

Approved: [Signature]
Superior Court Judge

Date: 8/10/14

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

AUG 15 2014

SONOMA COUNTY SHERIFF'S OFFICE
RESPONSE TO THE 2013-2014 GRAND JURY REPORT [Signature]
Deputy Clerk

Sheriff-Coroner's Office and Morgue Inspection

Pages 29 - 33

FINDINGS

F1. The close to 400 delinquent final autopsy reports due from FMG show a lack of effective oversight by the Sheriff-Coroner's Office.

RESPONSE: The respondent partially disagrees with this finding.

The respondent acknowledges that the issue of delinquent final autopsy reports is ultimately the Sheriff's Office responsibility and that this issue was left unresolved longer than desirable as staff attempted to explore solutions with the contractor. With that said the Sheriff's Office, specifically staff from the Coroner and Administration Bureaus have, consistently and diligently undertaken efforts to rectify the problem of delinquent autopsy reports. An autopsy report can only be completed by a licensed pathologist. Given this, Sheriff's Office staff are not able to directly assist with the clearing of the backlog. Staff have aggressively worked with the contractor and attempted to address this problem since meeting with FMG President Dr. Kelly Arthur-Kenny in January of 2013. At this meeting Dr. Arthur-Kenny informed Coroner staff that the only way to reduce the backlog and prevent any future backlogs is to hire an additional pathologist. Since that time, Sheriff's Office staff have been pursuing every available option to identify a secondary/backup pathologist. Staff have been working closely with FMG to assist with securing additional pathologists for their business and have been working independent of FMG to acquire a secondary/backup provider for the County.

Dr. Arthur-Kenny has been admonished about her obligations as the FMG pathologist assigned to Sonoma County on various occasions, as recently as April of 2014. Since that time the Sheriff's Office has been using the services of other pathologists employed by FMG. Dr. Arthur-Kenny has not been allowed to perform any new autopsies, unless an urgent situation occurs wherein no other FMG pathologists are available. Dr. Arthur-Kenny's priority task is completing all the delinquent autopsy reports. At the time of the Grand Jury investigation FMG was delinquent with over 400 reports. Currently, 320 case are backlogged, an improvement of 80 cases. At the same time, all new cases are being completed within the contractual timeframe.

The only means of recourse the Sheriff's Office has at this time is to impose a fine for overdue reports, sue FMG for breach of contract and/or replace FMG completely. All options have been considered and discussed with County Counsel. Since May 2014 County Counsel has been working directly with FMG's attorney to resolve the issues. In conjunction with County Counsel, the Sheriff's Office has negotiated a timeline to resolve the backlog of cases with FMG. If the timeline

is not strictly adhered to the Sheriff and County Counsel will recommend the Board of Supervisors impose penalties. Since the agreement was reached, FMG has been making progress and reaching prescribed milestones.

The Sonoma County Grand Jury is correct in their statement that there is a nationwide shortage of qualified forensic pathologists making it difficult for counties to recruit and retain them. However, as described above, the Sheriff's Office has spent extensive time and effort into the search and recruitment for a potential secondary pathology provider. At present time, we are finalizing a contract with United Forensic Services and expect to have the contract before the Board of Supervisors in late summer for ratification. However, until United Forensic Services can retain a full time pathologist to assign to Sonoma County, we have no other option then to continue using the services of FMG. In addition to seeking a temporary solution to the immediate backlog issue by working with FMG and securing a second provider of services, we are pursuing a longer term solution through the release of a new forensic pathology services Request for Proposal (RFP). We anticipate releasing this RFP later this summer.

Additionally, as an interim measure to pressure FMG into compliance, we have been delaying payment to FMG by an additional 30 days. The current Agreement specifies a 30 day payment term; the Sheriff has not been authorizing payment on FMG invoices until 60 days have passed. Staff have also developed a proposed amendment to the current Agreement which contains a split payment provision whereas a portion of the fee will be due upon the performance of an autopsy with the remainder of the fee to be paid upon completion of the report. This new split payment provision will be included in any new forensic pathology service agreement.

F2. The Sheriff- Coroner's Office has not exercised means within its control to bring about the timely issuance of final autopsy reports by imposing the 2-percent daily fine for overdue reports.

RESPONSE: The respondent partially disagrees this finding.

In cooperation and consultation with County Counsel, the Sheriff's Office has demanded that FMG complete and turn in all late reports by January 31, 2015 or fines will be imposed for all delinquent reports, including retroactive late fees. It has been determined that the best course of action at this time is to give FMG time to complete all reports prior to imposing fees. The main factor in this determination is, should FMG terminate the current contractual relationship or go out of business as a result of the fines, the County would have no one to complete the outstanding reports nor conduct any new autopsies. In essence, the Sheriff would not have the necessary certified medical professional staffing to carry out the medical portion of the death investigation function.

As discussed above in the response to F1, we have been delaying payment to FMG by an additional 30 days. The current Agreement specifies a 30 day payment term; the Sheriff has not been authorizing payment on FMG invoices until 60 days have passed. Staff have also developed a proposed amendment to the current Agreement which will contain a split payment provision whereas a portion of the fee will be due upon the performance of an autopsy with the remainder of

the fee to be paid upon completion of the report. This new split payment provision will be included in any new forensic pathology service agreement.

F3. The Coroner's Office lacks adequate storage for the extensive records currently in cardboard boxes stacked throughout the facility.

RESPONSE: The respondent wholly disagrees with this finding.

Coroner records are stored at County Information Services Department (ISD) managed records storage facilities and are warehoused in a downstairs storage area at the Coroner/Morgue office. The records that are stored in cardboard boxes in areas toured by the Grand Jury are only there due to the uncompleted case files. When the backlog of cases is eliminated they will all be moved to proper storage. The boxes viewed by the Grand Jury in the investigator's office area have been temporarily placed there for the convenience of Coroner Bureau staff.

F4. Coroner operations can be negatively affected by delays resulting from failure to use up-to-date file management software tailored to its needs or hands-free recording equipment during autopsies. (Page 33)

RESPONSE: The respondent wholly disagrees with this finding.

Although cumbersome and requiring some duplication in data entry, the Coroner's Bureau current records system has not caused any delays which negatively affect coroner operations or the release of information to appropriate parties. The Sheriff's Office is continually looking for ways to improve efficiency through innovation and technology. Coroner Bureau staff have been actively looking for a standalone, cutting edge, "up-to-date" file management software system. At the same time staff is working with County ISD on the development of the Coroner's module within the Sheriff's existing I-Leads system for records management. The I-Leads software successfully provides records management for other functional areas in the Sheriff's Office and it is believed that there is a possibility of adding a module to the existing software that will perform the desired Coroner functions.

Sheriff's Office staff do not believe that the lack of hands free recording equipment has contributed to or caused any delays that negatively affect Coroner operations. This type of equipment would primarily, if not exclusively, be used by the contract pathologist. To date, FMG has never suggested to the Sheriff's Office that the purchase of equipment would be beneficial to their pathologist, nor have they alleged that the lack of such equipment has contributed to any delays.

RECOMMENDATIONS

R1. The Sheriff-Coroner's Office impose contractually stipulated penalties for late autopsy reports while evaluating the suitability of its continued relationship with FMG for forensic services.

RESPONSE: This recommendation has not yet been fully implemented, but will be implemented in the future.

The recommendation to impose penalties is in the process of implementation. The Sheriff's Office has delayed payment to FMG by 30 days as a first step in imposing financial penalties. We have continued to evaluate additional financial penalties while balancing concerns regarding the completion of existing cases and need for on-going pathology services. The Sheriff's Office has been in continual consultation with County Counsel to determine the most productive approach in dealing with the current FMG case backlog. This analysis has been on-going and multifaceted. As outlined in the response to F1 on page 1, in conjunction with County Counsel, the Sheriff's Office has negotiated a timeline to resolve the backlog of cases with FMG. The negotiated schedule outlines key milestones and identifies clear deliverables which must be met by FMG and calls for a complete clearing of the backlog by January 31, 2015. If the timeline is not strictly adhered to the Sheriff and County Counsel will recommend the Board of Supervisors impose penalties. As mentioned previously in this response, there are currently 320 outstanding reports to be completed by FMG. These reports are being completed at a quicker rate now that Dr. Arthur-Kenny has been removed as the chief contract pathologist for the County. All new autopsies are now being performed by other FMG pathologists. All new autopsies reports are being completed and submitted in a timely fashion per the existing Pathology Service Agreement.

Sheriff's Office staff are near completion of a new Request for Proposal (RFP) for forensic pathology services. We expect that a new RFP will be released in late summer 2014. It is anticipated that the responses to the new RFP will include vendors proposing additional pathologist support to insure the timely turnaround of reports. This will more than likely result in an increase cost per autopsy. The release of the RFP will signify the County's formal solicitation for pathology providers although Sheriff's staff have been informally seeking out providers over the course of the past year. In order to rectify the current backlog and to insure the County has backup pathology providers, staff has been contacting known pathologists in our search for secondary providers. The severe shortage of qualified pathologists nationwide has made this search very difficult. At this time we have only been able to identify one other provider. We are currently finalizing a contract with a second provider, United Forensic Services and expect to bring this agreement before the Board of Supervisors for ratification in the near future. United Forensic Services is currently seeking a pathologist to assign to Sonoma County. Until a full-time pathologist is secured by United Forensic Services we cannot afford to lose the services of FMG as we will have no viable replacement.

Additionally, Coroner Bureau staff have been reaching out to other Sheriff-Coroners to research every alternative for the provision of pathology services. We have solicited other neighboring counties to determine if they have the capacity to assist us should we need back up pathology

support. Given the nationwide shortage of pathologist, we have not found a neighboring county that has the capacity to assist us. We will be following up with larger counties in northern California to make similar inquires. If we are successful in identifying a county that has the capacity and is willing to assist as a backup, the distance between counties will create additional transportation and timing challenges all of which will need to be addressed logistically and financially.

R2. The Sonoma County Board of Supervisors give priority to exploring possibilities for remodeling or relocating the existing Coroner's Office and Morgue.

RESPONSE: This recommendation has been implemented.

The Sheriff's Office continually recommends Coroner Bureau/Morgue remodeling projects to the Board of Supervisors through the Sonoma County annual Capital Project Plan (CPP). All County projects, including Coroner/Morgue projects, are ranked for funding based on a complex matrix of criteria. The Sheriff will continue to participate and cooperate with any analysis with regards to the remodeling or relocation of the Coroner Bureau/Morgue through the CPP process.

R3. The Coroner's Office and Morgue adopt technological improvements, including a modern file management system and hands-free recording devices in the autopsy room.

RESPONSE: This recommendation has both been implemented (case file management R3a) and will not be implemented (hands free recording R3b) because it is not warranted.

R3a The recommendation for a modern file management system is currently being implemented. Work on the Coroner case file management system is underway. Sheriff's Office staff, in cooperation with the County ISD, will continue to identify the latest, modern file management software solutions, while at the same time capitalizing on the modules available in the existing I-Leads software system as an interim improvement.

R3b As stated in the Findings section of this response, Sheriff's Office staff do not believe that the lack of hands free recording equipment has contributed to or caused any delays that negatively affect Coroner operations. This type of equipment would primarily, if not exclusively, be used by the contract pathologist. To date, FMG has never suggested to the Sheriff-Coroner's Office that the purchase of equipment would be beneficial to their pathologist, nor have they alleged that the lack of such equipment has contributed to any delays. We do acknowledge that the purchase of such equipment would be a convenience for the contract pathologist. At this time, the Sheriff's Office budget could not support the purchase of the hands free dictation equipment or the necessary renovations to the Morgue facility to accommodate the equipment as this equipment is not essential or warranted.