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October 12, 2010

William V. Roeder, Executive Director
New Jersey State Board of Medical Examiners
P.O. Box 183
140 East Front Street, 2nd Floor
Trenton, New Jersey 086125-0183

Re: I/M/O Steven C. Brigham, M.D.

Dear Members of the Board:

Please accept this letter brief in opposition to Respondent Brigham's motion to exclude the expert testimony the State's expert, of Gary Brickner, M.D. Respondent's application is premised upon the faulty assertion that the issues in this case were considered and decided by the Board of Medical Examiners while Dr. Brickner was a member. In fact, this is not a re-presentation of that earlier issue, as more fully argued by the Attorney General in opposition to Respondent's Motion to Dismiss. True, this matter involves allegation against a licensee who was also the Respondent in a disciplinary proceeding during Dr. Brickner's term on the Board.¹ However, the quality of care allegations herein are specific to the care rendered the five patients in the Amended Verified Complaint. The mere issue whether the insertion of laminaria is an act subject to the Termination of Pregnancy regulation is not the pivotal or controlling issue in this case. Since this is not the same case as the 1993 matter, nor the same issue, there is no basis to exclude Dr. Brickner.

Although Respondent seeks to analogize to precedent involving attorneys, a better and closer analogy is had to the conflict of

¹Dr. Brickner was appointed in April 1996. The final hearing on Exceptions took place in August 1996. The complaint, filed in 1993, pre-dated Dr. Brickner's term.



interest rules governing State employees. There is no general restriction prohibiting former state employees from appearing before their former agency. In fact, former special state officers or employees are not prohibited from working on matters that originated in their former agencies subsequent to their leaving State service so long as they had no substantial and direct involvement in those matters.

In viewing whether a conflict exists, the New Jersey State Ethics Commission looks at "whether the former employee was substantially and directly involved in the matter in question. See N.J. State Ethics Comm'n Case No. 25-08 (2009). The current case before the Board is a separate and distinct matter from the earlier prosecution. See N.J. State Ethics Comm'n Case No. 21-02 (2002), where the Commission advised a former employee that she was permitted to represent clients as an attorney before her former Unit so long as she had no previous involvement with the particular case in question in her state position.

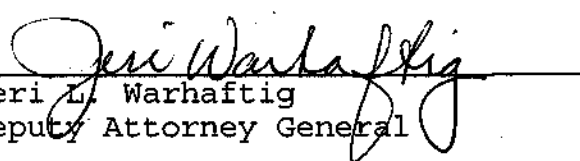
"[T]he Commission historically has defined "matter" in a manner that has not prohibited a former State employee from utilizing his/her general expertise in connection with post-employment activities." N.J. State Ethics Comm'n Case No. 04-00 (2001). "Based on Commission precedent, each case in which the former State employee testified would be a 'matter' for the purposes of this section. Id.

The matter pending before the Board is a separate and distinct matter from the prior matters involving Dr. Brigham. The Commission has treated each case as a separate matter. Dr. Brigham had no involvement in the current matter before the Board and should not be precluded from serving as an expert.

Sincerely yours,

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

By: _____


Jeri L. Warhaftig
Deputy Attorney General

cc: Joseph Gorrell, Esq.
Steven Flanzman, DAG