



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

6/23/2022 3:24:04 PM

Office of West Virginia
Secretary Of State

NOTICE OF AN EMERGENCY RULE

AGENCY: Health TITLE-SERIES: 64-84
RULE TYPE: Legislative Amendment to Existing Rule: Yes
RULE NAME: MEDICAL EXAMINER REQUIREMENTS FOR
POSTMORTEM INQUIRIES

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

61-12-16

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

PRIMARY CONTACT:

NAME: April Robertson
ADDRESS: One Davis Square Suite 100 E
Charleston, WV 25301
EMAIL: april.l.robertson@wv.gov
PHONE NUMBER: 304-558-9149

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

HB 4559 was passed during the 2022 Regular Session of the Legislature, including this provision: Further, the Office of the Chief Medical Examiner shall promulgate emergency rules pursuant to §29A-3-15 of this code providing for the disposition of unidentified or unclaimed remains in their possession, in a manner which does not conflict with the provisions of this article. (Now codified as W. Va. Code 61-12-16.)

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND OR EXPIRED? No

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

n/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

n/a

C. ECONOMIC IMPACT ON THE STATE OR ITS RESIDENTS:

Possible additional expenses incurred for the indigent burial fund for cremation of unclaimed/unidentified decedents; additional expense paid by the OCME for the transportation of unclaimed/unidentified decedents to decedent transportation vendors; upkeep/maintenance fees paid to the contracted cemetery for temporary interment of unclaimed/unidentified decedents; and additional one-time expenses paid by the OCME for the purchase, site preparation, construction, and installation of columbarium(s) at the contracted cemetery for the temporary interment of unclaimed/unidentified decedents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	256,200	156,200	156,200
Personal Services	0	0	0
Current Expenses	155,000	155,000	155,000
Repairs and Alterations	1,200	155,000	1,200
Assets	100,000	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

Costs - FY 2023

Purchase, site preparation, construction of 4 Columbarium(s) \$25,000 each x 4 = \$100,000 in the Assets Category.

Maintenance/Upkeep at contracted cemetery \$100 per month x 12 = \$1,200 in the Repairs and Alterations category.

Decedent Transportation Costs \$300 per case x 100 cases = \$30,000 in the Current Expenses category.

Indigent Burial Fund Expenses \$1,250 per case x 100 cases = \$125,000 in the Current Expenses category.

Costs - FY 2024 & Upon Full Implementation

Maintenance / Upkeep at contracted cemetery \$100 per month x 12 = \$1,200 in the Repairs and Alterations category.

Decedent Transportation Costs \$300 per case x 100 cases = \$30,000 in the Current Expenses category.

Indigent Burial Fund Expenses \$1,250 per case x 100 cases = \$125,000 in the Current Expenses category.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

April L Robertson--By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 64
LEGISLATIVE RULE
BUREAU FOR PUBLIC HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 84
MEDICAL EXAMINER REQUIREMENTS 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~~ Office of the Chief Medical Examiner (OCME). This rule should be read in conjunction with W. Va. Code §61-12-3 *et seq.*, §16-19-1 *et seq.* and §18B-4-8. ~~The W. Va. Code is available in public libraries and on the Legislature's web page, <http://www.lexis.state.wv.us/>.~~

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

1.3. Filing Date. -- ~~April 11, 2014.~~

1.4. Effective Date. -- ~~May 11, 2014.~~

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 Inquiries, 64CSR84, filed April 4, 2003, and effective May 15, 2003.~~ Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2028.

§64-84-2. Application and Enforcement.

This rule applies to the ~~state medical examiner's office~~ Office of the Chief Medical Examiner, county medical examiners, and county coroners.

§64-84-3. Definitions.

3.1. American Board of Medico-legal Death Investigators (ABMDI) – A professional association ~~which~~ that 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.

3.2. Assistant County Medical Examiner (ACoME) – 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.

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

~~3.4.~~ 3.4. Chief Administrator – Office Director of the OCME who manages the day-to-day operations of the OCME and is responsible for everything non-medical that occurs under the umbrella of the OCME.

~~3.5.~~ 3.5. Clinical Specialist – A practitioner of a medical discipline recognized by the American Boards of Medicine Specialties.

~~3.5.~~ 3.6. Commissioner - The Commissioner of the West Virginia Bureau for Public Health.

~~3.6.~~ 3.7. County Coroner (CoCo) – 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.~~ 3.8. County Medical Examiner (CoME) – 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.~~ 3.9. Deputy Chief Medical Examiner – A qualified forensic pathologist appointed by the Chief Medical Examiner as his or her designee to perform all duties specific to, and required for certification of death for the State of West Virginia as contemplated by W. Va. 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.~~ 3.10. Forensic Autopsy – A postmortem forensic examination of a body that ~~encompasses~~ may encompass varying levels of surgical exploration and the study and analysis of the body tissues and fluids, according to W. Va. Code and the rules of the Office of the Chief Medical Examiner.

~~3.10.~~ 3.11. Forensic Postmortem Examination – Any examination of the human body performed after death that is authorized by W. Va. Code §61-12-10.

~~3.11.~~ 3.12. Forensic Specialist – A practitioner of any forensic science or discipline, employing practices and methodologies recognized by the American Academy of Forensic Sciences or equivalent.

~~3.12.~~ 3.13. Medico-legal Death Investigation – The discipline of obtaining information by investigation into the deaths of persons pursuant to W. Va. Code §61-12-8.

~~3.13.~~ 3.14. OCME – Office of the Chief Medical Examiner.

~~3.14.~~ 3.15. Prosecutor – Chief or Deputy Chief Medical Examiner who conducts the autopsy.

~~3.15.~~ 3.16. Qualified Forensic Pathologist – A physician who holds board certification or board eligibility in forensic pathology or has completed an American ~~board of pathology~~ Board of Pathology or equivalent fellowship in forensic pathology.

~~3.16.~~ 3.17. Secretary – The Secretary of the Department of Health and Human Resources.

3.18. Unclaimed Decedent – a deceased person who has been positively identified by a recognized forensic identification method whose remains are in the custody of the OCME only due to the fact that no legal next of kin willing to accept custody in order to make arrangements for final disposition has been identified by the OCME or any other government entity for a minimum period of 30 days after their date of death.

3.19. Unidentified Decedent – a deceased person or a portion of a deceased person who has not been positively identified by a recognized forensic identification method and whose remains are in the custody of the OCME. The OCME at some point assumed jurisdiction and custody of the unidentified decedent under the authority granted in W. Va. Code §61-12-10(a) and sections 6 and 8 of this rule to perform a medico-legal death investigation.

§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 or equivalent 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 or equivalent;

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.wv-dhh.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 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 or her designee in writing within five 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 assist the Chief Medical Examiner or his or her designee in 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 W. VA. 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~~ is specifically prohibited from performing his or her duties as a County ~~medical~~ Medical Examiner, Assistant County Medical Examiner, or County Coroner to ~~establish~~ assist in establishing 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, also referred to as an “unattended death” in several sections of the W. Va. code;

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 as determined by the Chief Medical Examiner or his or her designee;

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 as determined by the Chief Medical Examiner or his or her designee;

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 as determined by the Chief Medical Examiner or his or her designee.

§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 W. Va. 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 and consultation with the Chief Medical Examiner or his or her designee;

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 after consultation with the Chief Medical Examiner or his or her designee; and

7.2.c. May go to where the body lies at the time of notification or may authorize removal of the body after consultation with the Chief Medical Examiner or his or her designee and 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 properly inventoried 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 (~~http://www.wv-dhhr.org/ocme/forms/ocme_fm.pdf~~).

§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 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 one hour ~~of~~ or as soon as possible after 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~~ such 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 OCME, 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; or

8.2.f.4. Obtaining the assistance of a law enforcement entity with the capacity to digitally capture and compare fingerprints utilizing a remote device to be employed at the death location or location at which the decedent is being inspected.

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, scars, and other unique physical characteristics;
- 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; and

8.2.h.11. Serialized prosthetics, implants or medical devices properly recorded in antemortem medical records by the surgeon or medical provider that implanted the prosthetic or medical device.

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 W. Va. 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; and assign a unique identifying number to the decedent to be known as a "Doe Number" that is generated by the OCME and properly recorded as a permanent part of the case file.

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 W. Va. Code and the appropriate section(s) of this legislative rule; and

8.2.k.5. ~~Sign~~ The Chief Medical Examiner or his or her designee is authorized to 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~~ in the appropriate sections of all prescribed OCME forms.

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 placed within the sealed body bag, 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 providing assistance with determining cause and manner of death, and 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 only 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 properly labeled and delivered to the OCME in a timely and secure fashion;

9.2.c. Shall obtain tissue specimens for examination, ~~if requested~~ only when specifically directed to do so by the OCME;

- 9.2.d. Shall use sample containers provided by the OCME which are properly and clearly marked;
- 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~~ OCME Forensic Investigations Unit (FIU) 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 have a Decedent Transportation Agreement Contract approved and on file with the Bureau for Public Health Central Finance office. Vendors must meet the terms and conditions set forth in the contract, which include but are not limited to 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 W. Va. 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 W. Va. 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 any medico-legal death investigation.

~~11.2. When in receipt~~ Immediate notification is also required when a County Medical Examiner, Assistant County Medical Examiner, or County Coroner is in receipt, at any point in an investigation, of a request from any investigating agency or other authority that the County Medical Examiner, Assistant County Medical Examiner, or County Coroner ~~performed~~ perceives may, in any way, ~~that may~~ constitute a violation of W. Va. Code §61-12-3 *et seq.*, or any provisions of this rule.; ~~investigation, as well as under the following determined death circumstances:~~

11.3. Immediate notification to the OCME is also required under the following determined death circumstances:

~~11.1.a.~~ 11.3.a. Homicides or deaths reported as suspicious for homicide;

~~11.1.b.~~ 11.3.b. Deaths of children younger than 18 years old, except those due to a car accident or when expected, due to known disease;

~~11.1.e.~~ 11.3.c. Multiple fatality events that cause three or more deaths;

~~11.1.d.~~ 11.3.d. Deaths occurring during incarceration, or associated with police action or intervention;

~~11.1.e.~~ 11.3.e. Fire-related deaths;

~~11.1.f.~~ 11.3.f. Deaths associated with a prolonged postmortem interval involving decomposed or skeletonized bodies;

~~11.1.g.~~ 11.3.g. Where remains are not able to be identified;

~~11.1.h.~~ 11.3.h. Cases that are likely to be declined medico-legal jurisdiction; or

~~11.1.i.~~ 11.3.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.~~ 11.4. 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.~~ 11.5. 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~~ status of declined jurisdiction using OCME forms and submit the original forms to the OCME within seven 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~~ OCME, 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 business days of the death notification; and

12.5. ~~When~~ In exigent or emergency situations where the Electronic Death Reporting System is unavailable for an extended period of time and 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 W. Va. death certificate, in accordance with W. Va. Code §16-5-1, *et seq.* or a photocopy of the completed death certificate to the OCME, within seven 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 OCME, County Medical Examiner, Assistant County Medical Examiner or County Coroner.

13.1. All requests to cremate a ~~deceased body~~ decendent, where the death was pronounced in West Virginia or the cremation will be physically executed within the state, must be authorized by the OCME, or by the County Medical Examiner, Assistant County Medical Examiner or County Coroner, in the Electronic Death Reporting System (aka DAVE). Before authorizing the cremation of human remains, the OCME, County Medical Examiner, Assistant County Medical Examiner, or County Coroner shall:

13.1.a. Review the completed death certificate in the DAVE system or a photocopy or facsimile copy of it provided by the funeral director or crematorium in an exigent or emergency situation;

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 OCME, 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, in accordance with the provisions of W. Va. Code §16-5-19(e)(1). This signature is required if the “pronouncing physician” is different from the “certifying physician”, in accordance with the provisions of W. Va. Code §16-5-19(e);~~

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 and competent cause of death and appropriate manner of death are listed. Only a medical examiner may determine a manner that is anything other than natural. As such, any death certificate with a manner designated other than natural must be certified by a medical examiner. If certified by any other provider, the death must be immediately referred to the OCME for review;

~~13.1.b.4.~~ 13.1.b.3. 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; and

~~13.1.b.5.~~ 13.1.b.4. 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 or who were pronounced outside of the State of West Virginia but will have cremation performed within the state, 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 OCME, 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 attached as a part of the death certificate file in the DAVE system, or in the case of an exigent or emergency situation requiring paper processing, a copy of the paper form shall be surrendered to the requesting funeral director or crematory, and the OCME, County Medical Examiner, Assistant County Medical Examiner, or County Coroner shall keep one copy for his or her records pursuant to subsection 12.6 of this rule. ~~and In situations where a paper process is utilized, the County Medical Examiner, Assistant County Medical Examiner, or County Coroner shall~~ submit a second copy to the OCME.

13.8. The Chief Medical Examiner or ~~Deputy Chief Medical Examiner~~ his or her designee may authorize cremation, on behalf of the OCME. Upon authorization, the requesting funeral director or crematory shall pay the OCME ~~a~~ the current 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 provide investigatory findings to help establish the cause and manner of death. The OCME shall complete and certify the death certificate in the DAVE system for all deaths for which OCME jurisdiction has been established in accordance with W. Va. Code §61-12-10 and this legislative rule. Under exigent or emergency circumstances, a County Medical Examiner, Assistant County Medical Examiner, or County Coroner may complete and certify a paper death certificate utilizing the Cause and Manner of death provided by the OCME. Such exigent or emergency circumstances shall be approved in advance and with the consultation of the. ~~and complete the death certificate regarding those and other associated findings pursuant to provisions of this rule and~~ Circumstances where a paper death certificate is authorized and utilized must follow the requirements outlined within this legislative 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, paper death certificates completed in the field under exigent or emergency circumstances do not qualify for an “undetermined” manner of death to be assigned.

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. Paper death certificates completed in the field under exigent or emergency circumstances do not qualify for a Pending cause or Pending manner to be assigned.

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~~ the State Registrar of Vital Statistics of an appropriate amendment in the DAVE system, or in exigent or emergency circumstances by submission of a paper OCME death certificate completion form bearing the signatures of both the prosector and reviewing DCME. 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~~ electronic or paper process to finalize a pending death certificate.

14.1.d. The Chief Medical Examiner, or his or her designee, ~~or with the assistance of a~~ County Medical Examiner, Assistant County Medical Examiner, or County Coroner when needed, 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 by following the appropriate electronic or paper process as outlined herein;

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~~ the appropriate electronic or paper process, 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 W. Va. Code §61-12-8 or under this rule, when the amendment will correct an inaccuracy, except where proscribed by W. Va. Code and this rule by following the appropriate electronic or paper process; and

14.1.g. No human remains which have been subject to a forensic postmortem examination pursuant to W. Va. 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 in the DAVE system by the Chief Medical Examiner or his or her designee; prosector; or in an exigent or emergency circumstance by the Chief Medical Examiner or his or her designee, County Medical Examiner, Assistant County Medical Examiner, or County Coroner on a paper death certificate.

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 through the DAVE system or on paper in exigent or emergency situations. ~~Vital Records~~ The State Registrar of Vital Statistics 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 paper death certificate in exigent or emergency situations, 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~~ Has consulted the Chief Medical Examiner or his or her designee and received directions regarding how to list the cause and manner of death on the associated paper death certificate; and

15.1.d. Has reasonably established the time and date of death, and the underlying injury through consultation with the Chief Medical Examiner or his or her designee, 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 an 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 relevant law enforcement investigations;

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~~ may 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.~~ by ensuring that universal precautions are continuously applied.

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. (see <http://www.W.Va.dhhr.org/ocme/Handbook2007.pdf>)

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~~ request the performance of a forensic autopsy or other forensic post mortem examination of the body by the OCME. In the case of deaths ~~which that~~ result from a suspected criminal act occurring in W. Va., 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 or his or her designee, subject to W. Va. 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 or equivalent for a pending disciplinary matter;

16.8.b. Has applied to the American Academy of Forensic Sciences or equivalent 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 equivalent; 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 W. Va. 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 prosecutor, in the course of performing autopsies, shall complete and sign all autopsy reports pursuant to OCME policy, with the Chief Medical Examiner having the authority to sign for the prosecutor in abstentia when necessary.

§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 W. Va. 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; and

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 or equivalent, and pursuant to W. Va. Code §61-12-10 and §17C-5B-1 ~~with confirmation in all cases of positive drug screen results, at the discretion of the prosecutor.~~

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

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. 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 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, anthropological studies, neuropathological studies, forensic odontology review, or DNA analysis when the procedure or test may render findings of forensic significance; and

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 or equivalent for a pending disciplinary matter;

17.2.d.2. Has applied to the American Academy of Forensic Sciences or equivalent 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 equivalent; 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 W. Va. Code §61-12-8, §61-12-10, §61-12-13, and §61-12A-3. The OCME does not create nor release any preliminary reports. Release of information may only be accomplished upon closure of the case. In the case of deaths investigated by the OCME, medical, corrective, other therapeutic, investigative and incarceration records of the deceased obtained at OCME's request pursuant to W. Va. 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's request pursuant to W.Va. 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~~ Commissioner, the Chief Medical Examiner may release autopsy or toxicology reports to governmental agencies when the ~~Secretary~~ Chief Medical Examiner or OCME Chief Administrator 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 W. Va. Code §61-12-10(d).

18.4. The Chief Administrator of the Office of the Chief Medical Examiner is the designated records custodian of the OCME, and as such, has the responsibility for the review, approval and fulfillment or denial of requests for release of information. These responsibilities are carried out in consultation with bureau, department, and state level legal counsel whenever necessary.

§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 (if performed), 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 copies 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. Va. 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 W. Va. Code §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 Services (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~~ OCME 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 working copy of the death certificate that is completed and signed certified by the prosecutor or delegate in the DAVE system, or in exigent or emergency situations a paper death certificate certified by the OCME, 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 certification by the organ procurement organization or 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 that the decedent or legal next of kin has approved or authorized organ/tissue/cornea recovery. 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. 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 by release to the funeral home/crematorium/transport agency authorized by the next of kin to accept custody of the decedent upon release of custody from the OCME. 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~~ Commissioner/State Health Officer;

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~~ or 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 maintained in the custody of the OCME. Copies of slides will be sent only to a licensed physician or laboratory only after all requirements outlined herein have been satisfied and the case has been closed by the prosecutor;

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~~ OCME 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 an 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 and is not able to be duplicated, 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 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 five 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 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 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 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 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 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. 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 W. Va. 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 10 years, at the OCME's discretion, or the images may be archived electronically to become part of the case file.

§64-84-24. Temporary Disposition or Interment of Unclaimed Decedents in the Custody of the Office of the Chief Medical Examiner.

24.1. There are two types of unclaimed decedents that the OCME has temporary custody of:

24.1.a. Category 1: A decedent that is or has been the subject of an OCME medico-legal death investigation for which the OCME assumed custody of the remains directly from the place of death. This category of unclaimed decedent will have an OCME-generated case number that is associated with either an Autopsy or Sign-Out case file. A decedent whose death was reported to the OCME, and jurisdiction was declined (NAMEC) does not fall into this category of unclaimed decedents; and

24.1.b. Category 2: A decedent for whom the OCME did not conduct a medico-legal death investigation but whose remains are in the custody of the OCME. The OCME assumed custody of the decedent, at some point in the past, due to the fact that they remained unclaimed in the custody of a funeral home, crematorium, or other entity for an extended period of time. NAMEC cases fall into this category of unclaimed decedents.

24.2. The OCME does not take custody of unclaimed decedents in Category 2 in the normal course of business. OCME custody of Category 2 decedents occurs under exceptional circumstances and requires specific authorization in advance from the Chief Medical Examiner or the OCME Chief Administrator. A majority of the Category 2 decedents that are in the custody of the OCME are the product of legacy processes and systems that pre-date the establishment of the OCME under W. Va. Code §61-12-3 and the specific legal authority to arrange for temporary disposition/interment of unclaimed decedents in W. Va. Code §61-12-16.

24.3. Disposition processes for Category 1 unclaimed decedents.

24.3.a. During the course of the medico-legal death investigation, the assigned prosecutor (in an Autopsy case) or the forensic pathologist assigned to certify the death certificate (in a Sign-Out case) shall ensure that all processes have been accomplished to verify that the identity of the decedent has been confirmed as outlined in subdivisions 8.2.f. and 8.2.h. of this rule.

24.3.b. At the appropriate point in the investigation, the prosecutor or assigned forensic pathologist shall indicate to the OCME Forensic Investigations Unit (FIU) that the physical remains of a decedent are ready for release from the OCME to the funeral home or crematorium designated by the legal next of kin.

24.3.c. In most cases, legal next of kin has already been identified and either has, or is in the process of, identifying a funeral home or crematorium with which they are entering into an agreement or contract to manage the final disposition of the decedent. In such cases, the FIU will contact the funeral home or crematorium that has been identified and notify that entity that the decedent is ready to be released from the OCME. The entity will then come to the OCME and accept custody of the decedent, thereby terminating the OCME's custody and interest in disposition of the remains.

24.3.d. In cases where the legal next of kin has not been identified prior to a decedent being ready for release from OCME custody, the OCME FIU shall coordinate efforts to identify and notify the legal next of kin. These efforts include, but are not limited to:

24.3.d.1. Requesting assistance from the primary law enforcement investigating agency, if there is one, in identifying and notifying legal next of kin. Death notifications are primarily a law enforcement function, therefore the OCME attempts to have law enforcement make such notifications whenever possible;

24.3.d.2. Requesting assistance from the County Medical Examiner or County Coroner, if there is one, in identifying legal next of kin;

24.3.d.3. Conducting internet-based research to help identify legal next of kin;

24.3.d.4. Reviewing medical records to determine if there are any emergency contacts contained therein that will assist in identifying legal next of kin;

24.3.d.5. Requesting assistance from the W. Va. State Police Communications Center through conduct of a search of the FBI Interstate Identification Index (Triple I) to assist in identifying legal next of kin; and

24.3.d.6. Conduct an electronic search of the National Missing and Unidentified Persons System (NamUs) for potential matching missing persons cases to assist in identifying legal next of kin.

24.3.e. In cases where the legal next of kin is identified and assumes responsibility for the disposition of the decedent, the process outlined in subdivision 24.3.c. is followed. In cases where the legal next of kin is identified but they are unable or unwilling to assume responsibility for disposition of the decedent, the subsequent processes in paragraph 24.3.f.4. shall be followed.

24.3.f. In cases where attempts to identify legal next of kin are not successful, after a minimum of three days, the FIU shall make a referral to the Central Intake Unit of the DHHR Bureau for Social Services BSS) Adult Protective Services Division (APS) to initiate the unclaimed decedent process. APS staff will take the referral and assign it to the appropriate county office for further investigation and additional attempts to identify legal next of kin.

24.3.f.1. APS staff shall follow their current processes and procedures with regard to investigation of unclaimed decedents which are promulgated by the BSS Commissioner and other bureau leadership outlined within the appropriate sections of W. Va. Code and legislative rules.

24.3.f.2. In general, the APS staff complete their portion of this type of investigation in 30 days or less and communicate the results to the OCME as soon as possible thereafter.

24.3.f.3. In cases where APS is successful at identifying legal next of kin who are willing to assume responsibility for the disposition of the decedent, the next of kin information is provided to the OCME and the process outlined in subdivision 24.3.c. is followed.

24.3.f.4. In cases where APS is unsuccessful at identifying legal next of kin who are willing to assume responsibility for the disposition of the decedent, the BSS shall take responsibility for making the arrangements for disposition of the decedent by means of cremation. This is accomplished by the BSS entering into a contract or agreement with a funeral home/crematorium to conduct the cremation at the current rate associated with the utilization of the indigent burial fund. The payment rate and management of the indigent burial fund fall within the purview of the DHHR under W. Va. Code §9-5-9.

24.3.f.4.a. Once an agreement or contract is established between the BSS and the funeral home/crematorium, the APS staff will contact the OCME and provide the name of the funeral

home/crematorium that has been contracted for the disposition. The OCME shall release the decedent's remains to the custody of the designated funeral home.

24.3.f.4.b. The funeral home conducting the cremation shall return the cremated remains of the decedent in an appropriately labeled container, with the appropriate engraved metal Cremation ID Tag affixed to the remains, to OCME custody.

24.3.f.4.c. The funeral home conducting the cremation shall complete the appropriate sections of the W. Va. death certificate that are assigned to the funeral director. Upon completion of the death certificate, the funeral home shall file the death certificate with the State Registrar of Vital Statistics under the processes established by the Registrar.

24.4. OCME Custody for Purposes of Temporary Disposition/Interment in cases where no legal next of kin willing to assume responsibility have been identified.

24.4.a. When the OCME accepts custody of the cremated remains of a decedent who does not have legal next of kin willing to assume responsibility for disposition identified through the APS process outlined in subdivision 24.3.f., the OCME shall:

24.4.a.1 Accept and properly store the remains in a protected and climate-controlled storage area with limited access-control that is specifically identified for temporary storage of cremated remains?

24.4.a.2. Conduct a thorough inventory and appropriate log entry of the remains and any case specific identifiers associated with the remains as delivered to the OCME from the funeral home;

24.4.a.3. Ensure that an appropriate entry for unclaimed remains has been input into the NamUs according to the rules and processes promulgated by the U.S. Department of Justice.

24.4.a.4. After an unclaimed decedent's profile has been established in NamUs for a period no shorter than 30 calendar days, the OCME may proceed with temporary interment of the cremated remains in a columbarium or crypt that is the property of the OCME located on the grounds of a cemetery with which the OCME has an established contract specifically for these purposes.

24.4.a.4.a. The OCME and any such cemetery shall appropriately record the exact location of the temporary interment separately for each decedent that is temporarily interred under the code and this rule. The OCME shall follow the rules promulgated by the designated cemetery sexton regarding the temporary interment of decedents in any respective cemetery regarding proper marking and recording of each interment.

24.4.a.4.b. The OCME, in direct coordination with the cemetery, shall maintain a schedule of reasonable and appropriate access for authorized OCME staff to inter or disinter, or both, cremated remains from each columbarium or crypt that is owned and utilized for the purposes of temporary interment by the OCME.

24.4.a.4.c. The OCME shall be responsible for all costs that may arise which are associated with the maintenance and upkeep of the columbarium(s)/crypt(s) in accordance with any agreement executed between the OCME and a cemetery.

24.5. Future claims regarding previously unclaimed decedent remains (Category 1) by legal next of kin.

24.5.a. In the event that a legal next of kin comes forward to claim a previously unclaimed decedent in Category 1 who has been temporarily interred by the OCME, the following process shall be followed:

24.5.a.1. The claimant must provide documentation proving that he or she is the legal next of kin of the decedent in question.

24.5.a.2. Once legal next of kin status is established, the OCME shall report the discovery of legal next of kin to APS. The APS case worker shall follow the procedures outlined in W. Va. Code §9-5-9 and the W. Va. Income Maintenance Manual to determine if a lien or any other attempts to recoup monies paid by the APS managed indigent burial fund are appropriate for the case and initiate the proper actions in accordance with DHHR policies and procedures.

24.5.a.3. Upon completion of the recoupment process, if any, the APS case worker shall notify the OCME that the process, if any, has been completed and the decedent's remains are eligible to be released to the legal next of kin that was identified.

24.5.a.4. As soon as practical after notification, authorized OCME staff shall accomplish the removal of the cremated remains from the columbarium or crypt where they have been temporarily interred. The OCME shall ensure that the cemetery sexton is notified for proper update of the cemetery records. The OCME shall transport the remains back to the OCME facility for coordination with the identified legal next of kin for pickup or delivery. The proper OCME forms outlining the chain of custody for the remains shall be completed for every case.

24.5.a.4.a. The OCME shall update all records upon release of the decedent to the identified legal next of kin to include all inventory logs, case management systems, and the unclaimed remains section of NamUs in accordance with the associated U.S. Department of Justice procedures.

24.5.a.4.b. Removal of cremated remains from the columbarium or crypt is to be conducted by authorized OCME staff and cemetery personnel only and in private. The legal next of kin and the general public are not authorized to witness or participate in the disinterment process. Exceptions may be granted at the discretion of the OCME Chief Administrator or Chief Medical Examiner on a case-by-case basis only, or in cases where a court of competent jurisdiction issues an appropriate judge's order otherwise.

24.6. Disposition processes for Category 2 unclaimed decedents.

24.6.a. The status of decedents in this category are cremated remains. A search for legal next of kin willing to assume responsibility for disposition of the decedent has been conducted previously by entities other than the OCME, which may include funeral homes, law enforcement, APS, and others.

24.6.b. In cases where the OCME accepts custody of the remains in this category, the OCME shall ensure:

24.6.b.1 The remains are packaged properly in an appropriate container designed for the purpose of storing cremated remains;

24.6.b.2. That the container is properly labelled with the name of the decedent; date of birth; date of death; county of death; and any other unique case or identifying numbers necessary to distinguish the remains;

24.6.b.3. That the appropriate engraved metal Cremation ID Tag is affixed to the remains on the inside of the container;

24.6.b.4. That the funeral home/crematorium that conducted the cremation has completed and filed the associated death certificate with the State Registrar of Vital Statistics;

24.6.b.5. The remains are properly stored in a protected and climate-controlled storage area with limited access-control that is specifically identified for temporary storage of cremated remains;

24.6.b.6. That a thorough inventory is conducted, and the appropriate log entry of the remains and any case specific identifiers associated with the remains is made to record the status as delivered to the OCME for temporary custody; and

24.6.b.7. That an appropriate entry for unclaimed remains has been input into the NamUs according to the rules and processes promulgated by the U.S. Department of Justice.

24.6.c. After an unclaimed decedent's profile has been established in NamUs for a period no shorter than 30 calendar days, the OCME may proceed with temporary interment of the cremated remains in a columbarium or crypt that is the property of the OCME located on the grounds of a cemetery with which the OCME has an established contract specifically for these purposes.

24.6.c.1. The OCME and any such cemetery shall appropriately record the exact location of the temporary interment separately for each decedent that is temporarily interred under the code and this rule. The OCME shall follow the rules promulgated by the designated cemetery sexton regarding the temporary interment of decedents in any respective cemetery regarding proper marking and recording of each interment.

24.6.c.2. The OCME, in direct coordination with the cemetery, shall maintain a schedule of reasonable and appropriate access for authorized OCME staff to inter and disinter cremated remains from each columbarium or crypt that is owned and utilized for the purposes of temporary interment by the OCME.

24.6.c.3. The OCME shall be responsible for all costs that may arise which are associated with the maintenance and upkeep of the columbarium(s)/crypt(s) in accordance with any agreement executed between the OCME and any cemetery.

24.7. Future claims regarding previously unclaimed decedent remains (Category 2) by legal next of kin.

24.7.a. In the event that a legal next of kin comes forward to claim a previously unclaimed decedent in Category 2 who has been temporarily interred by the OCME, the following process shall be followed:

24.7.a.1. The claimant must provide documentation proving that he or she is the legal next of kin of the decedent in question;

24.7.a.2. As soon as practical after verification that the claimant is the legal next of kin, authorized OCME staff shall accomplish the removal of the cremated remains from the columbarium or crypt where they have been temporarily interred. The OCME shall ensure that the cemetery sexton is notified for proper update of the cemetery records. The OCME shall transport the remains back to the OCME facility for coordination with the identified legal next of kin for pickup or delivery. The proper OCME forms outlining the chain of custody for the remains shall be completed for every case;

24.7.a.3. The OCME shall update all records upon release of the decedent to the identified legal next of kin to include all inventory logs, case management systems, and the unclaimed remains section of NamUs in accordance with the associated U.S. Department of Justice procedures; and

24.7.a.4. Removal of cremated remains from the columbarium or crypt is to be conducted by authorized OCME staff and cemetery personnel only and in private. The legal next of kin and the general public are not authorized to witness or participate in the disinterment process. Exceptions may be granted at the discretion of the OCME Chief Administrator or Chief Medical Examiner on a case-by-case basis only or in cases where a court of competent jurisdiction issues an appropriate judge's order otherwise.

§64-84-25. Temporary Disposition or Interment of Unidentified Decedents in the Custody of the Office of the Chief Medical Examiner.

25.1. An unidentified decedent has a unique case number(s) associated with the medico-legal death investigation and a unique John, Jane, Child, or Unknown Doe number(s) specifically generated and assigned to the medico-legal death investigation case(s). The unidentified decedent is assigned a temporary identity, (i.e., John Doe #2345), that combines the gender (if known) with the Doe number assigned that is utilized by the OCME to identify the decedent until such time as they can be positively identified by a recognized forensic identification method as determined by the assigned forensic pathologist.

25.2. The OCME case file may contain one or more “tentative” names identified throughout the investigation, but tentative names are not utilized as a case identifying characteristic.

25.3 Disposition processes for unidentified decedents.

25.3.a. These processes apply to unidentified decedents for whom an autopsy has been completed by the assigned prosecutor. For an unidentified decedent to be eligible for temporary disposition by the OCME, all of the following conditions must be met without exception and properly documented on an OCME form created specifically for the unidentified decedent disposition processes. Where a requirement under this subsection is imposed upon a specific prosecutor, the requirement may be satisfied by the Chief Medical Examiner as a proxy for a prosecutor who is not available to complete the requirements personally.

25.3.a.1. The assigned prosecutor must have completed the physical examination of the remains;

25.3.a.2. All supplementary studies, ancillary testing, and consultations to be conducted in the specific case must be completed, reviewed, and acknowledged as satisfactory by the assigned prosecutor;

25.3.a.3. The assigned prosecutor must validate that all possible recognized forensic identification methods have been attempted in the case, to include all methods outlined in subdivision 8.2.h. and all other recognized forensic identification methods known to the prosecutor at the time of review;

25.3.a.4. The assigned prosecutor must validate that all photographic documentation of the remains has been properly accomplished, stored, and has a redundant backup copy available if needed;

25.3.a.5. The assigned prosecutor must validate that all radiographic documentation of the remains has been properly accomplished, stored, and has a redundant backup copy available if needed;

25.3.a.6. The assigned prosecutor must validate that all tissue, blood, organ, and bodily fluid samples have been collected and properly stored for any future need that may arise;

25.3.a.7. The assigned prosecutor must validate that an appropriate sample required to establish a DNA profile in the Combined DNA Index System (CODIS) and NamUs has been submitted and a separate sample has been collected, saved, and stored separately for future utilization if needed; and

25.3.a.8. The assigned prosecutor must indicate on the appropriate OCME form that the physical remains of the unidentified decedent have no further forensically significant value to the medico-legal death investigation and are eligible for cremation and temporary interment by the OCME.

25.3.b. Upon certification by the assigned prosecutor or the Chief Medical Examiner that all requirements outlined in subdivision 25.3.a. have been met, the OCME shall proceed with arranging for cremation of the unidentified decedent through direct coordination with APS utilizing the following steps:

25.3.b.1. The OCME FIU shall make a referral to the APS to initiate the disposition process for an unidentified decedent. APS staff will take the referral and initiate an APS case utilizing the OCME case number and the unique “Doe” identifier explained in section 25.1. The APS staff will assign it to the appropriate county office for processing;

25.3.b.2. APS staff shall follow their current processes and procedures with regard to unidentified decedents which are approved by the BSS Commissioner and other bureau leadership outlined within the appropriate sections of W. Va. Code and legislative rules;

25.3.b.3. In general, the APS staff complete their portion of this process in 30 days or less and communicate the results to the OCME as soon as possible thereafter;

25.3.b.4. BSS shall take responsibility for making the arrangements for disposition of the decedent by means of cremation. This is accomplished by the BSS entering into a contract or agreement with a funeral home/crematorium to conduct the cremation at the current rate associated with the utilization of the indigent burial fund. The payment rate and management of the indigent burial fund fall within the purview of the DHHR under W. Va. Code §9-5-9;

25.3.b.5. Once an agreement or contract is established between the BSS and the funeral home/crematorium, the APS staff will contact the OCME and provide the name of the funeral home/crematorium that has been contracted for the disposition. The OCME shall release the decedent's remains to the custody of the designated funeral home/crematorium;

25.3.b.6. The funeral home conducting the cremation shall return the cremated remains of the decedent in an appropriately labeled container, with the appropriate engraved metal Cremation ID Tag affixed to the remains, to OCME custody; and

25.3.b.7. The funeral home conducting the cremation shall complete the appropriate sections of the W. Va. death certificate that are assigned to the funeral director. Upon completion of the death certificate, the funeral home shall file the death certificate with the State Registrar of Vital Statistics under the processes promulgated by the Registrar. There are special filing requirements associated with a death certificate for an unidentified person.

25.3.c. Upon receipt of the cremated remains of an unidentified decedent, the OCME shall:

25.3.c.1 Accept and properly store the remains in a protected and climate-controlled storage area with limited access-control that is specifically identified for temporary storage of cremated remains;

25.3.c.2. Conduct a thorough inventory and appropriate log entry of the remains and any case specific identifiers associated with the remains as delivered to the OCME from the funeral home;

25.3.c.3. Ensure that the entry for unidentified remains in the NamUs is updated to reflect the change in status (cremation) of the remains in accordance with the rules and processes promulgated by the U.S. Department of Justice;

25.3.c.4. At an appropriate time, as determined by the OCME, the remains may be temporarily interred in a columbarium or crypt that is the property of the OCME located on the grounds of a cemetery with which the OCME has an established contract specifically for these purposes;

25.3.c.5. The OCME and any such cemetery shall appropriately record the exact location of the temporary interment separately for each decedent that is temporarily interred under the code and this rule. The OCME shall follow the rules promulgated by the designated cemetery sexton regarding the temporary interment of decedents in any respective cemetery regarding proper marking and recording of each interment;

25.3.c.6. The OCME, in direct coordination with the cemetery, shall maintain a schedule of reasonable and appropriate access for authorized OCME staff to inter and disinter cremated remains from each columbarium or crypt that is owned and utilized for the purposes of temporary interment by the OCME; and

25.3.c.7. The OCME shall be responsible for all costs that may arise which are associated with the maintenance and upkeep of the columbarium(s)/crypt(s) in accordance with any agreement executed between the OCME and a cemetery.

25.3.d. Establishment of forensic identification of previously unidentified decedents temporarily interred by the OCME.

25.3.d.1. In the event that a previously unidentified decedent who is temporarily interred by the OCME subsequently becomes forensically identified by one of the recognized forensic identification methods outlined in subdivision 8.2.h. above, the OCME shall:

25.3.d.1.a. Ensure that the assigned prosecutor or the Chief Medical Examiner conducts a review of the evidence offered to establish forensic identification in the case and indicates that forensic identification has been established by affixing his or her signature to the appropriate OCME Form;

25.3.d.1.b. Ensure that the assigned prosecutor or the Chief Medical Examiner submits an amendment to the death certificate on file with the Registrar to update the name of the decedent on the official death certificate;

25.3.d.1.c. Ensure that the appropriate logs, reports, case management systems and all other records associated with the case are properly amended to reflect the correct name of the decedent;

25.3.d.1.d. Ensure that any investigating agency or prosecuting attorney involved in the original investigation(s) surrounding the death are provided with an update as to the establishment of the forensic identification so that their respective records may be updated;

25.3.d.1.e. Ensure that APS is provided with an update as to the establishment of the forensic identification so that their records may be updated;

25.3.d.1.f. Ensure that the OCME FIU continues the medico-legal death investigation with regard to location of the legal next of kin as outlined in subdivision 24.3.d., including the requests for assistance from law enforcement and other entities to identify and notify legal next of kin;

25.3.d.1.g. Ensure that the NamUs is updated to reflect the forensic identification in accordance with U.S. Department of Justice procedures; and

25.3.d.1.h. Ensure that the sexton of the cemetery where the decedent is temporarily interred is notified of the forensic identification so that the cemetery records may be updated.

25.3.e. Forensic Identification of a previously unidentified decedent temporarily interred by the OCME changes the category of such decedent from unidentified to unclaimed for purposes of this rule. Upon such a change in status, the applicable elements of the unclaimed decedent processes outlined in section 24 shall be followed by the OCME for the remainder of the temporary custody of the decedent.

~~§64-84-24.~~ §64-84-26. 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 W. Va. 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, and published by the OCME Chief Administrator, 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.~~ §64-84-27. Fees for OCME Facility Use.

~~25.1.~~ 27.1. 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 or OCME Chief Administrator, to cover:

~~25.1.a.~~ 27.1.a. The cost to use the facility; and

~~25.1.b.~~ 27.1.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.~~ 27.2. 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.~~ §64-84-28. **Charging Certain Fees for Providing Testimony or Production of Opinions.**

~~26.1.~~ 28.1. Under authority of W. Va. 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.~~ 28.1.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.~~ 28.1.b. Providing testimony or production of opinions for a criminal proceeding arising outside the State of West Virginia;

~~26.2.~~ 28.2. The fees charged under subsection ~~26.1.~~ 28.1. of this section shall be according to a reasonable fee schedule and agreement, established by the ~~Commissioner~~ OCME Chief Administrator and approved by the Chief Medical Examiner, to be filed with the Secretary of State and published in the State Register.

~~26.2.a.~~ 28.2.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.~~ 28.2.b. The fee schedule agreement is attached to this rule as APPENDIX A.

~~26.3.~~ 28.3. 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.~~ 28.4. 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.~~ §64-84-29. **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.~~ §64-84-30. **Penalties.**

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

APPENDIX A



DEPARTMENT OF HEALTH AND

HUMAN RESOURCES

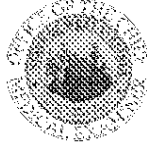
Office of the Secretary

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



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BUREAU FOR PUBLIC HEALTH
OFFICE OF THE CHIEF MEDICAL EXAMINER

AGREEMENT FOR PAYMENT OF FEES FOR SERVICES
INVOICE

TO:

DATE:

RE:

Fees authorized by law; W. Va. Code §16-1-11, Fees for Services, 64CSR51, and
Medical Examiner Requirements for Postmortem Inquiries, 64CSR84

_____	Staff/M.D./PH.D. Testimony (or deposition) out of the office:	\$ _____
	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 28).*	
_____	Staff/M.D./Ph.D. Deposition, in office: \$500 per hour, or fraction thereof (64CSR84, §26 28).	\$ _____
_____	Consultation in office: \$400/hour, or fraction thereof (64CSR84, §26 28).*	
_____	Use of autopsy suite: \$1,000/hour or fraction thereof (64CSR84, §25 27).*	\$ _____
_____	Use of OCME Office for deposition: \$300/hour or fraction thereof (64CSR84, §25 27).*	\$ _____
_____	Cremation Permits: \$50 per case (W. Va. 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 19.5) 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 19.5) (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 27)	\$ _____
_____	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 27); Requestor must submit timely written request and the additional fee payment for each quarter year of additional storage desired or the <u>specimen(s) will be discarded.</u>	\$ _____

Medico-legal 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. \$ _____

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 W. Va. Code §16-1-11 and §61-12-3 *et seq.* as well as two Bureau for Public Health legislative rules: Medical Examiner Requirements for Postmortem Inquiries, 64CSR84, and Fees for Services, 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, W. VA. 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: _____

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