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April 16, 2019

Kenneth S. Snell, MD  
Minnehaha County Coroner  
1305 W. 18<sup>th</sup> Street  
Sioux Falls, SD 57105

**Official Opinion No. 19-02**

Re: **Autopsy Report Exempt from State Public Records Laws**

Dear Dr. Snell,

In your capacity as the Minnehaha County Coroner you have requested an official opinion from the Attorney General's Office on the following question:

**QUESTION:**

Is the report of an autopsy performed at the request of a county coroner exempt from the state open records laws?

**ANSWER:**

Yes. Autopsy reports are exempt from disclosure under several exemptions to the state open records laws.

**FACTS:**

As coroner, you requested that an autopsy be performed regarding a death that South Dakota law requires to be investigated by the coroner. The autopsy report was used to complete the coroner's death investigation and complete the death certificate. A request for the autopsy report was received from a non-law enforcement individual who is also not the legal next-of-kin of the deceased person.

**IN RE QUESTION:**

Based upon the above facts, you have asked whether an autopsy report is a public record subject to disclosure according to the provisions of SDCL ch. 1-27.

SDCL 1-27-1 provides in relevant part:

Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, as defined in § 1-27-1.1, are hereby fully empowered and authorized to examine such public record[.]

Public records are defined to include “all records and documents” of the State and its political subdivisions. SDCL 1-27-1.1.

A coroner is an elected or appointed county official. See SDCL 7-7-1.1 and 7-7-1.4. As such, the coroner’s records and documents are records initially subject to the presumption of openness established by SDCL 1-27-1. This presumption can only be rebutted where some other “statute, ordinance, or rule” specifically exempts the record from being disclosed. SDCL 1-27-1.1.

SDCL 1-27-1.5 establishes that certain “records are not subject to §§ 1-27-1, 1-27-1.1, and 1-27-1.3.” The statute contains a list of twenty-seven categories that exempt documents and records from public disclosure. SDCL 1-27-1.5(2) exempts medical records from public disclosure, and SDCL 1-27-1.5(5) exempts the records of law enforcement agencies and other investigatory public bodies.

In reviewing a statute, “the language expressed in the statute is the paramount consideration.” *Olson v. Butte County Commission*, 2019 S.D. 13, ¶ 5, --- N.W.2d ---.

When the language in a statute is clear, certain and unambiguous, there is no reason for construction, and the Court’s only function is to declare the meaning of the statute as clearly expressed. When we must, however, resort to statutory construction, the intent of the legislature is derived from the plain, ordinary and popular meaning of the statutory language.

*In re Wintersteen Revocable Trust Agreement*, 2018 S.D. 12, ¶ 12, 907 N.W.2d 785, 789 (citations omitted). The intent of a statute “must be determined from the statute as a whole, as well as enactments relating to the same subject.” *In re Taliaferro*, 2014 S.D. 82, ¶ 6, 856 N.W.2d 805, 806-07 (citations omitted).

SDCL 1-27-1.5(2) specifically exempts medical records from public disclosure. While the term “medical record” is not defined in state statute, it is commonly defined as “a record of a patient’s medical information (as medical history, care or treatments received, test results, diagnoses, and medications taken).” *Medical Record*, Merriam-Webster Online, <http://www.merriam-webster.com/medical/medical%20records> (last visited April 1, 2019). The term “autopsy” has been statutorily defined as “the post mortem dissection and examination of a dead body...” SDCL 34-25-1.1(1.5). It is generally recognized that the purpose of an autopsy is to determine a person’s cause of death. See *Autopsy*, Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/autopsy> (last visited April 1, 2019) (defining “autopsy” as an “examination of the body ... to determine cause of death and extent of changes produced by disease”).

Considering the plain and ordinary meaning of the operative terms, I conclude that an autopsy report is a medical record exempt from public disclosure according to SDCL 1-27-1.5(2). An autopsy is an examination of a person’s body that reveals information concerning the general medical condition of the deceased at the time of death. An autopsy report may contain such information as the presence of any disease and evidence of prior medical treatments or procedures. The type of information included in an autopsy report would surely be recognized as a medical record if the person were alive. I decline to change the nature of the record because of the person’s death.

The medical records exemption discussed above is not the only public records exemption I find applicable to autopsy reports prepared by, or at the request of, a coroner. SDCL 1-27-1.5(5) indicates that:

[r]ecords developed or received by law enforcement agencies and other public bodies charged with the duties of investigation or examination of persons, institutions, or businesses, if the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training

are not subject to examination by the public. SDCL 1-27-1.5(5) clearly and specifically exempts the records of law enforcement agencies from public disclosure. In addition, SDCL 23-5-11 exempts confidential criminal justice information (which includes criminal investigative information) from the disclosure requirements of SDCL ch. 1-27. “Criminal investigative information” has been defined as “information associated with an individual, group, organization, or event compiled by a law enforcement agency in the course of conducting an investigation of a crime or crimes.” SDCL 23-5-10(4).

A state's attorney or sheriff, along with a coroner, is authorized to request an autopsy if it is suspected that a person died of unlawful means. SDCL 23-14-9.1. Also, importantly, a coroner is required to refer a death to law enforcement for further investigation if the coroner believes the death was due to non-natural causes. SDCL 34-25-22.

Based upon a review of the above referenced statutes, when the autopsy has been requested by a state's attorney or sheriff, or where the death has been referred to law enforcement by the coroner, I conclude the autopsy report is information compiled by law enforcement during an investigation into an individual's death. Further, the autopsy report is a record received by a law enforcement agency which constitutes part of the agency's investigation. In those instances, the autopsy report is exempt from disclosure to the public by operation of SDCL 1-27-1.5(5) and SDCL 23-5-11. *See also Mercer v. South Dakota Attorney General Office*, 2015 S.D. 31, 864 N.W.2d 299.

While SDCL 1-27-1.5(5) exempts autopsy reports that are part of the criminal investigation records of law enforcement, the language of SDCL 1-27-1.5(5) also clearly extends that exemption to any "public bod[y] charged with the duties of investigation or examination[.]"

Coroners are directed by law to "hold an inquest upon the dead bodies of such persons" that have died by unlawful means. SDCL 23-14-1. Beyond that authority, a coroner is also required to "investigate any human death if a determination of the cause and manner of death is in the public interest." SDCL 23-14-18. State statute authorizes a coroner to request an autopsy if it is suspected that a person died of unlawful means, or if the death falls within the provisions of SDCL 23-14-18(1) to (5). SDCL 23-14-9.1.

The provisions of SDCL 23-14-1, 23-14-9.1, and 23-14-18 make clear that a coroner is a public official authorized by state law to investigate human deaths. As such, I conclude that the reports of autopsies requested by a coroner that fall outside any law enforcement or criminal investigation exemption are nonetheless also exempt from public disclosure according to the provisions of SDCL 1-27-1.5(5). Such autopsy reports are the records of a public official charged with a duty to investigate, and the autopsy reports constitute a part of said investigation.

Beyond the exemptions found in SDCL 1-27-1.5, there is another exemption I believe applies to autopsy reports possessed by coroners. SDCL 1-27-1.9 states that:

[n]o elected or appointed official or employee of the state or any political subdivision may be compelled to provide documents, records, or communications used for the purpose of the decisional


or deliberative process relating to any decision arising from that person's official duties. Any document that is otherwise already public is not made confidential by reason of having been used in deliberations.

This deliberative process exemption applies to those documents used by a state or local official in reaching a decision that arises from that official's authorized duties. SDCL 23-14-20 requires a coroner to "prepare a medical certificate in conformance with chapter 34-25 for all deaths over which he assumes jurisdiction." SDCL 34-25-1.1(14) defines the "medical certificate" as "the portion of the death certificate that contains the information regarding the cause and manner of death." In completing the medical certificate, a coroner is required to determine what constitutes the cause and manner of death of the deceased person. The autopsy report is a document used by the coroner in reaching this decision. I conclude that autopsy reports are exempt from disclosure to the public according to SDCL 1-27-1.9 as part of the coroner's decisional process in determining cause and manner of death.

### **CONCLUSION**

It is my conclusion that autopsy reports are exempt from the public disclosure requirements of SDCL ch. 1-27 according to the exemptions found in SDCL 1-27-1.5(2), 1-27-1.5(5), and 1-27-1.9. Autopsy reports are properly considered medical records which are exempt from public disclosure by operation of SDCL 1-27-1.5(2). The reports of autopsies conducted at the request of law enforcement, or of deaths referred to law enforcement for further investigation, are exempt from public disclosure pursuant to operation of SDCL 1-27-1.5(5) and SDCL 23-5-11. Further, a coroner is a public official tasked with the duty of investigating deaths, and the autopsy report is a record of that investigation. Said reports are exempt from public disclosure pursuant to the general investigatory exemption found in SDCL 1-27-1.5(5). Finally, the autopsy report is a document or record used by the coroner in determining cause and manner of death, and in completing a medical certificate. As such, the autopsy report is part of the coroner's decisional or deliberative process and is exempt from public disclosure by operation of SDCL 1-27-1.9.

Sincerely,

  
Jason R. Ravensberg  
ATTORNEY GENERAL

JRR/SRB/lde