

MAINE STATE LEGISLATURE

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ALERT

MAY-JUNE 1977

CRIMINAL DIVISION

FROM THE OFFICE OF
THE ATTORNEY GENERAL
OF THE STATE OF MAINE



MESSAGE FROM THE ATTORNEY GENERAL JOSEPH E. BRENNAN

This issue of ALERT focuses on the Maine Medical Examiner system and the law enforcement officer's role in investigating death scenes. It is likely that all Maine law enforcement officers at some time in their careers will take part in the investigation of suspicious or unnatural deaths. The officer should be aware that these cases require special expertise and the cooperation of many different state and local agencies.

The Office of the Chief Medical Examiner within the Department of the Attorney General assists in carrying out the Attorney General's responsibility to investigate and prosecute all homicides in the State. I consider homicide prosecution one of the major functions of this office, and I attribute our current level of effectiveness in this area to the expertise and hard work of the Chief Medical Examiner and his staff and to the cooperation of the law enforcement community as a whole.

JOSEPH E. BRENNAN
Attorney General

THE MEDICAL EXAMINER SYSTEM AND INVESTIGATION OF SUSPICIOUS DEATHS

This article discusses the law enforcement officer's role in the state's medical examiner system. Dr. Henry Ryan, Chief Medical Examiner for the State of Maine, has issued an operating manual for Maine medical examiners, and the information in the present article is in part derived from that manual. The statutory law pertaining to medical examiners is found in the Maine Medical Examiner Act, 22 M.R.S.A. §§3021-3032.

It is vitally important that law enforcement officers familiarize themselves with this information. Many of the problems in the medical examiner system are caused by misunderstandings between law enforcement officers and medical examiners about their respective rights and responsibilities. Only through an understanding of the system and through cooperation between officers and medical examiners can investigations of death scenes be accomplished most effectively.

THE MAINE MEDICAL EXAMINER SYSTEM

The purpose of the Maine medical examiner system is to

establish the cause, circumstances, time and place of death, and identity of the deceased in cases of violent death, unexpected death, unattended death, or death under unusual or suspicious conditions. These terms will be defined later in this article. Accurate information regarding the circumstances surrounding a death is necessary for conducting criminal prosecutions, clearing innocent homicide suspects, settling insurance and civil liability matters, documenting public health hazards, and processing vital statistics.

The responsibility for the medical examiner system rests with the Chief Medical Examiner for the State of Maine, whose office is within the Department of the Attorney General. The Chief Medical Examiner is appointed by the Governor for a term of seven years. His qualifications are set by statute. He must possess a degree of doctor of medicine or doctor of osteopathy, be licensed to practice in the State of Maine, and be certified in the specialty of forensic pathology. 22 M.R.S.A. §3022.

To assist him in carrying out the purposes of the medical examiner

[Continued on page 2]

system, the Chief Medical Examiner is authorized to appoint medical examiners who serve at his pleasure, under any regulations promulgated by him. Each medical examiner has state-wide jurisdiction and can therefore perform his duties in any part of the state. The qualifications of these medical examiners are also set by statute. They must be educated in the sciences of medicine and anatomy, be licensed as physicians in the State of Maine, and be bona fide residents of the State of Maine.

Medical Examiner Cases

Two types of death cases come under the jurisdiction of medical examiners in Maine—cases which **are** actually due to other than natural causes and cases which **may be** due to other than natural causes. Examples of cases which **are** due to other than natural causes are all homicides, suicides, accidents, and deaths by violence, injury, or poisoning. These types of cases are medical examiner cases even though the deceased may have been under a doctor's care or in a hospital for a long time.

Examples of death cases that **may be** due to other than natural causes are:

1. Deaths occurring suddenly while a person is in apparent good health;
2. Deaths when **unattended by a physician;**
3. Deaths during medical procedures;
4. Deaths of persons in legal custody or confinement;
5. Deaths occurring in the course of employment; and
6. Deaths under other unusual or suspicious circumstances deserving investigation.

The category of deaths unattended by a physician deserves further comment. An unattended death is a death in which there is no

regular attending physician. Not every death without a physician actually present is an unattended death. Many natural deaths with no suspicious circumstances occur when a physician is not present. In these apparent natural death cases, without suspicious circumstances or violence, the dead person's physician, rather than a medical examiner, should be called to certify the death. Family physicians often want to be advised of the death of a patient and can offer appropriate help and consolation to the family. It is also the physician's legal and medical duty to certify death when he is in charge of the patient's care for the illness or condition which resulted in death.

Medical examiners are called to certify far too many deaths due to natural causes. As a result, medical examiners are burdened with many unnecessary calls often requiring considerable travel, when the family physician is much closer and can as easily certify death in appropriate cases. This problem is caused by a misunderstanding of the purpose of the medical examiner system and of the meaning of an "unattended death". It should be emphasized that medical examiners are primarily concerned with violent deaths or deaths occurring under suspicious circumstances. A death occurring without a physician present is not necessarily suspicious and need not be referred to a medical examiner, unless the deceased had no **regular attending** physician.

MEDICAL EXAMINER DUTIES

Once it is determined that a death case is within the medical examiner's jurisdiction, the medical examiner must establish the cause and circumstances of death and the identity of the deceased. "Cause of death" means the

medical reason for death, for instance, atherosclerosis or hemorrhage. The circumstances of death are when, where, and how it occurred, and whether the death was accidental, suicidal, or homicidal.

In order to perform his duties, the medical examiner may visit the death scene before the body is disturbed. The medical examiner has custody of the body, and if he chooses not to visit the death scene, he may authorize removal of the body without being personally present. In all suspicious death cases, however, the Chief Medical Examiner **must** be consulted before the body is moved.

Once the medical examiner has control over the body, he must examine the body for injury, disease, and post mortem changes. He must also be apprised of investigative findings by the police. If he still does not have enough information to characterize the cause and circumstances of death, he may make a technical study of the body in the form of a chemical analysis or an autopsy.

Purposes of an Autopsy

Autopsies are performed for the following reasons:

1. To establish the cause of death and to gain additional evidence in all cases involving criminal charges.
2. To rule out criminality in suspicious deaths.
3. To settle questions as to liability for cause of death.
4. To settle questions as to the fundamental nature of the death (natural, accident, suicide, homicide), where doubt exists.
5. To establish the cause of death when the circumstances, medical history, inspection of the body, or statistical probability cannot establish the cause of death.

Examples of each are presented below:

1. A person is stabbed during a holdup. An autopsy may indicate that one of two possible weapons in the possession of different suspects could **not** have caused the wounds. The autopsy, then, is useful beyond merely establishing the cause of death.

2. A night watchman is found dead. The door to the building he is guarding is open and the keys are in the door. Tire marks from acceleration are noted at the scene. The watchman has scrapes on his knees, elbows, and face, and some bruises on his face. An autopsy reveals a tumor in the brain and no significant injuries. Putting all these facts together, the medical examiner attributes the death to epilepsy due to a brain tumor. Even though the initial circumstances were suspicious, the autopsy can rule out criminality.

3. A man slips down the stairs and is found dead at the bottom. The landlord is sued. The autopsy shows a ruptured blood vessel in the brain that had ruptured a few hours before the fall and was the cause of death. The fall was only coincidental and caused no significant injuries. Thus, an autopsy settles the question of the landlord's liability.

4. A young man is reported dead outside his hunting cabin. His companions say they found him ill and could not awaken him one day, and the next day he was dead. Two days prior to his death, the deceased and his companions cooked dinner in the cabin over a charcoal fire. Both nights the companions slept outside in sleeping bags, but the deceased slept inside the cabin. A bottle of pills with a few barbiturate capsules in it was found outside the cabin. The companions said the deceased was outside his cabin because they tried to get him to a hospital. On these facts, the death

could be a natural death, an accident, a suicide, or a homicide. The autopsy reveals soot in the respiratory passages, a carbon monoxide level of 20%, and severe aspiration pneumonia. The cause of death was pneumonia due to aspiration while in a state of coma, caused by inhaling carbon monoxide while cooking indoors with charcoal. The autopsy thus reveals that the death was accidental.

5. A 17-year old boy wakes up at 4:00 a.m. and tells his mother that he has pains in his stomach. His mother gives him some medicine and he falls asleep. He wakes up at 5:30 a.m. and the pains are worse. His mother takes him to the hospital and he dies suddenly in the emergency room. No reasonable guess can be made as to the cause of death. The autopsy reveals acute bacterial meningitis of the brain with adrenal hemorrhage due to the infectious-toxic process. Thus, an autopsy can determine the cause of death when the observable facts offer no apparent explanation.

The above examples illustrate why the law has given the primary responsibility to a licensed doctor to determine if an autopsy is needed. The Attorney General or the District Attorney can also order an autopsy under their authority to protect the public in criminal matters. No one except a medical examiner, however, can **release** a body in a case falling within the medical examiner's jurisdiction. The Attorney General or District Attorney may advise a medical examiner that he believes no autopsy is needed, but neither the Attorney General nor the District Attorney makes the final determination that a body can be released without an autopsy.

Additonal Duties

Once the medical examiner has completed the study of the death case, he issues the death certificate which includes the identity of the deceased, the date of death, and the cause and circumstances of death. He also files a report of the case with the Chief Medical Examiner.

THE LAW ENFORCEMENT OFFICER'S DUTIES

The law enforcement officer is called upon to assist and cooperate with the medical examiner at every stage of the death investigation process, from the initial discovery of a death through the final stages of the case, in accidental deaths as well as criminal homicides.

The law enforcement officer is often one of the first persons to arrive at a death scene. The first and most important responsibility of the officer is to ascertain the fact of death. Of course, if there is **any** possibility that the person is alive, the officer must seek immediate medical help, since the preservation of human life takes precedence over any other duty the officer may have.

Once it has been determined that a person is dead, the officer should secure the scene to begin an initial investigation of the death scene. The officer should not disturb the body during the initial investigation.

The officer then must determine whether the death is a medical examiner case. As discussed earlier in this article, medical examiner cases are those death cases which may be due to other than natural causes. All violent deaths and all deaths occurring under suspicious circumstances are medical examiner cases. Again, it should be noted that a death without a physician present is not necessarily a medical examiner case, unless there is no regular attending physician.

Notification

If a death is apparently due to natural causes, the officer should ascertain who the deceased's physician was, if any, by asking relatives, friends, neighbors and work associates and by checking for address books, appointment slips, and names on prescription bottles. The physician should then be contacted, notified of the death, and requested to certify the death. If the physician cannot be reached or refuses to certify the death, the officer must report the situation to a medical examiner who will have to arrange for certification.

If a death occurred in a hospital, the medical examiner need not be called, as long as the patient was alive long enough to permit the hospital staff to diagnose the illness as a natural one. If the person died before reaching the hospital, the person's physician must be contacted, or if the physician is unknown or unavailable, a medical examiner should be called to certify the death.

If there is any reason to suspect that the death is due to other than natural causes, the officer must notify a medical examiner who will then certify the death. The family physician should also be notified to provide possible assistance to the family. A list of all the medical examiners in the state and their phone numbers will appear in the forthcoming supplement to the **Law Enforcement Officer's Manual**.

All cases of suspected homicide or disasters involving multiple deaths **must** be reported to the Attorney General's office. The Attorney General has overriding authority to investigate and prosecute homicides and other major crimes in the State, pursuant to 5 M.R.S.A. §200-A. Notification of the Attorney General is accomplished by calling State Police Headquarters in Augusta at

289-2155. The State Police, in turn, notify the duty officer of the Attorney General's office who then contacts the Chief Medical Examiner so that he may go to the scene himself or arrange for a local medical examiner to visit the scene.

Identification of the Deceased

If relatives or other persons who know the deceased are present, the officer at the scene should ascertain the identity of the deceased from them and make note of their names as well. When no one is available who knows the deceased, identification may require a search for friends or relatives through neighborhood checks and inquiries at local clubs, stores and business establishments or through fingerprints and dental records. Identifying the deceased is a joint effort of the police, the medical examiner and the pathologist. Even where the identification is accomplished solely through fingerprints, the identity of the deceased must be officially certified by the medical examiner who must be given a written report for that purpose, stating that a match has been made.

The officer who is present at the autopsy must be prepared to formally identify the body to the pathologist. This officer must be able to establish continuity of the body by verifying that the body at the autopsy is the same body that was removed from the scene. Furthermore, the officer who attends the autopsy should be the same officer who accompanied the body from the scene to the hospital where the autopsy is performed. The officer who took the personal identification must identify the deceased by name for the pathologist.

In all criminal or suspicious cases, a person who is old enough and mentally competent to be a witness, who is not suspected of the

crime and preferably who lives in the area of the crime should view the body and identify it to the police officer. The officer, in turn, should record the name and address of the person making the identification, the time and date, other persons present, the relationship of the person to the deceased, when the person last saw the deceased alive and where the body was found.

The officer at the autopsy should also be responsible for the physical evidence of identity. This evidence includes a photograph of the head and neck taken after the body has been cleaned, the injuries have been covered and the initial examination has been done; a full body picture (unclothed) for scars and deformities; fingerprints and general written description. The officer, in conjunction with the pathologist, should record the height, weight, any identifying scars, marks, tattoos or deformities. Fingerprints should be taken only after the autopsy is completed, as fingerprinting disturbs and contaminates the hands and fingers and obscures pathology.

Scene Investigation

Extreme caution should be exercised in the initial handling of the scene, for it is at this juncture that a case may be won or lost through the discovery, mishandling or loss of potential evidence. The first law enforcement officer who arrives at the scene of a death should immediately notify his superiors and secure and protect the area. The officer should note the names and addresses of all persons present, maintain a timetable of all persons arriving at or leaving the scene, and detain any criminal suspects when probable cause exists and circumstances require it.

The officer should exclude all unauthorized persons and should secure the scene to prevent disturbance of the body or destruction of evidence. Any area in which evidence might be found should be secured and the area surrounding the death scene should be guarded and blocked or roped off.

The officer should be prepared to take photographs, make measurements, and secure evidence if a special homicide investigator cannot be present to do these things. The investigating officer should photograph the scene both before and after the body is removed. In addition, accurate measurements should be made of the scene, including the distances between where the body was found and any permanent structures, doors, windows, other bodies, or other locations of possible importance. The officer should carefully note the position of the body, any visible wounds, signs of struggle, and possible weapons. The officer should also look for blood in other parts of the scene and for things such as cigarette butts, letters or notes, bottles, dishes, and food, all of which might be evidence of the presence of another person or of what the deceased was doing before death. All persons present at the scene must be cautioned not to disturb the telephone, door knobs or possible items of evidence until these things are dusted for fingerprints.

All suicide notes should be shown to the medical examiner on request to aid in his conclusion as to the circumstances of death. They must not be returned to the family, although copies may be made for the family. If it is not department policy to store suicide notes, they should be sent to the Chief Medical Examiner, taking care to maintain the chain of custody. If they are permanently kept in police files, a copy must be sent to the Chief Medical Examiner for his records.

Removal of the Body

In any medical examiner case the body should not be moved until a medical examiner arrives at the scene or authorizes the removal of the body. In suspected homicide cases, the body should not be moved until both the Chief Medical Examiner and the Attorney General's Criminal Division have been consulted and have authorized removal of the body.

Bodies in danger of destruction may be moved to avoid further harm. Photographs and notations of the position should be made whenever possible and care taken not to loosen or dislodge evidence or further injure the body. If the body is obstructing a busy thoroughfare or is distressing and disconcerting to the public, and the medical examiner cannot be promptly reached, the body may be moved prior to his authorization provided due care is taken to note and photograph the original position and avoid further injury or loss of evidence. In suspicious or criminal cases this should be viewed as a last resort and the decision made by senior personnel. In motor vehicle fatalities such movement of bodies can be made routinely if no medical examiner can be reached promptly. It is not necessary for a medical examiner to come to the scene of most motor vehicle fatalities but attempt should be made to contact him by phone.

Bodies badly decomposed are especially fragile and must not be moved by untrained personnel. It may be difficult to keep evidence intact unless the body is carefully bagged at the scene under the supervision of a medical examiner. The collection of scattered skeletal or dismembered remains may require a medical examiner to be sure all material has been found.

Any projecting weapons, bullets, shotgun pellets or loose material in contact with the body should be left in place until the medical examiner

arrives. These should be left in place until the autopsy, but this may not be possible due to the hazards of transit. The officer should assist the medical examiner in assuring safe transit of the body to the location of autopsy. Clothing should not be removed from bodies prior to autopsy. Fingerprints should not be taken before autopsy, and the hands should be wrapped loosely in plastic bags before transportation of the body.

Autopsy

A police officer knowledgeable in the circumstances leading to death and appearance of the crime scene should always be present for the autopsy. This officer must advise the pathologist of the investigative information required to determine the extent and manner of the autopsy, especially any anticipated problems that the autopsy might be expected to resolve. He must also be prepared to identify the body, as discussed previously.

The officer should also photograph the body, including all injuries, both before and after the wounds are cleaned. Photographs showing lesions should be taken with a ruler in the picture as close as possible to the wound without obscuring it. Photographs of the internal appearance of the body are rarely helpful and often confusing. These should be taken only when requested by the pathologist. The pathologist may request special photographs of organs of the body, photographs of foreign bodies in or near the wound, or probed track of bullets, etc. The photographer should be able to make clear close-ups without over-exposure from the flash. Color photographs are preferred.

The officer at the autopsy should receive and record evidence taken by the pathologist, place it in appropriate containers, label it for identification, and properly preserve and convey it to the

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appropriate laboratory for analysis or to an evidence locker, with scrupulous attention to the chain of custody. Soiled and wet material should be dried, not bagged in plastic bags when wet. Rot and mildew can cause terrible odors and can prevent effective analysis.

Blood, body fluid, and tissue may require refrigeration or freezing unless taken immediately to the laboratory. The directions of the pathologist must always be followed in these matters. All containers must be chemically clean. No samples from the body should be removed without the permission of the pathologist or medical examiner. Blood should not be taken from the heart prior to autopsy under any circumstances.

Samples commonly include:

a) Clothing (if removed prior to autopsy, it should be brought to the autopsy for examination by the pathologist).

b) Blood for typing and grouping.

c) Hair (pulled by the roots) from body, scalp and fingernail scrapings.

d) Smears and fluid from mouth, rectum and vagina in suspected sexual abuse.

e) Blood, urine, bile, stomach contents, cerebro-spinal fluid and fluid from eye, portions of liver, brain, kidney, lungs, and any other specimens collected or requested by the pathologist. (Note that only those tests ordered by a pathologist or medical examiner for analysis at a laboratory will be paid for by the office of the Chief Medical Examiner.) All toxicology samples removed by autopsy will be taken to the laboratories of the Human Services Department, or as otherwise determined by the Chief Medical Examiner.

Lastly, the officer at the autopsy should record and convey findings of the pathologist to superior officers and other members of the

investigation team. The officer should be present for the entire autopsy and should not ask for findings or cause of death prior to its completion. Great care must be taken when making notes at the autopsy. To be sure that he fully understands the findings the officer should check his notes with the pathologist. Generally, the information recorded consists of the number, location, and type of wounds, with special attention to any problems anticipated by the prior investigation. Bullet wounds are recorded as to location, direction in body, evidence of distance from which the shot was fired, and whether any projectiles were recovered. It is important to be sure that the cause of death is precisely understood. The police officer should note the exact wording of the death certificate and the precise opinion of the pathologist.

CONCLUSION

In investigating cases of suspicious deaths the officer should remember that he is part of a team which involves the medical examiner, the prosecutor, the laboratory specialists, and often other law enforcement agencies. Cooperation with all parties involved will promote more efficient investigation and will prevent problems at trial.

ALERT

The matter contained in this bulletin is intended for the use and information of all those involved in the criminal justice system. Nothing contained herein is to be construed as an official opinion or expression of policy by the Attorney General or any other law enforcement official of the State of Maine unless expressly so indicated.

Any change in personnel or change in address of present personnel should be reported to this office immediately.

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CONFESSIONS/SELF- INCRIMINATION:

B § 1.1 Voluntariness

B § 1.3 Miranda

D § 1.1 Right to Counsel- DEFENDANT'S RIGHTS:

D § 1.1 Right to Counsel-
Pretrial

Defendant was convicted of armed robbery, based primarily on the testimony of three accomplices. On appeal, defendant contested the admission of his statement to an officer concerning his whereabouts at the time of the crime. The statement was made during a conversation with the officer in a police cruiser when the officer was seeking information pertaining to unrelated criminal activity. No **Miranda** warnings were given. The court held that the admission of this statement did not violate defendant's constitutional rights. Defendant was not in custody at the time he made the statement, since he was not under arrest or under any kind of restraint and was free to leave the cruiser at any time. Furthermore, even if defendant had been in custody at the time, the statement would have been admissible in view of the evidence that it was volunteered and not offered in response to police interrogation. **State v. Lewis**, 373 A.2d 603 (Supreme Judicial Court of Maine, May 1977).

Comments directed toward the improvement of this bulletin are welcome. Please contact the Law Enforcement Education Section, Criminal Division, Department of the Attorney General, Room 507 - State Office Building, Augusta, Maine 04333.