



NEWS RELEASE

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VENTURA, California - District Attorney Gregory D. Totten announced today the conclusion of the Ventura County Medical Examiner investigation and the issuance of a public report.

In May 2015, the Ventura County District Attorney's Office learned of serious allegations regarding the Ventura County Medical Examiner's Office including practicing medicine without a license, conflict of interest, misappropriation of public funds, and fraud. Today, the District Attorney's Office is releasing a 50-page public report detailing the scope and results of the investigation. An Executive Summary of the public report is attached to this news release. The full report may be found on the District Attorney's Web site (<http://www.vcdistrictattorney.com>).

As discussed in the report, while the District Attorney's investigation uncovered policies and procedures that will call into question the professionalism and integrity of the office, there is insufficient evidence to warrant the filing of criminal charges in this matter.

The District Attorney's investigation found significant deficiencies in the manner in which autopsies were conducted; in some cases by an untrained, unqualified employee of the office. Chief Deputy Administrator Armando Chavez conducted procedures that could be classified as autopsies or partial autopsies and the practice of medicine despite having no medical training or certification. A number of these procedures were performed at the direction of Dr. Jon Smith while Dr. Smith was out of the country on vacation. This practice resulted in both medical conclusions and the preparation of autopsy reports that were not the product of a thorough examination of the body and necessary laboratory tests by a physician and medical professional.

During the investigation, it was learned that there are no definitive legal standards and no clear consensus among experts as to what constitutes an autopsy, who may perform an autopsy and whether conducting an autopsy is the practice of medicine. Because the law is unclear, and because Chavez's job classification authorizes him to assist in autopsies and "obtain tissue and fluid samples from dead bodies," criminal liability cannot be imposed for the very troubling practices described in the public report. Such legal standards need to be clarified and the report recommends that the California Legislature hold hearings to clarify this area of law.

The investigation also found that Dr. Smith was sent a cease and desist letter by the Louisiana Board of Medical Examiners and received a letter from the Oregon Medical Board alleging that a complaint had been made against him for practicing medicine without a license. In each instance, Dr. Smith performed services on behalf of Regional Pathology and Autopsy Services. Since there is insufficient evidence that the laws of the State of California were violated, no charges can be filed related to those allegations.

The District Attorney's Office further found that Dr. Smith spent significant amounts of time working for entities outside his primary responsibilities as the full-time Chief Medical Examiner and derived significant financial benefits from this work. This work included contracts with the Santa Barbara Coroner's Office, the Monterey County Coroner's Office, and Regional Pathology and Autopsy Services. However, it cannot be established that these activities directly interfered with his ability to perform his duties as Chief Medical Examiner for Ventura County. Thus, no charges can be proven related to this conduct.

Since the events discussed in this report, the Ventura County Medical Examiner's Office has adopted a number of changes to policy and procedure and has taken steps to become certified by the National Association of Medical Examiners (NAME). The District Attorney's Office believes these are positive steps that will enhance the professionalism provided by the Medical Examiner's Office to Ventura County citizens.

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EXECUTIVE SUMMARY

In May 2015, the Ventura County District Attorney's Office learned of serious allegations regarding the Ventura County Medical Examiner's Office (VCME), including practicing medicine without a license, conflict of interest, misappropriation of public funds, and fraud. In response, the District Attorney conducted a thorough investigation to determine the truth of the allegations and whether the law had been violated.

The investigation focused on the following allegations:

- Dr. Jon J. Smith, Chief Medical Examiner, authorized uncertified and unqualified personnel to conduct autopsies without the physical presence of a licensed medical doctor.
- Dr. Smith certified that he had conducted such autopsies despite not having been physically present when the bodies were examined.
- Armando Chavez, Chief Deputy Administrator/Supervising Medical Examiner Investigator, conspired with Dr. Smith and conducted autopsies without being qualified or licensed to do so and without the presence of a supervising physician.
- Dr. Smith contracted with numerous additional agencies/companies for significant postmortem procedures during which time he was employed as a *full-time* medical examiner with the County of Ventura and without the appropriate outside employment disclosures.
- Dr. Smith was sent a cease and desist letter by the Louisiana State Board of Medical Examiners for practicing medicine without a license when he contracted privately with Regional Pathology and Autopsy Services.

To determine the truth of these allegations, district attorney investigators interviewed dozens of witnesses, placed a pretext call to Investigator Chavez, contacted the California and Louisiana medical boards and executed several search warrants at various locations. They obtained and examined thousands of pages of documents, including records from the Medical Examiner's Office and County Recorder, e-mails, calendars, and payroll records. Potential criminal charges were reviewed by Senior Deputy District Attorney Thomas Dunlevy and Deputy District Attorney Andrew Sullivant; their written analysis forms the basis for the attached report.

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The investigation found evidence establishing the following:

- At the direction of Chief Medical Examiner Jon J. Smith, Supervising Medical Examiner Investigator Armando Chavez conducted postmortem procedures which could be classified as autopsies or partial autopsies on Christopher T., Hipolito V., Nancy K., Gustavo G., and Jeffrey L. without being licensed to do so.¹
- Dr. Smith signed documents written in a way that gave the impression that he had supervised postmortem procedures on three individuals, despite not having been physically present when those procedures were performed.
- Dr. Smith engaged in outside employment with public and private agencies including Santa Barbara County, Monterey County, and Regional Pathology and Autopsy Services while being employed as a full-time deputy medical examiner and chief medical examiner for the County of Ventura.
- Dr. Smith was sent a cease and desist letter by the Louisiana Board of Medical Examiners for practicing medicine without a license in the state of Louisiana. Further investigation revealed that Dr. Smith received a letter from the Oregon Medical Board advising him that a complaint had been made alleging that he performed an autopsy without being licensed to practice medicine in the state of Oregon. Both procedures were performed while Dr. Smith was employed as Ventura County's chief medical examiner, concurrently working for the Santa Barbara Sheriff-Coroner's Office, and working under contract for Regional Pathology and Autopsy Services.
- At the direction of Dr. Smith, postmortem procedures were delegated to an uncertified, unlicensed employee who was not qualified to determine the cause or manner of death or to assess the body for the possible presence of communicable diseases.

The Investigation

On May 11, 2015, the Ventura County District Attorney's Office received a telephone call from a person who identified himself/herself as a contract employee for the VCME. The caller asked to remain confidential and reported that he/she had witnessed Investigator Chavez perform two autopsies earlier that day without a physician present. After the procedures, the witness was told by Investigator Chavez to "keep [his/her] mouth shut." The

¹ The decedents' first names and last initials are used to respect their privacy and the privacy of their families.

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caller further indicated that the name of the doctor who would be signing off on the autopsy report would be Dr. Jon Smith. Dr. Smith was out of the country at that time.

Based upon the above information, the Ventura County District Attorney's Bureau of Investigation contacted the informant who was interviewed on May 11 and 12, 2015. The informant described in detail the procedures which he/she witnessed including the extraction of vitreous humor from one of Christopher T.'s eyes, the extraction of blood from his neck and urine from his bladder, the making of a four-inch to six-inch incision down the front of his right upper leg, and the cutting of muscle tissue from his leg. At the beginning of this autopsy, Investigator Chavez commented, "Dr. Smith told me to do the autopsies."

A short time later, the witness observed Investigator Chavez make a Y-shaped incision on Hipolito V.'s body, cut tissue away from his chest using a scalpel, and use "loppers" to cut through his ribcage, ultimately removing his breast plate. The witness further observed Investigator Chavez manipulating Hipolito V.'s internal organs, unsuccessfully attempting to find his gallbladder. Investigator Chavez then removed and dissected pieces from his liver and placed them in a specimen jar.

Later that morning, Investigator Chavez summoned the witness to his office and told him/her, "You need to keep your mouth shut and do not discuss this with anyone. . . ."

On May 12, 2015, under the direction of district attorney investigators, the witness placed a recorded pretext phone call to Investigator Chavez. During the call, Investigator Chavez said ". . . we are not doing anything that's considered illegal. We're just doing what we need to do right now to save money from our budget because we're almost out of money." Investigator Chavez also admitted that he did three autopsies the day before and identified the third body as that of Jeffrey L. Investigator Chavez went on to justify his actions indicating that Dr. Smith had authorized everything he was doing. Chavez stated that Dr. Smith reviews every case and directs which cases go to a contract pathologist, Dr. Ann Bucholtz, and which cases are Investigator Chavez's responsibility.

During the course of the investigation, Dr. Bucholtz was interviewed. Dr. Bucholtz had been a forensic pathologist for 25 years and was then employed as a part-time contract pathologist with the Ventura County Medical Examiner's Office. Dr. Bucholtz has since been appointed as the Ventura County Chief Medical Examiner. Dr. Bucholtz told investigators that at the time, she and Dr. Smith were the only licensed forensic pathologists working at VCME.

Dr. Bucholtz indicated that when she arrived at work on May 11, 2015, she noticed a body on the examination table with a Y-shaped incision. Dr. Bucholtz was aware of the fact that Dr. Smith was currently out of the country. When she inquired, she was told that

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Investigator Chavez did an autopsy of a Hipolito V. When Dr. Bucholtz inquired as to who authorized the autopsy, she was informed that Dr. Smith had. With knowledge that Investigator Chavez cannot author an autopsy report and Dr. Smith was out of the country, Dr. Bucholtz decided to review the preliminary draft. The draft indicated that “The case was reviewed with Dr. Jon J. Smith, Chief Medical Examiner for the County of Ventura. A postmortem examination was performed to determine the cause and manner of death.”

Dr. Bucholtz also recalled an incident which had occurred in December 2013, where she observed that Investigator Chavez had made an incision, opened up the chest cavity and abdominal area, and manipulated the internal organs of Nancy K., attempting to find the primary point of cancer. When he was unable to do so, he called Dr. Smith and was advised to seek Dr. Bucholtz’s assistance.

Dr. Bucholtz advised that the “Standard of Care” for forensic pathologists was set forth by the National Association of Medical Examiners (NAME) and in her opinion, the performance of an autopsy constituted the practice of medicine. Although forensic technicians, laboratory assistants and other personnel may assist with minor procedures, according to NAME standards, only a forensic pathologist or physician can determine the cause of death. Although not certified by NAME, the Ventura County Medical Examiner’s Office Web site lists NAME as an “additional resource.” NAME standards require that a forensic autopsy must be conducted by a licensed physician who is a forensic pathologist, or by a physician who is a forensic pathologist-in-training.

Investigators contacted Cheryl Gray, M.D., a consultant with the Medical Board of California, who opined that the act of conducting a forensic autopsy is practicing medicine. She further indicated that although some procedures may be accomplished by a trained technician, they can only be done in the physical presence of a licensed pathologist.

It is undisputed that Investigator Chavez has not attended medical school, is not licensed to practice medicine in any jurisdiction, and is not a licensed forensic pathologist or certified as a pathologists’ assistant.

Investigators contacted the California Department of Consumer Affairs and learned that Dr. Smith was sent a cease and desist letter by the Louisiana State Board of Medical Examiners for the unlawful practice of medicine in the state of Louisiana when he performed an autopsy in the state on October 28, 2014, while not licensed to do so. In a letter to Dr. Smith, the Louisiana Board advised Dr. Smith, “You are engaged in the unauthorized practice of medicine in this state as defined by the Louisiana Medical Practice Act . . . more significantly, you should be aware that engaging in the practice of medicine in the absence of licensure is a crime.”

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It had been determined that Dr. Smith prepared the Louisiana autopsy report while working for Regional Pathology and Autopsy Services. Further investigation revealed that although Dr. Smith prepared the report which read as if he had conducted the autopsy himself, it was actually performed by a certified pathologists' assistant who was not a licensed physician. She took samples and photographs of the decedent from the funeral home and sent them to Dr. Smith, who then authored the autopsy report.

During the course of this investigation, it was also determined that Dr. Smith had recently signed a three-year, \$870,000 contract with the County of Santa Barbara for forensic pathology services in addition to his *full-time* job as the Ventura County Medical Examiner, had employment with Regional Pathology and Autopsy Services, and did occasional contract work for the County of Monterey.

Criminal Filing Standards

In determining whether to file criminal charges, the Ventura County District Attorney's Office is guided by the same standards used by prosecutors throughout the state. In summary, a prosecutor may only file criminal charges if he or she believes, based on the evidence available after a thorough investigation, that the accused is in fact guilty of a crime and that guilt can be proven beyond a reasonable doubt at trial. Applying this standard, we conclude that criminal violations cannot be established in this matter.

Unauthorized Autopsy, Unauthorized Practice of Medicine, Conspiracy to Commit Unauthorized Practice of Medicine and Unlawful Mutilation of Human Remains (Health and Safety Code Sections 114 and 7052; Business and Professions Code Section 2052 and Health and Safety Code Section 7052)

Dr. Frank Sheridan, the San Bernardino County Coroner, was consulted and opined that Investigator Chavez's conduct with regard to the actions taken in three of the autopsies *could* constitute the performance of an autopsy and the practice of medicine. Specifically, Dr. Sheridan indicated that the cutting open of the abdomen and collecting samples from internal organs could constitute an autopsy/practice of medicine. He also opined that looking for a primary source of cancer could constitute the practice of medicine. This opinion is consistent with NAME standards as well as the opinions of the California, Louisiana, and Oregon medical boards. However, notwithstanding these opinions, there is no California statute which defines what constitutes an autopsy, differentiates between an

autopsy and a partial autopsy, or mandates who is authorized to conduct an autopsy.² There is also no statute which clearly defines the performance of an autopsy as the practice of medicine.

Additionally, as a supervising medical examiner investigator, Investigator Chavez's job classification authorized him to "obtain tissue and fluid samples from dead bodies." In an April 30, 2015, e-mail to staff, Dr. Smith wrote that Investigator Chavez would "perform some tasks related to sample collection or evidence collection" and any cases handled in this manner would have abbreviated reports authored by Dr. Smith upon his return. Since there is a dispute within the medical community as to what constitutes an autopsy and whether the performance of an autopsy or partial autopsy constitutes the practice of medicine, and since no clear standards are set forth in California law, the evidence fails to establish beyond a reasonable doubt that Dr. Smith and Investigator Chavez conspired to or did practice medicine without a license or in any way mutilated human remains within the meaning of California law.

Procuring or Offering False or Forged Instrument for Recording (Penal Code Section 115), Preparing False Documentary Evidence (Penal Code Section 134)

Although VCME is a public office within the State of California, there is a question as to whether an autopsy report is an "instrument" for purposes of this statute. Additionally, even if an autopsy report is an "instrument" under the statute, there are no statements in the autopsy reports in question which can be demonstrably proven false or untrue. Working "under the direction and supervision" of Dr. Smith is not synonymous with "direct supervision" but is sufficiently ambiguous as to confuse the reader as to whether or not Dr. Smith had been physically present. There is no evidence that any of the physical findings or conclusions in the autopsy reports were untrue or unsupported by the facts of the case. As a result, there is insufficient evidence to prove that the statements made were demonstrably false.

Potential Charges Related to Louisiana and Oregon Autopsies

Dr. Smith authored autopsy reports as a contract pathologist for Regional Pathology and Autopsy Services in Louisiana on October 28, 2014, and in Oregon on January 26, 2015. In each of these cases, Dr. Smith was not physically present for the postmortem examination. It is undisputed that Dr. Smith is not licensed to practice medicine in Louisiana or Oregon.

² In an interview, Dr. Smith stated that in a full autopsy, the cranial, thoracic and abdominal cavities are all open; in a partial autopsy, only one or two of the cavities are open.

However, there is no evidence to suggest that Dr. Smith violated any California statutes as a result of the autopsy reports issued in the Louisiana or Oregon cases.

Misappropriation of Public Funds/Fraudulent Claims (Penal Code Sections 424 and 72)

In June 2012, the Ventura County Board of Supervisors appointed Dr. Smith as the chief medical examiner for Ventura County. On May 14, 2014, the Ventura County Board of Supervisors approved authorization for Ventura County Health Care Agency Director Barry R. Fisher to sign a contract with the County of Santa Barbara for high-risk autopsies defined as “postmortem examinations of a decedent who had or is likely to have had, a serious infectious disease. . . .” Under the contract, the County of Santa Barbara would reimburse the County of Ventura \$3,500 for each autopsy, estimated to be two autopsies per year.

On July 1, 2014, Dr. Smith signed a one-year contract with the County of Santa Barbara to perform all forensic pathologist services as an independent contractor. On May 19, 2015, the Santa Barbara County Board of Supervisors approved a contract extension from July 1, 2015, through June 30, 2018, for pathology services not to exceed \$870,000 over the three-year life of the contract. Health Care Agency Director Fisher approved the employment with Santa Barbara County. His belief at the time was that all work performed for Santa Barbara County would be over and above the 40 hours per week that Dr. Smith worked for Ventura County. Fisher further indicated that he was aware of the work that Dr. Smith performed for Regional Pathology and Autopsy Services.

Dr. Smith also signed a contract with Monterey County to perform forensic pathologic postmortem examinations on a contract basis starting on July 1, 2011. This contract was extended until June 30, 2013. Evidence suggests that Dr. Smith requested and was approved for a leave of absence from Ventura County each time he performed services for Monterey County.

It is undisputed that Dr. Smith was a salaried employee for the County of Ventura who was expected to work 80 hours per biweekly pay period. However, according to Health Care Agency Director Fisher, Dr. Smith was free to flex those hours to accommodate other commitments including his contract work for Santa Barbara County, Monterey County and Regional Pathology and Autopsy Services. Because there is insufficient evidence to prove beyond a reasonable doubt that he defrauded the County of Ventura by falsely claiming that he worked hours for the County when he was instead performing contract work for another entity, he cannot be prosecuted for misappropriation of public funds or making fraudulent claims.

Statement of Economic Interests

The Conflict of Interest Code for the Ventura County Health Care Agency requires that persons serving in specified positions, including the chief medical examiner, file a Form 700, Statement of Economic Interests. Prior to 2015, the chief medical examiner was not required to disclose all sources of income on his Form 700. The Conflict of Interest Code was amended effective 2015 to require that the chief medical examiner disclose all sources of income. Dr. Smith failed to disclose the income that he earned through Regional Pathology and Autopsy Services. However, because there is no proof that Dr. Smith was ever notified of the change in the reporting requirements, there is insufficient evidence to prove that he committed the crime of *willfully* failing to comply with the reporting requirements.

Conclusion

This report is not intended to be an indictment of the Ventura County Medical Examiner's Office. Professionals working for this department are highly skilled, dedicated individuals who take seriously their obligation to accurately determine the cause, manner, and circumstances of deaths that fall under their jurisdiction. They work tirelessly to identify decedents, and locate and notify next-of-kin in a compassionate and timely manner. They can provide critical information for the next-of-kin who are dealing with sudden or unexpected fatalities. They can also be the frontline in the dissemination of information necessary for public safety as it relates to communicable diseases.

It is also not the intention of the District Attorney to judge the quality of medical expertise employed by the Medical Examiner's Office or the manner in which forensic examinations are conducted.

It is clear, however, that Dr. Smith spent significant amounts of time working for entities outside his primary responsibilities as the full-time Chief Medical Examiner and derived significant financial benefits from these responsibilities. It is also clear that for financial reasons, Dr. Smith directed and allowed an unqualified, uncertified person to conduct complex and sensitive medical procedures. We note that upon learning of Dr. Smith's actions, the Ventura County Healthcare Agency administration implemented a number of valuable changes to ensure such practices are not allowed in the future.

This investigation has exposed the need for legislation to clarify whether the performance of an autopsy is included in the "practice of medicine." Clarification is also necessary to define the terms "autopsy" and "partial autopsy" and to clearly define the qualifications and training required for forensic examiners who conduct such procedures. The legislature must reconcile existing law that allows non-physicians to serve as coroners.