

IN THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT

**CHESTER COUNTY OFFICE OF THE
CORONER** :

Appellant-Petitioner :

vs. :

No. _____

Allocatur Docket 2024

**TERENCE KEEL AND THE UNIVERSITY
OF CALIFORNIA-LOS ANGELES
INSTITUTE FOR SOCIETY AND GENETICS,
BIOSTUDIES LAB** :

Appellee-Respondent :

PETITION FOR ALLOWANCE OF APPEAL

Petition for Allowance of Appeal from the Order of December 7, 2023, of the Commonwealth Court of Pennsylvania at 242 C.D. 2023 affirming the decision of the Chester County Common Pleas Court dated March 1, 2023, per the Honorable Jeffrey R. Sommer at Chester County, Docket No. 2022-08162-CS which denied the Petition for Review by the Coroner of Chester County dated October 28, 2022 and affirmed the Final Determination of the Office of Open Records dated September 30, 2022, at OOR Dckt. AP. 2022-1801 issued by Appeals Officer, Lyle Hartranft granting the appeal from the Coroner of Chester County’s denial of a Right to Know Request for autopsy and toxicology reports.

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I. REFERENCE TO REPORT OF OPINIONS BELOW

The Commonwealth Court of Pennsylvania issued its “Not Reported Opinion” on December 7, 2023, confirming the Decision and Order of the Chester County Common Pleas of March 1, 2023, per the Honorable Jeffrey R. Sommer at Chester County, Docket No. 2022-08162-CS, which denied the Petition for Review by the Coroner of Chester County dated October 28, 2022 and affirmed the final Determination of the Office of Open records dated September 30, 2022, issued by Appeals Officer, Lyle Hartranft at OOR Dckt. AP 2022-1801 granting the appeal from the Coroner of Chester County’s denial of a Right to Know Request for autopsy and toxicology reports. The aforementioned Commonwealth Court Memorandum Opinion (and Order) authored by the Honorable Ellen Ceisler, the trial court’s initial Opinion (and Order) of March 1, 2023 and as well as Judge Sommer’s April 27, 2023 Opinion Pursuant to Pa. R.A.P. 1925(a) and the Final Determination of the Office of Open Records at docket No. AP 2022-1801 as issued by Hearing Officer Lyle Hartranft dated September 30, 2022 are attached hereto as respective exhibits “A”, “B” “C” and “D”¹

¹ Additionally, Petitioner has appended to this Petition: pertinent sections of the Right to Know Law (hereinafter the “RTKL”), 65 P.S. §67.101 et seq., including Sections 708 (b)(5) (“medical exemption”), 708 (b) (17)(i)(records made “confidential by law”), 708 (b)(20) (“autopsy exemption”), and Section 67.3101 (“Relation to other laws”) collectively marked as Exhibit “E”; pertinent sections of the Coroner’s Act , 16 P.S. §1201-B et seq., including Section 1202-B (definition of “Autopsy”), Section 1217-B (“Requests for examination and reports”), Section 1218-B (“Coroner’s investigation”), Section 1219-B (“Autopsy, Inquest and records”), Section

II. TEXT OF THE ORDER IN QUESTION

The Order of the Commonwealth Court filed on December 7, 2023, states as follows: “ORDER, AND NOW, this 7th day of December, 2023, the March 1, 2023 order of the Court of Common Pleas of Chester County is hereby AFFIRMED, Ellen Ceisler, Judge”

III. QUESTIONS FOR REVIEW

1. Whether the Commonwealth Court’s decision departs from accepted judicial practices and rules of construction and misconstrues the 2018 amendments to the Coroner’s Act – which expanded the definition of an autopsy and separated and distinguishing Section 1236-B (“Records”) from a much revised Section 1252-B (“Fees for reports”) – to improperly provide access to an otherwise privileged “autopsy report” which the Right to Know Law seeks to protect and in direct opposition to the practices of the Coroner² based upon a comprehensive review of the Coroner’s Act?

1236-B (“Records”), Section 1252-B (“Fees for reports”), collectively marked as Exhibit “F”; the ‘Privacy Rule’ and related regulations of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) 45 CFR §164.502 and 45 CFR § 164.512 which are attached hereto and collectively marked as Exhibit “G”; the Case Records Public Access of the Unified Judicial System of Pennsylvania, 204 Pa. Code §213.81 attached hereto as Exhibit “H”; and, Article I Sections 1 and 8 of the Pennsylvania Constitution attached hereto and collectively marked as (“Exhibit “I”) - supplied in accordance with Pa. R. App. 1115(a)(6).

² The Coroner of Chester County follows a practice of supplying to the Prothonotary an annual “verification of death form” (a single page form identifying the “cause and manner of death”) as the “official records and papers” of the coroner in compliance with Section 1236-B of the Coroner’s Act (but never containing privileged information such as an “autopsy report”).

2. Did the Commonwealth Court’s decision fail to recognize, as a matter of first impression, that the Appellant, using the services of a licensed medical examiner or toxicologist has obtained records (autopsy report and toxicology report) protected under HIPAA’s “privacy rule” which required protections from public release to protect the privacy of the deceased consistent with Pennsylvania law and Article I Sections 1 and 8 of the Constitution?

3. Did the Commonwealth Court’s decision in Allegheny County v. Brittany Hailer and Pittsburgh Current, No. 1469 C.D. 2021 (2023) addressed again by the Commonwealth Court in this case, present a matter of substantial public importance as well as a departure from accepted judicial practices and norms of statutory construction by ruling that the new Section 1252-B amended in 2018 relating to the “Fees for reports” and adding language stating that the records at issue were to be provided under this section “**...in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased**” did not limit the release of Section 1252-B “reports” and permitted the release of “autopsy reports” and “toxicology reports” despite their exclusion from release to the public under the RTKL?

IV. STATEMENT OF THE CASE

On June 27, 2022, the Office of the Chester County Coroner received an emailed request for information from Terence Keel and the University of California – Los Angeles, Institute for Society and Genetics, Biostudies Lab (hereinafter “Appellee”) pursuant to the aforementioned RTKL 65 P.S. §§67.101 et seq., requesting “the complete autopsy and toxicology reports” for 17 identified decedents with dates of death ranging from 2008 to 2021.

On July 1, 2022, County Coroner, Sophia Garcia-Jackson (hereinafter the “Coroner”) identified that she would require an additional thirty (30) days to respond due to bona fide staffing limitations and because the extent or nature of the request precluded a response within the required time period - with a response expected on or before August 5, 2022.

On August 2, 2022, the Coroner issued a detailed denial of the request supported by an Affidavit of Deputy Coroner of Chester County, Jesse Poole-Gulick citing as grounds for denial, exemptions under the RTK Law including: § 708 (b)(5) which exempts from disclosure “medical records”; § 708 (b)(20) which specifically exempts “an autopsy record of a coroner or medical examiner” other than the “name of the individual and the cause and manner of death” (noting that the latter information was not requested but is publicly disclosed by the Coroner’s Office on an annual basis and filed of record with Chester County Prothonotary’s

Office or can be obtained by “next of kin” by specific request); and, §708 (b)(17)(iv) “a record made confidential by law”.

The denial also noted that with respect to the records made “confidential by law”, that the autopsy and toxicology records constitute records protected under the “Privacy Rule” of HIPAA and do not fall within an exception under 45 CFR §164.512 or applicable state law and that these records constitute protected health information absent appropriate written authorization by an individual representing the deceased . The denial, as per the attached affidavit, also noted that three (3) of the records sought were not in the possession of the Coroner.

On August 3, 2022, Appellee filed an immediate appeal to the Court of Common Pleas of Chester County with briefing thereon due on or by August 12, 2022, which deadline was extended by request of the Coroner’s Office, until August 26, 2022.

On September 30, 2022, after timely briefing by the parties, the OOR through its Appeals Officer, Lyle Hartranft, issued the Final Determination granting the requests of the Appellee and Ordering that all autopsy reports and toxicology reports that had been requested be provided to the Appellee.

On October 28, 2023, the Appellant filed a Petition for Judicial Review of a Final Determination of the Pennsylvania Office of Open Records dated September 30, 2022. In response to the filing of the Petition for Judicial Review, the

Honorable Jeffrey R. Sommer, on November 14, 2022, entered an Administrative Scheduling Order requiring the Appellant to file the certified Record and serve all parties by December 9, 2022, and setting forth a briefing schedule.

The Appellant complied with the Administrative Order filing the record as certified by the Executive Director of the Office of Open Records. Thereafter, on December 16, 2022, Appellant filed its brief in support of the Petition for Review.

The Appellee, although requesting additional time to file its brief, did timely file Appellee's brief on December 23, 2023. This was supplemented by a correction filed by the Appellee to its brief on January 5, 2023.

The Court scheduled a hearing to be held on February 13, 2023, by Court Order dated January 20, 2023.

On February 9, 2023, Appellee filed a Motion for Continuance of the hearing which was denied by Judge Sommer on February 10, 2023. The hearing then went forward on February 13, 2023, in Courtroom 8, before Judge Sommer without the participation of the Appellee.

On March 1, 2023, Judge Sommer entered a Decision and Order sustaining the Final Determination of the OOR Appeals Officer. On March 1, 2023, Appellant filed a timely Notice of Appeal.

On March 14, 2023, the Honorable Judge Jeffery R. Sommer issued an Order Pursuant to Pa. R. App. P. 1925 (b) directing the Appellant to file and serve a concise statement of errors complained of on appeal.

On March 31, 2023, Appellant filed and served the required Concise Statement of Errors Complained of on Appeal in Accordance with Pa. R. App. P. 1925 (B)(1). Judge Sommer then issued his further Opinion on April 27, 2023, addressing the issues identified in Appellants Statement of Errors Complained of on Appeal.

On April 27, 2023, the Record was transferred to the Commonwealth Court. and the Commonwealth Court then issued a briefing schedule setting for a deadline of June 12, 2023, for Appellant's Brief and Reproduced Record.

Appellant filed an unopposed request for a thirty (30) day extension of time in which to file the Appellants Brief and Reproduced Record. The Commonwealth Court, pursuant to a per curiam Order dated June 7, 2023, granted Appellant's request and required that the Appellant file four copies of the Appellants Brief and four copies of the Reproduced Record on or before July 12, 2023, and serve once copy of same upon the Appellees.

On July 12, 2023, Appellant timely filed the Brief of Appellant, Chester County Coroner with the Commonwealth Court along with the Reproduced

Record. Thereafter, on August 14, 2023, the Appellee filed its brief which the Commonwealth Court.

On August 28, 2023, Appellant filed its Reply Brief of Appellant, Chester County Coroner. Thereafter, on November 9, 2023, the case was argued before a panel of the Commonwealth Court consisting of the Honorable Christine Fizzano Cannon, the Honorable Ellen Ceisler and the Honorable Lori A. Dumas.

The Commonwealth Court issued its Opinion designated “Opinion not Reported” on December 7, 2023, affirming the Trial Court’s Decision affirming the Decision of the Office of Open Records. This Petition for Allowance of Appeal pursuant to PA. R. App. 1113 follows.

V. REASONS FOR ALLOWANCE OF APPEAL

A. The Commonwealth Court’s decision departed from accepted judicial practices and rules of construction, misconstruing the 2018 amendments to the Coroner’s Act to conclude that the Coroner’s Act required the release of an “autopsy report” (which includes a “toxicology report”) when the 2018 amendments to the Coroner’s Act established that Section 1236-B Records (“official records and papers”) are distinguishable from Section 1252-B (“Fees for reports”) and there is no basis for concluding that one can obtain an “autopsy report” at the end of the year or earlier with the payment of a fee. Further, this would undermine the fact that the RTKL protects from disclosure a coroner’s autopsy report and to hold otherwise would be to disregard the 2018 amendments to permit the release of clearly privileged information without regulation or fee structure and in disregard of privacy interests.

As the record makes clear, the Coroner had a practice of preparing a “verification of death form” (previously, a “view of form”) - a single page

document identifying the “cause and manner of death” or the “official records and papers” lodged with the Office of the Prothonotary in accordance with Section 1236-B of the Coroner’s Act. This record was developed both at the administrative level before the OOR (in the affidavit in support of the Coroner’s denial of this requested information) and also on appeal before Judge Sommer at the hearing held on February 13, 2023.

When the Coroner denied the request for autopsy reports and toxicology reports by means of the RTKL - without any fee or compliance with procedures of the Coroner’s Act – this position was supported by a detailed affidavit of the First Deputy Coroner of Chester County, Jesse Poole-Gulick dated August 26, 2023. (R. 56a-57a).

This Affidavit explained that three (3) of the decedents were not people that the Coroner’s Office could identify. (R. 56a) (Affidavit ¶ 6.).

The Affidavit noted that the requests “exceed the information that the Coroner’s Office makes available to the public or interested parties in accordance with the County Code, Coroner’s Act as found at 16 P.S. § 1201-B et seq. (R. 56a) (Affidavit ¶ 8).

The Affidavit specified that under the Coroner’s Act (applicable to the County of Chester a Third Class County), the Coroner within 30 days after the end of the year supplies to the Prothonotary a document previously known as a “view

of form” and currently known as a “verification of death form” setting forth the cause and manner of death of all deaths addressed by the Coroner during the year preceding. This information is available at the Office of the Prothonotary of Chester County where it can be reviewed and copied. (R.56a)(Affidavit ¶ 9).

The Affidavit identified that the Coroner’s records include autopsy reports and toxicology reports which are detailed private records of the decedent and highly sensitive and private information. The Affidavit further asserted that the Coroner’s Office does release information to the next of kin and will supply information in response to a lawfully issued subpoena in a legal case in circumstances where it has determined that the interests of the decedent are being represented and there is no basis to file a motion to quash the subpoena. (R. 56a) (Affidavit ¶’s 10 and 11).

The Affidavit noted that the RTKL at Section 708 (b)(20) explicitly excludes the release of “an autopsy record of a coroner or medical examiner” and that the autopsy is done by a forensic pathologist (a medical doctor) and that medical examiners and toxicologists under contract with the County of Chester to provide services for the Coroner’s Office are bound by HIPAA and that Autopsy and Toxicology records are protected under the “privacy rule” under HIPAA and are “records made confidential by law”. (R. 57a)(Affidavit, ¶’s 13-16).

The Affidavit also specifically referenced that the recent amendments of 2018 to the Coroner's Act supported the Coroner's interpretation of her duties under Section 1236-B and differed same from procedures under Section 1252-B, stating as follows:

“The recent amendment of 2018 to the Coroner's Act found in the County Code at § 1252-B “Fees for Reports” establishes procedures for obtaining fees for collecting reports. This amendment does not authority requiring the creation of reports as it does not expand duties of the Coroner to release information - other than the customary release of the annual “verification of death” under Section 1236-B and release of information to “next of kin” or in response to a lawful subpoena and as determined appropriate at the discretion of the Coroner.

See, generally, 16 P.S. § 1217-B.” (R. 57a) (Affidavit ¶ 17).

At the hearing held on February 13, 2023 (R 364a-482a) these same arguments and facts were re-stated. The Solicitor for the Coroner discussed the 2018 amendments to the Coroner's Act (including the amendment to supply a definition of “autopsy” and state court of common pleas decisions supporting the denial of the release of such requested information based upon the 2018 amendments). At that hearing, the position was also put forth that the Coroner, consistent with the affidavit accompanying the denial, would only provide a simple one page “view [of] form” identifying the “cause and manner of death” on an annual basis with the Prothonotary as the “official records” and that this would not include autopsy reports or toxicology reports which were not to be released under the Coroner's Act or the RTKL. (R. 367a-368a 374a).

Although, Judge Sommer did not take direct testimony of the Coroner - who was present to testify - he did accept the proffer of the Solicitor and the general factual position advanced by the Coroner. Judge Sommer stated: "I appreciate that the Coroner has taken time to come and I accept what you have proffered as the offer of proof as to what the coroner would say..." (R. 381a) (Testimony of the Court).

The foregoing established that the Appellant had raised and preserved the issues of the 2018 amendments to the Coroner's Act affecting the interpretation of the Coroner's Act and its interrelationship with the RTKL and the Coroner's position that the autopsy reports and toxicology reports were exempt from release and that the only public information to be provided is the one page "verification of death form" or "view of form" annually filed with the Prothonotary in accordance with Section 1236-B of the Coroner's Act.

The Coroner's position is based upon the 2018 amendments to the Coroner's Act. These amendments were significant. The 2018 amendments constituted a major overhaul of the Coroner's Act, by the General Assembly pursuant to P.L. 931 enacted October 24, 2018, effective in 60 days (December 24, 2018). Among the many changes to the Coroner's Act, the amendments created a new section of the Coroner's Act containing "definitions" at Section 1202-B which establishes a definition of an "Autopsy" as follows:

“The external and internal examination of the body of a deceased person, including, 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.”

Id.

The above quoted language establishes that an “autopsy report” would also include a “toxicology report” as subsection (2) above references “documentation of findings” including “toxicological” information. See, § 1202-B (2) supra.

Of related significance with respect to the records subject to control of the coroner and affected by the 2018 amendments is the addition of a new subsection (d) to Section 1219-B of the Coroner’s Act (formerly 16 P.S. §1238). This new section (d) expressly authorizes the coroner to retain DNA samples for diagnostic, evidentiary, or confirmatory purposes. See, 16 P.S. § 1219-B (d).

In addition to these changes dealing with the records of the coroner, the prior sections of the Coroner’s Act at § 1236.1 (“Requests for examinations and reports”) has been broken into two (2) new sections of the Coroner’s Act at Sections 1217-B and 1252-B. Section 1217-B entitled “Request of examinations and reports” references the discretionary release of information by the coroner.

The new section 1252-B is entitled “Fee for reports” sets fees for reproducing reports and places a restriction on the release of information to “nongovernmental agencies in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased.” Id. (new language underlined).³ See, 16 P. S. §§ 1217-B and 1252-B.

These amendments to the Coroner’s Act change the prior understanding of the Coroner’s Act, and are consistent with the interpretation thereof by the Chester County Coroner - that an autopsy report is not to be released under the Coroner’s Act or the RTKL as a general matter and is protected.

It is the Chester County Coroner’s position that Section 1252-B is not a parallel provision to Section 1236-B and does not provide a basis for the open release of autopsy reports or toxicology reports given the heightened privacy interests involved - such as DNA data and other clearly private and privileged matters.

³ This argument was rejected by the Commonwealth Court in the decision Allegheny County v. Brittany Hailer and Pittsburgh Current, No. 1469 C.D. 2021 (Pa. Cmwlth Ct. July 11, 2023), an *en banc* decision authored by the Honorable Judge Ellen Ceisler (with Judge Michael H. Wojcik writing a separate dissent). Hailer reversed the Common Pleas Judge of Allegheny County who had denied a request for autopsy and toxicology records pursuant to the exemption found at Section 708(b)(20) of the RTKL. The Allegheny Court had made this ruling based upon an interpretation of Section 1252-B that limited any such release to a “nongovernmental agency” seeking this information “in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased.” The position of the Court of Common Pleas of Allegheny County was being advanced by the Chester County Coroner in this case and, to the extent that it was rejected by Hailer, *supra*, as reiterated by the Commonwealth Court in this case, is a matter for which allowance of appeal is sought by this Court for reasons and argument as set forth herein. See, Section C, *infra* at pp. 23-30.

Thus, it is reasonably asserted that Section 1236-B “records” do not include “autopsy reports” or “toxicology reports”.i.e., “reports” under Section 1252-B. Instead, 1236-B “records” are properly limited to the “verification of death form” setting forth public information as to the cause and manner of death. A fair reading of the 2018 amendments to the Coroner’s Act leads to the conclusion that Section 1236-B “records” are different from Section 1252-B “reports” and the release of this information is treated differently.

The 2018 amendments make it clear that this Court’s pronouncement in Penn Jersey Advance, Inc. v. Grim, 962 A.2d 632 (Pa. 2009) as set forth by Justice McCaffery (dissent by Justice Eakin) is no longer valid.⁴ The congruency that this Court found between the predecessors of Section 1236-B and 1252-B and relied upon in Penn Jersey, is extinguished by the 2018 amendments, as a “report” differs from a “record”.

The “records” are meant to be public documents available at the Office of the Prothonotary⁵. The “reports” are clearly much more detailed and contain

⁴Justic Mcaffery noted in Penn Jersey Advance, Inc. v. Grim that: “...Section 1236.1 merely provides a rapid mean of *procuring* an autopsy report for those who do not wish to wait until after the end of the year, and who are also willing to pay the charges associated with procuring it. The existence of such mechanism for obtaining an autopsy report does not compel the conclusion that autopsy reports are therefore not official records under Section 1251.” Id. at 638.

⁵ It should be noted that the records of the Prothonotary as “judicial records” are themselves not subject to a RTKL inquiry. See, Edison Frazier v. Philadelphia County Office of the Prothonotary, 58 A.3d 858 (Pa. Cmwlth 2012)(noting that the Office of Open Records lacks jurisdiction over a judicial agency and that, in addition, Section 304 of the RTKL provides that judicial agencies shall provide financial records only. 65 P.S. §57.304; See, also, Court of

privileged information such as DNA data not available to the public and, certainly not available under the RTKL without compliance with procedures and processes of the coroner.

Moreover, not only do the 2018 amendments to the Coroner's Act remove any congruence between 1236-B "records" and 1252-B "reports" but Penn Jersey Advance, Inc. v. Grim, has no application to a RTKL request as it was not a RTKL case and is inapposite. This Court's discussion in Penn Jersey, referencing available judicial protections to address "privacy concerns" was set forth in the context of a mandamus action and has no bearing in a RTKL context where judicial intervention is not available⁶ to address privacy concerns.

Further, and another reason that Penn Jersey Advance, Inc.,v. Grim, should not be treated with authority in the RTKL context is the fact that the RTKL was

Common Pleas of Lackawanna County v. Pa Office of Open Records, 2 A.3d 810, 813 (Pa. Cmwlth. 2010). Accordingly, it does not make sense that the RTKL can be used as a vehicle to obtain these records. Furthermore, and backing up this position, it is noteworthy that an autopsy report (which includes toxicology reports) is a medical record and clearly privileged pursuant to the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania as regulated by this Court. Such records would constitute "Confidential Documents" pursuant to 204 Pa. Code §213.81, Section 8.0 A.3 "Medical/Psychological records". Further, pursuant to Section 8.0 C. of this section these records "... shall not be accessible to the public **except as ordered by a court.**" Id. (emphasis supplied).

⁶ This Court had noted in Penn Jersey: "Although interests of privacy or potential privilege were not argued as a basis for non-disclosure in the instant matter.... Trial courts are adequately equipped and authorized to protect autopsy reports from public disclosure based on "judicial discretion and necessity under appropriate circumstances." Id. at 638 (quoting from Com. Ex rel. District Attorney of Blair County, in re: Buchanan, 880 A.2d 568 at 575 (Pa 2005)). However, as is easily noted, these protections in equity, are not available in the RTKL context.

not considered in rendering the decision. This Court noted as much in footnote 2 in Penn Jersey stating as follows:

“...The Right-to-Know Law became effective on January 1, 2009, *see*, 65 P.S. §67.3104(3), and thus has no application to the events underlying this case. Accordingly, we express no opinion at this time on the relationship between the Coroner’s Act and the Right-to-Know Law.”

Id. at 638 fn. 2.

In summary, a review of the 2018 amendments to the Coroner’s Act establish a clear expansion of the records retained by the Coroner and this information contains highly confidential medical records such as DNA records protected from release and separated from 1236-B reports. The impact of the 2018 amendments is to make it clear that the Coroner’s Act provides no direct access to the public with respect to an “autopsy report”.

The autopsy reports are inconsistent with Section 1236-B “records” as identified in the Coroner’s Act and which are to be made available to the public. Instead, the autopsy report or toxicology report are vehicles for a coroner’s further examination of a body. An autopsy report cannot constitute the “cause and manner of death” or 1236-B record that is provided to the Prothonotary. See, generally, Commonwealth v. Martin, 727 A.2d 1136 (Pa. 1999)(noting that the Coroner’s Act “requires the coroner to investigate the facts and circumstances of

deaths, which appear to have happened within his or her county....to determine the cause of death....” See, also, 16 P.S. §1218-B⁷ (b).

Additionally, the 2018 Amendments effectively result in the restoration of the protections provided under the RTKL which expressly exempted from disclosure a coroner’s autopsy. See, 65 P.S. §708(b)(20). Thus, there is no need for a contorted statutory construction analysis to reach the improper conclusion that the Coroner’s Act was created to **allow** access to an autopsy report and that the RTKL which exempted such a report then becomes the vehicle for an unregulated release of this private information⁸. cf. Hearst Television, Inc. v. Norris⁹, 54 A.3d 23 (Pa. 2012).

⁷ 16 P.S. §1218-B (b) notes: (“Coroner’s Investigation”) (“Purpose. -The purpose of an investigate under subsection (a) shall be to determine (1) the cause and manner of death. (2) whether or not there is sufficient reason for the coroner to believe that the death may have resulted from a criminal act or criminal neglect of a person other than the deceased.”

⁸ This reading of the Coroner’s Act as amended in 2018 removes this Court’s prior reliance upon Section 67.3101 of the RTKL, “Relation to other laws”, which holds: “If the provisions of this act regarding access to records conflict with any other Federal or State law, the provisions of this act shall not apply.” Id.

⁹ It is noted that Hearst Television, is also a decision by this Court which predates the 2018 amendments to the Coroner’s Act. Additionally, Hearst Television, is based upon an inapplicable assumption and agreement - not present in this case - that an “autopsy report” was agreed to be a “manner of death record” in that case. Id. (generally and see, fn.3 thereof). It is asserted that this Court’s ruling in Hearst Television, Inc. v. Norris is no longer dispositive for several reasons. First, this case was based upon a review of the Coroner’s Act prior to the extensive 2018 amendments as identified previously and the amendments establish that 1236-B “records” are not 1252-B “reports”. Second, as noted previously, Hearst Television, was not based upon the assumed and agreed upon fact equating an autopsy report with a 1236-B report. The factual record in this case does not make any such concession. Third, it is asserted that Hearst Television, mistakenly extended the ruling in Penn Jersey Advance, Inc. v. Grim, 962 A.2d 632 (2009)(a case which was inapposite as it did not interpret or rely upon the RTKL and identified that there were lawful remedies and protections against privacy violations available through the courts which are not available under the RTKL).

In conclusion, it is asserted that the “official records and papers for the preceding year” as identified in Section 1236-B of the Coroner’s Act differ from a 1252-B report which may contain private and private information (such as is found in an autopsy report or toxicology report). This privileged and private information is protected under an appropriate reading and understanding of the Coroner’s Act as amended and should be subject to the RTKL and its various exemptions, including, most notably, the exemption found at Section 708(b)(20).

B. Did the Commonwealth Court’s decision fail to recognize, as a matter of first impression, that the Coroner using the services of a licensed medical examiner or toxicologist has obtained records (autopsy report and toxicology report) protected under HIPAA’s “privacy rule” - records which this Court has recognized to be private in nature (under the Authority of Article 1 Section 8 of the Pennsylvania Constitution) not to be overridden except if justified by a “compelling state interest” not present under the facts at issue.

The Coroner argues against the release of an autopsy report or toxicology report sought by a RTKL on grounds that this is privileged and private information protected by the Privacy Rule of HIPAA and general privacy concerns. This argument is solid.

Although the Commonwealth Court in in the underlying decision referenced its belief that the Chester County Coroner was not a “covered entity”, the analysis fails to take into consideration that an autopsy conducted by a medical pathologist working for the Coroner would be action taken by a “covered entity” and this

information could only be released in one of two relevant manners. First, with the consent of a personal representative of the deceased, See, 45 CFR §164.502 or, second, if released to a coroner/medical examiner for the purpose of determining cause and manner of death. 45 CFR §164.512(g).

Clearly, an autopsy report (which also includes a toxicology report) contains private information provided to the coroner for his or her use to determine the cause and manner of death. It is not to be made available to the public as this would circumvent the protections provided when the decedent was first subject to an autopsy by a medical pathologist. To reach another conclusion does not stand the test of reason.

Additionally, the Commonwealth of Pennsylvania provides constitutional protection of such privacy interests as set forth in the Pennsylvania Constitution. More particularly, the Pennsylvania Constitution recognizes in Article I Section 1 the “inherent Rights of Mankind” specifying that:

“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.”
Pa Constitution, Article I Section 1

Further, Article I Section 8 of the Pennsylvania Constitution provides the following protection of privacy interests additionally specifying:

“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.”

Pa Constitution, Article I Section 8.

Generally speaking, privacy interests - and what can be more private than the decedent’s body as exposed through the process of an invasive autopsy and toxicology examination - are protected. Release of such protected information must always require a balancing test with strong weight in favor of public access needed to permit its release. See, Pennsylvania State Education Association v. Commonwealth, 148 A.3d 142 (2015)(noting with respect to a “personal security” exception under the RTKL that there must be a “balancing to access whether the privacy interests outweigh the public’s interest in the dissemination of the information.”. Id. at p.

In simple terms, it is asserted that there is no analysis by which the Coroner’s Act can be interpreted to establish that the extremely private personal information as found in an “autopsy report” and “toxicology report” is to be provided to the Prothonotary and can be obtained for a fee without restriction under the RTKL. Such an analysis would run directly contrary to the constitutional protections as identified previously. Further, this result would also bypass the exceptions found in the RTKL provided by the state legislature to protect this information.

The absurdity and flawed reasoning that could allow such an analysis is clear, distinct and without rebuttal. The major changes brought about by the 2018 amendments only serve to reinforce this analysis.

The coroner, and any careful reader of the Coroner's Act, especially when taking into consideration the 2018 amendments, knows that the duty of the coroner is to determine the cause and manner of death. The coroner is not a vehicle for releasing all private investigatory information - such as the autopsy report and toxicology report - to the public. The practice of preparing the "verification of death form" and supplying it to the Prothonotary meets the coroner's obligations and complies with Section 1236-B. This duty should not be extended to require the coroner to release an autopsy report or DNA information or other such private and privileged reports¹⁰.

C. Did the Commonwealth Court's decision in Allegheny County v. Brittany Hailer and Pittsburgh Current, No. 1469 C.D. 2021 (2023) addressed again by the Commonwealth Court in this case, present a matter of substantial public importance as well as a departure from accepted judicial practices and norms of statutory construction by ruling that the new Section 1252-B amended in 2018 relating to the "Fees for reports" and adding language stating that the records at issue were to be provided only to a "nongovernmental agency" "...in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased" permitted the

¹⁰ As noted previously, private information such as an autopsy would not be accessible if lodged with the Prothonotary, due to the OOR's lack of jurisdiction over the Prothonotary and the exemptions under the RTKL. See, fn. 5 *infra*. Also, as was noted previously, such "Medical/Records" if filed with the Prothonotary are protected from public review pursuant to the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania. Id.

release of “autopsy reports” and “toxicology reports” to the public despite their exclusion from release to the public under the RTKL?

The Commonwealth Court has previously decided the case, Allegheny County v. Brittany Hailer and Pittsburgh Current, No. 1469 C.D. 2021 (2023) (authored by Judge Ellen Ceisler with Judge Michael H. Wojcik writing a separate dissent). The Hailer decision published the day before the Appellant’s Brief was filed with the Commonwealth Court in this case, reversed the Common Pleas Judge of Allegheny County who had denied a request for autopsy and toxicology records pursuant to the exemption found at Section 708(b)(20) of the RTKL.

The Allegheny Court had made this ruling based upon an interpretation of Section 1252-B that limited any such release to a “nongovernmental agency” seeking this information “in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased.”

The position of the Court of Common Pleas of Allegheny County, as identified above, was one of the arguments being advanced by the Chester County Coroner in this case. However, the Commonwealth Court, again rejected this argument, citing to Hailer, supra.

As has been noted in the Appellant’s Reply Brief filed in the Commonwealth Court, the case at bar differs from Hailer. Attention is directed to footnote 10 in Hailer, asserting that a record in Hailer had not been developed to

address privacy concerns under HIPAA or the Public Access Policy of the Unified Judicial System found at 204 Pa. Code §213.81. Additionally, in Hailer, the coroner in that case denied that §1236-B of the Coroner's Act was applicable to any analysis of the matter.

In contrast, in the case at bar, privacy concerns and the ability of the Prothonotary to release privileged medical information was identified as a factual issue. Further, Section 1236-B was identified as critical to an understanding of the 2018 amendments to the Coroner's Act. Thus, the case at bar is distinguishable from Hailer.

Nevertheless, in the case at bar, the same argument as raised in Hailer was pursued by the Appellant/Petitioner in this case, i.e., that Section 1252-B was amended and the new section 1252-B is entitled "Fee for reports" which sets fees for reproducing reports and places restrictions on the release of information to "nongovernmental agencies in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased." Id. (new language underlined). See, 16 P. S. §1252-B.

Appellant/Petitioner in this case argued that the new language underlined above placed a restriction upon all of the information identified in Section 1252-B "reports" and would exclude the general release of an autopsy report. Appellant, unaware of Hailer, cited to lower court decisions prior to Hailer - which had

argued the very point rejected by the Commonwealth Court in Hailer – that the new language in 1252-B prohibited the release of an autopsy report except to a “nongovernmental agency” “in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased.”

The Commonwealth Court rejected this argument made by Appellant. However, the Commonwealth Court erred and Hailer, fails to properly interpret the amendment to Section 1252-B of the Coroner’s Act. The 2018 amendments to the Coroner’s Act clearly protect against the release of private and privileged matters such as an “autopsy report” or “toxicology report” as a 1236-B “record”. The Coroner’s Act also prohibits the release of this same information as a 1252-B “report” except for in limited circumstances as noted.

The Commonwealth Court failed to address the actual change of language in amended Section 1252-B of the Coroner’s Act. Instead, the Commonwealth Court restates the paragraph providing bold language to reach another result as follows:

“Section 1252-B of the Coroner’s Act mandates that the coroner “shall charge and collect” a fee, as specified for providing an autopsy report, toxicology report, inquisition or coroner’s report, and cremation or disposition authorization as well as **“other fees as may be established from time to time for other reports or documents requested by nongovernmental agencies in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased....”** 16 P.S. §1252-B (emphasis added by Commonwealth Court).

Opinion p. 10.

This Court has full authority to review the statutory interplay between the amended Coroner's Act and the RTKL. See, Commonwealth v. Zortman, 23 A.3d 519, 522-23 (Pa. 2011)(citation omitted), *cert den'd*, Zortman v. Pennsylvania, 565 U.S.1108 (2012) (questions of statutory construction present the court with a "pure question of law, meaning ...[the court's] review is plenary and non-deferential).

It is asserted that the 2018 amendments to the Coroner's Act clearly separated the 1236-B information from the 1252-B information and placed restrictions upon the 1252-B information.

When ascertaining the intent of the General Assembly, there is a presumption that the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable. 1 Pa. C.S. § 1922 (1). Furthermore, the words of a statute shall be construed according to rules of grammar and according to their common and approved usage. 1 Pa. C.S. § 1903(a). Every statute shall be construed, if possible, to give effect to all its provisions. 1 Pa. C.S. § 1921(a). [The Court] will only look beyond the plain meaning of the statute where the words of the statute are unclear or ambiguous. 1 Pa. C.A. § 1921(c). see, also, Commonwealth v. Diodoro, 970 A.2d 1100 (2009).

Further, it is presumed that when enacting legislation, the General Assembly is familiar with the extant law. See, generally, White Deer Twp. v. Napp, 985 A.2d,745,762 (Pa. 2009).

It is asserted that the General Assembly's significant amendments to the Coroner's Act in 2018 require a new and full and complete review of the interplay between the RTKL and the Coroner's Act and reconsideration of this Court's prior rulings in Penn Jersey Advance, Inc. v. Grim, 963 A.2d 632 (Pa 2009) and Hearst Television Inc v. Norris, 54 A.3d 23 (Pa. 2012).

Because the amendments differentiate between 1236-B "records" and 1252-B "reports", these prior rulings are no longer accurate. In fact, these changes are consistent with the views of and the inciteful analysis set forth by Justice Eakin in both Penn Jersey Advance, v. Grim, 962 A.2d 632 (2009) and Hearst Television, Inc. v. Norris, 54 A.3d 23 (Pa. 2012).

Justice Eakin in these two dissents lays out a well thought out explanation of the Coroner's Act and the interplay with the RTKL. He specifically states with respect to Penn Jersey, that he disagrees with the majority's conclusion that "conducting autopsies is one of the official duties of the coroner." This is now made clear by the 2018 amendments differentiating between 1236-B and 1252-B and as supported by other substantive changes as set forth in the 2018 amendments and discussed previously.

Consistent with the position of Appellant, Justice Eakin finds that the determination of the “cause and manner of death” is the duty of the Coroner and that the details of an “autopsy” should not be made public, as opposed to the “view of forms” which were approved for release under Johnstown Tribune Publishing Company v. Ross, 871 A.2d 324 (Pa. Cmwlth. 2005). See, Penn Jersey, supra, 926 A.2d at pp. 638-639 (quoting from Ross that “[r]equiring the Coroner to release the autopsy report upon which she relied, and any sensitive medical information contained therein that may be privileged or cause embarrassment to the decedent’s survivors, fulfills no purpose other than to satisfy a prurient interest.”) .

Similarly, in Hearst Television, Inc. v. Norris, Justice Eakin’s dissent correctly noted that Penn Jersey, was focused on the “official” nature of autopsy reports and did not involve the RTKL. 54 A.3d at 35. Justice Eakin in Hearst Television, went on to find a conflict between the predecessor to Section 1236-B (which provided for an annual release of information (“records”)) and the predecessor to Section 1252-B (which, under the prior Commonwealth Court Opinion favorably referenced by Justice Eakin, gave the coroner discretion regarding a more immediate release). Any such “discretion” has now actually been restricted by the new language in Section 1252-B.

However, because 1252-B information is now restricted in its release, this accords with Justice Eakin’s position that it should not be available for an

“immediate release” and Section 1252-B is still in conflict with Section 1236-B as Justice Eakin had asserted.

Under the circumstances presented in this case, the major amendments to the Coroner’s Act in 2018 require a reconsideration of and reversal of the analysis advanced by Judge Sommer and confirmed by the Commonwealth Court¹¹ and which Appellant/Petitioner asserts reach an absurd. Section 1252-B of the

¹¹ It is acknowledged that in the procedural history of the 2018 amendments, there were comments made that language which would specifically identify that the RTKL exemptions would control relative to any release of information. This language was relied upon by Judge Sommer in his Decision and is referenced in the Opinion of the Commonwealth Court as controlling and as referenced in Hailer, See, Opinion pp. 13 -18.

The Comments made by the Local Government Commission relative to the amendments to Section 1252-B of the Coroner’s Act provide as follows:

“This section is analogous to County Code Section 1236.1 (c) and SCCC Section 1235.1(c), except that the fees for reports have been increased.”

The footnote to this comment then from the Government Commission as quoted by Judge Sommer goes on to state:

“ Amendment A07290 removes a new subsection which would have specified that the section should not be construed as authorizing disclosure of a record exempt from public access under Act 3 of 2008, known as the Right -to-Know Law.”

This commentary is not determinative of the issue. The General Assembly in its re-write of the Coroner’s Act chose not to supply language provisions favoring exemptions provided in the RTKL. However, such a procedure was never necessary. Such a convoluted procedure would be the “tail wagging the dog”.

The General Assembly in passing the 2018 Amendments to the Coroner’s Act committed to a significant change in the prior statute. The General Assembly knew that this would be viewed as new legislation created to make changes in the functioning of the Coroner’s Act. It would have been difficult, and possibly a self-defeating task, to engraft language into the amended Coroner’s Act challenging the specific treatment of the revised Coroner’s Act as addressed by the RTKL. This was not necessary.

Coroner's Act should not be interpreted to make an autopsy report or toxicology report immediately available under the RTKL.

This is contrary to the rules of statutory construction which seek to avoid an absurd result. See, 1 Pa. C.S. A. § 1922 (1)(In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used: (1) That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.) Id.

The RTKL which specifically protects against the release of a coroner's autopsy should not be used as a vehicle for the immediate release of this private and privileged information.

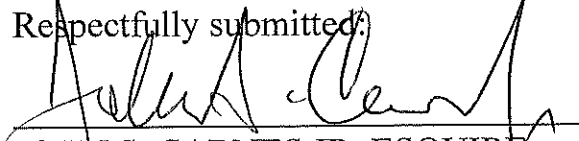
VI. CONCLUSION

For the foregoing reasons, Appellant/Petitioner respectfully requests that this Court grant this Petition for Allowance of Appeal¹².

¹² In accordance with Pa. R. Civ. P. 1115 (f) I hereby certify that this Petition for Allowance of Appeal does not exceed 9000 words. s/John S. Carnes, Jr.

Dated: 1/5/24

Respectfully submitted:



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IN THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT

CHESTER COUNTY OFFICE OF THE
CORONER

Appellant-Petitioner

vs.

TERENCE KEEL AND THE UNIVERSITY
OF CALIFORNIA-LOS ANGELES
INSTITUTE FOR SOCIETY AND GENETICS,
BIOSTUDIES LAB

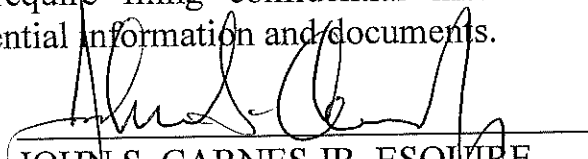
Appellee-Respondent

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PUBLIC ACCESS POLICY CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents different than non-confidential information and documents.

Dated: 1/5/24



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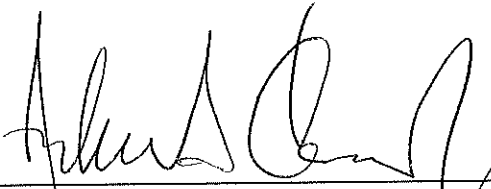
IN THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT

CHESTER COUNTY OFFICE OF THE CORONER :
Appellant-Petitioner :
vs. :
TERENCE KEEL AND THE UNIVERSITY OF CALIFORNIA-LOS ANGELES : No. 242 C.D. 2023
INSTITUTE FOR SOCIETY AND GENETICS, :
BIOSTUDIES LAB :
Appellee-Respondent :

CERTIFICATION PURSUANT TO Pa.R.Civ.P 1115(f)

I hereby certify that the Petition for Allowance of Appeal has less than 9,000 word count. The Petition for Allowance of Appeal contains 7,990 words.

Date: 1/5/24



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IN THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT

CHESTER COUNTY OFFICE OF THE CORONER
Appellant-Petitioner
vs.
TERENCE KEEL AND THE UNIVERSITY OF CALIFORNIA-LOS ANGELES INSTITUTE FOR SOCIETY AND GENETICS, BIOSCIENCES LAB
Appellee-Respondent

No. _____
Allocatur Docket 2024

PROOF OF SERVICE

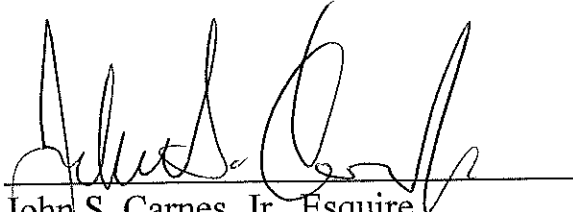
I hereby certify that I am this day serving the Petition For Allowance of Appeal upon the persons and in the manner indicated below which service satisfies the requirements of Pa.R.A.P. 121:

Service by first class mail addressed as follows:

Amy Dreibelbis, Esquire
Deputy Prothonotary
Supreme Court of Pennsylvania
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Harrisburg, PA 17106

James Patrick Davy, Esquire
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Philadelphia, PA 19125
Atty. for Respondent, Terence Keel

Dated: January 5, 2024



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EXHIBIT "A"

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Chester County Office of the Coroner, :
Appellant :
 :
v. : No. 242 C.D. 2023
 :
Terence Keel and the University of :
California-Los Angeles Institute for :
Society and Genetics, Biostudies Lab :

ORDER

AND NOW, this 7th day of December, 2023, the March 1, 2023 order of the Court of Common Pleas of Chester County is hereby AFFIRMED.



ELLEN CEISLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Chester County Office of the Coroner, :
Appellant :

v. : No. 242 C.D. 2023

Terence Keel and the University of :
California-Los Angeles Institute for :
Society and Genetics, Biostudies Lab : Argued: November 9, 2023

BEFORE: HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE ELLEN CEISLER, Judge
HONORABLE LORI A. DUMAS, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE CEISLER

FILED: December 7, 2023

The Chester County Office of the Coroner (Coroner) appeals from the March 1, 2023 order of the Court of Common Pleas of Chester County (trial court) affirming a Final Determination of the Pennsylvania Office of Open Records (OOR), which held that autopsy and toxicology reports are not exempt from disclosure under Section 708(b) of the Right-to-Know Law (RTKL)¹ or Article XII-B of The County Code, commonly known as the Coroner's Act.² After review, we affirm the trial court.

I. Background

On June 27, 2022, Terence Keel and the University of California-Los Angeles Institute for Society and Genetics, Biostudies Lab (Requesters), submitted a RTKL

¹ Act of February 14, 2008, P.L. 6, 65 P.S. § 67.708(b).

² Act of August 9, 1955, P.L. 323, *as amended*, added by the Act of October 24, 2018, P.L. 931, No. 154 (Act 154), 16 P.S. §§ 1201-B-1252-B.

request (Request) to the Coroner seeking autopsy and toxicology reports for 17 decedents. The Coroner denied the request on August 2, 2022, citing Section 705 of the RTKL,³ which establishes that an agency is not required to create a record, and Section 708(b) of the RTKL,⁴ which establishes several categories of information that are exempt from public access. Requesters appealed to the OOR.

In support of its position denying the Request, the Coroner submitted an affidavit from Jesse Poole-Gulick (Poole-Gulick), a deputy coroner, who stated that three individuals identified in the Request could not be identified. Verification of death forms disclosing the manner and cause of death were available for the remaining individuals identified in the Request. Poole-Gulick advised that autopsy and toxicology reports were considered private records of a decedent that contained “highly sensitive and private information.” Reproduced Record (R.R.) at 56a. The Coroner would release such records to “next of kin” or in response to a “lawfully issued subpoena[.]” *Id.* Otherwise, the requested records were exempt from disclosure pursuant to Section 708(b)(20) of the RTKL, which specifically excludes

³ 65 P.S. § 67.705.

⁴ Section 708(b) of the RTKL excludes 30 categories of information from public access. Relevant to the instant appeal, Section 708(b)(20), 65 P.S. § 67.708(b)(20), exempts

[a]n autopsy record of a coroner or medical examiner and any audiotape of a postmortem examination or autopsy, or a copy, reproduction or facsimile of an autopsy report, a photograph, negative or print, including a photograph or videotape of the body or any portion of the body of a deceased person at the scene of death or in the course of a postmortem examination or autopsy taken or made by or caused to be taken or made by the coroner or medical examiner. This exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death.

65 P.S. § 67.708(b)(20).

the release of autopsy records. Poole-Gulick further advised that the requested records were exempt from disclosure because they related to criminal and non-criminal investigations, and they were protected records under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).⁵ Poole-Gulick asserted that the Coroner was not required to release any information beyond the verification of death form.

The OOR issued its Final Determination on September 30, 2022. At the outset, the OOR noted that the Coroner failed to demonstrate that it was a covered entity under HIPAA. Therefore, the OOR concluded that the Coroner's autopsy and toxicology reports were not exempt from disclosure under HIPAA.⁶ The OOR also stated that the Coroner provided no legal authority for restricting access to autopsy reports beyond the decedent's next of kin or in response to a subpoena. In concluding that the requested records were not exempt from disclosure under the RTKL, the OOR cited *Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632 (Pa. 2009), in which our Supreme Court held that autopsy reports were one of the official records of a coroner's office that must be deposited with the prothonotary for inspection by

⁵ 42 U.S.C. § 1320d-6.

⁶ HIPAA regulations generally prohibit covered entities from using or disclosing protected health information. 45 C.F.R. § 164.508(a)(1). Covered entities under HIPAA are limited to health plans, health care clearinghouses, health care providers, and the business associates thereof, where provided. 45 C.F.R. § 160.102(a)-(b). A health plan under HIPAA is an individual or group plan that provides or pays the cost of medical care. 45 C.F.R. § 160.103. Health care provider is defined as a provider of services, including hospitals, rehabilitation facilities, and nursing facilities, a provider of medical or health services, including diagnostic and physical therapy services, and any other person or organization that furnishes, bills, or is paid for health care in the normal course of business. *Id.* Finally, a health care clearinghouse under HIPAA means a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and "value-added" networks and switches. *Id.* At first blush, these definitions do not appear to encompass a coroner's office.

the public, pursuant to former Section 1251 of the Coroner's Act.⁷ The OOR also relied on the Supreme Court's holding in *Hearst Television, Inc. v. Norris*, 54 A.3d 23 (Pa. 2012), that a coroner could not exercise discretion over the release of official records required by former Section 1251, and that a coroner's official records could be obtained upon payment of the fee provided for in former Section 1236.1(c) of the Coroner's Act.⁸

The OOR did not address the specific exemptions cited by Poole-Gulick, noting that Section 3101.1 of the RTKL, 65 P.S. § 67.3101.1, provides the RTKL "shall not apply" when any of its provisions regarding access conflict with any other federal or state law. The OOR acknowledged that former Section 1251, which formed the basis for the Supreme Court's holding in *Hearst*, had been repealed by Act 154; however, both former Section 1251 and new Section 1236-B of the Coroner's Act⁹ required that the official records and papers of a coroner's office be deposited with the prothonotary. The only substantive difference between the two provisions is that Section 1236-B only applies to counties of the third through eighth class. Thus, the OOR held that case law interpreting former Section 1251 applied to an analysis of Section 1236-B. As autopsy reports were official records of a coroner's office, the Coroner was required to deposit such reports with the

⁷ Former Section 1251, which was repealed by Act 154, provided that "[e]very coroner, within [30] days after the end of each year, shall deposit all of his official records and papers for the preceding year in the office of the prothonotary for the inspection of all persons interested therein." *Formerly* 16 P.S. § 1251.

⁸ Former Section 1236.1(c) was added to the Coroner's Act by the Act of November 29, 1990, P.L. 602, *formerly* 16 P.S. § 1236.1(c), and was repealed by Act 154.

⁹ 16 P.S. § 1236-B.

prothonotary. The OOR also held that toxicology reports were an official record of the Coroner that should have been deposited with the prothonotary.

The OOR rejected the Coroner's construction of Section 1252-B of the Coroner's Act, 16 P.S. § 1252-B, which establishes the fees to be charged and collected for providing an autopsy report, toxicology report, inquisition or coroner's report, and cremation or disposition authorization. Section 1252-B also provides for the collection of "other fees as may be established from time to time for **other reports or documents requested by nongovernmental agencies in order to investigate a claim asserted under a policy of insurance or to determine liability for the death** of the deceased[.]" 16 P.S. § 1252-B (emphasis added). The Coroner argued that the bolded language limited the production of documents identified in Section 1252-B to nongovernmental agencies investigating an insurance claim or determining liability for a decedent's death. The OOR disagreed, deeming this provision a "catch-all" that was limited to records required by nongovernmental agencies for the specified purposes – it did not affect an individual's ability to request autopsy or toxicology reports from a coroner. R.R. at 302a. In drafting Section 1252-B, the General Assembly (GA) created "a process where specific fees are paid to obtain specific reports from coroners, without limitation." *Id.* at 303a.

The OOR noted that the Coroner failed to deposit its official records and papers with the prothonotary, despite the clear language of Section 1236-B and the controlling legal precedent. The OOR opined that a finding of bad faith by a reviewing court, and the imposition of sanctions and penalties to offset Requesters' costs, would be appropriate under the facts presented, as it would provide the access to coroner records "envisioned by the [GA]" and affirmed by the Supreme Court, and would "discourage other agencies from acting similarly in violation of the public

interest.”¹⁰ *Id.* at 306a. Accordingly, the OOR granted Requesters’ appeal and directed that the Coroner provide copies of the requested autopsy and toxicology reports upon receipt of the fees established in Section 1252-B.

The Coroner appealed the OOR’s Final Determination to the trial court, which denied the appeal on March 1, 2023. The trial court opined that the Supreme Court’s holding in *Penn Jersey* that autopsy reports were official records of a coroner’s office remained “valid and undisturbed.” R.R. at 389a. While a conflict existed between the RTKL and the Coroner’s Act with regard to the release of autopsy and toxicology reports, Section 3101.1 of the RTKL made it clear that, in the case of a conflict between the RTKL and another statute, the RTKL did not apply. Thus, the trial court concluded that the Coroner’s Act controlled the release of the requested records. Under this same analysis, the trial court dismissed the Coroner’s argument that the requested records were exempt under the medical records exception in Section 708(b)(5) of the RTKL.¹¹ The trial court agreed with the OOR that the Coroner had not demonstrated that the requested records were governed by HIPAA or a similar privacy law.

¹⁰ Section 1304(a) of the RTKL provides that, where a court reverses the final determination of an appeals officer or grants access to a record after a request for access was deemed denied, the court may award reasonable attorney fees and costs of litigation if the court finds that the agency denied access to a public record willfully, with wanton disregard, or in bad faith, or where the agency’s denial was not based on a reasonable interpretation of the law. 65 P.S. § 67.1304(a). Section 1304(b) permits an award of sanctions if the court finds that the legal challenge was frivolous. 65 P.S. § 67.1304(b). Section 1305(a) of the RTKL, 65 P.S. § 67.1305(a), authorizes the imposition of a civil penalty of not more than \$1,500 if an agency denies access to a public record in bad faith.

The OOR does not have the authority to impose costs, fees, or penalties. *Off. of the Dist. Att’y of Phila. v. Bagwell*, 155 A.3d 1119, 1140 (Pa. 2017).

¹¹ The trial court also suggested that Section 708(b)(5) only applied to the release of a living person’s medical records, given that coroner records are covered by a separate exemption.

Citing *Hearst*, the trial court rejected the Coroner's argument that it had discretion when responding to records requests. The trial court acknowledged that the provisions of the Coroner's Act analyzed in *Hearst* and *Penn Jersey* were repealed by Act 154; however, the trial court did not consider the Act 154 amendments to the Coroner's Act to be "significant or dispositive." *Id.* at 390a. The trial court noted that a comment to Section 1252-B provided by the Local Government Commission (Commission)¹² states that Section 1252-B is analogous to former Section 1236.1(c), "except that the fees for reports have been increased." In addition, an earlier version of Senate Bill 1005 (SB 1005), which became Act 154, contained language specifying that Section 1236-B, requiring the coroner to deposit official records with the prothonotary, should not be construed as authorizing the disclosure of a record exempt from access under the RTKL. This language was removed from the enacted version of SB 1005. Thus, while the GA had the opportunity to address exemptions under the RTKL and the Coroner's Act, it "chose not to do so." *Id.* at 391a. Ultimately, the trial court held that language pertaining to requests from nongovernmental agencies did not change the public nature of autopsy reports or grant the Coroner discretion where the Supreme Court had "already determined there is none." *Id.* Therefore, the trial court affirmed the OOR.

¹² The Commission was established by the Act of May 29, 1935, P.L. 244, No. 102 (Act 102), with the stated purpose of studying and reporting on the functions of local government. It is comprised of five members of the Pennsylvania State Senate and five members of the Pennsylvania House of Representatives. One of the Commission's functions and responsibilities is to "[p]rovide a summary of acts signed into law by the Governor for distribution to Members of the Legislature and to other interested parties." See http://www.lgc.state.pa.us/download.cfm?file=/Reports/Other/lgc_brochure.pdf (last visited Dec. 6, 2023).

The trial court did not address whether the Coroner denied the Request in bad faith or impose sanctions and penalties, as suggested by the OOR. This appeal followed.¹³

II. Issues

On appeal, the Coroner argues that the trial court erred in concluding that the requested autopsy and toxicology reports were not exempt from disclosure, that the trial court failed to properly consider the Act 154 amendments to the Coroner's Act, and that the trial court improperly relied on *Hearst* and *Penn Jersey*.¹⁴

III. Discussion

Before we address the issues raised by the Coroner, it is helpful to summarize the relevant statutory provisions and legal precedent that will inform our analysis, the latter of which includes this Court's recent decision in *Allegheny County v. Hailer*, 298 A.3d 476 (Pa. Cmwlth. 2023). As always, "[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the [GA]." 1 Pa.C.S. § 1921(a). In the absence of a demonstrated constitutional infirmity, courts must generally apply the plain terms of a statute, as written. *Lower Swatara Twp. v. Pa. Lab. Rels. Bd.*, 208 A.3d 521, 530 (Pa. Cmwlth. 2019). Where the plain language in a statute is unambiguous, we must apply that language "without employing familiar canons of construction and without considering legislative intent." *Dubose v. Quinlan*, 173 A.3d 634, 643 (Pa. 2017). The plainness or ambiguity of statutory language is determined by reference to the language itself, as

¹³ Our review of the trial court's decision is limited to whether the findings of fact are supported by competent evidence, whether the trial court committed an error of law, or whether the trial court abused its discretion in reaching a decision. *Pysher v. Clinton Twp. Volunteer Fire Co.*, 209 A.3d 1116, 1119 n.6 (Pa. Cmwlth. 2019).

¹⁴ In its principal brief, the Coroner suggests that the trial court erred in failing to recognize its prior rulings, which allegedly align with the Coroner's position. As this Court is not bound by those decisions, our analysis in the instant appeal will not consider or address them.

well as the specific context in which the language is used and the broader context of the statute as a whole. *Roethlein v. Portnoff Law Assocs., Ltd.*, 81 A.3d 816, 822 (Pa. 2013). We must not interpret statutory words in isolation but must read them with reference to the context in which they appear. *Id.* Moreover, we must presume that the GA “does not intend a result that is absurd, impossible of execution[,] or unreasonable.” 1 Pa.C.S. § 1922(1).

A. Statutory Authority

1. RTKL

Under Section 305 of the RTKL,¹⁵ records in the possession of a Commonwealth agency are presumed to be public unless they are exempt under Section 708(b) of the RTKL, protected by a privilege, or exempt under any other federal or state law or regulation or judicial order or decree. Section 708(b)(20) of the RTKL exempts from disclosure a coroner’s autopsy records, including audiotapes, photographs, and video recordings. The name of the deceased and the cause and manner of his or her death may be reported. Per Section 3101.1 of the RTKL, however, the RTKL “**shall not apply**” when any of its provisions regarding access conflict with any other federal or state law. 65 P.S. § 67.3101.1 (emphasis added). Therefore, Section 708(b)(20) of the RTKL restricts access to a coroner’s autopsy records, unless access is otherwise provided by law.

2. Coroner’s Act

Section 1236-B of the Coroner’s Act provides that, in counties of the third through eighth classes, “every coroner, within 30 days after the end of each year, **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-

¹⁵ 65 P.S. § 67.305.

B (emphasis added). Section 1252-B of Coroner's Act mandates that the coroner "shall charge and collect" a fee, as specified, for providing an autopsy report, toxicology report, inquisition or coroner's report, and cremation or disposition authorization, as well as "other fees as may be established from time to time for other reports or documents requested by nongovernmental agencies in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased" 16 P.S. § 1252-B (emphasis added).

B. Case Law

1. *Penn Jersey*

Penn Jersey concerned whether an autopsy report was one of the official records that former Section 1251 of the Coroner's Act¹⁶ required a coroner to deposit with the prothonotary within 30 days after the end of each year. Because conducting autopsies was one of a coroner's official duties, the Supreme Court held that the resulting autopsy reports constituted "official records and papers" within the meaning of former Section 1251. *Penn Jersey*, 962 A.2d at 637. The Supreme Court acknowledged that such records could reveal a decedent's "potentially privileged" medical history, as well as graphic autopsy photographs. *Id.* Although it recognized the legitimate privacy concerns related to disclosure of such information, the Supreme Court noted that trial courts were "adequately equipped and authorized to protect autopsy reports from disclosure based on 'judicial discretion and necessity' under appropriate circumstances." *Id.* Where, for example, an autopsy report contained graphic photographs or privileged information, anyone with standing "to protect an interest in such material" could seek relief from the trial court. *Id.*

¹⁶ Formerly 16 P.S. § 1251.

2. *Hearst*

In *Hearst*, our Supreme Court reviewed whether former Sections 1236.1(c) and 1251 of the Coroner's Act granted a coroner discretion over the release of coroner records. Former Section 1236.1(c) of the Coroner's Act relevantly provided as follows:

(c) The coroner may charge and collect a fee of up to one hundred dollars (\$100) for each autopsy report, up to fifty dollars (\$50) for each toxicology report, up to fifty dollars (\$50) for each inquisition or coroner's report and such other fees as may be established from time to time for other reports and documents requested by nongovernmental agencies.

Formerly 16 P.S. § 1236.1(c).

Former Section 1251 of the Coroner's Act, also repealed by Act 154, required every coroner to deposit all "official records and papers for the preceding year in the office of the prothonotary for the inspection of all persons interested therein." *Formerly* 16 P.S. § 1251. The *Hearst* Court interpreted this language to require the deposit of all official coroner records and papers with the prothonotary within 30 days after the end of each year. *Hearst*, 54 A.3d at 25. For those unwilling to wait until after the end of the year, former Section 1236.1(c) established a fee schedule for obtaining the same records. *Id.* at 33.

3. *Hailer*

Hailer concerned a request for autopsy and toxicology reports possessed by the Allegheny County Office of the Medical Examiner (ME). The OOR, citing *Hearst*, issued a final determination directing the release of the requested reports upon payment of the appropriate fee. The Allegheny County Court of Common Pleas (Allegheny County trial court) reversed, in part, because the *Hearst* Court analyzed statutory provisions that were repealed by Act 154. Additionally, the new

provisions of the Coroner's Act contained language that did not appear in those which had been repealed.

The Allegheny County trial court construed newly-enacted Section 1252-B, providing for the imposition of fees for requests "by nongovernmental agencies in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased[,]” to mean that a coroner must review whether the requester was a nongovernmental agency and whether the information sought was for the purpose of investigating an insurance claim or to determine liability for the death of a decedent. Therefore, the requesters in *Hailer* could only obtain the autopsy and toxicology reports if they qualified as a nongovernmental agency seeking to determine liability for the decedent's death. The requesters had not asserted they were investigating an insurance claim, and the trial court considered the determination of liability for the death of a decedent to be an issue typically decided by a court. As a result, the Allegheny County trial court held that the requesters were not entitled to the autopsy and toxicology reports.

This Court reversed based on the plain language of Section 1252-B, which states that the coroner "shall charge and collect" a specific fee for autopsy reports, toxicology reports, inquisition or coroner's reports, and cremation or disposition authorizations. 16 P.S. § 1252-B. Section 1252-B was simply a fee schedule that established the costs to be collected by a coroner's office when providing copies of its records. Furthermore, Section 1252-B provides that the coroner "shall charge and collect . . . other fees[,]” as established, "for other reports or documents requested by nongovernmental agencies in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased.” *Id.* We declined to construe Section 1252-B as limiting the receipt of coroner records

to nongovernmental agencies that seek records to investigate an insurance claim or to determine liability for the death of a decedent. Instead, this language required that the coroner “‘charge and collect’ other fees that have been established for nongovernmental agency requests relating to those discrete types of inquiries.” *Hailer*, 298 A.3d at 481. Section 1236-B of the Coroner’s Act supported our interpretation of Section 1252-B, “as coroner records and papers in counties of the third through eighth class are publicly accessible ‘within 30 days after the end of each year’ following the deposit of such records ‘in the Office of the Prothonotary for the inspection of all persons interested therein.’” *Id.*

Our conclusion in *Hailer* was bolstered by the legislative history of Section 1252-B, which revealed that SB 1005, at one point, contained language stating that Section 1252-B “may not be construed as authorizing disclosure of a record exempt from public access” under the RTKL.¹⁷ This language was removed from subsequent versions of SB 1005, which we considered a “strong indicator that the [GA] intended that coroner records would be publicly accessible, provided the appropriate fee was paid.” *Id.* at 482. Also stricken from SB 1005 was language in Section 1236-B that would have relevantly provided that “[e]xcept as provided under this article, public disclosure of a coroner record shall be in accordance with the [RTKL.]”¹⁸ Based on the above analysis, we concluded that the requested autopsy

¹⁷ See SB 1005, Printer’s No. 1782, at 85-86, May 22, 2018.

<https://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2017&sessInd=0&billBody=S&billTyp=B&billNbr=1005&pn=1782> (emphasis added) (last visited Dec. 6, 2023).

¹⁸ See SB 1005, Printer’s No. 1782, at 84, May 22, 2018.

<https://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2017&sessInd=0&billBody=S&billTyp=B&billNbr=1005&pn=1782> (emphasis added) (last visited Dec. 6, 2023).

and toxicology reports were accessible upon payment of the fee established in Section 1252-B. We did not address the “continued viability of *Hearst*.” *Id.*

C. The Coroner’s Appeal

Turning to the instant appeal, the Coroner argues that the Act 154 amendments to the Coroner’s Act prohibit the release of autopsy and toxicology reports. The Coroner maintains that the single page verification of death form containing a decedent’s manner and cause of death satisfies the Coroner’s obligation under Section 1236-B of the Coroner’s Act to deposit official records with the prothonotary. Autopsy and toxicology reports, the Coroner maintains, are subject to privacy protections under HIPAA and are exempt from disclosure under the RTKL.

The Coroner also argues that *Penn Jersey* and *Hearst* are no longer controlling precedent, as they analyzed provisions repealed by Act 154. *Hearst*, according to the Coroner, is no longer relevant because Section 1252-B restricts the release of information to nongovernmental agencies investigating insurance claims or determining liability for the death of a decedent. By way of additional support, the Coroner points to provisions in the Coroner’s Act that require the retention of tissue, organs, blood, bodily fluids or gases, or other specimens necessary to establish and defend against challenges to a decedent’s cause and manner of death,¹⁹ or that permit the retention of deoxyribonucleic acid (DNA) specimens “for diagnostic, evidentiary[,] or confirmatory purposes.”²⁰ The Coroner contends that providing the public “this sort of confidential information is not appropriate under any common sense analysis[.]” Coroner’s Br. at 27.

¹⁹ Section 1202-B of the Coroner’s Act, 16 P.S. § 1202-B (Definitions).

²⁰ Section 1219-B(d)(1) of the Coroner’s Act, 16 P.S. § 1219-B(d)(1).

The Coroner does not deny that the Commentary provided by the Commission recognizes that a proposed, and deleted, amendment to SB 1005 would have specified that Section 1252-B did not authorize the release of records exempt from access under the RTKL. The Coroner suggests, however, that such an amendment was unnecessary because Section 1252-B already contained language restricting access to nongovernmental agencies investigating insurance claims or determining liability for the death of a decedent.

Requesters argue in response that *Hailer* controls our disposition here, as *Hailer* concerned a “virtually identical request for records and virtually identical legal argument . . . opposing disclosure.” Requesters’ Br. at 6. In light of *Hailer*, Requesters suggest that the Coroner’s continued appeal in this matter merits an award of reasonable attorney fees and costs of litigation or the imposition of sanctions, as provided for in Section 1304(a)-(b) of the RTKL.

In its reply brief, the Coroner contends that *Hailer* is not controlling precedent, as *Hailer* did not address whether official records under Section 1236-B are “different” from the autopsy reports, toxicology reports, inquisition or coroner’s reports, and cremation or disposition authorizations mentioned in Section 1252-B. Coroner’s Reply Br. at 6. In this respect, the Coroner vigorously maintains that the various reports itemized in Section 1252-B should not be considered the official records and papers required to be deposited with the prothonotary under Section 1236-B. Finally, the Coroner denies that its failure to withdraw this appeal in the wake of *Hailer* renders its appeal frivolous.

The Coroner’s argument regarding Section 1236-B is wholly unpersuasive, as it ignores the plain language in that provision, which is nearly identical to its predecessor, former Section 1251, with the exception that Section 1236-B only

applies to third through eighth class counties. The Commentary prepared by the Commission states that new Section 1236-B “[r]eflects [former] Section 1251, but [Section 1236-B] is restricted to counties of the third through eighth class.”²¹ The Coroner’s argument also fails to acknowledge the basis for the Supreme Court’s conclusion in *Penn Jersey* that autopsy reports are official records of a coroner’s office. In *Penn Jersey*, the Supreme Court recognized that a coroner’s official duties included conducting autopsies. As a result, it held that autopsy reports constituted an official record and paper of the coroner’s office. Act 154 did not strip the Coroner of its duty to conduct autopsies. In point of fact, Section 1219-B(a) of the Coroner’s Act explicitly provides that where a coroner cannot “determine the cause and manner of death, **the coroner shall perform or order an autopsy on the body.**” 16 P.S. § 1219-B(a) (emphasis added). Thus, the Supreme Court’s reasoning in *Penn Jersey* remains sound.

In *Hailer*, this Court considered, and rejected, the Coroner’s argument that Section 1252-B restricts the release of the specified reports to nongovernmental agencies either investigating insurance claims or determining liability for a decedent’s death. The Coroner’s argument that “official records” under Section 1236-B is limited to the cause and manner of death, and that the reports mentioned in Section 1252-B are not reflective of a coroner’s official acts, is not supported by any provisions in the Coroner’s Act or the legislative history of Act 154. It is noteworthy that the only information deposited with the prothonotary by the Coroner – a decedent’s manner and cause of death – corresponds to that which is authorized by Section 708(b)(20) of the RTKL. Per Section 3101.1 of the RTKL, however, the

²¹ See Commission Act 154 Section-by-Section Commentary, Oct. 24, 2018, page 14. http://www.lgc.state.pa.us/download.cfm?file=/Reports/countyCode/Act_154_of_2018_Commentary_10-24-2018.pdf (last visited Dec. 6, 2023).

limitation in Section 708(b)(20) “shall not apply”²² and gives way to the right of access established in Section 1236-B of the Coroner’s Act. The absence of legal authority supporting the Coroner’s argument suggests not so much a reasoned interpretation of Sections 1236-B and 1252-B as an attempt to justify the Coroner’s past practice, which utterly ignores the scope of access provided by the Coroner’s Act.

As the trial court noted, a comment to Section 1252-B prepared by the Commission indicates that Section 1252-B is analogous to former Section 1236.1, except that the fees for reports have been increased. This comment appears in a Section-by-Section Commentary (Commentary) the Commission prepared following Act 154’s enactment.²³ The Commission also drafted an Executive Summary of Act 154, which similarly reflects that Section 1252-B “contains the fee schedule previously in Section 1236.1 (Requests for Examinations and Reports). The fees for reports as set forth in [Section 1252-B] have been increased . . . to permit a greater recovery of the actual costs of the services.”²⁴

Both former Section 1236.1(c) and current Section 1252-B provide for the collection of “other fees as may be established from time to time for other reports and documents requested by nongovernmental agencies.”²⁵ Act 154 simply clarified

²² 65 P.S. § 67.3101.1 (emphasis added).

²³ See Commission Act 154 Commentary, Oct. 24, 2018, page 14. http://www.lgc.state.pa.us/download.cfm?file=/Reports/countyCode/Act_154_of_2018_Commentary_10-24-2018.pdf (last visited Dec. 6, 2023).

²⁴ See Commission Act 154 Executive Summary, Oct. 24, 2018, page 7. http://www.lgc.state.pa.us/download.cfm?file=/Reports/countyCode/Act_154_of_2018_Executive_Summary_10-24-2018.pdf (last visited Dec. 6, 2023).

²⁵ Formerly 16 P.S. § 1236.1(c); 16 P.S. § 1252-B.

the purposes for which a nongovernmental agency might request “other reports and documents[.]” One of the presumptions to be used in ascertaining legislative intent is that “when a court of last resort has construed the language used in a statute, the [GA] in subsequent statutes on the same subject matter intends the same construction to be placed upon such language.” 1 Pa.C.S. § 1922(4). Section 1252-B is essentially identical to former Section 1236.1(c), which the *Hearst* Court held was a fee schedule for obtaining the specified coroner records, should a requester not wish to wait until the records are deposited with the Prothonotary. The Coroner has not presented a compelling argument for construing Section 1252-B in any other manner.

Based on the above analysis, we conclude that the trial court did not err in affirming the OOR, as production of the requested records only requires payment of the fees set forth in Section 1252-B of the Coroner’s Act.

D. Sanctions

Section 1304(a) of the RTKL provides that, where a court reverses the final determination of an appeals officer or grants access to a record after a request for access was deemed denied, the court may award reasonable attorney fees and costs of litigation if the court finds that the agency denied access to a public record willfully, with wanton disregard, or in bad faith, or where the agency’s denial was not based on a reasonable interpretation of the law. 65 P.S. § 67.1304(a). Section 1304(b) permits an award of sanctions if the court finds that the legal challenge was frivolous. 65 P.S. § 67.1304(b). A requester seeking sanctions bears the burden of proving that an agency acted in bad faith. *Uniontown Newspapers, Inc. v. Dep’t of Corr.*, 185 A.3d 1161, 1171 (Pa. Cmwlth. 2018). Evidence of bad faith is necessary

to impose fees and costs on that basis. *Bagwell v. Pa. Dep't of Educ.*, 103 A.3d 409, 421 (Pa. Cmwlth. 2014).

Instantly, Requesters seek fees, costs, and/or sanctions based on the Coroner's failure to withdraw its appeal after this Court issued its decision in *Hailer*.²⁶ Although the Coroner presents a somewhat tortured argument that "official records" deposited with the prothonotary pursuant to Section 1236-B of the Coroner's Act are not the same documents as the reports specified in Section 1252-B's fee schedule, the Coroner's failure to withdraw its appeal does not rise to the level of bad faith. While the Coroner declined to produce the requested records based on its interpretation of the Coroner's Act, the Coroner did disclose the cause and manner of death for the individuals identified by Requesters, as authorized by Section 708(b)(20) of the RTKL. Therefore, we conclude there is no basis for awarding attorney's fees, costs of litigation, or sanctions in this matter.

IV. Conclusion

Section 1252-B of the Coroner's Act, 16 P.S. § 1252-B, establishes the costs to be collected by a coroner's office when providing copies of autopsy reports, toxicology reports, inquisition or coroner's reports, and cremation or disposition authorizations. Section 1252-B also provides that the coroner "shall charge and collect . . . other fees[,] as established, "for other reports or documents requested by nongovernmental agencies in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased." *Id.* As a result, the trial court did not err in affirming the OOR's Final Determination that directed the Coroner to provide copies of the requested autopsy and toxicology reports upon

²⁶ As noted earlier, the OOR suggested that sanctions might be appropriate, given the Coroner's failure to deposit its official records and papers with the prothonotary; however, the trial court's opinion, made no findings in that regard.

receipt of the fees established in Section 1252-B. Accordingly, we affirm the trial court. We decline to impose attorney's fees, costs of litigation, or sanctions as provided in Section 1304 of the RTKL for the reasons set forth in the foregoing opinion.

A handwritten signature in black ink that reads "Ellen Ceisler". The signature is written in a cursive, slightly slanted style.

ELLEN CEISLER, Judge

EXHIBIT "B"

CHESTER COUNTY OFFICE OF THE
CORONER

IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENN



VS.

TERENCE KEEL and THE
UNIVERSITY OF CALIFORNIA-LOS
ANGELES, INSTITUTE FOR SOCIETY
AND GENETICS, BIOSTUDIES LAB

NO. 2022-08612-CS
CIVIL ACTION

DECISION

I. INTRODUCTION

Petitioner, the Coroner of Chester County, Sophia Garcia-Jackson ("Coroner"), seeks review of the Final Determination of the Pennsylvania Office of Open Records ("OOR") permitting the disclosure of autopsy and toxicology reports for seventeen (17) named individuals requested by Respondent Terence Keel of the University of California-Los Angeles, Institute for Society and Genetics, Biostudies Lab, in Los Angeles, California (hereinafter "Requester" or "Dr. Keel"). According to the Coroner, the OOR committed an error of law when it granted Requester's appeal and failed to give effect to the exemption provisions of Pennsylvania's Right to Know Law, 65 Pa.C.S.A. §67.1302 ("RTKL"), the Coroner's Act, 16 P.S. §1201-B, et seq., and privacy concerns.

The Coroner appealed the OOR's Final Determination to this court on October 28, 2022. On November 14, 2022, the court issued a scheduling order establishing deadlines for certification of the record and briefing by the parties. On January 23, 2023, the court scheduled a hearing on the matter for February 13, 2023. Requester sought to continue the hearing by filing a motion for continuance on February 9, 2023, which was received by the court on February 10, 2023. The request was denied by the court on February 10, 2023, and the hearing proceeded as scheduled. At the

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hearing on February 13, 2023, the court did not take additional evidence, but heard argument on the Petition. Requester did not appear at the hearing.

Upon consideration of the certified record, the argument heard on February 13, 2023, and the parties' briefing, the court finds no error in the OOR's Final Determination. The present appeal is therefore denied.

II. FACTUAL BACKGROUND

On June 27, 2022, Dr. Keel submitted a request to the Coroner pursuant to Pennsylvania's RTKL seeking copies of autopsy and toxicology reports for seventeen (17) individuals identified by their name and dates of death (the "Request"). Following receipt and review of the Request, on August 2, 2022, the Coroner responded to Dr. Keel's Request by letter. She advised him that it was her position that the information sought was "was clearly excluded under the pertinent terms of the RTKL" and identified ten (10) provisions within the RTKL that she believed exempted the requested documents from production.

On August 2, 2022, Respondent filed an appeal of the Coroner's response to the OOR. The OOR did not conduct a hearing. On September 30, 2022, the OOR issued its Final Determination. The OOR concluded that the Request sought documents that were not exempt under the RTKL and which were required to be produced consistent with the provisions of the Coroner's Act. It granted Requester's appeal and directed the Coroner to provide copies of all available reports under 16 P.S. §1252-B of the Coroner's Act, upon receipt of the required fees for autopsy and toxicology reports. The OOR also noted that Requester could access the available reports under 16 P.S. §1236-B of the Coroner's Act from the Prothonotary's Office "to

the extent that the county coroner has complied with that statutory section.” (R.R., at Ex. 7, p. 6, n.6). This appeal then followed.

III. DISCUSSION

Standard of Review

Appeals from decisions of the OOR are reviewed *de novo* by the appropriate court. *Bowling v. Office of Open Records*, 621 Pa. 133, 75 A.3d 453 (Pa. 2013). The reviewing court's scope is plenary and it may consider evidence in addition to the administrative record as it deems necessary. See *Wishnefsky v. Pennsylvania Dept. of Corrections*, 144 A.3d 290, 294, n.7 (Pa. Cmwlth. 2016). The court has taken no additional evidence.

The RTKL and the Coroner's Act: Autopsy Reports and Toxicology Reports

The present appeal and its disposition involves the interplay between two Pennsylvania statutes, the RTKL and the Coroner's Act.

The RTKL

The RTKL “is designed to promote access to government information in order to prohibit secrets, permit scrutiny of the actions of public officials, and make public officials accountable for their actions.” *Ali v. Philadelphia City Planning Com'n*, 125 A.3d 92, 99 (Pa. Cmwlth. 2015). Under the Right to Know Law, 65 P.S. §67.302, records in possession of a local agency are presumed public unless exempt under the law or otherwise protected by a privilege, judicial order or decree. See 65 P.S. §67.305. Section 67.708(b) identifies the documents and information exempt from access by a requester. An agency bears the burden of proving the applicability of any cited exemptions by a preponderance of the evidence. See 65 P.S. §67.708(a)(1) and (b). Preponderance of the evidence has been defined as “such proof as leads the

fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence." See *Pa. State Troopers Ass'n v. Scolforo*, 18 A.3d 435, 439 (Pa. Cmwlth. 2011) (quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Cmwlth. 2010)). "All exemptions from disclosure . . . must be narrowly construed." *Ali, supra*.

At the center of this dispute is the exemption found at Section 67.708(b)(20) of the RTKL which addresses autopsy and similar post-mortem reports. The RTKL provides:

(20) An autopsy record of a coroner or medical examiner and any audiotape of a postmortem examination or autopsy, or a copy, reproduction or facsimile of an autopsy report, a photograph, negative or print, including a photograph or videotape of the body or any portion of the body of a deceased person at the scene of death or in the course of a postmortem examination or autopsy taken or made by or caused to be taken or made by the coroner or medical examiner

This exception, however, is not without limitation. The RTKL further provides that this exemption does not limit "the reporting of the name of the deceased individual and the cause and manner of death." *Id.*

The RTKL at Section 67.3101.1 recognizes the potential for conflict between it and other laws. It provides guidance for resolving such conflicts when they appear at Section 67.3101.1, which states:

[i]f the provisions of this act regarding access to records conflict with any other Federal or State law, the provisions of this act shall not apply.

RTKL, §67.3101.1.

The Coroner's Act

The Coroner's Act codifies the duties of a county coroner. As provided for in the Coroner's Act, a coroner is tasked with ascertaining the cause and manner of certain deaths. 16 P.S. §1218-B(a). If, after investigation, the coroner is unable to

determine the cause and manner of death, the coroner shall perform or order an autopsy on the body. 16 P.S. §1219-B.

In connection with the above duties, the Coroner's Act at Section 1236-B - "Records" - mandates

[i]n counties of the third, fourth, fifth, sixth, seventh and eighth classes, every coroner, within 30 days after the end of each year, 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.

Chester County is a county of the third class.

The Coroner's Act also sets for the fees that may be charged by a coroner for certain reports, including autopsy reports. Section 1252-B – "Fees for reports", provides

The coroner shall charge and collect a fee of \$500 for an autopsy report, \$100 for a toxicology report, \$100 for an inquisition or coroner's report, \$50 for a cremation or disposition authorization and other fees as may be established from time to time for other reports or documents requested by nongovernmental agencies in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased. The fees collected under this section shall be accounted for and paid to the county treasurer in accordance with section 1760 and shall be used to defray the expenses involved in the county complying with the training of coroners or coroner office personnel, as may be required or authorized by this or any other act.

16 P.S. §1252-B.

The OOR did not err in concluding that the autopsy and toxicology reports sought by Requester were not exempt from disclosure.

Under Pennsylvania law, a coroner's autopsy report is considered an official record or paper of the coroner that is required to be deposited with the Office of Prothonotary at the end of each year in accordance with 16 P.S. §1236-B. *Penn Jersey Advance, Inc. v. Grim*, 599 Pa. 534, 962 A.2d 632 (2009). Although the

Coroner is correct that the *Penn Jersey* Court in its decision did not address any conflict between the RTKL, which had just been enacted, and the Coroner's Act, the Supreme Court's conclusion that an autopsy record is an official record of the Coroner remains valid and undisturbed. Therefore, the question is not whether an autopsy report is an official record of the Coroner, and thus a public record - it is - but whether its disclosure is nonetheless exempt under the RTKL - it is not.

A conflict clearly exists between these two statutes as it relates to the disclosure of autopsy and toxicology reports of a decedent. Put simply, the Coroner's Act permits the disclosure of autopsy reports and toxicology reports for a fee and as official records of a coroner and the RTKL does not. However, the RTKL makes clear that in the case of a conflict, such as found here, the Coroner's Act controls the release of the requested records. The Coroner's exemption argument thus fails.

The Coroner alternatively argues that she has discretion under the Coroner's Act and her interpretation thereof to challenge the right of Requester to obtain these documents. According to the Coroner, Section 1252-B of the Coroner's Act, which allows the setting of fees for reports, provides the Coroner with discretion when responding to requests for certain information. This argument, however, was rejected by the Supreme Court in *Hearst Television, Inc. v. Norris*, 617 Pa. 602 (2017).

In *Hearst*, the Court analyzed a prior version of the Coroner's Act as it relates to fees for reports. The *Hearst* Court held that there "is no mention ... of discretion in [then Section 1236.1(c)]. By its plain terms, Section 1236.1 allows the coroner to charge fees for records, but does not afford the coroner any discretion with regard to releasing such records." *Hearst*, 617 Pa. at 617, 54 A.3d at 32. In sum, the *Hearst* Court concluded that the Coroner's Act provides two (2) methods for public access to

certain documents: (1) a coroner's year end archiving of all "official records and papers" with the Prothonotary or (2) rapid access for those who do not wish to wait and are willing to pay a fee. *Id.* at 318

The Coroner suggests that the court should not rely on the decisions in *Penn Jersey* or *Hearst* because each pre-date the 2018 amendments to the Coroner's Act. According to the Coroner, the "fee for reports" provision of the Coroner's Act is now "entirely different" rendering the Supreme Court's prior decisions on the issue to be unreliable authority. The court disagrees.

First, the court does not view the 2018 amendments to the Coroner's Act and the provisions at issue here to be significant or dispositive. The provision relating to the setting of fees for reports, such as autopsy and toxicology reports, at the time of *Penn Jersey* and *Hearst* provided:

(c) The coroner may charge and collect a fee of up to one hundred dollars (\$100) for each autopsy report, up to fifty dollars (\$50) for each toxicology report, up to fifty dollars (\$50) for each inquisition or coroner's report and such other fees as may be established from time to time for other reports and documents requested by nongovernmental agencies.

The amended provision now provides as follows:

The coroner shall charge and collect a fee of \$500 for an autopsy report, \$100 for a toxicology report, . . . and other fees as may be established from time to time for other reports or documents requested by nongovernmental agencies in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased.

The court notes that the County Code Comments following the newest provision state:

COUNTY CODE COMMENTS

This section is analogous to County Code Section 1236.1(c) and SCCC Section 1235.1 (c), except that the fees for reports have been increased.¹ [PA Local Gov't Comm. <<http://www.lgc.state.pa.us>>, Act

154 of 2018 (SB 1005, PN 2026) Section-by-Section Commentary, 2017-18 Sess. (2018)]

1 Amendment A07280 removes a new subsection which would have specified that the section should not be construed as authorizing disclosure of a record exempt from public access under Act 3 of 2008, known as the Right-to-Know Law.

The General Assembly had the opportunity to address the issue of exemptions under the RTKL and the Coroner's Act but chose not to do so. See *Verizon Pennsylvania Inc v. Commonwealth*, 127 A.3d 745, 757 (Pa. 2015) (noting "one of the most venerable and fundamental tenets of statutory interpretation is that, whenever our court has interpreted the language of the statute, and the General Assembly subsequently amends or reenacts that statute without changing that language, it must be presumed that the General Assembly intends that our courts' interpretation become part of the subsequent legislative enactment."). Under a fair reading of the above provision, neither the reference to fee setting by the Coroner for "nongovernmental agencies" in the predecessor statute nor the new language limiting requests for other reports to "nongovernmental agencies in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased" changes the public nature of autopsy reports (Section 1236-B) or creates discretion on the Coroner where the Supreme Court has already determined there is none.

The Coroner's next challenge to the OOR's Final Determination centers upon the exemption under the RTKL for medical and drug test reports as set forth in Section 67.708(b)(5). The RTKL provides as follows:

(b) Exceptions.--Except as provided in subsections (c) and (d), the following are exempt from access by a requester under this act:

(5) A record of an individual's medical, psychiatric or psychological history or disability status, including an evaluation, consultation,

prescription, diagnosis or treatment; results of tests, including drug tests; enrollment in a health care program or program designed for participation by persons with disabilities, including vocation rehabilitation, workers' compensation and unemployment compensation; or related information that would disclose individually identifiable health information.

RTKL, §67.708(b)(5).

The problem with this argument is once again one of conflict and thus the result is the same. As was the case with the autopsy report exemption, to the extent the RTKL prohibits the disclosure of medical records and information and the Coroner's Act does not, per the RTKL, the Coroner's Act prevails.

Even if the court did not find the statutes to be in conflict, it does not agree that the type of records referenced in what the Coroner identifies as the "medical record and drug test exemption" pertain to the records at issue here. The exemption set forth in Section 708(b)(5) reasonably refers to the medical records of someone that is living. Consistent therewith, this provision references records regarding diagnoses, treatment, enrollment in health care programs and the like. Furthermore, if this provision was meant to include autopsy reports and related reports of a decedent, the statutory language regarding the records of a coroner, would be unnecessary and surplusage. It is apparent to the court that the General Assembly considered these two categories of medical documents (those records related to the living and deceased persons) to be separate and distinct records for consideration.

Finally, as for the Coroner's privacy arguments, the court recognizes the concerns proffered by the Coroner and the protections offered under HIPAA and other similar privacy laws. However, the coroner's burden of demonstrating an exemption was simply not met here. Furthermore, the court notes that while the Coroner, per the Affidavit attached to the Petition, acknowledged reaching out to the District Attorney's

office (implicating the criminal investigation exemption) about this matter, no similar effort is set forth regarding any attempts to involve next of kin in this matter.

In summary, the Supreme Court has twice addressed third party requests for autopsy reports and each time has concluded that the production of the same are not violative of the privacy rights of individuals. The appeal is thus denied.

An appropriate Order follows.

BY THE COURT:

Date: March 1, 2023

Jeffrey R. Sommer
Jeffrey R. Sommer, J.

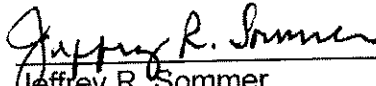
CHESTER COUNTY OFFICE OF THE CORONER	:	IN THE COURT OF COMMON PLEAS
	:	
	:	CHESTER COUNTY, PENNSYLVANIA
VS.	:	
	:	
TERENCE KEEL and THE UNIVERSITY OF CALIFORNIA-LOS ANGELES, INSTITUTE FOR SOCIETY AND GENETICS, BIOSTUDIES LAB	:	NO. 2022-08612-CS
	:	CIVIL ACTION

ORDER

AND NOW, this *1st* day of *March*, 2023, upon review and consideration of the Coroner of Chester County's Petition for Review/Appeal of Final Determination of the Pennsylvania Office of Open Records, Respondent's Answer thereto, and argument held on February 13, 2023, it is hereby ORDERED and DECREED the Petition is DENIED.

The Final Determination of the Office of Open Records is hereby AFFIRMED.

BY THE COURT:



 Jeffrey R. Sommer, J.

EXHIBIT "C"

CHESTER COUNTY OFFICE OF THE
CORONER

IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENN

Filed April 27, 2023 by
PROTHONOTARY
27 APR 2023 12:25 AM



VS.

TERENCE KEEL and THE
UNIVERSITY OF CALIFORNIA-LOS
ANGELES, INSTITUTE FOR SOCIETY
AND GENETICS, BIOSTUDIES LAB

NO. 2022-08612-CS
CIVIL ACTION

OPINION PURSUANT TO Pa.R.A.P. 1925(a)

I. PROCEDURAL SETTING

This matter comes before the Court as the result of an appeal by the Chester County Coroner ("Appellant" or the "Coroner") of the trial court's Decision and Order of March 1, 2023, denying the Coroner's Petition for Review/Appeal of Final Determination of the Pennsylvania Office of Open Records ("OOR") (the "Final Determination"). The Final Determination permitted the disclosure of autopsy and toxicology reports requested by Appellees Terence Keel ("Dr. Keel") and the University of California-Los Angeles, Institute for Society and Genetics, Biostudies Lab (collectively "Appellees" or "Requester").

By Order dated March 14, 2023, the trial court directed Appellant to file a Concise Statement of matters complained of on appeal. Appellant filed a Concise Statement on March 31, 2023. The matter is now ripe for review.

II. FACTS

On June 27, 2022, Dr. Keel submitted a request to the Coroner pursuant to Pennsylvania's Right to Know Law, 65 P.S. §67.101, *et. seq.* ("RTKL") seeking copies of autopsy and toxicology reports for seventeen (17) individuals identified by name and dates of death (the "Request"). Following receipt and review of the Request, on August 2, 2022, the Coroner responded to Dr. Keel's Request by letter. She advised him that

It was her position that the information sought was "was clearly excluded under the pertinent terms of the RTKL" and identified ten (10) provisions within the RTKL that she believed exempted the requested documents from production.

On August 2, 2022, Appellees filed an appeal of the Coroner's response to the OOR. The OOR did not conduct a hearing. On September 30, 2022, the OOR issued its Final Determination. The OOR concluded that the Request sought documents that were not exempt under the RTKL and which were required to be produced consistent with the provisions of the Coroner's Act. It granted Appellees' appeal and directed the Coroner to provide copies of all available reports under 16 P.S. §1252-B of the Coroner's Act, upon receipt of the required fees for autopsy and toxicology reports. The OOR also noted that Requester could access the available reports under 16 P.S. §1236-B of the Coroner's Act from the Prothonotary's Office "to the extent that the county coroner has complied with that statutory section." (R.R., at Ex. 7, p. 6, n.6).

On October 28, 2022, the Coroner appealed to the trial court seeking review of the Final Determination. On November 14, 2022, the trial court issued a scheduling order establishing deadlines for certification of the record and briefing by the parties. On January 23, 2023, the trial court scheduled a hearing on the matter for February 13, 2023. Appellees sought to continue the hearing by filing a motion for continuance on February 9, 2023, which was received by the trial court on February 10, 2023. The request was denied by the court on February 10, 2023, and the hearing proceeded as scheduled. At the hearing, the trial court did not take additional evidence, but heard argument on the Petition. Requester did not appear at the hearing.

III. ISSUE PRESENTED

Did the trial court properly conclude that the requested documents were not protected from disclosure under Pennsylvania's RTKL and Coroner's Act?

IV. HOLDING

Yes, the trial court properly denied the Coroner's appeal of the Final Determination.

V. RATIONALE

Upon further review, the trial court believes that its ten-page Decision and Order of March 1, 2023 adequately explains the court's reasoning and conclusions and addresses the main errors identified in the Concise Statement. In the interest of completeness, however, the trial court will address further a few of the issues raised in the Concise Statement.

Alleged Errors 1-4, 7-8

At Alleged Errors 1-4 and 7-8, Appellant again sets forth her reasoning as to why she believes the requested documents are exempt from disclosure, including her interpretation of the interplay between the RTKL and the Coroner's Act. The trial court considered those arguments, but properly concluded following its review of the plain language of the two applicable statutes and Pennsylvania decisional law that the Coroner's position was not sustainable. The trial court's analysis and conclusions are found at pp. 4-10 of its Decision.

The Coroner also suggests in her Concise Statement that the trial court erred in failing to acknowledge the significance of the Verification of Death form her office deposits annually with the Prothonotary. According to the Coroner, this is the "official

record" of the Coroner's Office and all that is required to be disclosed. The trial court disagrees.

First, the Coroner failed to provide support for the argument that the created "Verification Forms" replace an autopsy report as the Coroner's only "official record." Second, although the Coroner may have created and prepared a Verification of Death form for reporting purposes, Pennsylvania case law and the provisions of the Coroner's Act remain consistent that autopsy reports are nonetheless "official records" of the Coroner available for inspection.

Alleged Error 5

As the trial court understands this alleged error, the Coroner contends that the requested autopsy and toxicology reports are exempt from disclosure under the medical records exemption under the RTKL. The Coroner cites at Paragraph 5 of the Concise Statement the definition of "autopsy," within the Coroner's Act, which includes certain phrases and analysis related to medical matters. (Concise, at 5). Thus, the Coroner argues, autopsy reports must be exempt under the medical records exemption of the RTKL as well. The trial court considers it to demonstrate the contrary.

As the trial court explained at pp. 8-9 of its Decision, consideration of the medical records exemption requires the same analysis of the two statutes at issue as does any analysis of the autopsy exemption. To the extent the RTKL prohibits the disclosure of medical records and information and the Coroner's Act does not, per the RTKL, the Coroner's Act prevails. Furthermore, by highlighting the fact that the definition of "autopsy" in the Coroner's Act includes medical analysis etc., the Coroner strengthens the conclusion reached by the trial court because the case law is clear that autopsy reports, as official records of a coroner, are not exempt from disclosure.

Alleged Error 6

As for the Coroner's argument that the trial court failed to recognize the restrictions on disclosure imposed by HIPAA. The trial court concluded that the Coroner had failed to demonstrate, as was her burden, that HIPAA prevented the requested disclosures. The trial court noted that although efforts were made to involve the district attorneys' office in assessing the propriety of the request against any applicable exemptions, it did not appear that a similar inquiry had been made of family members of those whose records were requested. The trial court finds no error in its conclusion.

I respectfully request that the appellate court affirm the trial court's Decision and Order entered on March 1, 2023.

All of which is respectfully submitted,

BY THE COURT:

Date: April 27, 2023

Jeffrey R. Sommer
Jeffrey R. Sommer, J.

EXHIBIT "D"



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
TERENCE KEEL AND THE UNIVERSITY	:	
OF CALIFORNIA-LOS ANGELES,	:	
INSTITUTE FOR SOCIETY AND	:	
GENETICS, BIOSTUDIES LAB,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2022-1801
	:	
CHESTER COUNTY OFFICE OF THE	:	
CORONER,	:	
Respondent	:	

INTRODUCTION

Terence Keel and the University of California-Los Angeles, Institute for Society and Genetics, Biostudies Lab (collectively, the “Requester”) submitted a request (“Request”) to the Chester County Office of the Coroner (“Office”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking autopsy and toxicology reports. The Office denied the Request arguing, among other things, that the records are exempt autopsy records, and the Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted**, and the Office is required to take additional action as directed.

FACTUAL BACKGROUND

On June 27, 2022, the Request was filed, seeking “the complete autopsy and toxicology reports” for seventeen individuals. On July 1, 2022, the Office invoked a thirty-day extension during which to respond to the Request. 65 P.S. § 67.902(b). On August 2, 2022, the Office denied the Request, arguing that the Office has no duty to create a record, 65 P.S. § 67.705, and that the records are exempt medical records, autopsy records, criminal investigatory records, and noncriminal investigatory records, 65 P.S. §§ 67.708(b)(5), (20), (16), and (17).

On August 2, 2022, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Office to notify any third parties of their ability to participate in this appeal.¹ 65 P.S. § 67.1101(c).

On August 26, 2022, the Office submitted a position statement arguing that the Office is subject to the Health Insurance Portability and Accountability Act (“HIPAA”) and that the records are exempt under Section 708(b)(20) of the RTKL. The Office further argues that the records contain “very private and confidential medical records” subject to exemption pursuant to Sections 708(b)(5), (16) and (17) of the RTKL. Finally, the Office argues that the Pennsylvania Supreme Court’s decision in *Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632 (Pa. 2009) is “not controlling with respect to the case at bar.” In support of its argument, the Office submitted the attestation of Jesse Poole-Gulick, First Deputy Coroner for the Office.²

On August 26, 2022, the Requester submitted a position statement, arguing, among other things, that autopsy and toxicology reports “must be made available for inspection.”

¹ The Office attests that it has “sent notice to the Chester County District Attorney’s Office and the County Prison/County Solicitor regarding any third party rights that such agencies might have with respect to the requests for information but said parties have chosen not to intervene in this matter.” See Poole-Gulick Attestation at ¶7.

² On September 9, 2022, the Office submitted a Memorandum of Law correcting typographical errors submitted in its August 26, 2022 submission.

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* Here, neither party requested a hearing.

The Office is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

1. Autopsy and toxicology reports are not exempt under the RTKL and HIPAA.

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt from disclosure. 65 P.S. § 67.708(a)(1). In the present case, the Office first argues that the autopsy reports are “prepared by a forensic pathologist (a medical doctor) under contract with the County and subject to HIPAA”. Most notably, the Office has not submitted argument or evidence to demonstrate how the Office falls within the definition of “covered entity” under HIPAA and the Privacy Rule.³ *See Segelbaum and the York Daily Record v. York County*, OOR Dkt. AP 2017-1459, 2017 PA O.O.R.D. LEXIS 1332 (finding that the Office is not a covered entity under HIPAA), *rev'd in part on other grounds, County of York v. Segelbaum*, 2017-SU-002770 (York Co. Com. Pl. April 4, 2018) (confirming that neither York County nor the Office is a covered entity under HIPAA). Furthermore, while the OOR notes that HIPAA provides for the confidentiality of a deceased individual’s “protected health information” for a period of 50 years following the individual’s death, this limitation pertains only to protected health information of covered entities. *See* 45 C.F.R. § 164.502(f) (“A *covered entity* must comply with the requirements of this subpart with respect to the protected health information of a deceased individual for a period of 50 years following the death of the individual) (emphasis added).

Finally, the Office suggests that it “makes other information available to the ‘next of kin’ or in response to a subpoena in a legal action in which the interests of the decedent are being represented and as appropriate in the exercise of [the Coroner’s] discretion”; however, apart from the Coroner’s attestation and citing to Section 1217-B, the Office provides no case citation specifically excluding this type of information. To the contrary, the Pennsylvania Supreme Court has determined that autopsy reports constitute “official records and papers” of the coroner which,

³ The Office’s response to the Request does not address the definition of a “covered entity” within HIPAA in any meaningful way.

in accordance with the Coroner's Act, must be deposited with the county prothonotary for inspection by the public. *Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632, 636-37 (Pa. 2009) ("It is clear from these sections of the Coroner's Act that conducting autopsies is one of the official duties of a coroner. It follows logically that a coroner's resulting autopsy reports constitute 'official records and papers' within the meaning of Section 1251 [of the Coroner's Act]") (internal citations omitted);⁴ *see also* 16 P.S. § 1236-B ("In counties of the third, fourth, fifth, sixth, seventh and eighth classes, every coroner, within thirty (30) days after the end of each year, *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.")⁵ Likewise, the Court has concluded that the Coroner's Act does not provide coroners with discretion to withhold records such as autopsy and toxicology reports. *Hearst TV, Inc. v. Norris*, 54 A.3d 23, 32-33 (Pa. 2012). Accordingly, the Office has failed to establish that the requested autopsy and toxicology reports are protected from disclosure by HIPAA and the Privacy Rule; therefore, they must be disclosed to the Requester.

2. The Office failed to meet its burden that autopsy and toxicology reports are subject to any RTKL exemptions

The Office also argues that the autopsy and toxicology reports are exempt under Sections 708(b)(5), (b)(16), (b)(17) and (b)(20) of the RTKL. 65 P.S. §§ 67.708(b)(5) (b)(16)-(17), (b)(20). However, for the reasons set forth above, the Coroner's Act makes the reports subject to public access, as such the RTKL yields to the Act. *See* 65 P.S. § 67.306 ("Nothing in this act shall supersede or modify the public or nonpublic nature of a record or document established in ... State

⁴ The Office asks the OOR to not consider the *Penn Jersey* case because "[i]t did not address the Right to Know Law and was a very different case from this case before the OOR." As *Penn Jersey* has not been explicitly overturned, we find this argument unpersuasive.

⁵ Chester County is a county of the third class. The OOR notes that the Requester provided the dates of deaths of the decedents and all were the years 2021 or prior; therefore, the autopsy reports should have been deposited in the County Prothonotary.

law....”); 65 P.S. § 67.3101.1 (“If the provisions of th[e RTKL] regarding access to records conflict with any other ... state law, the provisions of th[e RTKL] shall not apply”).

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the Office is required to provide copies of all available reports under 16 P.S. § 1252-B, upon receipt of the fees for autopsy and toxicology reports set forth in that section.⁶ This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Chester County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁷ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 30, 2022

/s/ Lyle Hartranft
Lyle Hartranft, Esq.
Appeals Officer

Sent via email to: Terence Keel;
Sophia Garcia-Jackson;
John Carnes, Jr., Esq.

⁶ The Requester may also access the available reports under 16 P.S. § 1236-B from the County Prothonotary’s office, to the extent that the County Coroner has complied with that statutory section.

⁷ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

EXHIBIT "E"

Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 65 P.S. Public Officers (Refs & Annos)
Chapter 3A. Right-to-Know Law (Refs & Annos)
Chapter 1. Preliminary Provisions

65 P.S. § 67.101

§ 67.101. Short title

Effective: February 14, 2008

Currentness

This act shall be known and may be cited as the Right-to-Know Law.

Credits

2008, Feb. 14, P.L. 6, No. 3, § 101, imd. effective.

Notes of Decisions (95)

65 P.S. § 67.101, PA ST 65 P.S. § 67.101

Current through 2018 Regular Session Act 76

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Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 65 P.S. Public Officers (Refs & Annos)
Chapter 3A. Right-to-Know Law (Refs & Annos)
Chapter 7. Procedure

65 P.S. § 67.708

§ 67.708. Exceptions for public records

Effective: January 1, 2009
Currentness

(a) Burden of proof.--

- (1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.
- (2) The burden of proving that a legislative record is exempt from public access shall be on the legislative agency receiving a request by a preponderance of the evidence.
- (3) The burden of proving that a financial record of a judicial agency is exempt from public access shall be on the judicial agency receiving a request by a preponderance of the evidence.

(b) Exceptions.--Except as provided in subsections (c) and (d), the following are exempt from access by a requester under this act:

(1) A record, the disclosure of which:

(i) would result in the loss of Federal or State funds by an agency or the Commonwealth; or

(ii) would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.

(2) A record maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that, if disclosed, would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity or a record that is designated classified by an appropriate Federal or State military authority.

(3) A record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system, which may include:

(i) documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act;

(ii) lists of infrastructure, resources and significant special events, including those defined by the Federal Government in the National Infrastructure Protections, which are deemed critical due to their nature and which result from risk analysis; threat assessments; consequences assessments; antiterrorism protective measures and plans; counterterrorism measures and plans; and security and response needs assessments; and

(iii) building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems, structural elements, technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage and gas systems.

(4) A record regarding computer hardware, software and networks, including administrative or technical records, which, if disclosed, would be reasonably likely to jeopardize computer security.

(5) A record of an individual's medical, psychiatric or psychological history or disability status, including an evaluation, consultation, prescription, diagnosis or treatment; results of tests, including drug tests; enrollment in a health care program or program designed for participation by persons with disabilities, including vocation rehabilitation, workers' compensation and unemployment compensation; or related information that would disclose individually identifiable health information.

(6)(i) The following personal identification information:

(A) A record containing all or part of a person's Social Security number, driver's license number, personal financial information, home, cellular or personal telephone numbers, personal e-mail addresses, employee number or other confidential personal identification number.

(B) A spouse's name, marital status or beneficiary or dependent information.

(C) The home address of a law enforcement officer or judge.

(ii) Nothing in this paragraph shall preclude the release of the name, position, salary, actual compensation or other payments or expenses, employment contract, employment-related contract or agreement and length of service of a public official or an agency employee.

(iii) An agency may redact the name or other identifying information relating to an individual performing an undercover or covert law enforcement activity from a record.

(7) The following records relating to an agency employee:

(i) A letter of reference or recommendation pertaining to the character or qualifications of an identifiable individual, unless it was prepared in relation to the appointment of an individual to fill a vacancy in an elected office or an appointed office requiring Senate confirmation.

(ii) A performance rating or review.

(iii) The result of a civil service or similar test administered by a Commonwealth agency, legislative agency or judicial agency. The result of a civil service or similar test administered by a local agency shall not be disclosed if restricted by a collective bargaining agreement. Only test scores of individuals who obtained a passing score on a test administered by a local agency may be disclosed.

(iv) The employment application of an individual who is not hired by the agency.

(v) Workplace support services program information.

(vi) Written criticisms of an employee.

(vii) Grievance material, including documents related to discrimination or sexual harassment.

(viii) Information regarding discipline, demotion or discharge contained in a personnel file. This subparagraph shall not apply to the final action of an agency that results in demotion or discharge.

(ix) An academic transcript.

(8)(i) A record pertaining to strategy or negotiations relating to labor relations or collective bargaining and related arbitration proceedings. This subparagraph shall not apply to a final or executed contract or agreement between the parties in a collective bargaining procedure.

(ii) In the case of the arbitration of a dispute or grievance under a collective bargaining agreement, an exhibit entered into evidence at an arbitration proceeding, a transcript of the arbitration or the opinion. This subparagraph shall not apply to the final award or order of the arbitrator in a dispute or grievance procedure.

(9) The draft of a bill, resolution, regulation, statement of policy, management directive, ordinance or amendment thereto prepared by or for an agency.

(10)(i) A record that reflects:

(A) The internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another

agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.

(B) The strategy to be used to develop or achieve the successful adoption of a budget, legislative proposal or regulation.

(ii) Subparagraph (i)(A) shall apply to agencies subject to 65 Pa.C.S. Ch. 7 (relating to open meetings) in a manner consistent with 65 Pa.C.S. Ch. 7. A record which is not otherwise exempt from access under this act and which is presented to a quorum for deliberation in accordance with 65 Pa.C.S. Ch. 7 shall be a public record.

(iii) This paragraph shall not apply to a written or Internet application or other document that has been submitted to request Commonwealth funds.

(iv) This paragraph shall not apply to the results of public opinion surveys, polls, focus groups, marketing research or similar effort designed to measure public opinion.

(11) A record that constitutes or reveals a trade secret or confidential proprietary information.

(12) Notes and working papers prepared by or for a public official or agency employee used solely for that official's or employee's own personal use, including telephone message slips, routing slips and other materials that do not have an official purpose.

(13) Records that would disclose the identity of an individual who lawfully makes a donation to an agency unless the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public official or employee of the agency, including lists of potential donors compiled by an agency to pursue donations, donor profile information or personal identifying information relating to a donor.

(14) Unpublished lecture notes, unpublished manuscripts, unpublished articles, creative works in progress, research-related material and scholarly correspondence of a community college or an institution of the State System of Higher Education or a faculty member, staff employee, guest speaker or student thereof.

(15)(i) Academic transcripts.

(ii) Examinations, examination questions, scoring keys or answers to examinations. This subparagraph shall include licensing and other examinations relating to the qualifications of an individual and to examinations given in primary and secondary schools and institutions of higher education.

(16) A record of an agency relating to or resulting in a criminal investigation, including:

(i) Complaints of potential criminal conduct other than a private criminal complaint.

- (ii) Investigative materials, notes, correspondence, videos and reports.
- (iii) A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.
- (iv) A record that includes information made confidential by law or court order.
- (v) Victim information, including any information that would jeopardize the safety of the victim.
- (vi) A record that, if disclosed, would do any of the following:
 - (A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.
 - (B) Deprive a person of the right to a fair trial or an impartial adjudication.
 - (C) Impair the ability to locate a defendant or codefendant.
 - (D) Hinder an agency's ability to secure an arrest, prosecution or conviction.
 - (E) Endanger the life or physical safety of an individual.

This paragraph shall not apply to information contained in a police blotter as defined in 18 Pa.C.S. § 9102 (relating to definitions) and utilized or maintained by the Pennsylvania State Police, local, campus, transit or port authority police department or other law enforcement agency or in a traffic report except as provided under 75 Pa.C.S. § 3754(b)(relating to accident prevention investigations).

- (17) A record of an agency relating to a noncriminal investigation, including:
 - (i) Complaints submitted to an agency.
 - (ii) Investigative materials, notes, correspondence and reports.
 - (iii) A record that includes the identity of a confidential source, including individuals subject to the act of December 12, 1986 (P.L. 1559, No. 169),¹ known as the Whistleblower Law.
 - (iv) A record that includes information made confidential by law.

(v) Work papers underlying an audit.

(vi) A record that, if disclosed, would do any of the following:

(A) Reveal the institution, progress or result of an agency investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court.

(B) Deprive a person of the right to an impartial adjudication.

(C) Constitute an unwarranted invasion of privacy.

(D) Hinder an agency's ability to secure an administrative or civil sanction.

(E) Endanger the life or physical safety of an individual.

(18)(i) Records or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings.

(ii) This paragraph shall not apply to a 911 recording, or a transcript of a 911 recording, if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure.

(19) DNA and RNA records.

(20) An autopsy record of a coroner or medical examiner and any audiotape of a postmortem examination or autopsy, or a copy, reproduction or facsimile of an autopsy report, a photograph, negative or print, including a photograph or videotape of the body or any portion of the body of a deceased person at the scene of death or in the course of a postmortem examination or autopsy taken or made by or caused to be taken or made by the coroner or medical examiner. This exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death.

(21)(i) Draft minutes of any meeting of an agency until the next regularly scheduled meeting of the agency.

(ii) Minutes of an executive session and any record of discussions held in executive session.

(22)(i) The contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by an agency relative to the following:

(A) The leasing, acquiring or disposing of real property or an interest in real property.

(B) The purchase of public supplies or equipment included in the real estate transaction.

(C) Construction projects.

(ii) This paragraph shall not apply once the decision is made to proceed with the lease, acquisition or disposal of real property or an interest in real property or the purchase of public supply or construction project.

(23) Library and archive circulation and order records of an identifiable individual or groups of individuals.

(24) Library archived and museum materials, or valuable or rare book collections or documents contributed by gift, grant, bequest or devise, to the extent of any limitations imposed by the donor as a condition of the contribution.

(25) A record identifying the location of an archeological site or an endangered or threatened plant or animal species if not already known to the general public.

(26) A proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability; or the identity of members, notes and other records of agency proposal evaluation committees established under 62 Pa.C.S. § 513 (relating to competitive sealed proposals).

(27) A record or information relating to a communication between an agency and its insurance carrier, administrative service organization or risk management office. This paragraph shall not apply to a contract with an insurance carrier, administrative service organization or risk management office or to financial records relating to the provision of insurance.

(28) A record or information:

(i) identifying an individual who applies for or receives social services; or

(ii) relating to the following:

(A) the type of social services received by an individual;

(B) an individual's application to receive social services, including a record or information related to an agency decision to grant, deny, reduce or restrict benefits, including a quasi-judicial decision of the agency and the identity of a caregiver or others who provide services to the individual; or

(C) eligibility to receive social services, including the individual's income, assets, physical or mental health, age, disability, family circumstances or record of abuse.

(29) Correspondence between a person and a member of the General Assembly and records accompanying the correspondence which would identify a person that requests assistance or constituent services. This paragraph shall not apply to correspondence between a member of the General Assembly and a principal or lobbyist under 65 Pa.C.S. Ch. 13A (relating to lobbying disclosure).

(30) A record identifying the name, home address or date of birth of a child 17 years of age or younger.

(c) Financial records.--The exceptions set forth in subsection (b) shall not apply to financial records, except that an agency may redact that portion of a financial record protected under subsection (b)(1), (2), (3), (4), (5), (6), (16) or (17). An agency shall not disclose the identity of an individual performing an undercover or covert law enforcement activity.

(d) Aggregated data.--The exceptions set forth in subsection (b) shall not apply to aggregated data maintained or received by an agency, except for data protected under subsection (b)(1), (2), (3), (4) or (5).

(e) Construction.--In determining whether a record is exempt from access under this section, an agency shall consider and apply each exemption separately.

Credits

2008, Feb. 14, P.L. 6, No. 3, § 708, effective Jan. 1, 2009.

Notes of Decisions (270)

Footnotes

1 43 P.S. § 1421 et seq.

65 P.S. § 67.708, PA ST 65 P.S. § 67.708

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Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 65 P.S. Public Officers (Refs & Annos)
Chapter 3A. Right-to-Know Law (Refs & Annos)
Chapter 31. Miscellaneous Provisions

65 P.S. § 67.3101.1

§ 67.3101.1. Relation to other laws

Effective: January 1, 2009

Currentness

If the provisions of this act regarding access to records conflict with any other Federal or State law, the provisions of this act shall not apply.

Credits

2008, Feb. 14, P.L. 6, No. 3, § 3101.1, effective Jan. 1, 2009.

Notes of Decisions (2)

65 P.S. § 67.3101.1, PA ST 65 P.S. § 67.3101.1
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EXHIBIT "F"

character from, nor shall any such gratuity, gift or donation be made by any person, association or corporation.

(c) **Contract or agreement void.**—Any contract or agreement, whatsoever, made in violation of the provisions of this section, shall be utterly void and of no effect, in law or in equity, and is hereby declared to be contrary to public policy.

(d) **Outside employment.**—Notwithstanding any other provision of this section, unless otherwise prohibited by resolution or ordinance of the county, an individual who is employed as a sheriff, deputy sheriff, detective or other county police officer may engage in outside employment, including employment in security, during a period in which the individual is not scheduled to perform nor performing duty as a county employee. The county is not liable for any damage resulting from an act of an individual acting under this subsection.

1955, Aug. 9, P.L. 323, No. 130, § 1210-A, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1211-A. Penalties

A sheriff, deputy sheriff or other county police officer or any other official of the county or any person, association or corporation, who violates the provisions of sections 1206-A, 1209-A or 1210-A¹ commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not less than \$100 nor more than \$500, or to undergo imprisonment for not less than 90 days nor more than two years, or both.

1955, Aug. 9, P.L. 323, No. 130, § 1211-A, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

¹ 16 P.S. §§ 1206-A, 1209-A or 1210-A.

§ 1212-A. Construction

Nothing contained in section 1206-A or 1210-A¹ shall be construed to prohibit:

(1) The appointment, employment or compensation by any county in the manner expressly provided by law of:

- (i) Night watchmen.
- (ii) Railroad police.
- (iii) Bank police.
- (iv) Payroll police.
- (v) Special policemen to police and protect cemeteries and grounds and buildings open to the public, or to enforce laws for the prevention of cruelty to persons or animals.
- (vi) Fire police whose only duty shall be to direct traffic and maintain order to, at or from fires.
- (vii) Police or guards employed by nonprofit corporations or organizations.

(2) The payment by any person, association or corporation of fees or compensation for county police or

other peace officers assigned to exhibitions, athletic contests or other recreational activities.

1955, Aug. 9, P.L. 323, No. 130, § 1212-A, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

¹ 16 P.S. § 1206-A or 1210-A.

§ 1213-A. Chief deputy sheriff to act as sheriff in case of vacancy

If a sheriff is legally removed from office or dies or resigns before the expiration of the term for which the sheriff was commissioned, the chief deputy sheriff shall execute the office of sheriff and perform all things thereunto appertaining and receive and retain the compensation provided by law for sheriffs until another sheriff is commissioned and notice thereof is given to the chief deputy sheriff.

1955, Aug. 9, P.L. 323, No. 130, § 1213-A, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1214-A. Sheriff to keep docket

Every sheriff shall provide and keep in office a book or books in which the sheriff shall enter all writs that may be received and the proceedings thereon, and, at the expiration of the term of office, such book or books shall be deposited in the office of the prothonotary for the inspection of all persons interested therein.

1955, Aug. 9, P.L. 323, No. 130, § 1214-A, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1215-A. Not to exercise office until commission granted and recorded; penalty

No person elected or appointed to the office of sheriff shall execute any of the duties of office before a commission shall have been duly granted to the sheriff by the Governor and properly recorded, under a penalty of imprisonment for a term not exceeding six months, at the discretion of the court of common pleas. Such person shall nevertheless be liable to any person injured by any acts done by the sheriff under color of such office.

1955, Aug. 9, P.L. 323, No. 130, § 1215-A, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

ARTICLE XII-B. CORONER

(a) PRELIMINARY PROVISIONS

§ 1201-B. Applicability

Except as otherwise expressly provided under this article, this article shall apply to counties of the second class, second class A and third through eighth class.

1955, Aug. 9, P.L. 323, No. 130, § 1201-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

16 P.S. § 1202-B

§ 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, 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.

"Coroner." An elected or appointed coroner or an elected or appointed medical examiner.

"Staff." The term includes an individual in the coroner's office who engages in activities relating to death investigation. The term may refer to a medical investigator, forensic technician, laboratory director, forensic supervisor, forensic investigator, scientist or autopsy or histology technician.

1955, Aug. 9, P.L. 323, No. 130, § 1202-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

(b) GENERAL PROVISIONS

§ 1211-B. Deputies

The coroner may appoint a deputy to act in the coroner's place and may appoint staff to positions established in accordance with section 1623¹ as the coroner determines. A deputy shall have the same powers as the coroner.

1955, Aug. 9, P.L. 323, No. 130, § 1211-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

¹ 16 P.S. § 1623.

§ 1212-B. Duties regarding county morgues

(a) **Coroner.**—The coroner of a county in which a county morgue is established shall:

- (1) Make general rules and regulations for the morgue's operation and control.
- (2) Appoint a suitable individual in charge of the morgue. An individual appointed under this paragraph may be removed at the pleasure of the coroner.

(b) **Salary board.**—The salary board shall determine the number of individuals appointed under subsection (a)(2) and the individual's salaries.

1955, Aug. 9, P.L. 323, No. 130, § 1212-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1213-B. Removal of bodies to morgue

(a) **Unidentified or unclaimed body.**—When the body of a deceased person is unidentified or unclaimed, the proper person found within the county, the body shall be removed to the county morgue or, in a county of the third through eighth class, to a facility serving in lieu of a county morgue. If necessary, the coroner shall have the body properly embalmed or prepared for preservation for the length of time the coroner determines is required to determine the deceased's identity, the identity of a party responsible for the deceased and the cause and manner of death. The body may only be examined or inspected by an individual authorized by the coroner or who is admitted in the coroner's presence.

(b) **Removal from morgue.**—A body may not be removed from a morgue except upon the authorization of the coroner.

1955, Aug. 9, P.L. 323, No. 130, § 1213-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1214-B. Removal of body, burial and vehicle

(a) **Removal and burial.**—The county commissioner shall, in consultation with the coroner, provide for the removal of a body of a deceased individual to and from the morgue and for the burial of an unclaimed body.

(b) **Vehicle.**—The county commissioners may provide an ambulance or other vehicle for the purpose under subsection (a) and for other official duties of the coroner, including administrative, investigative or educational activities. The coroner may provide rules and regulations for the use and maintenance of the ambulance or other vehicle.

1955, Aug. 9, P.L. 323, No. 130, § 1214-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1215-B. Unclaimed property and sales

(a) **Duty.**—The coroner shall safely keep in the coroner's charge:

- (1) The personal effects and property that appear to have been on or about the person at the time of death or have been found on a decedent whose body is received at the county morgue or at any other facility serving in lieu of the county morgue.
 - (2) The effects and property that are delivered to the coroner according to law.
- (b) **Required holding period.**—The coroner shall hold the property for one year, unless the property is claimed by a legal representative of the deceased or is duly and lawfully disposed of or claimed.

board shall determine...
 § 1212-B, added 2018
 effective in 60 days [Dec. 24, 2018].

morgue

body.—When the body is...
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 effective in 60 days [Dec. 24, 2018].

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Property unclaimed after one year.—After one year, the coroner shall direct the unclaimed or undisposed property to the commissioners to be sold at public sale. Money and property as security that may not be subject to public sale shall be turned over to the commissioners for proper disposition or use.

(d) Notice.—Notice of a public sale under subsection (c) shall be published in at least one newspaper of general circulation in the county once a week for three successive weeks. The proceeds of each sale shall be paid immediately into the county treasury. The provisions of this subsection shall be in lieu of escheating to the Commonwealth.

1955, Aug. 9, P.L. 323, No. 130, § 1215-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1216-B. Private morgue

In a county of the third through eighth class in which a county morgue is not maintained, the coroner may have a body that the coroner is authorized to admit to a county morgue removed to a private facility. The county commissioners shall procure by contract, as provided under Article XVIII, the use of a private facility in consultation with the coroner.

1955, Aug. 9, P.L. 323, No. 130, § 1216-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

16 P.S. § 1801 et seq.

§ 1217-B. Requests for examinations and reports

(a) Requests.—A request for an examination or other professional service by another county or person may be complied with at the discretion of the coroner under guidelines established by the county commissioners.

(b) Fees and charges.—A fee and charge for an examination or professional service shall be established by the coroner, subject to approval by the county commissioners, and shall be accounted for and paid to the county treasurer as provided under section 1760. Payment for an examination or professional service shall be the responsibility of the county or person requesting the service.

1955, Aug. 9, P.L. 323, No. 130, § 1217-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1218-B. Coroner's investigation

(a) Duty.—The coroner having a view of the body shall investigate the facts and circumstances concerning a death that appears to have happened within the county, notwithstanding where the cause of the death may have occurred, for the purpose of determining whether or not an autopsy or inquest should be conducted in the following cases:

- (1) A sudden death not caused by a readily recognizable disease or, if the cause of death cannot be properly

certified, by a physician on the basis of prior recent medical attendance.

(2) A death occurring under suspicious circumstances, including if alcohol, a drug or another toxic substance may have had a direct bearing on the outcome.

(3) A death occurring as a result of violence or trauma, whether apparently homicidal, suicidal or accidental, including, but not limited to, a death due to mechanical, thermal, chemical, electrical or radiational injury, drowning, cave-in or subsidence.

(4) A death in which trauma, chemical injury, drug overdose or reaction to a drug or medication or medical treatment was a primary or secondary, direct or indirect, contributory, aggravating or precipitating cause of death.

(5) A perioperative death in which the death is not readily explainable on the basis of prior disease.

(6) A death in which the body is unidentified or unclaimed.

(7) A death known or suspected to be due to contagious disease and constituting a public hazard.

(8) A death occurring in prison or a penal institution or while in the custody of the police.

(9) A death of an individual whose body is to be cremated, buried at sea or otherwise disposed of so as to be unavailable for examination thereafter.

(10) A sudden and unexplained infant death.

(11) A stillbirth.

(b) Purpose.—The purpose of an investigation under subsection (a) shall be to determine:

- (1) The cause and manner of the death.
- (2) Whether or not there is sufficient reason for the coroner to believe that the death may have resulted from a criminal act or criminal neglect of a person other than the deceased.

(c) Requirements.—As part of an investigation under subsection (a), the coroner shall determine the identity of the deceased and notify the next of kin of the deceased.

1955, Aug. 9, P.L. 323, No. 130, § 1218-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1219-B. Autopsy, inquest and records

(a) Autopsy.—If, after investigation, the coroner is unable to determine the cause and manner of death, the coroner shall perform or order an autopsy on the body.

(b) Inquest.—If the coroner is unable to determine the cause and manner of death following an autopsy, the coroner may conduct an inquest upon a view of the body as provided by law. At the inquest, the coroner's duty shall be to:

- (1) Ascertain the cause of death.
- (2) Determine whether an individual other than the deceased was criminally responsible by act or neglect

and the identity of the individual who may be responsible.

(3) Examine further evidence and witnesses regarding the cause of death.

(c) **Recording.**—The proceedings at the inquest shall be recorded, at the expense of the county, in a manner to be provided by the county commissioners.

(d) **Retention and disposal.**—

(1) The coroner may retain a deoxyribonucleic acid (DNA) specimen for diagnostic, evidentiary or confirmatory purposes.

(2) Retained tissue, organs, blood, other bodily fluid, gas or another specimen from an autopsy are medical waste and shall be disposed of in accordance with applicable Federal and State laws.

(e) **Liability.**—A coroner who, in good faith, orders or performs a medical examination or autopsy under statutory authority shall be immune from civil liability for damages for ordering or performing the examination or autopsy.

1955, Aug. 9, P.L. 323, No. 130, § 1219-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1220-B. Child deaths

(a) **General rule.**—A coroner shall perform or order an autopsy to be conducted in the case of the sudden unexplained death of a child who is not more than three years of age. If an autopsy is required, the autopsy shall be conducted in the manner the coroner determines is the least invasive manner appropriate.

(b) **Investigation.**—

(1) For a death of a child who is not more than three years of age where the coroner has determined that an investigation is appropriate, the investigation shall include the following information:

- (i) Demographic information on the child and the child's primary caregivers.
- (ii) Witness interview.
- (iii) Infant medical history.
- (iv) Biological mother's prenatal history.
- (v) Incident scene investigation.
- (vi) Scene and body diagrams.

(2) In conducting the investigation under paragraph (1), the coroner shall consider nationally recognized standards for pediatric death review.

(c) **Deoxyribonucleic acid.**—A deoxyribonucleic acid (DNA) sample shall be collected for the purpose of aiding in the research of the causes of sudden and unexplained infant deaths and to provide genetic information as to the manner of death.

1955, Aug. 9, P.L. 323, No. 130, § 1220-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1221-B. Sudden death

(a) **General rule.**—The coroner shall regard a death as sudden if:

(1) The death occurs without prior medical attendance by an individual who may lawfully execute a certificate of death in this Commonwealth.

(2) Within 24 hours of death the decedent:

- (i) was discharged from medical attendance;
- (ii) had a change of medical attendance occur; or
- (iii) had medical attendance and the medical attendant refuses or is unable to certify the cause of death.

(b) **Construction.**—This section shall not be construed to affect the coroner's discretion as to whether or not a death was suspicious or to authorize a coroner to investigate a sudden death further than necessary to determine the cause and manner of death.

(c) **Definition.**—As used in this section, the phrase "medical attendance" shall include treatment or care at a facility providing medical services, including a hospital, nursing home and hospice service.

1955, Aug. 9, P.L. 323, No. 130, § 1221-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1222-B. Prohibition on moving a body

(a) **General rule.**—Except as provided under subsection (b), if a coroner has jurisdiction to investigate the facts and circumstances of death, the body and the surroundings of the body shall be left untouched until either:

(1) The coroner has conducted an initial investigation of the scene of death, including viewing and photographing the scene in the manner that most fully discloses how the individual died.

(2) The coroner directs or authorizes the touching of the body and the surroundings of the body, except as provided by law or as circumstances may require.

(b) **Exception.**—A body on a public thoroughfare or other place may be moved if necessary for the administration of emergency care and as a precaution against a traffic accident or another serious consequence that might reasonably be anticipated if the body was left in place. The removal of the body shall be done so as to not substantially destroy or alter possible evidence.

1955, Aug. 9, P.L. 323, No. 130, § 1222-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1223-B. Release of coroner's jurisdiction

If a coroner assumes jurisdiction of a body under the provisions of this article or another law, the body may not be released or removed from the coroner's jurisdiction except upon the coroner's directions and consent, in accordance with law.

1955, Aug. 9, P.L. 323, No. 130, § 1223-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1224-B. Cooperation with district attorney

In the exercise of duties under this article, the coroner shall consult with and advise the district attorney as may be practicable. The district attorney may act as counsel to the coroner in matters relating to inquests.

1955, Aug. 9, P.L. 323, No. 130, § 1224-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1225-B. Cooperation with other counties

If one or more coroners deem it necessary to establish a facility for conducting forensic testing and autopsies, a county may establish and operate the facility.

1955, Aug. 9, P.L. 323, No. 130, § 1225-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1226-B. Certificate of cause of death

A coroner shall issue a certificate of cause of death in each case:

- (1) Referred to the coroner by the local registrar of vital statistics under the act of June 29, 1953 (P.L. 304, No. 66), known as the Vital Statistics Law of 1953;
- (2) In which the coroner has jurisdiction and no individual duly authorized by law certifies the cause of death.

1955, Aug. 9, P.L. 323, No. 130, § 1226-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

1955 P.S. § 450.101 et seq.

§ 1227-B. Subpoena and attachment

The coroner may issue a subpoena and attachment, which shall be served and executed by the sheriff, coroner or coroner's deputy, for the following purposes:

- (1) A death investigation.
- (2) To obtain the attendance of an individual who may be necessary to examine as a witness at an inquest.
- (3) To compel attendance by attachment in a similar manner and extent as a court of common pleas may do in a case pending before the court.
- (4) To compel the production of the following:

- (i) A paper.
- (ii) A document in any form or media, including a medical and mental health record.
- (iii) Another thing relative to the investigation or inquest.

1955, Aug. 9, P.L. 323, No. 130, § 1227-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1228-B. Inquest and jury

(a) **Jury.**—The coroner may summon a jury of six individuals and two alternates to be selected from the jury panels of the court of common pleas.

(b) **Function.**—The function of the jury shall be to determine the manner of death and whether a criminal act or neglect of a known or unknown individual caused the death. The jury shall be paid as provided by law as if the jury members were serving the court of common pleas.

1955, Aug. 9, P.L. 323, No. 130, § 1228-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1229-B. Oaths

The coroner may administer an oath and affirmation to an individual brought or appearing before the coroner. An individual swearing or affirming falsely on the examination commits perjury.

1955, Aug. 9, P.L. 323, No. 130, § 1229-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1230-B. Commitment to county prison

(a) **Warrant.**—An individual may be committed by a coroner to the county jail by warrant directed to the sheriff or a constable of the county if the individual does either of the following while appearing before the coroner for examination:

- (1) Refuses to take an oath or affirmation.
- (2) Refuses to answer a question asked by the coroner on the matter of the inquest after having been sworn or affirmed.

(b) **Case required.**—The warrant under subsection (a) must set forth particularly the cause of the commitment.

(c) **Length.**—The individual shall remain committed until the individual submits to be sworn or affirmed, answers the questions of the coroner or is otherwise legally discharged.

1955, Aug. 9, P.L. 323, No. 130, § 1230-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1231-B. Inquests

The following shall apply:

(1) In counties of the second through eighth classes, the coroner may:

- (i) Admit or exclude a member of the public from an inquest or a part of an inquest.
- (ii) Admit or exclude an individual interested or suspected from the inquest or a part of an inquest.

(2) An excluded individual may not appear by attorney.

(3) An individual required to attend may have counsel at the attendance.

(4) In counties of the third through eighth class, representatives of the media may not be excluded from an inquest or part of an inquest unless the representa-

tives are personally interested or suspected from the inquest or part of the inquest.

1955, Aug. 9, P.L. 323, No. 130, § 1231-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1232-B. Vacancy

(a) **Legal removal, death or resignation.**—If a coroner is legally removed from office, dies or resigns before the expiration of the term for which the coroner was elected or appointed, the chief deputy coroner shall execute the office of coroner, perform related duties and receive and retain the compensation provided by law for the coroner until another coroner is appointed.

(b) **Neglect or refusal.**—Except as otherwise provided under subsections (d) and (e), if an individual who is elected to the office of coroner neglects or refuses, for the two months after the election, to assume the duties of the office and to comply with the requirements of the law, the office shall be deemed vacant. The Governor shall notify the recorder of deeds and appoint and commission a suitable individual to fill the vacancy during the remainder of the term.

(c) **Fees.**—A fee may not be charged on a commission issued to the coroner.

(d) **Exception in certain counties.**—In counties of the second class A, the appointee of the Governor shall serve until the first Monday of January next succeeding the first municipal election which occurs at least two months after the vacancy, at which time a new coroner shall be elected. The appointee shall be confirmed by the Senate if the Senate is in session.

(e) **Medical examiner.**—In counties of the second class, the appointee to the office of medical examiner shall serve and the term of office shall be as provided by county ordinance.

1955, Aug. 9, P.L. 323, No. 130, § 1232-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1233-B. Salary of solicitor and costs in counties of the second class

In counties of the second class, the following shall apply:

(1) The salary of the solicitor to the medical examiner shall be determined by the salary board. The salary shall be paid out of the fees received and paid into the office of the coroner.

(2) Costs and expenses incurred by the coroner in a manner connected with litigation or claims arising out of or relating to the coroner's office shall be paid by the county out of fees received by the coroner's office.

1955, Aug. 9, P.L. 323, No. 130, § 1233-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1234-B. Anatomical gifts

The coroner may order the removal of parts of a decedent's body for donation purposes in accordance with 20 Pa.C.S. Ch. 86 (relating to anatomical gifts).

1955, Aug. 9, P.L. 323, No. 130, § 1234-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1235-B. Execution of office

An individual elected or appointed to the office of coroner may not execute any of the duties of office before a commission has been duly granted to the coroner by the Governor and properly recorded. An individual who violates this section may be sentenced to imprisonment for a term of not more than six months. The individual shall be liable to a person injured by an act done by the individual under authority of the office.

1955, Aug. 9, P.L. 323, No. 130, § 1235-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

§ 1236-B. Records

In counties of the third, fourth, fifth, sixth, seventh and eighth classes, every coroner, within 30 days after the end of each year, 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.

1955, Aug. 9, P.L. 323, No. 130, § 1236-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

(c) FEES AND COST RECOVERY

§ 1251-B. Disposition costs

(a) **Cost of disposition.**—If legal representatives make claim to property after disposition of the deceased has occurred at county expense, any property retained from the deceased by the coroner in accordance with 1215-B¹ shall be subject to sale to cover the cost of disposition with the balance, if any, going to the representatives. No property shall be sold under this subsection unless the coroner has provided written notice to the representative of the all of the following:

- (1) The costs of disposition.
- (2) A list of the property held in accordance with section 1215-B.
- (3) An opportunity to pay the costs of disposition within 60 days of the notice.

(b) **Costs of securing.**—In cases where the coroner secures the premises of the deceased, the costs of securing may be charged against the estate of the deceased.

(c) **Civil liability.**—A coroner who reasonably attempts to secure or safeguard any real property where the deceased is found and any personal property on or around

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 or loss of the property or its contents.

1955, Aug. 9, P.L. 323, No. 130, § 1251-B, added 2018
 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec.
 24, 2018].

16 P.S. § 1215-B.

§ 1252-B. Fees for reports

The coroner shall charge and collect a fee of \$500 for
 an autopsy report, \$100 for a toxicology report, \$100 for
 an inquisition or coroner's report, \$50 for a cremation or
 disposition authorization and other fees as may be estab-
 lished from time to time for other reports or documents
 requested by nongovernmental agencies in order to inves-
 tigate a claim asserted under a policy of insurance or to
 determine liability for the death of the deceased. The
 fees collected under this section shall be accounted for
 and paid to the county treasurer in accordance with
 section 1760¹ and shall be used to defray the expenses
 involved in the county complying with the training of
 coroners or coroner office personnel, as may be required
 or authorized by this or any other act.

1955, Aug. 9, P.L. 323, No. 130, § 1252-B, added 2018
 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec.
 24, 2018].

16 P.S. § 1760.

**ARTICLE XIII. PROTHONOTARY, CLERK OF
 COURTS, CLERK OF ORPHANS' COURT, REGIS-
 TER OF WILLS, RECORDER OF DEEDS**

**§ 1301. Election of prothonotary, clerk of courts, clerk
 of orphans' court, register of wills, recorder
 of deeds**

At the municipal election preceding the expiration of
 the term of office of any prothonotary, clerk of the courts
 of common pleas, register of wills, clerk of the orphans'
 court or recorder of deeds of any county and quadrennial-
 ly thereafter, the electors of the county shall elect a
 person to fill the office from the first Monday of January
 next succeeding the election, for a term of four years and
 until a successor is elected and qualified. Where, under
 the provisions of this act or other law, it is provided that
 two or more offices shall be held by the same person, only
 one person shall be elected to hold the office.

1955, Aug. 9, P.L. 323, § 1301. Amended 2018, Oct. 24,
 P.L. 931, No. 154, § 23, effective in 60 days [Dec. 24,
 2018].

Saved from Repeal

*This section is saved from repeal by § 2(a)
 [1310] of Act 1978, April 28, P.L. 202, No. 53 [42
 P.S. § 20002(a) [1310]].*

§ 1302. How offices to be held

(a) In counties of the third and fourth classes, one
 person shall hold the office of prothonotary, one person
 the office of clerk of courts, one person the offices of

register of wills and clerk of the orphans' court, and one
 person the office of recorder of deeds.

(a.1) Notwithstanding subsection (a) or any other law,
 a county advancing from the fifth to fourth class as a
 result of census figures certified after the primary election
 in the year of a municipal election may maintain the
 configuration of offices in effect in the county as long as
 the county, in consultation with the president judge of the
 court of common pleas of the county, deems appropriate.
 At such time as a county decides that reconfiguration of
 the offices in the county in accordance with subsection (a)
 or any other general law applicable to the holding of
 offices and to the classification of the county is appropri-
 ate, the county shall wait until the year in which the
 offices are next up for election to effect that change.

(a.2) Notwithstanding subsection (a) or (a.1) or any
 other law, the county commissioners of a county advanc-
 ing from the fifth to fourth class may adopt a resolution
 providing that one person shall continue to hold the
 offices of prothonotary and clerk of courts, unless local
 law applying to such counties shall otherwise provide.

(a.3) Notwithstanding subsection (a) or (a.1) or any
 other law, the county commissioners of a county advanc-
 ing from the fifth to fourth class may adopt a resolution
 providing that one person shall hold the offices of register
 of wills, recorder of deeds and clerk of the orphans'
 court, unless local law applying to such counties shall
 otherwise provide.

(b) In counties of the fifth class, one person shall hold
 the offices of prothonotary and clerk of courts, one per-
 son the offices of register of wills and clerk of the or-
 phans' court, and one person the office of recorder of
 deeds, unless local law applying to such counties shall
 otherwise provide.

(b.1) Notwithstanding subsection (b) or any other law,
 the county commissioners of a county advancing from the
 sixth to the fifth class may adopt a resolution providing
 that one person shall continue to hold the offices of
 register of wills, recorder of deeds and clerk of the
 orphans' court, unless local law applying to such counties
 shall otherwise provide.

(c) In counties of the sixth and seventh classes, one
 person shall hold the offices of prothonotary and clerk of
 courts, and one person the offices of register of wills,
 recorder of deeds and clerk of the orphans' court, unless
 local laws applying to such counties shall otherwise pro-
 vide.

(d) In counties of the eighth class, one person shall
 hold the offices of prothonotary, clerk of courts, clerk of
 the orphans' court, register of wills and recorder of
 deeds, unless local laws applying to such counties shall
 otherwise provide.

(e) This section does not repeal any of the provisions of
 section one of the act, approved July two, one thousand
 eight hundred thirty-nine (Pamphlet Laws 559), entitled
 "An act to provide for the election of prothonotaries,

the deceased is immune from civil liability for damage to or loss of the property or its contents.

1955, Aug. 9, P.L. 323, No. 130, § 1251-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

16 P.S. § 1215-B.

§ 1252-B. Fees for reports

The coroner shall charge and collect a fee of \$500 for an autopsy report, \$100 for a toxicology report, \$100 for an inquisition or coroner's report, \$50 for a cremation or disposition authorization and other fees as may be established from time to time for other reports or documents requested by nongovernmental agencies in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased. The fees collected under this section shall be accounted for and paid to the county treasurer in accordance with section 1760 and shall be used to defray the expenses involved in the county complying with the training of coroners or coroner office personnel, as may be required or authorized by this or any other act.

1955, Aug. 9, P.L. 323, No. 130, § 1252-B, added 2018 Oct. 24, P.L. 931, No. 154, § 22, effective in 60 days [Dec. 24, 2018].

16 P.S. § 1760.

ARTICLE XIII. PROTHONOTARY, CLERK OF COURTS, CLERK OF ORPHANS' COURT, REGISTER OF WILLS, RECORDER OF DEEDS

§ 1301. Election of prothonotary, clerk of courts, clerk of orphans' court, register of wills, recorder of deeds

At the municipal election preceding the expiration of the term of office of any prothonotary, clerk of the courts of common pleas, register of wills, clerk of the orphans' court or recorder of deeds of any county and quadrennially thereafter, the electors of the county shall elect a person to fill the office from the first Monday of January next succeeding the election, for a term of four years and until a successor is elected and qualified. Where, under the provisions of this act or other law, it is provided that two or more offices shall be held by the same person, only one person shall be elected to hold the office.

1955, Aug. 9, P.L. 323, § 1301. Amended 2018, Oct. 24, P.L. 931, No. 154, § 23, effective in 60 days [Dec. 24, 2018].

Saved from Repeal

This section is saved from repeal by § 2(a) [1310] of Act 1978, April 28, P.L. 202, No. 53 [42 P.S. § 20002(a) [1310]].

§ 1302. How offices to be held

(a) In counties of the third and fourth classes, one person shall hold the office of prothonotary, one person the office of clerk of courts, one person the offices of

register of wills and clerk of the orphans' court, and one person the office of recorder of deeds.

(a.1) Notwithstanding subsection (a) or any other law, a county advancing from the fifth to fourth class as a result of census figures certified after the primary election in the year of a municipal election may maintain the configuration of offices in effect in the county as long as the county, in consultation with the president judge of the court of common pleas of the county, deems appropriate. At such time as a county decides that reconfiguration of the offices in the county in accordance with subsection (a) or any other general law applicable to the holding of offices and to the classification of the county is appropriate, the county shall wait until the year in which the offices are next up for election to effect that change.

(a.2) Notwithstanding subsection (a) or (a.1) or any other law, the county commissioners of a county advancing from the fifth to fourth class may adopt a resolution providing that one person shall continue to hold the offices of prothonotary and clerk of courts, unless local law applying to such counties shall otherwise provide.

(a.3) Notwithstanding subsection (a) or (a.1) or any other law, the county commissioners of a county advancing from the fifth to fourth class may adopt a resolution providing that one person shall hold the offices of register of wills, recorder of deeds and clerk of the orphans' court, unless local law applying to such counties shall otherwise provide.

(b) In counties of the fifth class, one person shall hold the offices of prothonotary and clerk of courts, one person the offices of register of wills and clerk of the orphans' court, and one person the office of recorder of deeds, unless local law applying to such counties shall otherwise provide.

(b.1) Notwithstanding subsection (b) or any other law, the county commissioners of a county advancing from the sixth to the fifth class may adopt a resolution providing that one person shall continue to hold the offices of register of wills, recorder of deeds and clerk of the orphans' court, unless local law applying to such counties shall otherwise provide.

(c) In counties of the sixth and seventh classes, one person shall hold the offices of prothonotary and clerk of courts, and one person the offices of register of wills, recorder of deeds and clerk of the orphans' court, unless local laws applying to such counties shall otherwise provide.

(d) In counties of the eighth class, one person shall hold the offices of prothonotary, clerk of courts, clerk of the orphans' court, register of wills and recorder of deeds, unless local laws applying to such counties shall otherwise provide.

(e) This section does not repeal any of the provisions of section one of the act, approved July two, one thousand eight hundred thirty-nine (Pamphlet Laws 559), entitled "An act to provide for the election of prothonotaries,

EXHIBIT "G"

§ 164.502. Uses and disclosures of protected health information: general rules

(a) *Standard.* A covered entity or business associate may not use or disclose protected health information, except as permitted or required by this subpart or by subpart C of part 160 of this subchapter.

(1) *Covered entities: Permitted uses and disclosures.* A covered entity is permitted to use or disclose protected health information as follows:

(i) To the individual;

(ii) For treatment, payment, or health care operations, as permitted by and in compliance with §164.506;

(iii) Incident to a use or disclosure otherwise permitted or required by this subpart, provided that the covered entity has complied with the applicable requirements of §§164.502 (b), 164.514(d), and 164.530(c) with respect to such otherwise permitted or required use or disclosure;

(iv) Except for uses and disclosures prohibited under §164.502 (a)(5)(i), pursuant to and in compliance with a valid authorization under §164.508;

(v) Pursuant to an agreement under, or as otherwise permitted by, §164.510; and

(vi) As permitted by and in compliance with this section, §164.512, §164.514 (e), (f), or (g).

(2) *Covered entities: Required disclosures.* A covered entity is required to disclose protected health information:

(i) To an individual, when requested under, and required by §164.524 or §164.528; and

(ii) When required by the Secretary under subpart C of part 160 of this subchapter to investigate or determine the covered entity's compliance with this subchapter.

(3) *Business associates: Permitted uses and disclosures.* A business associate may use or disclose protected health information only as permitted or required by its business associate contract or other arrangement pursuant to §164.504 (e) or as required by law. The business associate may not use or disclose protected health information in a manner that would violate the requirements of this subpart, if done by the covered entity, except for the purposes specified under §164.504 (c)(2)(i)(A) or (B) if such uses or disclosures are permitted by its contract or other arrangement.

(4) *Business associates: Required uses and disclosures.* A business associate is required to disclose protected health information:

(i) When required by the Secretary under subpart C of part 160 of this subchapter to investigate or determine the business associate's compliance with this subchapter.

(ii) To the covered entity, individual, or individual's designee, as necessary to satisfy a covered entity's obligations under §164.524 (c)(2)(ii) and (3)(ii) with respect to an individual's request for an electronic copy of protected health information.

(5) *Prohibited uses and disclosures.*

(i) *Use and disclosure of genetic information for underwriting purposes:* Notwithstanding any other provision of this subpart, a health plan, excluding an issuer of a long-term care policy falling within paragraph (1)(viii) of the definition of *health plan*, shall not use or disclose protected health information that is genetic information for underwriting purposes. For purposes of paragraph (a)(5)(i) of this section, underwriting purposes means, with respect to a health plan:

(A) Except as provided in paragraph (a)(5)(i)(B) of this section:

(1) Rules for, or determination of, eligibility (including enrollment and continued eligibility) for, or determination of, benefits under the plan, coverage, or policy (including changes in deductibles or other cost-sharing mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program);

(2) The computation of premium or contribution amounts under the plan, coverage, or policy (including discounts, rebates, payments in kind, or other premium differential mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program);

(3) The application of any pre-existing condition exclusion under the plan, coverage, or policy; and

(4) Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

(B) Underwriting purposes does not include determinations of medical appropriateness where an individual seeks a benefit under the plan, coverage, or policy.

(ii) *Sale of protected health information:*

(A) Except pursuant to and in compliance with §164.508 (a)(4), a covered entity or business associate may not sell protected health information.

(B) For purposes of this paragraph, sale of protected health information means:

(1) Except as provided in paragraph (a)(5)(ii)(B)(2) of this section, a disclosure of protected health information by a covered entity or business associate, if applicable, where the covered entity or business associate directly or indirectly receives remuneration from or on behalf of the recipient of the protected health information in exchange for the protected health information.

(2) Sale of protected health information does not include a disclosure of protected health information:

(i) For public health purposes pursuant to §164.512 (b) or §164.514 (e);

(ii) For research purposes pursuant to §164.512 (i) or §164.514 (e), where the only remuneration received by the covered entity or business associate is a reasonable cost-based fee to cover the cost to prepare and transmit the protected health information for such purposes;

(iii) For treatment and payment purposes pursuant to §164.506 (a);

(iv) For the sale, transfer, merger, or consolidation of all or part of the covered entity and for related due diligence as described in paragraph (6)(iv) of the definition of health care operations and pursuant to §164.506 (a);

(v) To or by a business associate for activities that the business associate undertakes on behalf of a covered entity, or on behalf of a business associate in the case of a subcontractor, pursuant to §§164.502 (e) and 164.504(e), and the only remuneration provided is by the covered entity to the business associate, or by the business associate to the subcontractor, if applicable, for the performance of such activities;

(vi) To an individual, when requested under §164.524 or §164.528;

(vii) Required by law as permitted under §164.512 (a); and

(viii) For any other purpose permitted by and in accordance with the applicable requirements of this subpart, where the only remuneration received by the covered entity or business associate is a reasonable, cost-based fee to cover the cost to prepare and transmit the protected health information for such purpose or a fee otherwise expressly permitted by other law.

(b) *Standard: Minimum necessary - Minimum necessary applies.* When using or disclosing protected health information or when requesting protected health information from another covered entity or business associate, a covered entity or business associate must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

(2) *Minimum necessary does not apply.* This requirement does not apply to:

- (i) Disclosures to or requests by a health care provider for treatment;
- (ii) Uses or disclosures made to the individual, as permitted under paragraph (a)(1)(i) of this section or as required by paragraph (a)(2)(i) of this section;
- (iii) Uses or disclosures made pursuant to an authorization under §164.508;
- (iv) Disclosures made to the Secretary in accordance with subpart C of part 160 of this subchapter;
- (v) Uses or disclosures that are required by law, as described by §164.512 (a); and
- (vi) Uses or disclosures that are required for compliance with applicable requirements of this subchapter.

(c) *Standard: Uses and disclosures of protected health information subject to an agreed upon restriction.* A covered entity that has agreed to a restriction pursuant to §164.522 (a)(1) may not use or disclose the protected health information covered by the restriction in violation of such restriction, except as otherwise provided in §164.522 (a).

(d) *Standard: Uses and disclosures of de-identified protected health information.*

(1) *Uses and disclosures to create de-identified information.* A covered entity may use protected health information to create information that is not individually identifiable health information or disclose protected health information only to a business associate for such purpose, whether or not the de-identified information is to be used by the covered entity.

(2) *Uses and disclosures of de-identified information.* Health information that meets the standard and implementation specifications for de-identification under §164.514 (a) and (b) is considered not to be individually identifiable health information, *i.e.*, de-identified. The requirements of this subpart do not apply to information that has been de-identified in accordance with the applicable requirements of §164.514, provided that:

- (i) Disclosure of a code or other means of record identification designed to enable coded or otherwise de-identified information to be re-identified constitutes disclosure of protected health information; and
- (ii) If de-identified information is re-identified, a covered entity may use or disclose such re-identified information only as permitted or required by this subpart.

(e)

(1) *Standard: Disclosures to business associates.*

(i) A covered entity may disclose protected health information to a business associate and may allow a business associate to create, receive, maintain, or transmit protected health information on its behalf, if the covered entity obtains satisfactory assurance that the business associate will appropriately safeguard the information. A covered entity is not required to obtain such satisfactory assurances from a business associate that is a subcontractor.

(ii) A business associate may disclose protected health information to a business associate that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit protected health information on its behalf, if the business associate obtains satisfactory assurances, in accordance with §164.504 (e)(1)(i), that the subcontractor will appropriately safeguard the information.

(2) *Implementation specification: Documentation.* The satisfactory assurances required by paragraph (e)(1) of this section must be documented through a written contract or other written agreement or arrangement with the business associate that meets the applicable requirements of §164.504 (e).

(f) *Standard: Deceased individuals.* A covered entity must comply with the requirements of this subpart with respect to the protected health information of a deceased individual for a period of 50 years following the death of the individual.

(g)

(1) *Standard: Personal representatives.* As specified in this paragraph, a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the individual for purposes of this subchapter.

(2) *Implementation specification: adults and emancipated minors.* If under applicable law a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation.

(3)

(i) *Implementation specification: unemancipated minors.* If under applicable law a parent, guardian, or other person acting *in loco parentis* has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation, except that such person may not be a personal representative of an unemancipated minor, and the minor has the authority to act as an individual, with respect to protected health information pertaining to a health care service, if:

(A) The minor consents to such health care service; no other consent to such health care service is required by law, regardless of whether the consent of another person has also been obtained; and the minor has not requested that such person be treated as the personal representative;

(B) The minor may lawfully obtain such health care service without the consent of a parent, guardian, or other person acting *in loco parentis*, and the minor, a court, or another person authorized by law consents to such health care service; or

(C) A parent, guardian, or other person acting *in loco parentis* assents to an agreement of confidentiality between a covered health care provider and the minor with respect to such health care service.

(ii) Notwithstanding the provisions of paragraph (g)(3)(i) of this section:

(A) If, and to the extent, permitted or required by an applicable provision of State or other law, including applicable case law, a covered entity may disclose, or provide access in accordance with §164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting *in loco parentis* ;

(B) If, and to the extent, prohibited by an applicable provision of State or other law, including applicable case law, a covered entity may not disclose, or provide access in accordance with §164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting *in loco parentis* ; and

(C) Where the parent, guardian, or other person acting *in loco parentis*, is not the personal representative under paragraphs (g)(3)(i)(A), (B), or (C) of this section and where there is no applicable access provision under State or other law, including case law, a covered entity may provide or deny access under §164.524 to a parent, guardian, or other person acting *in loco parentis*, if such action is consistent with State or other applicable law, provided that such decision must be made by a licensed health care professional, in the exercise of professional judgment.

(4) *Implementation specification: Deceased individuals.* If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation.

(5) *Implementation specification: Abuse, neglect, endangerment situations.* Notwithstanding a State law or any requirement of this paragraph to the contrary, a covered entity may elect not to treat a person as the personal representative of an individual if:

(i) The covered entity has a reasonable belief that:

(A) The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or

(B) Treating such person as the personal representative could endanger the individual; and

(ii) The covered entity, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

(h) *Standard: Confidential communications.* A covered health care provider or health plan must comply with the applicable requirements of §164.522 (b) in communicating protected health information.

(i) *Standard: Uses and disclosures consistent with notice.* A covered entity that is required by §164.520 to have a notice may not use or disclose protected health information in a manner inconsistent with such notice. A covered entity that is required by §164.520 (b)(1) (iii) to include a specific statement in its notice if it intends to engage in an activity listed in §164.520 (b)(1) (iii)(A)-(C), may not use or disclose protected health information for such activities, unless the required statement is included in the notice.

(j) *Standard: Disclosures by whistleblowers and workforce member crime victims -*

(1) *Disclosures by whistleblowers.* A covered entity is not considered to have violated the requirements of this subpart if a member of its workforce or a business associate discloses protected health information, provided that:

(i) The workforce member or business associate believes in good faith that the covered entity has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided by the covered entity potentially endangers one or more patients, workers, or the public; and

(ii) The disclosure is to:

(A) A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of the covered entity or to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by the covered entity; or

(B) An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate with regard to the conduct described in paragraph (j)(1)(i) of this section.

(2) *Disclosures by workforce members who are victims of a crime.* A covered entity is not considered to have violated the requirements of this subpart if a member of its workforce who is the victim of a criminal act discloses protected health information to a law enforcement official, provided that:

(i) The protected health information disclosed is about the suspected perpetrator of the criminal act; and

(ii) The protected health information disclosed is limited to the information listed in §164.512 (f)(2)(i).

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Title 45 — Public Welfare

Subtitle A — Department of Health and Human Services

Subchapter C — Administrative Data Standards and Related Requirements

Part 164 — Security and Privacy

Subpart E — Privacy of Individually Identifiable Health Information

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§ 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.

A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.

(a) **Standard: Uses and disclosures required by law.**

- (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.
- (2) A covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law.

(b) **Standard: Uses and disclosures for public health activities —**

- (1) **Permitted uses and disclosures.** A covered entity may use or disclose protected health information for the public health activities and purposes described in this paragraph to:
 - (i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;
 - (ii) A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;
 - (iii) A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity. Such purposes include:

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- (A) To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations;
- (B) To track FDA-regulated products;
- (C) To enable product recalls, repairs, or replacement, or lookback (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of lookback); or
- (D) To conduct post marketing surveillance;
- (iv) A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation; or
- (v) An employer, about an individual who is a member of the workforce of the employer, if:
 - (A) The covered entity is a covered health care provider who provides health care to the individual at the request of the employer:
 - (1) To conduct an evaluation relating to medical surveillance of the workplace; or
 - (2) To evaluate whether the individual has a work-related illness or injury;
 - (B) The protected health information that is disclosed consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance;
 - (C) The employer needs such findings in order to comply with its obligations, under 29 CFR parts 1904 through 1928, 30 CFR parts 50 through 90, or under state law having a similar purpose, to record such illness or injury or to carry out responsibilities for workplace medical surveillance; and
 - (D) The covered health care provider provides written notice to the individual that protected health information relating to the medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer:
 - (1) By giving a copy of the notice to the individual at the time the health care is provided; or
 - (2) If the health care is provided on the work site of the employer, by posting the notice in a prominent place at the location where the health care is provided.
- (vi) A school, about an individual who is a student or prospective student of the school, if:
 - (A) The protected health information that is disclosed is limited to proof of immunization;
 - (B) The school is required by State or other law to have such proof of immunization prior to admitting the individual; and
 - (C) The covered entity obtains and documents the agreement to the disclosure from either:
 - (1) A parent, guardian, or other person acting *in loco parentis* of the individual, if the individual is an unemancipated minor; or
 - (2) The individual, if the individual is an adult or emancipated minor.

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- (2) **Permitted uses.** If the covered entity also is a public health authority, the covered entity is permitted to use protected health information in all cases in which it is permitted to disclose such information for public health activities under paragraph (b)(1) of this section.
- (c) **Standard: Disclosures about victims of abuse, neglect or domestic violence –**
- (1) **Permitted disclosures.** Except for reports of child abuse or neglect permitted by paragraph (b)(1)(ii) of this section, a covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence:
- (i) To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;
 - (ii) If the individual agrees to the disclosure; or
 - (iii) To the extent the disclosure is expressly authorized by statute or regulation and:
 - (A) The covered entity, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or
 - (B) If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.
- (2) **Informing the individual.** A covered entity that makes a disclosure permitted by paragraph (c)(1) of this section must promptly inform the individual that such a report has been or will be made, except if:
- (i) The covered entity, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or
 - (ii) The covered entity would be informing a personal representative, and the covered entity reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.
- (d) **Standard: Uses and disclosures for health oversight activities –**
- (1) **Permitted disclosures.** A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:
- (i) The health care system;
 - (ii) Government benefit programs for which health information is relevant to beneficiary eligibility;
 - (iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or

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- (iv) Entities subject to civil rights laws for which health information is necessary for determining compliance.
- (2) **Exception to health oversight activities.** For the purpose of the disclosures permitted by paragraph (d)(1) of this section, a health oversight activity does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to:
 - (i) The receipt of health care;
 - (ii) A claim for public benefits related to health; or
 - (iii) Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.
- (3) **Joint activities or investigations.** Notwithstanding paragraph (d)(2) of this section, if a health oversight activity or investigation is conducted in conjunction with an oversight activity or investigation relating to a claim for public benefits not related to health, the joint activity or investigation is considered a health oversight activity for purposes of paragraph (d) of this section.
- (4) **Permitted uses.** If a covered entity also is a health oversight agency, the covered entity may use protected health information for health oversight activities as permitted by paragraph (d) of this section.
- (e) **Standard: Disclosures for judicial and administrative proceedings —**
 - (1) **Permitted disclosures.** A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:
 - (i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order; or
 - (ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:
 - (A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or
 - (B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.
 - (iii) For the purposes of paragraph (e)(1)(ii)(A) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:
 - (A) The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);

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- (B) The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and
- (C) The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:
 - (1) No objections were filed; or
 - (2) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.
- (iv) For the purposes of paragraph (e)(1)(ii)(B) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information, if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:
 - (A) The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or
 - (B) The party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal.
- (v) For purposes of paragraph (e)(1) of this section, a qualified protective order means, with respect to protected health information requested under paragraph (e)(1)(ii) of this section, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:
 - (A) Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and
 - (B) Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.
- (vi) Notwithstanding paragraph (e)(1)(ii) of this section, a covered entity may disclose protected health information in response to lawful process described in paragraph (e)(1)(ii) of this section without receiving satisfactory assurance under paragraph (e)(1)(ii)(A) or (B) of this section, if the covered entity makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of paragraph (e)(1)(iii) of this section or to seek a qualified protective order sufficient to meet the requirements of paragraph (e)(1)(v) of this section.
- (2) **Other uses and disclosures under this section.** The provisions of this paragraph do not supersede other provisions of this section that otherwise permit or restrict uses or disclosures of protected health information.
- (f) **Standard: Disclosures for law enforcement purposes.** A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official if the conditions in paragraphs (f)(1) through (f)(6) of this section are met, as applicable.
 - (1) **Permitted disclosures: Pursuant to process and as otherwise required by law.** A covered entity may disclose protected health information:

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- (i) As required by law including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to paragraph (b)(1)(ii) or (c)(1)(i) of this section; or
- (ii) In compliance with and as limited by the relevant requirements of:
 - (A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;
 - (B) A grand jury subpoena; or
 - (C) An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:
 - (1) The information sought is relevant and material to a legitimate law enforcement inquiry;
 - (2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
 - (3) De-identified information could not reasonably be used.
- (2) **Permitted disclosures: Limited information for identification and location purposes.** Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:
 - (i) The covered entity may disclose only the following information:
 - (A) Name and address;
 - (B) Date and place of birth;
 - (C) Social security number;
 - (D) ABO blood type and rh factor;
 - (E) Type of injury;
 - (F) Date and time of treatment;
 - (G) Date and time of death, if applicable; and
 - (H) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.
 - (ii) Except as permitted by paragraph (f)(2)(i) of this section, the covered entity may not disclose for the purposes of identification or location under paragraph (f)(2) of this section any protected health information related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.
- (3) **Permitted disclosure: Victims of a crime.** Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime, other than disclosures that are subject to paragraph (b) or (c) of this section, if:

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- (i) The individual agrees to the disclosure; or
 - (ii) The covered entity is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that:
 - (A) The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;
 - (B) The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and
 - (C) The disclosure is in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.
- (4) **Permitted disclosure: Decedents.** A covered entity may disclose protected health information about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if the covered entity has a suspicion that such death may have resulted from criminal conduct.
- (5) **Permitted disclosure: Crime on premises.** A covered entity may disclose to a law enforcement official protected health information that the covered entity believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the covered entity.
- (6) **Permitted disclosure: Reporting crime in emergencies.**
- (i) A covered health care provider providing emergency health care in response to a medical emergency, other than such emergency on the premises of the covered health care provider, may disclose protected health information to a law enforcement official if such disclosure appears necessary to alert law enforcement to:
 - (A) The commission and nature of a crime;
 - (B) The location of such crime or of the victim(s) of such crime; and
 - (C) The identity, description, and location of the perpetrator of such crime.
 - (ii) If a covered health care provider believes that the medical emergency described in paragraph (f)(6)(i) of this section is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, paragraph (f)(6)(i) of this section does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to paragraph (c) of this section.
- (g) **Standard: Uses and disclosures about decedents —**
- (1) **Coroners and medical examiners.** A covered entity may disclose protected health information to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. A covered entity that also performs the duties of a coroner or medical examiner may use protected health information for the purposes described in this paragraph.

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- (2) **Funeral directors.** A covered entity may disclose protected health information to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. If necessary for funeral directors to carry out their duties, the covered entity may disclose the protected health information prior to, and in reasonable anticipation of, the individual's death.
- (h) **Standard: Uses and disclosures for cadaveric organ, eye or tissue donation purposes.** A covered entity may use or disclose protected health information to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation.
- (i) **Standard: Uses and disclosures for research purposes —**
- (1) **Permitted uses and disclosures.** A covered entity may use or disclose protected health information for research, regardless of the source of funding of the research, provided that:
- (i) **Board approval of a waiver of authorization.** The covered entity obtains documentation that an alteration to or waiver, in whole or in part, of the individual authorization required by § 164.508 for use or disclosure of protected health information has been approved by either:
- (A) An Institutional Review Board (IRB), established in accordance with 7 CFR 1c.107, 10 CFR 745.107, 14 CFR 1230.107, 15 CFR 27.107, 16 CFR 1028.107, 21 CFR 56.107, 22 CFR 225.107, 24 CFR 60.107, 28 CFR 46.107, 32 CFR 219.107, 34 CFR 97.107, 38 CFR 16.107, 40 CFR 26.107, 45 CFR 46.107, 45 CFR 690.107, or 49 CFR 11.107; or
- (B) A privacy board that:
- (1) Has members with varying backgrounds and appropriate professional competency as necessary to review the effect of the research protocol on the individual's privacy rights and related interests;
- (2) Includes at least one member who is not affiliated with the covered entity, not affiliated with any entity conducting or sponsoring the research, and not related to any person who is affiliated with any of such entities; and
- (3) Does not have any member participating in a review of any project in which the member has a conflict of interest.
- (ii) **Reviews preparatory to research.** The covered entity obtains from the researcher representations that:
- (A) Use or disclosure is sought solely to review protected health information as necessary to prepare a research protocol or for similar purposes preparatory to research;
- (B) No protected health information is to be removed from the covered entity by the researcher in the course of the review; and
- (C) The protected health information for which use or access is sought is necessary for the research purposes.
- (iii) **Research on decedent's information.** The covered entity obtains from the researcher:
- (A) Representation that the use or disclosure sought is solely for research on the protected health information of decedents;
- (B) Documentation, at the request of the covered entity, of the death of such individuals; and

- (C) Representation that the protected health information for which use or disclosure is sought is necessary for the research purposes.
- (2) **Documentation of waiver approval.** For a use or disclosure to be permitted based on documentation of approval of an alteration or waiver, under paragraph (i)(1)(i) of this section, the documentation must include all of the following:
 - (i) **Identification and date of action.** A statement identifying the IRB or privacy board and the date on which the alteration or waiver of authorization was approved;
 - (ii) **Waiver criteria.** A statement that the IRB or privacy board has determined that the alteration or waiver, in whole or in part, of authorization satisfies the following criteria:
 - (A) The use or disclosure of protected health information involves no more than a minimal risk to the privacy of individuals, based on, at least, the presence of the following elements:
 - (1) An adequate plan to protect the identifiers from improper use and disclosure;
 - (2) An adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers or such retention is otherwise required by law; and
 - (3) Adequate written assurances that the protected health information will not be reused or disclosed to any other person or entity, except as required by law, for authorized oversight of the research study, or for other research for which the use or disclosure of protected health information would be permitted by this subpart;
 - (B) The research could not practicably be conducted without the waiver or alteration; and
 - (C) The research could not practicably be conducted without access to and use of the protected health information.
 - (iii) **Protected health information needed.** A brief description of the protected health information for which use or access has been determined to be necessary by the institutional review board or privacy board, pursuant to paragraph (i)(2)(ii)(C) of this section;
 - (iv) **Review and approval procedures.** A statement that the alteration or waiver of authorization has been reviewed and approved under either normal or expedited review procedures, as follows:
 - (A) An IRB must follow the requirements of the Common Rule, including the normal review procedures (7 CFR 1c.108(b), 10 CFR 745.108(b), 14 CFR 1230.108(b), 15 CFR 27.108(b), 16 CFR 1028.108(b), 21 CFR 56.108(b), 22 CFR 225.108(b), 24 CFR 60.108(b), 28 CFR 46.108(b), 32 CFR 219.108(b), 34 CFR 97.108(b), 38 CFR 16.108(b), 40 CFR 26.108(b), 45 CFR 46.108(b), 45 CFR 690.108(b), or 49 CFR 11.108(b)) or the expedited review procedures (7 CFR 1c.110, 10 CFR 745.110, 14 CFR 1230.110, 15 CFR 27.110, 16 CFR 1028.110, 21 CFR 56.110, 22 CFR 225.110, 24 CFR 60.110, 28 CFR 46.110, 32 CFR 219.110, 34 CFR 97.110, 38 CFR 16.110, 40 CFR 26.110, 45 CFR 46.110, 45 CFR 690.110, or 49 CFR 11.110);
 - (B) A privacy board must review the proposed research at convened meetings at which a majority of the privacy board members are present, including at least one member who satisfies the criterion stated in paragraph (i)(1)(i)(B)(2) of this section, and the alteration or

Uses and disclosures for which an authorization or opportunity to agree...

waiver of authorization must be approved by the majority of the privacy board members present at the meeting, unless the privacy board elects to use an expedited review procedure in accordance with paragraph (j)(2)(iv)(C) of this section;

- (C) A privacy board may use an expedited review procedure if the research involves no more than minimal risk to the privacy of the individuals who are the subject of the protected health information for which use or disclosure is being sought. If the privacy board elects to use an expedited review procedure, the review and approval of the alteration or waiver of authorization may be carried out by the chair of the privacy board, or by one or more members of the privacy board as designated by the chair; and
- (v) **Required signature.** The documentation of the alteration or waiver of authorization must be signed by the chair or other member, as designated by the chair, of the IRB or the privacy board, as applicable.
- (j) **Standard: Uses and disclosures to avert a serious threat to health or safety –**
 - (1) **Permitted disclosures.** A covered entity may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the covered entity, in good faith, believes the use or disclosure:
 - (i)
 - (A) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and
 - (B) Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or
 - (ii) Is necessary for law enforcement authorities to identify or apprehend an individual:
 - (A) Because of a statement by an individual admitting participation in a violent crime that the covered entity reasonably believes may have caused serious physical harm to the victim; or
 - (B) Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody, as those terms are defined in § 164.501.
 - (2) **Use or disclosure not permitted.** A use or disclosure pursuant to paragraph (j)(1)(ii)(A) of this section may not be made if the information described in paragraph (j)(1)(ii)(A) of this section is learned by the covered entity:
 - (i) In the course of treatment to affect the propensity to commit the criminal conduct that is the basis for the disclosure under paragraph (j)(1)(ii)(A) of this section, or counseling or therapy; or
 - (ii) Through a request by the individual to initiate or to be referred for the treatment, counseling, or therapy described in paragraph (j)(2)(i) of this section.
 - (3) **Limit on information that may be disclosed.** A disclosure made pursuant to paragraph (j)(1)(ii)(A) of this section shall contain only the statement described in paragraph (j)(1)(ii)(A) of this section and the protected health information described in paragraph (f)(2)(i) of this section.

- (4) **Presumption of good faith belief.** A covered entity that uses or discloses protected health information pursuant to paragraph (j)(1) of this section is presumed to have acted in good faith with regard to a belief described in paragraph (i)(1)(i) or (ii) of this section, if the belief is based upon the covered entity's actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

(k) **Standard: Uses and disclosures for specialized government functions —**

(1) **Military and veterans activities —**

- (i) **Armed Forces personnel.** A covered entity may use and disclose the protected health information of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission, if the appropriate military authority has published by notice in the FEDERAL REGISTER the following information:

- (A) Appropriate military command authorities; and
(B) The purposes for which the protected health information may be used or disclosed.

- (ii) **Separation or discharge from military service.** A covered entity that is a component of the Departments of Defense or Homeland Security may disclose to the Department of Veterans Affairs (DVA) the protected health information of an individual who is a member of the Armed Forces upon the separation or discharge of the individual from military service for the purpose of a determination by DVA of the individual's eligibility for or entitlement to benefits under laws administered by the Secretary of Veterans Affairs.

- (iii) **Veterans.** A covered entity that is a component of the Department of Veterans Affairs may use and disclose protected health information to components of the Department that determine eligibility for or entitlement to, or that provide, benefits under the laws administered by the Secretary of Veterans Affairs.

- (iv) **Foreign military personnel.** A covered entity may use and disclose the protected health information of individuals who are foreign military personnel to their appropriate foreign military authority for the same purposes for which uses and disclosures are permitted for Armed Forces personnel under the notice published in the FEDERAL REGISTER pursuant to paragraph (k)(1)(i) of this section.

- (2) **National security and intelligence activities.** A covered entity may disclose protected health information to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. 401, et seq.) and implementing authority (e.g., Executive Order 12333).
- (3) **Protective services for the President and others.** A covered entity may disclose protected health information to authorized Federal officials for the provision of protective services to the President or other persons authorized by 18 U.S.C. 3056 or to foreign heads of state or other persons authorized by 22 U.S.C. 2709(a)(3), or for the conduct of investigations authorized by 18 U.S.C. 871 and 879.
- (4) **Medical suitability determinations.** A covered entity that is a component of the Department of State may use protected health information to make medical suitability determinations and may disclose whether or not the individual was determined to be medically suitable to the officials in the Department of State who need access to such information for the following purposes:

Uses and disclosures for which an authorization or opportunity to agree...

- (i) For the purpose of a required security clearance conducted pursuant to Executive Orders 10450 and 12968;
- (ii) As necessary to determine worldwide availability or availability for mandatory service abroad under sections 101(a)(4) and 504 of the Foreign Service Act; or
- (iii) For a family to accompany a Foreign Service member abroad, consistent with section 101(b)(5) and 904 of the Foreign Service Act.

(5) *Correctional institutions and other law enforcement custodial situations* –

- (i) **Permitted disclosures.** A covered entity may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual protected health information about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary for:
 - (A) The provision of health care to such individuals;
 - (B) The health and safety of such individual or other inmates;
 - (C) The health and safety of the officers or employees of or others at the correctional institution;
 - (D) The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
 - (E) Law enforcement on the premises of the correctional institution; or
 - (F) The administration and maintenance of the safety, security, and good order of the correctional institution.
- (ii) **Permitted uses.** A covered entity that is a correctional institution may use protected health information of individuals who are inmates for any purpose for which such protected health information may be disclosed.
- (iii) **No application after release.** For the purposes of this provision, an individual is no longer an inmate when released on parole, probation, supervised release, or otherwise is no longer in lawful custody.

(6) *Covered entities that are government programs providing public benefits.*

- (i) A health plan that is a government program providing public benefits may disclose protected health information relating to eligibility for or enrollment in the health plan to another agency administering a government program providing public benefits if the sharing of eligibility or enrollment information among such government agencies or the maintenance of such information in a single or combined data system accessible to all such government agencies is required or expressly authorized by statute or regulation.
- (ii) A covered entity that is a government agency administering a government program providing public benefits may disclose protected health information relating to the program to another covered entity that is a government agency administering a government program providing public benefits if the programs serve the same or similar populations and the disclosure of protected health information is necessary to coordinate the covered functions of such programs or to improve administration and management relating to the covered functions of such programs.

Uses and disclosures for which an authorization or opportunity to agree...

- (7) **National Instant Criminal Background Check System.** A covered entity may use or disclose protected health information for purposes of reporting to the National Instant Criminal Background Check System the identity of an individual who is prohibited from possessing a firearm under 18 U.S.C. 922(g)(4), provided the covered entity:
- (i) Is a State agency or other entity that is, or contains an entity that is:
 - (A) An entity designated by the State to report, or which collects information for purposes of reporting, on behalf of the State, to the National Instant Criminal Background Check System; or
 - (B) A court, board, commission, or other lawful authority that makes the commitment or adjudication that causes an individual to become subject to 18 U.S.C. 922(g)(4); and
 - (ii) Discloses the information only to:
 - (A) The National Instant Criminal Background Check System; or
 - (B) An entity designated by the State to report, or which collects information for purposes of reporting, on behalf of the State, to the National Instant Criminal Background Check System; and
 - (iii)
 - (A) Discloses only the limited demographic and certain other information needed for purposes of reporting to the National Instant Criminal Background Check System; and
 - (B) Does not disclose diagnostic or clinical information for such purposes.
- (l) **Standard: Disclosures for workers' compensation.** A covered entity may disclose protected health information as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.

[65 FR 82802, Dec. 28, 2000, as amended at 67 FR 53270, Aug. 14, 2002; 78 FR 5699, Jan. 25, 2013; 78 FR 34266, June 7, 2013; 81 FR 395, Jan. 6, 2016]

EXHIBIT "H"

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§ 213.81. Case Records Public Access Policy of the Unified Judicial System of Pennsylvania

Section 1.0. Definitions.

- A. "Abuse Victim" is a person for whom a protection order has been granted by a court pursuant to Pa.R.C.P. No. 1901 et seq. and 23 Pa.C.S. §§6101 et seq. or Pa.R.C.P. No. 1951 et seq. and 42 Pa.C.S. §§62A 01 et seq., as well as Pa.R.C.P.M.D.J. No. 1201 et seq.
- B. "Case Records" are (1) documents for any case filed with, accepted and maintained by a court or custodian; (2) dockets, indices, and documents (such as orders, opinions, judgments, decrees) for any case created and maintained by a court or custodian. This term does not include notes, memoranda, correspondence, drafts, worksheets, and work product of judges and court personnel. Unless otherwise provided in this policy, this definition applies equally to case records maintained in paper and electronic formats.
- C. "Clerical errors" are errors or omissions appearing in a case record that are patently evident, as a result of court personnel's action or inaction.
- D. "Court" includes the Supreme Court, Superior Court, Commonwealth Court, Courts of Common Pleas, Philadelphia Municipal Court, and Magisterial District Courts.
- E. "Court of Record" includes the Supreme Court, Superior Court, Commonwealth Court, Courts of Common Pleas, and Philadelphia Municipal Court.
- F. "Court Facility" is the location or locations where case records are filed or maintained.
- G. "Custodian" is any person responsible for maintaining case records or for processing public requests for access to case records.
- H. "Docket" is a chronological index of filings, actions, and events in a particular case, which may include identifying information of the parties and counsel, a brief description or summary of the filings, actions, and events, and other case information.
- I. "Financial Account Numbers" include financial institution account numbers, debit and credit card numbers, and methods of authentication used to secure accounts such as personal identification numbers, usernames and passwords.
- J. "Financial Source Documents" are:
1. Tax returns and schedules;
 2. W-2 forms and schedules including 1099 forms or similar documents;
 3. Wage stubs, earning statements, or other similar documents;
 4. Credit card statements;
 5. Financial institution statements;
 6. Check registers;
 7. Checks or equivalent; and

8. Loan application documents.

K. "Medical/psychological records" are records relating to the past, present, or future physical or mental health or condition of an individual.

L. "Minor" is a person under the age of eighteen.

M. "Party" is one who commences an action or against whom relief is sought in a matter.

N. "Public" is any person, member of the media, business, non-profit entity, organization or association. The term does not include a party to a case; the attorney(s) of record in a case; Unified Judicial System officials or employees if acting in their official capacities; or any federal, state, or local government entity, and employees or officials of such an entity if acting in their official capacities.

O. "Remote Access" is the ability to electronically search, inspect, print or copy information in a case record without visiting the court facility where the case record is maintained or available, or requesting the case record from the court or custodian pursuant to Section 4.0.

Section 2.0. Statement of General Policy.

A. This policy shall govern access by the public to case records.

B. Security, possession, custody, and control of case records shall generally be the responsibility of the applicable custodian and designated staff.

C. Facilitating access by the public shall not substantially impede the orderly conduct of court business.

D. A court or custodian may not adopt more restrictive or expansive access protocols than provided for in this policy. Nothing in this policy requires a court or custodian to provide remote access to case records. However, if a court or custodian chooses to provide remote access to any of its case records, access shall be provided in accordance with Section 10.0.

Section 3.0. Access to Case Records.

All case records shall be open to the public in accordance with this policy.

Section 4.0. Requesting Access to Case Records.

A. When desiring to inspect or copy case records, a member of the public shall make an oral request to the applicable custodian, unless otherwise provided by a local rule or an order issued by a court of record.

B. When the information that is the subject of the request is complex or voluminous, the custodian may require a written request. If the requestor does not submit a written request when required, access may be delayed until the written request is submitted or a time when an individual designated by the custodian is available to monitor such access to ensure the integrity of the case records is maintained.

C. Requests shall identify or describe the records sought with specificity to enable the custodian to ascertain which records are being requested.

Section 5.0. Responding to Requests for Access to Case Records.

A. A custodian shall fulfill a request for access to case records as promptly as possible under the circumstances existing at the time of the request.

B. If a custodian cannot fulfill the request promptly or at all, the custodian shall inform the requestor of the specific reason(s) why access to the information is being delayed or denied.

C. If a custodian denies a written request for access, the denial shall be in writing.

D. Except as provided in Subsection E, relief from a custodian's written denial may be sought by filing a motion or application with the court for which the custodian maintains the records.

E. Relief from a magisterial district court may be sought by filing an appeal with the president judge of the judicial district or the president judge's designee. Relief from a written denial by the Philadelphia Municipal Court may be sought by filing a motion with the president judge of Philadelphia Municipal Court or the president judge's designee.

Section 6.0. Fees.

A. Unless otherwise provided by applicable authority, fees for duplication by photocopying or printing from electronic media or microfilm shall not exceed \$0.25 per page.

B. Except as provided in Subsection C, a custodian shall establish a fee schedule that is (1) posted in the court facility in an area accessible to the public, and (2) posted on the custodian's website.

C. Any fee schedule for a magisterial district court shall be established by the president judge of the judicial district by local rule pursuant to Pa.R.J.A. No. 103(c). The fee schedule shall be publicly posted in an area accessible to the public.

Section 7.0. Confidential Information.

A. The following information is confidential and shall not be included in any document filed with a court or custodian, except on a Confidential Information Form filed contemporaneously with the document:

1. Social Security Numbers;
2. Financial Account Numbers, except an active financial account number may be identified by the last four digits when the financial account is the subject of the case and cannot otherwise be identified;
3. Driver License Numbers;
4. State Identification (SID) Numbers;
5. Minors' names and dates of birth except when a minor is charged as a defendant in a criminal matter (see 42 Pa.C.S. §6355); and
6. Abuse victim's address and other contact information, including employer's name, address and work schedule, in family court actions as defined by Pa.R.C.P. No. 1931(a), except for victim's name.

This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority.

B. The Administrative Office of Pennsylvania Courts shall design and publish the Confidential Information Form.

C. Reserved.

D. Parties and their attorneys shall be solely responsible for complying with the provisions of this section and shall certify their compliance to the court. The certification that shall accompany each filing shall be substantially in the following form: "I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents." The certification language may be inserted in the document to be filed, thereby obviating the need for a separate certification form.

E. A court or custodian is not required to review or redact any filed document for compliance with this section. A party's or attorney's failure to comply with this section shall not affect access to case records that are otherwise accessible.

F. If a filed document fails to comply with the requirements of this section, a court of record may, upon motion or its own initiative, with or without a hearing, order the filed document sealed, redacted, amended or any combination thereof. A court of record may impose sanctions, including costs necessary to prepare a compliant document for filing in accordance with applicable authority.

G. If a filed document fails to comply with the requirements of this section, a magisterial district court may, upon request or its own initiative, with or without a hearing, order the filed document redacted, amended or both.

H. This section shall apply to all documents for any case filed with a court or custodian on or after the effective date of this policy.

Section 8.0. Confidential Documents.

A. The following documents are confidential and shall be filed with a court or custodian under a cover sheet designated "Confidential Document Form":

1. Financial Source Documents;
2. Minors' educational records;
3. Medical/Psychological records;
4. Children and Youth Services' records;
5. Marital Property Inventory and Pre-Trial Statement as provided in Pa.R.C.P. No. 1920.33;
6. Income and Expense Statement as provided in Pa.R.C.P. No. 1910.27(c); and
7. Agreements between the parties as used in 23 Pa.C.S. §3105.

This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority.

B. The Administrative Office of Pennsylvania Courts shall design and publish the Confidential Document Form.

C. Confidential documents submitted with the Confidential Document Form shall not be accessible to the public, except as ordered by a court. However, the Confidential Document Form or a copy of it shall be accessible to the public.

D. Parties and their attorneys shall be solely responsible for complying with the provisions of this section and shall certify their compliance to the court. The certification that shall accompany each filing shall be substantially in the following form: "I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents." The certification language may be inserted in the document to be filed, thereby obviating the need for a separate certification form.

E. A court or custodian is not required to review any filed document for compliance with this section. A party's or attorney's failure to comply with this section shall not affect access to case records that are otherwise accessible.

F. If confidential documents are not submitted with the Confidential Document Form, a court of record may, upon motion or its own initiative, with or without a hearing, order that any such documents be sealed. A court of record may also impose appropriate sanctions for failing to comply with this section.

G. If a filed document fails to comply with the requirements of this section, a magisterial district court may, upon request or its own initiative, with or without a hearing, order that any such documents be sealed.

H. This section shall apply to all documents for any case filed with a court or custodian on or after the effective date of this policy.

Section 9.0 .Limits on Public Access to Case Records at a Court Facility.

The following information shall not be accessible by the public at a court facility:

- A. Case records in proceedings under 20 Pa.C.S. §711(9), including but not limited to case records with regard to issues concerning recordation of birth and birth records, the alteration, amendment, or modification of such birth records, and the right to obtain a certified copy of the same, except for the docket and any court order or opinion;
- B. Case records concerning incapacity proceedings filed pursuant to 20 Pa.C.S. §§5501-5555, except for the docket and any final decree adjudicating a person as incapacitated;
- C. Any Confidential Information Form as set forth in Section 7.0;

D. Any document filed with a Confidential Document Form as set forth in Section 8.0;

E. Information sealed or protected pursuant to court order;

F. Information to which access is otherwise restricted by federal law, state law, or state court rule; and

G. Information presenting a risk to personal security, personal privacy, or the fair, impartial and orderly administration of justice, as determined by the Court Administrator of Pennsylvania with the approval of the Chief Justice. The Court Administrator shall publish notification of such determinations in the *Pennsylvania Bulletin* and on the Unified Judicial System's website.

H. The Unredacted Version of any document filed in accordance with prior versions of this policy.

Section 10.0. Limits on Remote Access to Case Records.

A. The following information shall not be remotely accessible by the public:

1. The information set forth in Section 9.0;
2. In criminal cases, information that either specifically identifies or from which the identity of jurors, witnesses (other than expert witnesses), or victims could be ascertained, including names, addresses and phone numbers;
3. Transcripts lodged of record, excepting portions of transcripts when attached to a document filed with the court;
4. *In Forma Pauperis* petitions;
5. Case records in family court actions as defined in Pa.R.C.P. No. 1931(a), except for dockets, court orders and opinions;
6. Case records in actions governed by the Probate, Estates and Fiduciaries Code, Adult Protective Services Act and the Older Adult Protective Services Act, except for dockets, court orders and opinions; and
7. Original and reproduced records filed in the Supreme Court, Superior Court or Commonwealth Court as set forth in Pa.R.A.P. 1921, 1951, 2151, 2152, and 2156.

B. With respect to Subsections A(5) and A(6), unless otherwise restricted pursuant to applicable authority, dockets available remotely shall contain only the following information:

1. A party's name;
2. The city, state, and ZIP code of a party's address;
3. Counsel of record's name and address;
4. Docket number;
5. Docket entries indicating generally what actions have been taken or are scheduled in a case;
6. Court orders and opinions;
7. Filing date of the case; and
8. Case type.

C. Case records remotely accessible by the public prior to the effective date of this policy shall be exempt from this section.

Section 11.0. Correcting Clerical Errors in Case Records.

A. A party, or the party's attorney, seeking to correct a clerical error in a case record may submit a written request for correction.

1. A request to correct a clerical error in a case record of the Supreme Court, Superior Court, or Commonwealth Court shall be submitted to the prothonotary of the proper appellate court.

2. A request to correct a clerical error in a case record of a court of common pleas, the Philadelphia Municipal Court, or a magisterial district court shall be submitted to the applicable custodian.

B. The request shall be made on a form designed and published by the Administrative Office of Pennsylvania Courts.

C. The requestor shall specifically set forth on the request form the information that is alleged to be a clerical error and shall provide sufficient facts, including supporting documentation, that corroborate the requestor's allegation that the information in question is in error.

D. The requestor shall provide copies of the request to all parties to the case.

E. Within 10 business days of receipt of a request, the custodian shall respond in writing to the requestor and all parties to the case in one of the following manners:

1. The request does not contain sufficient information and facts to determine what information is alleged to be in error, and no further action will be taken on the request.
2. The request does not concern a case record that is covered by this policy, and no further action will be taken on the request.
3. A clerical error does exist in the case record and the information in question has been corrected.
4. A clerical error does not exist in the case record.
5. The request has been received and an additional period not exceeding 30 business days is necessary to complete a review of the request.

F. A requestor may seek review of the custodian's response under Subsections E(1)-(4) within 10 business days of the mailing date of the response.

1. The request for review shall be submitted on a form that is designed and published by the Administrative Office of Pennsylvania Courts.
2. The request shall be reviewed by the judge(s) who presided over the case. However, if the request for review concerns a magisterial district court's decision, it shall be reviewed by the president judge or his/her designee.

Section 12.0. Continuous Availability of Policy.

A copy of this policy shall be continuously available for public inspection in every court and custodian's office and posted on the Unified Judicial System's website.

History:

The provisions of this §213.81 amended March 28, 2018, effective 7/1/2018, 48 Pa.B. 2113 and 48 Pa.B. 2602; amended September 15, 2020, effective in 30 days, 50 Pa.B. 5216; amended October 6, 2021, effective 1/1/2022, 51 Pa.B. 6583.

EXHIBIT "I"

CONSTITUTION
of the
COMMONWEALTH OF PENNSYLVANIA

Article

- Preamble
- I. Declaration of Rights
- II. The Legislature
- III. Legislation
- IV. The Executive
- V. The Judiciary
- Schedule to Judiciary Article
- VI. Public Officers
- VII. Elections
- VIII. Taxation and Finance
- IX. Local Government
- X. Private Corporations
- XI. Amendments
- Schedule No. 1 (Adopted with the Constitution)
- Schedule No. 2 (Amendments of November 2, 1909)

Constitution of 1874. The Constitution of 1874 was adopted November 3, 1873, by a Constitutional Convention which was called pursuant to the act of April 11, 1872 (P.L.53, No.42). The Constitution was ratified at a special election held December 16, 1873, and went into effect January 1, 1874. This Constitution was amended in 1901, 1909, 1911, 1913, 1915, 1918, 1920, 1922, 1923, 1928, 1933, 1937, 1943, 1945, 1949, 1951, 1953, 1955, 1956, 1957, 1958, 1959, 1961, 1963 and 1965. By statute, 1 Pa.C.S. § 906, the Constitution, as adopted by referendum of December 16, 1873, shall be known and may be cited as the Constitution of 1874.

Constitution of 1968. The Constitution of 1874 was modified and renumbered by extensive amendments on May 17, 1966, November 8, 1966, and May 16, 1967; and by proclamation of the Governor of July 7, 1967, P.L.1063, pursuant to the act of August 17, 1965 (P.L.345, No.180). Proposals 1 through 7 to amend the Constitution were recommended by a Constitutional Convention which was called pursuant to the act of March 15, 1967 (P.L.2, No.2). The proposals were approved by the electorate on April 23, 1968. By statute, 1 Pa.C.S. § 906, the Constitution, as amended by referenda of May 17, 1966, November 8, 1966, May 16, 1967, and April 23, 1968, and as numbered by proclamation of the Governor of July 7, 1967, shall be known and may be cited as the Constitution of 1968.

Section Headings. Section headings were not contained in the Constitution as adopted by referendum of December 16, 1873, but were either added by various constitutional amendments or promulgated on June 11, 1974, P.L.1573, by the Director of the Legislative Reference Bureau with the approval of the Attorney General under statutory authority contained in 1 Pa.C.S. § 905.

Explanation of Amendment Notes. Unless otherwise noted, amendments are referred to by date of adoption by the electorate together with a reference to the applicable joint resolution (J.R.) or, in rare cases, concurrent resolution (C.R.) adopted by the General Assembly and the page in the Laws of Pennsylvania (P.L.) in which the joint resolution or concurrent resolution was published.

WE, the people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance, do ordain and establish this Constitution.

ARTICLE I
DECLARATION OF RIGHTS

Sec.

1. Inherent rights of mankind.
2. Political powers.
3. Religious freedom.
4. Religion.
5. Elections.
6. Trial by jury.
7. Freedom of press and speech; libels.
8. Security from searches and seizures.
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28. Prohibition against denial or abridgment of equality of rights because of sex.
29. Prohibition against denial or abridgment of equality of rights because of race and ethnicity.

Adoption. Unless otherwise noted, the provisions of Article I were adopted December 16, 1873, 1874 P.L.3, effective January 1, 1874.

That the general, great and essential principles of liberty and free government may be recognized and unalterably established, WE DECLARE THAT--

§ 1. Inherent rights of mankind.

All men are born equally free and independent, and have certain inherent and indefeasible 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.

§ 2. Political powers.

All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter,

reform or abolish their government in such manner as they may think proper.

§ 3. Religious freedom.

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship.

§ 4. Religion.

No person who acknowledges the being of a God and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this Commonwealth.

§ 5. Elections.

Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

§ 6. Trial by jury.

Trial by jury shall be as heretofore, and the right thereof remain inviolate. The General Assembly may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case. Furthermore, in criminal cases the Commonwealth shall have the same right to trial by jury as does the accused.

(May 18, 1971, P.L.765, J.R.1; Nov. 3, 1998, P.L.1328, J.R.2)

§ 7. Freedom of press and speech; libels.

The printing press shall be free to every person who may undertake to examine the proceedings of the Legislature or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. No conviction shall be had in any prosecution for the publication of papers relating to the official conduct of officers or men in public capacity, or to any other matter proper for public investigation or information, where the fact that such publication was not maliciously or negligently made shall be established to the satisfaction of the jury; and in all indictments for libels the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Constitutionality. The provisions of section 7 relating to criminal libel were declared unconstitutional by the Supreme Court of Pennsylvania in *Commonwealth v. Armao*, 446 Pa. 325, 286 A.2d 626 (1972).

§ 8. Security from searches and seizures.

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.

§ 9. Rights of accused in criminal prosecutions.

In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he

be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land. The use of a suppressed voluntary admission or voluntary confession to impeach the credibility of a person may be permitted and shall not be construed as compelling a person to give evidence against himself. (Nov. 6, 1984, P.L.1306, J.R.2; Nov. 7, 1995, 1st Sp.Sess., P.L.1151, J.R.1; Nov. 4, 2003, P.L.459, J.R.1)

1995 Amendment. Joint Resolution No. 1 amended section 9. The passage of Joint Resolution No.1 was declared unconstitutional by Bergdoll v. Kane 731 A.2d 1261 (1999) and the language was reverted.

§ 10. Initiation of criminal proceedings; twice in jeopardy; eminent domain.

Except as hereinafter provided no person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger, or by leave of the court for oppression or misdemeanor in office. Each of the several courts of common pleas may, with the approval of the Supreme Court, provide for the initiation of criminal proceedings therein by information filed in the manner provided by law. No person shall, for the same offense, be twice put in jeopardy of life or limb; nor shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured. (Nov. 6, 1973, P.L.452, J.R.2)

§ 11. Courts to be open; suits against the Commonwealth.

All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.

§ 12. Power of suspending laws.

No power of suspending laws shall be exercised unless by the Legislature or by its authority.

§ 13. Bail, fines and punishments.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

§ 14. Prisoners to be bailable; habeas corpus.

All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it. (Nov. 3, 1998, P.L.1327, J.R.1)

§ 15. Special criminal tribunals.

No commission shall issue creating special temporary criminal tribunals to try particular individuals or particular classes of cases.

(May 16, 1967, P.L.1035, J.R.1)

§ 16. Insolvent debtors.

The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors in such manner as shall be prescribed by law.

§ 17. Ex post facto laws; impairment of contracts.

No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges

or immunities, shall be passed.

§ 18. Attainder.

No person shall be attainted of treason or felony by the Legislature.

§ 19. Attainder limited.

No attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the Commonwealth.

(May 16, 1967, P.L.1035, J.R.1)

§ 20. Right of petition.

The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.

§ 21. Right to bear arms.

The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.

§ 22. Standing army; military subordinate to civil power.

No standing army shall, in time of peace, be kept up without the consent of the Legislature, and the military shall in all cases and at all times be in strict subordination to the civil power.

§ 23. Quartering of troops.

No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

§ 24. Titles and offices.

The Legislature shall not grant any title of nobility or hereditary distinction, nor create any office the appointment to which shall be for a longer term than during good behavior.

§ 25. Reservation of powers in people.

To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

(May 16, 1967, P.L.1035, J.R.1)

1967 Amendment. Joint Resolution No.1 repealed former section 25 and renumbered former section 26 to present section 25.

§ 26. No discrimination by Commonwealth and its political subdivisions.

Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

(May 16, 1967, P.L.1035, J.R.1)

1967 Amendment. Joint Resolution No.1 added present section 26 and renumbered former section 26 to present section 25.

§ 27. Natural resources and the public estate.

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

(May 18, 1971, P.L.769, J.R.3)

1971 Amendment. Joint Resolution No.3 added section 27.

§ 28. Prohibition against denial or abridgment of equality of rights because of sex.

Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.

(May 18, 1971, P.L.767, J.R.2)

1971 Amendment. Joint Resolution No.2 added section 28.

§ 29. Prohibition against denial or abridgment of equality of rights because of race and ethnicity.

Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the race or ethnicity of the individual.

(May 18, 2021, P.L.493, J.R.1)

2021 Amendment. Joint Resolution 1 added section 29.

CONSTITUTION
of the
COMMONWEALTH OF PENNSYLVANIA

Article

- Preamble
- I. Declaration of Rights
- II. The Legislature
- III. Legislation
- IV. The Executive
- V. The Judiciary
- Schedule to Judiciary Article
- VI. Public Officers
- VII. Elections
- VIII. Taxation and Finance
- IX. Local Government
- X. Private Corporations
- XI. Amendments
- Schedule No. 1 (Adopted with the Constitution)
- Schedule No. 2 (Amendments of November 2, 1909)

Constitution of 1874. The Constitution of 1874 was adopted November 3, 1873, by a Constitutional Convention which was called pursuant to the act of April 11, 1872 (P.L.53, No.42). The Constitution was ratified at a special election held December 16, 1873, and went into effect January 1, 1874. This Constitution was amended in 1901, 1909, 1911, 1913, 1915, 1918, 1920, 1922, 1923, 1928, 1933, 1937, 1943, 1945, 1949, 1951, 1953, 1955, 1956, 1957, 1958, 1959, 1961, 1963 and 1965. By statute, 1 Pa.C.S. § 906, the Constitution, as adopted by referendum of December 16, 1873, shall be known and may be cited as the Constitution of 1874.

Constitution of 1968. The Constitution of 1874 was modified and renumbered by extensive amendments on May 17, 1966, November 8, 1966, and May 16, 1967; and by proclamation of the Governor of July 7, 1967, P.L.1063, pursuant to the act of August 17, 1965 (P.L.345, No.180). Proposals 1 through 7 to amend the Constitution were recommended by a Constitutional Convention which was called pursuant to the act of March 15, 1967 (P.L.2, No.2). The proposals were approved by the electorate on April 23, 1968. By statute, 1 Pa.C.S. § 906, the Constitution, as amended by referenda of May 17, 1966, November 8, 1966, May 16, 1967, and April 23, 1968, and as numbered by proclamation of the Governor of July 7, 1967, shall be known and may be cited as the Constitution of 1968.

Section Headings. Section headings were not contained in the Constitution as adopted by referendum of December 16, 1873, but were either added by various constitutional amendments or promulgated on June 11, 1974, P.L.1573, by the Director of the Legislative Reference Bureau with the approval of the Attorney General under statutory authority contained in 1 Pa.C.S. § 905.

Explanation of Amendment Notes. Unless otherwise noted, amendments are referred to by date of adoption by the electorate together with a reference to the applicable joint resolution (J.R.) or, in rare cases, concurrent resolution (C.R.) adopted by the General Assembly and the page in the Laws of Pennsylvania (P.L.) in which the joint resolution or concurrent resolution was published.

WE, the people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance, do ordain and establish this Constitution.

ARTICLE I
DECLARATION OF RIGHTS

Sec.

1. Inherent rights of mankind.
2. Political powers.
3. Religious freedom.
4. Religion.
5. Elections.
6. Trial by jury.
7. Freedom of press and speech; libels.
8. Security from searches and seizures.
9. Rights of accused in criminal prosecutions.
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Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.

(May 18, 1971, P.L.767, J.R.2)

1971 Amendment. Joint Resolution No.2 added section 28.

§ 29. Prohibition against denial or abridgment of equality of rights because of race and ethnicity.

Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the race or ethnicity of the individual.

(May 18, 2021, P.L.493, J.R.1)

2021 Amendment. Joint Resolution 1 added section 29.