



# NATIONAL COMMISSION ON FORENSIC SCIENCE

**NIST**  
National Institute of  
Standards and Technology  
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## Views of the Commission Recognizing the Autonomy and Neutrality of Forensic Pathologists

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<b>Subcommittee</b>
Medicolegal Death Investigation
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*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. This document does not formally recommend any action by a government entity, and thus no further action will be taken upon its approval by the Commission.*

### 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, 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 to 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.<sup>1</sup>

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 be limited from doing private work on government time or with government resources), but not so broadly defined that the pathologist 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.<sup>1</sup>

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, 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.<sup>2</sup>

NAME adopted a Position Paper on Medical Examiner, Coroner and Forensic Pathologist Independence in 2013 which affirmed that "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." The paper also stated that "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."<sup>3</sup>

## References

1. Medical Examiner's Independence is Vital for the Health of the American Legal System. Luzi SA, Melinek J, Oliver WR. *Academic Forensic Pathology* 2013, 3(1): 84-92
2. National Association of Medical Examiners Forensic Autopsy Performance Standards. Available at: <https://netforum.avectra.com/temp/ClientImages/NAME/de7871b6-1a1f-403c-9c23-d6d623e7a4a8.pdf> Accessed March 4, 2015.
3. NAME Position Paper: Medical Examiner, Coroner, and Forensic Pathologist Independence. Melinek J, Thomas LC, Oliver WR, Schmunk GA, Weedn VW. *Academic Forensic Pathology* 2013, 3(1): 93-98