

PALADINO, CAVAN, QUINLIVAN & PIERCE

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February 13, 2013

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 **ALSO ADMITTED IN FLORIDA

Jacalyn G. Hunter, R.N.
 Western Region Program Director
 Office of Professional Medical Conduct
 NYS Dept. of Health - Riverview Center
 150 Broadway, Suite 355
 Albany, NY 12204

Re: **OPMC #RO-11-12-6530A**

Dear Ms. Hunter:

In your response of September 17, 2012 to my letter of February 16, 2012, copies of which are enclosed, you stated that staff members investigated my complaint against Diane Vertes, that all relevant evidence was gathered and reviewed including a review conducted by a Board Certified physician from OPMC, and the investigation was closed because "there is insufficient evidence to bring a charge of professional misconduct".

I disagree. Justice is for all Ms. Hunter.

Enclosed is a Buffalo News article from this past weekend that should give you a basis to reopen your investigation.

Dr. Vertes concluded in her autopsy that Amanda Wienckowski died of a drug overdose and thereafter she attested on the death certificate that it was an "accidental death" which in turn prevented BPD Homicide from actively investigating. Do you think that Amanda accidentally climbed naked into a garbage tote to freeze to death?

Put aside arguments that the cause of death was other than a drug overdose and then, please explain to me how Dr. Vertes could possibly conclude in her report that a drug overdose, even if it was the cause of death, was administered by Amanda and not by a third party. Does Dr. Vertes have a special crystal ball to gain a particular knowledge of the circumstances by which drugs entered Amanda's body or is she just a pathetically incompetent pathologist. It is perfectly logical to conclude that Amanda could have been poisoned with drugs by others. How did your investigation deal with that question?

Enclosed herewith is a copy of the latest autopsy report from Dr. Michael Sikirica, a noted forensic and neuropathologist. His conclusion, like that of the two other pathologists, confirms that the cause of death should have been "undetermined". Dr. Vertes is unfit for the job and should be removed.

Erie County's self-absorbed Commissioner of Health at the time Dr. Anthony Billitier, in concert with the Erie County Attorney and the City Corporation Counsel, spent 3 years obstructing and stonewalling efforts to have a private autopsy performed by the family. Dr. Vertes refused to furnish evidence and "misplaced"

Comm. 5M-3
 Page 1 of 8

body parts. She stated unequivocally to the family's counsel that there was no DNA test, but a DNA test showing 3 different semen in the girl was found in her records. She clearly lied.

Dr. Sikirica's autopsy and the prior autopsies furnished to you evidence that a drug overdose was improbable considering the amount of morphine in Amanda's system and that she in fact died of strangulation.

As a result of the attempted cover up by Dr. Vertes and Dr. Billitier, the BPD Homicide was prohibited from conducting an active investigation. Evidence became cold and unavailable that might have otherwise established the identity of the killer. It was three years before BPD Homicide was informed by the District Attorney that the cause of death was "undetermined" and therefore they should actively investigate the matter. Critical evidence such as the car of the prime suspect was no longer available for the investigation.

Even with the new reports, Dr. Vertes has refused to change the cause of death on the death certificate. She and her staff are pitifully incompetent to operate the Erie County Medical Examiner's Office.

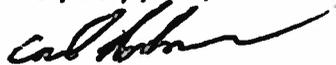
I intend to publish widely your failure to properly investigate and deal with this matter in the face of credible evidence which contradicts the autopsy and findings of Dr. Vertes.

I further demand that you reopen your file and properly investigate the conduct of Dr. Vertes. If you deny a proper investigation you will be condoning an incompetent service and will subject the people of Erie County to the horror of an inferior Erie County Medical Examiner's office.

A 20 year old girl from very poor circumstances was drugged, raped and murdered and then left in a jack knife position in a garbage tote naked and frozen. It took days for the Medical Examiner's Office to thaw the body. We assume that because the body had not thoroughly thawed, the Medical Examiner may have made an error in not identifying strangulation marks on the body. The criminality and/or negligence is in what she did afterward.

No matter what the cause of death, your job is to seek truth and justice for Amanda.

Very truly yours,



Carl P. Paladino

CPP/pg
Encls.

Cc: Frank A. Sedita, Erie County District Attorney
Eric Schneiderman, NYS Attorney General
Lou Michelle, Buffalo News
Stephen Cohen, Esq.
Hon. Mark Poloncarz, Erie County Executive
Gale R. Burstein, Erie County Health Commissioner
Darius Pridgen
Buffalo Common Council
Nirav R. Shah, NYS Commissioner of Health
Erie County Legislature ✓
All Press
Everybody Else

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

September 17, 2012

PERSONAL AND CONFIDENTIAL

Carl Paladino, Esq.
295 Main Street, Suite 210
Buffalo, New York 14203

RE: OPMC # RO-11-12-6530A

Dear Mr. Paladino:

Staff members of the Office of Professional Medical Conduct (OPMC) have investigated your complaint concerning Dianne R. Vertes, M.D. As part of the investigation all relevant evidence was gathered and reviewed, including (but not limited to) a review conducted by a Board Certified physician from OPMC.

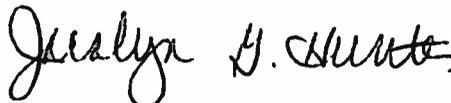
Upon completion of the investigation, based on all the information available to OPMC, there is insufficient evidence to bring a charge of professional misconduct, as defined by New York State Education Law, against Dr. Vertes.

The investigation has been closed. However, a permanent non-public file of the case will be maintained for future use as needed.

Thank you for taking the time to bring your concerns to our attention.

If you wish to discuss this matter further, please contact me at 585-423-8043.

Sincerely,



Jacalyn G. Hunter, RN
Western Region Program Director
Office of Professional Medical Conduct

JGH/cmjg

February 16, 2012

New York State Department of Health
Office of Professional Medical Conduct
Attn: Eileen Seils
335 East Main Street
Rochester, New York 14604

Re: Amanda Wienckowski

Dear Eileen:

Pursuant to our telephone conversation regarding review of the findings in the death of Amanda Wienckowski, enclosed please find copies of the following:

1. Certificate of Death;
2. County of Erie Office of the Medical Examiner Autopsy Report;
3. Erie County Medical Examiners Office Forensic Toxicology Report and Postmortem Toxicology Supplemental Report;
4. Order and Decision by Hon. Gerald Whalen and letter from Assistant County Attorney Brian R. Liebenow with enclosures sent to Silvia O. Comparini, M.D.;
5. Forensic Autopsy Report by Silvia O. Comparini, M.D.;
6. Exhibits numbers 1 through 6 and Diagrams numbers 1 through 4 to Forensic Autopsy Report by Silvia O. Comparini, M.D.;
7. Letter dated February 6, 2012 from Erie County District Attorney Frank A. Sedita III to Emily Trott, Esq., attorney for the estate of Amanda Wienckowski; and
8. Independent assessment of differing opinions regarding cause of death dated January 19, 2012, by Scott F. LaPoint, M.D. of Scientific Consulting of Western New York, Inc.

Please let me know if you need anything further.

Thank you for your attention to the above.

Very truly yours,
PALADINO, CAVAN & QUINLIVAN

LEANNA PILARSKI

Enc.

Michael Sikirica, M.D.
Forensic Medical Services

A Professional Corporation

50 Broad Street
Waterford, New York 12188
(518) 237-3211
Fax: (518) 237-7423

Susan LaCombe
Forensic Administrator
Susan@FM&NY.com

January 29, 2013

Mr. Steven Cohen
Hogan Willig
2410 North Forest Road, Suite 301
Amherst, NY 14068

RE: Amanda Wienckowski

Dear Mr. Cohen:

I am sending this letter in regards to the case of Amanda Wienckowski who was found dead in Buffalo under very unusual circumstances in January of 2009. I have been provided with the autopsy report generated by the County of Erie Office of the Medical Examiner as well as a report of a second autopsy performed by Silvia O. Comparini, M.D. of Los Angeles California. A cover letter was also provided by Kathy Weppner and dated October 21, 2012. After reviewing the materials I would like to respectfully offer the following opinions:

1. Based solely on the circumstances of her discovery this case should be considered a homicide unless some other very remarkable explanation for the location and appearance of her body could be almost immediately provided.
2. The level of morphine detected in her blood at the autopsy is a relatively innocuous level. Although I have signed out even lower levels of morphine as acute opiate intoxication these cases all involved scenes where there was absolutely no evidence of another more powerful cause of death. It is my opinion a morphine level of .08 mg/L is not at all uncommon in habitual users. Although one may die from the effects of other medications or compounds used in the heroin preparation to assume that would be only speculation.

3. The extent of the injuries around the decedent's neck, which were carefully and thoroughly documented by Dr. Comparini, indicate direct pressure applied to the neck either during strangulation or during a combined strangulation and suffocation type event. Although I have not examined all of the representative photographs or microscopic sections at this time the number and location of these injuries are significant. These injuries may have appeared following the autopsy when a significant amount of normal blood had drained from the surrounding areas and therefore not been recognized during the first autopsy.

In summary, it is my opinion to a reasonable degree of medical certainty that Amanda Wienckowski died as the result of manual strangulation/suffocation with a secondary finding of acute opiate intoxication and the manner of death should be classified as a Homicide.

Respectfully,



Michael Sikirica, M.D.
Forensic & Neuropathologist

MS/sl

Adding a dash of digital to entice diners
Area restaurants uniting high tech and high cuisine to delight patrons. | PAGE B9

THE REGION

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SUN

Retired detective in case says woman found in garbage tote did not die from overdose

Breaking silence in Wienckowski's death

By LOU MICHEL

NEWS STAFF REPORTER

A just-retired Buffalo homicide detective who investigated the death of a woman whose frozen body was stuffed inside a garbage tote in 2009, revealing publicly for the first time that he and fellow investigators

never agreed with the Erie County Medical Examiner's determination that Wienckowski died of a drug overdose.

They believed the most likely scenario was that a large person accidentally choked the petite, 20-year-old Kenmore woman during a paid sexual encounter, retired Buffalo Homicide Detective Mark J. Lauber said.

Previously, Lauber had not been

allowed to speak to reporters because of Buffalo Police Department policy.

But now that he has retired, he talked to The Buffalo News to clear up "misinformation" about the case and to show that police thoroughly investigated the case.

"We realized right away the cause of death was not from a lethal amount of opiates for someone who used heroin every day," Lauber said.

On Jan. 9, 2009, Wienckowski's body was discovered naked and upside down in a garbage tote across the street from the residence of Antoine J. Garner, where she had gone to provide sexual services.

Though not charged in her death, the 300-or-more pound Garner has been identified as the last person to

See Detective on Page B2



Detective does not believe death merits charge of second-degree murder

DETECTIVE - from B1

...ed her alive and as a person of interest in her death.

But the cause of Wienckowski's death has been a matter of contention ever since the county medical examiner ruled she died of a drug overdose.

The detectives disagreed with that conclusion.

"So we called the medical examiner's toxicologist, and he agreed with us but said they could not find another cause of death and went ahead and listed it as an accidental drug overdose," Lauber said.

The detectives didn't believe there was enough heroin in her system to cause an overdose.

Since the medical examiner's report was issued in 2009, at least three other pathologists also have issued reports.

Wienckowski's family sought

the assistance of attorney Steven M. Cohen of the Amherst law firm Hogan Willig and had a second autopsy done by a West Coast pathologist who concluded that Wienckowski's cause of death was strangulation.

But Lauber said he and the other detectives on the Homicide Squad weren't sure about that conclusion either.

The detectives' opinion that there were not enough drugs in her blood to cause death supports a medical opinion released late last month at a Buffalo Common Council meeting. Albany-area pathologist Michael Sikirica determined that the amount of opiates in Wienckowski's system was "a relatively innocuous level."

Sikirica sided with the results of the second autopsy - conducted at the request of the family - that determined the cause of death was strangulation.



Amanda Wienckowski was missing five weeks before her body was discovered in a garbage tote.

tion.

Cohen sought assistance from Sikirica on behalf of Wienckowski's family, which has been trying to get the county medical examiner to amend the cause of death to homicide.

"The Buffalo police have always maintained this was a homicide," Cohen said. "Whether it's murder or manslaughter is a question for a jury to decide, but the medical examiner's findings prevent District Attorney Frank Sedita from prosecuting the case because the listed cause of death creates reasonable doubt."

Lauber, in challenging the medical examiner's determination, said he and other detectives assigned to the case were told by a county toxicologist that the accidental overdose was selected as the cause of Wienckowski's death because they could not find any other explanation. The "logical" way to handle the cause of death, Lauber said, would be to list it as "undetermined." The former detective pointed out that yet another pathologist, Scott F. LaPoint, hired by Sedita last year, issued an opinion that the cause of death should be undetermined.

Sedita sought the outside, expert opinion because of the two conflicting autopsies. The case seemed puzzling right from the beginning, Lauber said.

When the Homicide Squad requested a copy of the county autopsy report in 2009, he was told a written request would have to be submitted. That was a first, he said.

Even more puzzling, he recalled, was that when the county report arrived, it was signed by four pathologists in the Medical Examiner's Office.

In the past, the only pathologist to sign an autopsy report was the pathologist who conducted the autopsy, said Lauber, who worked 11 years as a homicide detective and frequently attended autopsies.

Cohen also noted that it was

odd for four pathologists to sign an autopsy report. But a county spokesman for the medical examiner disagreed, saying many autopsies reports are signed by more than one pathologist.

Lauber said he and the other detectives believe that Wienckowski died during rough sex and dismisses the strangulation ruling. Pressure marks found on Wienckowski's neck and internal neck injuries, he said, could have occurred when her body was shoved down into the garbage tote.

As for what appear to be defensive wounds on her arm, he said, those also could have occurred when her body was being discarded.

Marks on Wienckowski's face by her jawline, he said, were caused by a large earring she was wearing that ended up pressed against her flesh.

Lauber interviewed Garner for two hours, just hours after Wienckowski's body was found in a garbage tote across the street from his home on Jan. 9, 2009, outside a church at Spring and Clinton streets. The garbage tote previously had been reported stolen by one of Garner's neighbors.

Garner told detectives that Wienckowski arrived at his house Dec. 5, 2008, after he had called her for paid sex in response to an advertisement, Lauber said. That part of the story detectives do not dispute.

But detectives were skeptical of Garner's claim that she left the home that evening.

Lauber and other police officials say they believe positional asphyxiation killed Wienckowski while she was having sex. They believe Wienckowski was grabbed from behind and an arm was placed against or around her neck while her assailant's full weight pressed against the flight woman.

"There were opiates in her system and that could slow her heartbeat, and with his arm on her neck, there was some compression to her throat," Lauber said of the factors that detectives believed caused Wienckowski's death. But, he added, he does not believe her death should result in a charge of second-degree murder.

"We don't believe this was a classic depraved indifference to life, which is the definition of second-degree murder," Lauber

said. He said a lesser charge of criminally negligent homicide or second-degree manslaughter might be more appropriate.

Garner has repeatedly denied that Wienckowski died in his presence.

But Lauber said police remain suspicious because of other occurrences. Among them:

- Garner last week was convicted in Erie County Court of choking and assaulting a prostitute during a paid sexual encounter. He faces up to seven years in prison when he is sentenced in March.

- During an extensive search of Garner's home after Wienckowski's body was found, Lauber said he went through the garbage tote for Garner's residence and discovered an earring that belonged to Wienckowski.

"The earring was wrapped in an ATM bank withdrawal slip that Garner had made three days earlier, and the earring had a strand of blond hair on it," Lauber said.

But DNA testing to determine if the hair belonged to Wienckowski, a blond, was never conducted, he said. Lauber said he does not understand why a test was not completed, especially since homicide detectives in 2009 put in a specific request for the test.

DNA tests did determine, however, that a hair found on Wienckowski's body belonged to Garner, he said.

The garbage tote in which Wienckowski's body was found was reported missing by its owner weeks before it turned up next to the church, Lauber said. And investigators suspected that if Wienckowski was dead, she was probably inside that missing container.

"We conducted surveillance of Garner's home, conducted numerous interviews and went up in the Erie County sheriff's Air One helicopter searching for the tote. That tote was not across the street from Garner's home in the days before she was found," he said.

So where was Wienckowski's body in the five weeks from early December when her family reported her missing to its discovery on Jan. 9, 2009?

"That is a question police have not been able to answer, Lauber said. But now, as individuals such as Council Member Darius G. Pridden try to get to the

bottom of Wienckowski's death with its conflicting pathology reports, Lauber said, the public should be aware that homicide detectives worked diligently on the case.

Pridden, whose Elliott District includes the location where Wienckowski was found, is working with County Legislature Chairwoman Betty Joan Grant to arrange for a county hearing where Chief Erie County Medical Examiner Dianne R. Vertes would be urged to attend and explain the county autopsy.

Vertes, one of the four pathologists to sign Wienckowski's autopsy report, declined Pridden's request that she attend his Legislative Committee meeting two weeks ago.

Peter Anderson, a county spokesman, said Vertes' findings in the Wienckowski death are self-explanatory and have already been widely reported.

email: michel@buffnews.com

BPO BUFFALO PHILHARMONIC ORCHESTRA
JOHN FALLETTA MUSIC DIRECTOR

HUNGARIAN SPIRIT
Sat. Feb 23, 8pm
Sun. Feb 24, 2:30pm
John Falletta, conductor
Michael Ludwig, violin

KODÁLY Variations on a Hungarian Folksong
The Peacock

GOLDSMARK Violin Concerto in A minor

BARTÓK Suite from The Miraculous Mandarin

LISZT Hungarian Rhapsody No. 2

HUNGARIAN SOUL
Sat. Mar 2, 8pm
Sun. Mar 3, 2:30pm
John Falletta, conductor
Cecilia Ulland, piano

DOHNANYI Rurality Hungarian

LISZT Piano Concerto No. 1

LISZT Totentanz for Piano and Orchestra

RÓZSA Hungarian Nocturne

BRAHMS Hungarian Dances Nos. 1, 4, 5

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Lottery Picks /

Winning numbers for Saturday

N.Y. Evening Numbers: 133
Lucky Sum: 7
N.Y. Midday Numbers: 576
Lucky Sum: 18

Win Four Evening: 4060
Lucky Sum: 10
Win Four Midday: 4308
Lucky Sum: 19

Take Fives: 1 15 22 33 85

Pick 10:
4 5 7 13 19 24 30 39 43 49
49 54 55 57 59 60 62 65 77 79

N.Y. Lotto: 9 18 20 46 48 61
Bonus Number: 41

Powerball: 5 6 16 36 54
Power Ball: 3

Penn. Evening Numbers: 614
Penn. Midday Numbers: 079

Big 4 Evening: 1106
Big 4 Midday: 7110

Late numbers for Friday

Take Five: 9 11 13 16 20

Mega Millions: 6 15 20 39 40
Mega Ball: 24
MegaMillers: X6

These numbers are unofficial.
For official New York Lottery results go to buffalo.com/lottery or a lottery retailer.