

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

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2002 JUN 19 P 12:41

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Department of Health and Human Resources TITLE NUMBER: 64

RULE TYPE: Legislative CITE AUTHORITY: WV Code §§61-12-3(f), -7(b), -8(c), -9, -10
16-1-4 and -11

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 84

TITLE OF RULE BEING PROPOSED: Medical Examiner Rule for Postmortem Inquiries

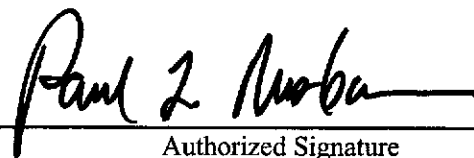
IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 19, 2002 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

James D. Kaplan, MD

Office of the Chief Medical Examiner

701 Jefferson Road
South Charleston, WV 25309

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SCANNED

Statement of Circumstances Which Require the Proposed Rule

This rule was legislatively mandated by WV Code §61-12-3(f) to formalize medical examiner office procedures and practices currently in place for postmortem inquiries.

Brief Summary

This rule regulates the conduct of medico-legal inquiry into the cause of death under certain circumstances as set forth under §61-12-8. The rule includes:

Establishing proper methods and procedures for the medico-legal investigation and certification of deaths;

Establishing proper methods and procedures for postmortem examination of human remains and substances taken thereof, and reports to be made of findings;

Setting forth requirements for the training and certification of county medical examiners and county coroners;

Establishing procedures for the release of information and evidence obtained as the product of medico-legal inquiry;

Establishing requirements for the collection and archiving of materials obtained as the result of medico-legal inquiry by the Office of the Chief Medical Examiner; and

Establishing reasonable fees payable to county medical examiners, assistant county medical examiners, county coroners and the Office of the Chief Medical Examiner for services provided to certain requests.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Medical Examiner Rule for Postmortem Inquiries, 64CSR84

Type of Rule: **Legislative** **Interpretive** **Procedural**

Agency: Division of Health
Department of Health and Human Resources

Address: Building 3, Capitol Complex
Charleston, W. Va. 25305

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$247,648	\$247,648
Personal Services					
Current Expense	\$			\$247,648	\$247,648
Repairs & Alterations					
Equipment					
Other					
Revenue				\$62,700	\$62,700

2. Explanation of above estimates.

64-84-4.—In addition to the above mentioned costs, the Office of the Chief Medical Examiner (OCME) will also incur costs for training and certification courses for County Medical Examiners (CoME), Assistant County Medical Examiners (AcoME), and County Coroners (CC) which will be partially offset by registration fees collected from participants.

64-84-7.2, --Authorizes payment of a reasonable fee, which will be set at \$10, in cases where jurisdiction is declined. For an estimated 1000 deaths reported to county personnel in which jurisdiction is declined, this cost would equal **\$10,000**.

64-84-7.2.c., 64-84-8.2.h, 64-84-10.2., 64-84-13.3,--Authorizes the CoME, AcoME, and CC to travel to death scenes and/or transport of bodies to other locations for pronouncement and viewing. Such costs are calculated as follows: Total estimated number of county cases: 2200. Travel to death scene: 50 miles average X \$.345/mile = \$18/case, Transport: 50 miles average X \$1/mile = \$50/case. 2200 cases X \$68 (\$18+\$50) = **\$149,600**. Funding has already been provided in part for this increased cost.

64-84-9.5.,64-84-10.1.b., 64-84-12.3., 64-84-13.7., 64-84-24.2.,--Authorizes that postage, body bag and other safety gear and supplies and telephone charges be at no cost to the CoME, AcoME, and CC. Those costs are calculated as follows: Postage is estimated at \$1.84/case, safety gear and supplies at \$30/case, telephone is toll-free. \$1.84+\$30.00 = \$31.84/case X 2200 cases = **\$70,048**. Partial funding has already been obtained to provide \$20 of the proposed \$30/case supplies. This would provide funding for photographic documentation of death scenes and other death investigation services not currently provided.

64-84-13.6, 64-84-13.8.--Authorizes that the fee for issuance of a cremation permit by CoME, AcoME, and CC or the OCME be increased to \$25, representing an increase of \$20/permit. Estimated revenues for this increase are calculated as follows: To OCME, 50 permits issued per month average X 12 months = 600 permits annually X \$20/permit increase = \$12,000. Estimated revenues for CoME, AcoME, and CC cannot be completed at this time because data regarding the total number of such permits issued is not currently collected by any state or private agency. This fee increase has already

taken effect.

64-84-16.7.—Authorizes the OCME to consult, query or otherwise employ outside forensic expertise. This cost is estimated at \$800 per case, number of cases estimated not to exceed 20 cases annually, or **\$16000**. Partial funding has already been provided for this cost, to **\$8000**.

64-84-8.2.g.4.—Authorizes OCME to direct that unidentified remains be embalmed, frozen or interred in an appropriate resting place. WV Division of Human Services pays for such interment through it's Indigent Burial Process, and the cost to disinter such remains is approximately \$500 per case, estimated not to exceed 4 cases annually, or **\$2000**.

64-84-19.7. -- Authorizes a fee which will be set at \$125 to be paid by parties requesting copies of autopsy reports in civil litigation cases, and requests by any commercial entity. Total numbers of such reports would be 25/month. 25X12X\$125 = **\$37,500**. This fee would be deposited in accordance with W. Va. Code §16-1-11.

64-84-21.8.c. -- Authorizes costs associated with duplication of histologic materials be assessed to and paid by the requesting party. A reasonable fee, which will be set at \$15 per slide X 180 slides per year would equal **\$2700**. This fee would be deposited in accordance with W. Va. Code §16-1-11.

64-84-25.—Authorizes charging of reasonable fees for out-of-state or civil case testimony. A fee of \$250 per hour for testimony and \$200 per hour for preparation would be assessed. It is estimated that 30 hours of testimony and 15 hours in preparation would be incurred for a total of **\$10,500**. This estimated cost may lead to a decreased level of such testimony, and this fee would be deposited in accordance with W. Va. Code §16-1-11.

3. Objectives of this rule:

Under Senate Bill 540, the secretary of the DHHR is directed to propose legislative rules in accordance with provisions of article 3, chapter 29a of state code concerning the proper conduct of medical examinations into the cause of death, the proper methods and procedures for postmortem inquiries conducted by county medical examiners and coroners, the examination of substances taken from human remains in order to determine the cause and manner of death, and training and certification of county medical examiners and coroners.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

No economic impact is expected on other agencies of state government.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

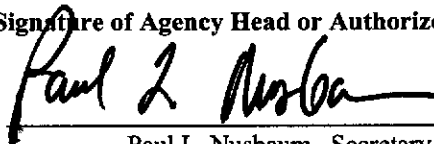
Payment of local body transport will provide additional revenue for transport services. Increase in cremation permit fee and in compensation for death investigation expenses incurred by the CoME, AcoME or CC will provide increased death investigation capabilities and income to the CoME, AcoME and CC's.

C. Economic Impact on Citizens/Public at Large.

Increase in cost of cremation permits will affect the general public.

Date: June 19, 2002

Signature of Agency Head or Authorized Representative:



Paul L. Nusbaum, Secretary
Department of Health and Human Resources

QUESTIONNAIRE

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

DATE: June 19, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency name, Address & Phone No.) Department of Health and Human Resources

State Capitol Complex, Building 3, Room 201, Charleston, WV 25305

Telephone: (304) 558-5598

LEGISLATIVE RULE TITLE: Medical Examiner Rule for Postmortem Inquiries

1. Authorizing statute(s) citation: WV Code §§61-12-3(f), -7(b), -8(c), -9, -10, 16-1-4 and -11.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period: June 19, 2002

b. What other notice, including advertising, did you give of the hearing?
Notice of the proposed rule will be sent to WV Public Defenders, WV Hospital Association, WV Medical Association, WV Trooper's Association, County Medical Examiners and Coroners, and WV Sheriffs' Association.

c. Date of Public Hearing(s) or Public Comment Period ended: July 19, 2002

- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached N/A No comments received

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

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

 Martha Barnitt

 Office of the Secretary - DHHR

 State Capitol Complex - Bldg. 3 - Room 201

 Charleston, West Virginia 25305

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule (please type):

 James A. Kaplan, MD

 Office of the Chief Medical Examiner

 701 Jefferson Road

 South Charleston, West Virginia 25309

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

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

 N/A

b. Date of hearing or comment period:

N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

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

**SERIES 84
MEDICAL EXAMINER RULE FOR POSTMORTEM INQUIRIES**

FILED

2002 JUN 19 P 12:41

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§64-84-1. General.

1.1. Scope. – This legislative 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 thereof, to determine the cause and manner of death; sets forth requirements for the training and certification of county medical examiners and coroners; and allows fees to be assessed for services provided to certain private parties by the medical examiner's office. This rule should be read in conjunction with 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.legis.state.wv.us/>.

1.2. Authority. – WV Code §§ 61-12-3(f), -7(b), -8(c), -9, -10, 16-1-4 and -11.

1.3. Filing Date. –

1.4. Effective Date. –

§64-84-2. Application and Enforcement.

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

§64-84-3. Definitions.

3.1. Assistant County Medical Examiner (ACoME). - A physician, registered nurse, paramedic, emergency medical technician or physician's assistant, licensed by the State of West Virginia, who is appointed by the chief medical examiner to provide medico-legal death investigation services under supervision of the chief medical examiner.

3.2. Certification of Death. – The scientific and legal processes used by the medical examiner or coroner to determine the cause and manner of certain deaths.

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

3.4. County Coroner (CC). - A person trained and certified by the OCME in the practice of medico-legal death investigation, who is appointed by a county commission and works under the supervision of the Office of Chief Medical Examiner (OCME).

3.5. County Medical Examiner (CoME). - A physician, registered nurse, paramedic, emergency medical technician or physician's assistant, licensed by the State of West Virginia, who is certified by the Department to practice medico-legal death investigation under the direction of the Chief Medical Examiner, or his or her designee.

3.6. Forensic Autopsy. - A postmortem forensic examination of the body that encompasses surgical exploration and study of the internal body tissues, according to West Virginia statutes, and the rules of the Office of Chief Medical Examiner (OCME).

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

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

3.9. Forensic Postmortem Examination. - Any examination of the human body performed after death that is authorized by W. Va. Code §16-12-10.

3.10. OCME. - Office of Chief Medical Examiner.

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

§64-84-4. Training and Certification of County Medical Examiners and Coroners.

4.1. A County Medical Examiner (CoME):

4.1.a. If he or she is not already trained and certified by the Department in the practice of medico-legal death investigation prior to his or her appointment, the chief medical examiner (CME) shall ensure that training and certification in the practice of medico-legal death investigation is provided to the CoME appointee within one (1) year of the appointment.

4.1.b. Shall participate in and pass a course of study following the guidelines for medico-legal death investigation promulgated by the National Institutes of Justice of the Office of Justice Programs, that includes a minimum of fourteen (14) contact hours of didactic lecture.

4.1.c. Shall qualify to take the state certifying examination by completing and passing a course of training specific to death investigation within one (1) year of planning to take the examination. If a person fails the state certifying examination, he or she shall attend another training program that satisfies the requirements in Subdivision 4.1.b. before taking the examination again.

4.1.d. Shall be certified in the practice of medico-legal death investigation:

4.1.d.1. If he or she passes an examination administered by the OCME,

the State of West Virginia, or by an entity recognized by the American Board of Medico-Legal Death Investigators (ABMLDI); or

4.1.d.2. If he or she was already practicing as a CoME as of January 1, 2001, and has been a CoME for three (3) years.

4.2. A County Coroner (CC):

4.2.a. Shall be certified by the OCME or by ABMLDI in the practice of medico-legal death investigation prior to his or her appointment by the county commission, or if already serving at the effective date of this rule with no certification, shall seek training and certification in the practice of medico-legal death investigation within two (2) years of the effective date of this rule.

4.2.b. Shall meet the same requirements as a CoME for training and certification, as described in Section 4.1. of this rule.

4.3. The OCME shall provide or provide access to a training course that meets the requirements in this rule at least once each year and shall assess reasonable fees, as established by the CME, to cover the cost of the training.

4.4. Certification in the practice of medico-legal investigation provided by the State of West Virginia to CoME, ACoME and CC shall expire after three (3) years and shall require recertification by attendance in any approved training program and passage of any approved certification examination as described in this rule.

§64-84-5. Authority of the County Medical Examiner (CoME), Assistant County Medical Examiner (ACoME), and County Coroner (CC) When Investigating A Death.

5.1. The CoME, ACoME and CC shall perform all duties related to investigations into, and determination of the cause and manner of death, and the formulation of conclusions thereof, under the direction of the chief medical examiner (CME), or his or her designee.

5.2. When the CoME, ACoME or CC investigates a death where the circumstances fall under criminal investigation:

5.2.a. They shall perform all duties related to the establishment of cause and manner of death, and the formulation of conclusions thereof, under the direction of the CME, but also subject to the direction of the county prosecutor and the principal investigative agency (PIA) of jurisdiction;

5.2.b. When entering a scene of death they 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. State Law; and

5.2.c. If any directions given to the CoME, ACoME or CC under 5.2.a. or 5.2.b. conflict with the provision in Section 5.1 of this rule, the CoME, ACoME or CC shall immediately notify the CME, or his or her designee.

5.3. When the CoME, ACoME or CC in the performance of other medical duties attends a patient to provide treatment or resuscitation and the person dies, CoME, ACoME or CC upon pronouncement of death, may not act in the capacity of performing their investigative duties of the establishment of cause and manner of death or formulating conclusions, opinions, or testimony in judicial proceedings, except by specific exception at the discretion of the CME.

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

6.1. The CoME, ACoME and CC, under authority and supervision of the Office of the Chief Medical Examiner (OCME), shall investigate the circumstances of a death when:

6.1.a. A person dies without benefit of a treating physician;

6.1.b. A person dies suddenly when in apparent good health and less than fifty (50) years of age, when there is no history or other reliable evidence of serious natural disease, so as to be able to reasonably assume death due to natural causes;

6.1.c. An inmate in a public institution such as a jail dies; or during an incident associated with police intervention or custody, or during court-ordered hospitalization, or when public services provided by county, state or federal social service agencies are thought to have contributed to the death;

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

6.1.e. A person dies due to or associated with, violence, or by any external cause; or by any suspected violence or external cause; or

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

§64-84-7. Responsibilities of the CoME, ACoME and CC.

7.1. The CoME, ACoME or CC shall be available at all times to perform the duties and responsibilities outlined in this rule, pursuant to W. Va. Code §§61-12- 7(b) and -14, except where he or she notifies the OCME otherwise in timely fashion.

7.2. When a CoME, ACoME or CC is notified that a death has occurred, he or she:

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

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

7.2.c. May go to where the body lies or may authorize removal of the body to an appropriate place for pronouncement, viewing, and certification of death.

7.3. When a CoME, ACoME or CC 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 decedent; and

7.3.b. Assume full responsibility for the personal effects and their condition until transfer of the items:

7.3.b.1. To an appropriate investigative agency, and list all items so transferred on prescribed forms;

7.3.b.2. To an authorized funeral agency; and list all items so transferred on prescribed forms, or;

7.3.b.3. To another entity as directed by the OCME, and list all items so transferred on prescribed forms.

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

8.1. Pronouncement.

8.1.a. A CoME, ACoME or CC shall pronounce death when at least one (1) of the following conditions exists:

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

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

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

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

8.1.b. If the CoME, ACoME or CC does not pronounce death under any of the conditions in Subdivision 8.1.a., he or she shall immediately notify medical rescue personnel.

8.1.c. The CoME, ACoME or CC shall record the date and time of the death pronouncement on a form from the OCME.

8.2. Investigation.

8.2.a.. In investigating a death under the CME's jurisdiction, the CoME, ACoME or CC shall identify the deceased person and establish proof of identity of the deceased person.

8.2.b. The CoME, ACoME or CC may identify the deceased by:

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

8.2.b.2. By verbal confirmation of visual identification by a family member or other person at the scene of death who knew the decedent, provided that facial features are sufficiently preserved to reflect the appearance of the decedent in life.

8.2.b.3. Comparing the body with a photographic identification such as a driver's license, and 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.c. If a CoMe, ACoME or CC cannot identify the deceased person by visual examination at the scene of death, he or she shall refer the body to the OCME.

8.2.d. The CME, Deputy CME or a designated pathologist may use, but not be limited to, the following means of identification:

8.2.d.1. Additional visual identification by persons acquainted with the decedent;

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

8.2.d.4. Comparison of postmortem x-ray films with antemortem radiology imaging;

8.2.d.5. Tattoos and scars;

8.2.d.6. Congenital or acquired malformations or anthropomorphic features;

8.2.d.7. Features documented by medical records;

8.2.d.8. Biologic methods of identification or fingerprints;

8.2.d.9. Photography;

8.2.d.10. Personal effects; and

8.2.d.11. Circumstances of inclusion or exclusion.

8.2.e. Obtaining medical records for identification of important medical information. When a deceased person has received medical treatment or attempted medical rescue, or when there is reason to believe that medical records exist for the person that might help determine the cause or manner of death, or answer any material question during an investigation of a death, the CoME, ACoME or CC shall obtain the medical records under the authority of the CME and shall review them for accurate certification of death.

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

8.2.e.2. Copies of these records may become part of the medical examiner file, and, as such, may not be released from this file upon any request or subpoena.

8.2.e.3. Copies of medical records that are obtained under this rule, when not incorporated into the medical examiner file, shall be returned to the original institution or destroyed.

8.2.f. The OCME shall radiologically or photographically document dentition and other potentially distinguishing morphologic characteristics, obtain potentially useful antemortem imaging and medical records when available, and archive them at the OCME.. If identification of the body is established through these records, they shall become part of the OCME case file, and the portions of those records relevant to identification shall be released to lawful inquiry or subpoena.

8.2.g. When human remains cannot be tentatively or positively identified:

8.2.g.1. They shall be marked "Unidentified" and, if possible, designated by all of the following categories that apply: White, Black, Asian, Native American, Adult, Child, Infant, Male, or Female.

8.2.g.2. Within ten (10) working days of having received a body that remains unidentified, the OCME shall submit to the appropriate registrar the characteristics of the unidentified body as required by National Crime Information Center guidelines.

8.2.g.3. The OCME shall take fingerprints, when possible, and keep them on file.

8.2.g.4. When the OCME receives a body whose identity remains unknown, after performance of autopsy and investigation into the circumstances of death, the OCME shall, within thirty (30) working days, authorize the unidentified remains to be embalmed, frozen or interred in an appropriate resting place, or otherwise disposed in an appropriate manner, pursuant to West Virginia State Law.

8.2.g.5. The OCME shall sign a death certificate bearing the designation “unidentified person” to mean that all applicable methods for establishing identity were attempted by the OCME and were unsuccessful.

8.2.h. Upon notification of a death under circumstances as listed in this rule, when a body has not been removed from the place of death and lays undisturbed, the CoME, ACoME, or CC shall initiate travel to the place of death within 1 (one) hour, when:

8.2.h.1. Natural death cannot be assumed on the basis of advanced age and evaluation of circumstances by police personnel at the scene;

8.2.h.2. Circumstances are suspicious for death due to unnatural causes or a culpable act;

8.2.h.3. The CoME, ACoME or CC deems it necessary in the public interest; or

8.2.h.4. When so requested by the OCME, pursuant to Section 11 of this rule.

8.2.i. When there is a criminal investigation of the death, the CoME, ACoME, or CC shall obtain authorization from the principle investigator of the police department of the 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.j. When examining a deceased person at the scene of death, the CoME, ACoME or CC shall:

8.2.j.1. Be accompanied by police or another authorized person, at the scene of death at all times;

8.2.j.2. Examine the body at the scene of death to identify the decedent, pronounce death, determine postmortem changes, evaluate other changeable or evanescent phenomena and other exigent forensic circumstances that may apply, and document the findings; and

8.2.j.3. Record all details of the examination including the time and date of the examination, the identity and official capacity of the accompanying person during the examination, and all findings from the examination, on the appropriate form from the CME.

8.2.k. When the CoME, ACoME or CC performs a complete external examination of the body, he or she shall:

8.2.k.1. Conduct the examination in an appropriate location such as a local hospital, funeral home or other similar facility;

8.2.k.2. Be accompanied by an authorized witness at all times when performing the examination; and

8.2.k.3. Record all details of the examination including the date and time of the examination, the identity and official capacity of the accompanying witness during the examination, and all findings from the examination, on the appropriate form from the CME;

8.3. Certification of Death.

8.3.a. After the CoME, ACoME or CC has identified the deceased person, when completing a death certificate, he or she shall enter the deceased person's name in the left upper corner of the death certificate, as indicated.

8.3.b. After a CoME, ACoME or CC 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 or other identification tag securely to the body or the body bag, and if the identification is from a photographic document, include the photographic document with the body.

8.3.c. If a CoME, ACoME or CC is not available at the scene of death, he or she shall direct investigating law enforcement personnel or other responsible person at the death scene to complete and securely affix an identification tag attesting to completed identification of the body, pursuant to this rule.

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

A CoME, ACoME or CC :

9.1. In determining cause and manner of death on any deceased body that does not require transport to the state medical examiner's office, when completing the death certificate, shall obtain peripheral blood by percutaneous route from the deceased person. The CoME, ACoME or CC shall collect other fluid and tissue upon specific instruction from the CME, DCME or his or her designee;

9.2. Shall, on a deceased person who has survived in a hospital for a period of time greater than one hour, or in the course of medical treatment having received a blood transfusion or significant intravenous fluid support, obtain admission hospital blood when available and submit the blood for toxicologic analysis;

9.3. Shall document hospital admission blood collection on the appropriate OCME form, and shall ensure that the blood accompanies the body when it requires transport to the state medical examiner's office for further examination;

9.4. Shall obtain appropriate fluid and tissue specimens for toxicologic analysis by the OCME according to provisions of this rule:

9.4.a. Using sample containers provided by OCME, accompanied by forms provided by the OCME that must accompany such sample.

9.4.b. Sealing them in approved containers provided by the OCME;

9.4.c. Delivering them to the OCME by mail by a bonded carrier or by a courier authorized by the OCME.

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

9.6. Shall not withdraw blood or other tissues or fluids in deaths when it is determined that transport of the body to the OCME for further postmortem examination is necessary.

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§64-84-10. Transport of the Body.

10.1. The CoME, ACoME or CC shall arrange for transport of the body from the place of death to any location under the provisions of these rules, for the purpose of performing further examination of the body, according to the following requirements:

10.1.a. That the body be transported in a timely manner and under appropriate and reasonable conditions;

10.1.b. That the body be enclosed in a clean, moisture-impervious body bag;

10.1.c. That the identity of the body be documented by tag or by a label affixed securely to the body or the body bag;

10.1.d. That it be by an approved funeral or ambulance vehicle, or other conveyance as authorized by the OCME; and

10.1.e. That the investigation report detailing findings from examination at the scene of death accompany the body or are sent by facsimile transmission so as to be available to the autopsy pathologist prior to performing the autopsy.

10.2. The CoMe, ACoME or CC may obtain telephone authorization from the CME, DCME or his or her designee, to arrange for removal of the body to an appropriate place for complete external examination and subsequent certification of death.

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

11.1. The CoMe, ACoME or CC shall notify and consult by telephone with the OCME prior to and following the investigation in the following circumstances:

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

11.1.b. Deaths of children sixteen (16) years or younger, except those due to a car accident or due to known disease;

11.1.c. Multiple fatality events that cause three (3) or more deaths;

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

11.1.e. Fire-related deaths;

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

11.1.g. Other deaths that fall under medical examiner jurisdiction;

11.1.h. Cases of declined medico-legal jurisdiction; or

11.1.i. A request by any investigating agency or other authority that he or she perform in any way that may constitute a violation of W. Va. Code §61-12-1 et seq., or any provisions of these legislative rules.

11.2. When a physician who is serving in the capacity of CoME, ACoME or CC recognizes that a current patient's death falls under medical examiner jurisdiction he or she shall contact the OCME.

11.3. When a CoME, ACoME or CC has in his or her capacity as a physician, paramedic, or EMT attempted resuscitation of a deceased person whose death requires a medico-legal investigation, he or she shall immediately contact another appointed CoME, ACoME or CC to investigate the death. If another CoME, ACoME, or CC is not available, the CoME, ACoME or CC shall immediately notify the OCME.

11.3. The OCME shall pay the cost of all mandated telephone consultations referred to in Section 11 of this rule.

§64-84-12. Documentation of Findings Obtained by Medico-Legal Death Investigation by the CoME, ACoME or CC.

12.1. The CoME, ACoME or CC who investigates the circumstances of death shall record findings by using the investigative forms provided by the OCME, designated OCME-1, except in investigations performed into the sudden, unexpected death of infants or children under the age of two (2), that are not clearly assignable to transportation related causes, when CoME, ACoME, or CC shall use the sudden infant/early childhood death event investigation form provided by the OCME, designated OCME- 17.

12.2. The CoME, ACoME or CC shall complete the forms as fully as possible, using

currently available information.

12.3. If a death requires examination at the State Medical Examiner's Office, the CoME, ACoME or CC shall submit the original copy of the OCME - 1, or other appropriate investigative form along with the case, or send it by facsimile transmission, to the OCME, to be available prior to the autopsy; and the CoME, ACoME or CC shall mail a hard copy to the appropriate state office within seven (7) business days of the death; and

12.4. When the death is certified by the CoME, ACoME or CC, he or she shall mail the original copy of the OCME - 1, or other appropriate completed investigative form, and the appropriate portion of the WV death certificate or photocopy of the completed death certificate to the OCME, within seven (7) business days of the death.

12.5. In all cases, the CoME, ACoME or CC shall retain a copy of the investigation report for their records.

12.5.a. The CoME, ACoME or CC shall archive the records for a period of at least two (2) years and shall surrender them to any other appointed CoME, ACoME, or CC of that county upon retiring or leaving office.

12.5.b. If there is no other CoME, ACoME or CC appointed to that county to surrender archived records to at the time of leaving office, such files shall be transferred to the OCME.

12.5.c. All obsolete records shall be disposed of in a manner that renders them illegible, such as by shredding or burning of documents.

12.6. All photographic images, pictorial documentation, or other representation or schematic record created at the request of the OCME shall become part of the OCME case file, including photographic negatives and all work product.

§64-84-13. Authorization for Cremation by CoME, ACoME or CC.

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

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

13.1.b. Ascertain that West Virginia death certificate items as noted below are fully and correctly completed:

13.1.b.1. Ensure that the name of the decedent is listed correctly in the appropriate place;

13.1.b.2. The “pronouncing physician” signature is present (required if different from the “certifying physician”);

13.1.b.3. That items referring to the “date of death”, “time of death”, “date pronounced”, “cause” and “manner of death” sections are fully completed, and a specific cause of death is listed; and

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

13.1.b.5. That the portions of the death certificate identifying the title and name of the “certifier”, his or her signature and the “date signed” should be completely and correctly filled out.

13.2. If any death certificate item as listed above is incomplete, or the cause of death statement is not valid or is incomplete, or certification is not lawful, the CoME, ACoME or CC shall refuse authorization for cremation and shall refer the case to the OCME.

13.3. The CoME, ACoME or CC may examine the remains presented for cremation directly, in 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 decedent.

13.4. When a CoME, ACoME or CC has refused authorization to cremate under these rules, it shall be unlawful for any person to solicit authorization for the cremation from any other Medical Examiner or Coroner without the knowledge and express consent of the refusing CoME, ACoME or CC.

13.5. These provisions shall apply only to remains of persons whose deaths have been pronounced within the State of West Virginia that are to be cremated in the State, regardless of whether or not there is prior authorization for cremation by any other legal instrument.

13.6. The CoME, ACoME or CC shall receive a reasonable fee as established by the Chief Medical Examiner, 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 by this rule.

13.7. The CoME, ACoME or CC 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, designated OCME-10. The original OCME -10 copy shall be surrendered to the requesting agency, and the CoME, ACoME or CC shall keep one copy for their records and submit a second copy to the OCME.

13.8. The CME or DCME may authorize cremation, on behalf of the OCME, when the

CoME, ACoME or CC are unable to respond to a request. Upon authorization, the requesting funeral director or crematory shall pay the OCME a fee as established for the CoME, ACoME or CC, under Subsection 13.6 of this rule, deposited in accordance with W. Va. Code §16-1-11.

§64-84-14. Death Certificate.

14.1. The CoME, ACoME or CC, under the supervision of the CME, DCME or a designated forensic pathologist, shall establish the cause and manner of death and complete the death certificate regarding those and other associated findings pursuant to provisions of these rules according to the following:

14.1.a. Only the CME, DCME or designated forensic pathologist has the authority to rule a manner of death as undetermined;

14.1.b. Regarding a death investigated by the OCME: only the CME, DCME or designated forensic pathologist shall have the authority to list as "pending" the cause and, or manner of death for an otherwise completed death certificate, when knowledge of the circumstances of death necessary for accurate death certification is lacking, but reasonably anticipated, either through further testing or investigation;

14.1.c. The CME, DCME or designated forensic pathologist shall have the authority to complete the cause of death statement or determination of manner of death on a death certificate where the cause and, or manner of death was previously listed as pending, for those cases which fall under their responsibility.

14.1.c.1. Upon receiving the information required for accurate death certification, the CME, DCME or designated forensic pathologist shall complete the appropriate pending portions of a pending death certificate within seven (7) working days.

14.1.d. The CME, DCME or his or her designee 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 the CME or DCME may amend the death certificate for the purposes of accuracy and conformity to State and Federal law.

14.1.e. The CME, DCME or designated forensic pathologist shall make all amendments and corrections to already signed and filed death certificates using specific OCME forms provided for that purpose.

14.1.f. The CME or DCME shall have the authority to 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 investigation into the death, as required under W. Va. Code §61-12-8 or under these rules, when the amendment will correct inaccuracy, except where proscribed by West Virginia Code.

14.1.g. No human remains which have been subject to forensic postmortem

examination pursuant to W. Va. Code §61-12-8, and -10 shall be considered to be released from legal control of the medical examiner without a completed and signed death certificate.

§64-84-15. Completion of Death Certificates by the CoME, ACoME and CC.

15.1. When the CoME, ACoME, or CC completes the death certificate, it means that an investigation into the circumstances of death and performance of a complete external examination of the body have been performed, and that the CoME/ACoME/CC:

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

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

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

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

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

16.1. The CME, DCME or designed forensic pathologist, pursuant to W. Va. Code §61-12-10, shall have the authority, under supervision of the CME, to perform, or to otherwise cause to have performed, a forensic autopsy in the case of deaths occurring under circumstances when such an examination is deemed necessary to:

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

16.1.b. Establish or confirm identification;

16.1.c. Recover, identify and preserve forensic evidence;

16.1.d. Obtain required samples for toxicologic or microscopic analysis;

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

16.1.f. Provide a factual medical report for law enforcement;

16.1.g. Prosecute or defend persons named in criminal matters;

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

16.1.i. Discover and document any forensic information of interest in a criminal

matter, or suspected criminal matter.

16.2. Forensic autopsy may include:

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 deemed necessary by the prosecutor.

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

16.4. Forensic postmortem examination of a body may take the form of a complete forensic autopsy, limited forensic autopsy or a forensic external examination of the body at the discretion of the CME or DCME.

16.5. The CME or DCME, or the CoME, ACoME or CC of the county in which the death was pronounced, shall authorize a forensic postmortem examination of the body.

16.6. The county attorney of any county in which the death or the event causing death occurred, or the judge of the circuit or any court which has criminal jurisdiction in the county in which the death or the event causing death occurred, may request performance of a forensic autopsy or other forensic post mortem examination of the body.

16.7. When a person opposes an autopsy, the CME, DCME or designated forensic pathologist shall give due consideration to the objections. However, the final decision as to the performance or extent of a forensic postmortem examination shall be at the discretion of the CME or DCME, subject to W. Va. Code §61-12-1 et seq. and this rule.

16.8. The CME, DCME or any designed forensic pathologist, may employ any forensic specialist, subject to the supervision of the CME, in order to investigate the cause or circumstances of death, except where such forensic specialist has been asked to surrender previous membership in the American Academy of Forensic Sciences for a disciplinary matter, or where such person has applied to the American Academy of Forensic Sciences for provisional membership and has been denied, or where a previous membership has been revoked by disciplinary action on the part of the American Academy of Forensic Sciences. This information shall become part of the OCME case file, releasable under W. Va. Code §61-12-10-(b), -(c), -(d), -(e) and (g).

16.9. The CME, DCME or designated forensic pathologist, in the course of performing autopsies, shall complete and sign all autopsy reports within four (4) weeks of signing the

completed death certificate corresponding to the autopsy performed.

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

17.1. The CME, DCME, or designated forensic pathologist:

17.1.a. May collect body fluids or tissues from deceased persons and hold them for the performance of toxicologic or other analyses to determine any fact or circumstance relevant to medico-legal death investigation, conforming to restrictions named in W. Va. Code §61-12-10(f) and to this rule. The specimens may include but are not limited to: blood, urine, vitreous fluid, liver, other visceral tissues, bone and hair.

17.1.b. Shall have final authority for disposition of the tissues and fluids except when the materials constitute a predominant amount of the collected deceased remains, where such materials shall be considered to constitute the human body, subject to release to the legal next of kin or designee, as described further in separate provisions of this rule.

17.1.c. Shall authorize testing of all blood and other appropriate specimens collected for both alcohol and drugs by drug screening, in conformity with Forensic Toxicology Guidelines, promulgated by the American Academy of Forensic Sciences, and pursuant to W. Va. Code §64-12-10 and §17 C -5B-1 with confirmation in all cases of positive drug screen results.

17.1.c.1. Compliance of toxicologic testing to Forensic Toxicology Guidelines, the American Academy of Forensic Sciences, 1991, and any other applicable standards are the immediate responsibility of the Chief Forensic Toxicologist, under direction of the CME.

17.1.d. Shall be authorized to collect from the body any biologic material that may possess forensic significance, and may submit such materials for any testing necessary to establish forensic significance.

17.1.e. Shall be authorized to collect and hold for study any non-biologic materials or items taken from a body during a postmortem examination to answer any question of forensic significance.

17.1.e.1. The CME or designee shall notify the legal next of kin, administrator or executor of the estate of the deceased in writing of any anticipated release of custody by the OCME of collected personal property on which testing has been completed. The legal next of kin, administrator or executor of the estate of the deceased property must notify the OCME within thirty (30) days of receipt of letter to make notification of intent to receive such personal property, or such property may be disposed of at the discretion of the OCME.

17.1.f. Shall collect and deliver any material, items or tissues possessing, or thought to possess, forensic significance to the law enforcement agency of jurisdiction, recording

the transfer on specific forms designated by the OCME.

17.1.g. Shall be authorized to perform, or cause to have performed, any ancillary test or procedure including, but not limited to, X-ray or photographic imaging, or obtaining fingerprints, when the procedure or test may render findings of forensic significance. Results of such tests shall become part of the OCME case file, releasable under W. Va. Code §61-12-10-(b),-(c),-(d),-(e) and -(g).

17.1.h. Shall have the authority to consult, query or otherwise employ any forensic specialist in order to provide ancillary testing, or other forensic expertise deemed necessary for determination, interpretation or correlation of any fact or circumstance of death thought to have forensic significance, except where such forensic specialist has been asked to surrender previous membership in the American Academy of Forensic Sciences for a disciplinary matter, or where such person has applied to the American Academy of Forensic Sciences for provisional membership and has been denied, or where a previous membership has been revoked by disciplinary action on the part of the American Academy of Forensic Sciences.

17.1.h.1. A report of findings thereof shall become part of the OCME case file, releasable under W. Va. Code §61-12-10(b),(c),(d),(e) and (g).

§64-84-18. Release of Information.

18.1. The following information pertaining to a medical examiner case may be released on public request one (1) hour after the next of kin has been notified, where the time and date of the notification to the next of kin has been documented:

18.1.a. The name, sex and age of the decedent;

18.1.b. The date of examination; and

18.1.c. The name of the pathologist who performed the examination.

18.2. Autopsy and investigation findings and results of ancillary studies performed by or at the request of the OCME are confidential information, except as specified under W. Va. Code §§61-12-8, -10 and -13. In the case of deaths investigated by the OCME, medical and other therapeutic or investigative records of the decedent obtained by the investigation are confidential and are not releaseable by the medical examiner upon any request or subpoena.

18.3. The OCME shall release information obtained by OCME investigation to the next of kin, the executor of the estate, or to any designee specified by the next of kin or executor of the estate, except when the circumstances of death are the subject of a criminal investigation or criminal prosecution, in which case all 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.

§64-84-19. Autopsy Reports.

19.1. The autopsy report shall include the document described as autopsy report, together with all reports and records of findings, and results of ancillary testing as performed or requested by the forensic pathologist, when the reports or records are pertinent to the findings recorded in the autopsy report proper. The autopsy report shall include at least the following items:

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

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

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

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

19.1.e. A description of medical treatment and effects;

19.1.f. A report of injury and effects present;

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

19.1.h. A report of 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 cause and manner of death arising out of autopsy and investigation findings, and correlation of autopsy findings with the circumstances of death where possible;

19.1.l. A list of all witnesses to the autopsy; the date, place and time of the autopsy; the identity of the prosector; his signature, and the date thereof.

19.2. The autopsy report shall not include medical records or confidential documents pertaining to the decedent, obtained by the medical examiner under W. Va. Code §61-12-8, or confidential investigative or corrective records obtained under similar law.

19.3. Except as provided in W. Va. Code §61-12-10, the autopsy report shall not be released, except copies of the report may be released upon written request by a next of kin of the

decedent.

19.4. When the death is the subject of criminal investigation or litigation, the autopsy report may be released only with the authorization of the prosecuting attorney in charge of the criminal proceeding, except for release of such reports:

19.4.a. To any other party involved in that same criminal litigation;

19.4.b. To the police department of jurisdiction;

19.4.c. To the Domestic Violence Related Fatality Review Team;

19.4.d. To the Child Fatality Review Team (CFRT), when the OCME autopsy reports and investigation records pertain to any decedent who is eighteen (18) years or younger at the time of death; or

19.4.e. To other state or federal agencies at the direction of the Secretary.

19.5. The original autopsy report, or any other original or irreplaceable element pertaining to the OCME case files, such as photographic negatives or single photograph copies, may not be released from OCME custody. Copies of autopsy reports shall be released in person, by mail or by other established courier upon request, and when released to persons named under W. Va. Code §61-12-10, shall be released with a notarized statement attesting to the release.

19.6. In the case of the death of any infant subsequently determined to have died of sudden infant death syndrome, a copy of the autopsy report may be released to the sudden infant death program based within the division of maternal and child health.

19.7. A reasonable fee may be charged for provision of an autopsy report copy to requests authorized under this rule, to be established by the Commissioner, for deposit in accordance with W. Va. Code §16-1-11.

19.7.a. Such fee shall be waived for the following:

19.7.a.1. The next of kin;

19.7.a.2. The attending physician, or West Virginia prosecuting attorney, police or other investigating agency;

19.7.a.3. Any officer of a West Virginia court of law in deliberation of a criminal matter involving the decedent;

19.7.a.4. All parties when release is by request of the prosecuting attorney;

and

19.7.a.5. Any state agency as authorized by this rule, or by the Secretary.

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

20.1. Human remains shall be released from medical examiner custody to an authorized funeral home or other entity designated by the next of kin only when accompanied by an appropriately filled out and signed death certificate.

20.2. Authorization of a funeral home shall be established by the signature of the funeral director or his or her designee on a form provided by the OCME.

20.3. The OCME may release custody of remains to an organ procurement organization (OPO) or its designee when authorized by the next of kin, established by receiving a written copy or a facsimile copy of the signature of an OPO representative or his or her designee attesting to such authorization. This authorization and release of custody of the body to the OPO by the OCME does not constitute a release of medical examiner case jurisdiction by the OCME.

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 custody of the OCME;

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

20.4.c. Shall be released to the principal investigating agency, upon its request, or in the absence of the request, when the personal property has no forensic significance, it may be released to the executor or administrator of the decedent's estate and documented on forms provided by the OCME for that purpose.

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

20.6. When there is no funeral home authorized by the next of kin for receipt of human remains, or when the remains or personal property are determined to have further forensic significance, they may not be released from the custody of the OCME without authorization by the CME, DCME, or his or her designee.

20.7. Whenever human remains are received into the custody of the OCME, and when they are released from the custody of the OCME, they shall be enclosed in a clean, moisture impervious body bag, with the decedent's name and 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 Samples from OCME Custody.

21.1. The OCME shall release biological samples, including tissues and body fluids,

directly to a certified and accredited laboratory upon a written request that is accompanied by a signed and witnessed release from:

21.1.a. The legal next of kin, or other person capable of authorization, except when an ongoing or pending criminal matter takes precedence over civil process.

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

21.1.c. Any officer of a West Virginia court who establishes proof of ongoing litigation to which he or she is a party, where the cause of death is a material issue, except when an ongoing or pending criminal matter takes precedence over civil process.

21.2. The OCME shall refer requests for testing of biological samples taken at time of postmortem examination of the body, from individuals who may have had an infectious disease exposure as a result of contact with a body under OCME custody, to their county health officer, who may request release of a sample.

21.3. When a person is notified by a county health officer that he or she has had a significant infectious disease exposure as the result of contact with a body under OCME custody, the OCME shall transfer a sufficient sample of blood pertaining to the case to the State public health laboratory for appropriate testing. The State public health laboratory shall be responsible for release of all such test results pursuant to applicable State law and rule.

21.4. Before the OCME can comply with a request to release biological material samples to a requesting party from a case that is part of a criminal investigation or criminal prosecution, the OCME shall require the approval of the prosecuting attorney of jurisdiction, except to other parties engaged in the criminal prosecution.

21.5. When the OCME deems a biological or other material sample from a case that is part of a criminal investigation or criminal prosecution to have irreplaceable forensic value, the OCME may withhold it from an otherwise lawful request for release under this rule, except by request of the prosecuting attorney of the county of jurisdiction; or when a court order directs the OCME to release the samples.

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

21.7. The OCME shall only allow shipment of the samples directly to the recipient laboratory by appropriate courier or other bonded service. When samples leave OCME custody, the requester is responsible for any risks associated with shipping and subsequent analysis.

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

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

21.8.b. When the OCME provides original slides by any request, all slides must be returned to the OCME after examination;

21.8.c. When the OCME provides duplicate histologic slides cut from original tissue blocks, associated with a case that is not part of a West Virginia criminal investigation or criminal prosecution, the Commissioner may charge a reasonable fee per slide, established by the Commissioner, to the requesting person or entity, payable to the Commissioner for deposit in accordance with W. Va. Code §16-1-11.

21.8.d. Such release will be made to written requests by the next of kin, executor of the estate, or to any designee, when accompanied by a signed and witnessed release for the same by the next of kin, executor of the estate;

21.8.e. If a court order is issued by a duly appointed West Virginia judge who directs the OCME to release such specimens;

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

21.9. Before the OCME releases histologic samples pertaining to criminal cases, or cases of death due to criminally culpable action, it shall have prior approval of the prosecuting attorney of jurisdiction, unless the requests come from other parties in the same criminal court proceeding.

21.10. If the OCME receives a request for histologic material that it deems to be of irreplaceable forensic value, it may be withheld from an otherwise lawful request, unless the request is by order of a court of jurisdiction.

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 prepaid by the requesting party.

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

22.1. The OCME shall retain and archive:

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

22.1.a.1. All specimens associated with homicide cases shall be retained until adjudication is completed.

22.1.a.2. Specimens may be archived indefinitely by written request of the CME or DCME.

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

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

22.1.d. Dried blood sample cards for at least fifty (50) years, and then may retain them or dispose of them at the OCME's discretion.

§64-84-23. Maintenance of Case Files.

23.1. Pursuant to W. Va. Code §61-12-10, the OCME shall maintain complete and thorough files for all cases which it investigates.

23.2. The OCME and its staff shall retain direct custody and control of all original files and reports pertaining to OCME investigations, maintain them in an orderly and systematic fashion, allowing timely and reliable retrieval, and store them in secure fashion at all times within the OCME, except when the records are requested by subpoena or delivered to a court of law for evidentiary purposes.

23.3. The OCME shall put its official reports on standard forms, designated by the CME, that contain the date of first use and the dates of any subsequent reviews and revisions.

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, under similar provisions created for the release of autopsy reports. However, pursuant to W. Va. Code §61-12-8(a), any medical or other therapeutic, investigative or incarceration record contained within OCME case files that were obtained from another agency or institution under provisions of W. Va. Code §61-12-8(a) are not subject to release by subpoena.

23.5. The OCME shall maintain autopsy records for at least fifty (50) years, except when autopsy reports, reports of ancillary studies results, and photographic evidence can be archived electronically, and the original materials destroyed.

23.5.a. All obsolete or discarded records must be disposed of in a manner that renders them illegible, such as by shredding or burning of documents.

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

§64-84-24 Fee Paid to CoME, ACoME and CC by the OCME for Performance of Duties Described By This Rule.

24.1 Pursuant to §61-12-7(b) and -8(c), and this rule, the OCME shall pay a reasonable fee, established by the CME, to the CoME, ACoME and CC for performance of all duties described by this rule. The fee shall include compensation for all expenses directly incurred in the performance of duties mandated by this rule.

§64-84-25. Charging Certain Fees for Providing Testimony or Production of Opinion.

25.1. Under authority of W. Va. Code §16-1-11 and this rule, the Commissioner shall charge reasonable fees for provision of testimony or any production of opinion provided by any OCME employee, arising from his or her professional OCME related activities, for:

25.1.a. Any civil request for providing testimony or any production of opinion, when the State of West Virginia or any public entity organized under the authority of the State of West Virginia, is not the plaintiff or defendant; or

25.1.b. Any request for providing testimony or any production of opinion for a criminal proceeding arising outside the State of West Virginia.

25.2. The fees charged under Subsection 25.1 of this rule shall be according to a reasonable fee schedule, established by the Commissioner, to be published annually in the State Register.

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

25.4. Fees payable under this rule shall be deposited in accordance with W. Va. Code § 16-1-11.

§64-84-26. Administrative Due Process.

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

§64-84-27. Penalties.

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