



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Bureau for Public Health

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Cabinet Secretary

Office of the Chief Medical Examiner

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MEMORANDUM

TO: All Administrators, Chief Medical Officers and Chief Nursing Officers of Hospitals in West Virginia

FROM: Allen R. Mock, MD, MS, DABP, FCAP, FNAME – Chief Medical Examiner, State of West Virginia

DATE: October 27, 2022

SUBJ:

1. Circumstances of death which mandate notifications to the OCME.
2. Clinician/Physician responsibilities for completion of death certificates
3. Medical Examiner policy regulating the performance of autopsy
4. Retention of hospital laboratory samples under conditions of impending death
5. Retention of hospital laboratory samples in cases of suspected assault

PURPOSE:

To provide a guide that will assure hospital compliance with reporting requirements for deaths of persons pronounced in a hospital setting, which fall under Medical Examiner jurisdiction. This memorandum lists death circumstances which must be reported to the Office of the Chief Medical Examiner (OCME); outlines hospital/clinician/laboratorian responsibilities regarding retention and disposition of decedent personal effects and laboratory specimens; and relates to performance of autopsy, when the OCME assumes jurisdiction of a hospital pronounced death.

This memorandum supersedes any and all previous instructions.

1. Circumstances of death which mandate notifications to the Medical Examiner/Coroner.

West Virginia Code §61-12-8 requires that the following deaths must be immediately reported to the Office of the Chief Medical Examiner for investigation. The OCME Forensic Investigation Unit (FIU) may be contacted by telephone 24 hours per day at **(304) 558-6921**.

- A. Death resulting directly or indirectly from antecedent conditions or injuries received as the result of an accident, homicide, or suicidal gesture; or if a reasonable suspicion of death due to accident, homicide or suicide exists. This criterion applies irrespective of the duration of survival of the individual.

- B. Any death associated with evidence of physical abuse or suspected physical abuse; or of significant neglect of a child, or of any incapacitated, elderly or incompetent person.
- C. A sudden unexpected death where the circumstances do not allow the attending physician to reasonably infer that death is due to natural disease processes.
- D. Any death where there is reasonable suspicion that there exists a condition that may constitute a threat to the public health or safety.
- E. Any death thought to be due to, or arising out of complications of drug abuse or intoxication (including any decedent with a known history of drug abuse).
- F. Any death during or associated with a therapeutic procedure, where the death may have resulted from an unforeseen complication of the procedure, treatment or therapy, or where the death is not readily explained as a consequence of pre-existing natural disease.
- G. Any death occurring as the result of, associated with, during or following police intervention, transport or custody; or death during court ordered custody or incarceration, even if reasonably due to natural disease processes.
- H. Any death occurring in a medical, mental health, or convalescent facility, (**where the cause of death cannot be inferred as being due solely to natural disease process**), or where there is suspicion of grossly inadequate or improper care, or willful abuse of the decedent.

Any death wherein there is any question whether the circumstances listed above, or suspected to have occurred as the result of such circumstances, where the pronouncement occurs in a hospital setting, must be reported immediately to the OCME Forensic Investigative unit at **(304) 558-6921**, regardless of the interval between the underlying/inciting cause of death and the death itself.

Note: The existence of all decedent hospital pathology laboratory specimens associated with a death occurring under conditions as listed above must be brought to the timely attention of the Medical Examiner for anticipated specimen transfer to OCME custody.

2. The responsibility of the Clinician/Physician in completing the death certificate.

If the OCME investigation concludes that a death was entirely the result of natural cause which does not pose a public hazard, such a death does not fall within the jurisdiction of the State Medical Examiner and the OCME will decline jurisdiction over the case. When jurisdiction over a death is declined by the OCME, pursuant to West Virginia Code §16-5-19(d)(2), the attending physician or pronouncing physician (hereafter, the “physician certifier”) **must, by law**, complete the cause of death statement (Part I and, if appropriate, Part II of the death certificate) and indicate the manner (Natural) in any in-hospital or emergency department death, to his or her best professional opinion, modified as necessary by conditional statements such as “probable...”

or “presumed...”. West Virginia death certificates are now completed in the WV DAVE system. The WV DAVE system contains resources and instructions that may be of some assistance to the physician certifier in the completion of the cause of death statement. The WV DAVE system is programmed to recognize unsatisfactory cause of death statements and will provide an error message to the certifier if incorrect or insufficient terminology is entered. **(Death Certificates where cause and manner of death are not completed correctly and are not caught by the system at the time of entry will be referred back to the certifying physician by Vital Statistics or the OCME in the WV DAVE system for correction.)**

Under this law, the Medical Examiner may direct the physician certifier to complete the death certificate for the decedent, by faxed document. When the physician certifier is directed to complete the death certificate by OCME, under this same law, he or she is specifically protected from any civil liability arising out of his or her completion of the death certificate.

The physician certifier is encouraged to memorialize this transaction by placing the OCME directive to certify into the decedent’s medical record. Further documentation of declined medical examiner jurisdiction, if the death was reported to the OCME, is accomplished through the entry of the OCME Case Number in the WV DAVE system. The FIU will provide a case number to the reporting individual for inclusion in the records and the WV DAVE system. Should the physician certifier have any uncertainty about how best to complete a death certificate under these circumstances, he or she should contact the OCME at (304) 558-6921 and request assistance.

Note: It is illegal for a physician not serving as a County Medical Examiner or County Coroner to complete parts I and/or II of the death certificate for persons dying under circumstances requiring notification to the medical examiner, as listed above, unless the OCME has been notified, and either A) jurisdiction is declined, or B) specific permission is given to complete the death certificate for the particular decedent.

3. In-hospital deaths: Medical Examiner jurisdiction and performance of autopsy.

Following an in-hospital death from natural causes, or in the case of a death when Medical Examiner jurisdiction has been declined: where autopsy is required or desired by the hospital, or by the estate of the decedent, for the purposes of clinical review, to clarify issues that involve civil litigation, or for any private purpose of obtaining autopsy, obtaining permission for autopsy, and performing autopsy for such reasons is the legal responsibility of the hospital, at the discretion of the estate of the decedent.

However, it is the responsibility of the autopsy pathologist, while performing hospital or private autopsy, upon discovery of injury or other condition that might have resulted from any scenario listed under “Circumstances of Death which Mandate Report to the Medical Examiner/Coroner” as listed above, to cease all dissection, and immediately notify the OCME of the case finding and its possible significance.

Medical Examiner jurisdiction over an in-hospital death establishes legal primacy over autopsy permission provided, or declined, by private legal authority (legal next of kin, or

executor/administrator of the estate of the decedent). Under death circumstances that fall under Medical Examiner criteria, hospital staff should refer decedent family members' questions and concerns specific to the autopsy to the OCME.

Following OCME investigation and completion of the death certificate by the Medical Examiner or Coroner, and after the release of custody of the remains from the medical examiner to the family, private or hospital autopsy (or re-autopsy) may be performed by any appropriate clinical entity, pursuant to applicable WV Law.

4. Retention of patient hospital laboratory samples under conditions of impending death.

Hospital laboratories are directed to retain all blood and other fluid samples or surgical pathology specimens belonging to a deceased patient or a patient whose death is impending when:

Underlying circumstances responsible for hospitalization of that patient may involve any of the (death) criteria requiring OCME notifications as listed above; for anticipated submission of such samples to the OCME, to be used solely for purposes of determination of cause and manner of death, or criminal prosecution. If medical examiner jurisdiction over death is declined, patient hospital laboratory samples may be discarded pursuant to other applicable clinical guidelines or standards.

5. Retention of hospital laboratory samples of surviving patients suffering serious bodily injury.

In the case of a seriously injured patient where there is reasonable suspicion of the use of deadly force, or lethal weapons utilization; or assault by either thermal or chemical burning, or by any felonious act; where the patient's death does not appear to be imminent, the hospital is encouraged to develop protocol, in conjunction with their County Prosecutor, for timely notification, and lawful release of patient samples in custody, to the appropriate law enforcement agency, for testing purposes crucial to effective criminal investigation and prosecution.

6. Provision of patient records, imaging, testing and laboratory results.

In cases involving death that meet the criteria explained herein, the OCME may issue an administrative subpoena requesting patient records, imaging, testing and laboratory results. The administrative subpoena is issued in accordance with West Virginia Code §61-12 et al to provide the assigned forensic pathologist with additional information required to complete the medicolegal death investigation and determine cause and manner of death. The information received as a result of such subpoena is utilized solely for the purpose of helping to determine cause and manner of death. Any information received as a result of an OCME administrative subpoena is prohibited, by law, from being further released to any other individual or entity and is not subject to release under any subpoena delivered upon the OCME. Hospitals and medical providers are required to provide response to the OCME administrative subpoena no later than the next business day following receipt. The administrative subpoena contains instructions for proper submission of the response.

The Office of the Chief Medical Examiner invites any and all opportunities for consultation, clarification, and any other inquiries from medical professionals and hospital administrators across West Virginia. The OCME desires continuation of the strong partnership between all West Virginia Hospitals, our investigators, our pathologists and our administration. Thank you for your service to the citizens of West Virginia and for your support of the OCME mission.

If there are any questions regarding the contents of this memorandum, please contact:

The OCME Forensic Investigations Unit: (304) 558-6921 (24/7 coverage)
OCME Administrative Offices: (304) 558-6920



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