



Matthew S. Bowman  
Legal Counsel

E-mail: [mbowman@telladf.org](mailto:mbowman@telladf.org)

January 6, 2009

**Via Facsimile and U.S. Mail**

Donna Katen-Bahensky  
President & CEO  
University of Wisconsin Hospitals  
and Clinics  
600 Highland Ave.  
Madison, WI 53792  
Facsimile: (608) 265-7248

James L. Woodward  
President & CEO  
Meriter Hospital  
202 S. Park Street  
Madison, WI 53715  
Facsimile: (608) 417-5601

Jeffrey Grossman, M.D.  
President & CEO  
University of Wisconsin Medical  
Foundation  
555 Zor Shrine Place  
Madison, WI 53719  
Facsimile: (608) 821-4103

***Re: UWHC's, UWMF's, and Meriter Hospital's Secret Plans to Perform Second-  
Trimester Abortions at Madison Surgery Center***

Dear Ms. Katen-Bahensky, Mr. Woodward, and Dr. Grossman:

The Alliance Defense Fund is writing to express our grave concerns about the heretofore secret plans by the University of Wisconsin Hospitals and Clinics (UWHC) to employ the staff and resources of the Madison Surgery Center to begin performing a full range of second-trimester abortions at 1 South Park Street in Madison. These late abortions will be performed by the UWHC's own Dr. Caryn R. Dutton, they will likely be used to train medical residents to dismember second-trimester babies, and they may well serve as a fresh source of baby body parts for various UW research projects as has occurred in the past.

This late-term abortion plan may cause the violation of various federal and state laws, either by compelling employees to aid in or refer for the abortions despite their rights under WIS. STAT. § 253.09 and other federal and state laws, or by the improper use of government funds and agencies to assist in abortion contrary to WIS. STAT. §§ 20.927–20.9275. The Madison Surgery Center is a “joint venture” of UWHC, Meriter Hospital, and the University of Wisconsin Medical Foundation (UWMF), all of which must give their approval before the plan is implemented.

The Alliance Defense Fund is a legal alliance that defends religious freedom and the sanctity of human life. We urge UWHC and its partners, Meriter and the UWMF, to thoughtfully reconsider this plan. We are also requesting a prompt response documenting the policies by which UWHC proposes to implement this plan in a manner that avoids violating legal conscience protections and abortion funding restrictions. Because UWHC is subject to Wisconsin's public records law, WIS. STAT. §§ 19.31–19.37, we are making an open records request to your records custodian for information related to this plan and proposed policies.

#### I. Transferring Second-Trimester Abortions to This UWHC-Run Clinic

The Madison Surgery Center is a joint venture of UWHC, UW Medical Foundation, and Meriter Hospital. Under the plan being pushed by UWHC officials, the Madison Surgery Center will soon begin a full-service second-trimester abortion practice. Well over 100 abortions will be performed yearly under this plan, mostly on healthy babies and healthy mothers, as well as on multiple babies with disabilities who are currently killed at Meriter. We are aware that many of the employees of Madison Surgery Center strongly object to this proposed practice, but officials from UWHC are using strong-arm tactics to install Dutton's late-abortion practice there regardless of the employees' own views on the matter.

Madison's long-time abortionist, Dr. Dennis Christensen, recently retired from his practice at Planned Parenthood in Madison. Christensen is "gifting" his abortion clientele to UWHC Faculty Member Caryn R. Dutton, who is also affiliated with Meriter Hospital and St. Mary's Hospital. Dutton will continue performing first trimester abortions at the Planned Parenthood with other abortionists, but the UWHC is planning to coordinate her performance of all second-trimester abortions at the Madison Surgery Center, once it obtains Meriter's approval.

#### II. Activities That May Be Involved in Killing Second-Trimester Babies

UW medical residents are expected to train in performing these abortions at the center. Moreover, the organs of such children are often freshly dissected in order to perform medical experiments. For example, UW researchers Ian Duncan, Su-Chen Zhang, Hans Sollinger and Debra Hullett have for years published studies indicating that they experiment on fresh fetal brains and pancreases from second-trimester abortions, apparently obtained from the victims of Madison abortionist Dennis Christensen.<sup>1</sup> UWHC may well be pushing abortions into the Madison Surgery Center, via their own in-house abortionist Dutton, so that they will have fresh and inexpensive baby body parts for various researchers to dissect.

Babies in the second trimester of pregnancy are almost fully formed. They have brain functions and limb movements; they yawn, roll over, and touch their faces. Ultrasound shows

---

<sup>1</sup> See, e.g., Grever WE, Zhang S, Ge B, Duncan ID, "Fractionation and enrichment of oligodendrocytes from developing human brain," 57 J. NEUROSCI. RES. 304-14 (Aug. 1, 1999); MacKenzie DA, Sollinger HW, Hullett DA, "Analysis of passenger cell composition of human fetal pancreas: implications for transplantation," 31 TRANSPLANT. PROC. 651 (Feb.-Mar. 1999); Brenda Ingersoll, "Women need control over birth choice, physician says," WISC. STATE. J. A1 (Mar. 4, 2001).

them actively playing and swimming in the womb. Second-trimester abortions are usually performed by means of "dilation and evacuation," in which the abortionist rips the child's arms and legs off piecemeal and pulls them out with forceps. These dismemberments are followed by the child's torso and head, the latter of which is sometimes so large that it needs to be crushed until the baby's brains are observed flowing out of the uterus. Other possible abortion methods during the second trimester include injecting the child with a lethal chemical, or partial-birth abortion in violation of federal law.

Second-trimester abortions are even less safe for women than abortions that occur earlier in pregnancy. This is due to the child's larger size, and the many times that the abortionist must pass sharp instruments into and out of the woman's body. Abortion textbook author Warren Hern vividly describes his second-trimester abortions: "The sensations of dismemberment flow through the forceps like an electric current."<sup>2</sup> Physical complications to women include uterine perforation, cervical injury, hemorrhage, incomplete abortion, reproductive failure, and death.<sup>3</sup>

### III. Madison Surgical Staff Will Be Adversely Affected by Pressuring Them to Accept Abortion in their Clinic

Many Madison Surgery Center employees believe that turning their workplace into an abortion facility will severely upset regular patients, disrupt the respected surgical practice that currently occurs there, decimate employee morale (as it has already threatened to do), require burdensome policy changes, and compel direct or indirect staff participation in the dismemberment of these viable and near-viable preborn infants. But UWHC and UWMF are imposing Dutton's abortion business on the center over the objection of these employees, and they are hoping to get Meriter to join in final approval.

Other UWHC staff besides Dutton will need to be brought in to assist in these abortions because a substantial number of the Madison Surgery Center employees refuse to participate. Nevertheless, there is a great danger that the employees will not be fully told of, or respected in, their right to refuse to participate even indirectly in abortions, as Wisconsin law guarantees. UWHC officials have already used troubling tactics to impose this unwanted plan on a previously content workplace, and they have created an atmosphere of intimidation that is ripe for discrimination against pro-life employees.

### IV. State and Federal Laws Prohibit Discrimination Against Pro-Life Employees and Funneling Government Assistance Towards Abortion

Pro-life employees of the Madison Surgery Center, UWHC, and Meriter need to be made aware that they will be afforded accommodation for their convictions against this procedure, and

---

<sup>2</sup> Warren Hern & Billie Corrigan, "What About Us? Staff Reactions to D&E," Planned Parenthood Physicians Annual Meeting, San Diego, CA, 1978.

<sup>3</sup> Thomas W. Strahan, ed., Detrimental Effects of Abortion: An Annotated Bibliography with Commentary (3d. ed. 2001); Elizabeth Ring-Cassidy and Ian Gentles, Women's Health After Abortion: The Medical and Psychological Evidence (2d ed. 2003).

that any adverse action taken against them for their pro-life convictions would violate state and federal law. WIS. STAT. § 253.09 prohibits any employer from penalizing any employee who refuses to "recommend, aid, or perform" abortions based on a religious or moral objection. Therefore an employee can refuse any kind of aid to the abortions. The Wisconsin Constitution applies strict scrutiny against a state agency's burden on the religious conscience of a pro-life employee. *State v. Miller*, 202 Wis. 2d 56 (1996). Moreover, newly implemented regulations of the Department of Health and Human Services prohibit recipients of federal funding from discriminating against employees or medical students who refuse to assist in abortion. 45 CFR Part 88. The Alliance Defense Fund intends to respond quickly and decisively with legal action in the event that any negative action is taken against a pro-life employee of UWHC or the Madison Surgery Center.

Wisconsin law also restricts the use of various government funds and agencies to participate in abortion. Pursuant to WIS. STAT. § 20.927, no funds of the state or of any state agency may be paid to either an abortionist or a clinic for the performance of an abortion. Under WIS. STAT. § 20.9275, no state or federal funds from various sources may be used for a program that either provides, encourages, or refers for abortions. And HHS regulations prohibit a multitude of federal funding to entities that violate the conscience rights of pro-life health workers. 45 CFR Part 88.

V. Request for Documents under Wisconsin Public Records Law

Pursuant to the state public records law, WIS. STAT. §§ 19.31-19.37, we request access to and a copy of the records in the following list. Please forward this request to the public records custodian at UWHC. If UWHC does not maintain these public records itself, please let us know who does and include the proper custodian's name and address.

1. Documents or emails from 2007-2009 discussing the performance of abortions at the Madison Surgery Center;
2. Documentation of any payments by UWHC, UWWMF, Meriter or the Madison Surgery Center, to Dr. Caryn R. Dutton from 2005-2009;
3. Documents stating the existence of and details for Dr. Dutton's medical license;
4. documents stating Dr. Dutton's clinical privileges;
5. Dr. Dutton's employment contract with UWHC, UWWMF, Meriter or the Madison Surgery Center;
6. Documentation of Part A and Part B billing for procedures or services performed by Dr. Dutton at the Madison Surgery Center from 2007-2009;
7. Documents or emails discussing how Dr. Dutton or other staff will be compensated for participating in abortions at the Madison Surgery Center;
8. Corporate charter and bylaws of the Madison Surgery Center;
9. Current and proposed internal policies of the Madison Surgery Center;
10. Documents or emails from 2007-2009 discussing possible policies of the Madison Surgery Center relating to the plan to perform abortions there

11. Current and proposed human tissue disposal policy applicable to the Madison Surgery Center, including as are or would be applicable to the performance of abortions there;
12. Any agreement for the performance of autopsy on abortion human fetuses at the autopsies facilities used by UWHC or the Veterans Administration Hospital, which fetuses were aborted at UWHC, Meriter, the Madison Abortion Clinic or the Madison Surgery Center;
13. Policies governing whether pathology residents are required or expected to perform autopsies on aborted human fetuses at autopsy facilities used by UWHC or the Veterans Administration Hospital, or whether they may opt out;
14. Policies governing whether medical students, residents, nurses, and physicians assistants are required or expected to assist in the performance of abortions at UWHC, Meriter, the Madison Abortion Clinic or the Madison Surgery Center, or whether they may opt out;
15. Documents or emails describing any current or proposed contractual or financial arrangement between the Madison Abortion Clinic or Planned Parenthood of Wisconsin, on the one hand, and UWHC, UWMF, Meriter, the Madison Surgery Center or Dr. Dutton on the other;
16. Internal review board applications, and their corresponding decisions, from Dr. Dutton from 2005-2009 for permission to do research pertaining to human subjects;
17. Internal review board applications, and corresponding decisions, from 1994-2009, for permission for any research pertaining to human subjects and involving the use of aborted human fetal tissue or organs which were obtained from the Madison Abortion Clinic, Planned Parenthood of Wisconsin, Meriter Hospital or the Madison Surgery Center;
18. Documents from 2007-2009 relating to receipt of funds by UWHC, UWMF, Meriter or the Madison Surgery Center under any of the following: WIS. STAT. §§ 48.487, 48.545, 253.05, 253.07, 253.08, or 253.085; or 42 USC §§ 201 et. seq., 701 et. seq., 2689 et. seq., 6000 et. seq.; or any program administered by the United States Departments of Health and Human Services, Labor, or Education.

We agree to pay any reasonable copying and postage fees of not more than \$500. If the cost would be greater than this amount, please notify us. Please provide a receipt indicating the charges for each document. As provided by the open records law, we request your response as soon as practicable and without delay. If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material. Please be advised that we are prepared to pursue whatever legal remedy necessary to obtain access to the requested records, and that violation of the open records law can result in the award of attorney fees, damages of not less than \$100 and other actual costs. We would further note that if a court determines that an official's noncompliance with the law was arbitrary or capricious, it may award punitive damages and assess fines of up to \$1000.

Conclusion

It is extremely troubling that second-trimester dismemberment abortions are being imposed on a previously legitimate surgery clinic over the objection of employees, many of whom could be illegally required to participate directly or indirectly in those abortions. It is further intolerable that a UWHC doctor and staff, at a UWHC joint venture, might undertake a vast second-trimester abortion practice in light of the UWHC's public status and the state and federal funds that are interwoven into the provision of medical care in these centers.

We ask you to rethink this plan of tainting the UWHC with late abortions, and of imposing the abortion industry on the undesiring staff of the Madison Surgical Center. We also ask that you publicly release the policies and practices by which employees' conscience rights could be protected in such a plan, and government funding regulations could be followed as this UWHC physician will be performing second-trimester abortions at your joint venture. We frankly do not believe that such policies are possible because of the legal pitfalls of this entire situation. Finally, we request that you provide the documents in our open records request above.

The Alliance Defense Fund is prepared to respond quickly and decisively to adverse action against pro-life employees, and any further attempts to hide the details of this plan from public review. The people of Wisconsin deserve to know exactly how their public agencies are arranging the killing of second-trimester preborn babies. We urge you to reconsider this plan, and we look forward to your response.

Yours truly,

A handwritten signature in black ink that reads "Matthew S. Bowman". The signature is written in a cursive, slightly slanted style.

Matthew S. Bowman

MSB/am

cc: Office for Civil Rights, U.S. Department of Health and Human Services  
National and state media outlets  
Local counsel