STATE OF CONNECTICUT
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March 1, 2010

To: Senator Jonathan Harris, Representative Ritter and distinguished members of the Public Health Committee

From: Todd D. Fernow, Chairman, Commission on Medicolegal Investigations
Professor of Law, University of Connecticut School of Law

Re: Raised Bill # 5289: An Act concerning the salaries of the Chief Medical Examiner and the Deputy Chief Medical Examiner

I am writing as the Chairman of the Commission on Medico-Legal Investigations ("Commission") to oppose passage of this bill. The purpose of this bill is to amend General Statutes Sections19a-404 and 19a-405, to strip the Commission of its current authority to set the salaries of the Chief and Deputy Chief Medical Examiners. The bill proposes to reduce the Commission to an advisory role on salary for these two highly skilled professionals and to vest the Office of Policy and Management with the exclusive responsibility for doing so.

In my view, this proposed bill, perhaps innocuous on its face, threatens to undermine one of the most fundamental and ingenious components of Connecticut's Medical Examiner's legislation—the independence of the Office of the Chief Medical Examiner ("OCME").

As brilliantly conceived in 1969, our Medical Examiner's office was designed to replace the coroner's system. It was explicitly crafted to be accessible to a multitude of constituencies directly affected by its workings: every police agency in the state; all the public and private forensic and pathology departments in operation here; prosecutorial officials; criminal defense counsel; all professionals involved in investigating and litigating insurance claims and lawsuits arising from the unnatural death of a citizen; and a variety of state agencies who are called upon to investigate suspicious deaths, ranging from the Connecticut Department of Correction to the Department of Children and Families.

In order to guarantee that OCME pathologists would not be beholden to any one constituency, the framers of our enabling statutes devised a scheme that is quite possibly unique in the United States: the creation of an independent OCME oversight Commission, whose members were not picked on the basis of political or governmental affiliation, but because of their association with the broader academic and professional communities. Thus, our statutes mandate that our Commission be comprised of: two full professors of pathology, two full professors of law, a member of the Connecticut Medical Society, a member of the Connecticut Bar Association, two members of the public, and the Commissioner of Public Health.

No less critical to maintaining the independence of this Office was the decision to allocate the decision on the appropriate salary for the Chief Medical Examiner, and very recently, the Deputy Chief Medical Examiner, to the independent Commission, rather than to the Executive or Judicial Branches of Government. It was and is essential to the proper functioning of the OCME that its policies not be subject

to interference—however benignly or altruistically intended—from the powerful state agencies and departments who are regular habitués of the political landscape in Connecticut.

While there is no doubt that bringing every single state agency in Connecticut into the fold of the Office of Policy and Management would be an efficient way of identifying and doling out limited resources at times of economic crisis, it is just as clear to me that subjecting an agency known for 40 years for its fairness, accessibility and ability to serve often competing constituencies without undue outside pressure is of even greater long-term value to the People of Connecticut.

I have an abiding fear that if the policies and salaries of the managers at the OCME are subordinated to the Office of Policy and Management, the multitude of constituencies identified by the framers of the Medicolegal Investigations Act will no longer have the voice they were designed by statute to have, and will not be able to protect the interests of the citizens of this state to the degree to which we have all become accustomed. To put it bluntly, the carefully crafted role of the Commission on Medicolegal Investigations will cease to have relevance as the enforcing authority over the OCME.

As a final note, before this body agrees to subordinate the policy and economic decisions of the OCME and the COMLI to the Office of Policy and Management, I would ask that you look around at other Medical Examiner's offices around the country that are built on less independent models than ours. In many of these states, the OCME's are now considered extensions of the State Police or the state prosecution system, and are not readily accessible to any of the other constituencies mentioned above. The rule, commonly enforced in such states, (which, I have recently learned, is also the case in Massachusetts), is that the OCME is forbidden to speak to defense counsel in criminal cases without the express permission of the local prosecutor's office. This, of course, prolongs criminal discovery and inhibits meaningful pretrial negotiations because one "side" in the litigation maintains exclusive access to some of the most critical and dispositive information in the case. Undoubtedly, opinions given under such a regime are presumed to be inherently biased, and therefore, suspect.

Civil cases are also tremendously impacted by having an OCME office that is considered free from outside governmental influence. In Connecticut, parties contemplating civil litigation will regularly tailor their expectations—even to the point of avoiding a lawsuit altogether—if they have access to information concerning the death of a person and access to a medical opinion both parties agree is trustworthy at the earliest stages of the investigation. I have been informed repeatedly by members of both the plaintiff's and defense bars that our OCME's office is considered by both groups as fair-minded and accessible.

In sum, I strongly encourage you to vote against making such a deep and fundamental change to a statutory scheme that has achieved an extraordinary level of trust with a broad range of interested constituencies in the 40 years since its enactment. Even if you are inclined to support this legislation, moreover, before you do so, I encourage you to solicit input from at least the Insurance and Banking Committee and the Judiciary Committee for their input into the wisdom of enacting this rule into law. I would expect that both Committees might well harbor strong views concerning the matters I have outlined above.

Very Truly Yours,

Todd D. Fernow
Chairman, Commission on Medicolegal Investigations
Professor of Law, University of Connecticut School of Law