

HEALTH - VITAL RECORDS - MEDICAL EXAMINER - ADMINISTRATIVE
LAW - CONTESTED CASES - PUBLIC INFORMATION ACT -
MEDICAL EXAMINER'S DETERMINATION OF CAUSE OF DEATH
NOT SUBJECT TO APA HEARING

December 10, 1991

*The Honorable Ronald A. Gums
Maryland House of Delegates*

You have requested our opinion whether the hearing requirement and other contested case procedures of the Administrative Procedure Act apply to an individual's challenge to the Chief Medical Examiner's determination of the cause or manner of death of a member of the individual's family, as set out on a death certificate.

For the reasons stated below, we conclude that a challenge to a medical examiner's determination about the cause or manner of death does not give rise to an entitlement to a hearing under the APA's contested case procedures.¹

I

Contested Case Procedures

The hearing and related adjudicatory procedures in the APA apply to any "contested case," defined as "a proceeding before an agency to determine ... a right, duty, statutory entitlement, or privilege of a person that is required by law to be determined only after an opportunity for an agency hearing." §10-201(c) of the State Government Article ("SG" Article).

"It is well established ... that the APA itself does not grant a right to a hearing. That right must come from another source such as a

¹ Sometimes the "cause" of death, strictly speaking, will be obvious — a gunshot wound to the head, for instance. In such cases, the medical examiner would also state on the death certificate an opinion about the "manner" of death — whether the wound was the result of an accident, or homicide, or suicide. See 41 *Opinions of the Attorney General* 242, 243 (1956). In this opinion, we shall use the term "cause" to include manner of death. See also note 4 below and accompanying text.

statute, a regulation, or due process principles." *Sugarloaf Citizens Ass'n v. Northeast Md. Waste Disposal Auth.*, 323 Md. 641, 652, 594 A.2d 1115 (1991). We turn, then, to a consideration of possible sources for a hearing requirement regarding determinations by a medical examiner.

II

Determination of Cause of
Death By Medical Examiner

The General Assembly has required that certain deaths be investigated by a medical examiner:

A medical examiner shall investigate the death of a human being if the death occurs:

- (i) By violence;
- (ii) By suicide;
- (iii) By casualty;
- (iv) Suddenly, if the deceased was in apparent good health or unattended by a physician; or
- (v) In any suspicious or unusual manner.

§5-309(a)(1) of the Health-General Article ("HG" Article)? The medical examiner is to be notified if the deceased was not under treatment by physician during a terminal illness, if the cause of death is unknown, or if the death was apparently caused by an accident, homicide, suicide, "other external manner of death," alcoholism, or criminal abortion. HG §4-212(c). See also HG §5-309(b). See generally COMAR 10.35.01.

² Medical examiners are employed by the State Postmortem Examiners Commission. The staff comprises a chief medical examiner, a deputy chief medical examiner, and assistant medical examiners. HG §5-305(a)(2). Each medical examiner on the Commission's staff must be a physician with specialized training in pathology. HG §5-305(b). In addition, the Commission is authorized to appoint deputy medical examiners for each county. HG §5-306(b).

The role of the medical examiner is to serve the State's compelling interest in learning whether a death resulted from a criminal act or a cause that might threaten the public health. *Snyder v. Holy Cross Hosp.*, 30 Md. App. 317, 330, 352 A.2d 334 (1976). To that end, the medical examiner offers his or her expert opinion about the cause of death, after investigation and if need be with the aid of evidence adduced by an autopsy. See HG §§5-309 and 5-310.³

In a medical examiner's case, the medical examiner is to fill out and sign the certificate of death. HG §4-212(b)(1)(i). Among other items, the medical examiner is to provide "[t]he cause of death and medical certification." HG §4-212(b)(2)(ii). If the medical examiner has not determined the cause of death immediately but does so later, the medical examiner is to send to the Secretary of Health and Mental Hygiene "a report of the cause of death, for entry on the certificate." HG §4-212(d)(2).

None of these provisions sets out any procedure for review of the medical examiner's determination of the cause of death. With respect to all vital records, including death certificates, HG §4-214(a) provides that a record "may be amended only in accordance with this subtitle and any rules and regulations that the Secretary [of Health and Mental Hygiene] adopts to protect the integrity and accuracy of vital records." The Secretary has not adopted any regulation regarding the amendment of a death certificate. Cf. COMAR 10.03.01.01C and D (procedures for amendment of birth certificate).

III

Correction of Public Records

The Public Information Act contains procedures under which "inaccurate or incomplete information in a public record" may be corrected. SG §10-625(a). An agency's decision to decline to correct

³ In medical examiners' cases, the medical examiner or an investigator "shall investigate fully the essential facts concerning the medical cause of death and, before leaving the premises [where the body was found], reduce these facts and the names and addresses of witnesses to writing, which shall be filed in the medical examiner's office." HG §5-309(c). "If the cause of death ... is established beyond a reasonable doubt, the medical examiner who investigates the case shall file in the medical examiner's office a report on the cause of death within 30 days after notification of the case." HG §5-310(a). An autopsy is performed "[i]f the medical examiner who investigates ... [the] case considers an autopsy necessary." HG §5-310(e)(1).

the record is subject to the contested case hearing procedures of the APA. §10-625(e). However, we conclude that this procedure is not a means by which a family member may challenge a medical examiner's opinion about the cause of death.

As noted in Part II above, the General Assembly has specifically addressed the issue of amending vital records, including amendments seeking to correct an alleged inaccuracy. Under HG §4-214(a), a death certificate "may be amended only in accordance with" departmental regulations, and none pertinent to death certificates have been adopted. Presumably, this administrative decision not to provide an amendment procedure reflects a concern that such a process would be incompatible with "protect[ing] the integrity and accuracy" of death certificates. HG §4-214(a).

Applying customary principles of statutory construction, we conclude that the more general procedures in SG §10-625 are not available to correct a death certificate. "It is well settled that when two statutes, one general and one specific, are found to conflict, the specific statute will be regarded as an exception to the general statute." *Farmers & Merchants Bank v. Schlossberg*, 306 Md. 48, 63, 507 A.2d 172 (1986).

Indeed, the correction procedures in SG §10-625 appear especially ill-suited to the issue of a death certificate's statement about the cause of death. The General Assembly has vested in the Chief Medical Examiner and other medical examiners the authority to investigate certain cases and, from the evidence, deduce a cause of death. Though others might disagree with it, the medical examiner's opinion in these cases is the *only one* that is to be entered on the death certificate. HG §4-212(b). As this office put it in a prior opinion, "this is clearly an opinion expressed for whatever value it may have for vital statistics and other non-judicial purposes" 41 *Opinions of the Attorney General* 242, 243 (1956).⁴ Hence, a death certificate cannot be "corrected" — that is, a different physician's opinion about the cause of death cannot be entered on the death certificate — without violating HG §4-212(b). And a death certificate cannot feasibly carry with it the statement of disagreement authorized by SG §10-625(d).

⁴ We note that the medical examiner's opinion about the manner of death — for example, that death resulted from suicide — would not be admissible evidence if the issue were litigated. See *Benjamin v. Woodring*, 268 Md. 593, 609, 303 A.2d 779 (1973).

Finally, the correction procedure is available only to a "person in interest," and only as to a record that "the person in interest is authorized to inspect." SG §10-625(a). Because a death certificate concerns only the deceased, it is hard to see that any "person in interest" exists to invoke the procedure.⁵

IV

Conclusion

In summary, it is our opinion that an individual seeking to challenge a medical examiner's determination about the cause of death of a family member has no legal entitlement to a contested case hearing under the Administrative Procedure Act. The individual's recourse under current law is to attempt to persuade the Chief Medical Examiner that the original determination was incorrect, and, we understand, the Chief Medical Examiner's practice is to give open-minded and careful consideration to whatever additional evidence might be presented.

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Opinions & Advice

Editor's Note:

In Chapter 547 of the Laws of Maryland 1992, the General Assembly amended the Administrative Procedure Act to extend contested case procedures to requests by a person in interest for correction of a death certificate.

⁵ The definition of "person in interest" is set out in SG §10-611(e):
"Person in interest" means:

- (1) A person or governmental unit that is the subject of a public record or a designee of the person or governmental unit; or
- (2) If the person has a legal disability, the parent or legal representative of the person.

Although the estate of a deceased person would have a personal representative who could be said to be the "legal representative of the person," death is not commonly described as "a legal disability."

HEALTH OCCUPATIONS

CONSUMER PROTECTION — USE OF TITLES LIKE "THERAPIST" AND "PSYCHOTHERAPIST"

April 24, 1991

The Honorable Michael R. Gordon
Maryland House of Delegates

You have requested our opinion about the use of the terms "psychotherapist," "therapist," "consultant," and "personal consultant." Specifically, you ask:

1. Are the terms "psychotherapist" and "therapist" protected in Maryland? If so, what are the prerequisites to their use? If there are no statutes or court opinions restricting the use of these terms, may anyone in Maryland claim to be a "psychotherapist" or "therapist" regardless of the person's credentials?

2. How are the terms "psychotherapy," "therapy," "consultant," and "personal consultant" defined?

For the reasons set forth below, we conclude as follows:

1. The terms "psychotherapist" and "therapist" are not protected titles under Maryland law. However, unlicensed individuals who use these titles in the course of providing services within the scope of a licensed profession could be subject to sanctions.

2. Although the terms "psychotherapist," "therapist," "consultant," and "personal consultant" have not been defined by either statute or judicial opinion, the misleading use of such titles is prohibited by the Maryland Consumer Protection Act.