

## **MEDICAL EXAMINERS COMMISSION MEETING**

Sandestin Golf and Beach Resort  
9300 Emerald Coast Parkway  
Miramar Beach, Florida 32550  
May 4, 2018 10:00 AM CDT

Chairman Stephen J. Nelson, M.D. called the meeting of the Medical Examiners Commission to order at **10:00 AM CDT**. He advised those in the audience that the meetings of the Medical Examiners Commission are open to the public and that members of the public will be allowed five minutes to speak. He then welcomed everyone to the meeting and asked Commission members, staff, and audience members to introduce themselves.

### **Commission members present:**

Stephen J. Nelson, M.A., M.D., F.C.A.P., District 10 Medical Examiner  
Barbara C. Wolf, M.D., District 5 Medical Examiner  
Wesley H. Heidt, J.D., Office of the Attorney General  
Robin Giddens Sheppard, L.F.D., Funeral Director  
Kenneth T. Jones, State Registrar, Department of Health  
Hon. Jeffrey Siegmeister, State Attorney, Third Judicial Circuit  
Hon. Harrell Reid, Hamilton County Sheriff (via Teleconference)  
Hon. Carol R. Whitmore, R.N., Manatee County Commissioner (via Teleconference)

### **Commission Members Not Present:**

Hon. James S. Purdy, J.D., Public Defender, 7<sup>th</sup> Judicial Circuit

### **Commission staff present:**

Vickie Koenig  
Beth McNeil  
Doug Culbertson  
James D. Martin, J.D.

### **District Medical Examiners present:**

Andrea Minyard, M.D. (District 1)  
Craig Mallak, M.D. (District 17)  
Jay Radtke, M.D. (District 14)

### **Other District personnel present:**

Lisa Flannagan, M.D. (District 2)  
Lindsey Bayer (District 5)  
Kayla Mitchell (District 14)  
Jeff Martin (District 1)  
Whit Majors (District 14)

### **Guests present:**

Linda Pollard (FDLE)  
Jonathan Rigsby (FDLE)  
Dean Register (FDLE)  
Shannon Tate (Okaloosa County SO)  
Capt. Doug Brugmans (Santa Rosa Co. SO)  
J. D. Peacock (Okaloosa Co. Clerk of Courts)  
Shirley Balanis (Lions Eye Institute)  
Mike Jackson (Escambia County SO)  
Kathryn Miyar, Ph.D. (Florida Dept. of State)  
Randolph Schilke (Florida Dept. of Health)  
Brendie Hawkins (FDLE)  
Eric Yopp (FDLE)  
Cory Hebert (RTI)  
Major Donald Clark (Walton County SO)  
Hon. Larry Ashley (Okaloosa County Sheriff)  
Hon. Graham Fountain (Okaloosa County BOCC)  
Jack Massy (FDLE)  
Mike Gilmore (Escambia County SO)  
Joshua Sturms (Florida Dept. of Health)  
Karen Card, DrPH (Florida Dept. of Health)

**A MOTION WAS MADE, SECONDED, AND PASSED UNANIMOUSLY FOR THE COMMISSION TO APPROVE THE AGENDA AS AMENDED ON MAY 2, 2018.**

**A MOTION WAS MADE, SECONDED, AND PASSED UNANIMOUSLY FOR THE COMMISSION TO APPROVE THE MINUTES OF THE FEBRUARY 16, 2018 MEDICAL EXAMINERS COMMISSION MEETING.**

**ISSUE NUMBER 1: INFORMATIONAL ITEMS**

- Dr. Nelson informed the Commission that District 9/25 Associate Medical Examiner Sarah H. Zydowicz, D.O. was appointed as the District Medical Examiner for districts 7 (Volusia county) and 24 (Seminole county).
- Dr. Nelson informed the Commission that District 4 Medical Examiner, Valerie J. Rao, M.D. is retiring effective July 6, 2018. Dr. Nelson will send letters to the 4<sup>th</sup> and 3<sup>rd</sup> Judicial Circuit State Attorneys informing them of the need to appoint a Search Committee to make a recommendation for a new medical examiner to the Commission.
- Ms. Vickie Koenig informed the Commission that the District Medical Examiner, the Licensed Funeral Director (LFD), and the County Commissioner positions on the Commission remain pending appointment by the Governor. The Public Defender position on the Commission is also pending the Governor's appointment, and Mr. Purdy will continue to serve as the Public Defender representative until that appointment is made.
- The District Medical Examiners in District 8 (Alachua, Baker, Bradford, Gilchrist, Levy, and Union counties), District 10 (Hardee, Highlands, and Polk counties), District 12 (DeSoto, Manatee, and Sarasota counties), District 18 (Brevard county), District 19 (Indian River, Martin, Okeechobee, and St. Lucie counties), District 20 (Collier county), District 21 (Glades, Hendry, and Lee counties), District 22 (Charlotte county), and District 23 (Flagler, Putnam, and St. Johns counties) are pending reappointment by the Governor. The incumbent District Medical Examiners continue to serve until reappointed or replaced by the Governor.
- The recommendations of Jay M. Radtke, M.D., as District Medical Examiner in District 14 (Bay, Calhoun, Gulf, Holmes, Jackson, and Washington counties), and Michael R. Steckbauer, M.D., as District Medical Examiner in District 16 (Monroe county) are also pending appointment by the Governor.
- 2017 Interim Drugs in Deceased Persons Report – Ms. Beth McNeil announced that the report was released in April 2018.
- 2017 The Paul Coverdell Forensic Science Improvement Grants Program Status Update – Ms. McNeil advised the Commission that funds were released by the National Institute of Justice (NIJ) for the 2017 Coverdell Grant and award packages were sent in to the districts in March. A total of \$42,901 was provided to 17 districts. She reminded the district to submit their reimbursement paperwork.
- 2017 Annual Reports Reminder – Ms. McNeil reminded everyone that the data deadline for the 2017 Annual Workload and 2017 Annual Drugs in Deceased Persons reports is June 30, 2018.

Because of the length of time for quality checks, she requested that the districts provide their data as soon as it was complete and not wait until the submission deadline.

- 2018 Legislative Session – Mr. Jim Martin informed the Commission the following bills of interest passed during the 2018 Legislative Session:

Controlled Substance Prescribing – PDMP – This provides medical examiners with indirect access to the Prescription Drug Monitoring Program. Medical examiners conducting an authorized investigation pursuant to s. 406.11, F.S., may request information from the PDMP through a program manager within the Department of Health. It was signed by the Governor on March 19<sup>th</sup>, becoming Chapter 2018-013, Laws of Florida, with an effective date of July 1, 2018.

Varnadoe Forensic Research Center – This project establishes a forensic anthropology research facility in Pasco County. It was included in the final budget approved by the Governor.

## **ISSUE NUMBER 2: REAPPOINTMENT NOMINATIONS FOR DISTRICTS 1, 2, 5 and 6, AND ASSESSMENT FOR DISTRICT 3**

The Commission reviewed the constituent surveys for the reappointments of district medical examiners in District 1 (Escambia, Okaloosa, Santa Rosa, and Walton counties), District 2 (Franklin, Gadsden, Jefferson, Leon, Liberty, Taylor, and Wakulla counties), District 5 (Citrus, Hernando, Lake, Marion, and Sumter counties), and District 6 (Pasco and Pinellas counties).

District 3 (Columbia, Hamilton, Lafayette, Madison, and Suwannee counties) is serviced by Districts 2 and 4 and the constituents of these counties received assessments for the services provided. District 4 Medical Examiner Valerie J. Rao, M.D., is retiring in early July 2018, and was not considered for reappointment. Additionally, District 7 is Home Rule and appointed a new medical examiner (Sara H. Zydowicz, D.O.) effective April 2, 2018, so assessments were not provided to that district.

Several Commission members expressed concerns with the survey results received in District 1; especially that three of the four sheriffs had provided unfavorable recommendations. The Commission opened the floor for discussion regarding the reappointment of District 1 Medical Examiner, Andrea N. Minyard, M.D.

Okaloosa County Sheriff Larry Ashley addressed the Commission and provided a brief historical overview from his perspective relating to the medical examiner services provided. Between 2011 and 2012, all four sheriffs and the State Attorney met to discuss concerns with slow response times from the medical examiner's office, delays in body recoveries, and autopsies not being performed. Based on discussions with Dr. Minyard, all four sheriffs lobbied their respective county commissions to increase the medical examiner's budget in an effort to address these concerns.

In 2015, when the Commission again was soliciting feedback for reappointment of Dr. Minyard, Sheriff Ashley stated he initially provided an unfavorable recommendation as the issues identified in 2011-2012 had not been addressed. He met with Dr. Minyard to express his concerns, and she stated that she would look into centralizing the medical examiner's office in the circuit. As the Fort Walton Beach medical examiner facility in Okaloosa County was unusable, Dr. Minyard would hire more staff to include an Associate Medical Examiner, but she would need additional funding. Sheriff Ashley stated that he again lobbied the County Commission to again increase the medical examiner's budget.

Sheriff Ashley went on to say that 3 years later in 2018, nothing has changed. The issues and concerns expressed in 2011-2012 and 2015 are still present. Despite more funding, there is no Associate Medical Examiner, the office is still located in the most Western part of the Circuit (Pensacola) with no indication of relocation or opening a satellite office in the Eastern part of the Circuit, response times to scenes are slow or no response at all, and cases are being declined that are suspicious or drug overdoses. Sheriff Ashley stated that Dr. Minyard told the Okaloosa Board of County Commissioners that she was not a public official. In summary, Sheriff Ashley stated that while Dr. Minyard is a competent pathologist, he has lost trust in her. Dr. Nelson stated for the record that Dr. Minyard and all District Medical Examiners are public officials. Dr. Nelson asked Sheriff Ashley to provide Commission staff with the Sheriff's Office case numbers of those calls-for-service where medical examiner jurisdiction was declined in suspicious deaths.

Okaloosa County Comptroller and Clerk of Courts J.D. Peacock stated the he is working with the other three counties (Escambia, Santa Rosa, and Walton) to conduct an internal audit of the funding of the medical examiner's office. Each county has been paying for services without knowledge of the other counties funding. However, he has had issues in obtaining the documents necessary to conduct the audit. Once those documents are received, the audit should conclude within a couple of months.

Okaloosa County Board of County Commissioners Chairman Hon. Graham Fountain said that this is not a good situation. He stated that the counties are partially to blame in that they have not been watchful of the funds they appropriated to the District Medical Examiner. Mr. Fountain stated that funds are in the current budget to lease space for a centralized or satellite facility. He is willing to work with Dr. Minyard to find space. Mr. Fountain also stated that future contracts would be handled differently and would hopefully have a single managing county to coordinate between the four counties in the circuit.

Dr. Minyard's attorney, T.A. "Ted" Borowski, Jr., stated that Dr. Minyard never told the county they cannot have the documents they have requested to support the contract. The contract is composed of 3-4 categories that are actual reimbursement of expenditures and professional fees. The professional fees are a flat rate charged for autopsies and other work performed by the pathologists. This will be the same fee regardless of the number of autopsies, external examinations, or case investigations performed, so in the event of a hurricane, the fees paid by the counties will not increase. Mr. Borowski stated that how Dr. Minyard spends the money she receives through the professional fees is her business, just as salary received by any other employee. He stated the issue of contention with the counties is how much Dr. Minyard is compensated.

Walton County Sheriff's Office Major Donald Clark was present on behalf of Sheriff Michael Adkinson. He stated the Walton County SO has the same basic concerns outlined by Sheriff Ashley. He would also provide staff with the case numbers for jurisdiction declined suspicious deaths.

Santa Rosa County Sheriff's Office Captain Doug Brugmans was present on behalf of Sheriff Robert Johnson. He stated that Sheriff Johnson is also concerned with the monetary and transparency issues of the medical examiner's office.

Dr. Minyard stated that misinformation regarding her fees is rampant. She has offered to renegotiate her contract with the counties. The current contract includes pass-through costs that are line item reimbursements. The professional fees cover the cost for the pathologists. She had an Associate Medical Examiner from 2015 through late 2017. She hopes to have new Associate Medical Examiner in July. Dr. Minyard stated she is good with either a single medical examiner facility located centrally in Santa Rosa County, or another satellite facility in Okaloosa County. She further stated that she was planning on taking Dr. Nelson's advice to increase communication with the district constituents.

Dr. Minyard indicated that 77% of Okaloosa County Sheriff's Office cases are accepted. Additionally her policy is that the office will accept all cases without an established medical history. Dr. Nelson asked if all jurisdiction declined cases were reviewed by a medical examiner. Dr. Minyard indicated that all but the hospice cases were reviewed by a medical examiner. Dr. Nelson stated that all jurisdiction declined cases (including hospice cases) should be reviewed by the District or Associate Medical Examiner and not only an investigator or office personnel.

Dr. Minyard concluded by stating that she was willing to continue to serve as District Medical Examiner so that there would be no interruption of services regardless of the outcome today, and that she welcomed the audits and would provide the financial documents as requested.

Dr. Wolf commented that the sheriffs had several cases that the Commission needs to review prior to making any decision.

Mr. Wesley H. Heidt stated that in addition to those cases, the audit being conducted by the counties needs to be completed, provided they are given the necessary documents. Dr. Nelson asked Dr. Minyard if everything was run through her Professional Association (P.A.) and she indicated it was. Dr. Nelson requested that she provide those requested P.A. tax returns to the counties by the end of the next week (May 11, 2018).

**A MOTION WAS MADE, SECONDED AND PASSED UNANIMOUSLY TO TABLE DR. MINYARD'S REAPPOINTMENT DECISION UNTIL THE NEXT COMMISSION MEETING.**

This would allow the Commission an opportunity to review information relating to cases where jurisdiction was declined, allow the counties to complete their audit, and allow the Commission to review those findings. Additionally, Dr. Nelson agreed to participate in a committee made up of the First Circuit State Attorney, the four Sheriffs, and representatives from the four county commissions to discuss possible resolutions of their concerns with the District 1 Medical Examiner before the Medical Examiners Commission will make a decision on reappointment.

The Commission reviewed the reappointment surveys for Districts 2, 5, and 6, and voted separately on each district. Mr. Siegmeister indicated that he was in favor of the reappointment of Dr. Stewart in District 2, and apologized for not returning his ballot prior to the meeting.

**WITH NO FURTHER DISCUSSION, A MOTION WAS MADE, SECONDED AND PASSED UNANIMOUSLY TO RECOMMEND THE GOVERNOR REAPPOINT DAVID T. STEWART, M.D., AS THE DISTRICT 2 MEDICAL EXAMINER. NO OTHER NAMES WERE SUBMITTED FOR CONSIDERATION IN THIS DISTRICT.**

**WITH NO FURTHER DISCUSSION, A MOTION WAS MADE, SECONDED AND PASSED TO RECOMMEND THE GOVERNOR REAPPOINT BARBARA C. WOLF, M.D., AS THE DISTRICT 5 MEDICAL EXAMINER. NO OTHER NAMES WERE SUBMITTED FOR CONSIDERATION IN THIS DISTRICT.** Dr. Wolf recused herself from this vote.

**WITH NO FURTHER DISCUSSION, A MOTION WAS MADE, SECONDED AND PASSED UNANIMOUSLY TO RECOMMEND THE GOVERNOR REAPPOINT JON R. THOGMARTIN, M.D., AS THE DISTRICT 6 MEDICAL EXAMINER. NO OTHER NAMES WERE SUBMITTED FOR CONSIDERATION IN THIS DISTRICT.**

The Commission also reviewed the survey assessments for District 3 (Columbia, Hamilton, Lafayette, Madison, and Suwannee counties).

### **ISSUE NUMBER 3: DISTRICT 7 PROBABLE CAUSE PANEL REPORT**

Dr. Wolf read the Probable Cause Panel Report from February 13, 2018 into the record. Since former District 7 Medical Examiner, Marie A. Herrmann, M.D., is no longer an appointed medical examiner, no Commission action was taken.

In response to your memorandum of December 11, 2017, the Probable Cause Panel convened on February 8, 2018 at 10:00 a.m. at the Third Judicial Circuit State Attorney's Office in Live Oak, Florida. Panel members District 5 Medical Examiner Barbara C. Wolf, M.D., Third Judicial Circuit State Attorney Jeff Siegmeister, and Funeral Director Robin Giddens Sheppard were all present. Also present were Commission staff members Vickie Koenig, Doug Culbertson, and Beth McNeil. Staff had already mailed the panel members a notebook of their findings and the reference materials upon which they would base their opinions.

The first order of business was the election of a chair, which Dr. Wolf accepted. Next, the Panel reviewed the statutory reference that established the Panel as well as the procedures that the Panel and the Commission will use in these proceedings. The authority of the Probable Cause Panel is established by Section 406.075(3), F.S., and is limited to a determination of whether the facts establish a violation of Chapter 406, Florida Statutes, Florida Administrative Code Chapter 11G, or the Practice Guidelines. Dr. Wolf then reviewed the reference material previously forwarded to the Panel members.

Dr. Wolf stated that the complaint alleges that Dr. Herrmann only conducted a visual inspection of Kayla Davis' body rather than an autopsy even though the family stated that they felt Ms. Davis died under suspicious circumstances, and that Dr. Herrmann failed to document a head wound that was present on the back of Ms. Davis' head. The complaint further alleged that Dr. Herrmann violated Chapter 119, F.S., by failing to provide records that the family had deemed to be public records.

The Panel discussed the complaint in detail, including any possible Florida Statute or Administrative Rule violations regarding Dr. Herrmann's actions in this case pertaining to the complainant's allegations that she violated one or more of the following:

- §406.075(1)(i), F.S., which states in part, "*Negligence or the failure to perform the duties required of a medical examiner with that level of care or skill which is recognized by reasonably prudent medical examiners as being acceptable under similar conditions and circumstances*".
- Rule 11G-2.003(5)(a), F.A.C., which states "*Absent good cause, an autopsy shall be performed when a reasonable suspicion exists that a death might be by criminal violence or by any violence sustained in prison, a penal institution, or in police custody*".
- Article 24, #4 of the Practice Guidelines for Florida Medical Examiners, incorporated by reference into Rule 11G-2.006, F.A.C., which states, "*Wounds that have evidentiary value, whether recent or remote, should be documented by written protocol, diagram and photography. Photographs should be composed so as to document the location and orientation of wounds and to demonstrate detail*".

After extensive discussion, the Panel made the following determinations:

The complainant alleges that Dr. Herrmann intentionally or unintentionally violated Rule 11G-2.003(5)(a), F.A.C., by declining to perform an autopsy on Kayla Davis in spite of the death being reported as potentially suspicious in nature. The Panel determined that Dr. Herrmann did violate this rule by failing to perform an autopsy when the death was reported as suspicious in nature.

Further, the Panel determined that Dr. Herrmann violated §406.075(1)(i), F.S., by failing to provide that level of care or skill that is recognized by reasonably prudent medical examiners as being acceptable under similar conditions and circumstances by failing to conduct an autopsy in a death that was reported as being potentially suspicious in nature.

The Panel reviewed the documents provided by District 7 and determined that the small marking on the back of the head on the body diagram was not labeled, nor did it meet the requirement of Article 24, #4 of the Practice Guidelines for Florida Medical Examiners. The Panel noted that, while all other wounds on the body were noted and labeled, the mark on the back of the head was not labeled, did not appear to be indicative of a wound, and was not noted in the Report of Postmortem Examination, as were the other wounds on the body diagram.

The Panel also discussed the alleged violation of Chapter 119, F.S., regarding public records and determined that there is no provision in Chapter 119, F.S. that requires creating a record in order to satisfy a public records request. Since the requested record did not exist, Dr. Herrmann was under no obligation to create a record in order to satisfy the request.

### **Conclusions**

The Panel found that there was probable cause for disciplinary action regarding the complaint lodged against Dr. Marie A. Herrmann. The Panel felt that neglecting to perform an autopsy on the body of Ms. Davis, even though the death had been reported as potentially suspicious in nature, was a direct violation of Rule 11G-2.003(5)(a), F.A.C. The Panel also felt that this failure constituted negligence or the failure to perform the duties required of a medical examiner with that level of care or skill which is recognized by reasonably prudent medical examiners as being acceptable under similar conditions and circumstances, in violation of s. 406.075(1)(i), F.S.

The Panel further found that the lack of documentation of the wound to the back of the head was a violation of Article 24, #4 of the Practice Guidelines for Florida Medical Examiners as it was not noted as a wound or injury in the report and the marking on the body diagram was not sufficient to qualify as proper documentation.

It was noted that Dr. Herrmann did not respond to an inquiry by the family for almost 4 years after their request was sent, and that she did not adequately answer the family's questions. While this was not a violation of Rule or Statute, the Panel felt better communication with family members should have been attempted.

The Panel recommends that the Commission issue a written reprimand to Dr. Herrmann for the aforementioned violations, and that the reprimand should include a suggestion for better communications with the families of decedents in the future.

The Panel is prepared to discuss this matter and the reasoning behind their conclusions at a future Commission meeting. In the meantime, please contact staff if you have any questions or if the panel can be of further assistance.

Ms. Koenig then read the following statement into the record at the request of the family of Kayla Davis:

Dear Medical Examiners Commission:

My name is Debbie Cicerello, and on October 23, 2017 I sent a complaint letter to Doug Culbertson MEC regarding the incompetency and neglect of duty of Medical Examiner Marie Herrmann in the chain of events surrounding the death of my daughter, Kayla Davis.

I feel that Marie Herrmann (CME) was negligent in the following critical areas:

- Negligence or the failure to perform the duties required of a Medical Examiner and failure to conduct a thorough investigation into the death of Kayla Davis.
- Refusal to respond to the family's requests for records, answers to open questions, and request for a meeting to discuss the reasoning for her failure to perform her duties.
- Ignoring the family's plea to perform a full autopsy on Kayla despite the suspicious nature of the incident and information contained in the hospital's medical documentation. For unknown reasons, a conversation with Daytona Beach Police Department (DBPD) influenced her decision to not perform an autopsy that even the lead forensic investigator Chris Smith had requested.

A Medical Examiners Commission was convened to decide whether or not this case reached the level of probable cause and whether there should be disciplinary action against the medical examiner. After reviewing our information and all the documents that were sent in that there was a findings (sic) of Probable Cause by the Panel and an upcoming meeting to address disciplinary action against her.

However, surprisingly on Jan 21, 2018, an article with Daytona Beach News-Journal stated that Marie Herrmann had announced her intent to retire. It is my and others opinion, that Dr. Herrmann sent her letter of resignation so that there would not be an opportunity for a PC panel to discuss the complaint. What she hadn't counted on was that the article also mentioned that she had agreed to remain employed in a part time capacity, and based on this fact it was determined that MEC could still move forward with the Probable Cause Panel.

The "Probable Cause Panel" met on February 8, 2018 and agreed that the CME was negligent in her performance of the duties required of a Medical Examiner. They noted that Dr. Herrmann only conducted a visual inspection of our daughter's body rather than an autopsy, even though we requested a full autopsy because of the suspicious circumstances regarding Kayla's death. She also failed to document a specific wound on the back of Kayla's head that was the primary cause of Kayla's death.

It was a small consolation for the family to receive the letter dated February 13, 2018, from the State of Florida MEC with the memorandum confirming Dr. Herrmann's negligence. Even this was short-lived, however, because when she received her copy of the findings she amended her letter of resignation to be effective March 9, 2018. So once again I was told that MEC has no jurisdiction over Ms. Herrmann and will not be able to take any disciplinary actions against her at this committee board meeting.

When I shared my disappointment with Mr. Culbertson, he informed me that the memo will still be brought up at the end of the meeting, and that if I wanted to attend the meeting that I was welcome. I was prepared to do so until I realized the location was a 4-plus hour drive, and being disabled with MS-related cognitive issues it was simply too much for me. Mr. Culbertson was



kind enough to allow me to offer this statement to be sure that the information is included in the public record.

Since the MEC is not going to be able to take further action, I also sent a formal complaint to Florida Health. Ms. Aliza Hopkins was assigned as the lead investigator for their medical quality assurance group. Initially she seemed positive that actions could be brought up against Dr. Herrmann. However, she subsequently contacted me after she brought the issue to their legal department and informed me that she was sorry, but after reviewing our information, because Dr. Herrmann was practicing in the capacity of a ME that Florida Health does not have jurisdiction over her. I was confused and asked if she could clarify this information and help me to understand, because according to FDLE MEC she is no longer affiliated with them in any capacity, and therefore Florida Health does appear to have authority to take action. Apparently there is no such similar grounds for discipline under the Medical Practice Act governing Dr. Herrmann's license to practice medicine.

You simply cannot imagine how disheartening and devastating this "catch 22" situation, that is allowing Dr. Herrmann to escape any type of recrimination, is to me and Kayla's family.

The Medical Examiners Commission found probable cause of a violation of the Medical Examiners Act, is supposed to be responsible for imposing discipline for that violation, and yet cannot do so due to Ms. Herrmann's current retired status as a medical examiner.

### **A complete circle!**

It should be recognized in the strongest of terms that our family is disheartened by the response from MEC and Florida Health tolerating a tactic in which one of its members can purposely and strategically avoid consequences for rule violations by simply resigning their position.

Since the Florida Health medical board places jurisdiction for discipline and enforcement of rules and regulations for medical examiners under the Commission then it should follow that in cases like this that the commission have options to transfer the jurisdiction back to Florida Health and/or Law Enforcement for discipline and/or criminal prosecution where appropriate for malfeasance.

My family and I have been changed forever by the untimely and unjustified death of our daughter Kayla. Medical Examiner Marie Herrmann's inappropriate diagnosis process, procedures, and evaluation of the facts negligently compounded to the untimely death of my daughter and had a direct result on the family's ability to pursue justice for her. She then repeatedly failed to respond or to honor even the simplest requests from the family to provide an explanation of the above discrepancies.

Kayla is not just another number, another name to clear, she deserved so much more from the "system" than she has received.

I want to thank Mr. Culbertson for reading my statement, and request this included in the public meeting notes.

Debbie Cicerello and Family

Ms. Koenig advised that should Dr. Herrmann be appointed or reappointed as a medical examiner in the future, this action would be brought back to the Commission for action.

#### **ISSUE NUMBER 4: ARCHEOLOGICAL/HISTORIC HUMAN REMAINS IDENTIFICATION**

Kathryn O'Donnell Miyar, Ph.D., with the Florida Department of State's Division of Historical Resources presented an overview of the Bureau of Archeological Research, and discussed the retrieval of remains from burial mounds, historical cemeteries, and how human remains are curated. The Commission agreed that any remains found that are 75 years or older are the domain of the Bureau of Archeological Research.

#### **ISSUE NUMBER 5: UNIDENTIFIED DECEASED INITIATIVE**

Doug Culbertson informed the Commission of a success story from District 17 (Broward County).

The decedent was found in a parking lot in the city of Fort Lauderdale on April 30, 2003, in an advanced state of decomposition. One fingerprint was obtained from the decedent and was run through the FCIC/NCIC systems with no results. The Fort Lauderdale Police Department investigated local missing persons reports and entered the available information into the NCIC teletype system. A note was found among the decedent's effects, written in a foreign language that was later determined to be the Serbo-Croatian dialect. The information obtained from the note at the time did not reportedly generate any leads on the decedent's identification.

In 2010, the decedent's information was entered in to the Unidentified Persons section of the NAMUS website by Broward Medical Examiner Investigator Wendy Crane. A copy of the note was also uploaded onto the site with permissions set for the public to be able to view it.

In 2017, a phone call was received from a family member of Zulejha Visnjic, who had reportedly not been heard from since early 2003. Ms. Visnjic, who resided in the Hollywood area, told family that she was going to Canada to visit and/ or reside with family there. The family member stated that he had viewed the details of the unidentified persons case and the note on the NAMUS website. Reportedly, the handwriting was familiar, and it specifically referenced names of family members. Additionally, he stated that the decedent had immigrated to this country from Bosnia.

The fingerprint that was obtained from the decedent in 2003 was sent to US-VISIT to be run against US immigration records, but no identification resulted. US-VISIT fingerprint analyst reported that the decedent likely immigrated prior to the automated system, and her fingerprint hardcopy could not be located. A decision was made to make contact with the decedent's daughter, Zana, to obtain a sample for DNA comparison. Investigator Crane contacted Carrie Sutherland of NAMUS for assistance in obtaining a buccal swab from Zana, who resided in Indiana. The NAMUS manager in the Midwest region was able to coordinate the submission of Zana Visnjic's DNA to UNT lab for comparison with the remains in this case.

On February 28, 2018, communication was received that Zana Visnjic was confirmed to be a maternal relative of the remains, which were identified as Zulejha Visnjic. Investigator Crane contacted Ms. Zana Visnjic to advise her of the DNA results and unfortunately confirm her mother's death.

FDLE Inspector Linda Pollard presented nine success stories to the Commission. The Missing and Endangered Persons Information Clearinghouse (MEPIC) section has made 17 identifications since beginning medical examiner office visits to assess the status of that district's unidentified deceased and to ensure that all information has been entered into NAMUS. This process began in 2017.

### **Success Story 9**

Identification was made on District 8 Medical Examiner Case #ME08-150. This case involved a deceased white male, approximately 35 to 59 years of age, who was found floating in the Gulf of Mexico, 30 miles from Yankeetown, Levy County, Florida. The manner and cause of death is still pending further investigation. On February 26, 2018, the District 8 Medical Examiner's Office provided Inspector Pollard with the fingerprint cards for their unidentified person. The fingerprint cards were submitted to FDLE's CJIS Biometric Services, however no identification was made at the time.

On March 6, 2018, Inspector Pollard provided the deceased's fingerprint cards to Kim Cashwell, Identification Manager for the Hillsborough County Sheriff's Office (HCSO). Ms. Cashwell had been contacted by NAMUS in reference to conducting a direct fingerprint comparison between this unidentified person and an HCSO missing person that NamUs believed could be a match. Ms. Cashwell contacted Inspector Pollard and advised that the unidentified person was not a match to her missing person. However, during the course of the fingerprint analysis, Ms. Cashwell came across a potential match, Robert Mitchell Howard. Inspector Pollard provided this information to CJIS Fingerprint Analyst James Pollock and requested that he conduct a direct comparison between the unidentified person's fingerprints and Robert Mitchell Howard's fingerprints. After reviewing the prints, Fingerprint Analyst Pollock advised that the deceased's prints were identified with Robert Mitchell Howard.

Senior Crime Intelligence Analyst (SCIA) Jon Rigsby conducted database searches on Howard and found that Howard was never entered as a missing person in NCIC. SCIA Rigsby was able to obtain an arrest report, booking photograph and Florida Driver's License photographs of Howard to provide to the Medical Examiner's Office. SCIA Rigsby was also able to obtain information on potential next of kin, which was also provided to the Medical Examiner's Office.

### **Success Story 10**

SCIA Rigsby was able to make an identification on District 1 Medical Examiner Case #1990-00396. SCIA Rigsby has been working a project to identify any fingerprint cards that may be available on cases pertaining to unidentified remains. SCIA Rigsby contacted the District 1 Medical Examiner's Office to determine if they had a fingerprint card available for the above mentioned case. During the course of the search, SCIA Rigsby was informed by the Medical Examiner's Office that the Escambia County Sheriff's Office had apparently identified the deceased through fingerprints a few years ago, but had failed to provide the Medical Examiner's Office with the information on the identification.

### **Success Story 11**

On March 26, 2018, the District 25 Medical Examiner's Office (Osceola) contacted FDLE in reference to an unidentified deceased case, ME17-01266. The case involved a white male who was found fully decomposed in his hotel room on April 17, 2017. The deceased had a medical history of coronary artery disease, tachycardia, and chronic back pain. He also suffered head trauma from falling in the bathroom. The Osceola County Sheriff's Office (OCSO) investigated the case. OCSO tentatively identified the subject on scene with his hotel registration and a copy of a Florida identification card in the name of J. R. Kennedy. OCSO ran the deceased's fingerprints; however no identification was made. OCSO was also unable to locate any information on the subject's next of kin. The District 25 MEO requested assistance from FDLE in identifying the deceased and locating next of kin.

SCIA Rigsby searched the Florida Driver and Vehicle Information Database (DAVID) on J. R. Kennedy, DOB: 3/02/1953. During the course of his search, SCIA Rigsby located documents in DAVID which showed that J. R. Kennedy was actually born Eliot Steven Berkowitz. In September 2013, Berkowitz legally changed his name in the State of Washington to J. R. Kennedy. Inspector Pollard requested SCIA Rigsby conduct a criminal history search on Berkowitz to determine if he had any prior arrests and may have been fingerprinted. SCIA Rigsby ran the subject's criminal history and found that he had prior arrests and provided Inspector Pollard with an FBI number. On March 26, 2018, Inspector Pollard submitted a request to FDLE's CJIS Biometric Services Unit to conduct a direct comparison of the unidentified deceased person's fingerprints to those of Berkowitz. On March 28, 2018, CJIS advised that the unidentified deceased person's prints were identified with Eliot Steven Berkowitz.

SCIA Rigsby conducted database checks on Berkowitz and was able to locate information on Berkowitz's next of kin. SCIA Rigsby also found that Berkowitz was a lawyer and was formerly registered with the Florida BAR. The fingerprint hit confirmation and information obtained by SCIA Rigsby was provided to the District 25 Medical Examiner's Office and they accepted the identification.

#### **Success Story 12**

On March 6, 2018, Inspector Pollard received a set of fingerprints pertaining to an unidentified deceased person from the District 11 Medical Examiner's Office (Miami-Dade County). The deceased was a black male, approximately 18 to 44 years of age, who was found on April 24, 1999 floating in a canal in Miami-Dade County. On March 29, 2018, Inspector Pollard submitted the deceased's fingerprints to the Department of Homeland Security for searching. The prints had previously been run through state and federal fingerprint databases and no identification had been made. The Department of Homeland Security advised that the deceased's fingerprints were identified with Jean Remy Bazile, a Haitian national. SCIA Rigsby was able to obtain a Florida Driver's License record and an arrest report and booking photograph of the subject to provide to the Medical Examiner's Office. SCIA Rigsby attempted to locate information on the subject's next of kin; however, the subject had no living next of kin in the United States. On April 16, 2018, Inspector Pollard provided the District 11 Medical Examiner's Office with the information on the fingerprint hit and they accepted the identification. The Medical Examiner's Office will be contacting the Consulate of Haiti for further assistance in identifying and notifying the subject's next of kin.

#### **Success Story 13**

Identification was made on a case from the District 9 Medical Examiner's Office (Orange County), ME # 2012-001519. This case involved a white, Hispanic male, who was found deceased on December 10, 2012 as a result of being struck by a motor vehicle in Orlando, Florida. On November 29, 2017, MEPIC received the decedent's fingerprints from the Medical Examiner's Office and ran the prints through the state, federal and Department of Homeland Security fingerprint databases, but no identifications were made. On March 29, 2018, the decedent's prints were submitted to the United States Customs and Border Patrol Missing Migrant Program and the prints were identified with Artemio Guzman-Velazquez, a Mexican national. SCIA Rigsby was able to obtain an arrest report and booking photograph of the subject from the Taft Police Department in California to assist with the identification. On April 17, 2018, Inspector Pollard provided the information regarding the fingerprint hit and associated documents to the District 9 Medical Examiner's Office and they accepted the identification. The Orlando Police Department is currently working with the Consulate of Mexico to locate and notify the next of kin.

#### **Success Story 14**

Another identification was made in a case from the District 10 Medical Examiner's Office. This case was identified via an extract of all available NAMUS cases which pinpointed cases with available fingerprints not uploaded to NAMUS. The deceased is a Hispanic male, believed to be between 18 and 30 years of age who died in a motor vehicle crash. The subject's right hand could not be fingerprinted due to burns, but the left hand contained viable fingerprints.

On April 13, 2018, we received a high resolution scan of a fingerprint card associated with the case. This card was submitted to CJIS Biometric services with negative results. The fingerprints were then submitted to the Department of Homeland Security on April 18, 2018, and the fingerprints were identified with Javier Pablo-Tepec, a Mexican national. Contact with Immigration and Customs Enforcement (ICE) confirmed the subject's hometown in Mexico, as well as his mother's and father's names. No other information about the subject's time in the United States could be located, and the deceased may have resided in the US using a fictitious identity. This information was provided to the Medical Examiner's Office, which accepted the identification.

#### **Success Story 15**

Identification was made on a case from the District 22 Medical Examiner's Office (Charlotte County). This case was identified via an extract of all available NAMUS cases which pinpointed cases with available fingerprints not uploaded into NAMUS. The deceased is a white, Hispanic male, between 40 to 60 years of age, who was found deceased on April 11, 2005 as a result of multiple injuries from a motor vehicle accident.

On April 17, 2018, we obtained and submitted the decedent's fingerprint cards to the Department of Homeland Security's Biometric Support Center. On April 20, 2018, the fingerprints were identified with Luis Alberto Moncada-Varela, a Honduran national. Information obtained from the United States Customs and Border Patrol provided further information on the subject's mother and his last known address in Honduras. Border Patrol was also able to provide a booking photograph of the subject from his illegal entry arrest in 2004. This information was provided to the District 22 Medical Examiner's Office, which accepted the identification. The District 22 Medical Examiner's Office will be working with the Florida Highway Patrol and the Consulate of Honduras to make the death notification.

#### **Success Story 16**

This case is from the District 21 Medical Examiner's Office (Lee County). The case involved a white, Hispanic male, between 21 to 35 years of age, who was found deceased on January 1, 1989. This individual was a victim of a homicide and succumbed from exsanguination as a result of a gunshot wound to the heart. A suspect was identified in this case; however it is unknown if this suspect was ever charged or prosecuted for this crime.

MEPIC began working this unidentified case in March 2017. At the time, there was no fingerprint card for the subject, so initial efforts were focused on creating a composite of the deceased and running the deceased's identification photograph through the Pinellas County Sheriff's Office facial recognition program. In May 2017, we were able to obtain a fingerprint card for the deceased from the Fort Myers Police Department. We ran the fingerprints through our CJIS Biometric Services Unit and the Department of Homeland Security but the prints were not identified to any records. Reports from the Fort Myers Police Department provided potential names/aliases for the subject, which were run against databases and missing persons websites. All of those efforts were unfruitful. As a last and final attempt, the subject's fingerprints were submitted to the United States Customs and Border Patrol (CBP). On April 24, 2018, CBP

advised that the subject's prints were identified with an FBI record pertaining to Kenneth Earl Henard, DOB: 10/31/1959.

Last week, SCIA Rigsby, worked diligently to obtain information on Mr. Henard and his next of kin. Being that this case was from 1989, all of Mr. Henard's arrests occurred prior to that year and locating records was very challenging. However, after conducting numerous phone calls to several law enforcement agencies throughout the United States, SCIA Rigsby was able to locate a booking photograph of Mr. Henard from Longmont, Colorado. SCIA Rigsby also discovered that the subject's birth name is Kenneth Mitchell Henard, and that his father was Kenneth Earl Henard. It appeared the subject either used his father's name as an alias or was mistakenly documented under his father's name, due to his father potentially having a prior criminal history as well.

One of the more difficult tasks in the Unidentified Deceased Initiative is locating next of kin. Particularly in old cases, it becomes very difficult to locate any living next of kin. SCIA Rigsby scoured through open sources and was able to locate two possible next of kin of Mr. Henard on the website Ancestry.com. A possible daughter and possible sister, identified themselves as relatives of Mr. Henard on the Ancestry.com message board between 2001 and 2008. The possible daughter specifically stated she was looking for her father, Kenneth Mitchell Henard, and provided his exact date of birth. SCIA Rigsby was able to match the subjects to their posts via email addresses they left as contact information on the message board. SCIA Rigsby was further able to obtain current addresses and a phone number for the next of kin. All of this information was provided to the District 21 Medical Examiner's Office and the Fort Myers Police Department. The Medical Examiner's Office was ecstatic about the identification. The Fort Myers Police Department will be making the death notification, as it is unknown what the status of their homicide investigation is at this time.

### **Success Story 17**

We recently received a positive hit on one of the many fingerprint cards provided by the District 20 Medical Examiner's Office and Collier County Sheriff's Office. These cases were identified for scrutiny by the use of a data extract of cases in the NAMUS system. The decedent, a migrant farm worker, was initially located in the Immokalee area, where he had been the victim of blunt force trauma later determined to be a homicide. He was transported to Naples Community Hospital where he identified himself as Irraglo Faustino before passing away. That name was later determined to be false.

The Department of Homeland Security's Latent Fingerprint Unit identified the deceased as Fanstin Hidalgo-Castillo, DOB 06/24/1979, a Mexican national. Mr. Hidalgo previously encountered the Border Patrol in 1997 when he was apprehended near the US-Mexico border. He was repatriated to Mexico, but a photo was taken before his return. The name, identifying information, and photograph were provided to the Medical Examiner's Office, who reported that the photo was "exactly the same" as their unidentified decedent.

Unfortunately, no other information about the subject or encounters with him could be located, and no next of kin information was found. Given the previous mention of the name Irraglo Faustino, the subject likely resided in the US using a fictitious identity. This information was passed to the District 20 Medical Examiner's Office and shared with Collier County Sheriff's Office. The Medical Examiner will coordinate with the Mexican Consulate for assistance in notifying Mr. Hidalgo's family or living relatives.

#### **ISSUE NUMBER 6: STATE FATALITY MANAGEMENT RESPONSE PLAN**

Ms. Koenig informed the Commission that some errors in the Mass Fatality Plan had been brought to the attention of Commission staff. These errors were corrected and updated contact and district information was made.

**A MOTION WAS MADE, SECONDED AND PASSED UNANIMOUSLY TO ACCEPT THE CHANGES TO THE MASS FATALITY PLAN.**

#### **ISSUE NUMBER 7: DEPARTMENT OF HEALTH OPIOID PROJECT**

Karen Card, DrPH, with the Department of Health, again appeared before the Commission to clarify the information that they are requesting from the medical examiners in opioid deaths. Dr. Card said that the two page list of requested information was mistakenly sent out to the districts, and that the 33 data points previously requested were sufficient. Additionally, on-site extraction of the data is an option, but it is not the preferred method for obtaining the data.

#### **ISSUE NUMBER 8: EMERGING DRUGS**

Ms. Koenig provided the Commission with an update on new drug trends. The Department of Corrections has seen an increase in the number of deaths from synthetic cannabinoids. The drugs are being applied to paper, sent to inmates, and the inmates are smoking the paper. Any sudden, unexpected inmate death should be tested for the presence of synthetic cannabinoids.

Ms. Koenig said that the number of known fentanyl analogs is more than 1,900. New analogs, mainly cyclopropyl fentanyl and methoxyacetyl fentanyl, are appearing in cases submitted by the districts in the 2017 drug data.

#### **ISSUE NUMBER 9: 2018 FAME EDUCATIONAL CONFERENCE**

Ms. Koenig reported that the 2018 FAME Educational Conference would be held July 18-20, 2018, at The Mission Inn Resort & Club (<https://missioninnresort.com>) in Howey-in-the-Hills (Lake County). The District 14 Medical Examiner's Office will host the 2018 conference. The deadline for hotel reservations is June 25, 2018. The conference registration deadline is July 13, 2018.

#### **ISSUE NUMBER 10: OTHER BUSINESS**

Letters from the Department of Corrections and the Department of Health relating to synthetic cannabinoids is included in the updated meeting packet.

Ms. Whitmore requested that the Medical Examiner District contact information and the district map be included in future meeting packets. She stated this is helpful with many of the discussions.

**With no further business to come before the Commission, the meeting was adjourned at 1:50 P.M. CDT**