

# Under pall of Gosnell trial, are Maryland's new abortion laws being enforced?

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The Philadelphia murder trial of Dr. Kermit Gosnell, an abortion provider accused of cutting the spinal cords of infants delivered alive during abortion procedures, has exposed not only the grisly details of his practice, but also the negligence of several Pennsylvania governmental agencies.

The case is causing some to question whether abortion clinics are appropriately monitored across the country, including in Maryland, where the Department of Health and Mental Hygiene (DHMH) introduced new regulations for the state's surgical abortion facilities last year.

Maryland has one of the highest abortion rates in the country, according to data from the New York-based Alan Guttmacher Institute, which has ties to Planned Parenthood, the United States' largest abortion provider. Maryland is one of four states that do not collection abortion statistics.

"There's a whole array of problems with Maryland's licensed abortion facilities in terms of safety for the patients who go there, and the historical lack of enforcement of all the other laws in terms of environmental safety and privacy protection," said Del. Nicholas Kipke, a Republican representing District 31 in Anne Arundel County. Named the House's Republican minority leader, Kipke is leading efforts to ensure Maryland is enforcing the new abortion facility regulations.

The Gosnell trial grand jury report outlines several instances where the Pennsylvania Department of Health failed in its obligation to regulate Gosnell's West Philadelphia center and respond to reports that Gosnell was performing late-term abortions, which are illegal in Pennsylvania, in unsanitary conditions with incompetent staff.

The report also accused Pennsylvania's Department of State, the Board of Medicine and Philadelphia's Department of Public Health of negligence.

Some descriptions of Gosnell's practice, most notably the prolonged storing of third-trimester fetuses and fetal parts, recall the 2010 case against fellow abortion

provider Dr. Steven Chase Brigham, who was also charged with killing infants born alive in late-term abortion procedures in Elkton. The charges were dropped because the prosecution lacked jurisdiction to pursue the case.

Brigham allegedly began the multiple-day late-term abortion process in his New Jersey clinic and then transferred patients across state lines to Elkton to finish the procedures with the help of an employee. He was not licensed to practice in Maryland.

At the time, New Jersey's late-term abortion regulations were more restrictive than those in Maryland.

Brigham's scam was revealed after one of his patients was severely injured during an abortion procedure in his Elkton facility in 2010. A police search of the facility revealed a freezer with the remains of 35 aborted late-term fetuses. Late-term fetuses are usually considered viable outside of the womb.

Brigham's case is one of the reasons the Maryland Catholic Conference has been a steadfast advocate for stricter regulations for the state's abortion centers. Legislation was introduced before the General Assembly in 2011 requiring the state to regulate surgical abortion facilities as ambulatory surgical centers, rather than doctors' offices, which was the current practice.

Among those who testified for stronger regulations was Stephanie White, whose 21-year-old daughter, Denise Crowe, died in 2006 after receiving too much anesthesia while undergoing an abortion in a Severna Park clinic.

The legislation failed, but the DHMH voluntarily agreed to create new regulations to address the public's concerns. They were enforced in July 2012, with a 120-day provisional period to allow clinics to complete the licensure survey process. It was to be completed Nov. 20.

Despite the new regulations, a woman died Feb. 7 following a late-term abortion at the Germantown abortion clinic of abortion provider Dr. LeRoy Carhart.

The incident prompted 30 members of the state's House of Delegates to sign a letter to Dr. Joshua Sharfstein, Maryland's Secretary of Health and Mental Hygiene, inquiring about the new regulations and whether the department investigated the clinic after the woman's death.

They expressed concern that the department was not properly enforcing the new regulations.

According to the letter, dated Feb. 28, an official complaint was filed against the clinic, Germantown Reproductive Health Services, three months before the patient's death. To the legislators' knowledge, the complaint had yet to be investigated and the facility had yet to be inspected.

"Despite the fact that the law had gone in place last year, all of these facilities had yet to be inspected," Kipke told the Catholic Review in April. "The state of Maryland

actually issued licenses to abortion clinics without inspecting them first.”

He added: “Never would you find a restaurant issued a license to serve hot dogs and hamburgers prior to them being inspected, but here we have very invasive surgeries taking place in Maryland abortion clinics (that) were going on until early this year in an entirely unregulated, uninspected fashion.”

Kipke, a ranking member of the Maryland House of Delegates’ Health and Government Operations Committee, was the letter’s chief signatory.

“While Marylanders have different opinions on the larger issue of abortion, we all agree that a woman receiving one should be protected from unscrupulous doctors as well as unsafe or unsanitary facilities in violation of state regulations or law,” the letter stated. “Laws and regulations are only effective if they are enforced.”

In February, the DHMH posted an update of its efforts to bring Maryland’s surgical abortion centers into compliance with the new regulations. It was to complete the first round of regulatory surveys and investigations in response to specific complaints by mid-April.

The DHMH told the Catholic Review that the Office of Health Care Quality initiated an investigation and conducted a licensing survey of the Germantown facility as a result of the complaint. Dori Henry, Maryland DHMH director of communications, declined to provide the date the investigation was initiated, or the date the facility was inspected for licensure.

However, “the department expects to provide an update in the near future on the results of its recent licensing surveys and complaint investigations,” the spokesperson said by email May 6.

In February, the Health Department suspended licenses held by Associates in OB/GYN Care to perform abortions in its Baltimore, Silver Spring and Landover locations. The business’ Frederick location was unaffected. Associates in OB/GYN Care facilities are among the abortion clinics in several states owned by Brigham.

At the Baltimore location, “surveyors identified a deficient response by facility staff to a cardiopulmonary arrest in a patient,” the letter said. The patient later died at a nearby hospital.

In a March 8 letter outlining steps Associates in OB/GYN Care had taken to rectify its three centers’ inadequacies, the organization’s administrator, Melissa Shachnovitz, told Sharfstein that the patient’s death was due to an underlying heart condition, and was likely not a direct result of the abortion she had at the facility.

After a review, according to the DHMH Office of Health Care Quality, it lifted the suspension of the facilities’ licenses.

“There will be continued monitoring to assure compliance,” a spokesperson said.

Abortion is prohibited in Maryland after viability of the fetus, except in cases of severe fetal abnormality, or life or health endangerment of the mother.

However, the definition of viability – or capability of surviving outside of the womb – is flexible, said Nancy Paltell, the Maryland Catholic Conference’s associate director for respect for life. So are the circumstances that can contribute to “health endangerment of the mother,” she said.

“Health of the mother includes psychological health, but she does not need to be examined by a psychologist or psychiatrist,” Paltell said. “Anyone can state, ‘This pregnancy is upsetting me,’ and you can have an abortion through all nine months” in Maryland.

A bill to restrict abortions after 20 weeks post fertilization – when the fetus can feel pain – died in committee during the 2013 legislative session.

The Maryland Catholic Conference is among pro-life organizations concerned that some surgical abortion centers continue to operate unlicensed.

The DHMH did not respond to questions regarding the licensure of specific operating surgical abortion centers not listed as licensed in its Office of Health Care Quality’s monthly report, but a spokesperson said they are working to ensure no clinic is operating without a license.

Kipke said that if he becomes aware of abortion facilities operating in the state without proper licensure, he will see they are shut down. He credits pressure from state legislators with ensuring that the new abortion clinic regulations are enforced.

“Individuals have reported very serious allegations against some of the abortion clinics in Maryland last fall, and the department did not respond, did not take action, did not go out and inspect. That is just unacceptable,” he said. “It wasn’t until it came to the attention of Maryland legislators and we took action and held the bureaucrats accountable, that they actually enforced the law.”

Kipke called the implementation and enforcement of abortion clinic regulations a success for pro-life organizations and other organizations that help pregnant women.

“We’ve been able to raise the bar in Maryland that if they’re going to happen, it will be in the most regulated environment possible,” he said.

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