Tennessee Medical Examiner Advisory Council Annual Report on the Standards and Guidelines of the Medical Examiners System

Calendar Year 2020

Tennessee Medical Examiner Advisory Council – 2020

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Assistant Director Josh Melton – TBI

Mr. Edward Miller – District Public Defender

General Amy Weirich – District Attorney General

Dr. Adele Lewis – State Chief Medical Examiner

List of Abbreviations

CME – Continuing Medical Education

DCS – Department of Children's Services

FBI – Federal Bureau of Investigation

MEAC – Medical Examiner Advisory Council

OSCME – Office of the State Chief Medical Examiner

RFC(s) – Regional Forensic Center(s)

TBI – Tennessee Bureau of Investigation

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Letter from the Chair

I am pleased to present the Annual Report on the Standards and Guidelines of the Medical Examiners System to the chairs of the Health Committee of the House of Representatives and the Health and Welfare Committee of the Senate on behalf of the Tennessee Medical Examiner Advisory Council.

The past year has been an unusual one, with the expanded Council and the entire forensic community being occupied with increased pressures from the COVID-19 pandemic. The duty of the council is to: review candidates and make a recommendation to the commissioner of health on the appointment of the chief medical examiner and deputy state medical examiners; assist the chief medical examiner in the development and updating of guidelines for death investigations and forensic autopsies in this state, to be promulgated as rules through the department of health; submit an annual report on the standards and guidelines of the medical examiners system to the chairs of the health committee of the house of representatives and the health and welfare committee of the senate; periodically review standards and guidelines promulgated by the department of health for the medical examiner system; and provide reports and recommendations to the commissioner on causes of death which may need public health intervention, funding issues, information technology needs, and any other issues as the council sees fit.

Thank you for the opportunity to present this report to House Health Committee and Senate Health and Welfare Committee.

Sincerely,

Dr. James Metcalfe
Chief Medical Examiner
Hamilton County Forensic Center
Chair, Medical Examiner Advisory Council

Tennessee Medical Examiner System Overview

The purpose of a medical examiner system is to serve the living and to speak for those who can no longer speak for themselves. As uncomfortable as the topic of death is, all Tennesseans will eventually be impacted in one way or another. Citizens can choose what counties they live in, but death does not respect county boundaries. For sudden and unexpected deaths which have significant financial and legal consequences, the public expects an unbiased competent death investigation with built-in accountability, regardless of the county of death.

The broad customer base of a medical examiner system includes multiple agencies involved in public safety including: District Attorneys General, Public Defenders, Department of Children's Services, Tennessee Bureau of Investigation, Federal Bureau of Investigation, Drug Enforcement Administration, Department of Transportation, Department of Corrections, local law enforcement agencies, occupational health, group homes, nursing homes, hospitals, numerous healthcare coalitions and other healthcare and law enforcement advocacy groups, patient advocacy groups etc., but most importantly, the people of Tennessee. For our citizens, the system enables appropriate payment of survivor benefits, informs the family of potential hereditary and/or congenital diseases, provides surveillance for emerging threats to health and safety, decreases the chance that murders go undetected and prevents the conviction of the innocent. In other words, the impact of quality medicolegal death investigation on any community is far reaching.

The medical examiner system is a county-based system funded mainly by county taxpayer dollars, but the allocation of funds varies considerably from county to county. This inconsistent funding is one of the reasons why delivery and quality of services is currently patchy, variable, and unpredictable. Citizens should have direct choice in the quality and extent of death investigation since they pay for the service. They can demand appropriate medicolegal death inquiry through their representatives, from their mayors and county commissioners to the higher office political leaders.

County medical examiners and their investigators continue to attend educational courses offered by the OSCME. Moreover, except for scattered outliers, county Medical Examiners across the state have been reporting results of their medicolegal death investigation to the OSCME. Collection and analysis of this data provided by county Medical Examiners are two of the main functions of the OSCME. According to the Performance Audit Report of the Department of Health and Related Health Advisory Entities generated by the State of Tennessee Comptroller of the Treasury, the OSCME's increased education efforts and small incentives have had a very positive effect on reporting of medicolegal death investigation, as evidenced by a more than 200% increase in receipt of these reports. We support the OSCME in continuing to provide education and increase financial incentives in order to raise the reporting of medicolegal death investigation. This would be the preferred approach over sanctions or increasing OSCME authority.

Areas of Concern

The Medical Examiner Advisory Council met two times in 2020, discussing the most pressing areas of concern for legislative review. The following is a comprehensive, though not exhaustive, list of the council's concerns.

Efforts to Remove Authority for Ordering Autopsies from Medical Examiners

During the last legislative session, efforts were put forth to remove the authority for ordering autopsies from the county medical examiners and placing it under the auspices of the district attorneys. The Medical Examiner Advisory Council strongly opposes any such efforts. Shifting autopsy authorization to district attorneys presents multiple serious concerns:

- There is a direct conflict of interest in having the entity responsible for prosecution also being responsible for determining whether an autopsy is necessary.
- District attorneys will not order autopsies in cases with no prosecutorial interest, eliminating the public health function of the medical examiners.
- The district attorneys are not trained for and do not have the resources for making such determinations.
- Accreditation of the Regional Forensic Centers by the National Association of Medical Examiners would likely be impossible to maintain, which would be in conflict with the Postmortem Act.

One of the arguments put forth in favor of this type of legislation is that the increase in the number of autopsies due to the nationwide opioid epidemic has put a financial strain on smaller counties. Limiting autopsies to only those where a prosecution is likely to occur would decrease this number. The council recognizes the financial burden the increase in autopsies has put on counties across the state. However, a more appropriate response is to increase funding to counties affected by such deaths. Adequate death investigation services help present a more accurate picture of the public's health, allowing for more successful interventions.

Lack of a Medical Examiner Succession Plan

The lack of a clear succession plan for medical examiners as they age out of the role remains one of our greatest concerns. Many county medical examiners serve their counties at no cost out of a sense of civic duty, and as these county medical examiners age out of the role it is unlikely new physicians will be willing to work for little or no compensation. Each county is responsible for appointing a medical examiner and funding autopsies, with no statutory requirement to compensate the medical examiner or investigators.

Undercompensation of county Medical Examiners contributes to two problems. The first is retention and recruitment. The second is that uncompensated Medical Examiners are less likely to invest time and effort into continuing education and practice improvement.

The Council again presents several means of improvement that are not mutually exclusive and could be utilized in conjunction with each other.

Suggestions for improvement:

- Consider statutory requirement to compensate county medical examiners, which would assist in increasing reporting.
- Increase state funding to the Regional Forensic Centers to alleviate the burden on smaller rural counties, as well as the burden on larger counties compensating for the rural counties (counties with trauma center hospitals will have much higher numbers of unexpected and unnatural deaths regardless of the county in which the injury occurred).
- Alleviate demands on the counties that support and sponsor RFCs by supplementing local/small county medical examiners with well-trained, nationally certified and state paid and state supervised investigators to serve regions and assist RFCs.

Uniform Anatomical Gift Act

The Uniform Anatomical Gift Act in Tennessee is in dire need for legislative change. Tennessee is one of very few states to adopt this act as suggested by the lobbying organizations and the position paper issued by the National Association of Medical Examiners with no amendments. The council acknowledged the importance of the act and organ procurement organizations but determined the act should be amended to give medical examiners the authority to deny procurement of some or all organs when it will seriously interfere with the outcomes of medicolegal death investigations, such as the medical examiner's inability to render a diagnosis or to provide the most accurate dating of injuries. The latter is a sequela of protracted life support after brain death in order to complete the necessary serological testing and organ recipient matching. Particularly concerning are child abuse cases where the Anatomical Gift Act gives organ procurement organizations the authority to procure organs if allowed by the donor family (frequently deemed suspects in an ongoing criminal investigation), even if there is a court order or direct request from the medical examiner to leave the body intact.

Suggestion for improvement:

- Amend the Uniform Anatomical Gift Act to grant authority to medical examiners to deny certain organ procurement when it could prevent the determination of a cause of death or introduce extensive artifact that would interfere with evaluation and/or timing of injuries. The council would request support from District Attorneys General, law enforcement, TBI, and funeral homes to amend the act.

Proper Death Certification and the Final Act of Patient Care

Tennessee Code Annotated 68-3-502 (c)(1) reads that "the physician in charge of the patient's care for the illness or condition that resulted in death" is responsible for completing the death certificate in cases of natural deaths. Proper death certification in situations when death does not fall under medical examiner jurisdiction is considered the final act of patient care. The refusal of primary care physicians, nursing home and assisted living facility directors to certify death certificates on their patients even when the cause of death is natural and in no way falls under medical examiner jurisdiction continues to be a major issue for medical examiners. The delays incurred impact the grieving families, who cannot settle the estate or make final arrangements for the body in the absence of a completed death certificate. These refusals also add more work to the medical examiners who must take responsibility for signing a death certificate for a patient they have never seen. Significant effort is put into obtaining necessary medical records to make an appropriate diagnosis with no additional compensation. The council acknowledges the Department of Health, specifically State Chief Medical Examiner Adele Lewis, for working with primary care physicians and clinicians on accomplishing this task.

Suggestions for improvement:

- Implement and mandate state funded continuing medical education (CME) for physicians to learn death certification. At least one hour of CME credit for the two-year licensing cycle should be required.
- State required death certification training for medical students and/or residents in medical school and postgraduate medical training, respectively.

Final Discussion and Requested Action

This document highlights the areas of concern most frequently discussed by the Medical Examiner Advisory Council in 2020. These are the most important issues that need to be addressed, nevertheless, it is not an exhaustive list. A quality death investigation system informs public health programs and services that affect all Tennesseans. Many public and private entities rely heavily on proper death investigation and accurate mortality data, including but not limited to district attorneys, public defenders, DCS, TBI, FBI, Drug Enforcement Administration, Department of Transportation, Department of Corrections, local law enforcement agencies, occupational health, group homes, nursing homes, hospitals, numerous healthcare coalitions, other healthcare and law enforcement advocacy groups, and patient advocacy groups. Most importantly, our findings and rulings regarding cause and manner of death frequently have life-changing consequences and lasting impact on the surviving family members and friends.

The importance of the medical examiner system should be recognized and funded appropriately. There are great variations and discrepancies in funding of the medical examiner operations throughout the State. There is also inconsistent and sometimes inadequate medicolegal death investigation in a number of jurisdictions in all three major divisions. The Regional Forensic Centers are nationally accredited and operate at each local level, which makes them more responsive and accountable to the citizens and local agencies. The RFCs provide investigation, guidance, and oversight for their areas medicolegal death investigation system. This approach keeps medicolegal death investigation in the community where it is needed.

We have listed areas concerning legislative action. It is a request of the council that a member of the House of Representatives be appointed to the Medical Examiner Advisory Council as is described in Tennessee Code Annotated 38-7-201 to enhance communication and understanding between Assembly members and the Council.

The council acknowledges the Department of Health, specifically State Chief Medical Examiner Dr. Adele Lewis and staff, for their outstanding support during the COVID-19 pandemic by providing very timely and authoritative guidance information to the forensic community, and their meticulous attention to the families' interests in correct COVID-19 death certification.