



## FISCAL NOTE FOR PROPOSED RULES

Rule Title: 64CSR84 - Medical Examiner Rule for Postmortem Inquires

Type of Rule:  X  Legislative   Interpretive   Procedural

Agency: Health and Human Resources

Address: One Davis Square  
Suite 100, East  
Charleston, WV 25301

Phone Number: (304) 558-2971 Email: ann.a.goldberg@wv.gov

### Fiscal Note Summary

Summarize in a clear and concise manner what effect this measure will have on costs and revenues of state government.

The rule will have only a de minimus effect on the costs or revenues for state government. There are fees authorized by this rule that have already been in place and a few small dollar value new fees, so it is difficult to calculate what, if any, additional revenue will be gained. There are also added duties and requirements placed on the Office of the Chief Medical Examiner that may require additional staff and professional time to complete, but those costs are also unknown and hard to measure. It should be a wash as to the net effect of this rule on state costs and revenue.

### Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

Effect of Proposal	Fiscal Year		
	2013 Increase/Decrease (use "-" )	2014 Increase/Decrease (use "-" )	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>		0	0
Personal Services			
Current Expenses			
Repairs and Alterations			
Buildings			
Equipment			
Land			
Other Assets			
<b>2. Estimated Total Revenues</b>		0	0

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

[Empty box for explanation of estimates]

**Memorandum**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

[Empty box for memorandum]

Date

7/23/2013

64CSR84 OCME FN 8/10/2013

Agency

Department of Health and Human Resources

Authorized Representative

*[Handwritten Signature]*

Cabinet Secretary

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 23, 2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) DHHR- Bureau for Public Health  
350 Capitol Street, Room 702  
Charleston, WV 25301  
(304)558-2971

LEGISLATIVE RULE TITLE: Medical Examiner Rule for Postmortem 64CSR84

1. Authorizing statute(s) citation WV Code §§ 61-12-3 (F), 16-1-4 and -11

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 19 - July 19, 2013

b. What other notice, including advertising, did you give of the hearing?  
n/a

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 19, 2013

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached \_\_\_\_\_ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

n/a

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Ann Goldberg, Director  
Public Health Regulations  
Bureau for Public Health  
350 Capitol Street, Room 702  
Charleston, WV 25301  
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- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Allen R. Mock, M.D. Chief  
Office of Chief Medical Examiner  
619 Virginia Street, West  
Charleston, WV 25302  
(304) 558-6920  
allen.r.mock@wv.gov

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

n/a

b. Date of hearing or comment period:

June 19 - July 19, 2013

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

n/a

d. Attach findings and determinations and reasons:

Attached n/a

Legislative Rule, 64CSR84  
MEDICAL EXAMINERS RULE FOR POSTMORTEM INQUIRIES  
Office of Chief Medical Examiner  
Bureau for Public Health  
Department of Health and Human Resources

### **BRIEF SUMMARY**

The rule is being amended and substantially rewritten to update and clarify numerous provisions that have been out of date and unenforceable. The work of the Office of the Chief Medical Examiner (OCME) has changed in the decade since the last revision of this rule.

This amended rule sets forth guidelines in the practice of County Medical Examiners and Coroners. It outlines consequences for failure to comply with OCME requirements in the field of medico-legal death investigation and addresses the security of medical examiner records, archiving requirements, release of information and specimens.

### **STATEMENT OF CIRCUMSTANCES**

The rule amendments are needed to reflect changes and improvements in OCME operations and practices that have taken place over the last 9 years, as well as to clarify some existing operations and practices. The rule is presented as a "repeal and replace" due to the substantial rewriting that has been done and to make it easier to read and understand.

## TITLE 64

FILED  
MAY 15 2003

LEGISLATIVE RULE  
BUREAU FOR PUBLIC HEALTH  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

MAY 15 2003

SERIES 84

MAY 15 2003

**MEDICAL EXAMINER RULE FOR POSTMORTEM INQUIRIES**

**§64-84-1. General.**

1.1. Scope. -- This rule regulates the conduct of medico-legal investigation into the cause of death; sets procedures for postmortem examination of deceased persons and the examination of substances collected as part of that process, to determine the cause and manner of death; sets forth requirements for the training and certification of county medical examiners and coroners; and allows fees to be assessed for services provided to certain private parties by the medical examiner's office. This rule should be read in conjunction with WV Code §§61-12-3 et seq., 16-19-1 et seq. and 18B-4-8. The WV Code is available in public libraries and on the Legislature's web page, <http://www.legis.state.wv.us/>.

1.2. Authority. -- WV Code §§16-1-4, 16-1-11 and 61-12-3(f).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal and Replacement of Former Rule. -- This legislative rule repeals and replaces the Bureau for Public Health's rule, Medical Examiner Rule for Postmortem Inquires, 64CSR84, filed April 4, 2003 and effective May 15, 2003.

**§64-84-2. Application and Enforcement.**

2.1. Application. -- This rule applies to the state medical examiner's office, county medical examiners and coroners.

**§64-84-3. Definitions.**

3.1. Assistant County Medical Examiner - A physician, registered nurse, paramedic, emergency medical technician or physician's assistant, who is medically trained and currently certified or licensed, unrestricted, in the State of West Virginia, who is in good standing, and who is appointed by the Chief Medical Examiner to provide medico-legal death investigation services under direction and supervision of the Chief Medical Examiner or designee, in accordance with standards of practice as set forth in this Rule and the West Virginia Handbook for Performance of Death Investigation and Certification.

3.2. American Board of Medico-legal Death Investigators (ABMDI) – A professional association which provides training and certification in the field of medico-legal death investigation, provides accreditation to other medico-legal death investigation training programs that meet requirements set by the ABMDI, and establishes professional standards of practice for that discipline.

3.3. Certification of Death - The scientific, investigative and legal processes used by the medical examiner or coroner to determine the cause and manner of certain deaths pursuant to the requirements of WV Code §§61-12-3 et seq. and 16-5-1, et seq., in particular but not limited to WV Code §§16-5-19, 16-5-20 and 16-5-21 related to Vital Records.

3.4. Clinical Specialist - A practitioner of a medical discipline recognized by the American Boards of

## Medicine Specialties.

3.5. Commissioner - The Commissioner of the West Virginia Bureau for Public Health.

3.6. County Coroner - A person who is in good standing, who is trained and certified in the practice of medico-legal death investigation in a manner pursuant to this rule, who is appointed by a county commission and works under the direction and supervision of the Chief Medical Examiner or designee.

3.7. County Medical Examiner - A physician, registered nurse, paramedic, emergency medical technician or physician's assistant, who is medically trained and currently certified or licensed, unrestricted, in the State of West Virginia, who is in good standing, who is trained and certified in the practice of medico-legal death investigation in a manner pursuant to this Rule, and who is appointed by the Chief Medical Examiner and works under the direction and supervision of the Chief Medical Examiner, or designee.

3.8. Deputy Chief Medical Examiner - A qualified forensic pathologist appointed by the Chief Medical Examiner as his/her designee to perform all duties specific to, and required for certification of death for the State of West Virginia as contemplated by WV Code §61-12-3, et seq. This person may be referred to simply as the Chief Medical Examiner's designee or as a DCME.

3.9. Forensic Autopsy - A postmortem forensic examination of a body that encompasses surgical exploration and the study and analysis of the body tissues and fluids, according to WV Code and the rules of the Office of the Chief Medical Examiner.

3.10. Forensic Specialist - A practitioner of any forensic science or discipline, employing practices and methodologies recognized by the American Academy of Forensic Sciences.

3.11. Medico-legal Death Investigation - The discipline of obtaining information by investigation into the deaths of persons pursuant to WV Code §61-12-8.

3.12. Forensic Postmortem Examination - Any examination of the human body performed after death that is authorized by WV Code §61-12-10.

3.13. OCME - Office of the Chief Medical Examiner.

3.14. Prosecutor - Chief or Deputy Chief Medical Examiner who conducts the autopsy.

3.15. Qualified Forensic Pathologist - A physician who holds board certification or board eligibility in forensic pathology or has completed an American board of pathology fellowship in forensic pathology.

3.16. Secretary - The Secretary of the Department of Health and Human Resources.

## **§64-84-4. Training, Certification and Standards of Practice of County Medical Examiners and Coroners.**

4.1. A County Medical Examiner:

4.1.a. Shall be trained and certified in the practice of medico-legal death investigation prior to his or her appointment;

4.1.a.1. In order to qualify a person shall complete and pass a course of medico-legal death investigation training accredited by the American Board of Medico-legal Death Investigators which shall include an examination of competency;

4.1.a.2. Any person who holds prior county medical examiner appointment which has expired

may recertify by successful completion of the examination for certification within 1 year of the expiration;

4.1.a.3. A person who fails the examination for certification shall complete a second accredited training program that satisfies the requirements of this subdivision before taking the examination again;

4.1.b. Shall be certified in the practice of medico-legal death investigation if he or she passes an examination for certification in the practice of medico-legal death investigation administered by the OCME, or as part of any medico-legal training program accredited by the American Board of Medico-legal Death Investigators;

4.1.c. Shall meet the standards of practice as stipulated in the current edition of the West Virginia Handbook for Performance of Death Investigation and Certification. <http://www.wvdhhr.org/ocme/Handbook2007.pdf>

4.1.c.1. Noncompliance with the standards of practice as outlined in the West Virginia Handbook for the Performance of Death Investigation and Certification may result in corrective notice, up to and including the suspension of appointment and discontinuation of service as a County Medical Examiner in the following manner:

4.1.c.1.A. The first identified occurrence of noncompliance with the standards of practice as outlined in the current edition of the West Virginia Handbook for the Performance of Death Investigation and Certification shall result in a written corrective notice. Evidence of continued noncompliance with the same and/or similar performance-related issues shall result in a second written corrective notice;

4.1.c.1.B. If a person receives two written corrective notices within one year, that person shall be subject to suspension of appointment and discontinuation of services as a County Medical Examiner, for a period of time to be determined by the Chief Medical Examiner.

4.1.c.2. A County Medical Examiner may appeal the suspension of appointment and discontinuation of services to the Commissioner or his/her designee in writing within 5 days of the suspension.

#### 4.2. A County Coroner:

4.2.a. Shall be trained and certified in the practice of medico-legal death investigation prior to his or her appointment by the county commission.

4.2.b. Shall meet the same requirements as a County Medical Examiner for training, certification and standards of practice, as described in subsection 4.1. of this section, and subject to discontinuation of service under certain circumstances at the discretion of the Chief Medical Examiner.

4.3. The OCME shall offer a training course that meets the requirements in this rule at least once each year and shall assess a reasonable fee, established by the Chief Medical Examiner, to cover the cost of the training.

4.4. Certification in the practice of medico-legal death investigation provided by the State of West Virginia to County Medical Examiner, Assistant County Medical Examiner and County Coroner expires after three (3) years and requires recertification as described in paragraph 4.1.a.2. of this section.

4.5 The OCME shall establish a call out schedule for County Medical Examiners, Assistant County Medical Examiners and County Coroners based on certification, appointment, and demonstration of competency by continued successful adherence to performance guidelines established in the current West

Virginia Handbook for the Performance for Death Investigation and Certification. This call out schedule shall be distributed to the county dispatch centers.

**§64-84-5. Authority of the County Medical Examiner, Assistant County Medical Examiner, and County Coroner When Investigating a Death.**

5.1. The County Medical Examiner, Assistant County Medical Examiner and County Coroner shall perform all duties related to medico-legal investigations of death, as well as the determination of the cause and manner of death, and the formulation of related conclusions as a result, under the direction of the Chief Medical Examiner, or his or her designee.

5.2. When the County Medical Examiner, Assistant County Medical Examiner or County Coroner investigates a death where the circumstances fall under criminal investigation:

5.2.a. The County Medical Examiner, Assistant County Medical Examiner or County Coroner shall perform all duties related to medico-legal death investigation under the direction of the Chief Medical Examiner, or his or her designee, and also subject to the direction of the county prosecutor and the principal investigative agency of the jurisdiction;

5.2.b. When entering a scene of death, the County Medical Examiner, Assistant County Medical Examiner or County Coroner shall also be under the direction of any agency responsible for the death scene safety or security including, but not limited to, a police agency or the State Fire Marshal, as described by WV Code; and

5.2.c. If any directions given to the County Medical Examiner, Assistant County Medical Examiner or County Coroner under subdivisions 5.2.a. or 5.2.b. of this subsection conflict with the provision in subsection 5.1. of this section, the County Medical Examiner, Assistant County Medical Examiner or County Coroner shall immediately notify the Chief Medical Examiner, or his or her designee.

5.3. When the County Medical Examiner, Assistant County Medical Examiner or County Coroner, in the performance of other medical duties attends a patient to provide treatment or resuscitation and the person dies, the County Medical Examiner, Assistant County Medical Examiner or County Coroner, upon pronouncement of death, may not perform his or her duties as a County medical Examiner, Assistant County Medical Examiner or County Coroner to establish cause and manner of death or formulate related conclusions, opinions, or testimony in judicial proceedings, except by specific exception at the discretion of the Chief Medical Examiner.

**§64-84-6. Death Circumstances That Require Medico-legal Death Investigation.**

6.1. The County Medical Examiner, Assistant County Medical Examiner and County Coroner, under authority and supervision of the Office of the Chief Medical Examiner, shall investigate the circumstances of a death when:

6.1.a. A person dies without benefit of having a pre-existing patient relationship to a treating physician;

6.1.b. A person who is in apparent good health and dies suddenly when there is no history or other reliable evidence of serious natural disease, or other circumstance, so as to be able to reasonably assume death due to natural causes;

6.1.c. Any death of an inmate in a public institution such as a jail dies while in the institution, or while in police custody, during police intervention, during court-ordered hospitalization, or when the death is believed to be due to, or in association with failure to receive code mandated public services provided by county, state or federal social service agencies;

6.1.d. A person dies due to, or in association with, environmental conditions suspected to pose a hazard to public health or safety;

6.1.e. A person dies due to, or in association with, violence, suspected violence, or by any suspected external cause, regardless of the interval between the injury and death; or

6.1.f. A person dies under any suspicious conditions, or in any unusual or unnatural manner.

**§64-84-7. Responsibilities of the County Medical Examiner, Assistant County Medical Examiner and County Coroner.**

7.1. The County Medical Examiner, Assistant County Medical Examiner or County Coroner shall be available at all scheduled times to perform the duties and responsibilities outlined in this rule and in accordance with the standards of practice as set forth in the current edition of the West Virginia Handbook for the Performance of Death Investigation and Certification, pursuant to WV Code §§61-12-7(b) and 61-12-14, except where he or she notifies the OCME otherwise in a timely fashion.

7.2. When a County Medical Examiner, Assistant County Medical Examiner or County Coroner is notified that a death has occurred, he or she:

7.2.a. May decline to take charge of the body, after initial investigation of the circumstances of death;

7.2.b. May take charge of the body and all personal effects and objects that lie close to the body and may be useful in determining the cause or manner of death; and

7.2.c. May go to where the body lies at the time of notification or may authorize removal of the body pursuant to the guidelines established in the current edition of the West Virginia Handbook for the Performance of Death Investigation and Certification to an appropriate place for pronouncement, viewing, and certification of death.

7.3. When a County Medical Examiner, Assistant County Medical Examiner or County Coroner takes charge of a body, he or she shall:

7.3.a. Cause to make secure all personal effects or items associated with the body of the deceased; and

7.3.b. Assume full responsibility for the personal effects and their condition until transfer of the items to: an appropriate investigative agency, an authorized funeral agency or to another entity as directed by the OCME; and in each instance he or she shall list all transferred items on prescribed OCME forms.

**§64-84-8. Pronouncement, Investigation and Certification of Deaths.**

8.1. Pronouncement.

8.1.a. A County Medical Examiner, Assistant County Medical Examiner or County Coroner shall pronounce death when at least one (1) of the following conditions exists:

8.1.a.1. There is a cessation of resuscitative attempts by medical personnel;

8.1.a.2. Medical personnel elect not to initiate resuscitative efforts;

8.1.a.3. Body changes indicating a prolonged postmortem interval; or

8.1.a.4. The injuries present are incompatible with life.

8.1.b. If the County Medical Examiner, Assistant County Medical Examiner or County Coroner is unable to pronounce death due to the absence of conditions set forth in subdivision 8.1.a. of this subsection, he or she shall immediately notify medical rescue personnel.

8.1.c. The County Medical Examiner, Assistant County Medical Examiner or County Coroner shall record the date and time of the death pronouncement on a form prescribed by the OCME.

## 8.2. Investigation.

8.2.a. Upon notification of a death under circumstances as listed in section 6 of this rule, when a body has not been removed from the place of death, the County Medical Examiner, Assistant County Medical Examiner, or County Coroner shall initiate travel to the place of death within 1 (one) hour of notification of the death, when:

8.2.a.1. Natural death cannot be assumed on the basis of initial death investigation findings, as provided by police or rescue personnel at the scene, or by any credible report;

8.2.a.2. The County Medical Examiner, Assistant County Medical Examiner or County Coroner considers his or her travel to the death scene for purpose of performing medico-legal death investigation to be in the public interest; or

8.2.a.3. When requested by the OCME, pursuant to section 11 of this rule.

8.2.b. When there is a criminal investigation of the death, the County Medical Examiner, Assistant County Medical Examiner, or County Coroner shall obtain authorization from the investigating agency holding jurisdiction, or county prosecutor, before entering the scene of death or before performing any examination of the body while at the scene of death.

8.2.c. When entering a scene of death for the purpose of performing medico-legal death investigation, examining a deceased person at the scene of death, the County Medical Examiner, Assistant County Medical Examiner or County Coroner shall:

8.2.c.1. Be accompanied by police or any person representing the investigating agency while at the scene of death, at all times;

8.2.c.2. Examine the body at the scene of death to pronounce death, identify the deceased, determine postmortem changes, identify and evaluate other significant death-related circumstances useful to determination of cause, manner, time and location of a death, request photographic documentation of the scene by law enforcement as deemed appropriate, and document the findings; and

8.2.c.3. Record all details of the examination including the time and date of the examination, the identity and official capacity of the accompanying person present during the examination, and all findings from the examination, on the appropriate form provided by the OCME.

8.2.d. When the County Medical Examiner, Assistant County Medical Examiner or County Coroner performs a complete external examination of the body, he or she shall:

8.2.d.1. Conduct an external examination of the body only in a location appropriate to the required confidentiality and dignity to be accorded the decedent, such as a local hospital, funeral home or other similar facility;

8.2.d.2. Be accompanied by a witness authorized to otherwise be present at the facility, the as a funeral director, a person designated by the funeral director, or hospital staff personnel, at all times

when performing the examination; and

8.2.d.3. Record all details of the examination including the date and time of the examination, the identity and official capacity of the witness present during the examination, and all findings from the examination, on the appropriate form provided by the OCME;

8.2.e. When investigating a death under the Chief Medical Examiner's jurisdiction, the County Medical Examiner, Assistant County Medical Examiner or County Coroner shall establish proof of identity of the deceased person.

8.2.f. The County Medical Examiner, Assistant County Medical Examiner or County Coroner may identify the deceased by:

8.2.f.1. A visual examination of the body by a family member or other person at the scene of death who knew the deceased, provided that facial features are sufficiently preserved to reflect the appearance of the deceased in life;

8.2.f.2. By verbal confirmation of visual identification by a family member or other person at the scene of death who knew the deceased, provided that the decedent's facial features or other unique identifying characteristics, such as tattoos, piercings, etc., are sufficiently preserved;

8.2.f.3. Comparing the body with a photographic identification such as a driver's license, provided that facial features are sufficiently preserved to reflect the appearance of the deceased in life. When driver's license or other photo identification card has been used to verify identification, it or a duplicate of it shall be retained in the permanent case file.

8.2.g. If a County Medical Examiner, Assistant County Medical Examiner or County Coroner cannot identify the deceased by any means as listed in subdivision 8.2.f. of this subsection he or she shall immediately notify the OCME that the decedent is currently unidentifiable.

8.2.h. The Chief Medical Examiner or his or her designee holding appointment as Deputy Chief Medical Examiner, in order to identify a decedent, may utilize:

8.2.h.1. Additional visual identification by persons acquainted with the deceased;

8.2.h.2. Dental x-rays or charts;

8.2.h.3. Comparison of postmortem x-rays with ante-mortem radiology imaging;

8.2.h.4. Tattoos and scars;

8.2.h.5. Congenital or acquired malformations or anthropomorphic features;

8.2.h.6. Features documented by medical records;

8.2.h.7. Biologic methods of identification or fingerprints;

8.2.h.8. Photography;

8.2.h.9. Personal effects; and

8.2.h.10. Circumstances of inclusion or exclusion.

8.2.i. The OCME and the County Medical Examiner, Assistant County Medical examiner or County Coroner may obtain and review medical records of a person suspected to be deceased for the

purposes of identification of a body; or when review of medical records of a deceased person might help determine the cause or manner of death, or answer any material question during an investigation of a death, the County Medical Examiner, Assistant County Medical Examiner or County Coroner shall obtain the medical records under the authority of the Chief Medical Examiner and shall review them for accurate certification of death.

8.2.i.1. Original medical records may not be incorporated into the medical examiner's file.

8.2.i.2. Copies of these records may become part of the medical examiner's file at the discretion of the prosecutor, and as part of the file, may not be released upon any request or subpoena and shall be maintained in a manner identifying them as non-disclosable except as permitted by WV Code §61-12-3, et seq.

8.2.i.3. Copies of medical records that are obtained under this rule, when not maintained in the final medical examiner file, at the discretion of the OCME prosecutor, shall be returned to the original institution or destroyed at the time of case closure.

8.2.j. The OCME shall radiologically or photographically document dentition or other potentially distinguishing morphologic characteristics, obtain copies of potentially useful ante-mortem imaging and medical records when available, and archive the information at the OCME. If identification of the body is established through these records, they shall become part of the OCME case file.

8.2.k. When human remains cannot be tentatively or positively identified, the OCME shall:

8.2.k.1. Mark them "Unidentified" and, if possible, designate them by any of the following categories that apply: White, Black, Asian, Native American, Adult, Child, Infant, Male, or Female;

8.2.k.2. Ensure the timely submission of required and available characteristics of the unidentified body to the appropriate registrar established by National Crime Information Center and other nationally recognized unidentified person's database(s);

8.2.k.3. Take fingerprints, when possible, and keep them on file;

8.2.k.4. Authorize final disposition of unidentified remains to be embalmed, frozen, interred or otherwise disposed, after completion of the final death certificate, in a manner set forth in WV Code; and

8.2.k.5. Sign a death certificate bearing the designation "unidentified person" indicating that all applicable methods for establishing identity were attempted by the OCME, were unsuccessful, and without expectation of being able to establish identity of the decedent by any known means in the foreseeable future.

### 8.3. Certification of Death.

8.3.a. After the County Medical Examiner, Assistant County Medical Examiner or County Coroner has identified the deceased person, he or she shall enter the deceased person's name in the left upper corner of the preliminary death certificate, as indicated.

8.3.b. After a County Medical Examiner, Assistant County Medical Examiner or County Coroner has identified a deceased person by visual examination at the scene of death, he or she shall document the identification on a form provided by the OCME, affix a toe tag provided by the OCME or other identification tag securely to the body or an article of clothing worn by the decedent, and if the identification is from a photographic document, submit the photographic document with the investigative report.

8.3.c. If a County Medical Examiner, Assistant County Medical Examiner or County Coroner is unavailable to perform medico-legal death investigation, the OCME shall direct investigating law enforcement or rescue or body transport personnel at the death scene to complete and securely affix an identification tag attesting to the identity of the body, in a manner pursuant to this rule.

**§64-84-9. Obtaining Blood, Body Fluids, and Tissue Material for Examination.**

9.1. A County Medical Examiner, Assistant County Medical Examiner or County Coroner in determining cause and manner of death, when responsible for examination of a body and completion of the death certificate, he or she shall obtain peripheral blood by percutaneous route and urine and vitreous fluid samples, if available, from the deceased person.

9.2. The County Medical Examiner, Assistant County Medical Examiner or County Coroner shall collect other fluid and tissue from the body of the decedent upon specific instruction from the Chief Medical Examiner or his or her designee, a Deputy Chief Medical Examiner:

9.2.a. Shall obtain body fluid samples obtained during hospitalization, and submit them for toxicologic analysis;

9.2.b. Shall document collection of body fluid samples obtained during hospitalization on the appropriate OCME form, and shall ensure that the samples are delivered to the OCME in a timely and secure fashion;

9.2.c. Shall obtain tissue specimens for examination, if requested by the OCME;

9.2.d. Shall use sample containers provided by the OCME;

9.2.e. Shall seal the sample containers securely;

9.2.f. Shall complete and attach the appropriate forms provided by the OCME;

9.2.g. Shall deliver the sample containers and the forms to the OCME in person, by mail, or by a bonded carrier or by any courier authorized by the OCME, within 24 hours of specimen collection;

9.2.h. Shall handle all biologic materials or any item possibly soiled with biologic materials in a manner consistent with strict infectious disease precautions;

9.2.i. Shall not withdraw blood or other body tissues or fluids when it is determined that transport of the body to the OCME for further postmortem examination is necessary; and

9.2.j. Shall notify the OCME immediately if unable to withdraw sufficient volume of peripheral blood sample for purposes of toxicology testing as outlined in the current edition of the West Virginia Handbook for Performance of Death Investigation and Certification.

**§64-84-10. Transport of the Body.**

10.1. The County Medical Examiner, Assistant County Medical Examiner or County Coroner shall obtain telephone authorization from the Chief Medical Examiner or his or her designee, a Deputy Chief Medical Examiner, to arrange for removal of the body to an appropriate place for complete external examination and subsequent certification of death.

10.2. The County Medical Examiner, Assistant County Medical Examiner or County Coroner shall arrange for transport of the deceased from the place of death to a funeral home or local hospital morgue under the provisions of this section, for the purpose of performing further examination of the body, according to the following requirements:

10.2.a. The body shall be transported in a timely manner and under appropriate and reasonable conditions;

10.2.b. The body shall be enclosed in a clean, moisture-impervious body bag;

10.2.c. The identity of the body shall be documented by form provided by the OCME affixed securely to the body; and the corresponding case number labeled securely on the body bag;

10.2.d. Transportation of remains shall be by an approved transportation company as outlined in subsection 10.4. of this section, using a funeral or ambulance vehicle, or other conveyance as authorized by the OCME; and

10.2.e. The OCME investigation report and any other records obtained by the County Medical Examiner, Assistant County Medical Examiner or County Coroner detailing the findings from the examination at the scene of death shall accompany the body or shall be delivered to the OCME in a secure and timely fashion so as to be available to the prosecutor prior to performing the autopsy.

10.3 In the event that a security tab must be removed from a sealed body pouch, the County Medical Examiner, Assistant County Medical Examiner, County Coroner, or any person requesting to remove the security tab shall first contact the OCME for approval to remove the security tab. The appropriate form provided by the OCME shall be used by the individual removing the security tab to document the removal of the original security tab and replacement with a second security tab.

10.4. Transport companies used for the purpose of transporting bodies for the OCME shall provide their staff with OSHA and Blood-borne pathogen training by a licensed funeral director or the OCME, and provide documentation of the training upon OCME request. Any drivers used by the transport company shall have a valid WV drivers' license with no points on record and no criminal record. The transport company shall be insured and bonded for at least two million dollars (\$2,000,000.00) through a Professional Mortuary Insurance policy.

10.4.a Transport companies used for the purpose of transporting bodies for the OCME shall:

10.4.a.1. Provide appropriate vehicles for the purposes of transporting human remains;

10.4.a.2. Provide vehicles of adequate size and spacing;

10.4.a.3. Not transport such number of cases which exceed vehicle design capacity;

10.4.a.4. Provide vehicles designed so that human remains are not visible during transport by tinting, curtains, shades or other means;

10.4.a.5. Provide vehicles that are kept clean and maintained in good working condition;

10.4.a.6. Provide vehicles that have effective interior cooling capacity in all climate conditions;

10.4.a.7. Maintain a valid and current WV business license; and

10.4.a.8. Remain in good standing with Workers' Unemployment Compensation and all state and local taxes.

#### **§64-84-11. Circumstances Requiring Immediate Consultation with the OCME.**

11.1. Immediately following initial notification of a death, the County Medical Examiner, Assistant

County Medical Examiner or County Coroner shall notify the OCME by telephone prior to performing medico-legal death investigation. When in receipt of a request from any investigating agency or other authority that the County Medical Examiner, Assistant County Medical Examiner or County Coroner performed in any way that may constitute a violation of WV Code §61-12-3, et seq., or any provisions of this rule; investigation, as well as under the following determined death circumstances:

- 11.1.a. Homicides or deaths reported as suspicious for homicide;
- 11.1.b. Deaths of children younger than eighteen (18) years old, except those due to a car accident or when expected, due to known disease;
- 11.1.c. Multiple fatality events that cause three (3) or more deaths;
- 11.1.d. Deaths occurring during incarceration, or associated with police action or intervention;
- 11.1.e. Fire-related deaths;
- 11.1.f. Deaths associated with a prolonged postmortem interval involving decomposed or skeletonized bodies;
- 11.1.g. Where remains are not able to be identified;
- 11.1.h. Cases that are likely to be declined medico-legal jurisdiction; or
- 11.1.i. When authorization for cremation requested of a County Medical Examiner, Assistant County Medical Examiner or County Coroner, as described further in this rule, shall be refused, pending further investigation.

11.2. When a physician, dentist, podiatrist or nurse practitioner who also serves in the capacity of County Medical Examiner, Assistant County Medical Examiner or County Coroner recognizes that his or her patient's death falls under medical examiner jurisdiction, he or she may not perform medico-legal investigation into the death, but shall immediately notify the OCME of the death.

11.3. When a County Medical Examiner, Assistant County Medical Examiner or County Coroner has in his or her capacity as a physician, paramedic, or EMT attempted resuscitation of a deceased person whose death requires medico-legal investigation, he or she may not perform medico-legal investigation into the death, but shall immediately notify the OCME of the death.

**§64-84-12. Documentation of Findings Obtained by Medico-legal Death Investigation by the County Medical Examiner, Assistant County Medical Examiner or County Coroner.**

12.1. The County Medical Examiner, Assistant County Medical Examiner or County Coroner who investigates the circumstances of a death shall record findings by using OCME reporting forms.

12.2. In cases of declined medical examiner jurisdiction, the County Medical Examiner, Assistant County Medical Examiner or County Coroner shall record findings of initial investigation and the fact of declined jurisdiction using OCME forms and submit the original forms to the OCME within seven (7) business days of death notification.

12.3. The County Medical Examiner, Assistant County Medical Examiner or County Coroner shall complete all pertinent OCME investigative forms as fully as possible, using currently available information.

12.4. If a death requires examination at the State Medical Examiner's Office, the County Medical Examiner, Assistant County Medical Examiner or County Coroner shall submit a copy of the appropriate

investigative reporting form with the case, or deliver it to the OCME in a secure and timely fashion, so as to be available prior to the autopsy. If a facsimile of the investigation report is initially submitted to the OCME, the County Medical Examiner, Assistant County Medical Examiner or County Coroner shall ensure that the original copy of the investigation report is provided to the OCME within seven (7) business days of the death notification; and

12.5. When the death is certified by the County Medical Examiner, Assistant County Medical Examiner or County Coroner, he or she shall submit the original copy of the completed investigative report, and the completed WV death certificate, in accordance with WV Code §16-5-1, et seq. or a photocopy of the completed death certificate to the OCME, within seven (7) business days of the death. Upon receipt at the OCME of the completed original OCME investigation form and death certificate, and, if applicable, the corresponding toxicology fluid samples, the County Medical Examiner, Assistant County Medical Examiner or County Coroner shall be paid a reasonable fee, as established by the Chief Medical Examiner.

12.6. In all cases, the County Medical Examiner, Assistant County Medical Examiner or County Coroner shall retain a copy of the OCME investigation report in files kept for that purpose. Upon receipt of payment, these records shall be destroyed as indicated in subdivision 12.6.a. of this subsection.

12.6.a. All obsolete records or third party records obtained for the purposes of the medico-legal death investigation shall be destroyed.

12.6.b. All OCME records in custody of the County Medical Examiner, Assistant County Medical Examiner or County Coroner shall be maintained in accordance with confidentiality, security and other conditions and restrictions regarding custody and release in this rule and shall be promptly conveyed to OCME upon their request.

12.6.c. At the expiration of the term of service, termination or resignation of any County Medical Examiner, Assistant County Medical Examiner or County Coroner all records shall be returned to OCME.

12.7. All work product created under this rule shall become part of the OCME case file.

**§64-84-13. Authorization for Cremation by County Medical Examiner, Assistant County Medical Examiner or County Coroner.**

13.1. All requests to cremate a deceased body, where the death was pronounced in West Virginia, must be authorized by the OCME, or by the County Medical Examiner, Assistant County Medical Examiner or County Coroner. Before authorizing the cremation of human remains, County Medical Examiner, Assistant County Medical Examiner or County Coroner shall:

13.1.a. Review the completed death certificate or a photocopy or facsimile copy of it provided by the funeral director or crematorium;

13.1.b. Ascertain that West Virginia death certificate items as set forth in this subdivision are fully and correctly completed as follows:

13.1.b.1. The County Medical Examiner, Assistant County Medical Examiner or County Coroner shall ensure that the name of the deceased is entered correctly;

13.1.b.2. The "pronouncing physician" signature is present. This signature is required if the "pronouncing physician" is different from the "certifying physician";

13.1.b.3. Items referring to the "date of death", "time of death", "date pronounced", "cause" and "manner of death" sections are fully completed, and a specific cause of death and manner of death are listed;

13.1.b.4. Appropriate referral of the death to the "medical examiner/coroner" has been made in cases whose death circumstances fall under Section 6 of this rule, by notation in the "was case referred to the medical examiner/coroner" location on the death certificate.

13.1.b.5. The portions of the death certificate identifying the title and name of the "certifier", his or her signature and the "date signed" are completely and correctly filled out.

13.2. If any death certificate item listed in subdivision 13.1.b of this section is incomplete, or the cause of death statement is not valid or is incomplete, or the certification is not lawful, the County Medical Examiner, Assistant County Medical Examiner, County Coroner shall refuse authorization for cremation; and any County Medical Examiner, Assistant County Medical Examiner, or County Coroner refusing cremation authorization under this rule shall immediately refer the case to the OCME.

13.3. The County Medical Examiner, Assistant County Medical Examiner, County Coroner or OCME may examine the remains presented for cremation directly, in a timely fashion, to ascertain that the appearance of the body is consistent with the cause of death as stated by the death certificate or to confirm the identity of the deceased.

13.4. When a County Medical Examiner, Assistant County Medical Examiner or County Coroner, or the OCME has refused authorization to cremate under this Section, it is unlawful for any person to solicit authorization for the cremation from any other County Medical Examiner or Coroner.

13.5. This Section applies only to remains of persons whose deaths have been pronounced within the State of West Virginia, regardless of whether or not there is prior authorization for cremation by any other legal instrument.

13.6. The County Medical Examiner, Assistant County Medical Examiner, County Coroner or OCME shall receive a reasonable fee, to be established by the Chief Medical Examiner. This fee shall be assessed to the requesting funeral agency or crematory for investigation into the circumstances of any death for the purposes of authorization for cremation, as described in this rule.

13.7. The County Medical Examiner, Assistant County Medical Examiner or County Coroner shall document his or her review of the death certificate and certify that there are no defects or omissions to the death certificate that would require further investigation into the circumstances of death, or further examination of the body, by signed authorization of a form provided by the OCME for this purpose. The original OCME form shall be surrendered to the requesting funeral director or crematory; and the County Medical Examiner, Assistant County Medical Examiner or County Coroner shall keep one copy for his or her records pursuant to section 12.6 of this rule and submit a second copy to the OCME.

13.8. The Chief Medical Examiner or Deputy Chief Medical Examiner may authorize cremation, on behalf of the OCME. Upon authorization, the requesting funeral director or crematory shall pay the OCME a fee as established for the County Medical Examiner, Assistant County Medical Examiner or County Coroner, under subsection 13.6. of this section.

#### **§64-84-14. Death Certificate.**

14.1. The County Medical Examiner, Assistant County Medical Examiner or County Coroner, under the direction and supervision of the Chief Medical Examiner, or his or her designee, shall establish the cause and manner of death and complete the death certificate regarding those and other associated findings pursuant to provisions of this rule according to the following:

14.1.a. Only the Chief Medical Examiner or his or her designee holding appointment as Deputy Chief Medical Examiner may rule a cause or manner of death as undetermined;

14.1.b. Regarding a death investigated by the OCME: only the Chief Medical Examiner or his or her designee holding appointment as Deputy Chief Medical Examiner may list as "pending" the cause or manner of death for an otherwise completed death certificate, when knowledge of the circumstances of death necessary for accurate death certification is lacking, but reasonably anticipated, either through further testing or investigation;

14.1.c. Completion of a death certificate by listing a specific cause or manner of death, previously listed as pending, by the prosector requires concurring opinion of the Chief Medical Examiner or his or her designated reviewing DCME, by review of all case findings and circumstances, documented by submission to Vital Records of an appropriate OCME death certificate completion form bearing the signatures of both the prosector and reviewing DCME.

14.1.c.1. Upon receiving the information required for accurate death certification, the Chief Medical Examiner or his or her designee holding appointment as Deputy Chief Medical Examiner, shall complete the appropriate pending portions of a pending death certificate.

14.1.d. The Chief Medical Examiner, or his or her designee; or County Medical Examiner, Assistant County Medical Examiner, or County Coroner, shall investigate any death where the corresponding death certificate is improperly filled out, invalid or completed in any manner which is unauthorized by State or Federal law, and may amend the death certificate in conformity to State and Federal law, and this rule;

14.1.e. The Chief Medical Examiner, Deputy Chief Medical Examiner or designated forensic pathologist holding appointment as Deputy Chief Medical Examiner shall make all amendments and corrections to already signed and filed death certificates using specific OCME forms, approved by the State Registrar, provided for that purpose;

14.1.f. The Chief Medical Examiner or Deputy Chief Medical Examiner may amend any section of the death certificate that pertains to the cause, manner, date or time of death of any previously certified death, when the OCME has made an investigation into the death, as required under WV Code §61-12-8 or under this rule, when the amendment will correct an inaccuracy, except where proscribed by WV Code and this rule; and

14.1.g. No human remains which have been subject to a forensic postmortem examination pursuant to WV Code §§61-12-8 and 61-12-10 shall be considered to be released from legal control of the medical examiner without a death certificate that is signed and completed by the prosector, County Medical Examiner, Assistant County Medical Examiner or County Coroner.

14.1.h. The prosector will complete his or her portion of the death certificate and submit the document to the authorized licensed funeral director. Vital Records is the custodian of the official death certificate. All other references to the completion of the death certificate made in this Rule apply to the prosector, County Medical Examiner, Assistant County Medical Examiner or County Coroner portion of the death certificate only.

**§64-84-15. Completion of Death Certificates by the County Medical Examiner, Assistant County Medical Examiner and County Coroner.**

15.1. When the County Medical Examiner, Assistant County Medical Examiner, or County Coroner completes the death certificate, it means that an investigation into the circumstances of the death and, when applicable, performance of a complete external examination of the body have been performed, and that the County Medical Examiner, Assistant County Medical Examiner, or County Coroner:

15.1.a. Has established the identity of the deceased;

15.1.b. Has reasonably identified the place of death, and place of injury, if applicable;

15.1.c. Can reasonably attest to the cause and manner of death; and

15.1.d. Has reasonably established the time and date of death, and the underlying injury, if applicable.

**§64-84-16. Performance of the Forensic Autopsy.**

16.1. The Chief Medical Examiner or his or her designee holding appointment as Deputy Chief Medical Examiner, may allow autopsy to be performed in the case of deaths occurring under circumstances when an examination is considered necessary to:

16.1.a. Establish a cause or manner of death;

16.1.b. Establish or confirm identification of the deceased;

16.1.c. Identify, recover and preserve forensic evidence;

16.1.d. Obtain required samples for toxicologic, microscopic or other analysis, for purposes described in this section;

16.1.e. Discover or provide interpretation and correlation of facts and circumstances of the death related to public health or safety;

16.1.f. Provide a report of death investigation, postmortem examination and toxicology test findings for law enforcement;

16.1.g. Answer any other material questions that might apply to the death, that pertain to the public health or safety; or to any anticipated criminal prosecution;

16.2. A forensic autopsy shall include, except as noted in subsection 16.4. of this section:

16.2.a. Examination of the cranial cavity and contents;

16.2.b. Examination of the thoracic and abdominal cavities and their contents; and

16.2.c. Surgical exploration of other parts of the body as considered necessary by the prosector;

16.3. The autopsy shall be conducted in such a way to minimize hazards to the persons performing or attending the autopsy, including the risk of infectious disease transmission, through direct contact, percutaneous injury or aerosolization of contaminated material.

16.4. When a forensic autopsy is performed for reasons other than either: determination of cause or manner of death; or, providing findings in criminal investigations or proceedings, such examination may be limited to whatever extent described by protocol established by the Chief Medical Examiner

16.5. Any Deputy Chief Medical Examiner, or the County Medical Examiner or County Coroner of the county in which the death was pronounced, may authorize a forensic postmortem examination of the body, subject to direction of the Chief Medical Examiner.

16.6. The prosecuting attorney of any county in which the death or the event contributing to, or causing death occurred, or the judge of the circuit or any court of record having criminal jurisdiction in the county in which the death or the event contributing to or causing death occurred, may require the performance of a forensic autopsy or other forensic post mortem examination of the body by the OCME; *Provided*, That, in the case of deaths which result from a suspected criminal act occurring in WV, but

which are pronounced in another State, all costs accruing from performance of autopsy shall be borne by the requesting County authority or court.

16.7. When any person opposes an autopsy, the Chief Medical Examiner or his or her designee holding appointment as Deputy Chief Medical Examiner shall give due consideration to the objections. The final decision as to the performance or extent of a forensic postmortem examination is at the discretion of the Chief Medical Examiner, subject to WV Code §§61-12-3, et seq.

16.8. The Chief Medical Examiner or his or her designee holding appointment as Deputy Chief Medical Examiner, may employ or consult any forensic or clinical specialist, subject to the approval of the Chief Medical Examiner, in order to investigate the cause or circumstances of a death, except when the forensic or clinical specialist:

16.8.a. Has resigned previous membership in the American Academy of Forensic Sciences for a pending disciplinary matter;

16.8.b. Has applied to the American Academy of Forensic Sciences for provisional membership and has been denied; or

16.8.c. Has had a previous membership revoked by disciplinary action by the American Academy of Forensic Sciences; or

16.8.d. Has had his or her professional license restricted or revoked by any licensing Board.

16.9. Any information discovered in subdivisions 16.8.a, 16.8.b or 16.8.c of this subsection shall become part of the OCME case file, releasable under WV Code §§61-12-10-(b), 61-12-10(c), 61-12-10(d), 61-12-10(e) and 61-12-10(g).

16.10. The prosector, in the course of performing autopsies, shall complete and sign all autopsy reports pursuant to OCME policy.

#### **§64-84-17. Specimens Collected and Tested.**

17.1. The Chief Medical Examiner or his or her designee holding appointment as Deputy Chief Medical Examiner:

17.1.a. May collect any biologic materials from deceased persons and hold them for the performance of toxicologic or other analyses to determine any fact or circumstance relevant to a medico-legal death investigation, conforming to restrictions named in WV Code §61-12-10(f) and this rule;

17.1.b. Has final authority for disposition of the tissues and fluids except when the materials constitute a predominant amount of the collected deceased remains, in which case the materials shall be considered to constitute the human body, subject to release to the next of kin, administrator or executor of the Estate where one exists, or to their designee, as described further in separate provisions of this rule;

17.1.c. Shall authorize testing of blood and other appropriate specimens collected for both alcohol and drugs by drug screening, in conformity with Forensic Toxicology Laboratory Guidelines, promulgated by the American Academy of Forensic Sciences, and pursuant to WV Code §§61-12-10 and 17C-5B-1 with confirmation in all cases of positive drug screen results, at the discretion of the prosector.

17.2 Compliance with toxicologic testing to Forensic Toxicology Laboratory Guidelines, promulgated by the American Academy of Forensic Sciences, 2006, is the responsibility of the Chief Forensic Toxicologist, under direction of the Chief Medical Examiner. The Chief Forensic Toxicologist:

17.2.a. May collect and hold for study any non-biologic materials or personal items taken from a

body during a postmortem examination to answer any question of forensic significance;

17.2.a.1. The Chief Medical Examiner or his or her designee shall notify in writing the next of kin, administrator or executor of the estate of the deceased, or their designee, if items were taken, in advance of any anticipated release of custody by the OCME of personal property retained. The next of kin, administrator or executor of the estate of the deceased, or their designee, must contact the OCME in writing within thirty (30) days of receipt of notice to inform the OCME of their intent to receive the personal property, or the property may be disposed of at the discretion of the OCME;

17.2.b. Shall collect and deliver any material or personal items possessing, or thought to possess, forensic significance to the law enforcement agency of jurisdiction, recording the transfer on specific forms designated by the OCME;

17.2.c. May perform, or cause to have performed, any ancillary test or procedure including, but not limited to, X-ray or photographic imaging, or obtaining fingerprints, when the procedure or test may render findings of forensic significance;

17.2.d. May consult, query or otherwise employ any forensic specialist in order to provide ancillary testing, or other forensic expertise considered necessary for determination, interpretation or correlation of any fact or circumstance of death thought to have forensic significance, except where the forensic specialist:

17.2.d.1. Has resigned previous membership in the American Academy of Forensic Sciences for a pending disciplinary matter;

17.2.d.2. Has applied to the American Academy of Forensic Sciences for provisional membership and has been denied;

17.2.d.3. Has had a previous membership revoked by disciplinary action by the American Academy of Forensic Sciences; or

17.2.d.4. Has had his or her professional license restricted or revoked by any licensing Board.

#### **§64-84-18. Release of Information.**

18.1. Autopsy and investigation findings, results of ancillary studies performed by or at the request of the OCME and all case file documents created by the process of death investigation by this office are confidential records and information, disclosed only as specified under WV Code §§61-12-8, 61-12-10, 61-12-13 and 61-12A-3. *Provided*, That, in the case of deaths investigated by the OCME, medical, corrective, other therapeutic, investigative and incarceration records of the deceased obtained at OCME request pursuant to WV Code §61-12-8(a), are confidential and are not releasable by the medical examiner upon any request or subpoena.

18.2. With the exception of any medical, corrective, and or other therapeutic, investigative and incarceration records of the deceased obtained by the investigation at OCME request pursuant to W.V. Code §61-12-8(a) the OCME shall release records and information obtained by the OCME investigation to the next of kin, the executor or administrator of the estate, or to any designee specified by the next of kin or executor or administrator of the estate, upon their written request, except when the circumstances of death are the subject of a criminal investigation or criminal proceeding, in which case the same records and information pertaining to the investigation into the death by the OCME shall be released only to the principal investigating agency, the prosecuting attorney holding jurisdiction for the death, or to their designee unless the prosecuting attorney authorizes the release or unless the release is authorized by order of the court of record having criminal jurisdiction.

18.3. At the direction of the Secretary, the Chief Medical Examiner may release autopsy or

toxicology reports to governmental agencies when the Secretary finds it to be in the public interest, except when the circumstances of death are the subject of a criminal investigation or criminal proceeding in accordance with WV Code §61-12-10(d).

**§64-84-19. Autopsy Reports.**

19.1. The autopsy report shall comprise the document titled "Report of Death Investigation and Post-mortem Examination Findings," together with all reports of ancillary tests requested by the prosecutor. The autopsy report shall include at least the following items:

19.1.a. The name of the deceased and the method of identification;

19.1.b. The condition of the body as received, including the state of preservation of the body and the development of postmortem changes; the deceased's clothing as well as its condition and significant defects;

19.1.c. Body development, and the height and weight of the deceased;

19.1.d. A description of body surface features, such as scars and tattoos;

19.1.e. A description of medical treatment and any postmortem organ or tissue donation, and associated effects;

19.1.f. A report of injury and manifestations thereof;

19.1.g. A report of findings on internal examination, including organ weight and appearance, and any abnormalities present, including natural disease, malformation or injury, and their effects;

19.1.h. A report of the microscopic examination, if performed;

19.1.i. A list of retained materials taken from the body during autopsy;

19.1.j. A list of other ancillary studies performed during, or as part of the autopsy, such as toxicology, photography, or X-ray imaging, and their results;

19.1.k. A statement of determination of the cause and manner of death based on autopsy findings, review of pertinent medical and investigative records and investigation findings, noting both areas of correlation and conflict of autopsy findings with reported circumstances of death and;

19.1.l. The date, place and time of the autopsy; the identity of the prosecutor; his or her signature, and the date he or she signed it

19.2. The autopsy report shall not include medical, corrective and/or other therapeutic, investigative and incarceration records of the deceased obtained by the investigation at OCME request pursuant to WV Code §61-12-8(a).

19.3. The original autopsy report, or any other original or irreplaceable element as determined by the Chief Medical Examiner pertaining to the OCME case files, may not be released from the OCME custody. When, upon request, copies of autopsy reports are released, pursuant to W. Va. Code §61-12-10, to the prosecuting attorney or to the court of record having criminal jurisdiction over the death, by mail or by other established courier, including electronically, such copies of the autopsy report shall be released with a notarized statement attesting that it is a true and accurate copy of the original record.

19.4. Pursuant to §61-12-10(e) and §49-6A-2, in the case of the death of any unemancipated person under the age of 18, whose death cannot be wholly attributed to natural disease, or where there is

suspicion of significant neglect or maltreatment of the decedent, immediate notification of the death and known death circumstances shall be made to Child Protective Service (CPS) of the county of decedent residence, using a form provided by the OCME.

19.5. A reasonable fee may be charged by the Commissioner for providing autopsy reports.

19.5.a. Fees payable under this section shall be deposited in the health services fund to be used to support the purposes of the OCME.

**§64-84-20. Human Remains and Personal Property.**

20.1. The OCME shall release human remains from medical examiner custody to a licensed funeral home or as otherwise permitted by law when designated by the next of kin or administrator or executor of the estate only when accompanied by a death certificate that is completed and signed by the prosecutor, County Medical Examiner, Assistant County Medical Examiner or County Coroner.

20.2. The licensed funeral home shall provide written authorization to receive the remains of the deceased by signing a form provided by the OCME.

20.3. The OCME may release custody of remains to an organ procurement organization or its designee only upon receipt of a copy of the prior written authorization for such release provided by the decedent, or by the next of kin, or the executor or administrator of the estate if there be an estate. This authorization and release of custody of the body to the organ procurement organization by the OCME does not constitute a release of medical examiner case jurisdiction by the OCME; *Provided, That* the organ procurement organization which accepts custody of a decedent's remains whose death falls under OCME jurisdiction assumes all responsibility and accrued liability for any change in the condition of those remains while in their possession.

20.4. When the OCME has taken charge of a body, all personal property belonging to and associated with the body:

20.4.a. May be taken into the custody of the OCME;

20.4.b. Shall be described and listed on forms prescribed by the OCME for that purpose; and

20.4.c. Shall be released to the principal investigating agency, upon its request, or in the absence of such a request, when the personal property has no forensic significance, it may be released to the executor or administrator of the deceased's estate or to the next of kin, or their designee. The OCME shall document the release of the personal property on forms provided by the OCME.

20.5. Upon the OCME transfer of the remains and personal property of the decedent, the transferee assumes full responsibility for decedent remains and personal property.

20.6. In the absence of an identified next of kin, executor or administrator of decedent's estate, or when the remains or personal property are determined to have further forensic significance, the remains may not be released from the custody of the OCME without authorization by the Chief Medical Examiner, or his or her designee.

20.7. Whenever human remains are received into, or released from, the custody of the OCME, they shall be enclosed in a clean, moisture impervious body bag, with the deceased's name and the OCME case number clearly labeled on both a body tag reliably affixed to the body and on the body bag.

**§64-84-21. Release of Biological Materials from OCME Custody.**

21.1. The OCME shall release biological materials, including tissues and body fluids, only to a

certified and accredited laboratory upon a written request that is accompanied by a signed authorization from:

21.1.a. The next of kin, the executor or administrator of the estate, or any designee specified by the next of kin or executor or administrator of the estate;

21.1.b. The county health officer, public health laboratory, or the Secretary;

21.1.c. Parties in litigation before a court of record to whom the cause of death is a material issue; or

21.1.d. Court order from a court of competent jurisdiction in a civil for family law matter.

21.2. The OCME shall refer requests for testing of biological materials taken at the time of postmortem examination on behalf of persons who may have had an infectious disease exposure as a result of contact with a body under the OCME's custody, to his or her county health officer, who may request release of a sample.

21.3. When the OCME is notified by a county health officer that a significant infectious disease exposure has occurred as the result of contact with a body under the OCME's custody, the OCME shall transfer a sufficient sample of blood or other useful biologic material pertaining to the case to the State public health laboratory for appropriate testing. The State public health laboratory is responsible for release of all test results pursuant to applicable State law.

21.4. Before the OCME can comply with a request under subsection 21.1. of this section to release biological materials to a requesting party from a case that is part of a criminal investigation or criminal proceeding, the OCME shall require the written approval from the prosecuting attorney of jurisdiction or an order of the court of record having criminal jurisdiction.

21.5. When the Chief Medical Examiner determines that a biological or other material sample from a case that is part of a criminal investigation or criminal proceeding has irreplaceable forensic value, the OCME may withhold it from an otherwise lawful request for release under this rule unless:

21.5.a. Requested by the prosecuting attorney holding jurisdiction; or

21.5.b. A court of record orders the OCME to release the samples.

21.6. The person or agency requesting biological material release and analysis shall prepay all costs associated with shipping, subsequent analysis and return of the samples to the OCME, prior to release of the materials.

21.7. The OCME shall only allow shipment of the biological materials directly to the recipient laboratory by courier or other bonded service acceptable to the OCME. Upon the OCME transfer of any biologic materials sample under this rule, the transferee assumes full responsibility for maintaining the forensic integrity and initial conditions of such materials, and for any risks associated with shipping and subsequent analysis.

21.8. The OCME shall handle requests for release of microscopic slides according to the following provisions:

21.8.a. Original slides shall be sent only to a licensed physician or laboratory;

21.8.b. When the OCME provides original slides by any request, all slides shall be returned to the OCME after examination. Upon the OCME transfer of original histology slides under this rule, the transferee assumes full responsibility for maintaining the forensic integrity of such materials, and for

return of all materials in original condition and in timely manner.

21.8.c. When the OCME provides duplicate histologic slides cut from original tissue blocks, the Commissioner may charge a reasonable fee per slide, to the requesting person or entity, to be deposited in the health services fund to be used to support the purposes of the OCME.

21.8.d. The release to an appropriate entity as described in this rule shall be made upon written request by the next of kin or executor or administrator of the estate, or by their designee.

21.8.e. If a West Virginia court of jurisdiction directs the OCME to release specimens to a party, that party is responsible for all costs incurred by release and transmittal of named materials to that party; and

21.8.f. At the request of an officer of the court engaged in a civil legal matter, except where there is also ongoing criminal litigation or investigation related to the case associated with the glass slides, when the criminal process holds precedence over the civil matter. In that case, authorization for release of the slides must be received from the prosecutor of jurisdiction or a court of jurisdiction.

21.9. Before the OCME releases histologic samples pertaining to a criminal investigation or proceeding, it shall have prior written approval of the prosecuting attorney of jurisdiction, unless the requests come from other parties in the same criminal court proceeding with a court order.

21.10. When the Chief Medical Examiner determines that a histologic sample possesses irreplaceable forensic value, the OCME may withhold it from an otherwise lawful request for release under this rule unless:

21.10.a. Requested by the prosecuting attorney holding jurisdiction; or

21.10.b. A court of record orders the OCME to release the samples.

21.11. All costs and fees associated with the duplication of histologic material, slide preparation, and shipment, including via bonded courier, first class mail, or other delivery service, when chargeable under this rule, shall be paid by the requesting party.

#### **§64-84-22. Retention of Biological Samples.**

22.1. The OCME shall retain and archive:

22.1.a. Solid tissue and body fluid samples taken at autopsy for at least one (1) year, and then may retain them or dispose of them at the OCME's discretion, except:

22.1.a.1. All solid tissue and body fluid specimens associated with homicide cases shall be retained for at least 5 years, after which the OCME may appropriately dispose of the specimens, except when retention is requested by the court of jurisdiction; and

22.1.a.2. Specimens may be archived for specified additional periods of time by request of the Chief Medical Examiner or Deputy Chief Medical Examiner;

22.1.b. Histologic tissue blocks for at least ten (10) years, and then may retain them or dispose of them at the OCME's discretion;

22.1.c. Histologic tissue mounted on glass slides for at least twenty five (25) years, and then may retain or dispose of them at the OCME's discretion; and

22.1.d. Dried blood sample cards for at least fifty (50) years, and then may retain them or dispose

of them at the OCME's discretion.

**§64-84-23. Maintenance of Case Files.**

23.1. The OCME shall maintain complete and thorough files for all cases which it investigates for a period of at least fifty (50) years.

23.2. The OCME shall retain direct custody and control of all original case files contents, shall maintain them in an orderly, secure and systematic fashion at all times, except when the original records are requested by subpoena for delivery to a court of law for evidentiary purposes. When such original documents are required, the Chief Medical Examiner or designee shall hand-deliver those documents to the court for inspection along with appropriately attested copies. The original documents shall be returned to the OCME by the Chief Medical Examiner or designee while leaving the copies for inclusion for evidentiary purposes.

23.3. The OCME shall utilize numbered standard forms, approved by the Chief Medical Examiner and bearing the dates of any subsequent revision.

23.4. The case files of the OCME shall be considered confidential medical records. The OCME shall release information obtained from the investigation, autopsy or other examination of the body, or from any ancillary test or procedure performed by, or at the request of the OCME, in accordance with the provisions of subsection 18.1 of this rule.

23.5. The OCME shall maintain autopsy case files for at least fifty (50) years, except when autopsy reports, reports of ancillary studies results, and photographic evidence are archived electronically, in which case the original materials may be destroyed;

23.5.a. All obsolete or discarded records shall be destroyed. Any medical or other therapeutic record contained within OCME case files, that were obtained from another agency or institution or other source, pursuant to WV Code §61-12-8(a), may, at the discretion of the Chief Medical Examiner or DCME, be destroyed at case closure.

23.6. The OCME shall maintain X-rays obtained at an autopsy or copies of x-rays obtained by records request, for at least ten (10) years, at the OCME's discretion, or the images may be archived electronically to become part of the case file.

**§64-84-24. Fee Paid to County Medical Examiner, Assistant County Medical Examiner and County Coroner by the OCME for Performance of Duties Described By This Rule.**

Pursuant to WV Code §§61-12-7(b) and 61-12-8(c), and this rule, the OCME shall pay a reasonable fee, established by the Chief Medical Examiner, to the County Medical Examiner, Assistant County Medical Examiner or County Coroner for performance of all duties described by this rule, except as further described in subsection 13.6. of this rule.

**§64-84-25. Fees for OCME Facility Use.**

25.1. The OCME shall charge a reasonable fee to non-governmental entities approved to use the OCME facility, at the discretion of the Chief Medical Examiner, to cover:

25.1.a. The cost to use the facility; and

25.1.b. The regular rate of pay for the staff supervisor required to be present while the facility is in use or the overtime rate of pay for the staff supervisor required to be present if the facility is in use after the OCME's usual business hours, as well as additional personnel work time otherwise needed to allow non-OCME facility use.

25.2. Fees payable under this section shall be deposited in the health services fund to be used to support the purposes of the OCME.

**§64-84-26. Charging Certain Fees for Providing Testimony or Production of Opinions.**

26.1. Under authority of WV Code §16-1-11 and this rule, the OCME shall charge reasonable fees for the provision of testimony or for production of opinions provided by OCME employees, arising from his or her professional OCME related activities, and for other enumerated services performed by the OCME as follows:

26.1.a. Providing testimony or production of opinions in a civil matter, when neither the State of West Virginia nor any public entity created under the laws of the State of West Virginia, is a party;

26.1.b. Providing testimony or production of opinions for a criminal proceeding arising outside the State of West Virginia;

26.2. The fees charged under subsection 26.1. of this section shall be according to a reasonable fee schedule and agreement, established by the Commissioner, to be filed with the Secretary of State and published in the State Register.

26.2.a. The fee schedule shall remain in effect and may be modified by the filing of a new fee schedule agreement with the Secretary of State, as needed.

26.2.b. The fee schedule agreement is attached to this rule as APPENDIX A.

26.3. The fees charged shall be for any OCME employee for time spent in case preparation and for presentation of testimony or any production of opinion, including time spent and expenses incurred in travel and in waiting to provide these services.

26.4. All fees payable under this rule shall be deposited in the health services fund to be used to support the purposes of the OCME.

**§64-84-27. Administrative Due Process.**

Those persons adversely affected by the enforcement of this rule may request a contested case hearing in accordance with the Bureau's legislative rule, Rules and Procedures for Contested Case Hearings and Declaratory Rulings, 64CSR1.

**§64-84-28. Penalties.**

The provisions of this rule are subject to enforcement in accordance with WV Code §§16-1-17, 16-1-18 and other applicable Code sections.



## APPENDIX A

## DEPARTMENT OF HEALTH AND HUMAN RESOURCES

## Office of the Secretary

One Davis Square, Suite 100, East  
Charleston, West Virginia 25301

Telephone: (304) 558-0684 Fax: (304) 558-1130

Earl Ray Tomblin  
Governor

Rocco S. Fucillo  
Cabinet Secretary

AGREEMENT FOR PAYMENT OF FEES FOR SERVICES  
INVOICE

TO:

DATE:

RE:

**Fees authorized by law; WV Code §16-1-11, Fees for Services rule, 64CSR51, and  
Medical Examiner Rule for Postmortem Inquiries, 64CSR84**

___ Staff/M.D./PH.D. Testimony (or deposition) <u>out of the office</u> : Minimum fee of \$1,000 (for up to 2 hours), and \$500 per each additional hour, or fraction thereof. Other Staff: \$300/hour (64CSR84, §26).*	\$ _____
___ Staff/M.D./Ph.D. Deposition, <u>in office</u> : \$500 per hour, or fraction thereof (64CSR84, §26).	\$ _____
___ Consultation <u>in office</u> : \$400/hour, or fraction thereof (64CSR84, §26).*	
___ Use of autopsy suite: \$1,000/hour or fraction thereof (64CSR84, §25).*	\$ _____
___ Use of OCME Office for deposition: \$300/hour or fraction thereof (64CSR84, §25).*	\$ _____
___ Cremation Permits: \$50 per case (WV Code §61-12-9 and 64CSR84, §13.8).*	\$ _____
___ Histology Services: microscopic slide re-cuts: \$50 per slide (64CSR84, §21.8.c).	\$ _____
___ Copying x-rays: \$50/film (64CSR51, §§4.3 & 4.4).	\$ _____
___ Photocopying, duplication, etc.: \$0.50/page (64CSR51, §§4.3 & 4.4).	\$ _____
___ Post-mortem Examination Reports to Family: a report of autopsy or external examination and toxicology report (64CSR84, §19.7) will be sent to authorized family member for a fee of \$15, upon written request.	\$ _____
___ Post-mortem Examination Reports (Notarized): \$300 per case (64CSR84, §19.7) (Report of autopsy or external examination and toxicology report)	\$ _____
___ Photograph copying: \$2.00 per photograph or \$30 per CD (64CSR51, §§4.3 & 4.4).	\$ _____
___ Civil Request: Viewing of OCME material: \$100/hour, or fraction thereof (64CSR84, §25)	\$ _____
___ Autopsy Wet Tissue Specimen and Body Fluid Storage: The OCME stores samples for 1 year at no cost. Longer storage beyond 1 year may be requested for a fee of \$500 every 3 months, requiring a letter of request (64CSR84, §25); Requestor must submit timely written request and the additional fee payment for each quarter year of additional storage desired or the specimen(s) will be discarded.	\$ _____
___ Medicolegal Investigation Training Course: \$\$ Varies per course. Registration per attendee based on location and associated services required; \$50 processing fee for regular registration cancellation; late cancellation (within two weeks of conference) - 50% of registration will be withheld; and for cancellation during or after conference - registration payment is non-refundable (64CSR84)	\$ _____
CRM/05/20/13	Total Due: \$ _____

Office of the Chief Medical Examiner  
619 Virginia Street, W.  
Charleston, WV 25302  
Phone (304) 558-6920 FAX (304) 558-8492

**Authorization:**

The Office of the Chief Medical Examiner has established fees for a number of services provided by this Office in accordance with our authority under West Virginia Code, Chapter 16, Article 1, Section 11 and Chapter 61, Article 12 as well as two Bureau for Public Health legislative rules; Medical Examiner Rule for Postmortem Inquiries, 64CSR84, and Fees for Services Rule, 64CSR51. The service(s) you have requested are subject to these fees.

**Payment:**

**Please do not send cash.** Please make check payable to the Office of the Chief Medical Examiner and mail to 619 Virginia Street, W., Charleston, WV 25302. Please record the name of the decedent on your check. Please note that the OCME reserves the right to require expected fee payment prior to performing requested services. Cancellations should be made within 48 hours or the fee will be non-refundable.

**Payment must be received before services will be rendered (excluding \* services).**

**Rendered Services:**

For services rendered before payment is received the below authorization must be signed:

I hereby agree to pay the Office of the Chief Medical Examiner as invoiced for the above-mentioned service. Invoice to be prepared upon completion of services.

Authorized Signature: \_\_\_\_\_

Title of Person Signing: \_\_\_\_\_

Date: \_\_\_\_\_

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**Office of the Chief Medical Examiner  
619 Virginia Street, W.  
Charleston, WV 25302  
Phone (304) 558-6920 FAX (304) 558-8492**