



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

November 25, 2013

Kimberly Glunt  
President  
Integrity Family Health d/b/a Integrity Family Planning  
9622 Bustleton Avenue, Suite 2  
Philadelphia, PA 19115

**RE: DEPARTMENT OF HEALTH, Bureau of Facility Licensure and  
Certification v. INTEGRITY FAMILY HEALTH d/b/a INTEGRITY  
FAMILY PLANNING, Docket No. L13-003**

Dear Ms. Glunt:

Please find enclosed for filing an Order and an Order to Show Cause, which have been filed with the Docket Clerk for the Department of Health.

Sincerely,

  
Audrey Feinman Miner  
Senior Counsel

Enclosures



**DATE OF MAILING: November 25, 2013**

**Certified Mail**

**First Class Mail**

Facsimile: (267) 731-3947

**ORDER**

Facility ID GKSE8701

Integrity Family Health d/b/a Integrity Family Planning

9622 Bustleton Avenue, Suite 2

Philadelphia, PA 19115

(215) 581-3634

**TO:**

Kimberly Glunt

President

Integrity Family Health d/b/a Integrity Family Planning

9622 Bustleton Avenue, Suite 2

Philadelphia, PA 19115

You are hereby notified that the Pennsylvania Department of Health (Department") is issuing an **ORDER** against Integrity Family Health d/b/a/Integrity Family Planning ("Integrity") pursuant to the Abortion Control Act ("ACA"), *see* 18 Pa.C.S. § 3207(b); the ACA implementing regulations, *see* 28 Pa. Code Chapter 29; the Health Care Facilities Act ("HCFA"), *see* 35 P.S. §§ 448.811 and 817; the HCFA implementing regulations for abortion facilities, *see* 28 Pa. Code Chapter 551 and § 553.31; and The Administrative Code of 1929, *see* 71 P.S. §§ 532(a) and (b), 1403, 1404. As a result of Integrity's failure to disclose, on its application for registration as a Class A ambulatory surgical facility performing medical and surgical abortions, a current affiliation and/or business association with "American Women's Services" and a past affiliation and/or business association with Steven Brigham, the Department has determined that Integrity is in serious violation of the ACA and the HCFA.

On October 25, 2013, Department surveyors determined that Integrity provides the following number to patients and prospective patients: 1-800-226-7846. Department surveyors called that number, which is answered with the greeting "American Women's Services." A White Pages search links 1-800-226-7846 with "American Medical Service P.C. Business" operating at 1 Alpha Avenue, Suite 27, Voorhees, New Jersey. As part of its investigation, the Department further determined that Integrity's medical director, Eric Yahav, MD, had a prior business address at 1 Alpha Avenue, Suite 27, Voorhees, New Jersey, and a group affiliation with "American Medical Services, P.C." Upon information and belief, Steven Brigham operates

an abortion facility known as "American Women's Services" at 1 Alpha Avenue, Suite 27, Voorhees, New Jersey. None of these affiliations or associations were disclosed on Integrity's application to be registered under the ACA and approved under the HCFA to provide abortion services.

Therefore, pursuant to 18 Pa.C.S. § 3207(b), 28 Pa. Code § 29.43, 35 P.S. § 448.811(5) (6), and (10), and 71 P.S. §§ 532, 1403 and 1404, the Department **IMMEDIATELY SUSPENDS** the approval of Integrity under the Laws of the Commonwealth of Pennsylvania; 28 Pa. Code Chapter 29, Subchapter D; and 28 Pa. Code Chapter 551 and § 553.31 to Operate as an Abortion Facility **EFFECTIVE IMMEDIATELY, November 29, 2013**. No abortion related services of any kind may be offered after November 29, 2013.

This **SUSPENSION ORDER** is accompanied by an **ORDER TO SHOW CAUSE** why Integrity's ACA registration and HCFA approval to perform abortions should not be permanently **REVOKED**.

You may appeal the issuance of this **SUSPENSION ORDER** by requesting an Administrative Hearing before the Health Policy Board. If you wish to appeal the Department's action, you must file the attached "Notice of Appeal" **within 30 days** of the Date of Mailing of this decision with the Health Policy Board at the following address:

Health Policy Board  
625 Forster Street  
Room 825, Health & Welfare Building  
Attention: Angela Garcia, Acting Docket Clerk  
Harrisburg, Pennsylvania 17120

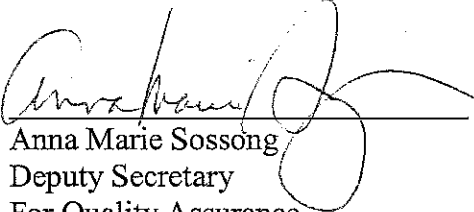
Additionally, if an appeal is filed, an Answer to the Order must be filed with the Health Policy Board specifically admitting or denying the allegations or charges in the Order. See 37 Pa. Code § 197.84. Failure to file said Answer shall be deemed an admission by you that all allegations or charges contained in the Order are true. The rules of practice and procedure for the Health Policy Board are found at 37 Pa. Code Chapter 197.

An appeal to the Health Policy Board shall not act as an automatic supersedeas of the decision of the Department of Health. If you wish to file a request for supersedeas, said filing must be done pursuant to 37 Pa. Code § 197.87.

If you do not request a hearing within 30 days of the Date of Mailing, this Order shall become final pursuant to 1 Pa. Code § 35.37 and 35 P.S. § 448.815.

If you request a hearing, a copy of the Notice of Appeal and Answer, if any, shall be served on the Department of Health on or before the date of filing your appeal at the address stated below, and a Certificate of Service (attached) shall be filed with the Health Policy Board indicating the party served:

Office of Legal Counsel  
Pennsylvania Department of Health  
625 Forster Street  
Room 825, Health & Welfare Building  
Harrisburg, Pennsylvania 17120



Anna Marie Sossong  
Deputy Secretary  
For Quality Assurance  
Department of Health

COMMONWEALTH OF PENNSYLVANIA  
HEALTH POLICY BOARD

IN RE:

:  
:  
:

DOCKET NO. L-

NOTICE OF APPEAL – LICENSURE

1. Appellant is \_\_\_\_\_  
(name, address and telephone number)

2. Appellant appeals the following decision of the Department of Health:

\_\_\_\_\_  
(Identify the decision, e.g., denial of application for license to operate and maintain a long-term care  
facility etc.)

3. The docket number or identifying number in the proceedings before the Department of Health, if any  
is: \_\_\_\_\_

4. The date of mailing of the decision of the Department of Health is:

5. Appellant lists the following specifications of objections to the decision of the Department as the basis  
for its appeal:

\_\_\_\_\_  
(e.g., decision not supported by substantial evidence, etc.)  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature of appellant or representative  
of appellant)

\_\_\_\_\_  
(Name and address of appellant or  
representative of appellant)

(Attach Certificate of Service)

COMMONWEALTH OF PENNSYLVANIA  
HEALTH POLICY BOARD

IN RE:

:  
:  
:

DOCKET NO.

CERTIFICATE OF SERVICE

I hereby certify that on or before the date of filing the foregoing document, I have served a copy thereof on each of the following persons in the manner indicated below:

Service by first-class mail addressed as follows:

\_\_\_\_\_  
(name and address)

Service in person:

\_\_\_\_\_  
(name and address)

Acceptance of service endorsed by the following:

\_\_\_\_\_  
(name and address)

\_\_\_\_\_  
(Signature of person filing)

\_\_\_\_\_  
(Name and address of person filing)

RECEIVED

NOV 22 2013

OFFICE OF THE SECRETARY  
SECRETARY OF HEALTH

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH, :  
Bureau of Facility Licensure and Certification, :  
Petitioner :

v. :

DOCKET: L 13-003

INTEGRITY FAMILY HEALTH, :  
d/b/a/ INTEGRITY FAMILY PLANNING, :  
Respondent. :

TO: INTEGRITY FAMILY HEALTH

NOTICE OF RIGHTS AND RESPONSIBILITIES

THE ACCOMPANYING ORDER TO SHOW CAUSE HAS BEEN ISSUED TO INTEGRITY FAMILY HEALTH D/B/A INTEGRITY FAMILY PLANNING ("INTEGRITY") DIRECTING IT TO ANSWER FULLY THE AVERMENTS CONTAINED IN THAT ORDER PURSUANT TO WHICH THE BUREAU OF FACILITY LICENSURE AND CERTIFICATION IS SEEKING THE REVOCATION OF THE DEPARTMENT OF HEALTH'S APPROVAL FOR INTEGRITY TO PROVIDE ABORTIONS AT 9622 BUSTLETON AVENUE, SUITE 2, PHILADELPHIA, PA 19115, THE ORDER TO SHOW CAUSE INSISTITUES A FORMAL ADMINISTRATIVE ACTION IN WHICH THE REVOCATION ACTION SET FORTH IN 28 PA. CODE §29.43(d) AND PURSUANT TO THE ABORTION CONTROL ACT (18 Pa.C.S. § 3201 *ET SEQ.*) AND THE HEALTH CARE FACILITIES ACT (35 P.S. § 448.808A *ET SEQ.* MAY BE IMPOSED AGAINST INTEGRITY IF IT IS FOUND GUILTY OF ANY OF THE CHARGES AGAINST INTEGRITY.

IF INTEGRITY ELECTS TO DEFEND AGAINST THE ALLEGATIONS SET FORTH IN THE ORDER TO SHOW CAUSE, IT IS DIRECTED, IN ACCORDANCE WITH 1 PA. CODE § 35.37, TO FILE A WRITTEN RESPONSE TO THE AVERMENTS IN THE ORDER WITH ANGELA GARCIA, ACTING DOCKET CLERK, ROOM 825 HEALTH AND WELFARE BUILDING, 625 FORSTER STREET, HARRISBURG, PA 17120-0701, WITHIN TEN (30) DAYS AFTER SERVICE OF THE ORDER UPON IT. AN ORIGINAL AND TWO COPIES MUST BE SUBMITTED. MERE GENERAL DENIALS UNSUPPORTED BY SPECIFIC FACTS WILL NOT CONSTITUTE AN ANSWER. FAILURE TO FILE AN ANSWER WITHIN THE TIME ALLOWED SHALL BE DEEMED A DEFAULT AND RELEVANT FACTS AVERRED IN THE ORDER TO SHOW CAUSE MAY BE DEEMED ADMITTED. IF INTEGRITY FAILS TO RESPOND, THE DEPARTMENT'S APROVAL TO PROVIDE ABORTIONS AT 9622 BUSTLETON AVENUE, SUITE 2, PHILADELPHIA, PA

19115, MAY BE REVOKED AND SANCTIONS IMPOSED. MATTERS IN DEFENSE OR MITIGATION OF THE CHARGES, WHICH ARE NOT AVERRED IN THE ANSWER, ARE TO BE AVERRED IN NEW MATTER. INTEGRITY MAY BE PRECLUDED FROM PRESENTING EVIDENCE OR RAISING DEFENSES AT THE HEARING THAT IT HAS NOT PLED AS NEW MATTER.

ANY DOCUMENT INTEGRITY FILES WITH THE HEARING OFFICER IT MUST ALSO SERVE ON OTHER PARTIES TO THIS MATTER. A DOCUMENT FILED WITH THE HEARING OFFICER MUST INCLUDE THE ABOVE CAPTION AND DOCKET NUMBER AND BE ACCOMPANIED BY A CERTIFICATE OF SERVICE.

UNLESS INTEGRITY WAIVES THE RIGHT TO A FORMAL HEARING, A FORMAL HEARING WILL BE HELD IN ACCORDANCE WITH THE PROVISIONS OF THE ADMINISTRATIVE AGENCY LAW, THE ACT OF APRIL 28, 1978, P.L. 202, NO. 53, 2 PA. C.S. §§ 501-508, AND THE GENERAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE, 1 PA.CODE § 31.1 *ET SEQ.* INTEGRITY WILL BE GIVEN AN OPPORTUNITY TO APPEAR AND BE HEARD IN PERSON OR THROUGH COUNSEL, AND TO QUESTION AND CROSS-EXAMINE WITNESSES, TO OFFER EVIDENCE AND ADVOCATE ITS POSITION, AND TO OBJECT TO ANY EVIDENCE ANOTHER PARTY TO THE PROCEEDING ATTEMPTS TO PRESENT.

CONTINUANCES WILL BE GRANTED FOR GOOD CAUSE ONLY. REQUESTS FOR CONTINUANCES MUST BE FILED IN WRITING AT LEAST TEN (10) DAYS PRIOR TO THE DATE OF THE HEARING. THIS REQUIREMENT WILL BE WAIVED ONLY UPON THE SHOWING OF GOOD CAUSE. IF INTEGRITY HAS NOT RETAINED COUNSEL OR DISENGAGES COUNSEL PRIOR TO THE HEARING, A REQUEST FOR CONTINUANCE TO RETAIN COUNSEL WILL NOT BE CONSIDERED AS A VALID REASON FOR THE GRANTING OF A CONTINUANCE ON THE DAY OF THE HEARING.

IF AN INTERPRETER IS REQUIRED, A REQUEST FOR AN INTERPRETER MUST BE FILED IN WRITING AT LEAST TWENTY (20) DAYS PRIOR TO THE DATE OF THE HEARING.

POSTHEARING BRIEFS MAY BE FILED PROVIDED THAT A REQUEST TO DO SO IS RESERVED ON THE RECORD AT THE HEARING.



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF HEALTH

RECEIVED

NOV 22 2013

OFFICE OF THE SECRETARY  
SECRETARY OF HEALTH

DEPARTMENT OF HEALTH, :  
Bureau of Facility Licensure and Certification, :  
Petitioner :

v. :

DOCKET: L 13-003

INTEGRITY FAMILY HEALTH, :  
d/b/a/ INTEGRITY FAMILY PLANNING, :  
Respondent. :

ORDER TO SHOW CAUSE

AND NOW, this 25th day of November, 2013, the Pennsylvania Department of Health, Bureau of Facility Licensure and Certification ("Department"), hereby issues this **ORDER** directing Integrity Family Health d/b/a Integrity Family Planning ("Integrity") to answer the following averments and to show cause why the Department should not revoke Integrity's registration and approval to operate an abortion facility in the Commonwealth.

Background

1. The Department registers every freestanding abortion facility under the Abortion Control Act, (18 Pa. C.S. §§ 3201-3220) and licenses freestanding abortion facilities that perform surgical abortions under the Health Care Facilities Act (35 P.S. §448.101 *et seq.*), as amended by Act 122 of 2011, as either a Class A or a Class B facility. Class A facilities are "registered" under the Department's implementing regulations, but the granting of such

registration provides Class A facilities with the same rights and responsibilities as a licensed health care facility.

2. Class A facilities are limited to performing procedures with the administration of either local or topical anesthesia, or no anesthesia at all.

3. To be registered, all abortion facilities are required to complete an Abortion Control Act registration packet.

4. To be registered as a Class A facility, the proposed abortion facility, in addition to registering with the Department under the Abortion Control Act, must complete a license application and provide a copy of its accreditation survey and certificate from a nationally recognized ambulatory surgical accrediting agency.

5. The Health Care Facilities Act requires the Department to issue a license to a health care provider when the Department is satisfied that, *inter alia*, the health care provider is a "responsible person." 35 P.S. § 448.808(a)(1).

### **Abortion Control Act and Its Implementing Regulations**

6. Section 3207(a) of the Abortion Control Act, 18 Pa. C.S. § 3207(a), requires the Department to make rules and regulations with respect to facilities in which abortions are performed.

7. The Department issued implementing regulations that are found at 28 Pa. Code Chapter 29, Subchapter D.

8. Registration of a facility signifies the Department's approval of the facility to perform abortions within this Commonwealth. 28 Pa. Code § 29.43(a).

9. Section 3218(b) of the Abortion Control Act, 18 Pa. C.S. § 3218(b), provides in relevant part as follows:

(b) False statement, etc. —A person commits a misdemeanor of the second degree if, with intent to mislead a public servant in performing his official function under this chapter, such person:

(1) makes any written false statement which he does not believe to be true

10. Section 3218(d) of the Abortion Control Act, 18 Pa. C.S. § 3218(d), provides that Section 4902(c) through (f) (relating to perjury) applies to subsection (b).

**Integrity Family Health Application Under the Abortion Control Act**

11. By letter dated April 14, 2013, Integrity, through its President Kimberly Glunt, requested a registration application for Integrity Family Health to be licensed as a Class A ambulatory surgical facility. (Attached hereto as Exhibit A).

12. In the April 14, 2013 letter, Ms. Glunt states that Eric Yahav, M.D., is the board-eligible OB/GYN physician who will serve as Medical Director for Integrity.

13. No other affiliation of any kind is mentioned in the April 14, 2013 letter.

14. Ms. Glunt provided the Department with an Abortion Control Act Registration form signed by her on April 17, 2013. (Attached hereto as Exhibit B).

15. On the April 17, 2013 Abortion Facility Registration form, in response to the question, "Are there any parent, subsidiary, or affiliated organizations, corporations or associations?," Ms. Glunt checked the box next to the word, "No." (See Exhibit B).

16. On the April 17, 2013 Abortion Facility Registration form, in response to the question, "Are there any parent subsidiary or affiliated organizations, corporations or associations which have contemporaneous commonality of ownership, beneficial interest, directorship or officership with any other facility?" Ms. Glunt checked the box next to the word, "No." (See Exhibit B).

### **The Health Care Facilities Act and Its Relevant Implementing Regulations**

17. The Health Care Facilities Act requires the Department to issue a license to a health care provider when it is satisfied that, inter alia, the health care provider is a responsible person. 35 P.S. § 448.808(a)(1).

18. The Health Care Facilities Act and the Ambulatory Surgical Facility regulations provide that the Department may revoke a license issued to an ambulatory surgical facility for fraud or deceit in obtaining or attempting to obtain a license and for knowingly aiding or abetting the improper granting of a license. 35 P.S. § 448.811 (5) and (6); 28 Pa. Code § 551.91(b)(4) and (b)(6).

### **Integrity Family Health/Integrity Family Planning Class A Application under the Health Care Facilities Act**

19. By letter dated June 20, 2013, Ms. Glunt, on behalf of Integrity Family Health/Integrity Family Planning, requested registration as a Class A ambulatory surgical facility. (Attached hereto as Exhibit C).

20. The June 20, 2013 letter identifies Dr. Eric Yahav as the board-eligible OB/GYN physician who will serve as Medical Director. (See Exhibit C).

21. No other affiliation of any kind is mentioned in the June 20, 2013 letter.

22. With the June 20, 2013 letter, Ms. Glunt enclosed a completed ambulatory surgical facility licensure application which she signed and dated July 2, 2013. (Attached hereto as Exhibit D).

23. The Department issued Integrity a Class A registration effective October 2, 2013 through July 31, 2014. (Attached hereto as Exhibit E).

#### **Undisclosed Business Affiliations or Associations**

24. On October 24, 2013, the Department received a complaint that Integrity was a “shell” corporation that was operated and/or controlled by Stephen Chase Brigham, M.D. (“Brigham”).

25. Brigham was the sole shareholder and chief executive officer of American Medical Associates, PC (AMA), d/b/a/ American Women’s Services (AWS).

26. In Pennsylvania, Brigham is precluded from registering any facility as a freestanding abortion facility under the Abortion Control Act either directly, or indirectly through any professional corporation, nonprofit corporation, or any other entity in which he has a controlling ownership or equity interest. (Attached hereto as Exhibit F; *See Brigham, et al. v. Dep’t of Health, Bureau of Comty. Licensure and Certification*, No 1582 C.D. 2010, 2011 Pa. Cmwlth. Unpub. LEXIS 467 (June 15, 2011), *alloc. denied*, 34 A.3d 833 (Pa. 2011)).

27. Although Brigham’s facilities formerly registered in Pennsylvania were closed by the Department in April 2012 and are no longer open, he currently operates a number of freestanding abortion facilities in New Jersey and Maryland, all of which operate under the name “American Women’s Services.”

28. Upon information and belief, Brigham operates an abortion facility known as "American Women's Services" at 1 Alpha Avenue, Suite 27, Voorhees, New Jersey, 08043.

29. On October 24, 2013, the Department commenced an investigation into the alleged Brigham connection with Integrity.

30. As part of its investigation, on October 25, 2013, Department surveyors conducted an unannounced survey of Integrity in which the surveyors asked for phone records, lease records, and other documentation.

31. As part of its investigation, Department surveyors determined that Integrity provides the following number to patients and prospective patients: 1-800-226-7846.

32. Department surveyors called the 1-800-226-7846 number. The person who answered identified herself with the greeting "American Women's Services."

33. Upon information and belief, prospective patients who call the 1-800-226-7846 phone number, which is answered with the greeting "American Women's Services," can schedule an appointment to be seen at Integrity and are advised of Integrity's prices for abortion services

34. A reverse White Pages phone search links 1-800-226-7846 with American Medical Service PC Business, operating at 1 Alpha Avenue, Suite 27, Voorhees, New Jersey 08043.

35. As part of its investigation, the Department determined that Dr. Eric Yahav had a prior business address located at 1 Alpha Avenue, Suite 27, Voorhees, New Jersey 08043, as well as an affiliation with "American Medical Services, PC."

36. The Abortion Control Act regulations (28 Pa. Code §§ 29.31-29.43) provide that “facility approval for performance of abortions may be revoked if [the regulations are] not adhered to.” 28 Pa. Code § 29.43(d).

### COUNT I

37. Paragraphs 1-36 are incorporated by reference.

38. Integrity failed to disclose its affiliation and/or business relationship with Brigham and/or American Women’s Services on its Abortion Control Act Registration form.

39. Failure to disclose affiliations and business relationships constitutes a falsification of the Abortion Control Act registration form and the Abortion Control Act itself. *See* 18 Pa. C.S. §§ 3207(b) and 3218(b).

40. The failure of Integrity to disclose its affiliation and/or business relationship with Brigham and/or American Women’s Services is grounds for revocation of Department approval for Integrity to operate an abortion facility under 28 Pa. Code § 29.43(d).

### COUNT II

41. Paragraphs 1-40 are incorporated by reference.

42. Integrity failed to disclose Dr. Yahav’s affiliation and/or business relationship with Brigham and/or American Women’s Services on its Abortion Control Act Registration form.

43. Failure to disclose Dr. Yahav’s affiliations and business relationships on the Abortion Control Act Registration form constitutes a falsification of the Abortion Control Act Registration Form and the Abortion Control Act itself. *See* 18 Pa. C.S. §§ 3207(b) and 3218(b).

44. The failure of Integrity to disclose Dr. Yahav's affiliation and/or business relationship with Brigham and/or American Women's Services is grounds for revocation of Department approval for Integrity to operate an abortion facility under 28 Pa. Code § 29.43(d).

### COUNT III

45. Paragraphs 1-44 are incorporated by reference.

46. Integrity failed to disclose its affiliation and/or business relationship with Brigham and/or American Women's Services.

47. If Integrity had disclosed its affiliation and/or business relationship with Brigham and/or American Women's Services, Integrity would not have been found to be a "responsible person" pursuant to Section 808 of the Health Care Facilities Act. *See* 35 P.S. § 448.808(a)(1)

48. The failure of Integrity to disclose its affiliation and/or business relationship with Brigham and/or American Women's Services evidences its intent to obtain an ambulatory surgical facility license by fraud or deceit in violation of 35 P.S. § 448.811 (5) and (6) and 28 Pa. Code § 551.92(b)(4) and (b)(6).

49. The failure of Integrity to disclose its affiliation and/or business relationship with Brigham and/or American Women's Services is grounds for revocation of Department approval for Integrity to operate an abortion facility pursuant to 35 P.S. § 448.811 (5) and (6) and 28 Pa. Code §§ 551.92(b)(4) and (b)(6).

### COUNT IV

50. Paragraphs 1-49 are incorporated by reference.

51. Integrity failed to disclose its affiliation and/or business relationship with Brigham and/or American Women's Services.



52. If Integrity had disclosed its affiliation and/or business relationship with Brigham and/or American Women's Services, Integrity would not have been found to be a responsible person pursuant to 35 P.S. § 448.808(1)(1).

53. The failure of Integrity to disclose Dr. Yahav's affiliation and/or business relationship with Brigham and/or American Women's Services evidences its intent to obtain an ambulatory surgical facility license by fraud or deceit in violation of 35 P.S. § 448.811 (5) and (6) and 28 Pa. Code § 551.92(b)(4) and (b)(6).

54. The failure of Integrity to disclose Dr. Yahav's affiliation and/or business relationship with Brigham and/or American Women's Services is grounds for revocation of Department approval for Integrity to operate an abortion facility pursuant to 35 P.S. § 448.811 (5) and (6) and 28 Pa. Code §§ 551.92(b)(4) and (b)(6).

#### COUNT V

55. Paragraphs 1-54 are incorporated by reference.

56. Integrity failed to disclose its affiliation and/or business relationship with Brigham and/or American Women's Services on its Abortion Control Act registration form.

57. Failure to disclose affiliations and business relationships constitutes a falsification of the Abortion Control Act registration form and a violation of the Abortion Control Act.

58. Falsification of the Abortion Control Act registration form is a serious violation of the Health Care Facilities Act.

59. A serious violation of the Abortion Control Act is grounds for revocation of Department approval for Integrity to operate an abortion facility under the Health Care Facilities Act pursuant to 35 P.S. § 448.811(10).

**COUNT VI**

60. Paragraphs 1-59 are incorporated by reference.

61. Integrity failed to disclose Dr. Yahav's affiliation and/or business relationship with Brigham and/or American Women's Services on its Abortion Control Act registration form.


62. Failure to disclose Dr. Yahav's affiliation and business relationships on the Abortion Control Act registration form constitutes a violation of the Abortion Control Act registration form and a violation of the Abortion Control Act.

63. Falsification of the Abortion Control Act registration form is a serious violation of the Health Care Facilities Act.

64. A serious violation of the Abortion Control Act is grounds for revocation of Department approval for Integrity to operate an abortion facility under the Health Care Facilities Act pursuant to 35 P.S. § 448.811(10).

Respectfully submitted,

**ALISON TAYLOR**  
Chief Counsel  
Attorney I.D. 61873

By:   
**AUDREY E. MINER**  
Senior Counsel  
Attorney I.D. 41659

Office of Legal Counsel  
Department of Health  
825 Health and Welfare Building  
625 Forster Street  
Harrisburg, PA 17120  
Phone: (717) 783-2500



**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF HEALTH**

<p><b>DEPARTMENT OF HEALTH,</b></p> <p><b>Bureau of Facility Licensure and Certification,</b></p> <p style="padding-left: 40px;"><b>Petitioner</b></p>  <p style="text-align: center;"><b>v.</b></p>  <p><b>INTEGRITY FAMILY HEALTH,</b></p> <p><b>d/b/a/ INTEGRITY FAMILY PLANNING,</b></p> <p style="padding-left: 40px;"><b>Respondent.</b></p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p><b>DOCKET: _____</b></p>
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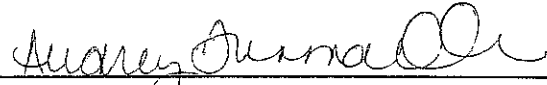
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing Order to Show Cause and Notice of Rights and Responsibilities upon all parties of record in this proceeding in accordance with the requirements of 1 Pa. Code § 33.32 (relating to service by a participant).

**Service by US First Class Mail:**

Kimberly Glunt, President  
Integrity Family Health  
9622 Bustleton Ave, Suite 2  
Philadelphia, PA 19115

November 25, 2013


---

 Audrey Feinman Miner  
 Senior Counsel  
 Office of Legal Counsel  
 Pennsylvania Department of Health  
 625 Forster Street  
 Harrisburg, PA 17120-8212  
 (717) 783-2500

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH, :  
Bureau of Facility Licensure and Certification, :  
Petitioner :

v. :

DOCKET: \_\_\_\_\_

INTEGRITY FAMILY HEALTH, :  
d/b/a/ INTEGRITY FAMILY PLANNING, :  
Respondent. :

ORDER TO SHOW CAUSE

AND NOW, this 25th day of November, 2013, the Pennsylvania Department of Health, Bureau of Facility Licensure and Certification (“Department”), hereby issues this **ORDER** directing Integrity Family Health d/b/a Integrity Family Planning (“Integrity”) to answer the following averments and to show cause why the Department should not revoke Integrity’s registration and approval to operate an abortion facility in the Commonwealth.

Background

1. The Department registers every freestanding abortion facility under the Abortion Control Act, (18 Pa. C.S. §§ 3201-3220) and licenses freestanding abortion facilities that perform surgical abortions under the Health Care Facilities Act (35 P.S. §448.101 *et seq.*), as amended by Act 122 of 2011, as either a Class A or a Class B facility. Class A facilities are “registered” under the Department’s implementing regulations, but the granting of such

registration provides Class A facilities with the same rights and responsibilities as a licensed health care facility.

2. Class A facilities are limited to performing procedures with the administration of either local or topical anesthesia, or no anesthesia at all.

3. To be registered, all abortion facilities are required to complete an Abortion Control Act registration packet.

4. To be registered as a Class A facility, the proposed abortion facility, in addition to registering with the Department under the Abortion Control Act, must complete a license application and provide a copy of its accreditation survey and certificate from a nationally recognized ambulatory surgical accrediting agency.

5. The Health Care Facilities Act requires the Department to issue a license to a health care provider when the Department is satisfied that, *inter alia*, the health care provider is a “responsible person.” 35 P.S. § 448.808(a)(1).

### **Abortion Control Act and Its Implementing Regulations**

6. Section 3207(a) of the Abortion Control Act, 18 Pa. C.S. § 3207(a), requires the Department to make rules and regulations with respect to facilities in which abortions are performed.

7. The Department issued implementing regulations that are found at 28 Pa. Code Chapter 29, Subchapter D.

8. Registration of a facility signifies the Department’s approval of the facility to perform abortions within this Commonwealth. 28 Pa. Code § 29.43(a).

9. Section 3218(b) of the Abortion Control Act, 18 Pa. C.S. § 3218(b), provides in relevant part as follows:

(b) False statement, etc. --A person commits a misdemeanor of the second degree if, with intent to mislead a public servant in performing his official function under this chapter, such person:

(1) makes any written false statement which he does not believe to be true

10. Section 3218(d) of the Abortion Control Act, 18 Pa. C.S. § 3218(d), provides that Section 4902(c) through (f) (relating to perjury) applies to subsection (b).

#### **Integrity Family Health Application Under the Abortion Control Act**

11. By letter dated April 14, 2013, Integrity, through its President Kimberly Glunt, requested a registration application for Integrity Family Health to be licensed as a Class A ambulatory surgical facility. (Attached hereto as Exhibit A).

12. In the April 14, 2013 letter, Ms. Glunt states that Eric Yahav, M.D., is the board-eligible OB/GYN physician who will serve as Medical Director for Integrity.

13. No other affiliation of any kind is mentioned in the April 14, 2013 letter.

14. Ms. Glunt provided the Department with an Abortion Control Act Registration form signed by her on April 17, 2013. (Attached hereto as Exhibit B).

15. On the April 17, 2013 Abortion Facility Registration form, in response to the question, "Are there any parent, subsidiary, or affiliated organizations, corporations or associations?," Ms. Glunt checked the box next to the word, "No." (See Exhibit B).

16. On the April 17, 2013 Abortion Facility Registration form, in response to the question, "Are there any parent subsidiary or affiliated organizations, corporations or associations which have contemporaneous commonality of ownership, beneficial interest, directorship or officership with any other facility?" Ms. Glunt checked the box next to the word, "No." (See Exhibit B).

### **The Health Care Facilities Act and Its Relevant Implementing Regulations**

17. The Health Care Facilities Act requires the Department to issue a license to a health care provider when it is satisfied that, inter alia, the health care provider is a responsible person. 35 P.S. § 448.808(a)(1).

18. The Health Care Facilities Act and the Ambulatory Surgical Facility regulations provide that the Department may revoke a license issued to an ambulatory surgical facility for fraud or deceit in obtaining or attempting to obtain a license and for knowingly aiding or abetting the improper granting of a license. 35 P.S. § 448.811 (5) and (6); 28 Pa. Code § 551.91(b)(4) and (b)(6).

### **Integrity Family Health/Integrity Family Planning Class A Application under the Health Care Facilities Act**

19. By letter dated June 20, 2013, Ms. Glunt, on behalf of Integrity Family Health/Integrity Family Planning, requested registration as a Class A ambulatory surgical facility. (Attached hereto as Exhibit C).

20. The June 20, 2013 letter identifies Dr. Eric Yahav as the board-eligible OB/GYN physician who will serve as Medical Director. (See Exhibit C).

21. No other affiliation of any kind is mentioned in the June 20, 2013 letter.



22. With the June 20, 2013 letter, Ms. Glunt enclosed a completed ambulatory surgical facility licensure application which she signed and dated July 2, 2013. (Attached hereto as Exhibit D).

23. The Department issued Integrity a Class A registration effective October 2, 2013 through July 31, 2014. (Attached hereto as Exhibit E).

#### **Undisclosed Business Affiliations or Associations**

24. On October 24, 2013, the Department received a complaint that Integrity was a “shell” corporation that was operated and/or controlled by Stephen Chase Brigham, M.D. (“Brigham”).

25. Brigham was the sole shareholder and chief executive officer of American Medical Associates, PC (AMA), d/b/a/ American Women’s Services (AWS).

26. In Pennsylvania, Brigham is precluded from registering any facility as a freestanding abortion facility under the Abortion Control Act either directly, or indirectly through any professional corporation, nonprofit corporation, or any other entity in which he has a controlling ownership or equity interest. (Attached hereto as Exhibit F; *See Brigham, et al. v. Dep’t of Health, Bureau of Comty. Licensure and Certification*, No 1582 C.D. 2010, 2011 Pa. Cmwlth. Unpub. LEXIS 467 (June 15, 2011), *alloc. denied*, 34 A.3d 833 (Pa. 2011)).

27. Although Brigham’s facilities formerly registered in Pennsylvania were closed by the Department in April 2012 and are no longer open, he currently operates a number of freestanding abortion facilities in New Jersey and Maryland, all of which operate under the name “American Women’s Services.”

28. Upon information and belief, Brigham operates an abortion facility known as "American Women's Services" at 1 Alpha Avenue, Suite 27, Voorhees, New Jersey, 08043.

29. On October 24, 2013, the Department commenced an investigation into the alleged Brigham connection with Integrity.

30. As part of its investigation, on October 25, 2013, Department surveyors conducted an unannounced survey of Integrity in which the surveyors asked for phone records, lease records, and other documentation.

31. As part of its investigation, Department surveyors determined that Integrity provides the following number to patients and prospective patients: 1-800-226-7846.

32. Department surveyors called the 1-800-226-7846 number. The person who answered identified herself with the greeting "American Women's Services."

33. Upon information and belief, prospective patients who call the 1-800-226-7846 phone number, which is answered with the greeting "American Women's Services," can schedule an appointment to be seen at Integrity and are advised of Integrity's prices for abortion services

34. A reverse White Pages phone search links 1-800-226-7846 with American Medical Service PC Business, operating at 1 Alpha Avenue, Suite 27, Voorhees, New Jersey 08043.

35. As part of its investigation, the Department determined that Dr. Eric Yahav had a prior business address located at 1 Alpha Avenue, Suite 27, Voorhees, New Jersey 08043, as well as an affiliation with "American Medical Services, PC."

36. The Abortion Control Act regulations (28 Pa. Code §§ 29.31-29.43) provide that “facility approval for performance of abortions may be revoked if [the regulations are] not adhered to.” 28 Pa. Code § 29.43(d).

### COUNT I

37. Paragraphs 1-36 are incorporated by reference.

38. Integrity failed to disclose its affiliation and/or business relationship with Brigham and/or American Women’s Services on its Abortion Control Act Registration form.

39. Failure to disclose affiliations and business relationships constitutes a falsification of the Abortion Control Act registration form and the Abortion Control Act itself. *See* 18 Pa. C.S. §§ 3207(b) and 3218(b).

40. The failure of Integrity to disclose its affiliation and/or business relationship with Brigham and/or American Women’s Services is grounds for revocation of Department approval for Integrity to operate an abortion facility under 28 Pa. Code § 29.43(d).

### COUNT II

41. Paragraphs 1-40 are incorporated by reference.

42. Integrity failed to disclose Dr. Yahav’s affiliation and/or business relationship with Brigham and/or American Women’s Services on its Abortion Control Act Registration form.

43. Failure to disclose Dr. Yahav’s affiliations and business relationships on the Abortion Control Act Registration form constitutes a falsification of the Abortion Control Act Registration Form and the Abortion Control Act itself. *See* 18 Pa. C.S. §§ 3207(b) and 3218(b).

44. The failure of Integrity to disclose Dr. Yahav's affiliation and/or business relationship with Brigham and/or American Women's Services is grounds for revocation of Department approval for Integrity to operate an abortion facility under 28 Pa. Code § 29.43(d).

### **COUNT III**

45. Paragraphs 1-44 are incorporated by reference.

46. Integrity failed to disclose its affiliation and/or business relationship with Brigham and/or American Women's Services.

47. If Integrity had disclosed its affiliation and/or business relationship with Brigham and/or American Women's Services, Integrity would not have been found to be a "responsible person" pursuant to Section 808 of the Health Care Facilities Act. *See* 35 P.S. § 448.808(a)(1)

48. The failure of Integrity to disclose its affiliation and/or business relationship with Brigham and/or American Women's Services evidences its intent to obtain an ambulatory surgical facility license by fraud or deceit in violation of 35 P.S. § 448.811 (5) and (6) and 28 Pa. Code § 551.92(b)(4) and (b)(6).

49. The failure of Integrity to disclose its affiliation and/or business relationship with Brigham and/or American Women's Services is grounds for revocation of Department approval for Integrity to operate an abortion facility pursuant to 35 P.S. § 448.811 (5) and (6) and 28 Pa. Code §§ 551.92(b)(4) and (b)(6).

### **COUNT IV**

50. Paragraphs 1-49 are incorporated by reference.

51. Integrity failed to disclose its affiliation and/or business relationship with Brigham and/or American Women's Services.

52. If Integrity had disclosed its affiliation and/or business relationship with Brigham and/or American Women's Services, Integrity would not have been found to be a responsible person pursuant to 35 P.S. § 448.808(1)(1).

53. The failure of Integrity to disclose Dr. Yahav's affiliation and/or business relationship with Brigham and/or American Women's Services evidences its intent to obtain an ambulatory surgical facility license by fraud or deceit in violation of 35 P.S. § 448.811 (5) and (6) and 28 Pa. Code § 551.92(b)(4) and (b)(6).

54. The failure of Integrity to disclose Dr. Yahav's affiliation and/or business relationship with Brigham and/or American Women's Services is grounds for revocation of Department approval for Integrity to operate an abortion facility pursuant to 35 P.S. § 448.811 (5) and (6) and 28 Pa. Code §§ 551.92(b)(4) and (b)(6).

#### COUNT V

55. Paragraphs 1-54 are incorporated by reference.

56. Integrity failed to disclose its affiliation and/or business relationship with Brigham and/or American Women's Services on its Abortion Control Act registration form.

57. Failure to disclose affiliations and business relationships constitutes a falsification of the Abortion Control Act registration form and a violation of the Abortion Control Act.

58. Falsification of the Abortion Control Act registration form is a serious violation of the Health Care Facilities Act.

59. A serious violation of the Abortion Control Act is grounds for revocation of Department approval for Integrity to operate an abortion facility under the Health Care Facilities Act pursuant to 35 P.S. § 448.811(10).

**COUNT VI**

60. Paragraphs 1-59 are incorporated by reference.

61. Integrity failed to disclose Dr. Yahav's affiliation and/or business relationship with Brigham and/or American Women's Services on its Abortion Control Act registration form.

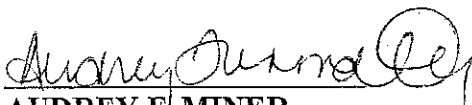
62. Failure to disclose Dr. Yahav's affiliation and business relationships on the Abortion Control Act registration form constitutes a violation of the Abortion Control Act registration form and a violation of the Abortion Control Act.

63. Falsification of the Abortion Control Act registration form is a serious violation of the Health Care Facilities Act.

64. A serious violation of the Abortion Control Act is grounds for revocation of Department approval for Integrity to operate an abortion facility under the Health Care Facilities Act pursuant to 35 P.S. § 448.811(10).

Respectfully submitted,

**ALISON TAYLOR**  
Chief Counsel  
Attorney I.D. 61873

By:   
**AUDREY E. MINER**  
Senior Counsel  
Attorney I.D. 41659

Office of Legal Counsel  
Department of Health  
825 Health and Welfare Building  
625 Forster Street  
Harrisburg, PA 17120  
Phone: (717) 783-2500

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH, :  
Bureau of Facility Licensure and Certification, :  
Petitioner :

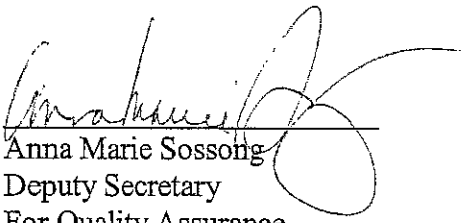
v. :

DOCKET: L13-003

INTEGRITY FAMILY HEALTH, :  
d/b/a INTEGRITY FAMILY PLANNING, :  
Respondent. :

VERIFICATION

I, Anna Marie Sossong, hereby verify, subject to the penalties in 18 Pa. C.S. § 4904, relating to unsworn falsification of testimony, that I am the Deputy Secretary for Quality Assurance, and that I am authorized to execute this Verification on behalf of the Department, that I am familiar with the factual averments set forth in the Department's foregoing Order to Show Cause, and that the factual averments therein are true and correct to the best of my knowledge, information and belief.

  
Anna Marie Sossong  
Deputy Secretary  
For Quality Assurance  
Department of Health

Date: 11/25/13

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,  
Bureau of Facility Licensure and Certification,  
Petitioner

v.

INTEGRITY FAMILY HEALTH,  
d/b/a/ INTEGRITY FAMILY PLANNING,  
Respondent.

DOCKET: L 13-003

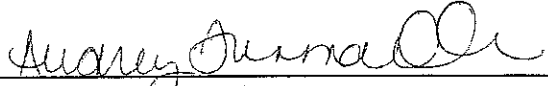
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Order to Show Cause and Notice of Rights and Responsibilities upon all parties of record in this proceeding in accordance with the requirements of 1 Pa. Code § 33.32 (relating to service by a participant).

**Service by US First Class Mail:**

Kimberly Glunt, President  
Integrity Family Health  
9622 Bustleton Ave, Suite 2  
Philadelphia, PA 19115

November 25, 2013

  
Audrey Feinman Miner  
Senior Counsel  
Office of Legal Counsel  
Pennsylvania Department of Health  
625 Forster Street  
Harrisburg, PA 17120-8212  
(717) 783-2500



# Integrity Family Health

9622 Bustleton Ave  
Suite 2  
Phila, PA 19115  
215-582-0032

RECEIVED PA DEPT OF HEALTH  
ACUTE & AMBULATORY CARE  
2013 APR 24 PM 4:03

April 14, 2013

Pennsylvania Department of Health  
8<sup>th</sup> floor west  
H & W Building  
7<sup>th</sup> & Forster Streets  
Harrisburg, PA 17120

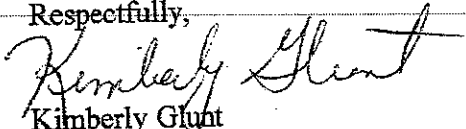
To Whom It May Concern:

I would like to take this opportunity to introduce Integrity Family Planning, myself and Dr. Eric Yahav. We are strong proponents of women's rights and advocates of the pro-choice movement. Integrity Family Health is a Pennsylvania non-profit corporation currently seeking accreditation through the American Association for the Accreditation of Ambulatory Surgical Facilities. Dr. Yahav is a pro-choice, board-eligible OB/GYN physician who will serve as Medical Director.

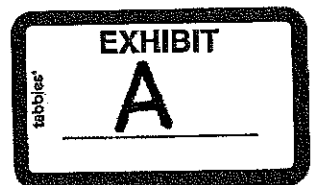
Enclosed please find our completed abortion facility registration form. We are hereby requesting a registration application for a class A ambulatory surgical facility license. Once registered, accredited and approved by the Department, we will provide both non-surgical and surgical pregnancy terminations using local anesthesia.

Please do not hesitate to contact me if there another questions or if any additional documentation is required. Thank you in advance for your consideration.

Respectfully,



Kimberly Glunt  
President  
Integrity Family Health





CONTROL NO.

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF HEALTH

ABORTION FACILITY REGISTRATION FORM

In accordance with 18 Pa. C.S. §3207, every facility in Pennsylvania at which abortions are performed is required to furnish to the Department the information requested on this form. Return the completed form to the Division of Acute and Ambulatory Care, Rm. 532, Health and Welfare Building, 625 Forster St., Harrisburg, PA 17120

1. Identifying Information

Integrity Family Health Integrity Family Planning  
Name of Owner Facility D/B/A

9622 Berketon Ave Suite #2 Phila, PA 19115  
Street Address of Facility City, County, State Zip Code

215-582-0032  
Facility Telephone Number Pending  
Fax Number

2. Are there any parent, subsidiary, or affiliated organizations, corporations, or associations?

No  Yes If Yes, list names, addresses and brief description of facility relationship. Use an additional sheet if needed.

Name \_\_\_\_\_

Address \_\_\_\_\_

Type of Business (e.g., professional corporation) \_\_\_\_\_

Relationship to Facility \_\_\_\_\_



Are there any parent, subsidiary or affiliated organizations, corporations or associations which have contemporaneous commonality of ownership, beneficial interest, directorship or officerhip with any other facility?

No  Yes IF Yes, list names and other requested information below. Use an additional sheet if needed.

Name \_\_\_\_\_

Name of Other Facility \_\_\_\_\_

Address of Other Facility \_\_\_\_\_

Explanation of Interest or Relationship \_\_\_\_\_

4. The completed form is a public record if it is filed by a facility that received State-appropriated funds during the 12-month period preceding a request to inspect or copy it.

Has the facility received such funds?  No  Yes

If the facility is not yet operating, will it receive State-appropriated funds when it begins operation?

No  Yes

5. Is this form being filed to revise information provided in a previously submitted Abortion Facility Registration Form?

No  Yes

6. Kim Christ President  
Name of Facility Chief Executive Officer (Printed) Title

Kim Christ  
Signature

4-17-13  
Date

NOTE: A facility is required to apprise the Division in writing, immediately, of any change in the information it provided in this form.

FOR OFFICE USE ONLY

BUREAU APPROVAL

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

# Integrity Family Health

9622 Bustleton Ave  
Suite 2  
Phila, PA 19115  
215-582-0032

Pennsylvania Department of Health  
8<sup>th</sup> floor west  
H & W Building  
7<sup>th</sup> & Forster Streets  
Harrisburg, PA 17120

June 20, 2013

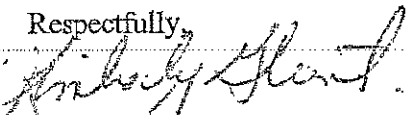
To Whom It May Concern:

I would like to take this opportunity to introduce Integrity Family Health, myself and Dr. Eric Yahav. We are strong proponents of women's rights and advocates of the pro-choice movement. Integrity Family Health is a Pennsylvania non-profit corporation currently seeking accreditation through the American Association for the Accreditation of Ambulatory Surgical Facilities. Dr. Yahav is a pro-choice, board-eligible OB/GYN physician who will serve as Medical Director.

Enclosed please find our completed ambulatory surgical facility licensure application. We are hereby requesting registration as a class A ambulatory surgical facility. Once registered, accredited and approved by the Department, we will provide both non-surgical and surgical pregnancy terminations using local anesthesia.

Please do not hesitate to contact me if there another questions or if any additional documentation is required. Thank you in advance for your consideration.

Respectfully,



Kimberly Glunt  
President  
Integrity Family Health



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF HEALTH

Facility ID:  
License Expires:

C-30202

AMBULATORY SURGICAL FACILITY LICENSURE APPLICATION

Ambulatory Surgical Facility Name  
Integrity Family Health

Ambulatory Surgical Facility Address  
9622 Bustleton Ave Suite 2

City Phila State PA Zip 19115

Telephone Number  
215-582-0032

E-mail  
Kimglint@hotmail.com

Director  
Kim Glint

Medical Director  
Eric Vahan, MD

Director of Nursing  
Brittany Brossier, RN

TYPE OF SURGERY

General

Ophthalmology

Oral

Plastic

Gynecology

Cardio-Vascular

Podiatric

Neurologic

Orthopedic

Otolaryngology

Thoracic

Urology

Other (Specify)

2013 JUN -5 AM 11:15  
DEPARTMENT OF HEALTH  
ACUTE & AMBULATORY CARE

Type of Ownership Profit  Nonprofit  Government

Owner of ASF  
(Name of Corporation)  
(Address)

ACCREDITATION Yes No

JCAHO

AAAHC

AAAASF pending

List all persons having 5% or more ownership or controlling interest in ASF

Kimberly Glint 5739 Spruce Street Broomall, PA 19007  
(Name) (Address)

If space allotted is inadequate, prepare additional listing.

**PAYMENT** A check or Money Order payable to the Commonwealth of Pennsylvania in the amount of the fee must accompany this application. Please identify check or Money Order with name of ASF. Currency will not be accepted.

The Fee is \$250.00 Mail check or Money Order, along with application and any amendments or changes to the original charter made since the last Licensure Application to Division of Acute & Ambulatory care, Pennsylvania Department of Health, Room 532 Health & Welfare Building, Harrisburg, PA. 17120.

**AGREEMENT** Application is made for license to operate an ASF in accordance with P.L. 130, No. 48, July 19, 1979 as amended July 12, 1980 (Act 136).



I agree to conduct said ASF in accordance with the laws of the Commonwealth of Pennsylvania and with the Rules and Regulations of the Department of Health.

**AFFIDAVIT**

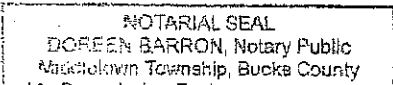
County of Bucks being duly sworn according to the law deposes and says information, and belief

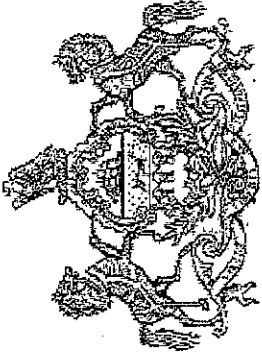
Signed Kimberly Glint  
(Applicant)

Sworn to and subscribed before me this 2 day of July, 2013

Doreen Barron  
(Signature - Notary Public)

My commission expires 6-21-16  
COMMONWEALTH OF PENNSYLVANIA





# Registration of Ambulatory

## Surgical Facility

TO OPERATE AS A CLASS "A" AMBULATORY SURGICAL FACILITY

*This is to Certify that*

INTEGRITY FAMILY HEALTH  
9622 BUSILETON AVENUE  
PHILADELPHIA

*Is Hereby Granted This Approval Under The Laws Of The Commonwealth of Pennsylvania,  
35 P.S. §448.802a etseq., To Operate As An Ambulatory Surgical Facility (Class A)*

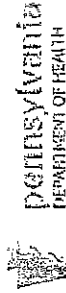
The maximum number of operating rooms shall not exceed 2 rooms.

Expiration Date: 07/31/2014

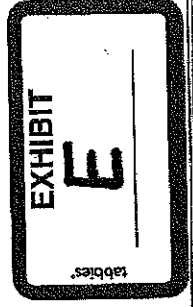
Approval Date: 08/07/2013

*Anna Marie Sassone*  
Anna Marie Sassone  
Deputy Secretary For Quality Assurance

*Michael Wolf*  
Michael Wolf  
Secretary of Health



NOTE: This license must be posted in a conspicuous place on the premises.



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Steven Chase Brigham, M.D.,  
American Medical Associates, PC  
d/b/a American Women's Services  
and State College Medical Services  
and Allentown Medical Services,  
Petitioners

v.

Department of Health, Bureau of  
Community Licensure and Certification,  
Respondent

No. 1582 C.D. 2010

Argued: March 8, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE KELLEY

FILED: June 15, 2011

Steven Chase Brigham, M.D. (Dr. Brigham) and American Medical Associates, PC (AMA) d/b/a American Women's Services (AWS), State College Medical Services (SCMS), and Allentown Medical Services (AMS) (collectively, Petitioners) petition for review of the Adjudication and Order of the Deputy Secretary for the Pennsylvania Department of Health (Department): denying their exceptions to the Proposed Report and Order of a Department hearing examiner; adopting the Proposed Report and Order in its entirety, with the exception of the Conclusions of Law; substituting his own Conclusions of Law in place of those in



the Proposed Report and Order; and denying their petition to reopen the record. The Proposed Order recommended that: (1) all registrations of AMA and AMS to operate freestanding abortion facilities in the Commonwealth pursuant to the Abortion Control Act (Act)<sup>1</sup> should be revoked; (2) AMA and AMS shall be precluded from registering any facility as a freestanding abortion facility under the Act; and (3) Dr. Brigham shall be precluded from registering any facility as a freestanding abortion facility under the Act either directly, or indirectly through any professional corporation, nonprofit corporation, or any other entity in which he has a controlling ownership or equity interest. We affirm.

AMA is a professional corporation that has registration from the Department to operate a freestanding abortion facility in Pittsburgh, and operates that facility under the AWS fictitious name. AMA also has a registration from the Department to operate a freestanding abortion facility in Erie that also operates under the AWS fictitious name. AMA also has a registration from the Department to operate a freestanding abortion facility in State College that operates under the SCMS fictitious name. In addition, AMS is a nonprofit stock corporation that has registration from the Department to operate a freestanding abortion facility in

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<sup>1</sup> 18 Pa.C.S. §§ 3201 – 3220. Section 3207(a) of the Act provides:

(a) **Regulations**—The department shall have power to make rules and regulations pursuant to this chapter, with respect to performance of abortions and with respect to facilities in which abortions are performed, so as to protect the health and safety of women having abortions and of premature infants aborted alive. These rules and regulations shall include, but not be limited to procedures, staff, equipment and laboratory testing requirements for all facilities offering abortion services.

18 Pa.C.S. § 3207(a).



Allentown. At all relevant and material times, Dr. Brigham was the sole shareholder and chief executive officer of both AMA and AMS.

In 2003 and 2004, a number of abortions were performed at the AMA and AMS facilities by a physician who was not appropriately licensed.<sup>2</sup> As a result, rather than facing disciplinary action<sup>3</sup>, on July 27, 2004, Dr. Brigham, AMA, and AMS entered into a Stipulation and Settlement Agreement with the Department. See Certified Record (CR) at 30a-39a.

The Settlement Agreement included the following relevant provisions:

1. Immediately prior to initially employing, engaging or otherwise permitting a physician or other health care practitioner (practitioner) to provide health care services relating to an abortion in an abortion facility [AMA] or AMS operates in this Commonwealth, [AMA] or AMS, as appropriate, will ask the practitioner for the practitioner's current license status, secure from the practitioner a copy of the practitioner's current license or license registration certificate, and check the website the Department of State maintains on practitioner license status, to verify that the practitioner is currently licensed or has a currently registered license to ensure that the health care services the practitioner would be providing in the facility are within the scope of the practitioner's license.

\* \* \*

---

<sup>2</sup> The physician in question possessed an active-retired license to practice medicine. An active-retired license only permits a physician to provide medical care, including the prescription of drugs, to the physician and his or her immediate family.

<sup>3</sup> Section 29.33(3) of the Department's regulations provides that "[a]bortions shall be performed only by a physician who possesses the requisite professional skill and competence as determined and approved by the medical facility in accordance with appropriate procedures." 28 Pa. Code § 29.33(3). In addition, Section 29.43(d) of the Department's regulations provides, in pertinent part, that "[f]acility approval for performance of abortions may be revoked if this subchapter is not adhered to." 28 Pa. Code § 29.43(d).

5. [AMA] and AMS will prohibit any practitioner from performing a health care service relating to an abortion at any abortion facility [AMA] or AMS operates in this Commonwealth, when the practitioner is known by [AMA] or AMS to be prohibited from performing that service due to lack of scope or license, or no current registration of the license.

\* \* \*

9. Within three days after discovery, [AMA] and AMS will report to the [Department] and the appropriate licensure board, a practitioner who provided at any of the abortion facilities [AMA] or AMS operates in this Commonwealth, health care services relating to an abortion prohibited by lack or scope of license, or no current registration of the license, and explain to the Department and the appropriate licensure board the circumstances under which the prohibited practice occurred and was discovered.

10. Within 10 days after discovery, [AMA] and AMS will disclose to each patient (or the patient's authorized representative) who received, at any of the abortion facilities [AMA] or AMS operates in this Commonwealth, health care services relating to an abortion after the effective date of this Agreement from a person unauthorized to provide such services due to lack or scope of license, or no current registration of the license, the name of the person who provided the prohibited services and a general description of those services.

\* \* \*

13. Should [AMA] or AMS violate any term of this Agreement, the Department will revoke all registrations of [AMA] and AMS to operate abortion facilities in this Commonwealth, subject to [AMA] and

AMS being afforded procedural and substantive rights guaranteed by the Administrative Agency Law<sup>4</sup>....

14. Should [AMA] or AMS violate any term of this agreement, neither [AMA] nor AMS shall thereafter seek to register any facility in this Commonwealth as a freestanding abortion facility, nor shall Dr. Brigham directly, or indirectly through any professional corporation, nonprofit corporation, or any other entity in which he has a controlling ownership or equity interest, seek to register a facility in this Commonwealth as a freestanding abortion facility, subject to [AMA], AMS and Dr. Brigham being afforded procedural and substantive rights guaranteed by the Administrative Agency Law.

CR at 33a-36a, 37a.

On October 11, 2006, AMA hired an office manager for its Pittsburgh office named Mary Grover who held herself out to be a licensed practical nurse (LPN), and indicated that she held a Pennsylvania license. She provided AMA with a license number that belonged to a different person named "Mary Grace Glover".<sup>5</sup> While employed by AMA, she assisted a physician on occasion when he performed abortions and administered anesthesia; she occasionally worked in the recovery room and oversaw the patients in the recovery room including monitoring their color, pulse, and blood pressure; and she prepared notes that she signed as the recovery room nurse.<sup>6</sup> Mary Grover tendered her resignation to AMA in January

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<sup>4</sup> 2 Pa.C.S. §§ 501-508, 701-704.

<sup>5</sup> Immediately prior to her employment, the registry of nurses accessible through the Department of State's website showed a Mary Grover as the holder of an inactive RN license in Pennsylvania. However, at that time, the registry also showed a Mary Grace Glover as the holder of an active LPN license in Pennsylvania.

<sup>6</sup> Section 29.33(13) of the Department's regulations provides:

(13) Each patient shall be supervised constantly while

(Continued....)

of 2007. The improper health care services provided by Mary Grover were not reported to either the appropriate licensure board or any patients as required by the Settlement Agreement.

On March 3, 2008, the Department issued an Order to Show Cause against Dr. Brigham, AMA, AWS, SCMS, and AMS in which it sought to impose the penalty provisions of the Settlement Agreement.<sup>7</sup> On April 3, 2008, Petitioners

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recovering from surgery or anesthesia, until she is released from recovery by a registered nurse or a licensed practical nurse under the direction of a registered nurse or a physician. The nurse shall evaluate the condition of the patient and enter a report of the evaluation and orders in the medical record of the patient.

28 Pa. Code § 29.33(13).

<sup>7</sup> Section 31.1(a) of the General Rules of Administrative Practice and Procedure (GRAPP) expressly provides that the GRAPP “[g]overn[] the practice and procedure before agencies of the Commonwealth...”, with exceptions that are not relevant here. 1 Pa. Code § 31.1(a). In turn, Section 31.3 of the GRAPP define “agency” to include “[a] department, departmental administration board or commission, officer, independent board or commission, authority or other agency of the Commonwealth now in existence....” 1 Pa. Code § 31.3.

In addition, Section 35.14 of the GRAPP provides:

Whenever an agency desires to institute a proceeding against a person under statutory or other authority, the agency may commence the action by an order to show cause setting forth the grounds for the action. The order will contain a statement of the particulars and matters concerning which the agency is inquiring, which shall be deemed to be tentative and for the purpose of framing issues for consideration and decision by the agency in the proceeding, and the order will require that the respondent named respond orally, or in writing (as provided in § 35.37 (relating to answers to orders to show cause)) or both.

1 Pa. Code § 35.14. Thus, pursuant to Section 35.14, whenever an administrative agency desires to institute a proceeding against an individual “under statutory or other authority”, the agency can commence the action by filing an order to show cause. Id.

In addition, as noted above, in the Settlement Agreement, the parties agreed that “[s]hould [AMA] or AMS violate any term of this Agreement, the Department will revoke all

(Continued....)

filed an Answer and New Matter to the Order to Show Cause<sup>8</sup> in which they alleged, *inter alia*, that the Department was engaging in selective enforcement of its regulatory authority because they were abortion providers, in violation of their rights and the rights of women seeking abortions.<sup>9</sup> On April 14, 2008, the Department filed an Answer to the New Matter.

On June 9, 2008, prior to a hearing before a Department hearing examiner, the Department filed a motion *in limine* in which it sought, *inter alia*, to preclude Petitioners from presenting evidence in support of their selective enforcement claims. The hearing examiner initially granted the motion, but later certified the motion to the Department's Deputy Secretary for disposition. On

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registrations of [AMA] and AMS to operate abortion facilities in this Commonwealth, subject to [AMA] and AMS being afforded procedural and substantive rights guaranteed by the Administrative Agency Law...." CR at 37a. Thus, by the express terms of the Settlement Agreement, AMA and AMS specifically agreed that it would be automatically subject to sanctions by the Department, with the enumerated requisite due process, based upon a single violation of its terms. *Id.*

<sup>8</sup> Pursuant to Section 35.37 of the GRAPP, the answer filed by the person upon whom the order to show cause has been served, must be drawn so as to specifically admit or deny the allegations or charges in the order, set forth the facts upon which the respondent relies, and concisely state the matters of law relied upon. 1 Pa. Code § 35.37. Mere general denials of the allegations in the order, which are unsupported by specific facts upon which the respondent relies, will not be considered to be in compliance with Section 35.37. *Id.* Moreover, general denials may be deemed to be a basis for the entry of a final order without a hearing on the basis that the response had not raised an issue requiring a hearing or further proceedings. *Id.*

<sup>9</sup> More specifically, Petitioners alleged the following, in pertinent part:

50. In filing the Order to Show Cause seeking the revocation of the registrations of [AMA and AMS], and attempting to activate certain terms of the [Settlement Agreement] against [Petitioners], the Department is engaging in the selective enforcement of regulations against abortion providers in violation of the rights of [Petitioners] and women seeking abortion to due process and equal protection of the law.

(Continued...)

November 10, 2008, the Deputy Secretary issued an order granting in part, and denying in part, the motion in limine. In pertinent part, the order denied the Department's motion to prohibit evidence on selective enforcement, but required Petitioners to initially establish that there are other similarly situated health care providers, "[i].e. that there are other health care providers in Pennsylvania potentially in violation of a settlement agreement with the Department addressing quality assurance conditions for continued registration or licensure as a health care provider...." CR at 424a. Only if Petitioners could present evidence of other "similarly situated" health care providers could they then present evidence relating to the Department's selective enforcement. Id.

A hearing was conducted on February 3 and 4, 2009. Petitioners did not present evidence of selective enforcement at the hearing. On September 29, 2009, the hearing examiner issued a Proposed Report and Order in which she determined, inter alia, that Petitioners had violated the provisions of the Settlement Agreement. See CR at 1342a-1345a. As a result, the Proposed Order recommended that the Settlement Agreement's penalty provisions be imposed. More specifically, the Proposed Order recommended that: (1) all registrations of AMA and AMS to operate abortion facilities in the Commonwealth should be revoked; (2) AMA and AMS should be precluded from registering any freestanding abortion facility in the Commonwealth; and (3) Dr. Brigham should be precluded from either directly or indirectly registering a freestanding abortion facility in the Commonwealth. See id. at 1346a.

On October 28, 2009, Petitioners filed exceptions to the Proposed Report and Order. On July 7, 2010, the Deputy Secretary issued the instant

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CR at 25a-26a.

Adjudication and Order: (1) denying the Petitioners' exceptions to the Proposed Report and Order of the hearing examiner; (2) adopting the Proposed Report and Order in its entirety, with the exception of the Conclusions of Law; (3) substituting his own Conclusions of Law in place of those in the Proposed Report and Order; and (4) denying the Petitioners' petition to reopen the record. Petitioners then filed the instant petition for review of the Deputy Secretary's Adjudication and Order.<sup>10</sup>

In this appeal, the sole claim raised by Petitioners is that they were wrongly denied an opportunity to present evidence that the Department's imposition of the Settlement Agreement's penalty provisions was based upon the selective enforcement of the Department's regulatory authority. However, we discern no error in the Department's actions in the case sub judice.<sup>11</sup>

It must be noted that a settlement agreement encompasses the compromise of a pending legal claim. Oakmont Presbyterian Home v. Department of Public Welfare, 633 A.2d 1315 (Pa. Cmwlth. 1993).<sup>12</sup> It is merely an agreement between the parties; that is, a contract binding the parties thereto. Global Eco-

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<sup>10</sup> This Court's scope of review is limited to determining whether necessary findings of fact are supported by substantial evidence, whether the Department committed an error of law, or whether Petitioners' constitutional rights were violated. Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704; Sklar v. Department of Health, 798 A.2d 268 (Pa. Cmwlth. 2002).

<sup>11</sup> It is well settled that this Court may affirm the Department's order on any basis appearing in the record. See, e.g., White v. Workmen's Compensation Appeal Board (Good Shepherd Rehab Hospital), 666 A.2d 1128, 1131 n. 6 (Pa. Cmwlth. 1995) ("This court may affirm the judgment of an administrative agency where the result is correct, even though the reason given is erroneous, when the correct basis for the decision is clear on the record.") (citation omitted).

<sup>12</sup> See Sofronski v. Civil Service Commission, 695 A.2d 921, 926 (Pa. Cmwlth. 1997) ("As the Superior Court has stated: '[s]ettlement of matters in dispute are favored by the law and must, in the absence of fraud and mistake, be sustained. Otherwise, any settlement agreement will serve no useful purpose.' Greentree Cinemas, Inc. v. Hakim, [432 A.2d 1039, 1041 (Pa. Super. 1981)]....").

Logical Services, Inc. v. Department of Environmental Protection, 789 A.2d 789 (Pa. Cmwlth. 2001); Commonwealth v. United States Steel Corp., 325 A.2d 324 (Pa. Cmwlth. 1974). As a result, the enforceability of settlement agreements is determined according to principles of contract law. Pennsbury Village Associates, LLC v. McIntyre, \_\_\_ Pa. \_\_\_, 11 A.3d 906 (2011); Mazzella v. Koken, 559 Pa. 216, 739 A.2d 531 (1999). “[B]ecause a settlement agreement is considered a contract under Pennsylvania law, the document must ‘speak for itself’ and cannot be given a meaning other than that expressly stated within the agreement itself.” Oakmont Presbyterian Home, 633 A.2d at 1320 (citation omitted). Courts will enforce a settlement agreement if all its material terms have been agreed upon by the parties. Pennsbury Village Associates, LLC.

In addition, a settlement agreement between the Department and a private party, affecting personal or property rights, constitutes an appealable “adjudication” of the Department under the Administrative Agency Law. Pennsylvania Association of Independent Insurance Agents v. Foster, 616 A.2d 100, 102 (Pa. Cmwlth. 1992) (citing Department of Health v. Rehab Hospital Services, 561 A.2d 342 (Pa. Cmwlth. 1989), petition for allowance of appeal denied, 525 Pa. 607, 575 A.2d 571 (1990)). Where, as here, there has been no appeal of such an “adjudication”, any collateral attack on the content, validity, or enforceability of the agreement is barred in a subsequent enforcement proceeding. Global Eco-Logical Services, Inc.<sup>13</sup> In short, as between Petitioners and the

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<sup>13</sup> See also 36 Standard Pennsylvania Practice 2d § 166:231 at 341-342 (“[T]he doctrine of administrative finality precludes a collateral attack of an administrative action where the party aggrieved by that action forgoes his or her statutory appeal remedy. Thus, the failure to take a timely appeal from the agency action complained of precludes collateral attack on that action by resort to a reviewing court’s original jurisdiction, or in subsequent proceedings for enforcement of that agency’s order. Since a consent order by an administrative agency is equivalent to an

(Continued...)



Department, the provisions of the Settlement Agreement constitute the law governing the disposition of this case. See Buttermore v. Aliquippa Hospital, 522 Pa. 325, 330, 561 A.2d 733, 735 (1989) (“[H]owever improvident their agreement may be or subsequently prove for either party, their agreement, absent fraud, accident or mutual mistake, is the law of their case. In the instant case, there is no allegation of fraud, accident or mutual mistake, therefore, as between them their agreement is their law.”).

As noted above, in the Settlement Agreement, both Petitioners and the Department specifically agreed that “[s]hould [AMA] or AMS violate any term of this Agreement, the Department will revoke all registrations of [AMA] and AMS to operate abortion facilities in this Commonwealth, subject to [AMA] and AMS being afforded procedural and substantive rights guaranteed by the Administrative Agency Law....” CR at 37a. In construing these provisions, they must “speak for themselves”, and cannot be given a meaning other than that expressly stated within the Settlement Agreement itself. Oakmont Presbyterian Home. Thus, by the plain terms of the Settlement Agreement, Petitioners expressly agreed that they would be automatically subject to the imposition of sanctions by the Department, subject to the procedural and substantive rights guaranteed by the Administrative Agency Law, based upon a single violation of the terms of the Settlement Agreement by either AMA or AMS. CR at 37a.

By entering into the Settlement Agreement, and under its express terms, Petitioners bargained away their rights to contest the prior violations of the

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order from which no appeal has been taken, any collateral attack on the content or validity of the order in an enforcement proceeding is barred. The party against whom the order is issued may challenge the agency’s assertion that it has violated the consent order, but cannot challenge the existence, language, or enforceability of the order. ”) (citations omitted).

Department's regulations, and voluntarily subjected themselves to immediate disciplinary action by the Department for any subsequent violations of its terms. As a result, Petitioners were precluded from contesting, in the instant enforcement proceedings, the enforceability of the penalty provisions of the Settlement Agreement under the guise of a selective enforcement claim. See, e.g., Department of Environmental Resources v. Landmark International, Ltd., 570 A.2d 140, 142 (Pa. Cmwlth. 1990) ("[W]hat Landmark is seeking, in effect, is an appeal of the consent order, a right which it waived by voluntarily entering into the order. Since the consent order is the equivalent of an order from which no appeal was taken, any collateral attack on the content or validity of the order in an enforcement proceeding is barred. *Commonwealth v. Derry Township, Westmoreland County*, 466 Pa. 31, 351 A.2d 606 (1976).<sup>7</sup> ... 7. This is not to say that Landmark cannot challenge DER's assertion that it has violated the consent order. They may merely not challenge the existence of the order, its language, and its enforceability. The language of the order may very well be subject to such an interpretation that this Court could disagree with DER's position that penalties are due....").<sup>14,15</sup> In short,

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<sup>14</sup> See also Global Eco-Logical Services, Inc., 789 A.2d at 796 ("[A]tlantic appears to ignore the fact that DEP initially exercised its discretion regarding Atlantic's violations when it issued the Revocation Order on March 3, 1999. Atlantic could have pursued the prior litigation, i.e., its appeal of that Revocation Order, thereby forcing DEP to prove that its enforcement action was not an abuse of discretion; however, Atlantic chose instead to enter into the [Consent Order and Agreement] with DEP. By taking this course of action, Atlantic obviated the need for the EHB to determine whether Atlantic's violations justified Permit revocation. In other words, Atlantic bargained away any arguments that its failure to submit Annual Operations Reports and to timely pay civil penalties justified Permit revocation, Facility closure and Surety Bond forfeiture.") (footnote omitted).

<sup>15</sup> See also Pennsbury Village Associates, LLC, \_\_\_ Pa. at \_\_\_, 11 A.3d at 915 ("This Court has yet to contemplate the intersection of settlement agreements and anti-SLAPP legislation such as the Environmental Immunity Act[, 27 Pa.C.S. §§ 8301-8305]. We look to other jurisdictions' decisional law, and as appellant provided, *Daimler-Chrysler Motors [Co. v.*

(Continued....)

the Department did not err in rejecting Petitioners' selective enforcement claim, and Petitioners' assertion to the contrary is patently without merit.<sup>16</sup>

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*Lew Williams, Inc.*, 142 Cal.App.4<sup>th</sup> 344, 48 Cal.Rptr.3d 233 (2006)] and *Duracraft [Corp. v. Holmes Products Corp.]*, 427 Mass. 156, 6921 N.E.2d 935 (1998)] are instructive. Those cases stand for the proposition that where pre-existing legal relationships preclude a party from engaging in the activity protected by anti-SLAPP legislation, that party cannot claim immunity for actions taken in violation of its pre-existing legal obligation. Anti-SLAPP legislation will not shield a party from liability where a party 'waived the very constitutional right it seeks to vindicate.' *Daimler-Chrysler Motors* at 240. *Duracraft* provided '[a] quintessential example of such a waiver is a settlement agreement, in which a party releases legal claims against an adversary that otherwise properly could be prosecuted by petitioning the court.' *Duracraft* at 942.... [A]s in *Buttermore*, there has been no allegation of fraud, accident, or mutual mistake; 'therefore, as between them their agreement is their law.' *Buttermore*, [522 Pa. at 330, 561 A.2d] at 735 Accordingly, as in *Daimler-Chrysler Motors* and *Duracraft*, appellee will not enjoy immunity for attempting to defeat the stipulation's terms, because the stipulation provides an overriding legal basis defeating appellee's immunity claim.').

<sup>16</sup> Moreover, even if it is assumed that Petitioners were not precluded from contesting the enforceability of the Settlement Agreement's penalty provisions, their allegation of error regarding the Deputy Secretary's order disposing of the Department's motion *in limine* is likewise without merit. As this Court has previously noted:

The doctrine of selective prosecution applies to enforcement by administrative agencies. The agency has sole responsibility to assess whether a violation has occurred and whether to expend agency resources on one particular enforcement action as opposed to another. To bring a claim for selective prosecution, a party must demonstrate that: (1) others, similarly situated, were generally not prosecuted for similar conduct, and (2) it was intentionally and purposefully singled out for an invidious reason. The discretion involved in subjective assessment of the strength of a given claim and whether the best allocation of resources are spent on enforcement may not be compelled, and is not subject to judicial review, because such actions are not adjudicatory in nature.

*Koken v. One Beacon Insurance Co.*, 911 A.2d 1021, 1030-1031 (Pa. Cmwlth. 2006) (citations and footnotes omitted). In determining those who are "similarly situated", all relevant factors must be examined and "[d]efendants are similarly situated when their circumstances present no distinguishable legitimate prosecutorial factors that might justify making different prosecutorial decisions with respect to them." *United States v. Lewis*, 517 F.3d 20, 27 (1<sup>st</sup> Cir. 2008) (quoting *United States v. Olvis*, 97 F.3d 739, 744 (4<sup>th</sup> Cir. 1996)).

(Continued...)

Accordingly, the Adjudication and Order of the Department's Deputy Secretary is affirmed.

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JAMES R. KELLEY, Senior Judge

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As noted above, in this case, the Deputy Secretary's order required Petitioners to initially establish that there are other similarly situated health care providers, "[i]e. that there are other health care providers in Pennsylvania potentially in violation of a settlement agreement with the Department addressing quality assurance conditions for continued registration or licensure as a health care provider...." CR at 424a. The foregoing factors, including the common types of violations previously committed, and the common legal status as between the Department and the purported offender, are clearly relevant and material factors to be considered by the Department in determining whether to proceed in an enforcement action. As a result, the Deputy Secretary did not err in adopting these factors in disposing of the Department's motion in limine. See, e.g., Lewis, 517 F.3d at 28 ("In this case, the district court took account of these precepts and configured the pool of similarly situated offenders with reference to the nature and numerosity of the offenses and the incidence of possible links to terrorism. While the defendant labors to persuade us that this configuration is too specific, we are not convinced. Each of the items that the district court factored into the configuration calculus is relevant and material. Those criteria are, therefore, appropriate.").

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Steven Chase Brigham, M.D.,  
American Medical Associates, PC  
d/b/a American Women's Services  
and State College Medical Services  
and Allentown Medical Services,  
Petitioners

v.

Department of Health, Bureau of  
Community Licensure and Certification,  
Respondent

No. 1582 C.D. 2010

**ORDER**

AND NOW, this 15th day of June, 2011, the Adjudication and Order of the Deputy Secretary for the Pennsylvania Department of Health, dated July 7, 2010 at No. AB APP 09-001, is AFFIRMED.

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JAMES R. KELLEY, Senior Judge