

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MEDICAL EXAMINERS COMMISSION,     )  
  )  
      Petitioner,                        )  
  )  
vs.                                        )     Case No. 10-3082  
  )  
MARIE A. HERRMANN, M.D.,            )  
  )  
      Respondent.                       )  
\_\_\_\_\_  
  )

RECOMMENDED ORDER

On September 21, 2010, a duly-noticed hearing was held via video teleconferencing with sites in Daytona Beach and Tallahassee, Florida, before Lisa Shearer Nelson, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Joseph White, Esquire  
Florida Department of Law Enforcement  
Post Office Box 1489  
Tallahassee, Florida 32302

For Respondent: Richard N. Staten, Esquire  
Assistant County Attorney  
County of Volusia  
123 West Indiana Avenue  
Deland, Florida 32720

STATEMENT OF THE ISSUE

The issue to be determined is whether Respondent violated Florida Administrative Code Rule 11G-2.001(5)(e), as alleged in the Administrative Complaint, and if so, what penalty should be imposed?

PRELIMINARY STATEMENT

On December 7, 2009, Petitioner filed an Administrative Complaint against Respondent, Marie A. Herrmann, M.D., alleging that she violated Florida Administrative Code Rule 11G-2.001(5)(e). Respondent disputed the allegations in the Administrative Complaint and requested a hearing pursuant to Section 120.57(1), Florida Statutes. On June 3, 2010, the matter was referred to the Division of Administrative Hearings for assignment of an administrative law judge.

The case was originally scheduled to be heard on August 12, 2010. At the request of Petitioner, the matter was rescheduled for September 21, 2010, and proceeded as scheduled. Prior to hearing, the parties filed a Pre-Hearing Stipulation in which they stipulated to certain facts that, where relevant, are incorporated into the findings of fact listed below. At hearing, Petitioner presented the testimony of Kyle Bainbridge, David McNamara, Tara Clark, Horace Baker, and Joy Bowers-Williams. Petitioner's Exhibits numbered 1 and 2 were admitted without objection. Respondent testified on her own behalf and presented the testimony of Priscilla Feller, David Siebert, and David Burch. Respondent offered six exhibits for admission. At the time of hearing, Respondent's Exhibits numbered 2 through 6 were admitted, and ruling on the admission of Respondent's Exhibit numbered 1 was deferred. Petitioner withdrew its objection to

the exhibit in its Proposed Recommended Order, and Respondent's Exhibit numbered 1 is hereby admitted.

The proceedings were recorded and the Transcript was filed with the Division of Administrative Hearings on October 5, 2010. At the request of the parties, the deadline for submission of Proposed Recommended Orders was extended to November 5, 2010. Both parties timely filed their Proposed Recommended Orders, which have been carefully considered in the preparation of this Recommended Order. All references to Florida Statutes are to the 2008 codification.

#### FINDINGS OF FACT

1. At all times material to the allegations in the Administrative Complaint, Respondent was, and remains, the Medical Examiner for District Seven, which includes Volusia County.

2. On or about April 13, 2009, the Deland Fire Department responded to a scene located at 931 South Woodland Boulevard in Deland, Florida. The body of an unidentified black male had been discovered at that location.

3. The unidentified male was pronounced dead at the scene, and the District Seven Medical Examiner's Office (Medical Examiner's Office) was notified of the body. Pursuant to Section 406.11(1)(a), Florida Statutes, the Medical Examiner's Office has jurisdiction to investigate the death of a person who dies unattended by a practicing physician or other recognized

practitioner, or under unusual circumstances. These conditions were present with respect to this body.

4. Medical Examiner's Office investigators Tara Clark and Robert Burch arrived at the scene and transported the decedent to the morgue. Based upon a Florida identification card found in a wallet with the body, decedent was presumptively identified as Theodore Roosevelt Langston.

5. Also located with the body were some slips of paper among Mr. Langston's personal effects, including two slips of paper with names and numbers on them. One of those pieces of paper contained handwritten notations stating, "Joy F. Williams," "sister," "Savoy Lane," "Al," "West Palm Beach, FLA," and "33417." Also among his personal effects were newspaper clippings, customer reward cards for two grocery stores, a social security card, and a slip of paper with power ball numbers.

6. The Medical Examiner's office staff photographed Mr. Langston's personal effects and stored them.

7. When law enforcement or the Medical Examiner's Office is confronted with the unidentified body of a homeless person, it is not unusual for there to be an assortment of paperwork, clippings, and miscellaneous objects with the body that may or may not belong to the decedent. Staff at the Medical Examiner's Office did not find the information found with Mr. Langston to be particularly important at this point, because there was a significant possibility that the pieces of paper in Mr.

Langston's possession did not belong to him. Moreover, references such as "sister" or "aunt" do not always connote a blood relationship with the deceased and may just as likely be a colloquial phrase.

8. On or about April 14, 2009, an autopsy was also performed on the decedent. The next day, the Medical Examiner's Office staff released the decedent's birth certificate, Florida identification card, and a fingerprint card containing the decedent's fingerprints to Investigator David McNamara of the Volusia County Sheriff's Office (VCSO). The VCSO positively confirmed the identity of the decedent through these fingerprints on April 15, 2009. Confirmation of his identity also indicated that Mr. Langston used several aliases and dates of birth.

9. On April 16, 2009, Investigator McNamara attempted to locate the next of kin at the behest of Respondent or a member of her staff, pursuant to District Seven's protocols and Florida Administrative Code Rule 11G-2.001.

10. Over the next several days, Investigator McNamara attempted unsuccessfully to locate Mr. Langston's next of kin. Mr. Langston had been classified as a career criminal. Investigator McNamara searched jail databases, career criminal databases, and autotracs for addresses of the decedent. No next of kin was listed for Mr. Langston in any of the databases he searched. He went to the address on the identification card and spoke to people living at that address. From those people,

Investigator McNamara located a woman named Rose Smith, whom he believed to be the decedent's sister. When he spoke to her, however, she denied being Mr. Langston's sister, indicating that she was a cousin. Ms. Smith gave Investigator McNamara the name of someone living in Orlando who she believed was the decedent's father, and said she would attempt to contact other family. However, other than the possible father's name, she did not provide to Investigator McNamara any additional names of possible relatives.

11. Investigator McNamara contacted the gentleman Ms. Smith had identified, and learned that he was not related to the deceased. However, apparently as a result of Investigator McNamara's attempts to find relatives of Mr. Langston, the decedent's uncle, Horace Baker (who lived in Palm Beach County), received a call from his sister in Deland advising of his nephew's death. Mr. Baker in turn called his niece, Joy Bowers-Williams, and told her that he had learned that Ms. Bowers-Williams' brother had died.

12. Ms. Bowers-Williams was Mr. Langston's next of kin.

13. On April 21, 2009, Investigator McNamara completed a form entitled Law Enforcement Notice to Medical Examiner of Unknown Next of Kin. When he dropped the form off at the Medical Examiner's Office, he learned that Ms. Bowers-Williams had contacted the Medical Examiner's Office the day before, asking about her brother. Investigator McNamara returned her call and

explained the circumstances regarding her brother's death and the efforts he had made to locate next of kin. He also explained to her the options available regarding disposition of her brother's remains.

14. The following day, April 22, 2009, the Medical Examiner's Office received a request for release of the body from Arthur Mack's Funeral Home, indicating that the family wished for his body to be transferred to the funeral home in Deland.

15. Normally, where there is a Notice to Medical Examiner of Unknown Next of Kin filed, staff for the Medical Examiner's Office would then go through a decedent's personal effects searching for any additional information that may lead to finding a person's next of kin. At that point, the slips of paper with writing on them, including the slip with Ms. Bowers-Williams' name on it, would have been re-examined to determine whether there was additional information that would help identify next of kin for the decedent.

16. Ms. Bowers-Williams was Mr. Langston's sister. However, she was not listed as next of kin in any database in the law enforcement and corrections systems checked. She did not visit him while he was in jail, and had not had any contact with him for well over six months prior to his death. While she was upset that the Medical Examiner's Office had not called her, she also testified that she did not have a phone.

CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with Sections 120.569 and 120.57(1), Florida Statutes (2002).

18. The Medical Examiners Commission within the Department of Law Enforcement is charged with the responsibility of investigating complaints against medical examiners for violations identified in Section 406.075, Florida Statutes, and where appropriate, to reprimand, place on probation, remove, or suspend a medical examiner where a violation is proven.

19. Petitioner is seeking to take disciplinary action against Respondent's position as medical examiner for District 7. Because of the penal nature of the proceeding, Petitioner bears the burden of proof to demonstrate the allegations in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

20. As stated by the Florida Supreme Court:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.



In re Henson, 913 So. 2d 579, 590 (Fla. 2005), quoting Slomowitz v. Walker, 429 So. 797, 800 (Fla. 4th DCA 1983).

21. Moreover, because proceedings providing for suspension or removal from one's position as a medical examiner are disciplinary proceedings, the statutes and rules for which a violation is alleged must be strictly construed in favor of Respondent. Elmariah v. Department of Professional Regulation, 574 So. 2d 164 (Fla. 1st DCA 1990); Taylor v. Department of Professional Regulation, 534 So. 782, 784 (Fla. 1st DCA 1988).

22. The Administrative Complaint alleges the following:

2. On or between April 13, 2009 and April 20, 2009, the District Seven Medical Examiners [sic] Office received the body of Theodore Roosevelt Langston and failed to notify the next of kin of that fact, in spite of information found on the body that would provide names and telephone numbers for the decedent's next of kin.

3. The actions of the Respondent did violate the provisions of Rule 11G-2.005(5) (e), F.A.C., in that the Respondent failed to ensure that the next of kin was notified that the medical examiner's office was investigating the death.

23. Section 406.075(1) (a), Florida Statutes, authorizes a medical examiner to be reprimanded, placed on a period of probation, removed, or suspended for failing to comply with the provisions of Chapter 406 or with the rules of the Medical Examiners Commission.

24. The rule Respondent is charged with violating is Florida Administrative Code Rule 11G-2.001(5)(e), which provides in pertinent part:

(5) If the medical examiner determines that jurisdiction for an investigation under Section 406.11(1)(a) or (b), F.S., does exist, he shall,

\* \* \*

(e) Ensure that next of kin is notified that the medical examiner's office is investigating the death, when this can be done without hindering the legal purpose of the investigation and the identification and location of the next of kin is readily available. The contact with the next of kin, or the attempt to contact, shall be documented in the medical examiner's case file, whether such contact or attempt to contact is made by the medical examiner's office or through other agencies such as hospital personnel, law enforcement agencies, funeral homes or friends of the deceased  
. . . .

25. Petitioner has not proven the allegations in the Administrative Complaint by clear and convincing evidence.

26. Rule 11G-2.001, which is strictly construed in favor of Respondent, does not give a specific time frame for notification of next of kin. In this case, Respondent's office initially provided to law enforcement the information that appeared, at first examination, to be relevant and reliable to determine whether the decedent had next of kin. The databases searched by Investigator McNamara, which would appear to be reliable sources, did not list any next of kin. The un rebutted testimony indicated that, upon learning that the initial search was unsuccessful, a

thorough search of the decedent's personal affects would have been conducted in accordance with the medical examiner's standard procedure to determine whether additional information existed that would be helpful. That second search became unnecessary once Ms. Bowers-Williams called the Medical Examiner's Office and a request for transfer of the body to the funeral home was received.

27. Petitioner argues that had the slip of paper with Ms. Bowers-Williams name been furnished to Investigator McNamara along with the decedent's Florida identification card, his next of kin would have been located more quickly. However, under the circumstances presented in this case, staff's decision to only provide what appeared to be official documentation related to Mr. Langston's identity was reasonable. Nothing on the slip of paper indicated that the decedent considered Ms. Bowers-Williams to be an "emergency contact" person. While the slip of paper did turn out to identify someone related to the decedent, it was just as likely that it could have been someone totally unrelated to him. The Medical Examiner's Office staff's decision to first rely on more reliable sources of information was a reasonable one.

28. A different scenario would be presented if Investigator McNamara had filed the Notice to Medical Examiner of Unknown Next of Kin with the Medical Examiner's Office, Ms. Bowers-Williams had not called about her brother, and the Medical Examiner's

Office had then failed to take any steps to examine the decedent's personal effects for any information that might identify next of kin. That case, however, is not presented here. The procedure followed by the Medical Examiner's Office is not prohibited by Florida Administrative Code Rule 11G-2.001(5), and is not a basis for discipline.

RECOMMENDATION

Upon consideration of the facts found and conclusions of law reached, it is

RECOMMENDED:

That the Medical Examiners Commission dismiss the Administrative Complaint in its entirety.

DONE AND ENTERED this 1st day of December, 2010, in Tallahassee, Leon County, Florida.



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LISA SHEARER NELSON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 1st day of December, 2010.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.