

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

Calendar Year 2018

Tennessee Medical Examiner Advisory Council – 2018

Chair: Dr. Darinka Mileusnic-Polchan – Forensic Pathologist – Knox County Regional Forensic Center (East TN)

Members:

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Mayor Jake Bynum – Weakley County Mayor

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Dr. Tony Emison – Madison/Crockett County Medical Examiner (Representing West TN)

Dr. Lorraine MacDonald – Rutherford County Medical Examiner (Representing Middle TN)

Dr. Benjamin Figura – Administrator from West Tennessee Regional Forensic Center

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Dr. James Metcalfe – Forensic Pathologist – Hamilton County Forensic Center (SE TN)

Dr. Feng Li – Forensic Pathologist – Forensic Medical Management Services (Middle TN)

Dr. Marco Ross – Forensic Pathologist – West TN Regional Forensic Center (West TN)

Assistant Director Dewayne Johnson – TBI

Mr. Edward Miller – District Public Defender

General Amy Weirich – District Attorney General

Dr. Julia Goodin – State Chief Medical Examiner

List of Abbreviations

CME – Continuous Medical Education

DCS – Department of Children’s Services

DEA – Drug Enforcement Agency

DOH – Department of Health

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 a productive one, involving the legislative overhaul of the council with new members and additional stakeholders strongly involved in improvement and development of the medical examiner system. 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.

At the end of 2016, the council reviewed and approved the County Medical Examiner Handbook. This has been published and distributed across the state. In addition, select members of the council assisted in the production of a statewide Mass Fatality Plan. The council has made great strides in identifying areas of concern in the medical examiner system, and has compiled this report to address key areas for legislative review.

I would like to thank Margaret Hyder, the Deputy Director of the Office of the State Chief Medical Examiner, for the support with planning and conducting the Council meetings this past year. Her assistance with the meeting minutes and the preparation of the Annual Report has been invaluable.

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

Sincerely,

Darinka Mileusnic-Polchan, MD, PhD
Chief Medical Examiner, Knox and Anderson County
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 Services, Tennessee Bureau of Investigation, Federal Bureau of Investigation, Drug Enforcement Agency, 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. It is the opinion of the Medical Examiner Advisory Council that all participants and stakeholders should be adequately informed and educated about the provision and oversight of needed services, from the citizens to their local and state governments as well as the regional alliances. Therefore, the current, statutorily sanctioned, strictly county-based delivery of services requires reconsideration in favor of regional concept.

One of the necessary improvements has been partially accomplished by many county medical examiners who have stepped up in many ways. A number of the county medical examiners and their investigators have attended educational courses offered by the OSCME. Moreover, except for seventeen outliers, county Medical Examiners across the State have been consistently 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 report, 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 200% increase. 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

Since the first meeting of the reorganized Medical Examiner Advisory Council, December 1, 2017, the council has recognized the most pressing areas of concern for legislative review. The following is a comprehensive, though not exhaustive, list of the council's concerns.

Lack of a Medical Examiner Succession Plan

One of the greatest issues discussed by the council was the succession plan for medical examiners as they age out of the role. 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 be willing to invest time and effort into continuing education and practice improvement. This was a severe problem in the neighboring North Carolina, in which new initiatives requiring training and proficiency were met by mass resignations of county Medical Examiners. In response, that state increased its remuneration of these county officials from \$100 to \$200 per case in 2015 in addition to requiring mandatory training.

The Council has identified 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.
- Provide 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).
- Change the statute to bring about a regional concept for medical examiners, instead of individual counties; this would promote economy of scale and cost sharing among the neighboring counties.
- 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 organ procurement when it will seriously interfere with outcome with medicolegal death investigation such as the medical examiner inability to render a diagnosis or to provide the most accurate dating of injuries. The latter is a sequella 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.

Suggestions 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.

Unfortunately, it has been increasingly more common for primary care physicians, nursing home and assisted living facility directors to refuse to certify death certificates on their patients even when the cause of death is natural and in no way falls under medical examiner jurisdiction. 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. The council acknowledges the Department of Health, specifically Deputy State Chief Adele Lewis, for working with primary care physicians and clinicians on accomplishing this task. Unfortunately, it seems that efforts are not 100% successful.

Suggestions for improvement:

- Tennessee Code Annotated 68-3-502 – Death Registration, must be rewritten with assistance from the council to remove antiquated and conflicting sections and add order and structure to the Statute.

- State funded, implemented, and mandated continuing medical education (CME) for physicians to learn death certification. At least one hour of CME credit for 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.
- Consider adopting a statute to allow medical examiners to impose a fee against physicians refusing to certify natural, non-medical examiner jurisdiction deaths.

Unclaimed Remains

Over the years there has been a significant increase in the number of unclaimed decedents in the state. Oftentimes county medical examiners are faced with the burden of storage and final disposition of remains, resulting in an additional time-consuming aspect of the job. Medical examiners, all of whom are physicians and many of whom still practice in hospitals, health care departments and ambulatory services, should not be expected to provide the services of a funeral home. Medical examiners certainly do not want to be associated with those responsibilities and services that represent direct competition to funeral director duties.

Suggestions for improvement:

- Medical Examiners and Hospitals can arrange for cremation after 96 hours (Tennessee Code 68-4-103 and 113). MEAC suggests that the State and RFCs come up with a contractual agreement regarding purchasing and/or designating regional mausoleums to intern and catalogue the remains. The contract should encompass yearly maintenance as well as periodic opening of the mausoleums for either depositing or retrieving the cremains.
- Surrounding small and medium size counties should create contractual agreements with RFCs to handle cremains for them.

Open Records & Privacy

Last year the chair of the council led legislative efforts to treat autopsy and medical examiner investigative reports as protected information rather than as a matter of public record. This was spearheaded by a number of families expressing grave concerns about the public access to their loved ones' personal data as well as the family health related information, either directly or indirectly, through our detailed reporting of the diseases and conditions encountered at autopsies. Though the legislation failed to pass, the privacy of next of kin is still a concern for the council.

Legislative Accomplishments & Concerns

The council has discussed a myriad of issues and indicated several important areas that required legislative action. Except for the council overhaul and the attempt at the open records legislation, no significant additional legislative items have even come close to being brought forward to any of the legislative committees for discussion. One particular legislation (so-called

“Suicide Bill”) never gained support by the council in its original form. The OSCME assisted in editing the bill such that the State Chief Medical Examiner was not empowered to overrule the county medical examiner’s opinion as to manner of death, which was how the bill was originally written. Subsequently, the Statute required an important amendment and is still plagued with issues that will need to be addressed in the next legislative session. Meetings, discussions and work of the MEAC as well as all discussion among the MEAC members outside the quarterly meetings are subject to sunshine law and require full transparency. The MEAC trusts that other groups and agencies that share the common interest should reciprocate the same full transparency.

The OSCME operates under the auspices of the Department of Health. The MEAC is statutorily bound to assist the OSCME in the development and updating of guidelines to be promulgated as rules and statutes through the DoH. The DoH is a large organization with broad and profound responsibilities. The Medical Examiner system is a small part of that. It is neither possible nor expected for the DoH to devote a majority of its resources and legislative capital to promote, endorse, or assist with the legislative efforts described here. Nonetheless, the Medical Examiner system has suffered because it lacks an effective voice at the legislative level. In order to achieve this needed voice, more direct access to legislative branch is imperative. The most direct, and likely the most effective method of doing this, would be to amend the structure of the council by adding representatives, one from the House and one from the Senate, to help council promote and promulgate legislative items that are in interest of our stakeholders and citizens.

Final Discussion & Requested Action

This document highlights the areas of concern most frequently discussed by the Medical Examiner Advisory Council in 2018. 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 Agency, 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 jurisdiction in all three major divisions. A Regional system, funded with county and state funds could provide investigation, guidance, and oversight for the medicolegal death investigation system. RFCs are nationally accredited and operate at the local level, which makes them more responsive and accountable to the citizens and local agencies. 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 General Assembly be added to the Medical Examiner Advisory Council as it is described in Tennessee Code Annotated 38-7-201 to enhance communication and understanding between Assembly members and the Council.