

## *Maryland's Path to an Accord in Abortion Fight*

By Erik Eckholm

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BALTIMORE — The 18-year-old woman arrived at Johns Hopkins Hospital by medevac helicopter in critical condition. Her uterus and bowel had been pierced during a late-term abortion that had started in New Jersey and ended at an unmarked, unregulated clinic in Elkton, in northeastern Maryland.

The surgeons were able to repair the damage, but they were appalled by the woman's tale of a procedure that spanned two states, a switch to an unfamiliar doctor who seemed to be learning on the job and a clinic unprepared for an emergency. They reported the case to the state medical board.

That young woman's ordeal in late 2010 led to new scrutiny that continues today for the clinic owner and doctor who had directed her abortion, Steven C. Brigham. From a base in New Jersey, Maryland officials learned, Dr. Brigham operated abortion clinics in several states, and for two decades he had faced complaints of substandard care. He had been barred from medical practice in Pennsylvania and New York.

The near disaster in an Elkton mall led to something rare in this era of polarized abortion politics — sharply tightened oversight of Maryland abortion clinics that came into full force this year and won praise from both sides of the political divide. The state's first system of licensing and inspecting the clinics has already improved patient safeguards without imposing costly burdens, defenders and opponents of abortion rights agree.

“We were shocked with the findings in the Brigham case, and we saw an important gap,” said Frances B. Phillips, who recently retired as Maryland's deputy secretary for public health.

Once-obscure issues of clinic regulation are a new flash point in the abortion wars, exemplified by the restrictive bill now moving through the Republican-controlled Legislature in Texas, on Wednesday passing in the House. In addition to banning abortions after 20 weeks of pregnancy, the Texas bill, in the name of safety, would require all abortion clinics to meet the costly standards of ambulatory surgical centers, which could force dozens of clinics to close.

The bill, which would also mandate that abortion doctors obtain admitting privileges at local hospitals, is part of a wave of stringent rules on abortion facilities, equipment and staffing in 29 states, promoted by anti-abortion groups that often cite the squalid practices of Dr. Kermit Gosnell in Philadelphia, who was convicted of murder this year.

If the goal is to make abortions as safe as possible, the new Maryland rules — which were negotiated not by politicians, but by health officials in consultation with medical groups, clinic managers and anti-abortion leaders — may offer a different path.

Dr. Brigham, who was not licensed to practice in Maryland, had not even been required to notify the state health department when he set up the Elkton center to complete late-term abortions, after about the 14th week of pregnancy. He initiated the procedures in New Jersey, where he was not authorized to perform them, then led his startled patients to Maryland, where the abortions were completed.

“Both sides realized we needed new rules,” Ms. Phillips said. “But we kept the focus on patient safety.”

The Maryland regulations are not as rigid as those in some states: they do not dictate the width of hallways, the size of janitors' closets or the number of parking spaces outside. Rather, they look at the goal: Is there a sound plan, for example, for rapid evacuation if a patient has a medical emergency?

The state also did not require abortion doctors to have local hospital admitting privileges, a measure that threatens to shut down clinics in several states. Officials concluded that in emergencies, hospitals are best equipped to provide care anyway, and the clinic doctor can advise the hospital staff without holding admitting privileges. Under the new rules, Dr. Brigham would have been required to seek a clinic license before operating his center in Elkton and his procedures would have been scrutinized.

“Maryland took a thoughtful approach that reflects a balance between ensuring access to service but also protecting public health,” said Heather Howard, a former commissioner of the New Jersey Department of Health and Senior Services and now a lecturer at Princeton University.

### **A Safe Procedure Over All**

While the existence of abortion doctors with illegal or haphazard methods can never be ruled out, the medical record for abortions in the United States indicates the procedure is quite safe over all. Ten women died of abortion-related causes out of 1.2 million procedures in 2010, according to the Centers for Disease Control and Prevention; the number of deaths in 2009 was 12.

For many years, the death rate has hovered around one per 100,000 procedures, according to Dr. David A. Grimes, a professor of obstetrics and gynecology at the University of North Carolina School of Medicine and a former chief of abortion surveillance at the C.D.C.

“Today, having an abortion is safer than an injection of penicillin,” he said.

Risks rise with the length of a pregnancy, with one death occurring for every one million abortions in the first 8 weeks, one per 29,000 at 16 to 20 weeks and one per 11,000 in the small fraction of abortions performed at 21 weeks or more, according to the Guttmacher Institute, a research group that supports abortion rights.

Abortion opponents say complications and deaths are underreported. They also list numerous examples of clinics and doctors who have been censured for poor emergency procedures or sanitation, including Dr. Brigham, and they publicize patient deaths.

The Gosnell trial has “pulled back the cloak of secrecy about what abortion clinics are really like,” said Charmaine Yoest, the president of Americans United for Life, which offers model laws for stringent clinic regulation.

Dr. Gosnell was sentenced this year to life in prison for snipping the spines of babies born alive in illegal, late-term abortions in Pennsylvania. But any suggestion that the doctor’s practices — live delivery in a filthy room — are widespread is not supported by evidence. For at least the past two decades, experts say, it has been standard for doctors to make sure the fetus in the womb has no heartbeat before completing a late-term abortion.

Former employees of an abortion doctor in Houston recently claimed that he, too, had killed babies when they emerged alive in late-term abortions. State officials are investigating.

Apart from any state rules that may exist, about 400 medical facilities accounting for a majority of the country’s abortions are accredited by the National Abortion Federation, a private group that has guidelines for equipment, procedures and training. It says it inspects its members every three to five years.

Dr. Gosnell was not caught earlier, other clinic directors say, because Pennsylvania did not enforce its existing rules, failing to inspect his West Philadelphia clinic for more than 17 years. Since his indictment in early 2011, the Pennsylvania Health Department has fired some officials and restarted inspections of clinics in the state. But later that year, the state legislature also adopted stringent rules, requiring all surgical abortion clinics to meet the standards of ambulatory surgery centers.

“There was a compelling public interest to make these clinics safe,” said State Representative Matthew E. Baker, a Republican.

Three clinics have closed, and others have spent large sums to comply.

Elizabeth Barnes, the executive director of the Philadelphia Women's Center, called the \$500,000 that her clinic had to spend on new air systems, ceilings and floors "medically pointless."

As for the lessons of the Gosnell and Brigham cases, Ms. Barnes drew an opposite conclusion to Ms. Yoest's. "The more expensive and inaccessible that abortion becomes," Ms. Barnes said, "the more it creates a space for a Gosnell or a Brigham to operate."

### **Flouting Regulations**

Maryland officials are still trying to understand Dr. Brigham's role and legacy in the state's abortion care.

In a recent e-mail, Dr. Brigham, 56, said, "It has always been my goal and desire to provide women with safe and appropriate medical care." He blamed his tangles with the authorities in several states over the years on anti-abortion bias and efforts by competing abortion providers to drive him out of business.

The continuing case of Dr. Brigham is a cautionary one, showing that a determined person, working behind the anonymity of private corporations and moving among states, can flout even strong medical regulations.

In 1992, facing an investigation for issues that have not been disclosed, Dr. Brigham signed an agreement with Pennsylvania that he would never practice medicine in the state. In 1994, New York revoked his license, concluding that he had been poorly trained, had been duplicitous and had exhibited "gross negligence" in the care of late-term abortion patients.

Dr. Brigham works through a multistate network, American Women's Services, which since the 1990s has offered abortions in New Jersey, Virginia, Pennsylvania and Maryland (where he had established four conventional, openly advertised clinics apart from the now-vacant space in Elkton). When Pennsylvania barred him from operating clinics in the state, corporate ownership was transferred to his mother in Ohio.

But the issue that has landed Dr. Brigham in trouble most often has been his repeated involvement in the far less common, but more complicated, second- and third-trimester abortions.

First-trimester abortions, which account for the large majority of procedures, can be induced with drugs or completed quickly using a vacuum method. But after about the 14th or 15th week of pregnancy, as the fetus grows larger, the procedures might take two or more

days and require extracting the fetus with forceps or inducing delivery, and they often require more anesthesia.

A few states, including New Jersey, have special rules governing abortions after 14 weeks, limiting them to ambulatory surgery centers. Texas already has similar limits for abortions after 16 weeks.

While Dr. Brigham himself is no longer licensed to practice in any state, several clinics he established in New Jersey and Virginia still operate, and others in Pennsylvania and Maryland, though now suspended by the state authorities, are also listed on the American Women's Services Web site.

In New Jersey, he had a license to practice in 2010, but neither he nor his clinics were authorized to perform second- or third-trimester abortions. Yet he offered them to New Jersey residents on his Web site. The crisis at the Elkton clinic revealed, New Jersey officials said, how he tried to evade the law.

As he had with dozens of other patients over the previous months, Dr. Brigham began the young woman's procedure at his clinic in Voorhees Township, N.J., initiating the cervical dilation of the woman, who was 21.5 weeks pregnant, and using a standard injection to kill the fetus.

The next morning, he led the puzzled patient, her mother and boyfriend, along with two other patients, in a car caravan 60 miles south, across Delaware, to the clinic in an unlabeled suite in Elkton. There, Dr. Brigham advised Dr. Nicola I. Riley, who had a Maryland license but limited experience in late-term abortions, as she administered anesthesia and began extracting the fetus. "It seemed like he was training her," the patient later testified.

Soon, Dr. Riley testified, she realized that she was tugging not on the fetus but on intestinal tissue, indicating a potentially life-threatening perforation of the patient's uterus and damaged bowel. After debating whether to call an ambulance, she and Dr. Brigham drove the ailing young woman to a nearby emergency room, where doctors quickly determined that a medevac was necessary.

Once the Johns Hopkins doctors reported the case to the Maryland medical board, Dr. Riley's license was quickly suspended (and later revoked for unprofessional conduct and concealing a felony conviction for fraud and larceny).

Evidence gathered in Elkton showed that Dr. Brigham had, over previous months, completed abortions on fetuses past the 24-week point of viability, and in 2011, state prosecutors indicted him and Dr. Riley on charges of murdering viable fetuses, based on an untested legal theory. But they dropped the charges when it appeared most likely that the fetal deaths had occurred inside the womb, in New Jersey.

Dr. Brigham, defending himself before the New Jersey medical board, said he believed he had not been violating state rules because he had not completed the abortions in the state.

The board disagreed, and in late 2010 suspended his license to practice. Dr. Brigham has appealed.

### **'Step in the Right Direction'**

Maryland officials have determined that most abortion clinics in the state are safe and professionally run. Nevertheless, they have tried to devise a licensing regime to detect and prevent violations.

"The idea is to take action before there's a problem," said Dr. Joshua M. Sharfstein, the state's secretary of health and mental hygiene.

Maryland officials of Planned Parenthood, a group leery of new regulations because, in its view, they are too often driven by politics, called the state's licensing rules reasonable and helpful.

Jeffrey D. Meister, the legislative director of Maryland Right to Life, said that while his group supported even stronger, surgical-center standards, the new rules had brought important gains. "After 20 years of not having any regulations whatsoever, it is a step in the right direction," he said.

In their inspections so far this year, Maryland officials found easily correctable sanitary and records violations in several clinics. But after finding deficiencies in medical management that posed "a serious and immediate danger to patients," they suspended four clinics on May 9 that are now run by a company, called Associates in Ob/Gyn Care, which was incorporated in 2010.

The inspectors found poor emergency procedures, the use of untrained staff members and other violations, and the medical board suspended the licenses of two doctors with the company.

State health officials also found that the four suspended clinics had been established in the same locations years earlier by Dr. Brigham, and remained listed on the American Women's Services Web site. The new regulations bar doctors who run afoul of state licensing rules, as Dr. Brigham had, from operating abortion clinics.

Dr. Brigham said in an e-mail that Associates in Ob/Gyn Care took control of the clinics in 2010. Neither he nor any family member shares in their ownership, he said, adding that the Web site of American Women's Services merely serves to advertise or provide referrals for clinics that might be owned by others.

Yet he appears to maintain ties with the four clinics. Online real estate records examined by The New York Times indicate that corporations associated with Dr. Brigham still own two of the clinic office spaces.

And Dr. Brigham appears to have provided the doctors. In a letter to legislators on June 25, Dr. Sharfstein said an official of Associates in Ob/Gyn Care, after previously denying ties to Dr. Brigham, had admitted that Dr. Brigham “owns an entity that provides physician services” to the facilities.

“It has been a concern for us to learn that Dr. Brigham is so involved with these centers, especially after he denied it,” Dr. Sharfstein said in an interview. “This is leading us to take another look at the regulations.”