

Harlan's problems could cause court cases to be re-examined

01/15/02

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The state Health Department's attempt to revoke Dr. Charles Harlan's medical license could prompt challenges to some of the homicide convictions that Harlan helped prosecutors obtain while he was Metro medical examiner, legal experts said.

But any inmate hoping to use Harlan's problems to overturn his or her conviction will have an uphill climb, the experts said yesterday.

"If Dr. Harlan were to lose his medical license based on past activities, it could call into question some of the cases where he testified as an expert," said Nashville lawyer and legal scholar David Raybin.

But, Raybin said, an inmate seeking a new trial "would have to show that a mistake was made (by Harlan) and that the cause of death was a hotly contested issue."

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"I would think that the number of cases where that is a critical issue would be relatively small," Raybin said.

Metro Public Defender Ross Alderman said that it is "possible that some of the cases that Dr. Harlan testified in could come up for further scrutiny."

Alderman drew a distinction between the Health Department's disciplinary charges against Harlan and a brewing controversy in Oklahoma, where a state crime lab scientist's credibility — and several convictions she helped to obtain — have been called into question.

"As I understand the allegations against Dr. Harlan, they are in many ways relatively narrow kinds of problems," Alderman said. "I did not read any allegations of him falsifying or intentionally tainting results. Many of the allegations appear to be related to practice issues that are separate and apart from the accuracy of his assessments."

If the disciplinary hearing establishes that Harlan's opinions in a number of cases were "unreliable or inaccurate," Alderman said, "that could create the possibility of some people at least seeking appellate review (of old convictions)."

But, he said, "Based on what I know at this point, I don't think there is going to be an across-the-board review of each and every case in which he was a witness."

Davidson County Deputy District Attorney Tom Thurman said he does not expect the Health Department charges against Harlan to lead to the reversal of any homicide cases out of the Criminal Courts here.

Harlan performed thousands of autopsies and testified in hundreds of homicide cases when he served as Metro medical examiner from 1983-93. He has continued to perform autopsies for several dozen Tennessee counties and to testify as an expert witness for prosecutors in those counties, since he was demoted from the position of Metro medical examiner late in 1993 and then left the Metro office and opened a private pathology lab early in 1994.

The state Health Department filed 39 disciplinary charges against Harlan on Friday. Dating from 1994 through December 2001, the charges allege incomplete autopsies, mishandling of evidence, mistaken diagnoses and misidentified bodies.

About half of the charges stem from Harlan's allegedly mistaken labeling of the deaths of small children as cases of "sudden infant death syndrome," which is a catchall term for the sudden deaths of children younger than 1 that remain unexplained after a thorough investigation.

Several other charges deal with cases in which prosecutors asked for a second autopsy after Harlan had ruled a death accidental.

Raybin said that it is possible that police could reopen some cases in which Harlan ruled that deaths were accidental and prosecute someone for murder.

The disciplinary charges will not prevent Harlan from practicing medicine until he receives a hearing, set for March 19, from the state Board of Medical Examiners.

Harlan's attorney, Dan Warlick, has said he thinks that Dr. Fredia Wadley, state health commissioner, is unfairly pursuing charges against Harlan because of animosity dating back to when he was Metro medical examiner and she was the city's health director in the early 1990s. She didn't renew Harlan's contract as the state's chief medical examiner in 1995.

Dr. Bruce Levy now serves as Metro and state chief medical examiner.