



February 24, 2013

Attorney General Doug Gansler
Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202

John McCarthy
Montgomery County State Attorney
101 Monroe St., 3rd Floor
Executive Office Building
Rockville, MD 20850

Dear Sirs:

RE: Request for Second-Degree Murder Charges Against Dr. LeRoy Carhart

In the interests of public welfare and safety, I respectfully submit the following request for the filing of criminal charges against Dr. LeRoy Carhart for second-degree (depraved heart) murder in the untimely death of Ms. Jennifer L. Morbelli.

Case History

Jennifer Leigh Morbelli, age 29, from New Rochelle, NY, arrived at Germantown Reproductive Health Center in Germantown, MD, on Sunday, February 3, 2013, for a 33-week abortion performed by Dr. LeRoy Carhart. Pro-life activists observed her enter the clinic every day through Wednesday, February 6. Witnesses said she appeared “pale and weak” on Monday and each day thereafter.

Dr. Carhart left the premises of Germantown Reproductive Health Center on Wednesday, February 6, 2013, at approximately 4:30 PM, and flew to an unknown, out-of-state location that evening.

Early Thursday morning, February 7, 2013, Ms. Morbelli began suffering difficulty breathing and other complications to her 33-week abortion. After attempts to contact Dr. Carhart failed, family members took Ms. Morbelli from her hotel to the Shady Grove Adventist Hospital emergency room at approximately 5:00 AM. Efforts by hospital staff to contact Dr. Carhart or to obtain informational assistance from Germantown Reproductive Health Center were unsuccessful.

Ms. Morbelli suffered massive internal bleeding into her abdominal cavity. Her hematocrit levels were incompatible with life. She slipped into a Code Blue condition approximately five times, before finally succumbing to her injuries at around 10:00 AM.

By the time Carhart finally called in to the hospital after several failed attempts by family and hospital staff to reach him, it was between 9-10:00 AM, but his patient was already “at death’s door.”

Carhart was finally located at the Abortion and Contraception Clinic in Omaha, NE, on Friday morning, February 8, 2013, over twenty-four hours after Ms. Morbelli began suffering severe complications from her abortion, which led to her eventual death.

A funeral Mass for Ms. Morbelli, and her unborn daughter, 33-week-old Madison Leigh, was held on Wednesday, February 13, 2013 at the Holy Name of Jesus Church in New Rochelle, NY.

Display of reckless disregard for human life

Normal precautions for this delicate and high-risk procedure require that the physician ensure some means of communication for patient follow-up care or possible life-threatening complications. According to post-abortion instructions distributed by Germantown Reproductive Health Center, patients experiencing complications from their abortion procedure should first call the clinic emergency hotline number, “answered 24 hours a day.” If efforts to contact this number fail, the patient should go to the Emergency Room and tell the attending physician to contact Dr. LeRoy Carhart from the Abortion and Contraception Clinic of Nebraska.

Dr. Carhart, however, showed reckless disregard for normal precautions, patient well-being, and potentially fatal consequences, and left the state at the most critical time for any late-term abortion patient, just hours after completing the dangerous procedure, and remained unavailable to the patient or hospital until it was too late.

During the time that Carhart was unresponsive to efforts to contact him, Ms. Morbelli suffered severe bleeding and eventual death, as a result of fatal complications sustained during the abortion procedure. Dr. Carhart is responsible, not only for shoddy care that ignored warning signs of life-threatening complications, but also for causing Ms. Morbelli's death by a wanton disregard for the consequences of his actions and an extreme indifference to human life.

Dr. Carhart manifested this disregard and indifference in every aspect of this case, including, but not limited to: unprofessional conduct; patient abandonment; negligence; failure to meet standard of care; failure to provide medical monitoring until his patient stabilized, and failure to provide details of a patient's medical record to the patient, another physician, or hospital.

In summary, the following points demonstrate on Carhart's part a "deliberate perpetration of a knowingly dangerous act with reckless and wanton unconcern and indifference as to whether anyone is harmed or not."¹

- Carhart failed to have arranged hospital privileges or a transfer agreement with a local hospital to ensure continuity of care in the event of a medical emergency. This lapse is a matter of policy for Carhart and Germantown Reproductive Health Centers. **(Exhibit 1)**
- Carhart failed to have any arrangement with any physician who did have hospital privileges in order to provide continuity of care for patients in the event of a medical emergency. This lapse is a matter of policy for Carhart and Germantown Reproductive Health Centers.
- Carhart left Maryland within minutes after Morbelli's abortion.
- Carhart had Morbelli return to her hotel immediately after the abortion where he understood that she would be unmonitored by medical personnel, even though she had not completely stabilized.
- Neither he nor his abortion clinic staff was available to the family emergency contact even though written instructions provided to the patient discouraged them from seeking immediate medical care from a local hospital.
- Carhart provided no means for the hospital to ascertain Morbelli's exact medical condition. In addition to being unavailable at his 24-hour emergency number, medical records were not available to hospital staff, which put them in the dark about Morbelli's previous treatment and condition, and caused a delay in her care. As a result, Morbelli died.

¹ *Debettencourt v. State*, 48 Md.App. 522, 530, 428 A.2d 479, 484 (1981)

This egregious behavior meets the legal standard and definition of second-degree (depraved heart) murder in the state of Maryland, and as such, must be summarily prosecuted before the perpetrator has opportunity to commit similar crimes.

Legal Precedent

Maryland Code, Criminal Law §2–204(a): A murder that is not in the first degree under § 2201 of this subtitle is in the second degree.

“In Maryland there are four types of second degree murder: (1) killing a person with intent to kill but without deliberation and premeditation; (2) killing a person without the intent to kill but with the intent to inflict such grievous bodily harm that death would be a likely result; (3) depraved heart murder; (4) felony murder, where the killing is committed in the perpetration of certain felonies.”

-- *Alston vs. State*, 414 Md. at 109 n. 5 (2010)

“[D]epraved heart murder – a killing resulting from ‘the deliberate perpetration of a knowingly dangerous act with reckless and wanton unconcern and indifference as to whether anyone is harmed or not.’”

-- *Burch vs. State*, 346 Md. at 274, 69 6 A.2d at 454 (1997)

“One of these variant forms of malice—the analogue of the hour—is that of ‘the depraved heart.’ It is the form that establishes that the willful doing of a dangerous and reckless act with wanton indifference to the consequences and perils involved, is just as blameworthy, and just as worthy of punishment, when the harmful result ensues, as is the express intent to kill itself. This highly blameworthy state of mind is not one of mere negligence (even enough to serve as the predicate for civil tort liability). It is not merely one even of gross criminal negligence (even enough to serve as the predicate for guilt of manslaughter). It involves rather the deliberate perpetration of a knowingly dangerous act with reckless and wanton unconcern and indifference as to whether anyone is harmed or not. The common law treats such a state of mind as just as blameworthy, just as anti-social and, therefore, just as truly murderous as the specific intents to kill and to harm.”

--- *Debettencourt v. State*, 48 Md.App. 522, 530, 428 A.2d 479, 484 (1981)

“A depraved heart murder is often described as a wanton and wilful killing. The term “depraved heart” means something more than conduct amounting to a high or unreasonable risk to human life. The perpetrator must [or reasonably should] realize the risk his behavior has created to the extent that his conduct may be termed wilful.

Moreover, the conduct must contain an element of viciousness or contemptuous disregard for the value of human life which conduct characterizes that behavior as wanton.’

“R. Gilbert and C. Moylan, Maryland Criminal Law: Practice and Procedure § 1.6-3 (1983). The critical feature of ‘depraved heart’ murder is that the act in question be committed ‘under circumstances manifesting extreme indifference to the value of human life.’ 2 Wharton’s Criminal Law § 143 at 197 (14th ed. 1979). The terms ‘recklessness’ or ‘indifference,’ often used to define the crime, do not preclude an act of intentional injury. They refer to ‘recklessness’ or ‘indifference’ to the ultimate consequence of the act - death - not to the act that produces that result.”

-- *Robinson v. State*, 307 Md. at 745, 517 A.2d at 98 (1986)

“[A]n act that, without intent to kill, nevertheless produces that result because of the actor’s reckless disregard for the likely fatal consequences of the act.”

-- *Robinson v. State*, 307 Md. 738, 517 A.2d 94 (1986)

History of Reckless Behavior

Dr. Carhart has a previous history of reckless behavior during abortion procedures and indifference to the value of human life.

In court documents from 1993, Dr. Carhart agrees to refrain from speaking on the telephone and to refrain from falling asleep while performing surgical procedures, including abortion (**Exhibit 2**).

Sworn affidavits of former employees indicate he employed convicted felons, and assigned personnel with no medical training to administer sonograms and intravenous drugs (**Exhibits 3-5**).

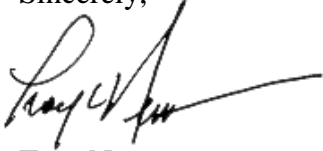
In 2005, he was involved in the botched, 28-week abortion procedure of 19-year-old Christin Gilbert, who eventually died after complications to a third trimester abortion, which were similar in nature to Morbelli’s complications, went undetected by Dr. Carhart until Ms. Gilbert suffered cardiac arrest at the abortion facility on the fourth day of the operation (**Exhibits 6 & 7**).

In November, 2011, the Maryland Department of Health and Mental Hygiene issued an “Advisory Letter” to Carhart based on a complaint alleging that he lied on his medical license application in order to gain licensure in Maryland (**Exhibit 8**).

Prayer

For the reasons set forth herein and in the interests of public health and safety, I request that Dr. LeRoy Carhart be immediately apprehended and held without bond, that he be charged with second-degree (depraved heart) murder by the appropriate state or county agency, and that he be duly prosecuted to the fullest extent of the law.

Sincerely,

A handwritten signature in black ink, appearing to read "Troy Newman", with a long horizontal flourish extending to the right.

Troy Newman
President, Operation Rescue

enclosures

cc: Chief J. Thomas Manger, Montgomery County Police