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OFFICE OF THE CHIEF MEDICAL EXAMINER
BOARD OF MEDICOLEGAL INVESTIGATIONS

In February of this year, the National Research Council released a report entitled Strengthening Forensic Science in the United States: A Path Forward. This report which has been cited by the United States Supreme Court in one of its most recent decisions (MELENDEZ-DIAZ v. MASSACHUSETTS CERTIORARI TO THE APPEALS COURT OF MASSACHUSETTS No. 07-591. Argued November 10, 2008—Decided June 25, 2009) recommends that all medical examiner offices should be accredited and all medicolegal autopsies should be performed or supervised by a board certified forensic pathologist.

Medical Examiner systems are accredited by the National Association of Medical Examiners (NAME) with forensic pathologists certified by the American Board of Pathology. Oklahoma may be in the unique position of receiving the lowest rating that the National Association of Medical Examiners (NAME) has ever given a state system. Years of neglect and underfunding have brought the agency to a point of forced deviation from the national standards of practice for the professionals who work in the Office of the Chief Medical Examiner, and an overwhelming and impossible work load for everyone else in the agency. The NAME inspection, report, and decision to take away the agency accreditation, has eloquently stated the issues in a public way so that they can no longer be ignored and it forces me to issue a statement addressing them. There are 22 phase II deficiencies and to be accredited there have to be none. There are 19 phase I deficiencies, and to be accredited there have to be less than 10. I only regret that the equipment issues were not comprehensively addressed, but the inspector only had a fixed amount of time, and my feeling is that the magnitudes of the deficiencies were such that she simply didn't have time to get to everything. It is not, as it has been so popular to say, poor employees and poor performance on their part, but rather a chronic lack of funding and support for this agency. As a result, this agency has been unable to perform approximately a third of its functions in the past years.

This has had widespread ramifications:

1. Families who are about to lose their home because insurance companies won't pay until there is a final report from the medical examiner (there are many cases from as long as 9 months ago that have still not been completed);

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2. Police and other agencies that this office isn't supporting as well as they would like us to;

3. Suicide cases and other violent death cases are not autopsied, with the possibility that homicides have been missed (it is not at all rare that someone who commits murder will try to make the scene look like it was a suicide);

4. Accidental deaths, including traffic accidents, are not autopsied, making it impossible to accurately assess the cause of death, survival time and other issues for the civil courts who deal with pain, suffering, and liability issues in deciding amounts to award the surviving family members;

5. Comprehensive toxicology screening, and subsequent quantification is not performed on all cases, whether autopsied or not. Alcohol testing alone is simply inadequate in today's environment where so many other drugs and substances contribute in some way to the vast majority of deaths;

6. Deaths that seem natural on the surface may turn out to be otherwise when autopsied. The national standard is to autopsy all deaths without a known cause under the age of 55-60. Some medicolegal investigative agencies perform autopsies on everyone below the age of 60. This agency has only been performing autopsies on individuals under the age of 40, for deaths in this category. It has been found that in apparent natural deaths where a body is not autopsied, the cause of death is wrong in approximately 20% of the cases. This increases by another 5% when no toxicology examination is performed.

7. Improper evidence preservation and security;

8. Chains of custody with documentation gaps may impact past convictions as well as future trials;

9. Absence of written policies for almost everything has caused confusion and inconsistency (which is what always happens) for both the people who work in the agency, and those who work with our agency; and

10. Difficulty recruiting qualified professionals and other employees due to the inadequate staffing, training, space, and equipment, as well as the constant negative publicity.

There are issues that I am not at liberty to discuss, and there will certainly be ramifications in the future that I have yet to discover, since I am finding new deficiencies weekly. The extent of the damage caused by lack of funding has not been totally revealed and won't be known for some time.

The NAME inspector stated that:

1. "The quality of investigations and autopsies is excellent, but the personnel have an excessive workload;

2. There is a core of dedicated staff working extremely hard to continue to deliver quality postmortem examinations without sufficient support structure;

3. The pathologists have an excessive workload. (Recommended caseload for medical examiners without administrative duties is 250 per year. Caseload should never exceed 325 cases per year); and

4. Despite the shortage of personnel, however, the office does quality work".

The Oklahoma State Auditor and Inspector's Operational Audit report in 2008 stated: "The fact remains that this agency has a small administrative staff and the amount of work is frequently overwhelming".

The core of our problem is lack of money.

A new, state of the art facility, has been talked about for years. That is certainly a need, but the immediate crisis is people, training, space, and equipment. The immediate crisis cannot wait on a new building sometime in the future.

Suggestions to hire a college graduate to be in charge of the entire agency, or to put the Office of the Chief Medical Examiner under agencies such as the Oklahoma State Bureau of Investigation, the Department of Public Safety, and the Department of Health reflect a total lack of appreciation as to the problems in the office and how they should be remedied. Operating a medicolegal agency requires specialized knowledge only possessed by individuals who work in this field, i.e. forensic pathologists. These are the only individuals who have the background, training, and most importantly, the experience in a proper and functioning death investigation system. Only the forensic pathologist has the training, practical, and experiential background to be able to understand the subtleties of a functioning medicolegal investigation office. Changing administration does not address the core problem, lack of funding.

In their textbook Forensic Pathology, Dr. Vincent J. M. DiMaio and his late father Dr. Dominick J. DiMaio, two of the foremost forensic pathologists in this country, state "No medical examiner's office should function under a police agency. There is a direct conflict in values, goals, and philosophies. The police want to make an arrest and clear a case. The medical examiner's office wants to determine the cause and manner of death independent of who did what. These functions, while usually coinciding, in some cases do not. One of the most controversial types of death is that of a civilian killed by police. By virtue of being a subdivision of a police agency, the impartiality of the medical examiner's office in such cases is open to serious question." Having the medical examiner's office function under other public agencies, the DiMaio's continue (I paraphrase slightly here), "generally does not work out. Other agencies often have only a vague concept of the duties and functions of a medical examiner's office, which is a

medicolegal agency rather than a pure medical agency. Placing the medical examiner's office under another public agency tends to increase the bureaucracy between the office and the authority to which it is responsible. Just as police agencies should be separate from the District Attorney's Office, so should the medical examiner's office be reportable to only the highest authority, for example the Governor".

The DiMaio's go on to state "The public is often unaware of the poor quality of the medicolegal system in their area because they assume what they see on television crime shows is also true in their own community". They conclude by saying "Because of the poor quality of forensic medicine in many parts of this country, there are individuals languishing in jail for homicides that were suicides and murderers walking the street after having committed a homicide that was interpreted as an accident or a natural death".

Many of the people who work in this agency were here at the time of the Federal Building bombing of April 19, 1995. Their efforts were nothing short of heroic. Their efforts, and those of the people who have joined our agency since then, are still nothing short of heroic. They still work extremely excessive hours, are under constant pressure associated with what is asked of them, and yet receive substandard salaries and criticism for their efforts. It is their dedication and loyalty to the people and agencies of Oklahoma that has kept them here in spite of the neglect and criticism that they receive. The work that they do is exemplary, and many of our employees are the finest, most considerate and competent employees that I have ever worked with. Some of the practices in this office are the best that I have seen, anywhere. This job is what we do for the dead and their families. It is how we honor their memory and ensure that there is justice for them. My goal is simple... "Do what is right" for the people of Oklahoma and the agencies that we serve. Sadly, this is a goal that this agency has not been able to achieve for a long, long time.

I knew about most of what the NAME report describes, and many additional issues that aren't described, before I started the job. I met with several Legislators regarding the fact that almost every problem over the years has been due to inadequate numbers of people (which is compounded by a lack of training), insufficient space, or lack of quality equipment. Now no one has to take my word for it because the National Association of Medical Examiners has explained it very clearly. I also shared with several Legislators that one thing I could promise is that I will be honest with them. I stated that there may be times when they won't like what they hear (I suspect they will consider this one of those times), but it is the only way that I can help them, help me, to best serve the people and agencies in Oklahoma.

In the 6 weeks that I have been here, I have been able to correct a significant number of deficiencies, focusing on those that we have money for, and the bottom line is that we don't have much money for anything. We definitely have friends in the Legislature who want to help, and I have appreciated their kind words and offers of support. We simply have not had anywhere near the number of friends needed to fix the funding problems. Now, with our loss of accreditation in Oklahoma, and public awareness of the issues, maybe we will win some new converts.

