

## **Pennsylvania Supreme Court Holds That Autopsy Reports Are Public Records**

**By Michael Berry**

Last month the Pennsylvania Supreme Court held that autopsy reports are public records. *See Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632 (Pa. Jan. 22, 2009). Although the court's holding stands as a resounding victory for public access, its long-term implications are less clear, as the court expressly avoided deciding whether autopsy reports will remain accessible under the Commonwealth's new Right to Know Law, which went into effect just three weeks before the Supreme Court handed down its decision. And, without providing any specific guidance, the Court left open the possibility that courts can seal autopsy reports "based on privacy or privilege concerns."

### ***Background***

Under the Pennsylvania Coroner's Act, every coroner throughout the state is required to "deposit all of his official records and papers for the preceding year" with the clerk of court "for the inspection of all persons interested therein." Citing this law, reporters for the *Easton Express-Times* and the *Allentown Morning Call* requested that the Lehigh County Coroner, Scott Grim, provide copies of the autopsy report he prepared following the shooting death of a local police officer.

The officer's death, which the coroner declared to be a homicide, had garnered substantial public interest, particularly because he was shot inside police headquarters. Nevertheless, Coroner Grim denied the newspapers' requests based on his view that the autopsy report was not an "official" record or paper under the Coroner's Act. The two newspapers filed mandamus actions in the local court of common pleas seeking to force Grim to deposit his autopsy report in the clerk's office. The court granted the newspapers' request and ordered the coroner to deliver the report to the clerk. Coroner Grim appealed to the Commonwealth Court, one of two intermediate appellate courts in Pennsylvania.

Grim's challenge was not the first time Pennsylvania's appellate courts had addressed the accessibility of autopsy reports. In 1996, the Superior Court, Pennsylvania's other intermediate appellate court, determined that autopsy reports are "official records of the coroner's office" and thus should be released under the Coroner's Act. *See In re Dillon*, 674 A.2d 735, 739 (Pa. Super. Ct. 1996). That determination was later cited favorably by the state Supreme Court in a case addressing whether autopsy reports could be sealed to protect ongoing criminal investigations. *See In re Buchanan*, 880 A.2d 568, 576-77 (Pa. 2005). Several months before the Supreme Court issued its decision in *Buchanan*, the Commonwealth Court took the opposite position, holding that autopsy reports are not "official records" covered by the Act and that the statute only requires coroners to disclose documentation of the cause of death and whether the death resulted from foul play. *See Johnstown Tribune Publ'g Co. v. Ross*, 871 A.2d 324, 330-31 (Pa. Commw. Ct. 2005); *see also MLRC MediaLawLetter* April 2005 at 38.

In *Grim*, the Commonwealth Court was forced to address these conflicting rulings. Ultimately, it followed its prior decision and, consistent with that decision, concluded that Coroner Grim was not required to deposit the autopsy report with the clerk of courts. The newspapers petitioned the Supreme Court for review, contending that the Commonwealth Court erred by failing to follow the Superior Court's decision in *Dillon* and the Supreme Court's guidance in *Buchanan*.

### ***The Supreme Court's Decision***

The Supreme Court reversed the Commonwealth Court's ruling and applied the plain meaning of the Coroner's Act, as foreshadowed by its *Buchanan* decision. Specifically, the Court held that because one of a coroner's "official duties" under the Act is conducting an autopsy, "[i]t follows logically that a coroner's resulting autopsy reports constitute 'official records and papers' within the meaning of [the Act]." Thus, coroners must deposit their autopsy reports with the clerk of court at the end of each year.

The Supreme Court recognized that under its decision the public would have access to "potentially privileged information related to the decedent's medical history and graphic photographs taken during the autopsy." The Court explained that trial courts could address this "legitimate" concern through their "inherent power" to "limit public access to autopsy reports (or portions thereof) based on privacy or privilege grounds where warranted." Although the Court did not discuss this point in detail, it said that "anyone seeking to protect an interest in such material, and having standing to do so, can seek appropriate relief from the trial court."

This concern prompted a dissent from Justice J. Michael Eakin, who discussed the privacy issues raised by the Court's decision at length. Justice Eakin criticized the effect of the Court's ruling as "abominable," stating his view that "matters having nothing to do with cause and manner of death should remain private and not be routinely disclosed."

### ***The New Right to Know Law***

In a footnote, the Supreme Court stated that it expressed no view "on the relationship between the Coroner's Act and the Right to Know Law," noting that the new open records law, which became effective on January 1, 2009, "has no application to the events underlying this case." While this question technically remains an open issue, it appears reasonably clear that the Court's decision in *Grim* should continue to control public access to autopsy reports. Although the new Right to Know Law provides that "autopsy record[s] of a coroner," copies of "autopsy report[s]," and photographs taken during an autopsy are exempt from disclosure, it also expressly states that if its provisions "regarding access to records conflict with any other federal or state law, the provisions of this act shall not apply." In other words, under the Right to Know Law, the mandate of the Coroner's Act should continue to govern public access to autopsy reports. If the Supreme Court continues to follow the same plain meaning approach it employed in *Grim*, the public should continue to have access to autopsy reports under the new open records law.

*Michael Berry is an attorney in the Philadelphia office of Levine Sullivan Koch & Schulz, L.L.P. Penn Jersey Advance, Inc. was represented by Douglas J. Smillie of Fitzpatrick Lentz & Bubba, P.C. The Morning Call, Inc. and Joseph McDonald were represented by Malcolm J. Gross and Michael Alan Henry of Gross, McGinley, LaBarre & Eaton, L.L.P. Scott Grim was represented by Stuart Shmookler of the Lehigh County Department of Law. Teri L. Henning and Melissa Bevan Melewsky of the Pennsylvania Newspaper Association filed an amicus brief in support of the newspapers.*

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