



# State Attorney

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November 28, 2006

Dr. Stephen J. Nelson  
Chairman, Medical Examiners Commission  
District Ten Medical Examiner  
1021 Jim Keene Boulevard  
Winter Haven, Florida 33880

Re: Chapter 406, Florida Statutes

Dear Dr. Nelson:

Pursuant to Executive Order 06-36 and Amended Executive Order 06-37, Mark A. Ober is assigned as state attorney to investigate the death of Martin Anderson, who died January 6, 2006, at Sacred Heart Hospital in Pensacola. Martin Anderson had been placed in the Bay County Boot Camp in Panama City, and began the boot camp on January 5, 2006. While running as part of a physical assessment, he fell to the ground. For a period of over twenty minutes, drill instructors from the boot camp applied various uses of force on Anderson. When Anderson became unresponsive, paramedics were called to the scene. Anderson was transported to Bay Medical Center in Panama City and treated at that location. He was then flown to Sacred Heart Hospital in Pensacola, where he was pronounced dead the following morning.

Law enforcement decided to conduct the autopsy in Panama City rather than in Pensacola. This decision was made for the convenience of the investigators and the

efficiency of the investigation. Dr. Charles Siebert, the Medical Examiner for the 14<sup>th</sup> District, was contacted by law enforcement and was asked to perform an autopsy as soon as possible. Dr. Siebert agreed to perform the autopsy and contacted the Medical Examiner's Office for the 1<sup>st</sup> District to request jurisdiction and to have the body of Martin Anderson transported back to Panama City. The 1<sup>st</sup> District agreed to allow Dr. Siebert to have jurisdiction, and arrangements were made to transport the body to Panama City. The autopsy was conducted on January 6 at the District 14 Medical Examiner's Office.

As you are aware from previous correspondence and a sworn statement you provided during our investigation, the propriety of conducting the autopsy of Martin Anderson in Panama City instead of in Pensacola was called into question in this case. As part of our investigation, we have attempted to address this issue. The evidence does not indicate that Dr. Siebert knowingly performed the autopsy without lawful authority. Instead, the evidence shows that he acted under the good-faith belief that he had the authority to conduct the autopsy in the manner that he did. From our investigation I am aware that you and other medical examiners share this belief. Upon reviewing this matter, however, I do not agree with your position that Chapter 406 of Florida Statutes clearly conveys the authority for a medical examiner to perform an autopsy when the death occurs in another district. I am writing to you to further explain this issue, to discuss applicable Florida Statutes, and to suggest that the Medical Examiners Commission advocate statutory amendments to clarify jurisdictional issues and provide protection to medical examiners who find themselves in a similar situation to the one encountered by Dr. Siebert in this case.

The portion of Florida Statutes governing medical examiners is Chapter 406.

Jurisdiction to conduct autopsies is specifically addressed in §406.11(1), which states the following:

In any of the following circumstances involving the death of a human being, **the medical examiner of the district in which the death occurred or the body was found shall determine the cause of death and shall, for that purpose, make or have performed such examinations, investigations, and autopsies as he or she shall deem necessary** or as shall be requested by the state attorney. (Emphasis added).

The authority to perform an autopsy is also specifically addressed in §406.11(2)(a):

**The district medical examiner shall have the authority in any case coming under subsection (1)** to perform, or have performed, whatever autopsies or laboratory examinations he or she deems necessary and in the public interest to determine the identification of or cause or manner of death of the deceased or to obtain evidence necessary for forensic examination. (Emphasis added).

Sections 406.11(1)(a), 406.11(1)(b) and 406.11(1)(c) list the various circumstances of death that authorize medical examiners to perform autopsies as he or she deems necessary. In sections 406.11(1) and 406.11(2) the legislature has expressly conveyed authority to perform an autopsy. These are the only two provisions in Chapter 406 that explicitly grant such authority.

The authority for a medical examiner to conduct an autopsy when the incident occurred in his or her district but the death occurred in another district is not specifically addressed in Chapter 406. The only statutory reference to autopsies for deaths that occur outside the medical examiner's district is in §406.08(2), which provides as follows:

In the event that an examination or autopsy is performed by the district medical examiner or his or her associate upon a body when the death occurred outside the district, the governmental body requesting the examination or autopsy shall pay the fee for such services.

Section 406.08 provides for the payment of fees, salaries, expenses and transportation costs for autopsies. Under §406.08(1), expenses are typically paid by the board of county commissioners in the district. Section 406.08(2) addresses the specific situation however, of how costs are to be paid when the death occurred outside the medical examiner's district and there is a request from a government agency to perform the autopsy. When this occurs, §406.08(2) requires the requesting agency to pay for the services.

Implicit in §406.08(2) is that medical examiners may perform autopsies for deaths occurring outside their district upon request by a governmental body, but this authority is not expressly granted as it is in sections 406.11(1) and 406.11(2). This is also problematic because chapter 406 does not specify under what circumstances a governmental body has the authority to request a medical examiner to perform an autopsy when the death occurred outside that medical examiner's district, and chapter 406 also fails to specify what governmental bodies may make such requests. To make a comparison and further illustrate this point, a theoretical example of authority to perform an autopsy when the death occurs outside the medical examiner's district that would be expressed authority and not merely implied is the following:

In the event a district medical examiner or his or her associate is requested to perform an examination or autopsy upon a body when the death occurred outside the district, the medical examiner or his or her associate shall have the authority to perform the examination or autopsy if requested to do so by any law enforcement agency or state attorney with authority to conduct a criminal investigation within the district.

If chapter 406 contained such a provision, the authority to perform the autopsy in this case would be clear and unambiguous.

It also should not be presumed from §406.08(2) that the legislature intended to convey the authority to request an autopsy on any governmental entity under any set of circumstances. The legislature has explicitly granted authority to conduct an autopsy in two separate sections of Florida Statutes, and those statutes have articulated the circumstances that allow an autopsy to occur. In addition to section 406.11, previously discussed, the legislature has clearly granted to state attorneys the authority to have an autopsy performed. Section 925.09 of Florida Statutes gives explicit authorization for state attorneys to request an autopsy, and expresses the circumstances under which this may occur:

**The state attorney may have an autopsy performed, before or after interment, on a dead body found in the county when she or he decides it is necessary in determining whether or not death was the result of a crime.** Physicians performing the autopsy shall be paid reasonable fees by the county upon the approval of the county commission and the state attorney ordering the autopsy. (Emphasis added).

There is no similar statutory provision in Florida Statutes authorizing law enforcement to request an autopsy.

Most autopsies are covered by §406.11, and law enforcement ordinarily does not have a need to have the statutory authority to request an autopsy. When law enforcement seeks an autopsy to be performed in a manner not specifically covered by §406.11, however, as was done for the autopsy of Martin Anderson, Florida Statutes do not specifically grant that authority. Therefore, it is unclear whether a medical examiner can

rely on the request from law enforcement as the basis for an autopsy not otherwise authorized by §406.11.

In previous correspondence with my office you cited Florida Statutes sections 406.05, 406.08(2) and 406.08(3) in support of your position that Florida Statutes authorize an autopsy to be done by a medical examiner when the death occurred or the body was found outside the district. You have also referred to the cooperative arrangement that designates Dr. Siebert as an associate medical examiner in the 1<sup>st</sup> District in support of your view that Dr. Siebert had the statutory authority to perform the autopsy on Martin Anderson. I do not agree with your interpretation that the statutes you refer to or the cooperative agreement clearly convey legal authority for Dr. Siebert's autopsy of Martin Anderson.

I have already discussed in detail §406.08(2) and made the distinction between the expressly stated authority to perform an autopsy in §406.11, and the implied authority to perform an autopsy at the request of a government agency under §406.08(2).

Section 406.08(3) pertains to the payment of costs, and states the following (in pertinent part):

When a body is transported to the district medical examiner or his or her associate, transportation costs, if any, shall be borne by the county in which the death occurred.

Section 406.08(3) determines which county is responsible for costs when a body is transported to the district medical examiner. This subsection should be read in conjunction with §406.08(1), which requires expenses to be paid by the board of county commissioners for autopsies, and §406.08(2), which requires the governmental agency requesting the autopsy to pay the expenses when the death occurred outside the district.

Many districts are comprised of multiple counties. The district medical examiner clearly has authority to perform autopsies when the death occurs or the body is found in any of the counties within his or her district. Sections 406.08(1) and 406.08(3) clarify that each county within a district is responsible for the costs of its autopsies. Section 406.08(3) does not refer to deaths occurring outside the district. Therefore, I do not agree that §406.08(3) can be relied on as statutory authority to perform an autopsy when the death occurred outside a medical examiner's district.

Section 406.04 gives the Medical Examiners Commission the power to adopt rules to implement the provisions of Chapter 406. The rules that have been promulgated by the commission, however, do not specifically address the authority to conduct autopsies when the death occurred or the body was found outside a medical examiner's district

Cooperative arrangements among the districts are not prohibited, pursuant to §406.05. An ongoing cooperative agreement cross-designates Dr. Siebert as an Associate Medical Examiner for the 1<sup>st</sup> District. While cross-designation as an associate medical examiner for another district clearly gives that associate medical examiner the ability to perform an autopsy under the authority of the district medical examiner where the death occurred or the body was found, by virtue of being designated as an associate medical examiner, that person's authority is inherently limited to working as an associate medical examiner, which ordinarily would mean working at the direction and under the supervision or authority of the district medical examiner. It does not give the associate medical examiner the ability to claim jurisdiction over a case and conduct an autopsy independent of the medical examiner in charge of the district where the death occurred.

If such were the case, the associate medical examiner could disregard the directives of the medical examiner in the district where the death occurred by simply claiming jurisdiction over the case.

Martin Anderson died in the 1<sup>st</sup> District, which is the jurisdiction of Dr. Andrea Minyard. Dr. Siebert contacted the 1<sup>st</sup> District to have the body of Martin Anderson released to him and transported to Panama City for an autopsy. During our investigation, both Dr. Siebert and Dr. Minyard have stated that Dr. Siebert took jurisdiction for the autopsy of Martin Anderson. Both understood that Dr. Siebert was working on the case as the medical examiner for the 14<sup>th</sup> district, and not as an associate medical examiner for the 1<sup>st</sup> district. Therefore, the cooperative agreement was not the basis for Dr. Siebert performing the autopsy in this case. And even though the cooperative agreement was sufficient to allow Dr. Siebert to perform an autopsy as an associate medical examiner under Dr. Minyard, and Dr. Minyard had the authority to direct Dr. Siebert to perform the autopsy as her associate medical examiner, the cooperative agreement did not give Dr. Siebert the authority to take jurisdiction and perform the autopsy on his own accord.

Finally, while it might be the preference of the Medical Examiners Commission to promulgate rules or cooperative agreements instead of seeking statutory revisions to convey authority for autopsies when the death occurred or the body was found outside the medical examiner's district, I feel it would be prudent to have this matter addressed by the legislature. Pursuant to Florida Statutes §872.04, unless an autopsy is consented to by the health care surrogate or by a spouse, nearest relative or next of kin, **an autopsy must be authorized by statute**. If it is the intent of the legislature to allow a medical examiner in the district where the event under investigation occurred to conduct an autopsy rather

than the district where the person died, a statutory revision could clearly accomplish that goal. Similarly, if it is the intent of the legislature that one district medical examiner may transfer or relinquish jurisdiction to another medical examiner, the legislature can specify the circumstances where this may be done.

As I have previously stated, the purpose of this letter is to point out the problems I perceive with Chapter 406, and to suggest that the Medical Examiners Commission review the matter to consider seeking legislative amendments. Medical examiners, homicide investigators and prosecutors are aware of the need to conduct investigations and prosecute cases in an efficient manner, and it is sometimes in the best interests of an investigation for the autopsy to be performed in the district where the incident occurred instead of the district where the death occurred. For the protection of all involved, I recommend a statutory amendment specifically authorizing autopsies in such situations.

Sincerely,

MARK A. OBER  
STATE ATTORNEY

A handwritten signature in black ink, appearing to read "Michael C. Sinacore". The signature is fluid and cursive, with a large initial "M" and "S".

Michael C. Sinacore  
Assistant State Attorney