

BILL SUMMARY

This bill authorizes a family member of a deceased to request, except in a homicide case, the medical examiner to correct the findings and conclusions regarding the cause of death recorded on a death certificate. If the chief medical Examiner denies the request, the family member is authorized to appeal the denial to the secretary of DHMH who refers the matter to the Office of Administrative Hearings. The Administrative Law Judge submits his findings of fact back to the Secretary who then can accept or reject the findings of the ALJ. The Secretary can then order the Chief Medical Examiner to make any necessary changes. If there is no change ordered, the family member would be required to pay for the costs of the hearing.

BILL RATIONALE

This bill provides due process protections for those who disagree with the findings of the Chief Medical Examiner. Currently, there is no independent review of the Medical Examiner's decisions. The only recourse someone has is to appeal to the medical examiner himself. This bill provides the necessary independent mechanism of review.

HB 565, Hearing date February 18, 1992.

Throughout the voluminous and emotionally charged legislative history of HB 565, there was never any mention of a reason or rationale as to why Section 5-310(d)(2)(ii) did not include the term "manner of death. However, on May 11, 1992, the Attorney General, after reviewing HB 565 for legal sufficiency, noted the following:

House Bill 565 would permit certain persons to seek correction of the medical examiner's findings and conclusions on "the cause and manner of death." See page 3, lines 7-8. Similar language appears on page 3, line 24. However, page 3, lines 13 and 18, which deal with appeals of the medical examiner's decision refer to findings and conclusions on "the cause of death." We recommend that these apparent inconsistencies be resolved next session in clarifying legislation.

Letter of J. Joseph Curran, Jr., Attorney General of Maryland to Governor William Donald Schaefer, dated May 11, 1992.

It does not appear that any subsequent review of this inconsistency ever occurred as advised by the Attorney General, because the statute appears in that same form today. In over 300 pages of legislative history regarding HB 565, other than the Attorney General's note set

forth above, there was no discussion whatsoever about a distinction between the terms "cause" and "manner" of death, or any reason or rationale for limiting an appeal to cause of death challenges only. Throughout the legislative history, in committee notes, letters and testimony from supporters or opponents of the bill, suggested amendments and drafts, the terms cause and manner of death are used interchangeably. 1992 Legislative History, HB 565.

The legislative history contains a multitude of letters and statements from the public in favor of the bill. A large majority of the supporters were in the same posture as the Appellant herein. For example, in a letter dated February 13, 1992 to Delegate Pitkin, Nancy Ruhe, Executive Director of Parents of Murdered Children, Inc. wrote, in support of HB 565:

We have in the past become aware of cases in which a death certificate states that a person died of natural causes or suicide, only to have it proved later that the victim was actually murdered. Having a loved one die is in itself a traumatic experience. When there is some doubt as to the cause of death or the cause of death is incorrect on the death certificate, it adds to the trauma already experienced and too often creates legal problems for surviving family members.

Letter from Nancy Ruhe, Executive Director, Parents of Murdered Children, Inc., dated February 13, 1992.

On February 18, 1992, Delegate Pitkin testified in support of the bill:

Since first approached by one of my constituents whose son died an unnatural death several years ago, I have heard from other people who have had similar problems. In the case of my constituent who testified for the bill last year, the death of her son was ruled a suicide by the medical examiner's office despite evidence to the contrary. The ruling stands because Maryland's law permits no changes in the autopsy's conclusions once the Medical Examiner's office issues its findings. The result is that no law enforcement agency will investigate the case since his death was ruled a suicide.

Testimony of Del. Joan B. Pitkin before the House Environmental Matters Committee, February 18, 1992.

Additionally, there were numerous letters supporting HB 565 from family members of children who disagreed with the medical examiner's determination that their childrens' deaths

were determined to be suicide; they were in favor of extending the appeal process of the Administrative Procedure Act to the OCME. *Letter of James Tyler to the House Environmental Matters Committee*, undated; *Letter of Mary Gaffney to Hon. Clarence W. Blount, Chairman Economic and Environmental Affairs*, dated March 25, 1992; *Letter from Anne Wiles Boduc and Portia E. Tyler to Hon. Clarence W. Blount*, dated March 25, 1992; *Letter of John E. Wieck to Del. Joan B. Pitkin*, dated March 25, 1992; Testimony summaries, HB 565. Over 1500 people signed petitions in support of HB 565. *See generally*, Legislative History, HB 565, 1992 Legislative Session. These experiences were the impetus behind the introduction and passage of HB 565.

The legislative history clarifies that the purpose of HB 565 was to provide an appeal process through the Administrative Procedure Act for interested persons to contest the findings and conclusions of the Medical Examiner for non-homicide death determinations. The plain language of Health-Gen. § 5-310(d)(2)(ii) is ambiguous on its face when read as a whole with the remainder of the statute. In 1992, the Attorney General noted the discrepancy and suggested that it be corrected in the next legislative session which clearly did not happen. The terms cause and manner of death were used interchangeably throughout the legislative process of HB 565. The section of the statute immediately following the description of the appeal process requires the Medical Examiner to change a finding on the "cause or manner" of death if the Secretary, the Secretary's designee or the Circuit Court reaches a different finding. There was significant discussion throughout the legislative process about the OAH and its functional role in the appeal process that HB 565 created. Section 5-310(d) specifically designates the OAH as the Secretary's designee for the purpose of the newly created appeal.

If the intent of the statute was to exclude the manner of death determination from the appeal process, there would not be a path or process to challenge manner of death determinations to ever reach the Secretary, the Secretary's designee (the OAH) or the Circuit Court. Without any discussion or indication of an intent to specifically exclude the manner of death from the appeal process, the legislative history is overwhelmingly clear that HB 565 was drafted and passed to address precisely the situation presented herein by the Appellant. To hold otherwise would result in a reading of Section 5-310(d)(2)(ii) which that is contrary to the intent of the legislature and the reasoning behind the enactment of HB 565. I conclude, therefore, that the MDH's argument that the OAH is not authorized to hear this matter is improper and Motion must be denied.

Judicial Estoppel

Since I have determined that the Motion must be denied, it is not necessary to address the Appellant's judicial estoppel argument. However, I will do so briefly for completeness. In *Middlebrook Tech, LLC v. Moore*, 157 Md. App. 40 (2004), the Maryland Court of Special Appeals addressed the doctrine of judicial estoppel:

The doctrine of judicial estoppel "precludes a party who ... secured a judgment in his or her favor from assuming a contrary position in another action simply because his or her interests have changed." *Mathews v. Underwood-Gary*, 133 Md.App. 570, 579, 758 A.2d 1019 (2000), *aff'd on other grounds*, 366 Md. 660, 785 A.2d 708 (2001) (quotation marks and citation omitted). Three factors "typically inform the decision whether to apply" the doctrine of judicial estoppel in a particular case: whether the party's later position is clearly inconsistent with its earlier position; whether the party succeeded in persuading the court in the earlier matter to accept its position, so that judicial acceptance of the contrary position in the later matter would create the perception that one of the courts had been misled; and whether the party seeking to assert the inconsistent position in the later matter would derive an unfair advantage, or would impose an unfair detriment on the other party, from being permitted to do so. *Gordon v. Posner*, 142 Md. App. 399, 426-27, 790 A.2d 675 (2002).

Middlebrook Tech, LLC v. Moore, 157 Md. App. 40, 62-63 (2004) (emphasis in original).

In *Gordon v. Posner*, 142 Md. App. 399, 425 (2002), the Court provided a detailed explanation of the reasons for the doctrine:

There are two important reasons for estoppel. First, the doctrine of judicial estoppel “rests upon the principle that a litigant should not be permitted to lead a court to find a fact one way and then contend in another judicial proceeding that the same fact should be found otherwise.” *Id.* (quotation marks and citations omitted). Judicial estoppel ensures “the ‘integrity of the judicial process’ by ‘prohibiting parties from deliberately changing positions according to the exigencies of the moment [.]’ ” *New Hampshire v. Maine*, 532 U.S. 742, 121 S.Ct. 1808, 1814, 149 L.Ed.2d 968 (2001) (citation omitted). The Court of Appeals has explained that

[i]f parties in court were permitted to assume inconsistent positions in the trial of their causes, the usefulness of courts of justice would in most cases be paralyzed; the coercive process of the law, available only between those who consented to its exercise, could be set at naught by all.... It may accordingly be laid down as a broad proposition that one who, without mistake induced by the opposite party, has taken a particular position deliberately in the course of litigation, must act consistently with it; one cannot play fast and loose.

WinMark Ltd. P'ship, 345 Md. at 620, 693 A.2d 824 (internal quotations and citations omitted).

The second reason for estoppel is to protect the party seeking the estoppel. The Court of Appeals has recognized that in addition to protecting the judicial system, estoppel also preserves “the relationship between the parties to the prior litigation.” *Id.* at 623, 693 A.2d 824 (citation omitted).

Gordon v. Posner, 142 Md. App. 399, 425 (2002).

As set forth in *Middlebrook Tech*, there are three factors to be considered in determining whether application of the doctrine of judicial estoppel: 1) whether the party's later position is clearly inconsistent with its earlier position; 2) whether the party was successful in persuading the earlier court to accept its position; 3) whether the party seeking to assert the inconsistent position would derive an unfair advantage or would cause an unfair detriment to the other party.

Middlebrook Tech, at 63.

The Appellant provided a synopsis of two proceedings the Appellant filed in the Circuit Court of Anne Arundel County for a Writ of Mandamus to change Katherine's death certificate. It is unclear who drafted the synopsis and I did not give it much weight as a result. However, the synopsis included internet links to the MDH's motions to dismiss in each of those cases and a brief to the Court of Special Appeals. Indeed, in each, the MDH moved for dismissal based on the Appellant's failure to exhaust her administrative remedies, a position that is patently inconsistent with its argument in this case that there is no administrative appeal to a manner of death determination.

The Appellant testified that the prior proceedings were dismissed because the circuit court accepted the MDH's argument that the Appellant failed to exhaust her administrative remedies. However, she did not provide any evidence that established that the MDH was successful in persuading the earlier court to accept this argument and that failure to exhaust administrative remedies was the basis of the dismissal of those cases. The MDH's motions to dismiss and appellate brief in the prior cases posited multiple arguments for dismissal and I am not privy to which of those arguments the circuit court accepted or relied upon when it dismissed those cases. Thus, the Appellant failed to successfully demonstrate the factors that would necessitate application of the doctrine of judicial estoppel.

CONCLUSION OF LAW

I conclude that the MDH's Motion to Dismiss must be denied because its argument that the Appellant can only challenge the cause, not the manner of death, is contrary to the legislative intent of Section 5-310(d)(2)(ii) (2019). Md. Code Ann., Health-Gen. § 5-310(d)(2)(ii) (2019); COMAR 10.01.03.35; COMAR 28.02.01.12C.

PROPOSED DECISION

I propose that the Motion to Dismiss filed by the Maryland Department of Health be **DENIED** and that the hearing, currently scheduled for December 14 through 17, 2020, will proceed as scheduled.

November 18, 2020
Date Decision Mailed

Susan Sinrod

Susan A. Sinrod
Administrative Law Judge

SAS/emh
#188789

Copies Mailed to:

Marguerite R. Morris
701 Harvest Run Drive #104
Odenton, MD 21113

Kush Patel, Esquire
Kush Patel Law Group
400 South Hammonds Ferry Road
Linthicum Heights, MD 21090

Chris Gozdor, Assistant Attorney General
Administrative Prosecutor
Health Occupations Prosecution and Litigation Division
Office of the Attorney General
300 West Preston Street, Room 201
Baltimore, MD 21201

Pamela Southall, M.D.
Office of the Chief Medical Examiner
900 West Baltimore Street
Baltimore, MD 21223

Rosalind Spellman, Administrative Officer
Health Occupations Prosecution and Litigation Division
Office of the Attorney General
300 West Preston Street, Room 201
Baltimore, MD 21201

Ron Pringle, Exceptions Coordinator
Maryland Department of Health
Office of the Secretary
Operations Administrative Support/PRGA
201 West Preston Street
Baltimore, Maryland 21201