



# National Association of Medical Examiners Position Paper: Medical Examiner, Coroner, and Forensic Pathologist Independence

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**ABSTRACT:** Objective: Forensic pathologists play a vital role in the justice system in matters concerning questions of death. Science as applied in the justice system should be objective and neutral. Since the goals of medical examiners and coroners are to determine the cause and manner of death for certification and public health functions (goals different and distinct from the missions of law enforcement agencies), it is important that medicolegal death investigation be independent. Accurate investigation, examination, reporting, and testimony by forensic pathologists are important to determine the cause and manner of death of individuals who die under sudden, unexpected, or violent circumstances. These cases can become the focus of political or legal pressure by individuals or offices seeking to influence the pathologist's findings. This pressure, even if seemingly unsuccessful in an individual case, can introduce error, bias, and corruption into the medicolegal investigation process. This paper reinforces the principle that medical examiners, coroners and forensic pathologists should be allowed to perform medicolegal investigations free of these influences.

Participants: The ad hoc Committee on Medical Examiner Independence of the National Association of Medical Examiners (NAME), a self-selected volunteer committee, developed this position paper. The findings are based on surveys of the NAME membership regarding members' experience with, and reaction to, outside influence.

Evidence: Surveys of NAME members revealed that medical examiner independence was important to most members. Over 70% of survey respondents had been subjected to pressures to influence their findings, and many had suffered negative consequences for resisting those influences. In a separate study, over 30% of respondents indicated that fear of litigation affected their diagnostic decision-making. In 2009, the National Research Council of the National Academies published recommendations to strengthen the forensic sciences; they specifically recommended that medical examiner and coroner offices should be independent from law enforcement agencies and prosecutors' offices.

Consensus Process: This position paper represents the consensus of the ad hoc Committee on Medical Examiner Independence, submitted to the Executive Committee and Board of Directors of NAME, and subject to comment and review by the membership.

Conclusions: It is the position of NAME that forensic pathologists working in or for medical examiner or coroner offices or as private consultants should be permitted to objectively pursue and report the facts and their opinions of those cases which they are investigating independent of political influences from other agencies within their respective jurisdictions and independent of the threat of litigation.

**KEYWORDS:** Forensic pathology, Medical examiner, Independence, Policy

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Acad Forensic Pathol  
2013 3 (1): 93-98

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## INTRODUCTION

The Standards of the National Association of Medical Examiners (NAME) state that medicolegal death investigators “*must investigate cooperatively with, but independent from, law enforcement and prosecutors. The parallel investigation promotes neutral and objective medical assessment of the cause and manner of death*” (1). The Standards also state that “*To promote competent and objective death investigations: A1.1 Medicolegal death investigation officers should operate without any undue influence from law enforcement agencies and prosecutors.*”

In spite of this goal, many medical examiners, coroners and forensic pathologists are exposed to significant pressure to modify their diagnoses. In response to these pressures, the National Research Council of the National Academy of Sciences states, “*Scientific and medical assessment conducted in forensic investigations should be independent of law enforcement efforts either to prosecute criminal suspects or even to determine whether a criminal act has indeed been committed. Administratively, this means that forensic scientists should function independently of law enforcement administrators. The best science is conducted in a scientific setting as opposed to a law enforcement setting*” (2). The report also recommended sufficient funding to state and local jurisdictions “*for the purpose of removing all public forensic laboratories and facilities from the administrative control of law enforcement agencies or prosecutors’ offices.*” However, a recent publication by the National District Attorneys Association (NDAA) defended the retention of forensic laboratories within the auspices of prosecutors’ offices and stated that “*there is nothing inherently suspect or improper in properly accredited forensic laboratories being located within law enforcement agencies and prosecutors’ offices whose mission these laboratories are intended to support*” and that “*the autonomy of the laboratory is preserved by faithful adherence to recognized standards of accreditation*” (3). Even the courts have weighed in on the issue, overturning a conviction due to prosecutorial interference with a forensic pathologist who served as a consultant and expert for the defense. In that decision, the court recognized that while “*some police and prosecutors tend to view government-employed forensic scientists...as members of the prosecution’s ‘team,’*” the courts “*need these experts to...remain neutral, objective, and free from influence when they are generating reports; providing counsel to investigators, prosecutors, or criminal defendants; or testifying at trial*” (4).

NAME takes the position that medical examiner

and coroner independence is an absolute necessity for professional death investigation.

## DISCUSSION

In 2011, NAME surveyed its membership, the results of which are published in a companion paper (5). Of the 583 members on the NAME email list, there were 336 responses (58%). In that survey, 97% of respondents believed that the independence of forensic pathologists was an important issue deserving action. Additionally, several members reported instances of external entities influencing their work. More forensic pathologists working in coroner’s offices (21.1%) than medical examiner systems (4.5%) were directed to change their findings by supervisors, usually once a year ( $p=0.03$ ). Approximately 10% of respondents had been asked to sign documents (autopsy reports and/or death certificates) that were not consistent with the findings at autopsy. Eighty-two percent (82%) of the forensic pathologists surveyed had experienced family or political pressure to change the reported cause or manner of death, with almost 10% stating this occurred on a monthly basis. Twenty-two percent (22%) of pathologists reported that they had experienced political pressure to change death certificates from elected and/or appointed political officials. Although a separate question on family pressure was not specifically asked, these data suggest that approximately 60% of the remaining attempts to influence pathologists came directly from families. Political pressure came in the forms of verbal and/or written communications, threats, termination, intimidation, media exposure, and legal actions. A quarter (25%) of those individuals who resisted these pressures suffered consequences for their actions. Ten percent (10%) of individuals similarly reported pressure from outside sources on testimony provided in legal settings and about half of these individuals suffered consequences for resisting any changes in their expected testimonies (5).

In a separate study of NAME membership, 222 members responded (31%). Of those who responded, approximately 13.5% admitted to having modified their diagnostic findings due to threat of litigation, and approximately 32.5% stated these considerations would affect their decisions in the future (6).

### NAME supports the following positions:

- Forensic pathologists need to work independently from law enforcement. That does not mean that they should be barred or restricted from seeing police investigative reports. The ability of forensic pathologists to interpret



autopsy findings depends on the context of the investigation. As such, forensic pathologists working in coroner's and medical examiner's offices need to have access to good medicolegal death investigations and should have the ability to request or direct some of the investigations, as needed, in order to get the information they will rely on to interpret the cause and manner of death correctly. Ideally, this means that the medicolegal death investigators will be under the direction of the forensic pathologist, medical examiner, or coroner, and independent and separate from law enforcement. In offices that rely solely on law enforcement for their death investigation, there needs to be recognition that this may bias the perspective of the information received and does not constitute a truly independent investigation.

- There are times that forensic pathologists have to investigate and testify in cases where a public entity has been involved in the death of a person (as in an officer-involved shooting; an industrial accident; or a death in jail or in a state mental institution). For the integrity of the public trust and quality assurance in these institutions, it is imperative that the forensic pathologists who investigate these deaths are free of pressure from the public entities involved and if they should uncover abuse or criminal activity in these settings, have full "whistleblower" protections afforded to them under the law. Forensic pathologists working for coroners or medical examiners should enjoy civil service status, contractual agreements, or other similar types of protection, to ensure that they can only be dismissed or disciplined for appropriate cause.
- There are times that forensic pathologists, medical examiners, and coroners have to certify a cause and/or manner of death that causes emotional discomfort or financial difficulties for a family. Medical examiners' and coroners' cause and manner of death determinations are not written in stone. They can be altered by legal challenges. It is never appropriate to threaten, bribe or cajole a forensic pathologist, medical examiner, or coroner to omit information from the death certificate or alter a cause or manner of death for personal, emotional, or financial gain. Criminal penalties for bribery of a public official may apply.
- Coroner's and medical examiner's offices need to have an open-door policy with regard to availability of the forensic pathologists or other experts. Experts need to be available and open to discussing cases with all attorneys, whether prosecuting, plaintiff or defense. Options include open meetings for both at the same time, or separate meetings where attorney work-product and attorney-client privileged information are kept confidential. It is inappropriate for attorneys to request that expert witnesses tell them what the opposing counsel's attorney asked, the substance of conversations, or what their litigation strategy is going to be.
- Medical opinions are based on the current science and research and can change over time if the expert's experience base and/or medical research advance. Inconsistencies in an individual expert's testimony may be the result of these changes and not the result of intentional perjury or incompetence.
- No one should be made afraid to testify to the truth of their scientific convictions, when based on their direct examination of the evidence or their knowledge of the peer-reviewed literature. It is never appropriate for an authority, whether a litigating attorney, law enforcement officer, or an elected official, to threaten a forensic pathologist with loss of a job, position, or compensation, based on testimony that is perceived to be counter to the authority's wishes or to have resulted in the loss of a case. Cases are won or lost based on multiple complex factors including (but not limited to): jury make-up, jurors' education level and understanding of scientific data, judicial decisions about what evidence is available and admissible, reliability and credibility of witnesses, the perception of law enforcement in the community, reliability of the collected evidence, chain of custody issues, and the advocates representing each side in the case. An attorney who threatens or intimidates a witness, either before or following testimony, may be in violation of the law, and should be censured for ethical violations. Similarly, forensic pathologists working for coroners or medical examiners should be protected from systematic litigation meant to influence their diagnoses by providing them with qualified immunity in the performance of their official duties, even if they are not government employees.
- Since there are few (approximately 450) board-certified forensic pathologists practicing in the United States, restrictions on private practice imposed on pathologists working for public institutions have the effect of undermining the public trust in those institutions, limiting the supply of qualified experts,



increasing the costs for those left available to testify in high-profile or complex cases, and impeding justice in our courts. This restriction opens forensic pathologists to criticism by members of the public who believe that experts whose sole source of income is a government entity will inevitably act on their financial incentive to protect their employer from litigation. In offices where forensic pathologists are discouraged from speaking to the defense, as is the practice in some jurisdictions, they can be viewed as “prosecution witnesses” and have little experience in conferring with the defense. If conflict-of-interest or ethics rules are imposed, they need to be narrowly defined so that pathologists are only restricted from personal gain on cases that fall under their jurisdiction, or limited from doing private work on government time or with the use of government resources; but not so broadly defined so that the pathologist cannot speak out in the public interest in cases that are outside of their employing public entity’s jurisdiction. Forensic pathologists should be free to review, offer opinions on, and testify on cases from outside their own jurisdiction, as long as they are doing it on their private time (or, where appropriate, in a time frame sanctioned by their employer) and not to an extent that it interferes with the timely and competent performance of their duties. Given the scarcity of forensic pathologists in the United States, impeding the ability of defense attorneys to consult with them—whether by contract or coercion—will escalate the costs of trials as attorneys are forced to look far beyond their jurisdiction for second opinions. This could potentially interfere with the defendant receiving a fair trial.

- Credible experts may have legitimate differences of opinion, based on their skills, education, training, experience, and interpretation of the literature, especially in complicated or unusual cases.
- Any credible expert, whether consulting for the plaintiff, defense, or the prosecution, should be consistent in his/her testimony regardless of who requested the testimony, recognizing that medical science is not static and may evolve over time. Ethical experts consistently testify only as to what they believe to be true. By the same token, ethical attorneys ask their experts for honest appraisals of the evidence. Neither prosecuting attorneys, defense attorneys, or civil attorneys should “coach” an expert witness on the substance of his or her opinion or ask an expert to intentionally omit mention of evidence that

is not supportive of their legal position.

- An expert consulting with the defense often assists both sides in the criminal process. In some instances, the opinion of an outside expert is in agreement with the original medical examiner, helping the defense attorney more realistically assess his/her client’s situation and facilitating a willingness to work with the prosecutor.
- Review of any forensic pathologist’s, medical examiner’s, or coroner’s work by an outside expert represents the highest form of quality control.
- Any expert’s credibility is enhanced when s/he has the latitude to look at cases for the “other side,” and is not perceived as beholden only to the prosecution. Indeed, an expert forced to testify only for the prosecution will quickly and easily be impeached on cross examination, and left with no credibility.
- In order to maintain their independence and credibility, forensic pathologists, medical examiners, and coroners should not be forced to relinquish their independence by contractually requiring that they not perform criminal defense work. An appearance of impropriety or bias exists when a forensic pathologist cannot become involved in cases for the defense.
- Draft reports from forensic pathologists should not be available to others outside the office prior to finalization of the report. To maintain independence, the forensic pathologist should not be required to release a draft to law enforcement or attorneys.
- Recent Supreme Court decisions, such as *Bullcoming* (7), *Melendez-Diaz* (8), and *Williams* (9) can be interpreted as including forensic pathologists’ reports as testimonial and subject to the confrontation clause of the U.S. constitution. The Second (10) and Eleventh (11) U.S. Circuit Courts have been divided in deciding whether autopsy reports are testimonial. However, Justice Sotomayor, in her concurring opinion under *Bullcoming*, stated that when the report is prepared for a purpose other than testimony in court, the confrontation clause may not apply (12). This is certainly the case for autopsy reports, which are primarily prepared for medical and public health reasons and only later are used for legal purposes. However, if the medical examiner, coroner or forensic pathologist works directly with law enforcement or the prosecution, a

nexus may be inferred which makes the reports testimonial in nature and subject to confrontation. This position was reaffirmed in *Bullcoming* (13). As the courts have held that the original examiner must be available for confrontation by the accused in cases where the report is testimonial, this is of obvious importance to medicolegal death investigations, where the trial may occur many years after the death. In many cases, the pathologist has moved to another jurisdiction, and in some cases, they are deceased. Unlike with crime laboratory examinations, which are usually generated to determine guilt or innocence, the medicolegal death investigation is primarily a public health effort. The forensic pathologist's opinion is primarily for the determination of cause and manner of death, which occurs prior to the time of any trial. In fact, just as often as not, the forensic pathologist's findings may contradict those of law enforcement and obviate the need for any prosecution (as in natural or accidental deaths that initially appeared to be homicides). While the forensic pathologist may be called as a witness by the prosecution, his/her opinion is formed independently from the prosecution.

## CONCLUSIONS

In summary, for preservation of a fair and just judicial system, it is imperative that forensic pathologists, medical examiners, and coroners remain independent officials, and be available for consultation for both prosecuting and defense attorneys throughout the United States.

While medical examiners and coroners necessarily work with police in the investigation of death, and should have access to law enforcement reports, they should not be dependent upon the police for all their information and should not be subject to pressure from police to modify their conclusions. Forensic pathologists, medical examiners, and coroners, in the performance of their duties, should be considered neutral experts and not as "prosecution experts" or "defense experts," except when explicitly hired *ex parte*. They should be protected from political pressure from government officials and from litigation directed at intimidating pathologists in their determination of cause of death. They should not be penalized for providing testimony that proves helpful for plaintiff, prosecution, or defense. Forensic pathologists who work as government employees should be allowed to accept private or outside cases (with the caveats noted above) that would allow them more experience in testifying for the defense, and provide better quality control across multiple jurisdictions.

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## DISCLOSURES

The opinions and conclusions of this paper have been reviewed and approved by the National Association of Medical Examiners (NAME) Board of Directors and as such are endorsed by NAME. These opinions and positions are based on a consensus of the current literature, knowledge, and prevailing theories on this topic. As Scientific knowledge and experience grow, NAME reserves the right to revise or update these opinions. The process by which NAME position papers are initiated, written, reviewed, and approved is publically available at <https://netforum.avectra.com/temp/ClientImages/NAME/2c26a527-f992-4f70-9d03-7941bff5319d.pdf>. All scientific position papers endorsed by the National Association of Medical Examiners automatically expire five years after publication unless reaffirmed, revised, or retired at or before that time. This work is a product of NAME and as such, was not subjected to *Academic Forensic Pathology Journal* editorial review.

The authors, editors and publication staff do not report any relevant conflicts of interest.

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