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Attorney for Appellant

CHESTER COUNTY OFFICE OF THE  
CORONER

Appellant

Vs.

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

: IN THE COURT OF COMMON PLEAS  
:  
: CHESTER COUNTY, PENNSYLVANIA

: CIVIL ACTION

: NO. 2022-08612-CS

:

**CONCISE STATEMENT OF ERRORS COMPLAINED OF ON APPEAL IN**  
**ACCORDANCE WITH PA. R. A.P. 1925 (b)(1)**

Comes now, Appellant, Chester County Coroner, (hereinafter "Appellant") by and through its undersigned counsel and files the within Concise Statement of Errors Complained of on Appeal in accordance with the Order of Court by the Honorable Jeffrey R. Sommer dated and filed of record on March 14, 2023 and due on or by April 4, 2023 as follows:

1. Judge Sommer erred in misconstruing the Coroner's Act and, after accepting the Coroner's factual position that the Coroner was required to and had on an annual basis filed a single page "Verification of Death" form (or, previously, "View of Form") with the Prothonotary in compliance with the Coroner's Act at § 1236-B, Judge Sommer further required that the Coroner supply additional information under the Right to Know Law (hereinafter "RTKL") including autopsy reports and toxicology reports excluded by the exception of the RTKL 65 P.S. § 67.708(b)(20) when the exemption is qualified by specifying that the "exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death", a provision with which the Coroner had complied.
2. Judge Sommer erred in disregarding the 2018 amendments to the Coroner's Act stating "the court does not view the 2018 amendments to the Coroner's Act and provisions at issue here to be significant or dispositive"; however, the amendments not only increased the fees that may be charged but also restricted the release of information to only certain specified nongovernmental agencies by providing new language in Section 1252-B that specified that the reports to be released (other than discretionary releases made by the Coroner) are to be limited to those 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 facts of record establish that the Respondent is not employed by an insurance company and is not

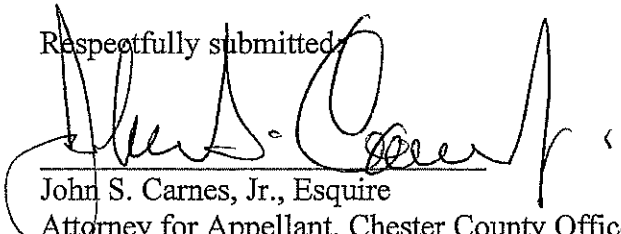
addressing a claim asserted under a policy of insurance or to determine liability for the death of the deceased.

3. Judge Sommer further erred in his disregard of the exemption in the RTKL at § 708 (b)(20) which exempts “an autopsy record of a coroner or medical examiner” because the Coroner’s Act, as mentioned before does not make this information public, and, the Coroner’s Act, as state law, should apply based upon the conflict of law provisions found in the RTKL. See, Right to Know Law, 65 P.S. § 67.3101.1.
4. Judge Sommer erred in relying upon Penn Jersey Advance, Inc. v. Grim, 962 A.2d 632 (2009) as establishing that an “autopsy report is an official record of the Coroner and a public record” when in fact it is the “Verification of Death” form (or, previously “View of Form”) that the Coroner’s Act supplies to the Prothonotary under procedures for public copying at the Office of the Prothonotary (and not under the RTKL) as this document is not subject to release under the RTKL coming from a judicial agency.
5. Judge Sommer erred in determining that the “medical record and drug test exemption” at Section 708(b)(5) of the RTKL despite the fact that the Coroner’s Act Section 1202-B Definitions identifies an “Autopsy” as 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. (emphasis supplied).
6. Judge Sommer erred in determining “HIPAA and other similar privacy laws” are not applicable – improperly stating by inference that the RTKL “refers to medical records of someone who is living” when the RTKL at 65 P.S. § 67.708.(b)(5) makes no reference to the living or the deceased as the exemption refers to, “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...** Id. (emphasis supplied), and Judge Sommer implied that the Coroner failed “any attempts to notify the next of kin in this matter” when the HIPAA Privacy Rule applies to the individually identifiable health information of a decedent for 50 years following the date of death of the individual unless released

with written consent by the decedent's family. See, also, 45 CFR § 164.502. The facts of record establish that the Respondent does not appear to be associated with any of the deceased persons identified in the Request nor has the Respondent received any authorizations to receive the records from the personal representatives or family of the deceased individuals.

7. Judge Sommer erred in relying upon Penn Jersey Advance, Inc. v. Grim, 962 A.2d 632 (2009) and Hearst Television, Inc v. Norris, 617 Pa. 602 (2017) because they pre-date the 2018 amendments to the Coroners Act and the Court should have reviewed cases addressing the amendments found in sister courts at Court of Common Pleas of Centre County No. AP 2022-1053, dated August 17, 2022 and Court of Common Pleas of Allegheny County, Pennsylvania Civil Division No. SA21-000108 dated April 28, 2021.
8. Judge Sommer made errors of law and mistakes of fact and abuses of his discretion as the OOR determination is not supported by substantial evidence and contains clear errors of law, is contrary to State Law, Rules of Statutory Construction, disregards the exemptions to disclosure as properly identified by the Coroner and the OOR determination should have been reversed.

Respectfully submitted,

  
John S. Carnes, Jr., Esquire  
Attorney for Appellant, Chester County Office  
Of Coroner

3/31/23

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Appellant

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Concise Statement of Errors  
Complained On Appeal In Accordance With Pa.R.A.P. 1925(b)(1) has been served via hand  
delivery on the Honorable Jeffrey R. Sommer at the address below and sent via U.S. First Class  
Mail, postage pre-paid to all parties on the date below noted:

The Honorable Jeffrey R. Sommer  
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Dr. Terence Keel, Assoc. Professor UCLA  
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Harrisburg, PA 17101-2234

Date: 3/31/23

By:



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