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Investigative Powers of the Medical Examiner in the Light of *Rupp vs. Jackson*

Death is an event which triggers various emotions in those persons who have some relational ties with the decedent. Society accepts and approves of these emotions and their external manifestations which culminate in burial. But society does more than merely accept and approve this ritual; it has a decided interest in the death of each person from the viewpoint of health and welfare. This interest is often codified in statutes, which create the office of the medical examiner and broadly outline his investigative powers. The fact that this interest is codified expressly verifies that society considers its rights, in certain areas, with respect to the body of the decedent superior to any rights of other individuals having a legal relationship to the decedent.[4]

Recently in two Florida counties, the scope of the investigative power of the medical examiner has come under judicial scrutiny.[5] In the Jackson case, the surviving son of the decedent brought a civil action against Joseph C. Rupp, M.D., an associate county medical examiner of Broward County, alleging a tort and damages for performing an autopsy on the body of Clara B. Jackson contrary to the express refusal of the next of kin to permit a hospital autopsy.

Clara B. Jackson, age 82, had fallen from her hospital bed and sustained a hip fracture two weeks after being admitted to the hospital for suspected abdominal cancer. The fracture was surgically repaired but Mrs. Jackson died without leaving the hopsital. Dr. Rupp's autopsy determined the cause of death to be intestinal obstruction and cancer of the colon. The attending physician could not assign a cause of death without the autopsy findings. An informative article by Campbell discusses the medicolegal aspects of such a case [*1*].

At the trial, Dr. Rupp testified that he performed the autopsy because ". . . with this hip fracture there was a possibility that death was directly the result of this accident, [and also] for reasons of insurance or possible litigation or for simply an accurate determination

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[4] It is interesting to note, however, that the attorney general of Florida has written an opinion to the effect that a justice of the peace or coroner may not order an autopsy except where such is necessary to determine whether death was caused by, or was the result of, a criminal act, or when such is required by law for other reasons. He may not order an autopsy merely because it is in the interest of public welfare to determine the cause of death. (1953–54 Op.Atty.Gen., Fla. 715.)

[5] *Jackson vs. Rupp*, 228 So. 2d 916 (4th Dist. App. Fla., 1969). One other case has subsequently arisen [*Prescott vs. Lovett*, 239 So. 2d 606 (4th Dist. App. Fla., 1970)], but the reported opinion is brief and of no additional value. *Prescott* merely holds that a given complaint stated a cause of action under *Jackson*.

of the cause of death. . . ." Dr. Rupp had not consulted with the state attorney's office prior to the autopsy and no request was made by the prosecuting attorney of Broward County to perform the autopsy. At the close of the plaintiff's case, the court directed a verdict in favor of the defendant.

The Court of Appeal for the 4th District reviewed the case, reversed the decision, and remanded for a new trial. The Florida Supreme Court, on certification from the district court, affirmed the granting of a new trial.[6]

The case is one of first impression in the State of Florida and deserves close analysis by both the medical and legal professions. As a result of these decisions, considerable question has arisen, in both the medical and legal communities, pertaining to the functions of medical examiners under several jurisdictions and the role of the pathologist in society.

Permission for autopsy may be obtained in two ways. The most commonly used and recognized is by virtue of the permission of the next of kin, as provided by statute FSA §872.04. This act provides, *inter alia*,

> Unless otherwise authorized by statute, no autopsy shall be performed without the written consent of the spouse, nearest relative or, if no such next of kin can be found, the person who has assumed custody of the body for purposes of burial; . . .

It is worth noting that the statute is completely delimiting since no autopsy shall be performed except that it fall within the statutory specifications. The act also makes provision for medical autopsy in the absence of the next of kin.

The other authority by which an autopsy may be performed is alluded to in the first phrase of the above quoted statute: ". . . unless otherwise authorized by statute. . . ". What statutory provisions are available? In addition to some provisions pertaining to workmen's compensation, Florida Statute §932.57 provides that the prosecutor

> . . . may, in his discretion, have autopsies performed upon dead bodies found within the county, either before interment or after interment, whenever in his opinion such autopsies are necessary in order to ascertain whether or not death was criminally caused.

This has been recodified and reworded as Florida Statute §925.09, according to which

> The state attorney or the county solicitor may have an autopsy performed, before or after interment, on a dead body found in the county when he decides it is necessary in determining whether or not death was the result of a crime.

Some counties within the state of Florida recognize yet another type of authority, namely, those counties which have medical examiner's laws applicable to the particular county. Unfortunately, these laws vary widely both in content and in medical examiner principles.

A medical examiner, in the modern context, should be concerned with the investigation of deaths which fall within the public interest. Such investigations should be conducted for the purpose of upholding the laws of the jurisdiction as well as to determine, in an epidemiological way, the multiple factors leading to such deaths. One goal is to utilize these investigations for purposes of preventive legislation and educational programs. The late Richard Ford, medical examiner for a large portion of Boston, stated that the formation and proper functioning of an adequate medical examiner's system ". . . can bring about the exoneration of the innocent, prevent nonrecognition of murder, provide

[6] *Rupp vs. Jackson*, 238 So. 2d 86 (Fla., 1970).

soundly documented evidence for civil and criminal courts, protest against unrecognized fatal contagious disease, expose industrial health and safety hazards, and provide priceless material for the study of the effects of injury and the effectiveness of treatment" [2].

A medical examiner's jurisdiction should embody the following principles:

1. A definition of cases to be investigated. Such a definition includes deaths arising from accidents, suicides, homicides, industrial injury, jail deaths, and public health hazards. These all have one thing in common, the public health, welfare, and safety.
2. A means for notification of the medical examiner.
3. Responsibility of the medical examiner to determine cause of death.
4. Authority to investigate commensurate with responsibility. It is here that the medical examiner should be allowed, at his discretion, to determine the need for autopsy. Once the case has fallen within the jurisdiction of the medical examiner he should then have full power to decide the necessity of autopsy, his guiding principle being public service in the broadest sense.
5. Concurrent authority by the prosecuting attorney in the event that the medical examiner fails to investigate in a complete and satisfactory manner.

District Court View

The interpretation of medical examiner powers reached by the District Court of Appeal in *Jackson vs. Rupp* has created substantial concern. Initially, one must realize that the law under consideration was a special act pertaining only to Broward County and its medical examiner (Chapter 27439, Laws of Florida, Special Acts of 1951). It defines, in section 3, cases to be investigated by the medical examiner as those in which:

> . . . any person shall die of criminal violence, by casualty, by suicide, suddenly when in apparent good health and when unattended by any physician or Christian Science practitioner, in any prison or penal institution, or in any suspicious or unusual manner.

A cumbersome notification procedure is outlined in sections 4 and 6. In essence, these sections interpose the prosecutor or the police or both between any person who becomes aware of a notifiable death and the medical examiner. The act does not provide for direct notification of the medical examiner. This is an unusual departure from accepted coroner and medical examiner practice elsewhere in the United States.

The responsibilities of determination of cause of death are alluded to in section 5. The authority to determine the cause of death by investigation and autopsy is alluded to in both section 3 and section 5; these sections must be read together. Section 3 states

> . . . the County Medical Examiner shall have the power and authority to perform such duties as may be provided by law and by this Act, and to make such examinations, investigations and autopsies as may be requested by the prosecuting attorney or any court of record having jurisdiction of felonies in Broward County.

Two ideas are embodied here. The first is that the medical examiner has been given direct power and authority. The second is that the prosecuting attorney may order examinations, investigations, and autopsies. If analysis and reading of the special act were to cease here, then it would appear that no autopsy could be done unless the prosecutor specifically ordered it. No explanation of "the power and authority to perform such duties as may be provided . . . by this Act . . ." is contained in section 3. It must be assumed, nonetheless, that words in statutes have some purpose. Thus, the phrase "by this Act" cannot be considered meaningless, that is to say, the phrase implies that the county

medical examiner has certain power and authority other than that requested by the prosecutor or "provided by law." If this were not the case, then the phrase "and by this Act" would be redundant and devoid of meaning; it could be stricken from the act without loss of literary continuity and logical significance. The phrase must have been incorporated for some purpose. That purpose is set out in section 5 of the act:

> . . . if, however, in the opinion of said Medical Examiner or in the opinion of said Assistant State Attorney or County Solicitor an autopsy is necessary, the same shall be performed by the County Medical Examiner, or some other doctor, and a detailed report of all findings and conclusions in connection with said autopsy shall be prepared and furnished said Assistant State Attorney in writing with all convenient speed, a copy of said report to be furnished the County Solicitor and a copy to be retained by the County Medical Examiner for his records and files. [emphasis supplied]

It becomes readily apparent that the medical examiner, having been appropriately notified of a death of the type as defined in section 3, has independent power of autopsy. It is also apparent that, should he fail to exercise this responsibility, the prosecutor, if he deems it necessary, may order the autopsy. Likewise, it would seem that the circumstances of the death in the *Jackson* case bring it within the ambit of the special act pertaining to Broward County. Mrs. Jackson was involved in an accidental fall from a hospital bed with serious injury. Determination of her death "by casualty" could not have been made without autopsy.

Of special interest is the manner in which the district court discussed the autopsy powers of the special act pertaining to Broward County. The appeal court said, "Section 3 of Ch. 27439, fixes the powers of the County Medical Examiner," and then cited the full wording of section 3 as stated above. Following this, the court stated that

> Section 3 does not embrace every means of death, but is qualified by the specific language incorporated therein. We are of the conviction that in order to allow a county medical examiner to perform an autopsy authorized within the ambit of paragraph 3, (1) the death should be shown to have occurred under the specific language of paragraph 3 and (2) that to trigger paragraph 3 a necessary condition precedent exists, i.e., the request by the prosecuting attorney of any court of record having jurisdiction of felonies in Broward County, Florida, made to the County Medical Examiner to make an examination, investigation, or autopsy.

Elsewhere, the court states

> Testimony also elicited [at the trial] . . . reveals that he [Dr. Rupp] was never requested nor did he solicit the request of the Prosecuting Attorney in Broward County in order that he might perform the autopsy in question.

Following this the court stated

> . . . Dr. Rupp lacked the request of the Prosecuting Attorney of Broward County to perform the autopsy . . .

In essence, it is apparent that the appellate court dealt with three general functions of a medical examiner, namely, the definition of a case to be investigated, the means of notification of the medical examiner, and the independent power of autopsy by the medical examiner. Unfortunately, the court, in discussing autopsy power of the medical examiner, assuming the case would come under his jurisdiction and he had been properly notified, held that "Section 3 of Ch.27439 fixes the powers of the County Medical Examiner" and omitted any discussion of section 5 which clearly states that "If, however, in the opinion

of said County Medical Examiner . . . an autopsy is necessary, the same shall be performed by the County Medical Examiner or some other doctor. . . ."

It is indeed unfortunate that the court failed to discuss the significance of section 5, since it is clear that section 5 confers the power and authority to perform certain duties "by this Act." That is to say, a death falling into the definition portion of section 3, followed by proper notification of the medical examiner, would set the stage for his independent exercise of discretionary autopsy authority.

Supreme Court View

The district court certified the question to the Supreme Court as one of great public interest.[7] For some reason, not clearly stated, the term "suspicious" was introduced into the proceedings at the Supreme Court level and discussed in terms of a medical examiner performing an autopsy without independent authorization. The Court concluded that "suspicious" carries an inference of foul play.

The Court, in affirming the granting of a new trial, considered both Chapter 27439, a 1951 Special Act for Broward County, and Chapter 30228, Laws of Florida 1955, a general population act embracing that county, as special defenses for Dr. Rupp. The court stated, "The Special Act sets out a series of limited circumstances under which an autopsy may be performed without permission of the survivors, but by the terms of the Act, authorization by a prosecuting attorney is made a condition precedent to any autopsy." Again section 5 was ignored; yet, as noted above, section 5 of this special act authorizes the medical examiner to perform an autopsy, if he deems it necessary. The prosecuting attorney can take part in the procedure twice under the terms of this special act. He is interjected into the notification procedure of the medical examiner. This is a mechanical feature of notification and does not necessitate the performance of an autopsy by the medical examiner, this being discretionary to the medical examiner according to section 5. Second, the prosecutor orders an autopsy. This is specified in section 3, apparently inserted by the legislature to offer a supplementary power of autopsy should the medical examiner choose not to perform this particular duty. In other words, the 1951 Special Act provides for the independent power of autopsy by the medical examiner, in section 5, and also for the authority of the prosecuting attorney to order an autopsy should he deem it necessary, in section 3.

The Court, in discussing a general population act, Chapter 30228, Laws of Florida 1955, states

> This act differs from the Special Act in two major important aspects: first, the examiner may himself determine whether an autopsy is warranted without having to consult other agencies; second, the circumstances under which autopsies are permitted differ from those given in the Special Act. In our judgment, even though the petitioner, as examiner, did not have to secure independent authorization under the general act, none of the circumstances listed therein would support an autopsy. Petitioner dwells upon the fact that the general act authorizes autopsies where circumstances of the death are "suspicious", but to us this term clearly connotes an inference of foul play.[8]

One would infer that the petitioner had invoked the suspicious death aspect of each act, rather than the accident or casualty aspect, which was the key consideration of the original circumstances surrounding the fall from the hospital bed resulting in a fractured hip. The Court interprets the general law, Chapter 30228, Laws of Florida 1955, correctly,

[7] *Rupp vs. Jackson*, 238 So. 2d 86 (Fla., 1970).
[8] *Rupp vs. Jackson, supra.* note 3 at 90.

when it states, "the examiner may himself determine whether an autopsy is warranted without having to consult other agencies." In section 7g the general law, originally applicable only to Dade County, says, "If, however, in the opinion of the medical examiner or the prosecuting attorney of any court of record and jurisdiction of felony in such county, an autopsy is necessary, the same shall be performed by the medical examiner." Note the similarity of this language to that of section 5 of the special act pertaining to Broward County. In the special act the wording is "if, however, in the opinion of said County Medical Examiner or in the opinion of the said Assistant State Attorney or County Solicitor an autopsy is necessary, the same shall be performed by the County Medical Examiner, or some other doctor . . ."

Note that the court acknowledged, in reference to Chapter 30228, Laws of Florida 1955, that this is a general population act "embracing that county." The inference is that Broward County grew to 450,000 in population and that the act formerly embracing Dade County now would cover Broward County. If this be the case, the medical examiner in Broward County would not have to rely on notification from the prosecutor as specified in section 4 and section 6 of the special act. Instead the general population law provides, in section 6, "It shall be the duty of any citizen, law enforcement officer or justice of the peace in such county, including all municipalities, who becomes aware of the death of any person occurring under circumstances described in Section 7 of this Act, to report such death forthwith to the office of the chief medical examiner." The type of death under this population law is listed in section 7 as follows:

(a) violent death, whether apparently homicidal, suicidal, or accidental, including but not limited to death due to thermal, chemical, electrical or radiational injury, and death due to criminal abortion, whether apparently self-induced or not;
(b) sudden death not caused by readily recognizable disease;
(c) death under suspicious circumstances;
(d) death of persons whose bodies are to be cremated, dissected, buried at sea, or otherwise disposed of so as to be thereafter unavailable for examination;
(e) death of inmates of public institutions not hospitalized therein for organic disease;
(f) death related to disease resulting from employment or to accident while employed;
(g) death related to disease which might constitute a threat to public health.

Further, the wording in section 7g of the general law is strikingly similar to the wording of section 3 of the special act. The general law reads

> The medical examiner shall have the power and authority to perform such duties as may be provided by this Act, and to make such examinations, investigations and autopsies as said medical examiner deems necessary or as may be requested by the prosecuting attorney of any court of record and jurisdiction of felony in such county to determine the cause of death, but shall not be bound by requests therefor from private persons or other public officials.

Here it is quite clear that the medical examiner, as well as the prosecuting attorney, has autopsy authority. The point of confusion pertaining to the sole power of the prosecuting attorney in the Broward County special act arises from the wording in section 3:

> . . . the County Medical Examiner shall have the power and authority to perform such duties as may be provided by law and by this Act, and to make such examinations, investigations and autopsies as may be requested by the prosecuting attorney of any court of record having jurisdiction of felonies in Broward County.

But, as mentioned previously, section 3 is further clarified in section 5, which reads:

> If, however, in the opinion of the said County Medical Examiner or in the opinion of the said Assistant State Attorney or County Solicitor an autopsy is necessary, the same shall be performed by the County Medical Examiner, or some other doctor, . . .

In summary, it would seem, in light of the two laws, each of which appears to embrace Broward County, that an accidental death would come under the jurisdiction of the medical examiner. Notification of the medical examiner is the responsibility of any citizen without interposition of the prosecuting attorney. Further, the medical examiner has independent power of autopsy. Accordingly, the only real issue for determination is whether or not the facts of the case were sufficient to bring it under the jurisdiction of the medical examiner by virtue of "violent death, whether apparently . . . accidental"[9] or "by casualty."[10]

Basically, the medical determination to be made, *ab initio*, by the medical examiner after appropriate notification was whether or not under the circumstances he could certify that the death of Mrs. Jackson was due to natural causes as opposed to casualty, since the attending physician could not so certify. If Dr. Rupp could not so certify without autopsy, then he had the power and indeed the duty to perform an autopsy in order to make the medical determination. It is suggested that such a determination is a question of law for the court and not a matter for resolution by a lay jury. An interesting account of *Jackson vs. Rupp* and its consequences is given by Rupp [*3*].

The American Academy of Forensic Sciences, the American Bar Association, the American Judicature Society, the American Medical Association, the National Civil Service League, and the National Municipal League have all endorsed the power and authority of the medical examiner argued herein:

> The requirement for the performance of autopsy is that it be necessary in the opinion of the medicolegal investigator. Here is the heart of the system. [*4*]

Recent Legislation

As of 1 July 1970, the Florida Legislature has enacted a new statute designated as the Medical Examiners Act. It defines, in section 6, cases to be investigated as follows:

> When in the State of Florida any person shall die (a) of criminal violence, (b) by accident, (c) by suicide, (d) suddenly when in apparent good health, (e) when unattended by a practicing physician, or other recognized practitioner, (f) in any prison or penal institution, (g) when in police custody, (h) in any suspicious or unusual circumstance, (i) by criminal abortion, (j) by poison, (k) by disease constituting a threat to public health, (l) by disease or injury or toxic agent resulting from employment, (m) when a dead body is brought into the State of Florida without proper medical certification, or (n) when a body is to be cremated, dissected or buried at sea, the medical examiner of the district in which the death occurred or the body was found shall determine the cause of death and shall make or have performed such examinations, investigations and autopsies as he shall deem necessary or as shall be requested by the state attorney or county solicitor. The medical examiner shall have the authority in any case coming under any of the above categories to perform or have performed whatever autopsies or laboratory examinations that he deems necessary in the public interest.[11]

In section 7 there is provision for direct notification of the medical examiner by any person who becomes aware of a death occurring under the circumstances in section 6.

[9] Section 7(c), Ch. 30228, Laws 1955.
[10] Section 3, Ch. 27439, Special Acts of 1951.
[11] Chapter 70-232, Laws, 1970. This has been completely codified as FSA §§406.01 to 406.17. The substance of the above quoted portion of the initial Bill is contained in FSA §406.11.

The purpose of this act is to define, in a uniform manner throughout the state of Florida, those cases which should be investigated in the public interest. The responsibility to determine the cause of such deaths rests upon the shoulders of the medical examiner. The medical examiner has sufficient authority to carry out investigations, including autopsies, as he deems necessary in the public interest. In order to implement this act on a statewide basis in the most economical manner in terms of both money and personnel, there is provision within the act for a commission which shall have the power to create multi-county districts and to promulgate those rules and regulations "necessary to effectuate this chapter to insure minimum and uniform standards of excellence, performance of duties and maintenance of records so as to provide useful and adequate information to the state in regard to causative factors of those deaths investigated." Sensible implementation of this act, correlated with judicial wisdom of interpretation will do much to insure the future well being, health, and safety of the citizens of Florida.

References

[1] Campbell, J. E., *Journal of Forensic Sciences*, Vol. 3, Oct. 1958, pp. 401–424.
[2] Ford, R., *Journal of the American Medical Association*, JAMAA, Vol. 145, 1951, pp. 1027–1028.
[3] Rupp, J., *Journal of Forensic Sciences*, Vol. 16, 1971, pp. 420–437.
[4] "A Model State Medicolegal Investigative System," National Municipal League, p. 25.

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