COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania,	:	
Bureau of Professional and	:	
Occupational Affairs	:	**File No. 11-49-12033**
v.	:	
	:	**Docket No. 1012-49-13**
Kermit Barron Gosnell, M.D.,	:	
Respondent	:	

FINAL ORDER

AND NOW, this 1st day of November 2013, noting that neither party filed an application for review and that the State Board of Medicine (Board) did not issue a Notice of Intent to Review, in accordance with 1 Pa. Code § 35.226(a)(3) and 49 Pa. Code § 16.57, the hearing examiner's adjudication and order dated September 10, 2013, appended to this order as **Appendix A**, is now the **FINAL ORDER** of the Board in this proceeding.

This order shall be effective immediately.

BUREAU OF PROFESSIONAL & OCCUPATIONAL AFFAIRS

Kathy J. Barley

KATHY J. BARLEY,
ACTING COMMISSIONER

STATE BOARD OF MEDICINE

Andrew J. Behnke

ANDREW J. BEHNKE, MD
CHAIR

Respondent's Address:

Kermit Barron Gosnell
68012-066
FDC Philadelphia, Federal Detention Center
P.O. Box 562
Philadelphia, PA 19105

Prosecuting attorney:	Anita P. Shekletski, Esquire
Board counsel:	Wesley J. Rish, Esquire
Date of mailing:	November 1, 2013

APPENDIX A

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs	:	
	:	Docket No. 1012-49-13
v.	:	File No. 11-49-12033
Kermit Barron Gosnell, M.D., Respondent	:	

ADJUDICATION AND ORDER

Jackie Wiest Lutz
Chief Hearing Examiner

Commonwealth of Pennsylvania
GOVERNOR'S OFFICE OF GENERAL COUNSEL
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649
(717) 772-2686

DATE DISTRIBUTED 10/7/13
PROSECUTION
COUNSEL
HEARING EXAMINER
OTHER

HISTORY

This matter was initiated by the Commonwealth's filing of a two hundred thirty-eight (238) count *Order to Show Cause* (OSC) on July 2, 2013 against Kermit Barron Gosnell, M.D. (Respondent), alleging that Respondent is subject to disciplinary action under the Medical Practice Act of 1985 (Act), Act of December 20, 1985, P.L. 457, No. 112, *as amended*, 63 P.S. § 422.1 *et seq.*, and the Criminal History Record Information Act (CHRIA), Act of July 16, 1979, P.L. 116, No. 47, *as amended*, 18 Pa. C.S. § 9101 *et seq.*

Counts One through Two Hundred Thirty-Six of the OSC alleged that Respondent is subject to disciplinary action under Section 41(3) of the Act, 63 P.S. § 422.41(3), because Respondent was convicted of a felony or a misdemeanor relating to a health profession or received probation without verdict, disposition in lieu of trial or an Accelerated Rehabilitative Disposition in the disposition of felony charges, in the courts of this Commonwealth, a Federal court or a court of any other state, territory or country.

Count Two Hundred Thirty-Seven of the OSC alleged that Respondent is subject to disciplinary action under the CHRIA, at 18 Pa. C.S. § 9124(c)(1), because Respondent has been convicted of any felony.

Count Two Hundred Thirty-Eight of the OSC alleged that Respondent is subject to disciplinary action under the CHRIA, at 18 Pa. C.S. § 9124(c)(2), because Respondent has been convicted of any misdemeanor related to the practice of the profession.

The Commonwealth served the OSC upon Respondent on July 3, 2013 by mailing one copy via certified mail, return receipt requested, and one copy via first class mail, postage prepaid, to Respondent at his current address: FDC Philadelphia, Federal Detention Center, P.O. Box 562, Philadelphia, PA 19105. Respondent received the OSC sent by certified mail, as

evidenced by USPS Proof of Delivery letter, Article #9171 9690 0935 0042 3886 75. Additionally, the OSC that was sent via first class mail has not been returned to the Commonwealth and therefore delivery of the OSC is presumed. The OSC directed Respondent to file a written answer within thirty days of the date on the OSC, and specifically advised that the factual allegations may be deemed admitted if Respondent fails to file an Answer within the time period allowed. Respondent was also advised that if he fails to file an Answer, the State Board of Medicine (Board) may revoke, suspend, or impose other restrictions against his medical license; and the Board may also impose a civil penalty of up to $10,000.00 for each and every violation of the Act.

On September 5, 2013, the Commonwealth filed a *Motion to Enter Default and Deem Facts Admitted* (MDFA). The MDFA was served upon Respondent on September 5, 2013, by first class mail, postage prepaid, at the same address at which the OSC had been served. Respondent did not file a response to the MDFA.

On September 18, 2013, an *Order Deeming Facts Admitted and Entering Judgment by Default* was issued. The Order deemed the factual allegations in the OSC admitted and entered judgment by default against Respondent and advised him that an Adjudication and Order setting forth appropriate sanctions will be issued in due course.

This matter is now ripe for disposition.

FINDINGS OF FACT

1. Respondent held the following license to practice as a medical physician and surgeon in the Commonwealth of Pennsylvania: license no. MD009422E. (Board records; OSC at paragraph 1)

2. Respondent's license was originally issued on July 1, 1967, expired on December 31, 2010, and is currently subject to a voluntary surrender.[1] (Board records; OSC at paragraph 2)

3. At all times pertinent to the factual allegations, Respondent held a license to practice as a medical physician and surgeon in the Commonwealth of Pennsylvania, subject to the conditions as set forth in paragraph 2. (OSC at paragraph 3)

4. Respondent's last known address on file with the Board is: 3801 Lancaster Avenue, Philadelphia, PA 19104. (Board records; OSC at paragraph 4)

5. The Commonwealth has reason to believe that Respondent's current address is: FDC Philadelphia, Federal Detention Center, P.O. Box 562, Philadelphia, PA 19105. (OSC at paragraph 5)

6. On or about January 20, 2011, a Criminal Complaint was filed in the Philadelphia County Court of Common Pleas at docket number MC51-CR-0002714-2011. (OSC at paragraph 6)

7. A Criminal Information was filed in the Philadelphia County Court of Common Pleas at docket number CP-51-CR-0001667-2011 charging Respondent with:

[1]By Consent Agreement and Order filed February 23, 2011, Respondent agreed to the voluntary surrender of his license to practice medicine during the pendency of the criminal charges referenced in the OSC. A true and correct copy of the February 23, 2011 Consent Agreement and Order was attached as Exhibit A to the OSC and incorporated by reference. Additional charges were then filed by the Commonwealth with respect to Respondent's failure to purchase Medical Professional Liability Insurance. These charges resulted in a subsequent Board Order dated July 12, 2012, in which it was ordered that should the Respondent apply for reinstatement, reactivation, renewal or reissuance of his license, his license will be immediately and indefinitely suspended until such time as Respondent complies with the requirements of the Mcare Act pertaining to the purchase of Medical Professional

a. one (1) Count of violating 18 Pa. C.S.[2] § 2502, *Murder* – a H1,

b. one (1) Count of violating 18 Pa. C.S. § 903, *Conspiracy* –a H1,

c. one (1) Count of violating 18 Pa. C.S. § 903, *Conspiracy* – a H1,

d. one (1) Count of violating 18 Pa. C.S. § 903, *Conspiracy* – a H1,

e. one (1) Count of violating 35 Pa. C.S. § 780-113 §§ A14, *Admin Etc of Cont Subst By Pract* – a Felony,

f. one (1) Count of violating 35 Pa. C.S. § 780-113 §§ A30, *Manufacture, Delivery, or Possession With Intent to Manufacture or Deliver* – a Felony,

g. one (1) Count of violating 18 Pa. C.S. § 902 §§ A, *Manufacture, Delivery, or Possession With Intent to Manufacture or Deliver* – Criminal Solicitatic [sic],

h. one (1) Count of violating 18 Pa. C.S. § 2502 §§ C, *Murder of The Third Degree* – a Felony,

i. one (1) Count of violating 18 Pa. C.S. § 2506 §§ A, *Drug Delivery Resulting in Death* – a Felony,

j. one (1) Count of violating 18 Pa. C.S. § 911 §§ B1, *Corrupt Organizations* – a Felony,

k. one (1) Count of violating 18 Pa. C.S. § 903, *Conspiracy* – H1,

l. one (1) count of violating 18 Pa. C.S. § 903, *Conspiracy* – a H1,

m. thirty-three (33) Counts of violating 18 Pa. C.S. § 3211 §§ A, *Abortion on Unborn Child of 24 weeks or more* – a Felony of the Third Degree,

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Liability Insurance. A true and correct copy of the July 12, 2012 Order was attached as Exhibit B to the OSC and incorporated by reference. (OSC at paragraph 2, footnote #1)

[2] Throughout paragraphs 7 and 8 of the OSC, the Commonwealth cited the Pennsylvania Crimes Code as being 18 P.S. instead of 18 Pa. C.S.; the correct citation to the Crimes Code is used herein throughout Findings of Fact Nos. 7 and 8.

n. two (2) Counts of violating 18 Pa. C.S. § 3212 §§ B, *Infanticide* – a Felony of the Third Degree,

o. one (1) Count of violating 18 Pa. C.S. § 903, *Conspiracy* – H1,

p. one (1) Count of violating 18 Pa. C.S. § 903, *Conspiracy* – H1,

q. one (1) Count of violating 18 Pa. C.S. § 5105 §§ A1, *Hinder App/Prose – Harbor or Conceal* – a Felony of the Third Degree,

r. ten (10) Counts of violating 18 Pa. C.S. § 3922 §§ A1, *Theft by Decep – False Impression* – a Misdemeanor of the First Degree,

s. three (3) Counts of violating 18 Pa. C.S. § 6301 §§ A1, *Corruption of Minors* – a Misdemeanor of the First Degree,

t. one (1) Count of violating 18 Pa. C.S. § 903, *Conspiracy* – H1,

u. one (1) Count of violating 18 Pa. C.S. § 903, *Conspiracy* – H1,

v. one (1) Count of violating 18 Pa. C.S. § 5101, *Obstruct Admin Law/Other Govt Func* – a Misdemeanor of the Second Degree,

w. five (5) Counts of violating 18 Pa. C.S. § 5510, *Abuse of Corpse* – a Misdemeanor of the Second Degree,

x. one (1) Count of violating 18 Pa. C.S. § 4910 §§ 1, *Tamper With/Fabricate Physical Evidence* – a Misdemeanor of the Second Degree,

y. three hundred and thirteen (313) Counts of violating 18 Pa. C.S. § 3205 §§ A, *Informed Consent Abortion* – a Misdemeanor of the Third Degree,

z. one (1) Count of violating 18 Pa. C.S. § 2502, *Murder* – a H1,

aa. one (1) Count of violating 18 Pa. C.S. § 2502, *Murder* – a H1,

bb. one (1) Count of violating 18 Pa. C.S. § 2502, *Murder* – a H1,

cc. one (1) Count of violating 18 Pa. C.S. § 2502, *Murder* – a H1,

dd. one (1) Count of violating 18 Pa. C.S. § 2502, *Murder* – a H1,

ee. one (1) Count of violating 18 Pa. C.S. § 2502, *Murder* – a H1, and

ff. one (1) Count of violating 18 Pa. C.S. § 911 §§ B4, *Consp To Vio 911b1, 911b2, 911b3* – a Felony of the First Degree.

(OSC at paragraph 7)

8. On or about May 15, 2013, Respondent was found guilty in the Philadelphia County Court of Common Pleas at docket number CP-51-CR-0001667-2011 of the following offenses:

a. one (1) Count of violating 18 Pa. C.S. § 2502 §§ A, *Murder of the First Degree*, a H1[3],

b. one (1) Count of violating 18 Pa. C.S. § 903 §§ C, *Conspiracy – Murder* – H1[4],

c. one (1) Count of violating 18 Pa. C.S. § 903 §§ C, *Conspiracy – Murder* – a H1[5],

[3] The Commonwealth has not alleged in the OSC that the crime of murder of the first degree is a felony, and the Crimes Code does not specifically designate murder of the first degree as a felony. Nevertheless, the Crimes Code provides that "[a] crime is a felony of the first degree if it is so designated in this title or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is more than ten years." 18 Pa. C.S. § 106(b)(2). Respondent was sentenced to be confined for life at State Correctional Institution for his crime of murder of the first degree. (OSC at paragraphs 9 and 10; Exhibit C attached to the OSC at Order of Sentence). Therefore, the Hearing Examiner concludes as a matter of law that murder of the first degree is a felony of the first degree.

[4] The Commonwealth has not alleged in the OSC that the crime of Conspiracy – Murder is a felony, and the Crimes Code does not specifically designate Conspiracy – Murder as a felony. Nevertheless, the Crimes Code provides that "[a] crime is a felony of the first degree if it is so designated in this title or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is more than ten years." 18 Pa. C.S. § 106(b)(2). Respondent was sentenced to be confined for 10 to 20 years at the State Correctional Institution for his crime of Conspiracy – Murder. (OSC at paragraphs 9 and 10; Exhibit C attached to the OSC at Order of Sentence). Therefore, the Hearing Examiner concludes as a matter of law that Conspiracy – Murder is a felony of the first degree.

[5] *See* footnote #4.

d. one (1) Count of violating 18 Pa. C.S. § 911 §§ B1, *Corrupt Organizations* – a Felony of the First Degree,

e. one (1) Count of violating 18 Pa. C.S. § 903 §§ C, *Conspiracy – Informed Consent Abortion* – a Misdemeanor of the Third Degree,

f. one (1) Count of violating 18 Pa. C.S. § 3211 §§ A, *Abortion on Unborn Child of 24 Weeks or more* – a Felony of the Third Degree,

g. one (1) Count of violating 18 Pa. C.S. § 903 §§ C, *Conspiracy – Abortion on Unborn Child of 24 Weeks or more* – a Felony of the Third Degree,

h. one (1) Count of violating 18 Pa. C.S. § 3205 §§ A, *Informed Consent Abortion* – a Misdemeanor of the Third Degree,

i. one (1) Count of violating 18 Pa. C.S. § 2502, *Murder* – a H1[6],

j. one (1) Count of violating 18 Pa. C.S. § 2502, *Murder* – a H1[7],

k. one (1) Count of violating 18 Pa. C.S. § 911 §§ B4, *Cons To Vio 911b1, 911b2, 911b3* – a Felony of the First Degree,

l. one (1) Count of violating 18 Pa. C.S. § 2504 §§ A, *Involuntary Manslaughter* – a Felony of the Second Degree,

m. twenty (20) Counts of violating 18 Pa. C.S. § 3211 §§ A, *Abortion on Unborn Child of 24 Weeks or more* – a Felony of the Third Degree and

n. two hundred three (203) Counts of violating 18 Pa. C.S. § 3205 §§ A, *Informed Consent Abortion* – A Misdemeanor of the Third Degree.[8]

[6] *See* footnote #3.

[7] *See* footnote #3.

[8] The OSC alleged in paragraph 8(n) that Respondent was found guilty of two hundred four (204) Counts of violating 18 P.S. § 3205 §§ A, *Informed Consent Abortion* – A Misdemeanor of the Third Degree. (OSC at paragraph 8(n)). This allegation was based upon totaling the Counts starting with Count 64 and ending with Count

(OSC at paragraphs 8 and 10)

9. On or about May 15, 2013, Respondent was sentenced by the Philadelphia County Court of Common Pleas at docket number CP-51-CR-0001667-2011 to:

a. Three Life Imprisonment Terms of Incarceration to be served consecutively without Parole; three terms to be confined[9] for 10 to 20 years; and one term to be confined[10] for a minimum of 2 years, 6 months and a maximum of 5 years;

b. Pay costs; and

c. Pay Crime Victim's Compensation Fund.

(OSC at paragraphs 9 and 10)

10. On July 3, 2013, the Commonwealth mailed to Respondent an *Order to Show Cause* (OSC) requesting that Respondent show cause why the Board should not suspend, revoke or otherwise restrict Respondent's license, impose a civil penalty, or impose the costs of investigation, based upon his convictions in the Philadelphia County Court of Common Pleas. (Docket No. 1012-49-13 – OSC filed July 2, 2013)

11. The OSC was served upon Respondent by certified mail, return receipt requested, and first class mail, postage prepaid, addressed to Respondent at his current address as follows: Kermit Barron Gosnell, #68012-066, FDC Philadelphia, Federal Detention Center, P.O. Box

289 in the Order of Sentence, which was attached to the OSC as Exhibit C. (OSC at paragraph 10) A careful tally of these Counts shows that these Counts add up to two hundred three (203) Counts rather than two hundred four (204) Counts as alleged in the OSC. The correct number of Counts has been reflected in Finding of Fact No. 8(n).

[9] The Commonwealth alleged "three terms to be ***combined*** for 10 to 20 years." [Emphasis added]. The word "combined" appears to be an error, given the following wording in the Order of Sentence: "To be ***confined*** for 10 to 20 years at State Correctional Institution." [Emphasis added]. This wording has been corrected in Finding of Fact No. 9(a).

[10] The Commonwealth alleged "one term to be ***combined*** for a minimum of 2 years, 6 months and a maximum of 5 years." [Emphasis added]. The word "combined" appears to be an error, given the following wording in the Order of Sentence: "To be ***confined*** for a minimum period of 2 year(s) 6 month(s) and a maximum period of 5 year(s) at State Correctional Institution." [Emphasis added]. This wording has been corrected in Finding of Fact No. 9(a).

562, Philadelphia, PA 19105. (Docket No. 1012-49-13 – OSC at Certificate of Service; and MDFA at paragraph 2)

12. The OSC sent by certified mail was delivered to Respondent on or about July 9, 2013 as evidenced by USPS Proof of Delivery letter, Article #9171 9690 0935 0042 3886 75. (Docket No. 1012-49-13 – MDFA at paragraph 3; Exhibit A attached to the MDFA)

13. The OSC that was sent via first class mail has not been returned to the Commonwealth and therefore delivery of said document is presumed. (Docket No. 1012-49-13 – MDFA at paragraph 4)

14. The OSC directed Respondent to file a written answer within thirty days of the date on the OSC, and specifically advised that the factual allegations may be deemed admitted if Respondent failed to file an Answer within the time period allowed. (Docket No. 1012-49-13 – OSC filed July 2, 2013)

15. The OSC also advised Respondent that if he failed to file an Answer, the Board may revoke, suspend, or impose other restrictions against his medical license; and the Board may also impose a civil penalty of up to $10,000.00 for each and every violation of the Act. (Docket No. 1012-49-13 – OSC filed July 2, 2013)

16. Thirty days from the date of the OSC expired at least on August 2, 2013. (Docket No. 1012-49-13 – MDFA at paragraph 6)

17. Respondent did not file an Answer to the OSC. (Docket No. 1012-49-13 – MDFA at paragraph 7)

18. On September 5, 2013, the Commonwealth filed a *Motion to Enter Default and Deem Facts Admitted* (MDFA). (Docket No. 1012-49-13 – MDFA filed September 5, 2013)

19. The MDFA was served upon Respondent on September 5, 2013, by first class mail, postage prepaid, at the same address at which the OSC had been served. (Docket No. 1012-49-13 – MDFA at Certificate of Service)

20. Respondent did not file a response to the MDFA. (Docket No. 1012-49-13)

21. On September 18, 2013, an *Order Deeming Facts Admitted and Entering Judgment by Default* was issued; this Order deemed factual allegations in the OSC admitted and entered judgment by default against Respondent and advised him that an Adjudication and Order setting forth appropriate sanctions will be issued in due course. (Docket No. 1012-49-13)

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Findings of Fact, Nos. 1-3)

2. Respondent has been afforded reasonable notice of the charges against him and an opportunity to be heard in this proceeding, in accordance with the Administrative Agency Law, 2 Pa. C.S. § 504. (Findings of Fact, Nos. 10-21)

3. Respondent is subject to disciplinary action under Section 41(3) of the Act, 63 P.S. § 422.41(3), in that Respondent has been convicted of 30 felonies and 205 misdemeanors relating to the practice of medicine, a health profession. (Findings of Fact, No. 8)

4. Respondent is subject to disciplinary action under the CHRIA at 18 Pa. C.S. §§ 9124(c)(1) and 9124(c)(2), respectively, in that Respondent has been convicted of any felony and any misdemeanor related to the practice of medicine. (Findings of Fact, No. 8)

DISCUSSION

Counts One through Two Hundred Thirty-Six of the Commonwealth's OSC are brought under the authority of Section 41(3) of the Act, 63 P.S. § 422.41(3), which provides as follows:

> **§ 422.41. Reasons for refusal, revocation, suspension or other corrective actions against a licensee or certificate holder**
>
> The board shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons:
>
> * * *
>
> (3) ***Being convicted of a felony or being convicted of a misdemeanor relating to a health profession*** or receiving probation without verdict, disposition in lieu of trial or an Accelerated Rehabilitative Disposition in the disposition of felony charges, in the courts of this Commonwealth, a Federal court or a court of any other state, territory or country.
>
> * * *
>
> (Emphasis added).

Additionally, Counts Two Hundred Thirty-Seven and Two Hundred Thirty-Eight of the Commonwealth's OSC are brought, respectively, under the CHRIA at sections 9124(c)(1) and 9124(c)(2). These sections provide as follows:

> **§ 9124. Use of records by licensing agencies**
>
> * * *
>
> (c) **State action authorized.** – Boards, commissions or departments of the Commonwealth authorized to license, certify, register or permit the practice of trades, occupations or professions may refuse to grant or renew, or may suspend or revoke any license, certificate, registration or permit for the following causes:
>
> (1) Where the applicant has been convicted of a felony.

(2) Where the applicant has been convicted of a misdemeanor which relates to the trade, occupation or profession for which the license, certificate, registration or permit is sought.

* * *

The facts deemed admitted conclusively[11] establish that on or about May 15, 2013, Respondent was convicted of the following 30 felonies:

- three counts of Murder of the First Degree, in violation of 18 Pa. C.S. § 2502 §§ A;
- two counts of Conspiracy-Murder, in violation of 18 Pa. C.S. § 903 §§ C;
- one count of Corrupt Organizations, in violation of 18 Pa. C.S. § 911 §§ B1;
- twenty-one counts of Abortion on Unborn Child of 24 Weeks or more, in violation of 18 Pa. C.S. § 3211 §§ A;
- one count of Conspiracy – Abortion on Unborn Child of 24 Weeks or more, in violation of 18 Pa. C.S. § 903 §§ C;
- one count of Cons To Vio 911b1, 911b2, 911b3, in violation of 18 Pa. C.S. § 911 §§ B4; and
- one count of Involuntary Manslaughter, in violation of 18 Pa. C.S. § 2504 §§ A.

Because Respondent was convicted of these 30 felonies, the Board is authorized to take disciplinary action against his medical license under section 41(3) of the Act, 63 P.S. § 422.41(3), and also under the CHRIA at 18 Pa. C.S. § 9124(c)(1).

The facts deemed admitted also conclusively establish that on or about May 15, 2013, Respondent was convicted of the following 205 misdemeanors:

- one count of Conspiracy – Informed Consent Abortion, in violation of 18 Pa. C.S. § 903 §§ C; and
- two hundred four counts of Informed Consent Abortion, in violation of 18 P.S. § 3205 §§ A.[12]

[11] *See, Burnworth v. State Bd. of Vehicle Mfrs., Dealers and Salespersons*, 589 A.2d 294, 297 (Pa. Cmwlth. 1991) (citations omitted) (holding that underlying criminal convictions may not be challenged in a subsequent civil license suspension proceeding).

[12] These 204 counts consist of the one count found at Finding of Fact No. 8(h) and the two hundred three counts found at Finding of Fact No. 8(n).

By virtue of the fact that these 205 misdemeanor convictions pertain to Informed Consent Abortion, they are clearly related to the practice of the profession of medicine and therefore the Board is authorized to take disciplinary action against Respondent's medical license under section 41(3) of the Act, 63 P.S. § 422.41(3), and also under the CHRIA at 18 Pa. C.S. § 9124(c)(2).

The Commonwealth has proven Counts One through Two Hundred Thirty-Five (235 convictions under the Act: 30 felonies and 205 misdemeanor related to the profession)[13], Count Two Hundred Thirty-Seven (any felony under the CHRIA), and Count Two Hundred Thirty-Eight (any misdemeanor related to the practice of the profession under the CHRIA).

The Board has the authority to suspend or revoke Respondent's license under both the CHRIA, 18 Pa. C.S. § 9124(c), and the Act, 63 P.S. § 422.42.[14] Additionally, the Board may

[13] The Commonwealth did not prove Count Two Hundred Thirty-Six because the Commonwealth counted one too many convictions for Informed Consent Abortion. *See* footnote #8.

[14] The CHRIA, 18 Pa. C.S. § 9124(c), only provides for suspension or revocation of a license. However, Section 42 of the Act, 63 P.S. § 422.42, provides for the following types of corrective action:

§ 422.42. Types of corrective action

(a) **Authorized actions.** – When the board is empowered to take disciplinary or corrective action against a board-regulated practitioner under the provisions of this act or pursuant to other statutory authority, the board may:

(1) Deny the application for a license, certificate or any other privilege granted by the board.
(2) Administer a public reprimand with or without probation.
(3) Revoke, suspend, limit or otherwise restrict a license or certificate.
(4) Require the board-regulated practitioner to submit to the care, counseling or treatment of a physician or a psychologist designated by the board.
(5) Require the board-regulated practitioner to take refresher educational courses.
(6) Stay enforcement of any suspension, other than that imposed in accordance with section 40, and place a board-regulated practitioner on probation with the right to vacate the probationary order for noncompliance.
(7) Impose a monetary penalty in accordance with this act.

impose a civil penalty of up to $10,000.00 per violation on any licensee who violates any provision of the Act, under Section 5(b)(4) of Act 48, 63 P.S. § 2205(b)(4).[15]

In assessing an appropriate sanction, the Board is mindful of its responsibility to oversee the profession in a manner that protects the public health and safety. *Barran v. State Bd. of Medicine*, 670 A.2d 765, 767 (Pa. Cmwlth. 1996), *appeal denied*, 679 A.2d 230 (Pa. 1996); *Galena v. Department of State*, 551 A.2d 676, 679-680 (Pa. Cmwlth. 1988). *See also*, *Sklar v. Dept. of Health*, 798 A.2d 268, 275 (Pa. Cmwlth. 2002), *appeal denied*, 845 A.2d 819 (Pa. 2004). With public protection in mind, the Board also considers the seriousness of the offense(s) and any mitigating evidence. Although he has been given appropriate notice and the opportunity to respond, Respondent has not defended himself in the matter now before the Board. Therefore, the Board has no mitigating evidence to consider.

Absent any mitigating evidence, the Board has a responsibility to the public to impose a disciplinary sanction that recognizes the solemnity of the convictions. Respondent's felony crimes – Murder of the First Degree; Conspiracy – Murder; Corrupt Organizations; Abortion on Unborn Child of 24 Weeks or more; Conspiracy – Abortion on Unborn Child of 24 Weeks or

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[15] Section 5(b)(4) provides, in pertinent part, as follows:

> **§ 2205. Civil penalties**
>
> * * *
>
> (b) **Additional powers.**---In addition to the disciplinary powers and duties of the boards and commissions within the Bureau of Professional and Occupational Affairs under their respective practice acts, boards and comissions shall have the power, respectively:
>
> * * *
>
> (4) To levy a civil penalty of not more than $10,000 per violation on any licensee, registrant, certificate holder, permit holder or unlicensed person who violates any provision of the applicable licensing act or board regulation.
>
> * * *

more; Cons to Vio 911b1, 911 b2, and 911b3; and Involuntary Manslaughter – and misdemeanor crimes related to the profession – Informed Consent Abortion and Conspiracy – Informed Consent Abortion – are detestable crimes against humanity that disrespect the sanctity of life and the ethical practice of medicine. Respondent has demonstrated through his crimes that he is neither fit nor competent nor deserving to hold a medical license. He has breached the public's trust and that of the profession.

The Board is well within its authority to impose the maximum civil penalty for each and every violation at issue. However, no amount of monetary penalty will erase the damage that has been done to the victims and their families, to the public and to the reputation of the medical profession as a whole. Further, the likelihood of collecting on a civil penalty commensurate in amount with the gravity of the offenses would in all probability be an exercise in futility because owing to the egregious nature of Respondent's crimes, a maximum civil penalty of $10,000 per offense would be warranted.

It is noted that the Respondent is currently serving three consecutive life sentences. In addition, the criminal court has already imposed sizeable monetary penalties against the Respondent in the form of payment of costs and payment to the Crime Victim's Compensation Fund. Therefore, while warranted here, a civil penalty will not be imposed.. The public's interest will best be protected by the revocation of the Respondent's license.

Based upon the foregoing findings of fact, conclusions of law and discussion, the following order will issue:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs	:	
	:	Docket No. 1012-49-13
v.	:	File No. 11-49-12033
Kermit Barron Gosnell, M.D., Respondent	:	

ORDER

AND NOW, this 7th day of October 2013, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby **ORDERED** that the license to practice medicine and surgery issued to Respondent, **Kermit Barron Gosnell, M.D.**, license no. MD-009422-E, is **REVOKED.**[16]

BY ORDER:

Jackie Wiest Lutz
Chief Hearing Examiner

Respondent:

Kermit Barron Gosnell, # 68012-066
FDC Philadelphia, Federal Detention Center
P.O. Box 562
Philadelphia, PA 19105

[16] Respondent's licensure documents have already previously been surrendered under the terms of the Consent Agreement and Order was filed on February 23, 2011.

Prosecuting Attorney:

Anita P. Shekletski, Senior Prosecutor in Charge
Commonwealth of Pennsylvania
GOVERNOR'S OFFICE OF GENERAL COUNSEL
Department of State
2601 N. 3rd Street, P.O. Box 2649
Harrisburg, PA 17105-2649

Date of Mailing:

October 7, 2013

(Medicine)

NOTICE

REHEARING AND/OR RECONSIDERATION BY HEARING EXAMINER

A party may file an application to the hearing examiner for rehearing or reconsideration **within 15 days of the mailing date** of this adjudication and order. The application must be captioned *"Application for Rehearing"*, *"Application for Reconsideration"*, or *"Application for Rehearing or Reconsideration"*. It must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking rehearing or reconsideration, including any alleged error in the adjudication. If the adjudication is sought to be vacated, reversed, or modified by reason of matters that have arisen since the hearing and decision, the matters relied upon by the petitioner must be set forth in the application.

APPEAL TO BOARD

An application to the State Board of Medicine for review of the hearing examiner's adjudication and order must be filed by a party **within 20 days of the date of mailing** of this adjudication and order. The application must be captioned *"Application for Review"*. It must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking the Board's review of the hearing examiner's decision, including any alleged error in the adjudication. Within an application for review a party may request that the Board hear additional argument and take additional evidence.

An application to the Board to review the hearing examiner's decision may be filed irrespective of whether an application to the hearing examiner for rehearing or reconsideration is filed.

STAY OF HEARING EXAMINER'S ORDER

Neither the filing of an application for rehearing and/or reconsideration nor the filing of an application for review operates as a stay of the hearing examiner's order. To seek a stay of the hearing examiner's order, the party must file an application for stay directed to the Board.

FILING AND SERVICE

An original and three (3) copies of all applications shall be filed with:

Prothonotary
P.O. Box 2649
Harrisburg, PA 17105-2649

A copy of all applications must also be served on all parties.

Applications must be received for filing by the Prothonotary within the time limits specified. The date of receipt at the office of Prothonotary, and not the date of deposit in the mail, is determinative. The filing of an application for rehearing and/or reconsideration does not extend, or in any other manner affect, the time period in which an application for review may be filed.

NOTICE

The attached Final Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Board with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Board Counsel
P.O. Box 2649
Harrisburg, PA 17105-2649

The name of the individual Board Counsel is identified on the Final Order.