



NATIONAL COMMISSION ON FORENSIC SCIENCE

NIST
National Institute of
Standards and Technology
U.S. Department of Commerce

Views of the Commission Recognizing the Autonomy and Neutrality of Forensic Pathologists

Subcommittee
Medicolegal Death Investigation

Date of Current Version	12/13/2016
Approved by Subcommittee	12/15/2016
Approved by Commission	01/09/2017

Commission Action

The Commission voted to adopt this Views Document on January 9, 2017 by a more than two-thirds majority vote (94% yes, 0% no, 6% abstain).

Note: This document reflects the views of the National Commission on Forensic Science, and does not necessarily represent the views of the Department of Justice or the National Institute of Standards and Technology. The portion of the document directly labeled “Views of The Commission” represents the formal Views of the Commission. Information beyond that section is provided for context. Views documents do not request specific action by the Attorney General, and thus do not require further action by the Department of Justice upon their approval by the Commission. The National Commission on Forensic Science is a Federal Advisory Committee established by the Department of Justice. For more information, please visit: <https://www.justice.gov/ncfs>.

Overview

Currently, many medicolegal offices do not allow (or they restrict) forensic pathologists (FPs) from performing private work outside of their full-time employment, to include consultative work and/or locum tenens for reasons of alleged conflicts of commitment and/or interest. Because of the national shortage of forensic pathologists, this means that the public as well as courts and defendants, both civil and criminal, are deprived of forensic services.

Views of the Commission

There must be recognition that forensic pathologists operate as autonomous and neutral scientists, and that forensic pathologists must be available and encouraged to routinely consult with prosecuting, plaintiff, and/or defense attorneys and investigators in both criminal and civil law

cases arising from their official death investigation duties as well as on private, independent consultations.¹

Conflict-of-interest rules pertaining to private-consult work need to be narrowly defined (e.g., salaried pathologists are only restricted from personal gain on cases that fall in their jurisdiction, or are limited from doing private work on government time or with government resources), but not so broadly defined that pathologists cannot speak out in the public interest in cases outside their employing public entity's jurisdiction or on their own time.

Background

Currently, many medicolegal offices do not allow (or they restrict) forensic pathologists (FPs) from performing private work outside of their full-time employment, to include consultative work and/or locum tenens, for reasons of alleged conflicts of commitment and/or interest.¹

In some jurisdictions, forensic pathologists are considered “prosecution” witnesses and are restricted or discouraged from consulting with the defense in criminal cases outside the jurisdiction of their employment. In others offices, “conflict of interest” is defined so broadly as to prevent pathologists from testifying in criminal and civil cases outside their jurisdiction or in lawsuits against other government entities. This undermines public trust in the forensic sciences, as pathologists are perceived as being beholden to their employer, and not as neutral, autonomous scientists. Because of the national shortage of forensic pathologists, this means that the public as well as courts and defendants, both civil and criminal, are deprived of forensic services.

The National Association of Medical Examiners (NAME) has stated that it is imperative that forensic pathologists and medical examiners remain independent officials, and be available for consultation for both prosecuting and defense attorneys throughout the United States.²

NAME adopted a Position Paper on Medical Examiner, Coroner and Forensic Pathologist Independence in 2013, which affirmed that:

[R]estrictions 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.

The paper also stated that “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.”³

References

1. Luzi, S.A.; Melinek, J; and Oliver, W.R. Medical Examiner's Independence is Vital for the Health of the American Legal System. *Academic Forensic Pathology* 3(1):84–92, 2013.
2. National Association of Medical Examiners (NAME). *Forensic Autopsy Performance Standards*. Atlanta: NAME, 2006. Available at: https://www.mtf.org/pdf/name_standards_2006.pdf. Accessed January 19, 2017.
3. Melinek, J.; Thomas, L.C.; Oliver, W.R.; Schmunk, G.A.; Weedn, V.W.; and National Association of Medical Examiners [NAME] Ad Hoc Committee on Medical Examiner Independence. NAME Position Paper: Medical Examiner, Coroner, and Forensic Pathologist Independence. *Academic Forensic Pathology* 3(1): 93–98, 2013.