

OPEN MINUTES - N.J. STATE BOARD OF MEDICAL EXAMINERS - PG. 1
DISCIPLINARY MATTERS PENDING CONCLUSION - OCTOBER 13, 2010

A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, October 13, 2010 at the Richard J. Hughes Justice Complex, 25 Market Street, 4th Floor Conference Center, Trenton, New Jersey for Disciplinary Matters Pending Conclusion, open to the public. The meeting was called to order by Kevin Walsh, P.A., Board Vice President.

PRESENT

Board Members, Cheema, Ciechanowski, Criss, Howard, Jordan, Lambert, Mendelowitz, Paul, Rajput, Scott, Stanley, Tedeschi and Walsh.

EXCUSED

Board Members Berkowitz, Baker, DeGregorio, Lomazow, Iannuzzi, and Weiss.

ALSO PRESENT

Assistant Attorney General Joyce and Deputy Attorney's General Ehrenkrantz, Hafner, Levine, Flanzman and Warhaftig, and Executive Director Roeder.

RATIFICATION OF MINUTES

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO
APPROVE THE MINUTES FROM THE SEPTEMBER 15, 2010 BOARD
MEETING.**

HEARINGS, PLEAS, AND APPEARANCES

1. **A.M., MD**
 DAG Doreen Hafner, Prosecuting
 D.A.G. Debra Levine, Counseling

On or about September 22, 2010, the Attorney General filed a Notice of Motion to Require Respondent to Submit to a Psychological Evaluation and an Assessment of Skills. A.M., M.D. filed a response to the allegations. The matter was scheduled for oral argument on the motion.

DAG Hafner read a preliminary Motion. Because of the anticipated litigation and the nature of the proceedings, the Attorney General requested that the matter be conducted in Closed Session.

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO
CONDUCT THE HEARING IN CLOSED SESSION BASED ON THE BOARD'S
INVESTIGATIVE AUTHORITY AND SINCE THE MATTER WAS THE
SUBJECT OF ANTICIPATED LITIGATION. THE RESPONDENT'S INITIALS**

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WILL BE USED IN THE TRANSCRIPT AND ANY REFERENCE TO THE RESPONDENT'S IDENTITY SHOULD BE REDACTED. ALSO, IF ANY ORDER IS ISSUED BY THE BOARD IT WILL USE RESPONDENT'S INITIALS AS WELL AND ANY DOCUMENTS THAT HAVE IDENTIFYING INFORMATION WERE ORDERED SEALED.

The motion passed unanimously. The motion was made by Dr. Scott and seconded by Ms. Criss.

The Board moved into Closed Session to commence the hearing.

2. **BRIGHAM, Steven C. MD 25MA05106800**
Joseph Gorrell, Esq. For the Respondent
DAG Jeri Warhaftig, Prosecuting
DAG Steven Flanzman, Counseling

A Notice of Hearing and a Notice to File an Answer was filed by the Board on or about September 8, 2010. A hearing was scheduled for September 15, 2010 at 10 a.m, but the matter was adjourned with an agreement by Dr. Brigham to Cease and Desist his practice of medicine and surgery in New Jersey effective September 16, 2010. The matter was heard on October 13, 2010.

Mr. Walsh reminded the parties that this matter was scheduled before the Board based on the Application of the Attorney General seeking the temporary suspension of Dr. Brigham's license.

The parties put their appearances on the record.

Handed out at the meeting were copies of Respondent's brief in response to the application (w/ 21 exhibits) received in the Board office the day before the hearing. There was also a Motion filed by Dr. Brigham which sought to dismiss four of the six counts of the complaint. In short, it asserted collateral estoppel based on prior Board actions and the advice received by Dr. Brigham's counsel concerning laminaria insertion. The Attorney General responded to that motion. Finally, Dr. Brigham's counsel also filed a motion to dismiss the complaint.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO MOVE INTO CLOSED SESSION FOR ADVICE OF COUNSEL AND DELIBERATIONS ON THE PRELIMINARY MOTIONS.

Motion made by Karen Criss and seconded by Dr. Jordan. It carried unanimously.

All parties, except counseling, and administrative staff, left the room.

Returning to open session, Mr. Walsh noted for the record that during closed session, the Board

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members reviewed the extensive papers which were only received that morning.

Mr. Gorrell, arguing in support of his Motion to Dismiss, reminded the Board that in 1993, the Board brought a complaint against Dr. Brigham for the improper insertion of Laminaria and contained similar, if not identical, to the allegations currently at issue, although he admitted the fact patterns were slightly different. The Board conducted extensive hearings on the matter at that time, including referring it to the OAL. During those proceedings, the Board articulated a definition of an abortion and further concluded that the insertion of Laminaria is preliminary to the performance of an abortion. It followed, therefore, that the insertion of laminaria could not be considered as an abortion procedure. Additionally, it concluded that the insertion of Laminaria was proper and that the transport performed at that time was proper. Finally, it concluded that the treatment plan of Dr. Brigham was within the appropriate standard of care. Mr. Gorrell also reminded the Board that in a letter dated October 1999, it expressed the opinion that the insertion of Laminaria did not constitute an abortion. Dr. Brigham relied on this information from the Board and never heard anything to the contrary and therefore has acted accordingly up to his current practice. Mr. Gorrell argued that in light of the findings made at that time, the Board was collaterally estopped from imposition of “new” discipline.

Continuing his argument, Mr. Gorrell argued that the Board was collaterally estopped from deciding the issue further. The findings from 1993/1999, he maintained, were binding on this case. Fundamental fairness, according to Mr. Gorrell, dictated that physicians must be able to rely on the advice and findings of the Board. Until the Board undergoes the appropriate rule making process, then the physicians will always and should always be guided by the prior decisions and/or advice of the Board.

Turning his attention to the allegations in this case, he posited that they should be dismissed because they are contrary to the prior findings of the Board, as well as the current regulations in place.

DAG Warhaftig, in response, argued that the sole issue in the 1993 complaint which was resolved in favor of Dr. Brigham was the insertion of Laminaria. While she conceded that this was decided in the 1996 order in finding that the insertion of laminaria was not an abortion, she also conceded that the treatment plan at that time was appropriate. However, she continued, these facts cannot be viewed in a vacuum. Mr. Gorrell failed to point out that the abortion performed in New York was permitted under law in that state. This case is not about the insertion of Laminaria in his New Jersey office. This case, according to DAG Warhaftig, is about the insertion of Laminaria (which begins the abortion procedure) and the medical care, or lack thereof, provided.

She agreed that the physicians should be able to rely on what the Board has advised. But, once again, Mr. Gorrell asks the Board to hold to that premise in a vacuum. When the Board took a closer look at the specific facts outlined in the request letter, she believed that the Board would determine that the fact pattern in the letter was not even remotely similar to the fact pattern of the

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present case. The question in 1999 was very specific and focused on that fact pattern. In order to invoke the collateral estoppel doctrine, the fact patterns must be identical. Additionally, she noted that the current practice was distinguishable insofar as it involved several patients that received various agents, agreed to procedures by unknown doctors, in settings other than a licensed facility, and without any emergency or back up plan in place. The Board has a duty to consider the quality of medical care rendered in its jurisdiction. She also noted that Dr. Brigham has to be bound to the fact pattern that was articulated in the request for advice.

In rebuttal, Mr. Gorrell argued that the Board should dismiss any allegation in this case that deals with the insertion of Laminaria as a violation of the standard of care and that a treatment plan in that regard does not meet acceptable standards. He asked that an additional finding that Diogoxin as a prefatory modality does not constitute the performance of an abortion.

In her rebuttal, DAG Warhaftig noted that Mr. Gorrell is expanding the prior findings of the Board by adding two prefatory medications in the abortion procedures.

MOTION MADE BY MS. CRISS AND SECONDED BY DR. JORDAN TO MOVE INTO EXECUTIVE SESSION FOR ADVICE OF COUNSEL AND DELIBERATIONS.

All parties, except counseling and administrative staff, left the room.

Coming out of Executive Session, with all parties in the room, the Board announced the following Motion.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY THE MOTION TO DISMISS AS THE ATTORNEY GENERAL HAS RAISED SUFFICIENT FACTS TO MAKE A COLORABLE CLAIM AND THE BOARD DETERMINED THAT THERE WERE SUBSTANTIAL FACTS IN THE INSTANT MATTER WHICH DISTINGUISHED IT FROM THE PRIOR CASE WHEREBY THE DOCTRINE OF COLLATERAL ESTOPPEL DID NOT APPLY.

Motion made by Ms. Criss and seconded by Dr. Jordan. It carried unanimously.

The Board then heard oral argument on the Motion to Disqualify the Board's Expert, Dr. Gary Brickner.

In oral argument, Mr. Gorrell argued that it was Respondent's position that Dr. Brickner, the State's expert, should be disqualified. In short, he argued that since Dr. Brickner was a member of the Board when the Board made the decision in 1996, he should be precluded from the current matter. He cited a number of cases that supported his position. He also questioned how Dr. Brickner could have voted in favor of the issue in 1999 and now take a completely different position. He posited that experts should always be impartial and he could not advocate a

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position and now sit in judgement against Dr. Brigham.

DAG Warhaftig argued that Dr. Brickner's involvement in 1996 did mean that he voted in favor of Dr. Brigham. This participation demonstrates his lack of bias and this was a different case. She further argued that the basis to deny this motion was the same as the one used to deny the prior Motion to Dismiss. The question was simple – whether this is a separate and distinct case. The Board already has answered that question in the affirmative. The Attorney General maintained that clearly it was and that the Board's recent ruling supports such a decision.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO MOVE INTO EXECUTIVE SESSION FOR ADVICE OF COUNSEL AND DELIBERATIONS.

Motion made by Ms. Criss and seconded by Dr. Lambert. All voted in favor.

All parties, except counseling and administrative staff, left the room. Returning to closed session, it announced its decision.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO DENY THE MOTION TO DISQUALIFY DR. BRICKNER AS THE STATE'S EXPERT.

Motion made by Ms. Criss and seconded by Dr. Cheema.

Turning its attention to the application for the temporary suspension, the Board heard oral argument from the parties.

DAG Warhaftig reminded the Board that the Attorney General brought this application and asked the Board to view the case in the following context. This case is not solely about the Board's regulation on the termination of pregnancy. The case is about the care provided by a New Jersey licensee to five patients. DB suffered a complication after an abortion in Elkton, Maryland and another doctor was participating in the D&C procedure. The complications were discovered after she was transported to a local hospital and then air lifted to John Hopkins. The care began in New Jersey when she was 21 ½ weeks pregnant and laminaria was inserted. After the insertion, she returned home and then came back and was administered a drug, Mesophex, and was directed to drive to an unknown destination. Originally, she thought she was going to Philadelphia, however, she was directed to Elkton. In the caravan of cars, there were also two other patients with a similar story. On August 13th, Dr. Reiley, a licensed Maryland doctor, performed the procedures. In the caravan, Dr. Brigham was in the last car. The facts, according to the deputy, are replete with care well below the appropriate standard of care. DAG Warhaftig, however, also argued that the case was about not fully informing the patient where the procedure would take place, who would be performing and would it be illegal if performed here in New Jersey. As an example, she noted that one patient, encountered some discomfort after the insertion of laminaria, and JP eventually had a fetal demise after administration of digoxin and

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spontaneously delivered in the hospital. ML, yet another patient, traveled from Canada, was treated by Dr. Brigham and also was directed to Elkton, Maryland, with two other women, and received completed abortions after the insertion of Laminaria and/or administered medications. During anticipated testimony, DAG Warhaftig believed the Board would hear from two doctors that performed procedures at the Elkton facility. Overall, she posited that Dr. Brigham created a series of deceptive events that ultimately provided inadequate care and treatment of his patients.

Mr. Gorrell opened by asking the Board to realize that the case involved the provision of care in two states: New Jersey and Maryland. In each, the laws concerning abortions are different. In New Jersey there is no limitation which limits when a patient may have an abortion, although there are regulations which dictate where the procedures at different stages can be performed. The abortions in this case were performed in Maryland and its law is controlling. That law does not limit the time when a woman may have an abortion and in fact, it goes much further in protecting the woman's right to have an abortion. Dr. Brigham comported all of his care consistent with Maryland's law and did not violate any New Jersey regulations. He noted that Dr. Brigham would have witnesses to support this position.

Mr. Gorrell also asked the Board to realize that Dr. Brigham's care of his patients is always kind and compassionate. Rather than send the one patient to the emergency room, he went to the hotel room in order to treat the complications. In fact, he started the Elkton MD facility to make available late term abortions to women. His staff was frightened because of the recent murders of doctors that perform abortions and he has always "laid low."

Unlike the State's case, which will rely simply on paper, Dr. Brigham would present experts in the field to support the care given by Dr. Brigham. He posted that Dr. Brickner has never performed an abortion, at least in the last five years and asked the Board to remember that in evaluating the value and strength of Dr. Brickner's opinion.

Mr. Gorrell continued that there is a cease and desist order in Maryland and as a result, Dr. Brigham has immediately stopped providing any care in Maryland and has stopped bringing patients there. There is no immediate harm that is at issue with patient care. Accordingly, the Attorney General's motion should fail.

DAG Warhaftig offered into evidence exhibits. All exhibits had been pre-marked P-A through P-Z. All were accepted into evidence.

Mr. Gorrell objected to the admissibility of Exhibit X. He felt this "certification" was not proper and in many ways, constituted "double hearsay." The Board sealed Exhibit X.

Mr. Gorrell offered into evidence R – 1 through R- 23. All were accepted although DAG Warhaftig objected to R17 as it was duplicative, yet it was admitted.

The first witness, Dr. Michael Muccilo, testified that he is licensed to practice medicine in New

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York. Mr. Gorrell referred him to his CV and summarized his background and experience. He then testified to the procedures that he performs, including the common practice of inserting the laminaria and then sending the patient home to return about 24 or so hours later depending on how far dilated the insertion causes the cervix to become. As a general rule, the dilation usually occurs within forty-eight hours. On cross examination, he acknowledged that he has not attended any Continuing Medical Education (CME) on the topic of abortions. He does teach residents and that comprises about 5% of his practice. Primarily, he practices out of a hospital and has testified about 35 to 40 times in court on malpractice actions, generally as a defense expert. The Attorney General did not object to having this witness serve as an expert.

Dr. Muccilo then addressed the use of laminaria and testified that it is primarily a dilator. It's placed on the cervix, and after a period of time, because it assists in the abortion process because after a number of weeks of pregnancy, the cervix becomes "tougher" and this could lead to complications. Misoplastol was also developed and this type of drug can also soften the cervix and it does cause some complications. It has become an adjunct therapy with the Laminaria to soften the cervix. In some cases, it can be used to induce labor but this would take multiple doses over a period of time. In the last few years, it has been discovered useful in performing a D&C in softening the cervix. It is used as a softening agent in the abortion procedure. It allows for less use of the Laminaria and for less time when used in conjunction. People are beginning to realize that this can shorten the laminaria time which is a big advantage. There is a one in 500 chances that it will induce labor. The cervix needs to be dilated slowly or it could be dangerous for the procedure.

The witness also commented on Digoxin which has become more common in the abortive procedure. While the witness did not use it, he was aware that more often than not, it is used at the sonogram unit (adjacent to the hospital) and the intent is the same, namely to dilate the cervix. It is injected into the amniotic sack.

In commenting on Dr. Brickner's report, Dr. Muccilo took issue that these are dangerous drugs that should not be used. In his experience, with multiple pregnancies, it is generally thought that it is better to reduce it to one, maybe two. He opined that the insertion of the Laminaria, as well as the use of Misoplastol and Digoxin, is prefatory to the performance of an abortion and does not constitute an abortion.

Contrary to the argument of the Attorney General, the witness opined that the care performed by Dr. Brigham was within the appropriate standard of care. He also opined that driving did not present any further risks and there needs to be sufficient time to allow the cervix to soften enough for a "safer" abortive procedure. With Laminaria, there will be some pain, cramping pain, because of the type of procedure and because of the use of the clamps.

The witness addressed each of the cases at issue in this case and ultimately opined that the care performed by Dr. Brigham was care and treatment within the appropriate standard of care. It met the standards of a typical, second trimester abortion.

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Dr. Stanley left and did not participate further in the hearing.

On cross examination, Dr. Mucilo recognized that the medical record was not clear as to what dosage was ordered, however, if one looked at the total care provided, one could deduce the amount given. He also noted that a specialty has been created and is continuing to be developed that would permit one to claim to be a specialist in the area. If you know how to do the procedure, according to the witness, you know how to do the procedure.

Dr. Rajan was called next and he spoke to the Board about his background, training, and experience. He has provided abortion services over the years and continues to provide them in a clinic in Philadelphia which is an out patient clinic. Abortions, including second trimester abortions, are performed. He is no longer practicing OB, but has kept up his Board certification which is up-to-date. He was offered to serve as an expert for the defense. After some qualifying questions, the Attorney General did not object to him serving as an expert, however, she reserved her right to object to him testifying at one at the plenary hearing. The Board qualified him as an expert.

He explained the reason for the laminaria insertion by the use of a diagram. He also opined on the various patients that are at issue in the complaint and challenged whether those that believed that they were in labor actually were. The witness also addressed the use of digoxin and Metrosporal as prefatory medications used to soften the cervix. As with the other expert, he concurred that driving did not endanger the patient and it was common practice to let the patient drive after the administration of the Laminaria/Digoxin/Cytotech. None of these constitute an abortion, but are prefatory in nature. The witness also concurred with the other witness that all the care provided to the five patients identified in the case received appropriate care from Dr. Brigham. He also went so far as to opine that Dr. Reilly was the practitioner responsible for the care at the facility and it was within her judgment at the time to permit her to go to the hospital in her own car rather than wait for an ambulance. On cross examination, DAG Warhaftig challenged his knowledge on the use of Cytotech.

Dr. Brigham, after being sworn in, testified before the Board. In August 2010, his practice consisted of office gynecology and family planning and first trimester abortions. In New Jersey, he performed second trimester abortions about four or five years ago at a licensed health care facility in Atlantic City. His practice is restricted now to the first trimester. Dr. Brigham also spoke about his background and in particular his training in abortions. He recalled that he became aware of the regulation about the insertion of Laminaria and consulted with the drafter of the regulation sometime in 1992. At that time, he was working in New York and was interested in performing the procedures in New Jersey in the office setting. Shortly thereafter, the Board investigated his practices and he stopped inserting Laminaria until after a final decision from the Board sometime in 1996 or 1998. Finally, in 1999 he wrote to the Board and requested advice on the issue. As he recalled, the response confirmed that Laminaria could be inserted in the office setting as prefatory to the abortion procedure. This was consistent with the testimony at the hearing at the OAL and Board. Over the last 11 years, there is a group of physicians in New

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Jersey that do insert Laminaria based on the Board's decisions. He also mentioned that he has not had one adverse reaction or untoward event in New Jersey over those years. He did admit, however, that from time to time, after insertion, there would be some complications and he would send the patient to hospitals in Pennsylvania or New York.

He started the facility in Maryland because he already had an office down there and was training physicians in that State. He recalled that he had received a letter that informed him that Maryland was investigating him for the unlicensed practice. His lawyer returned a response and based on its law that permits a licensed physician who is consulting with a Maryland physician, Dr. Brigham concluded he was not violating any Maryland laws. Dr. Brigham also was motivated to open an office because he was motivated by the murder of a doctor who performed abortions, wanting to provide women with a safe alternative. At all times, according to Dr. Brigham, he was only working as a consultant with a Maryland doctor.

The witness then testified about the procedures in his office for a second trimester abortion. When he made the decision to offer these services, there were a lot of fear and resistance on the part of his staff because of the harm that often these clinics faced. He educated the staff and tried to keep a rather low profile. He selected Elkton because of the close proximity to Delaware, New Jersey, and Pennsylvania. Patients weren't given much information about the site because of fear of retaliation. When a woman comes to the office seeking an abortion for second trimester, he continued, she would see a doctor and more often a laminaria was inserted and the patient is instructed to return to the office the next day. She was informed that she would have to travel to another office for the procedure. He always would verify that this was the patient's wish prior to the insertion of the Laminaria. When the patient returned, she would be accompanied to the other facility. The use of medications was decided on a case by case basis, generally 90 minutes prior to the termination procedure. It was always used as an adjunctive procedure with the Laminaria.

For third trimester patients, they would meet at the Mt. Laurel office to make sure they were "real" patients. There was always a fear that individuals were pretending to be patients in order to obtain information about the office and/or procedures. He also maintains a 24-hour hot line in order to address any complications or issues that arise after the insertion of the laminaria. When patients contact it, his staff answer the basic questions and refers the more complicated matters to him. In the case of the one patient, according to Dr. Brigham, he suggested that she needed to work with the gauze a bit more and he decided to go to the hotel room. When he went to the hotel room, the police, according to the witness, tried to block his entrance to the room and appeared to be confrontational. The EMS arrived and the police insisted that she be transported to the hospital. He further recalled that the police threatened to arrest him if he attempted to block her transport. Dr. Brigham did not believe that she was in labor, however, because of the laminaria there was radial pressure on the cervix and this causes a constant pain. This is very different, he continued, than those of a contraction. With a contraction, the pain is intermittent. In contrast, with the laminaria insertion, the pain is constant. He was of the opinion that if the police hadn't forced her to go to the hospital, he would have seen her the next day and the

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problems would have been resolved. He was arrested and Dr. Brigham maintained that they used the pretext of an expired parking ticket from 13 years ago. When he got to the police station, they questioned him solely about the late term abortion.

In the Elkton office, he testified to the qualifications of Dr. Reilly and believed that she was more than qualified. He did note, however, that after a while, it did appear that the stress had gotten to her. She began to bark at patients and in fact had made a few of the patients, as well as staff members, cry.

He went over each of the cases and talked about the care that he provided. He was convinced that the care he provided was well within the standard of care. Dr. Brigham also asked the Board to recognize that he was trying to provide the most compassionate and medically sound care that he could provide to his patients.

Regarding his use of Digoxin, Dr. Brigham noted that it was being used as a prefatory measure to assist in the softening of the cervix in conjunction with the Laminaria. He cited several medical journal articles that supported this use.

Dr. Brigham, throughout his testimony, stressed that any practice in Maryland was only in consultation with another physician that was licensed in Maryland.

Turning his attention to Exhibit "H", he testified that it was a log of medical waste and tissue. Dr. Sheppard's name is on the sheet and the witness informed the Board that he was the Medical Director of the facility. Dr. Brigham consulted with him. Also in the recovery log, there were other names of physicians and Dr. Brigham again assured the Board that each of them was duly licensed in the State of Maryland. The logs do not convey who performed the procedures. The medical record was the source where the doctor performing and/or assisting on the case would indicate there by countersigning the record together. If a record did not contain the name of a physician, specifically patient ML, it was because the doctor performing the procedure did not have time to fill out the record because of the transport. The record was seized prior to completion.

Dr. Brigham then testified to Exhibit "X" and noted that he first saw it yesterday. Upon review of the document, Dr. Brigham testified that the report was filled with errors. For example, in the ML case, the reference about the patient being in labor was inaccurate. At best, he opined that the patient was in pain because of the insertion of the laminaria. The document does indicate that he was paid for the procedure, but this is inaccurate. He billed the insurance carrier, but this amount does not reflect what was actually paid, and in fact, he did not receive anything for this procedure.

With Board member questions, Dr. Brigham mentioned that he uses a criterion of nothing greater than 25 weeks to determine whether or not to perform a late term abortion, unless for genetic reasons. In Elkton, he estimated that maybe 20 percent of the cases were late term. The New

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Jersey office for first trimester and general OB/GYN care saw about 20 plus patients a day, while in Elkton, there may only be 12 during the entire week. As far as gestational viability, he opined that it depended on how you define viability. The literature reports a wide range of age for viability. He did state that in the third trimester he would always need some type of anomaly before he would perform the abortion. He believed that the latest he has performed an abortion was at 36 weeks, however, this was a case where the brain was non existent.

He addressed the issue of the Maryland's investigation. He was ordered to cease and desist the practice of medicine in Maryland, although he maintained that he was permitted to continue to practice because he did it in consultation with Maryland licensed doctors. Dr. Brigham believed he was acting in compliance with Maryland's laws.

Dr. Brigham talked about his ownership interests in Pennsylvania, Maryland, New Jersey and his work in New York.

In closing, Dr. Brigham testified that he asked the Board to consider that the abortion issue is always filled with emotions and asked that the Board put these aside. He asked that the Board evaluate the service that he is providing and only makes its decisions based on the quality of that care. He also asked the Board to recognize his efforts over the years in his attempt to comply with the Board's regulations. Dr. Brigham also noted for the record that he sought out the specific advice on the issue. He requested that the Board, if it were changing its position on the appropriateness of the insertion of laminaria, not to apply the new position retroactively.

In closing, Mr. Gorrell reminded the Board of the status of his license and assured the Board there was no danger to him continuing to practice performing first trimester abortions. There is no issue about that. He also believed that it was outside the purview of this board to review and interpret Maryland law. In the event the Board disagreed, he posited that the law in Maryland permitted the services performed by Dr. Brigham. With respect to him practicing in Maryland the law specifically permits someone in consultation with a Maryland licensed physician to perform services.

Turning his attention to the expert opinion proffered by the Attorney General, Mr. Gorrell was surprised that Dr. Brickner did not come in to testify and this precluded the Respondent from the ability to cross examine him. It is nearly impossible to give any weight to the report when the Board has no idea how many abortions were performed by him. Mr. Gorrell also questioned based on the information provided in the report whether he reviewed or was even aware of Maryland's law.

Mr. Gorrell opined that the only thing that the state has proven is that the medical record keeping was at times "sloppy." This is not a basis to take away his license considering the proofs needed for temporary suspension. Nothing presented by the State, counters the findings of the Board in defining what an abortion is and what Dr. Brigham did was lawful. He is only performing first semester abortions and there hasn't been any questions about his ability to perform such

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procedures.

In closing, DAG Warhaftig started with Dr. Brickner's addendum in which he says that Dr. Brigham's experts miss the issue in the case. Simply put, does the quality of his medical practice place his patients at a risk of harm and does his continued practice constitute irreparable harm.

Reviewing each one of the cases, DAG Warhaftig argued that the records demonstrated that the Laminaria begins the abortion process and this statement is part of the informed consent given and taken from the patient. Additionally, it clearly states in that same consent form that once inserted, there isn't any going back.

As Dr. Brigham testified, he asks the patients to articulate why they want the abortion. In one of the patients, she stated a mental health issue and when carefully read, it was being requested for social reasons and questionable characteristics of the sperm donor. While a mental health issue might be appropriate for a late term abortion, she speculated that perhaps this was specious at best. The abortion was completed in Maryland and he performed the abortion as evidenced by his countersignature. Clearly, Dr. Brigham according to his own testimony was the more skilled physician present at that procedure. The other physician hadn't performed one in more than ten years. Even if the final "act" was performed in Maryland, the drugs and insertion of the laminaria had all started in New Jersey. Another patient qualified because she thought she was better suited to an abortion as it would "affect her career." Again this appeared to be a sham rather than a genuine reason for mental health reasons. She never made it to Maryland because she delivered at 3:00 a.m.

DAG Warhaftig zeroed in on the use of Cytotech that he administered because he failed to record it and she posited that the hospital at a minimum would have cared as to the dosage. While he tried to explain it away as it was the "standard" dose, but if one were reading the record "cold" how would one know that. She also questioned the validity of the informed consent as the patients never knew where the procedure would take place or for that matter, who might be performing the procedure. She doubted that the Board would find this as appropriate care.

Finally, she argued that Dr. Brigham was playing fast and loose with the rules and felt he could get away with the conduct. His history of the Board, she continued, evidenced a behavior that always was just over the edge of legal behavior. Even his letter seeking advice was at best disingenuous and represented that it was being sought out advice on behalf of a group of physicians. The advice that the Board offered was not followed, although he would like the Board to believe that he attempted to follow the law. She further posited that the Board cannot take comfort in that he would only be performing first trimester abortions because no matter what his practice consists of, he will always take with him his lack of sound medical judgment. The problem, she offered, is that clear and imminent danger is created by his poor medical judgment when one reviews his overall practice of care. The standard of care is that of the community, but depending on where he is in the treatment, he picks and chooses what standard

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he wants and therefore, migrates from state to state. He began to bring the patient into the state of no return in New Jersey and therefore the standard in New Jersey should apply.

In response, Mr. Gorrell argued that if you have the facts, pound the facts; if you have the law, pound the law; when you have neither, pound the pavement. He asked the Board to realize that in most of her closing argument she speculated about situations that did not happen and are not alleged in the case. Additionally, the facts presented and as evidenced by the materials entered by the Board, the Board has determined what and when an abortion occurs. The behavior of Dr. Brigham in New Jersey does not meet that definition. This Board already ruled on these issues and it is bound by that ruling. The insertion of the Laminaria by Dr. Brigham was approved by the Board and the expert testimony to be believed by the Board supports that finding. Again he stressed that there has been no question about his performing first trimester abortions. He also concluded by noting that actions performed in New Jersey are governed by New Jersey and acts performed in Maryland are governed by Maryland. This Board, according to Mr. Gorrell, can only apply and interpret the laws of New Jersey.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO MOVE INTO CLOSED SESSION FOR THE ADVICE OF COUNSEL AND DELIBERATIONS.

Motion made by Ms. Criss and seconded by Dr. Jordan. It carried unanimously.

All parties, except administrative and counseling staff, left the room.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO GRANT THE ATTORNEY GENERAL'S APPLICATION AND ORDERED THE TEMPORARY SUSPENSION OF DR. BRIGHAM'S LICENSE BASED ON THE DEMONSTRATIVE, MANIPULATIVE AND DECEPTIVE BEHAVIOR TO CIRCUMVENT THE REGULATIONS OF THE STATE OF NEW JERSEY . IN THE THREE CASES WHICH HE INJECTED DIGOXIN IN THE PATIENT, HE CAUSED FETAL DEMISE AND BROUGHT EACH OF THE PATIENTS TO A POINT WHERE A TERMINATION OF PREGNANCY PROCEDURE HAD TO BE PERFORMED. HE COULD NOT HAVE QUALIFIED UNDER THE BOARD'S REGULATION TO PERFORM THOSE PROCEDURES IN THE STATE OF NEW JERSEY AS HE LACKED THE QUALIFICATIONS TO DO SO. FINALLY, THE LACK OF INFORMED CONSENT THAT DOESN'T FULLY TELL THE PATIENTS WHO WILL BE PERFORMING THE SERVICES AND WHERE THEY WILL BE PERFORMED IS ALSO REPRESENTATIVE OF HIS DEMONSTRATED POOR JUDGMENT. TAKEN TOGETHER, THE ABOVE PATTERN OF CONDUCT DOES PRESENT THE FINDING THAT DR BRIGHAM'S CONTINUED PRACTICE WOULD PRESENT A CLEAR AND IMMINENT DANGER . AN ORDER MORE FULLY

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DETAILING THE BOARD'S ACTION WILL FOLLOW.

Motion made by Dr. Jordan seconded by Dr. Lambert; the Motion carried unanimously.

Mr. Gorrell asked for an expedited transmittal to OAL and Attorney General would not consent because there are special rules that apply and the Attorney General was not willing to consent to the application of those special rules at this juncture.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO MOVE INTO CLOSED SESSION FOR THE ADVICE OF COUNSEL AND DELIBERATIONS.

Motion made by Ms. Criss and seconded by Dr. Scott. It carried unanimously.

All parties, except administrative and counseling staff, left the room.

Returning to open session, the Board announced that it would forward the case to the OAL with a request that the matter be handled on an expedited basis.

OLD BUSINESS

MASOOD, Yousuf, MD 25MA07146700
DAG Kay Ehrenkrantz, Prosecuting

On or about October 1, 2010 the Attorney General filed an Interim Consent Order. Dr. Masood agreed to voluntarily surrender his license to practice medicine and surgery in the State of New Jersey pending the final resolution of criminal charges and until further order of the Board. This Interim Consent Order shall not be deemed a disciplinary event.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO RATIFY THE BOARD PRESIDENT'S INTERIM CONSENT ORDER.

Respectfully submitted,

Kevin Walsh PA, Chairperson
For Open Disciplinary Minutes

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WVR/dt/br