

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

Form #4 ■

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OFFICE WEST VIRGINIA
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NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

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

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

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

SCANNED

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

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

§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 in the process, to determine the cause and manner of death; sets forth requirements for the training and certification of county medical examiners and coroners; and allows fees to be assessed for services provided to certain private parties by the medical examiner's office. This rule should be read in conjunction with 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), 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. - 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. - A person trained and certified by the Office of Chief Medical

Examiner (OCME) in the practice of medico-legal death investigation, who is appointed by a county commission and works under the supervision of the OCME.

3.5. County Medical Examiner . - A physician, registered nurse, paramedic, emergency medical technician or physician's assistant, licensed by the State of West Virginia, who is certified by the Office of Chief Medical Examiner or by the American Board of Medico-Legal Death Investigators 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 a body that encompasses surgical exploration and study of the internal body tissues, according to W. Va. Code and the rules of the Office of Chief Medical Examiner.

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:

4.1.a. If he or she is not already trained and certified in the practice of medico-legal death investigation prior to his or her appointment, the appointee shall be provided the opportunity for training and certification in the practice of medico-legal death investigation by the OCME within one (1) year of the appointment;

4.1.b. Shall qualify to take a state certifying examination administered by the OCME by completing and passing a course of training specific to medico-legal death investigation within one (1) year of the date of 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. of this Subsection before taking the examination again; and

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

4.1.c.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; or

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

4.2. A County Coroner:

4.2.a. Shall be certified by the OCME or by the American Board of Medico-Legal Death Investigators in the practice of medico-legal death investigation prior to his or her appointment by the county commission. If he or she is already serving as county coroner at the effective date of this rule with no certification, he or she shall seek training and certification in the practice of medico-legal death investigation within two (2) years of the effective date of this rule; and

4.2.b. Shall meet the same requirements as a County Medical Examiner for training and certification, as described in Subsection 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 Chief Medical Examiner, 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 County Medical Examiner, Assistant County Medical Examiner and County Coroner expires after three (3) years and requires 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, Assistant County Medical Examiner, and County Coroner When Investigating A Death.

5.1. The County Medical Examiner, Assistant County Medical Examiner and County Coroner shall perform all duties related to medico-legal investigations of death, as well as the determination of the cause and manner of death, and the formulation of 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. He or she shall perform all duties related to medico-legal death investigation, under the direction of the Chief Medical Examiner, 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 he or she 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 Subdivision 5.2.a. or 5.2.b. of this Subsection conflict with the provision in Subsection 5.1 of this rule, 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 act in the capacity of performing his or her 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 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 a treating physician;

6.1.b. A person who is in apparent good health and is less than fifty (50) years of age, dies suddenly 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 while in the institution, while in police custody, during police intervention, during court-ordered hospitalization, or the death is believed to be in association with receiving public services provided by county, state or federal social service agencies;

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

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

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

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

7.1. The County Medical Examiner, Assistant County Medical Examiner or County Coroner shall be available at all 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 a timely fashion.

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

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

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

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

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

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

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

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

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

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

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

8.1. Pronouncement.

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

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

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

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

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

8.1.b. If the County Medical Examiner, Assistant County Medical Examiner or County Coroner does not pronounce death under any of the conditions 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 from the OCME.

8.2. Investigation.

8.2.a. 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 County Medical Examiner, Assistant County Medical Examiner, or County Coroner shall initiate travel to the place of death within 1 (one) hour, when:

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

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

8.2.a.3. The County Medical Examiner, Assistant County Medical Examiner or County Coroner considers it in the public interest; or

8.2.a.4. 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 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.c. When 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 a person authorized by police, 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, evaluate other changeable or evanescent phenomena and other exigent forensic circumstances that may apply, 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 the examination in an appropriate location such as a local hospital, funeral home or other similar facility;

8.2.d.2. Be accompanied by an authorized witness, such as a funeral director, a person designated by the funeral director, or an authorized person from the local hospital, 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 accompanying person present during the examination, and all findings from the examination, on the appropriate form from the Chief Medical Examiner;

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

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

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

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

8.2.f.3. Comparing the body with a photographic identification such as a driver's license. 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.g. If a County Medical Examiner, Assistant County Medical Examiner or County Coroner cannot identify the deceased by visual examination at the scene of death, he or she shall refer the body to the OCME.

8.2.h. The Chief Medical Examiner, Deputy Chief Medical Examiner or a designated pathologist may use, but not be limited to, the following means of identification:

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-ray films with antemortem radiology imaging;

8.2.h.4. Tattoos and scars;

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

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

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

8.2.h.8. Photography;

8.2.h.9. Personal effects; and

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

8.2.i. The OCME may obtain 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 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, and as part of the file, may not be released upon any request or subpoena.

8.2.i.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.j. 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 the information 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.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 all of the following categories that apply: White, Black, Asian, Native American, Adult, Child, Infant, Male, or Female;

8.2.k.2. Upon receiving a body that remains unidentified, submit the characteristics of the unidentified body to the appropriate registrar as required by National Crime Information Center guidelines;

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

8.2.k.4. When he or she receives a body whose identity remains unknown, after performance of autopsy and investigation into the circumstances of death, the Chief Medical Examiner may after 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 W. Va. Code; and

8.2.k.5. Sign a death certificate bearing the designation "unidentified person" indicating that all applicable methods for establishing identity were attempted by the OCME and were unsuccessful.

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 death certificate, as indicated.

8.3.b. After a County Medical Examiner, Assistant County Medical Examiner or County Coroner has identified a deceased person by visual examination at the scene of death, he or she shall document the identification on a form provided by the OCME, affix a toe tag 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 County Medical Examiner, Assistant County Medical Examiner or County Coroner is not available at the scene of death, he or she shall direct investigating law enforcement or rescue personnel at the death scene to complete and securely affix an identification tag attesting to the identity of the body, pursuant to this rule.

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

A County Medical Examiner, Assistant County Medical Examiner or County Coroner :

9.1. In determining cause and manner of death on any deceased person 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 County Medical Examiner, Assistant County Medical Examiner or County Coroner shall collect other fluid and tissue upon specific instruction from the Chief Medical Examiner, Deputy Chief Medical Examiner or his or her designee;

9.2. Shall, on a deceased person who survived in a hospital for a period of time greater than one hour, or in the course of medical treatment 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 and shall:

9.4.a. Use sample containers provided by the OCME;

9.4.b. Complete and attach the forms provided by the OCME;

9.4.c. Seal the sample containers; and

9.4.d. Deliver the sample containers and the forms 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 body tissues or fluids when it is determined that transport of the body to the OCME for further postmortem examination is necessary.

§64-84-10. Transport of the Body.

10.1. The County Medical Examiner, Assistant County Medical Examiner or County Coroner may obtain telephone authorization from the Chief Medical Examiner, Deputy Chief Medical Examiner 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.

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 rule, 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 tag or by a label affixed securely to the body or the body bag;

10.2.d. Transportation shall be by an approved funeral or ambulance vehicle, or other conveyance as authorized by the OCME; and

10.2.e. The investigation report detailing findings from the examination at the scene of death shall accompany the body or shall be sent by facsimile transmission so it is available to the autopsy pathologist prior to performing the autopsy.

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

11.1. The County Medical Examiner, Assistant County Medical Examiner or County Coroner in the performance of his or her duties shall notify or consult by telephone 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 a 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. Receipt of request from 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 this rule.

11.2. When a physician who is serving in the capacity of County Medical Examiner, Assistant County Medical Examiner or County Coroner recognizes that a current patient's death falls under medical examiner jurisdiction, he or she shall notify the OCME about it.

11.3. When a County Medical Examiner, Assistant County Medical Examiner or County Coroner has in his or her capacity as a physician, paramedic, or EMT attempted resuscitation of a deceased person whose death requires medico-legal investigation, he or she shall immediately contact another appointed County Medical Examiner, Assistant County Medical Examiner or County Coroner of that county to investigate the death. If another County Medical Examiner, Assistant County Medical Examiner, or County Coroner is not available, the County Medical Examiner, Assistant County Medical Examiner or County Coroner shall immediately notify the OCME about the situation.

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 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 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. In those deaths the County Medical Examiner, Assistant County Medical Examiner, or County Coroner shall use the sudden infant/early childhood death event investigation form provided by the OCME, designated OCME- 17.

12.2. In cases of declined medical examiner jurisdiction, the County Medical Examiner, Assistant County Medical Examiner or County Coroner shall record findings of initial investigation and the fact of declined jurisdiction using forms provided by the OCME, designated OCME-1C, and submit the original forms to the OCME by mail within seven (7) business days of notification.

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

12.4. If a death requires examination at the State Medical Examiner's Office, the County Medical Examiner, Assistant County Medical Examiner or County Coroner shall submit 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. The County Medical Examiner, Assistant County Medical Examiner or County Coroner shall also mail a hard copy of the form to the appropriate state office within seven (7) business days of the death; and

12.5. When the death is certified by the County Medical Examiner, Assistant County Medical Examiner or County Coroner, 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 a photocopy of the completed death certificate to the OCME, within seven (7) business days of the death.

12.6. In all cases, the County Medical Examiner, Assistant County Medical Examiner or County Coroner shall retain a copy of the investigation report for his or her records.

12.6.a. The County Medical Examiner, Assistant County Medical Examiner or County Coroner shall archive the records for a period of at least two (2) years and shall surrender them to any other appointed County Medical Examiner, Assistant County Medical Examiner, or County Coroner of that county upon retiring or leaving office.

12.6.b. If there is no other County Medical Examiner, Assistant County Medical Examiner or County Coroner appointed to that county to surrender archived records to at the time the County Medical Examiner, Assistant County Medical Examiner or County Coroner leaves office, he or she shall transfer the files to the OCME.

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

12.7. 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 County Medical Examiner, Assistant County Medical Examiner or County Coroner.

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

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

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

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

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

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

13.1.b.4. 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. 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 3.1.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 or County Coroner shall refuse authorization for cremation and immediately refer the case to the OCME.

13.3. The County Medical Examiner, Assistant County Medical Examiner or County Coroner 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 has refused authorization to cremate under this Section, it is 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 County Medical Examiner, Assistant County Medical Examiner or County Coroner.

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

13.7. The County Medical Examiner, Assistant County Medical Examiner or County Coroner shall document his or her review of the death certificate and certify that there are no defects or omissions to the death certificate that would require further investigation into the circumstances of death, or further examination of the body, by signed authorization of a form provided by the OCME for this purpose, designated OCME-10. The original OCME -10 copy shall be surrendered to the requesting funeral director or crematory; and the County Medical Examiner, Assistant County Medical Examiner or County Coroner shall keep one copy for his or her records and submit a second copy to the OCME.

13.8. The Chief Medical Examiner or Deputy Chief Medical Examiner may authorize cremation, on behalf of the OCME, when the County Medical Examiner, Assistant County Medical Examiner or County Coroner 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 County Medical Examiner, Assistant County Medical Examiner or County Coroner, under Subsection 13.6 of this rule.

§64-84-14. Death Certificate.

14.1. The County Medical Examiner, Assistant County Medical Examiner or County

Coroner, under the supervision of the Chief Medical Examiner, Deputy Chief Medical Examiner 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 this rule according to the following:

14.1.a. Only the Chief Medical Examiner, Deputy Chief Medical Examiner or designated forensic pathologist may rule a manner of death as undetermined;

14.1.b. Regarding a death investigated by the OCME: only the Chief Medical Examiner, Deputy Chief Medical Examiner or designated forensic pathologist may 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 Chief Medical Examiner, Deputy Chief Medical Examiner or designated forensic pathologist may 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 his or her responsibility;

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

14.1.d. The Chief Medical Examiner, Deputy Chief Medical Examiner 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 Chief Medical Examiner or Deputy Chief Medical Examiner may amend the death certificate for the purposes of accuracy and conformity to State and Federal law;

14.1.e. The Chief Medical Examiner, Deputy Chief Medical Examiner 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 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 West Virginia Code and this rule; 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 -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 County Medical Examiner, Assistant County Medical Examiner and County Coroner.

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

- 15.1.a. Has established the identity of the deceased;
- 15.1.b. Has reasonably identified the place of death, and place of injury, if applicable;
- 15.1.c. Can reasonably attest to the cause and manner of death; and
- 15.1.d. Has reasonably established the time and date of death, and of the underlying injury, if applicable.

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

16.1. The Chief Medical Examiner, Deputy Chief Medical Examiner or designated forensic pathologist, pursuant to W. Va. Code §61-12-10, may under supervision of the Chief Medical Examiner perform or otherwise cause to have performed, a forensic autopsy 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. 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 the 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. A 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 considered necessary by the prosecutor.

16.3. The autopsy shall be conducted in such way to minimize hazards to the person performing the autopsy, 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 according to protocol established by the Chief Medical Examiner.

16.5. The Chief Medical Examiner or Deputy Chief Medical Examiner, or the County Medical Examiner, Assistant County Medical Examiner or County Coroner of the county in which the death was pronounced, may authorize a forensic postmortem examination of the body, under the supervision of the Chief Medical Examiner.

16.6. The prosecuting 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 the performance of a forensic autopsy or other forensic post mortem examination of the body.

16.7. When a person opposes an autopsy, the Chief Medical Examiner, Deputy Chief Medical Examiner 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 is at the discretion of the Chief Medical Examiner subject to W. Va. Code §61-12-1 et seq. and this rule.

16.8. The Chief Medical Examiner, Deputy Chief Medical Examiner or any designated forensic pathologist, may employ any forensic specialist, subject to the supervision of the Chief Medical Examiner, in order to investigate the cause or circumstances of a death, except when the forensic specialist:

16.8.a. Has been asked to surrender previous membership in the American

Academy of Forensic Sciences for a disciplinary matter;

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

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

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), -(c), -(d), -(e) and (g).

16.10. The Chief Medical Examiner, Deputy Chief Medical Examiner 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 Chief Medical Examiner, Deputy Chief Medical Examiner, 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 a 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, bone and hair;

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 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 Chief Medical Examiner;

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

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

17.1.e.1. The Chief Medical Examiner 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 the personal property, or the property may be disposed of at the discretion of the OCME;

17.1.f. Shall collect and deliver any materia 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;

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

17.1.h.1. Has been asked to surrender previous membership in the American Academy of Forensic Sciences for a disciplinary matter;

17.1.h.2. Has applied to the American Academy of Forensic Sciences for provisional membership and has been denied; or

17.1.h.3. Has had a previous membership revoked by disciplinary action by the American Academy of Forensic Sciences; and

17.1.i. Any information discovered in Paragraphs 17.1.h.1, 17.1.h.2, or 17.1.h.3 of this Subdivision 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 of the planned release of the information, and shall document the time and date of the notification to the next of kin in its file:

- 18.1.a. The name, sex and age of the deceased;
- 18.1.b. The date of the 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 deceased 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 the 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 the "autopsy report," together with all reports and records of findings, or 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 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 on 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 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 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 arising out of the autopsy and investigation findings, and correlation of autopsy findings with the circumstances of death where possible; and

19.1.l. A list of all witnesses to the autopsy; the date, place and time of the autopsy; the identity of the prosecutor; his or her signature, and the date he or she signed it.

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

19.3. The OCME shall release the autopsy report upon written authorization by a next of kin of the deceased to family and any designated entity, except in cases of criminal prosecution.

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 the 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 deceased 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 the 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 by the Commissioner for providing autopsy reports except as specified in Subdivision 19.7.a.

19.7.a. The 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 deceased;

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

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

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

20.1. The OCME shall release human remains from medical examiner custody to an authorized funeral home or other entity designated by the next of kin only when accompanied by a completed and signed death certificate.

20.2. The funeral home shall provide 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 when authorized by the next of kin. The organ procurement organization shall submit a written copy or a facsimile copy of the signature of an organ procurement organization representative or his or her designee attesting to the authorization. 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.

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 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 deceased's estate. The OCME shall document the release of the personal property on forms provided by the OCME for that purpose.

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

20.6. In the absence of an identified next of kin, 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, Deputy 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 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;

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 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 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 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 or any court of jurisdiction.

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

21.5.a. When requested by the prosecuting attorney of the county of jurisdiction;

or

21.5.b. 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 the 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 the OCME's 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 shall 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.

21.8.d. The release shall be made upon 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 an order is issued by a West Virginia court of jurisdiction who directs the OCME to release the specimens; and

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

22.1.a.2. Specimens may be archived indefinitely by written request of the Chief Medical Examiner or Deputy Chief Medical Examiner;

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; and

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

§64-84-23. Maintenance of Case Files.

23.1. 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 a 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, approved by the Chief Medical Examiner, with 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, 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, then the original materials destroyed.

23.5.a. All obsolete or discarded records shall be disposed of in a manner that renders them illegible, such as by the 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 County Medical Examiner, Assistant County Medical Examiner and County Coroner 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 Chief Medical Examiner, to the County Medical Examiner, Assistant County Medical Examiner and County Coroner 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. Fees for OCME Facility Use.

25.1. The Commissioner shall charge a reasonable fee not to exceed seven hundred fifty dollars (\$750) an hour to non-government entities who use the OCME facility, at the discretion of the Chief Medical Examiner, to cover:

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

25.1.b. The regular rate of pay for the staff supervisor required to be present while the facility is in use, or the overtime rate of pay for the staff supervisor required to be present if the facility is in use after the OCME's usual business hours.

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

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

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

26.1.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

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

26.2. The fees charged under Subsection 26.1 of this rule shall be according to a reasonable fee schedule, established by the Commissioner, to be published annually in the State Register.

26.3. 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.

§64-84-27. Administrative Due Process.

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

§64-84-28. Penalties.

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