

## CHAPTER 7 – OUTLINE

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## CHAPTER 7: CULTURAL COMPETENCY

If you are new to serving the TGI community, please do not let your lack of experience discourage you from taking cases involving barriers to GAC. Cultural competency is a lifelong learning process that continuously evolves.

While various definitions of “cultural competency” exist, the term generally refers to the ability to understand the values, beliefs, and practices of a given culture, thereby allowing one to interact respectfully and effectively with someone of that culture.<sup>1</sup> An example of cultural competency with TGI individuals is respecting each individual's name, gender identity and pronouns. Understanding why these aspects are significant for this particular community is key to developing skills in being culturally responsive to TGI communities.

The tools and infrastructure within many law firms and legal organizations often carries inherent risks for deadnaming and misgendering. However, there are tools to minimize, if not eliminate, the occurrence of those risks. Examples include, adjustments to the intake process, such as intake forms and questions, using case management systems or adapting functionality within existing systems is another way to avoid insensitive or potentially discriminatory behavior toward potential TGI clients.

Cultural competency requires seeing all of the layers of an individual's identity, because those layers do not exist in isolation. Building awareness and understanding of multiple intersecting aspects of TGI individuals' lived experiences, including race, ethnicity, sexual orientation, disability, and more helps ensure potential clients are treated with respect and that potential barriers impacting them can be identified, addressed or avoided altogether.<sup>2</sup> This Chapter will largely focus on gender identity.

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<sup>1</sup> A related term is cultural humility, which involves not only understanding and respect for another culture but also self-reflection of your own culture, including an awareness of how your own biases or assumptions shape your views. See, e.g., Katherine A. Yeager and Susan Bauer-Wu, “Cultural Humility: Essential Foundation for Clinical Researchers.” *Appl Nurs Res.* (Aug 12, 2013), <https://pmc.ncbi.nlm.nih.gov/articles/PMC3834043/> (last visited Feb. 21, 2025).

<sup>2</sup> See Columbia Law School, Kimberlé Crenshaw on Intersectionality, More than Two Decades Later (June 8, 2017),

## A. DEADNAMING: CURRENT NAME, LEGAL NAME, & BIRTH NAME

Some TGI individuals may change their name (and sometimes multiple times) as a part of their social transition. **Deadnaming** occurs when the incorrect and/or former name is used to refer to someone.<sup>3</sup> Deadnaming may occur intentionally or unintentionally.<sup>4</sup> The deadname is often times, but not always, the person's "birth name" or "given name."<sup>5</sup>

Deadnaming can be harmful and unaffirming to TGI individuals and should be avoided, unless the individual has requested otherwise.<sup>6</sup> This could be for safety reasons or because they are not yet open about their gender identity. Deadnaming and using incorrect pronouns should be avoided even when the person is not present, as doing so may put them in danger by outing their transgender status to others and revealing their personal information.<sup>7</sup>

Please note that not all TGI people legally change their name or gender marker, even if they go by a different name. There are many reasons for this, including cost, time, energy, and safety. Some individuals feel satisfied and affirmed by simply going by a different name and pronouns. This means the name they currently use may be different than the name and gender marker information on their identity documents. While individuals can request a fee waiver for the cost of filing a petition to change their legal

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<https://www.law.columbia.edu/news/archive/kimberle-crenshaw-intersectionality-more-two-decades-later> (last visited Feb. 21, 2025).

<sup>3</sup> Healthline, What is Deadnaming?, <https://www.healthline.com/health/transgender/deadnaming> (last visited Feb. 21, 2025) [hereinafter What is Deadnaming?].

<sup>4</sup> What is Deadnaming?

<sup>5</sup> What is Deadnaming?

<sup>6</sup> Nat'l Inst. Health Office of Intramural Training & Education Blog, Understanding the Impact of Misgendering and Deadnaming (Jul. 31, 2023), <https://web.archive.org/web/20231007003321/https://oitecareersblog.od.nih.gov/2023/07/31/understanding-the-impact-of-misgendering-and-deadnaming/> (last visited Feb. 21, 2025) [hereinafter Understanding the Impact].

<sup>7</sup> Understanding the Impact.

name and/or gender marker, it can still be cost prohibitive for individuals who may not qualify for such a waiver.

The best practice is to use the name and pronouns a person goes by, regardless of whether or not the person has legally changed it. A person's deadname is largely not relevant, with few exceptions, to providing TGI individuals with legal assistance, even if it is still their legal name. In the legal profession, there are two common scenarios when a person's deadname is often necessary in the course of providing legal assistance to TGI individuals:

(1.) Conflict of interest checks.

Section F. Intake Forms & Questions; Screening Script, provide sample intake questions that may be useful to gather necessary information to check for any conflicts of interest in a manner that is sensitive to an individual's identity while maintaining legal ethics standards. Section G. Conflict of Interest Check provides tips on conducting a culturally competent conflict of interest check to reduce trauma or avoid unintentional deadnaming of TGI clients.

(2.) Identity information differs between identity documentation.

Barriers to accessing GAC may arise if a person's name does not match their identity documents. This is important to keep in mind to spot potential legal issues. For example, watch out for health plans is keeping a plan member from accessing their personal health information because the plan won't accommodate the different names connected to the member because of their gender identity.. This is an issue where handling information related to a person's deadname may be necessary to fix the issue.

## **B. PRONOUNS**

When corresponding with potential clients, it is a best practice to ask whether they go by another name when collecting information about their legal name, rather than assuming that they go by their legal name. The same principle applies to a person's **pronouns** (the words, other than the person's name, that should be used to refer to that person). Rather than assuming someone's pronouns it is a best practice to offer your pronouns when introducing yourself and/or asking them what pronouns they use. There is no "right" way to be transgender and gender non-conforming, and transgender people are not monolithic. So, it is best to avoid assumptions about a person's gender identity, pronouns, or preferences based on their

appearance. Some people go by multiple pronouns, such as “he/they,” “ze/zir” or “she/he/they.” Asking people what pronouns they use and sharing your pronouns normalize asking and answering, and help to create a culture of safety and inclusivity.

## C. MISGENDERING

**Misgendering** refers to the act of incorrectly assigning a gender identity to another person. This can happen explicitly or indirectly, and intentionally or unintentionally. Referring to a person as a “boy” or “man” or using “he/him” pronouns when that person self-identifies as a “woman” or “girl” or “nonbinary” is an example of explicit misgendering. Another example may be refusing to use a nonbinary person’s pronouns because you disagree with the way they’re referring to themselves is another form of misgendering. It is also possible to indirectly misgender people through gendered language such as mother/father, brother/sister, or Mr./Mrs./Ms. Or in settings where colloquial language – such as referring to a group of people as “guys” or “ladies” – is used. Using gender neutral language and taking the time to learn how clients refer to themselves is the best way to avoid misgendering.

Everyone makes mistakes and asking about and using unfamiliar pronouns can take practice. In the event that you accidentally misgender another person, it’s important to not make the situation about you and to avoid unnecessarily escalating the situation. In the event that you accidentally misgender someone, it’s best practice to simply apologize, correct yourself by using the correct name or pronoun, and then move on with the conversation. It is also important to make every effort to not repeat the mistake. Ongoing practice helps reduce mistakes. The National LGBTQIA+ Health Education Center advises frontline health care staff that:

Occasionally, a patient will have a very negative reaction to being misgendered, even after an apology. Remember that many TGD<sup>8</sup> people have experienced extreme discrimination and trauma, making it challenging for them to trust others. Try to stay calm and not take their reaction personally. A second thoughtful apology can go a long way in changing the patient’s experience.”<sup>9</sup>

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<sup>8</sup> In this source, “TGD” means “transgender and gender-diverse.”

<sup>9</sup> National LGBTQIA+ Health Education Center, Affirmative Services for Transgender and Gender-Diverse People: Best Practices for Frontline Health Care Staff (updated Winter 2020) at 8,

If asking about and using different pronouns is a new practice for you, be patient with yourself and keep practicing. Having a colleague or friend to practice with or correct you can be a helpful way to get comfortable and keep yourself accountable.

**ADVOCACY TIP # 7.1:** Some people use multiple pronouns, and/or do not have a preference over any pronouns, and/or do not like pronouns, altogether. Try using a different pronoun that a person goes by instead of using the same one or the pronoun most often assumed for that individual. For example, if a person goes by “he/they,” try using “they” if you typically have referred to that person with “he” pronouns.

## **D. RECOGNIZING THE MENTAL IMPACT ON TGI PEOPLE**

Navigating barriers to access health care, including gender-affirming care services can take a mental toll on TGI individuals. Barriers to gender-affirming care remain a major systemic issue for TGI individuals and having to constantly defend their health care needs can be discouraging and upsetting for TGI individuals that has the potential to cause serious harm to their wellbeing. For example, improper denials for gender-affirming care on the basis that it’s cosmetic or lacking medical necessity can trigger an individual’s gender dysphoria or other feelings of distress from past traumatic experiences. The denials are often loaded with unaffirming, incorrect or outdated language. Offering reassurance to clients that you support them, while also having candid conversations about the possible outcomes of their case in the course of your representation often helps to prepare your client and manage their expectations. It’s also helpful to explain, if applicable, the narrow instances where you may need to use their deadname for any legal-related purposes. Providing this background while educating them about their rights and strategies to overcome barriers helps empower more TGI individuals to fight against future barriers.

## **E. CASE MANAGEMENT SYSTEMS**

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[https://www.lgbtqiאהealtheducation.org/wp-content/uploads/2020/03/TFIE-40\\_Best-Practices-for-Frontline-Health-Care-Staff-Publication\\_web\\_final.pdf](https://www.lgbtqiאהealtheducation.org/wp-content/uploads/2020/03/TFIE-40_Best-Practices-for-Frontline-Health-Care-Staff-Publication_web_final.pdf) (last visited Feb. 21, 2025) [hereinafter Affirmative Services].

A case management system is a tool that advocates use to create, document details, and organize case files. When creating a new case in the system, the advocate needs to have basic information about the client in order to label the case correctly (by client name, by legal issue type, etc). This information might be collected from the client during the intake process, discussed in section F. of this Chapter.

If your case management system is formatted to automatically label or identify cases using the client's legal name, it creates a risk of deadnaming or misgendering them if they go by another name. A culturally competent case management system should allow the advocate to use a different input, such as a case number or the name the client goes by, as a case identifier.

As legal ethics require, advocates must check for any conflicts of interest that may bar representation of a potential client. The case management software can perform a conflict of interest check by cross referencing the client's information in the system. The conflict of interest check is discussed in section G. of this Chapter.

Case management systems can also help track statistics and identify trends. For example, you can use sorting and searching functions to identify how many cases in a given year involved a certain issue type, or clients living in a certain zip code, or overrepresentation of specific demographic populations. The ability to quantify your organization's work can help identify systemic issues, comply with grant reporting rules, and seek grant funding.

## **F. INTAKE FORMS & QUESTIONS / SCREENING SCRIPT**

For intake processes, it is important to ensure that the questions asked during the intake are inclusive and culturally responsive. Below are common examples of general intake questions:

- (1.) May I have your name with spelling?  
May I have your legal name with spelling?  
What name do you go by?

**CAUTION:** It is important to note that questions (2.) and (3.) may be relevant questions only if you are a law firm or providing legal representation, and

- (2.) Is there another name you would like me to use?



If the name they go by is different than their legal name, you may want to check whether the person wants to legally change their name and/or gender marker and if they want assistance with the process. If so, then you may try to refer them to a local name and gender marker change clinic to assist with that legal process or it may be appropriate to do the process if it's related to the legal issue of a client's case.

- (3.) Do you have any prior names, including nicknames, maiden names, aliases?

If they have a prior legal name(s) and/or gender marker(s), ask if they are experiencing any barriers to change it with the county, health plan, or providers' offices, etc.

- (4.) What is your gender identity?  
(5.) What pronouns do you use?

While not every TGI person contacting your organization will have a legal issue that is related to accessing gender-affirming care, there are questions that can be helpful to screen for potential barriers the person may not be aware is a legal issue. Below are some sample prompts to issue spot:

- (1.) Are you seeking a gender-affirming service that you are not already receiving?  
(2.) Are you having any problems getting gender-affirming care? Is there anything preventing you from obtaining the health services you are seeking?  
(3.) Do you have any questions about accessing gender-affirming care services?  
(4.) Have you been denied any gender-affirming services recently?

If your organization requires you to ask all individuals about their sex, gender identity, sexual orientation, etc., it is normal to encounter some resistance, confusion, questions or concerns, or sometimes bigotry when asking such questions. It is a best practice to explain why the questions are necessary to ask and why they are important.

Here are some examples of helpful responses:

- We understand your concern about these questions. Answering is voluntary, and answers are kept confidential.
- We do not want to assume any information about anyone.



- The questions allow us to better serve all of our community in the most respectful way possible.
- The information allows us to identify systemic issues or barriers impacting the community.

## **G. CONFLICT OF INTEREST CHECK**

Legal professionals who provide legal representation or certain levels of legal assistance must screen for conflicts of interest under legal ethics rules. In order to conduct conflict of interest checks, they must ask prospective clients for all names they have used including: names they go by, their current and prior legal names, nicknames, maiden names, and aliases. Regardless of whether or not they have legally changed their name, a TGI person's birth name or deadname can be a great source of trauma and discomfort even if the information is necessary before providing legal representation. It is a best practice to explain the reason you are asking for this information, the limited scope you will use the information, and to reassure them that you will address the person by the name and pronouns they use. If a prospective client is particularly distressed, it may help to offer alternative methods for providing the information such as writing the name down, sending it in an email, or providing a copy of the court order if they legally changed their name.

## **H. CREATING A SAFE & INCLUSIVE SPACE FOR TGI PEOPLE**

### **a. Documents & Materials**

Gendered language is prevalent in many places such as letters, emails, forms, and brochures. Making documents and materials culturally competent depends on different factors, such as the purpose of the document and its intended audience. Be sure to review any template correspondence for gendered language and remove it or switch to gender-neutral language. If it is an intake form or other type of form containing client information, it is also helpful to include a space for the person's pronouns and other names they go by, if necessary.

Examples of gendered language, along with gender-neutral alternatives:

<i>Instead of:</i>	<i>Use:</i>
He or She	They
Pregnant women	Pregnant people Birthing person
Maternal health	Parental health Birthing health
Husband or Wife	Spouse Partner

Remember that TGI individuals have complex, full lives like everyone else. They are someone's parents, children, siblings, etc. Implementing these best practices helps cultivate an environment of safety and respect.

## **b. Bathrooms & Signage**

Creating an affirming physical environment for TGI clients is important, too. This can include common areas, office spaces, bathrooms, and more. Below are a few best practices to help make your organization a more inclusive and safe space for TGI clients.

Avoiding gendered spaces, which most commonly comes up around bathrooms, is a key approach to create a safe and inclusive environment. Not everyone identifies as a “man” or a “woman” and even binary-identified TGI individuals still may feel apprehensive about entering a bathroom even if it corresponds with their gender identity. Many TGI people encounter discrimination, harassment, and violence when existing in public spaces, such as public restrooms. Designating gender-neutral or all-gender restrooms or simply converting restroom signage to gender-neutral or all-gender bathroom signage is an example of how to make your organization a welcome space for TGI clients and colleagues.

It is also helpful to use inclusive language and images on correspondence, public-facing materials and other forms of communication, such as websites, educational materials, and posters.<sup>10</sup> For example, the National LGBT Cancer Network published some recommendations, including, “[p]ost a nondiscrimination policy that includes sexual orientation and gender identity[; e]nsure that public areas include wall art with LGBTQ images and contain LGBTQ publications[; p]lace rainbow stickers or pins on staff and posters[; and i]nclude LGBTQ images and language in all printed materials/brochures.”<sup>11</sup>

**REMEMBER:** Cultural competency is a multifaceted process and requires commitment. All of the above factors are important in order to make your place of work more affirming for TGI clients and your representation of them more effective. However, building trust with TGI communities, like anything else, takes time and continued action. While using brochures and having physical materials and signage that appear inclusive for TGI clients are important, they are only initial steps. These improvements must be incorporated into your organization’s culture and priorities. The ways of speaking with and issue spotting common experiences and barriers for TGI clients to ensure effective representation and to protect their interests within an attorney-client relationship are what is most important; this can only be accomplished through continued learning and practice.

## ENDNOTES

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<sup>10</sup> National LGBT Cancer Network, Best Practices in Creating and Delivering LGBTQ Cultural Competency Trainings for Health and Social Service Agencies, [https://cancer-network.org/wp-content/uploads/2017/02/best\\_practices.pdf](https://cancer-network.org/wp-content/uploads/2017/02/best_practices.pdf) (last visited Feb. 21, 2025) [hereinafter Cultural Competency Trainings].

<sup>11</sup> Cultural Competency Trainings at 19.