

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ALLEGHENY COUNTY

APPELLEE

v.

BRITTANY HAILER AND
THE PITTSBURGH CURRENT

APPELLANTS

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DOCKET NO. 1469 CD 2021

AMICUS BRIEF IN SUPPORT OF ALLEGHENY COUNTY MEDICAL
EXAMINER

AND NOW COMES, the Pennsylvania State Coroners Association (PSCA), a coalition of all 67 County Coroners/Medical Examiners, by and through its attorney, Susan M. Shanaman, and hereby files this Amicus Brief¹ in Support of the Allegheny County Medical Examiner (Coroner) Appeal.

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¹ No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus curiae, made a monetary contribution to its preparation or submission.

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I. Procedural History and Relevant Facts

This proceeding was initially commenced as a Right to Know appeal brought by the media groups and is now before this Court as an appeal from the Allegheny County Common Pleas Court decision denying Appellants access to particular autopsy reports of the Allegheny County Medical Examiner/Coroner.

PSCA supports the statement of questions involved as stated by the Allegheny County Medical Examiner/Coroner in its brief.

BASIS OF FILING The Pennsylvania State Coroners Association (“PSCA”) makes this filing as Amicus Curiae pursuant to 210 Pa. C.S. Rule 531. STATEMENT OF INTEREST PSCA, the Amicus Curiae, is the primary professional organization for medical examiners and coroners in Pennsylvania founded in 1935. The Amicus respectfully asks the Court to consider its argument against allowing Appellants requested remedy for access to autopsy medical records. The Amicus has chosen to speak to this Honorable Court in the case at bar because the statutory, regulatory and court recognize privacy in medical records utilized in the medicolegal death investigation will be placed at risk if third parties, however well-meaning and vested, are granted the power to view and publish medicolegal death investigation detailed health information and possibly photographs. As noted in the CDC Coroners’ Handbook, note 9, at 1, a “medico-legal officer” is either a coroner or a medical examiner with the responsibility to investigate deaths as provided by statute – sudden, unexpected deaths, deaths under suspicious circumstances, deaths occurring as a result of violence or trauma, deaths in which trauma, chemical injury, reaction to drugs or medical treatment, operative or peri-operative deaths,

unidentified or unclaimed bodies, deaths due to contagious diseases or public hazards, bodies to be cremated, SIDS, and stillbirths. The stated purpose of these investigations, in the first instance, is to determine whether criminal acts or criminal neglect were involved in the deaths (16 P.S. § 1217-B).

Medicolegal death investigations often require a medical procedure called an autopsy, which is an examination deconstructing the body of the deceased performed by a forensic pathologist. Forensic pathologists may provide key testimony that will permit the incarceration of murderers and thereby prevent future murders, exonerate persons who may be facing erroneous and unsubstantiated charges, recognize the death of a child to be from abuse by a caretaker, explain the industrial hazard of a death at work, reveal a previously unrecognized genetic disorder that will affect others in a family, report consumer product risks to the Consumer Product Safety Commission, contribute statistics to suicide prevention efforts, and identify human remains from a mass disaster, thereby allowing closure for families. Forensic pathologists, medical examiners and coroners are not infallible; however, these trained professionals are vested with authority to make determinations as to procedures, protocols, factual investigations, and medical diagnosis regarding cause and manner of death. Forensic pathologists are first medical doctors who specialize in pathology and then proceed to further specialization in forensic pathology. In order to reach this professional status, forensic pathologists must successfully matriculate through college and medical school and then must undergo rigorous pathology education and training. Forensic pathologists must complete an additional year in a forensic pathology fellowship program that is accredited by the Accreditation Council for Graduate Medical Education before testing for board certification. At least three board examinations must be successfully completed post-medical school to become a board-certified forensic pathologist, and then certification is

maintained only by passing regularized testing conducted by the Pathology Board. In addition to continued testing to maintain certification, forensic pathologists must maintain state licensure by completing rigorous yearly continuing medical education training and adhering to moral character and ethics standards. In cases such as the one at bar, forensic pathologists use their specialized medical training to reach medical diagnosis relating to cause and manner of death through the autopsy, which is a surgical procedure focusing on particularized detail relating to a decedent's pathology, physical condition, medical condition, toxicological findings, medical history, external condition and features, and other factors contributing to medical diagnosis. Coroners and medical examiners who are not forensic pathologists are imbued with powers, duties, and responsibilities to conduct investigations that enable the respective coroners and medical examiners to reach determinations and conclusions on cause and manner of death. Coroners, medical examiners, forensic pathologists, and forensic toxicologists work closely and cooperatively to gather and interpret all medical, scientific, and factual information that is needed for a cause and manner of death determination. In Pennsylvania, medical examiners and coroners have broad statutory authority to conduct investigations, require autopsies, convene inquests, and gather pertinent information so they can fulfill their primary statutory duties to make findings relating to death. Elected coroners not only undertake specialized training mandated under statute before commencing duties, but also must participate in continuing education to remain current in expertise. See 16 P.S. § 1201-B et. seq.

At the crux of this dispute is the interpretation of the provision of the Coroner's Act (1955, Aug. 9, P.L. 323, No. 130, as amended, 16 P.S. §1201-B et seq.) stating that coroners "shall deposit all official records and papers for the preceding year in the Office of the Prothonotary for the inspection of all persons interested therein" 16 P.S. §1236-B (formerly 16

P.S. §1251). The questions involved are whether the disclosure of private and confidential medical and psychiatric data in autopsy reports to the general public is in contravention of

- a) the Case Records Public Access Policy of the Unified Judicial System, 204 Pa Code §213.81, Section 1 K (hereinafter “Public Access Policy”),
- b) the Coroner’s Act’s provision for inspection “of all persons interested therein” because Plaintiffs and the general public do not constitute “all persons interested therein”,
- c) the legal standing of the decision in Penn Jersey Advance, Inc. v. Grim, 962 A.2d 632, 637 (Pa. 2009) has been overruled by the legislature in passing Act 3 of 2008 and effective 2009 (Right to Know Law, 65 P.S. §§ 67.101–67.3104 (“RTKL”)², and
- d) legal and social policies, statutory and constitutional privacy guarantees.

As a further indication of the investigatory nature of the Coroners’ office, there is national certification for death investigation. Coroners and Deputy Coroners can be certified as ABMDI³ Diplomates and Fellows. Pennsylvania leads the nation with 128 persons certified as Medicolegal Death Investigators (ABMDI Diplomates).

The authority of the Coroner comes from the Legislature. The office of Coroner was originally established as a Constitutional office in this Commonwealth in 1682 by William Penn in his Frame of Government.

As will be seen in the following cases, based upon statutory and common laws, the office of Coroner is a mixture of investigatory and judicial authority and powers.

² In fact, the PA Supreme Court notes in its decision that it neither considered the newly-enacted RTKL nor any Constitutional right to privacy in rendering its decision.

³ American Board Medicolegal Death Investigator

“Since 1276 A. D., the coroner has been charged with the duty to investigate unnatural deaths occurring within the county and to commit to jail those found responsible for the killing, to stand trial at the next term of court. Second, the office of coroner is a quasi-investigative office. The coroner has the power to summon and command the attendance of any person having knowledge of the facts and circumstances surrounding the death he is investigating. A coroner receives and considers testimony of both the Commonwealth and the accused in determining the identity, if any, of the person responsible for the death of the victim. The findings of a coroner are, in effect, a formal charge lodged against the accused which he is required to answer at the next term of court. In this regard, a criminal proceeding is instituted other than by complaint.”

Commonwealth v. Guy, 1966 Pa. Dist. & Cnty Dec., 41 Pa. D & C2d 151.

The Court in Marvin v. Monroe County, 154 Pa. Super, 75, 35 A.2d 781 (1944) further elucidated the duties of the Coroner.

“The circumstances under which it is the duty of a coroner to make an investigation is stated in section 1 of the Act of April 16, 1907, P. L. 92: “ It shall be the duty of the coroner and the deputy coroner of any county in this commonwealth, in all cases where the cause of death is of a suspicious nature and character, to cause an investigation of the facts concerning said death, and to make or cause to be made such an autopsy as the facts of the case may demand, by such official. ”

That statute was re-enacted and amended by section 2 of the Act of July 12, 1935, P. L. 710, 16 PS § 3161, as follows: “ It shall be the duty of the coroner or the deputy coroner of any county in this Commonwealth, in all cases where death is sudden or violent or is of a *suspicious nature and character*, to cause a careful investigation of the facts concerning said death to be made, to ascertain whether the death was due to other than natural causes, and to make or cause to be made such an autopsy as the facts of the case may demand. ” (Italics in original.) Section 2 provides for the disposition by the health authorities, etc. of the body where it appears that the death, though

sudden or violent, is not surrounded by suspicious circumstances and contains the following significant proviso: " Provided, that the coroner shall have the right to view any such body, and to investigate the facts or causes of said death, if in his opinion the same is required. " 154 Pa. Super. 75, *78; 35 A.2d 781, 782; 1944 Pa. Super. LEXIS 362.

In so far as the coroner's duties are concerned the acts are declaratory of the common law as it existed in this state. The act of 1935, supra, requiring an investigation where death is sudden or violent or of a suspicious nature enlarges, rather than confines, the coroner's powers. The coroner, of course, must continue to exercise reasonable discretion. Each case coming before him must necessarily depend to a greater or less extent upon the facts. Death, later determined to be suicide, accidental, or even due to natural causes, as from acute heart attack, by reason of the attending circumstances and violent or sudden nature, may be entirely proper for investigation by the coroner."

And that power and authority to investigate as stated today is enunciated in Commonwealth v. Martin, 1999 Pa. Super. 29, 727 A.2d 1136, "[T]he Act of November 29, 1990, (16 Pa.C.S. § 1237(a)), requires the coroner to investigate the facts and circumstances of deaths, which appear to have happened within his or her county, whenever such deaths are sudden, suspicious, or violent, or fall within other enumerated categories to determine whether an autopsy or inquest should be conducted. The purpose of the investigation is to determine the cause of death and whether sufficient reason exists for the coroner to believe that the death may have resulted from the criminal acts or criminal negligence of another. (16 Pa.C.S. § 1237(b))." Thus, every death investigation of the Coroner from the beginning requires an initial determination of whether any criminal acts caused the death.

The judicial power or authority of a coroner is exercised in the conducting of an inquest when an autopsy fails to reveal the cause and manner of death. At the inquest the coroner may subpoena documents and witnesses to appear either before him or a person authorized by him such as a deputy or solicitor and may call six jurors to hear the evidence brought before the inquest. During the inquest there is no requirement for proof beyond a reasonable doubt. The requirement is for the State to establish a prima facie case sufficient to allow a trial judge to allow a case to go before a jury. Commonwealth v. Martin, supra.

If the coroner concludes after an inquest that the death resulted from criminal conduct, he may “act as a committing magistrate.” Commonwealth v. Prosdocimo, 331 Pa. Super 51 (1984), Commonwealth v. Anderson, 253 Pa.Super. 334 (1978), Commonwealth v. Sullivan, 286 A.2d 898 (Pa. 1971) and Commonwealth v. Lopinson, 234 A.2d 552 (Pa. 1967). It is this authority of the coroner which constitutes the equivalent of an arrest. The coroner does not engage in custodial interrogation when determining the facts and circumstances surrounding a death investigation interview or in the review of the scene of death. Therefore, Miranda warnings are not required, there is no privilege against self- incrimination for statements to the coroner, and no arrest can occur until after an inquest. See also, Power of Coroner &c., 11 Phila. 387 (1875); Rentschler v. Schuylkill County, 1 Schuylkill Legal Record 289 (1880); Commonwealth v. Rafferty, 11 C.C. 513 (1892); Commonwealth ex rel Bandi v. Ashe, 367 Pa. 234 (1951); Commonwealth ex rel Tanner v. Ashe, 365 Pa. 419, 76 A.2d 210 (1950).

It might be appropriate to note there are 5 manners of death – natural, accident, homicide, suicide and undetermined.

1. **ARGUMENT**

A. UJS Public Access Policy

The dissemination of private medical/mental health records to the public has recently been addressed by the Pennsylvania Supreme Court in its public access policy adopted January 6, 2018, known as the Case Records Public Access Policy of the Unified Judicial System, 204 Pa. Code § 213.81, Section 1 K (hereinafter “Public Access Policy”).

This Public Access Policy applies to records filed with the Office of Prothonotary. This includes records of the Coroner as stated in statute. (16 P.S. § 1251, now 1236-B). It does not change even though the Coroner is given permission by statute, with the concurrence of the Prothonotary to physically maintain the records in the Coroner’s office (16 P.S. § 405, a provision which was reaffirmed in the rewrite of the County Code in Act 154 of 2018). Also, it should be noted that this Honorable Court has stated in Frazier v. Philadelphia County Office of the Prothonotary, No. 2344 C.D. 2011 (2012):

“Even if we were to reach the merits of Petitioner’s appeal, his request for an autopsy report directed at the Prothonotary would be properly denied. Section 304 of the Right-to-Know Law provides that judicial agencies shall provide financial records only. 65 P.S. § 67.304; Lackawanna Cty., 2 A.3d at 813. An autopsy report is not a financial record and the Prothonotary is not required to provide it, even assuming, as Petitioner asserts, that it exists, is in the possession of the Prothonotary, and is not subject to an exemption.” Opinion p.2.

In addition, the Legislature in passing SB 1005, which is now Act 154 of 2018 defined an autopsy as clearly a medical procedure, albeit the last medical procedure an individual will ever have.⁴ It should be noted that an autopsy is not performed in all Coroners cases. It is a

⁴ Section 1202-B. Definitions. The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise: "Autopsy." The external and internal examination of the body of a deceased person, including,

discretionary act to be performed by or at the request of a Coroner when necessary to determine the cause and manner of death. An autopsy will reveal diseases, deficiencies and very personal information, such as, HIV which has a separate mandate of confidentiality.

What is the actual autopsy report? The autopsy is the external and internal examination of the deceased using surgical techniques, microscopy, laboratory analysis, and medical records and precise measured photographs of the external and internal examination are made. To determine whether disease or injury may have caused or contributed to the death incisions are carefully made on the body to explore the head, neck, chest and abdomen. Organs are removed and examined individually, small samples are retained for additional testing, if necessary. The organs are generally and carefully returned with the body for burial or cremation with the body. During the examination samples of bodily fluids and organs are obtained for toxicology. The documentation of the examination and any medical findings, diagrams and photographs constitute the autopsy report. Simply stated, this is the final medical record of the deceased which can reveal all diseases, genetic anomalies, conditions for which medication was being taken and photographs showing detailed measurements of the body and its organs. To require the Coroner to redact the confidential, investigatory, and medical information from an autopsy report in order to provide it for public consumption would be like providing the public with a view of a skeleton laid bare -

but not limited to: (1) Gross visual inspection and dissection of the body and its internal organs. (2) Photographic or narrative documentation of findings, including microscopic, radiological, toxicological, chemical, magnetic resonance imaging or other laboratory analysis performed upon tissues, organs, blood, other bodily fluids, gases or other specimens. (3) The retention for diagnostic and documentary purposes of the following which are necessary to establish and defend against challenges to the cause and manner of death of the deceased person: (i) Tissues, organs, blood, other bodily fluids or gases. (ii) Any other specimen.

“Between falsehood and useless truth there is little difference. As gold which he cannot spend will make no man rich, so knowledge which cannot apply will make no man wise.” Samuel Johnson

Documents filed with the Prothonotaries must comply with the Unified Judicial System’s Public Access Policy. These stated protocols of the UJS may not be expanded or restricted by any custodian. See 204 Pa. Code § 213.81 Section 2 D. The medical/psychological documentation may not be accessible to the public, 204 Pa. Code § 213.81, Section 8 C.

B. The Coroner’s statute does not envision records filed with the Prothonotary to be generally available to the public. Had it wished that result it could have simply used the word “public” instead of “all persons interested therein”.

Does § 1251 (now 1236-B) actually require release to any member of the public? It should be noted that the case law and statutory law in Pennsylvania for at least 150 years has determined the meaning of the phrase “person interested” as being a reference to a person who has a concrete interest, a substantial interest, an interest beyond that of the general public.⁵ News media interests are not included within the legislative framework of “persons interested”.

C. The PSCA opposes any release of private medical/mental health information which, at a minimum, does not have the consent of the next of kin. Now, let’s turn to HIPAA, and how that impacts this matter.

Any discussion about HIPAA, Coroners and the RTKL usually starts and ends with Coroners are not covered entities. Unfortunately, such a superficial analysis of HIPAA trivializes the very important Congressionally mandated preservation of the personal privacy of health information.

⁵ County of Allegheny v. Gibson’s Son & Co., 90 Pa. 397 (1879); Duke v. Hague, 107 Pa. 57 (1884); Wiegand’s Barnes Foundation, 374 Pa. 149 (1953); Dombrowski v. Philadelphia, 43 Pa. 199 (1968); Citizens for State Hospital v. Commonwealth, 123 Pa. Commw. 434 (1994); Nader v. Hughes, 164 Pa. Cmmw. 434 (1994); Clinkscale v. Dept of Pub. Welfare, 101 A.3d 137 (2014); Hunsicker v. Pa. State Police, 93 A.3d 911, (2014).

In several Court decisions, HIPAA and its regulations have been characterized as a federal floor of informational privacy to individuals and protects their right to keep confidential medical information which is highly personal and intimate. Cohen v. Ayabe, 322 P.3d 948 (2014) It is neither a preemption statute, nor an anti-preemption statute. It allows more stringent state privacy statutes to prevail. Wade v. Vabnick-Warner, 922 F.Supp.2d 679 (2010).

HIPAA prevents disclosure of personal health information by covered entities – health care providers, health care plans, health care clearinghouses and hybrid entities from disclosing personal health information (PHI) without the consent of the individual. There are exceptions for matters involving law enforcement, coroners, funeral directors and public health agencies. These exceptions permit sharing of protected health information without constituting a disclosure of that information publicly.

HIPAA continues its requirements of consent and privacy to the deceased. 45 CFR §164.502. Deceased medical information is protected for fifty years after death. During that time, the deceased's medical information can only be disclosed with the consent of a personal representative of the deceased. As noted earlier, an autopsy performed upon the deceased by a forensic pathologist is a medical record subject to being released only in two manners, with the consent of those listed in the previous sentence and to a coroner/medical examiner for the purpose of determining cause and manner of death. 45 CFR §164.512(g). This HIPAA exception provides for a needed sharing of medical information, autopsy and other medical records, for a governmental investigation into the cause and manner of death. It is not a public disclosure of the information. Thus, such information sharing is consistent with and does not violate the privacy promise of HIPAA. The compact that Congress enacted with the people and providers of health

care remains unbroken. The right of the next of kin or a persona representative to agree or not agree to disclosure remains intact.

The consequences of these violations are of the utmost concern to persons who privacy rights are being violated.

While these individuals are dead, they and their families are still subject to harm by the release of private medical information. A release of the toxicology results in an individual will provide access not only to whether illegal drugs played a role in the death, but, also, what other medical problems the decedent was facing. Certain drugs are prescribed for mental health problems, certain drugs will reveal the presence of HIV, other drugs will reveal transgender changes, anxiety disorders, panic disorders, post-traumatic stress disorder, alcohol addiction withdrawal, heroin addiction, testosterone deficiency, chronic and acute pain, seizure disorders, narcolepsy, insomnia, attention deficit hyperactivity disorder, migraines, and the list can grow longer in revealing a person's medical issues for which treatment was sought.

However, the larger point in autopsy reports, toxicology reports and coroners' reports are the invasion of the right to privacy without any compelling public interest in knowing these details of the deceased's life and its impact upon the living family.

The right to privacy refers to the concept that one's personal information is protected from public scrutiny. U.S. Justice Louis Brandeis called it the "right to be left alone". This right to be left alone is not specified in the U.S. Constitution, but has been found by the Courts in many cases interpreting the First, Third, Fourth, Fifth, Ninth and Fourteenth Amendments. Many statutes also have privacy protections. HIPAA, FTC, Federal Privacy Act of 1974, Financial Monetization Act of 1999, Fair Credit Reporting Act, Children's Online Privacy Act are some of the more prominent statutes protecting personal privacy as part of their purpose.

This right to privacy was first discussed by Samuel Warren and Louis Brandeis in an 1890 Harvard Law Review article. These law partners wrote that the right to life as proscribed by the Constitution was meant as a compilation of the themes of various common law protections of the right to be left alone. The right to life must be construed as the right to enjoy life. This enjoyment cannot be limited to physical things, but thoughts, emotions, and sensations also demanded legal recognition as a part of the right to enjoy life and the right to be left alone.

There are a few famous cases that helped establish this area of law in the U.S. One of the most well-known is the case of Vincent Foster, a lawyer who worked for the Clinton administration before committing suicide in 1993. Photographs of the scene where Foster's body was found weren't made public. As a result, several conspiracy theorists suspected a cover-up that involved the Clintons, so they made FOIA requests for the photos. The case, National Archives and Records Administration v. Favish , 541 US 157 (2004), made it all the way to the Supreme Court. The court ruled unanimously in favor of the government -- and Foster's privacy and stated.

“When disclosure touches upon certain areas defined in the exemptions, however, the statute recognizes limitations that compete with the general interest in disclosure, and that, in appropriate cases, can overcome it. In the case of Exemption 7(C), the statute requires us to protect, in the proper degree, the personal privacy of citizens against the uncontrolled release of information compiled through the power of the state. The statutory direction that the information not be released if the invasion of personal privacy could reasonably be expected to be unwarranted requires the courts to balance the competing interests in privacy and disclosure. To

affect this balance and to give practical meaning to the exemption, the usual rule that the citizen need not offer a reason for requesting the information must be inapplicable.

Where the privacy concerns addressed by Exemption 7(C) are present, the exemption requires the person requesting the information to establish a sufficient reason for the disclosure. First, the citizen must show that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake. Second, the citizen must show the information is likely to advance that interest. Otherwise, the invasion of privacy is unwarranted.”

“It is the right of privacy of the living which it is sought to enforce here. That right may in some cases be itself violated by improperly interfering with the character or memory of a deceased relative, but it is the right of the living, and not that of the dead, which is recognized. A privilege may be given the surviving relatives of a deceased person to protect his memory, but the privilege exists for the benefit of the living, to protect their feelings, and to prevent a violation of their own rights in the character and memory of the deceased.” Schuyler v. Curtis, 147 N. Y. 434, 447, 42 N. E. 22, 25 (1895).

See also Reid v. Pierce County, 136 Wash. 2d 195, 212, 961 P. 2d 333, 342 (1998) (“[T]he immediate relatives of a decedent have a protectable privacy interest in the autopsy records of the deceased”); McCambridge v. Little Rock, 298 Ark. 219, 231–232, 766 S. W. 2d 909, 915 (1989) (recognizing the privacy interest of the murder victim’s mother in crime scene photographs); Bazemore v. Savannah Hospital, 171 Ga. 257, 155 S. E. 194 (1930) (*per curiam*) (recognizing parents’ right of privacy in photographs of their deceased child’s body); Restatement (Second) of Torts §652D, p. 387 (1977) (recognizing that publication of a

photograph of a deceased infant—a hypothetical “child with two heads”—over the objection of the mother would result in an “inva[sion]” of the mother’s “privacy”).

See, *e.g.*, New York Times Co. v. National Aeronautics and Space Admin., 782 F. Supp. 628, 631, 632 (CADC 1991) (sustaining a privacy claim under the narrower Exemption 6 with respect to an audiotape of the Space Shuttle Challenger astronauts’ last words, because “[e]xposure to the voice of a beloved family member immediately prior to that family member’s death ... would cause the Challenger families pain” and inflict “a disruption [to] their peace of mind every time a portion of the tape is played within the hearing”), on remand from 920 F. 2d 1002 (CADC 1990); Katz v. National Archives and Records Admin., 862 F. Supp. 476, 485 (DC 1994) (exempting from FOIA disclosure autopsy X-rays and photographs of President Kennedy on the ground that their release would cause “additional anguish” to the surviving family), *aff’d* on other grounds, 68 F. 3d 1438 (CADC 1995); Lesar v. Department of Justice, 636 F. 2d 472, 487 (CADC 1980) (recognizing, with respect to the assassination of Dr. Martin Luther King, Jr., his survivors’ privacy interests in avoiding “annoyance or harassment”). Neither the deceased’s former status as a public official, nor the fact that other pictures had been made public, detracts from the weighty privacy interests involved.

While these cases refer to FOIA, they are applicable guidelines to the interpretation of Pennsylvania’s RTKL with its similar provisions.

A similar case played out after the death of popular race car driver Dale Earnhardt. A Florida newspaper tried to get access to the autopsy photos, but Florida passed a law banning their release. The lower courts decided against the newspaper, and the Supreme Court refused to hear the case. 700 So.2d 370 (1997)

The Pennsylvania Constitution is more specific than the U.S. Constitution. It provides in Article 1 Section 1:

“Inherent Rights of Mankind

Article 1, Section 1. All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.”

And further:

Article 1 Section 8

“The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.”

As has been held by the Pennsylvania Supreme Court:

“One of the pursuits of happiness is privacy,” and as such, “[t]he right to privacy is as much property of the individual as the land to which he holds title and the clothing he wears on his back.” Commonwealth v. Murray, 423 Pa. 37, 233 A.2d 102, 109 (1966).

And as eloquently stated in that case by Justice Musmanno:

“The greatest joy that can be experienced by mortal man is to feel himself master of his fate...this in small as well as big things. Of all the precious privileges and prerogatives in the crown of happiness which every American citizen has the right to wear, none shines with greater luster and imparts more innate satisfaction and soulful contentment to the wearer than the golden-studded right to be let alone. Everything else is dross and sawdust.”

The Pennsylvania Supreme Court has consistently upheld the right to informational privacy. In re June 1979 Allegheny Cty. Investigating Grand Jury, 490 Pa. 143, 415 A.2d 73 (1980), In re T.R., 557 Pa. 99, 731 A.2d 1276 (1999), Stenger v. Lehigh Valley Hosp. Ctr., 530 Pa. 426, 609 A.2d 796 (1992), Denoncourt v. Com. State Ethics Comm'n, 504 Pa. 191, 470 A.2d 945 (1983).

Certainly, how an individual or family copes with and grieves over the death of a member of its family could not be a more personal matter over which the Plaintiffs are unable, in the instant case, to show a compelling, significant interest or purpose in requiring the medical information to be publicly disclosed. As noted by the OOR in Kneller v. City of Hazelton, No. AP 2018-1933 (December 5, 2018):

“The Pennsylvania Supreme Court has held that an individual possesses a constitutional right to privacy in certain types of personal information. Pa. State Educ. Ass'n v. Commonwealth, 148 A3d 142 (Pa. 2016)”.

. When a request for records implicates personal information not expressly exempt from disclosure under the RTKL, the OOR must balance the individual's interest in informational privacy with the public's interest in disclosure and may release the personal information only when the public benefit outweighs the privacy interest.” (Emphasis added.) The Court's consideration in this matter is clear. The right to privacy in health information allows the family of the deceased to determine whether disclosure may be made of the medical records as provided by federal and the Constitutions of the U.S. and Pennsylvania. And even if that were not the case, a mere interest in having access to the medical records, without more is not a compelling public interest that would outweigh the interest of privacy.

The Coroner has disclosed the information by which the office may be judged to have faithfully executed the duties of the office – the name, the cause and manner of death. This is the stated purpose of the RTKL. Its purpose cannot be and cannot be implemented in such a manner as to violate the very basic rights of personal privacy. As stated in Pennsylvania State Education Association v. Commonwealth, 148 A.3d 142 (2016), “the ‘personal security’ exception in the RTKA is the statutory locus for constitutionally required recognition of personal rights to informational privacy” to which there must be a “balancing to access whether the privacy interests outweigh the public’s interest in the dissemination of the information.”⁶

It should not matter whether there are other means of accessing the information. As Justice Wecht noted in his statement in PSEA case to Concur: “That such information may be uncovered by private citizens through industry or skullduggery does not mean that government must employ public resources to assist in that activity.”

Thus, the Court must uphold the denial of access to the autopsy records requested. If it does not, not only will it violate federal statutes, state statutes and Court policies and the U.S. Constitution and the Pennsylvania Constitution. As stated in its Final Determination in Miller and Lehighvalleylive.com v. PA. DHS, Docket AP 2018-1768 (December 5, 2018), “Where a public interest can be adequately served without disclosing private information, the public interest in disclosure does not outweigh a privacy interest.” And as further noted by the OOR, “As stated by the Supreme Court, “the constitutional right of the citizens of this Commonwealth to be left alone remains a significant countervailing force” to disclosure.”

⁶ Just a note. The previous quote referred to the RTKA, which was the law prior to the passage of the RTKL. The Court further clarified, in response to an argument by the OOR, that the information protected from disclosure by the Pennsylvania Constitution is certainly exempt from the RTKL. Government agencies are required to respect the privacy rights of citizens when disseminating private information subject to the balancing test aforesaid. Id.

The Coroner has performed his statutory duties and found the cause and manner of decedent's death and has filed a public report of the same. An autopsy is equivalent to the scene investigation, one of the tools in determining the cause and manner of death. It is a private medical record subject to the right to withhold public disclosure under the law.

Let's put reality on the table. We are talking about people's lives, reputations and Constitutional protections over their and their family's medical records. Let us keep in mind the words of Justice Wecht noted in his statement in PSEA case to Concur: "That such information may be uncovered by private citizens through industry or skullduggery does not mean that government must employ public resources to assist in that activity."

For these reasons set forth herein, the Allegheny Court of Common Pleas decision should be upheld.

RESPECTFULLY SUBMITTED,



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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ALLEGHENY COUNTY

APPELLEE

v.

BRITTANY HAILER AND
THE PITTSBURGH CURRENT

APPELLANTS

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DOCKET NO. 1469 CD 2021

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CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2022, a true and correct copy of **AMICUS BRIEF**

IN SUPPORT OF ALLEGHENY COUNTY MEDICAL EXAMINER was

served as follows:

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Respectfully Submitted,

A handwritten signature in purple ink that reads "Susan M. Shanaman". The signature is written in a cursive style with a horizontal line underneath the name.

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ALLEGHENY COUNTY

APPELLEE

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**BRITTANY HAILER AND
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APPELLANTS

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

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Dated: September 6, 2022

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