



**Thomas More Society**  
**Case Review**  
**February 29, 2008**

**WOMEN'S MEDICAL PROFESSIONAL**  
**Corporation, et al.**  
**vs**  
**J. Nick Baird, M.D.**

**CASE BACKGROUND:**

Beginning in 1996, the State of Ohio required ambulatory surgical facilities to obtain licenses from the Ohio Department of Health. If it were not for these requirements, these facilities, where large numbers of surgeries are performed outside of a hospital setting, would be unregulated. Women's Medical Professional Corporation, owned & operated by Dr. Haskell, did not get a license when required to by state law. When this fact was brought to the attention of the Ohio Department of Health in 1999, Dr. Haskell claimed that he was operating as a physician's office, and not a surgical facility, and therefore was not required to obtain a license. The Ohio Department of Health disagreed and told him to get a license. He refused and took the case before the State Administrative Review Board. They ordered him to get a license. He refused and took the case to Franklin County Common Pleas Court. They ordered him to get a license. He refused and appealed the case to the Ohio Court of Appeals for the 10<sup>th</sup> Appellate District. They ordered him to get a license. He finally applied for one in the fall of 2002. His application was denied by the Ohio Department of Health because he could not obtain a hospital transfer agreement for the care of emergency patients. (Dr. Haskell has no certification in family practice and no formal OB-GYN training outside of what was provided to him as an intern. His attempt to obtain admitting privileges at Miami Valley Hospital was denied.)

On January 9, 2003, the Ohio Department of Health wrote Dr. Haskell informing him of his decision to deny a license. Dr. Baird of the DOH also issued the following order: "I order you to immediately cease all health

care facility operations, including all ambulatory surgical facility operations as those terms are defined at R.C. 3702.30". On the same day, Dr. Haskell's attorney obtained a restraining order from a federal judge in Cincinnati, Judge Susan Diott. The case was transferred to Franklin County federal district court under Judge Algenon Marbley. Attorneys from the Ohio Attorney General's office defended the actions of the Ohio Department of Health & Dr. Baird in attempting to close the clinic. The trial was held on June 11-13. Judge Marbley ruled that Haskell was deprived of constitutional due process because he was not given an opportunity for a hearing before the Ohio Department of Health before the cease and desist order to close the abortion facility was issued. The judge also ruled that it would be an undue burden on women to close this facility, since it was the only one in the Dayton area. The Department of Health then appealed the decision to the Sixth Circuit Court of Appeals.

On February 17<sup>th</sup>, 2006, the Sixth Circuit removed the injunction that was stopping the Ohio Department of Health from enforcing the hospital transfer agreement requirement against this facility, and ordered that, although he had to comply with the law, Haskell had to be given a hearing of the proposed denial of the license application if he asked for one. The Court also found that closing Haskell's facility would not be an undue burden to the women of Dayton. In other words, Haskell was wrong.

In a letter dated Friday, April 7, 2006 the ODOH expressed its intention to revoke the license of the facility because it is in violation of the transfer agreement requirement. But Haskell requested his due-process hearing. Two dates were scheduled by a hearing officer, but Haskell asked for postponements of both (the latest on Oct. 4<sup>th</sup> & 5<sup>th</sup>, 2006) and has now asked that a hearing not be held since he is willing to stipulate to the facts (that he cannot get a transfer agreement) and that he be permitted to argue the legal issues in writing.

The Department of Health Hearing Officer reviewed 28 stipulations of fact, twenty-three joint exhibits and various briefs and issued his report and recommendations on March 12, 2007, finding that the proposed revocation of licensure of the Women's Medical Center of Dayton is a valid state action. The Department thus fulfilled the order of the Sixth Circuit Court of Appeals.

On February 14<sup>th</sup>, the current Director of the Ohio Department of Health, Dr. Alvin Jackson, denied the request to waive the hospital transfer agreement requirement and issued an order revoking the facility's license. The order gave Haskell 15 days to appeal the order with the Department.

## **WHY A HOSPITAL TRANSFER AGREEMENT IS IMPORTANT:**

Dr. Haskell's attorney argued that a hospital transfer agreement is not necessary because emergency rooms in the Dayton area would accept any patients needing further treatment. However, as Dr. Baird, Director of the Ohio Department of Health from 1999-2006 said in his letter to Dr. Haskell: "OAC 3701-83-19E requires an ASF to have a written transfer agreement with a hospital for transfer of patients in the event of medical complications, emergency situations, and for other needs as they arise. The purpose of this provision of the ASF rules is to assure the timely and unimpeded availability of hospital-level care and services in the event of an emergency arising in the ASF that may be beyond the capacity of the ASF."

In addition, all National ASF accrediting boards – such as the Federation of State Medical Boards and the American Association for Accreditation of Ambulatory Surgical Facilities) in the U.S. consider a written transfer agreement to be an absolute necessity. The only alternative they consider appropriate is that every surgeon in the facility have admitting privileges at a local hospital.

## **WHY LICENSING & REGULATION ARE IMPORTANT AND SHOULD NOT BE WATERED DOWN FOR ABORTION CLINICS:**

Abortion is dangerous to women. The AMA has compiled statistics which show that abortion is more dangerous than childbirth beginning in the late second trimester (18 weeks). The risk to maternal health increases dramatically approaching the end of the second trimester. In a report to the Board of Trustees of the AMA dated May of 1997, Nancy W. Dickey, MD, Chair, state that: Maternal mortality is the most serious complication resulting from induced abortion, and the risk of maternal death increases with gestation age...At 21 weeks or more it increased to one in 6000 procedures, and exceeded the risk of maternal death from childbirth, which was one in 13,000 deliveries..." Yet many current consent forms used by abortionists, including abortionist Martin Haskell, mislead patients into believing that abortion is always safer than childbirth. It is not. The state's licensing requirements do contain an informed consent requirement that would at least provide a greater chance for women to have all relevant information before making a decision about abortion.

**One woman who regrets her involvement with Dr. Haskell's facility in Dayton is Candace Armstrong. Dr. Haskell performed a partial-birth abortion on Candace in 1997. As a result of the procedure, Candace suffered complications resulting in permanent sterility. She was never warned of this, never told that this was one of the risks of the procedure. Today she is paying the price for Dr. Haskell's noncompliance with the basic medical standards of Ohio law. Yet he is permitted to perform abortions.**

**Abortion is a dangerous surgical procedure. Infections, torn uteruses, cervical injuries, and endometritis are just a few of the injuries reported in medical journals, with complication rates of 1% to 22%.**

