



I concur with the majority's finding 16 P.S. §§ 1251 and 1236.1(c) do not conflict; however, I respectfully dissent from the majority's holding all "autopsy reports" are part of a coroner's "official records and papers" requiring annual filing and disclosure. The details of an autopsy do not, in my judgment, become an "official record."

Preliminarily, I do not agree "conducting autopsies is one of the official duties of a coroner." See Majority Slip Op., at 7. The singular official duty of a coroner is to determine the cause and manner of death within a particular county. An autopsy is not a duty — it is a tool the coroner uses in order to discharge that duty. Having authority to order an autopsy does not equate to the duty to do so. It is up to the coroner to determine whether an autopsy will be of help when completing those statutory duties, see 16 P.S. § 1237(a), but there is no duty to conduct an autopsy.

Nothing in the statute hints at what is distinguishes "official records and papers" from non-official records and papers. Autopsy reports normally consist of the details of the examination, and a conclusory portion that addresses cause and manner of death based on those details. I believe the latter is appropriately part of the "official" report, for it deals with that which the coroner is obliged to find. However, the entirety of the autopsy notes should not be deemed such.

An autopsy is an interrogation of the body. It is not pleasant for the "layman" to contemplate what actually is done to accomplish an autopsy; politely put, it is comprehensively deconstructive of the body. Being necessarily comprehensive, autopsies reveal volumes of information, much of which is sensitive medical information, irrelevant to the cause and manner of death. Private medical information protected in life<sup>1</sup> does not automatically become less private because of the person's death.

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<sup>1</sup> These protections stem not only from common decency, but also via legislation, such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) statute. See 29 U.S.C. § 1181 et seq.

Here, the majority concludes “trial courts are adequately equipped and authorized to protect autopsy reports from disclosure based on ‘judicial discretion and necessity’ under appropriate circumstances.” Majority Slip Op., at 8. I believe this does not express good public policy, for it places the onus on those who are affected adversely by the automatic public display of very private information. The majority offers no guidance on what might be “appropriate circumstances” much less “necessity,” nor does it suggest with what parameters judicial discretion should be exercised.

Why should the family of the deceased, understandably wishing to keep intimate details of their loved one from the prurient public eye, have to affirmatively seek protection? Having a loved one die under circumstances requiring an autopsy is tragedy enough for the family; thinking of what that autopsy entails for the body of the deceased is exponentially disturbing for them. Does the family really have to run to court to try to avoid routine disclosure of the deceased’s weight, muscle tone, the condition of internal organs, the presence and progress of disease, and such other physical abnormalities that confront us all but are no one else’s business? Requiring the public exposition of every detail of the body borders on abominable; matters having nothing to do with cause and manner of death should remain private, and not be routinely disclosed. If there is reason for such information to come out, let it be the requesting party who must show cause.

As the Commonwealth Court noted in Johnstown Tribune Publishing Company v. Ross, 871 A.2d 324 (Pa. Cmwlth. 2005), official records and papers are those containing the cause and manner of death, which can be satisfied by issuing a “view of forms.” Id., at 329. Additionally, as noted in Ross, “[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." Id.

I disagree with the majority's rejection of the Commonwealth Court's application of Ross rather than Com. ex rel. District Attorney of Blair County, In re Buchanan, 880 A.2d 568 (Pa. 2005). See Majority Slip Op., at 4-5. Buchanan did not expressly hold autopsy reports are "official records and papers" under § 1251; rather, it determined that a trial court has discretion to seal an autopsy report in order to preserve an ongoing criminal investigation. Buchanan, at 575. Here, there are no concerns about criminal investigations; rather, the question involves mandatory public disclosure in every case. This case is distinguishable from Buchanan and more analogous to Ross, where the coroner disclosed documents detailing cause of death and other information relevant to that conclusion, and the Commonwealth Court held the coroner fulfilled her duty.

I believe the approach in Ross was the correct one, and certainly the humane one. The coroner's official duties involve the cause and manner of death, and the requirements of a coroner's official report within the meaning of § 1251 should not be expanded beyond those parameters. If the coroner chooses to file the entire report, it may be inspected; however, the coroner has the discretion to file only the conclusions, which meets the requirements of the statute, just as if no autopsy was performed. If there is a dispute, the coroner's decision should have the presumption of correctness given the discretionary acts of other elected officials, and the burden of proving otherwise should be on the inquisitive party.