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TITLE 7 HEALTH
CHAPTER 3 STATE MEDICAL INVESTIGATOR'S OFFICE
PART 2 POLICIES OF THE OFFICE OF THE MEDICAL INVESTIGATOR

7.3.2.1 ISSUING AGENCY: Office of the Medical Investigator
[Recompiled 10/31/01]

7.3.2.2 SCOPE: [RESERVED]
[Recompiled 10/31/01]

7.3.2.3 STATUTORY AUTHORITY: [RESERVED]
[Recompiled 10/31/01]

7.3.2.4 DURATION: [RESERVED]
[Recompiled 10/31/01]

7.3.2.5 EFFECTIVE DATE: [RESERVED]
[Recompiled 10/31/01]

7.3.2.6 OBJECTIVE: This document is a compilation of the duties of the staff of the office of the medical investigator as outlined in the statutes of New Mexico and certain regulations of official agencies involved in death investigation. It discusses those policies that have been formulated under the supervision of the board of medical investigation to carry out the designated responsibilities of this office. It is intended to assist interested parties in understanding the basic structure of the New Mexico system of death investigation. John E. Smialek, M.D., Chief Medical Investigator.
[Recompiled 10/31/01]

7.3.2.7 DEFINITIONS: [RESERVED]

7.3.2.8 DUTIES OF THE OFFICE OF THE MEDICAL INVESTIGATOR: In all cases of reportable deaths as defined in this document, the OMI will:

- A. receive all reports of sudden, unexpected or unexplained deaths;
- B. respond to all sudden, unexpected or unexplained deaths;
- C. in the absence of a physician, pronounce death;
- D. take custody of the body and all articles on or near the body;
- E. maintain the chain of custody of the body and all articles obtained therefrom;
- F. conduct an investigation leading to the determination of the cause and manner of death;
- G. obtain toxicology samples from the body when indicated, and arrange for necessary tests upon those samples that will aid in the determination of cause and manner of death; maintain the proper chain of custody and evidence on those samples; store those samples for an appropriate period of time;
- H. certify the cause and manner of death; forward written certification to designated agencies;
- I. properly dispose of human remains through release to family or designated and authorized entities;
- J. provide accurate identification of all human remains when possible;
- K. cooperate with authorized agencies having involvement with death investigation;
- L. provide professional, objective testimony in state and local courts of law;
- M. define procedures that establish fees for services and material provided by the office of the medical investigator;
- N. define procedures to reimburse all parties providing services to the office of the medical investigator;
- O. establish and maintain a disaster plan outlining the role of OMI staff;
- P. maintain records of each official death investigation and provide reports to official agencies.

[Recompiled 10/31/01]

7.3.2.9 ADMINISTRATION - ORGANIZATION:

A. Citations and regulations:

(1) 24-11-1 NMSA 1978 - There is created the "board of medical investigators" consisting of the dean of the medical school at the university of New Mexico, the secretary of health and environment, the chief of the state police and the chairman of the state board of thanatopractice of the state of New Mexico. The members of the board of medical investigators shall receive no compensation for their services as board members other than as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

(2) 24-11-2 NMSA 1978:

(a) The board of medical investigations shall meet at least annually and as often as necessary to conduct the business of the board. Additional meetings may be called by the chairman or by a majority of the members of the board.

(b) At the first annual meeting of the board, the members shall elect one of their number as chairman.

(c) The board of medical investigations shall formulate broad policy for the operation of the office of the state medical investigator and the offices of the district medical investigators.

(d) The board of medical investigations shall employ and fix the compensation of a qualified state medical investigator who shall be assigned as an employee of the university of New Mexico school of medicine.

(3) 24-11-3 NMSA 1978:

(a) The state medical investigator shall be a physician licensed to practice in New Mexico. Insofar as practicable, the medical investigator shall be trained in the fields of pathology and forensic medicine.

(b) The state medical investigator shall maintain his office at the school of medicine at the university of New Mexico.

(c) The state medical investigator shall appoint district medical investigators and, where necessary, deputy medical investigators who shall serve at his pleasure. The state medical investigator may assign deputy medical investigators to districts to work under the supervision of a district medical investigator. The district medical investigator shall be a licensed physician. When deemed necessary by the state medical investigator, he may direct a deputy or district medical examiner to enter another district for the purpose of carrying out medical investigations.

(d) Any district created by the state medical investigator to be staffed by a district medical investigator shall be co-extensive with one or more counties.

(e) The state medical investigator may enter into agreements for services to be performed by persons in the cofurse of medical investigations.

(f) The state medical investigator shall, subject to the approval of the board of medical investigations, promulgate rules and regulations for the proper investigation of deaths occurring within this state.

(g) The state medical investigator shall maintain records of the deaths occurring within this state which are investigated by either state or district medical investigators.

(h) In addition to other duties prescribed in this section, the state medical investigator shall also serve as the district medical investigator for Bernalillo county.

(i) Funds for the operation of the state and district medical investigators' offices shall be appropriated to and administered by the university of New Mexico school of medicine.

B. Policy: Board of medical investigators: By statute, four individuals sit on this board and convene when required for development of matters of policy. The members are the dean of the school of medicine, university of New Mexico; the secretary of health and environment; the chief of the New Mexico state police; and the chairman of the New Mexico state board of thanatopractice. The board appoints the state medical investigator. Certain positions are described in the statute.

(1) State medical investigator: A licensed physician appointed by the board responsible for developing the rules and regulations for the proper investigation of deaths occurring within the state of New Mexico.

(2) Medical investigator: A forensic pathologist who assists the state medical investigator in the performance of his duties.

(3) District medical investigator: A licensed physician appointed by the state medical Investigator who is responsible for directing the investigations within a particular district in which they practice. This physician is responsible for the certification of death of those OMI cases within his district that remain in that district. This physician is appointed by and serves as requested by the state medical investigator. He is called for assistance in OMI cases and is reimbursed for each case in accordance with the fee schedule maintained by the central office.

(4) Medical investigator district: An area designated by the state medical investigator that generally coincides with boundaries of the respective judicial districts.

(5) Designated pathologist: A licensed physician who is state certified and duly qualified as a pathologist and is appointed by the state medical Investigator. This physician conducts those examinations within his jurisdiction as directed by the state medical Investigator, reporting those findings to the central office of the OMI. Reimbursement for each case is in accordance with the fee schedule maintained by the central office.

(6) Deputy medical investigator: A lay individual appointed and trained by the OMI who responds to the scenes of reportable deaths in order to perform the duties enumerated by law. This individual is specially trained in essential aspects of forensic medicine and death investigation. Deputy medical investigators are required to be available to respond to the scene of an OMI jurisdictional death. More than one deputy medical investigator can be assigned to a district. Deputy medical investigators may also serve as full-time employees who, in addition to performing the stated duties of the deputy medical investigator, perform specialized duties required in the central office. Annual review and biannual training are required for continued certification.

(7) Central office: The central office of the OMI was established within the university of New Mexico, school of medicine, in Albuquerque. The administrative office and repository of official records of the forensic pathology services are provided at this location.

[Recompiled 10/31/01]

7.3.2.10 REPORTING DEATHS:

A. Citations and Regulations:

(1) 24-11-5 NMSA 1978: When any person comes to a sudden, violent or untimely death or is found dead and the cause of death is unknown, anyone who becomes aware of the death shall report it immediately to law enforcement authorities or the office of the state or district medical investigator. The public official so notified shall in turn notify either, or both, the appropriate law enforcement authorities or the office of the state or district medical investigator. The state or district medical investigator, or a deputy medical investigator under his direction, shall, without delay, view and take legal custody of the body.

(2) 24-11-10 NMSA 1978:

(a) It is unlawful to:

(i) wilfully and without good cause neglect or refuse to report a death to law enforcement authorities or the office of the state or district medical investigator as required by law; or

(ii) willfully and unnecessarily touch, remove or disturb any dead body required by law to be reported to the state or district medical investigator, or any article on or near the body or disturb its surroundings until authority is granted by the state, district or deputy medical investigator.

(b) Any person violating this section is guilty of a petty misdemeanor.

(3) Physicians' Handbook on Medical Certification: Death, Birth, Fetal Death. U.S. Department of Health, Education, and Welfare, DHEW Publication No. (PHS) 78-1108, Section IId.

B. POLICY:

(1) Responsibility for Reporting: Anyone who becomes aware of any death falling into the category enumerated here under "Reportable Deaths" must report it immediately to either law enforcement officers or to a representative of the office of the medical investigator. It will be the responsibility of that agency to notify the other of the report. The designated representative of the OMI shall then respond to that scene of death without delay, view and take legal custody of the body. See Section D [now 7.3.2.11 NMAC] for responsibilities of representatives of the OMI.

(2) Reportable deaths: Those deaths to be reported to the office of the medical investigator include all deaths occurring in New Mexico as outlined below regardless of where or when the initial injuring event occurred.

(a) any death that occurs suddenly and unexpectedly, that is, when the person has not been under medical care for significant heart, lung or other disease;

(b) any death suspected to be due to violence, that is, suicidal, accidental or homicidal injury, regardless of when or where the injury occurred;

(c) any death suspected to be due to alcohol or intoxication the result of exposure to toxic agents;

(d) any deaths of residents housed in county or state institutions, regardless of where death occurs. This refers to any ward or individual placed in such a facility by legal authorization;

(e) any deaths of persons in the custody of law enforcement officers;

(f) any deaths in nursing homes or other private institutions without recent medical attendance;

(g) any deaths that occur unexpectedly during, in association with, or as a result of diagnostic, therapeutic, surgical, or anesthetic procedures;

- (h) deaths alleged to have been caused by an act of malpractice;
- (i) deaths suspected to be involved with the decedent's occupation;
- (j) deaths unattended by a physician;
- (k) any death due to neglect;
- (l) any still birth of 20 or more weeks' gestation unattended by a physician;
- (m) any death of an infant or child where the medical history has not established some pre-existing medical condition;
- (n) deaths which are possibly directly or indirectly attributable to environmental exposure not otherwise specified;
- (o) any death suspected to be due to infectious or contagious disease wherein the diagnosis and extent of disease at the time are undetermined;
- (p) any death occurring under suspicious circumstances;
- (q) any death in which there is doubt as to whether or not it is a medical investigator's case should be reported;
- (r) a list of reportable deaths will be provided to all state agencies, hospitals and other public and private facilities that require the services of the OMI.

C. Procedure for reporting death: Deputy medical investigators are assigned by the central office of the OMI to be the responders and investigators to and of the reports of all sudden, unexpected and unexplained deaths. A list of these assignments is sent to the sheriff's office, chief of police, the local district attorney, funeral directors, and emergency medical personnel within each respective district. The central office of the OMI shall keep these lists current. Each district medical investigator, in conjunction with the central office of the medical investigator, shall determine appropriate on-call schedules for the deputy medical investigators, and shall provide that schedule to each of the agencies and offices cited above to provide each agency and office with the immediate means of notifying the OMI of a death included in the category of "Reportable Deaths". This list shall include the on-call deputy medical investigator, then shall show the names of any backup deputy medical investigators, then the name of the district medical investigator, and finally, the 24-hour telephone number of the central office of the OMI.

D. Jurisdiction: The OMI will respond and take custody of a body in those reportable deaths that occur within the state of New Mexico, excluding Indian reservations and military installations. On Indian reservations and military installations, the OMI will respond as investigative consultants when so invited and when reimbursed for the service as defined in a legal contract or by agreement. In cases where the event leading to the death occurs on state land, but the individual is taken to a federal facility for emergency treatment, and is pronounced dead there, the death is to be reported to the OMI representative if the circumstances of the event are reportable, as defined in this manual.

[Recompiled 10/31/01]

7.3.2.11 INVESTIGATION - SCENE OF DEATH:

- A. Citations and Regulations:
 - (1) 12-2-4 NMSA 1978:
 - (a) For medical, legal and statutory purposes, death of a human being occurs when, and "death," "dead body," "dead person" or any other reference to human death means that:
 - (i) based on ordinary standards of medical practice, there is the absence of spontaneous respiratory and cardiac function and, because of the disease or condition which caused, directly or indirectly, these functions to cease, or because of the passage of time since these functions ceased, there is no reasonable possibility of restoring respiratory or cardiac functions; in this event, death occurs at the time respiratory or cardiac functions ceased; or
 - (ii) in the opinion of a physician, based on ordinary standards of medical practice: a) because of a known disease or condition there is the absence of spontaneous brain function; and b) after reasonable attempts to either maintain or restore spontaneous circulatory or respiratory functions in the absence of spontaneous brain function, it appears that further attempts at resuscitation and supportive maintenance have no reasonable possibility of restoring spontaneous brain function; in this event death will have occurred at the time when the absence of spontaneous brain function first occurred. Death is to be pronounced pursuant to this paragraph before artificial means of supporting respiratory or circulatory functions are terminated and before any vital organ is removed for purposes of transplantation in compliance with the Uniform Anatomical Gift Act [24-6-1 to 24-6-9 NMSA 1978].
 - (b) The alternative definitions of death in Paragraphs 1 and 2 of Subsection A [now (i) and (ii) of Subparagraph (a) of Paragraph (1) of Subsection A of 7.3.2.11 NMAC] of this section are to be utilized for all

purposes in this state, including but not limited to civil and criminal actions, notwithstanding any other law to the contrary.

(2) 24-11-5 NMSA 1978: When any person comes to a sudden, violent or untimely death or is found dead and the cause of death is unknown, anyone who becomes aware of the death shall report it immediately to law enforcement authorities or the office of the state or district medical investigator. The public official so notified, shall in turn notify either, or both, the appropriate law enforcement authorities or the office of the state or district medical investigator. The state or district medical investigator, or a deputy medical investigator under his direction, shall, without delay, view and take legal custody of the body.

(3) 24-11-9 NMSA 1978: The state, district or deputy medical investigator may administer and may issue a subpoena to compel the attendance and production of evidence by any necessary witness, and the subpoena may be enforced in the district court. Any subpoena shall be served without cost by the sheriff or any deputy or by any member of the New Mexico state police.

(4) 24-11-10 NMSA 1978:

(a) It is unlawful to:

(i) willfully and without good cause neglect or refuse to report a death to law enforcement authorities or the office of the state or district medical investigator as required by law; or

(ii) willfully and unnecessarily touch, remove or disturb any dead body required by law to be reported to the state or district medical investigator, or any article on or near the body or disturb its surroundings until authority is granted by the state, district or deputy medical investigator.

(b) Any person violating this section is guilty of a petty misdemeanor.

B. Policy:

(1) Pronouncement of death - OMI cases: When there is no physician present, the representative of the office of the medical investigator shall immediately pronounce death and shall provide the time of pronouncement to the law enforcement official present.

(2) Authority at the scene: At scenes of reportable deaths when the initial determination is that criminality exists, the police agency shall be primarily responsible for conducting the investigation at the scene. This investigation shall include the representatives of the office of the medical investigator who will view the scene and take appropriate photographs prior to disturbance of any item within the scene. Only when both the law enforcement official having jurisdiction and the OMI representative are satisfied that the investigation is complete enough to warrant moving the body shall the body then be examined by the OMI representative. During this examination, the representative of the OMI will provide as much information as possible to the law enforcement agency regarding a possible cause and manner of death. Nothing shall be done at this point that will taint, tamper with or disturb any item on the body that may subsequently require examination by a specified pathologist during the course of his external or internal examination. When the initial determination at a scene is that no criminality exists, the representative of the OMI shall assume primary responsibility and may direct the law enforcement agency to provide security for the scene. In cases of vehicular deaths, the law enforcement agency remains the primary investigator of the circumstances.

(3) Evidence at the scene: Any item deemed evidentiary by law enforcement definition, whether criminal charges exist or not, shall belong to that law enforcement agency having jurisdiction; such evidence at a death scene may be requested by the state medical investigator to accompany the body to aid in the examination and subsequent findings. The chain of custody is to be maintained and documented by the OMI, and all items shall be receipted back to that law enforcement agency. No item identified as evidence by a law enforcement agency shall remain in the custody of the state medical investigator longer than is required to examine that evidence.

(4) Preservation of the evidence: In assuming custody of a body, the OMI is authorized to remove anything that is on or in the body, to secure and analyze that material where appropriate, and to be responsible for the formal reporting of that analysis, the safekeeping of that material, and the receipting of that material to a law enforcement agency, where appropriate, for their retention and analysis. Specimens retained by the OMI are held for specified periods of time. Prior to disposal, the respective district attorney is advised.

(5) Body not at the scene: When the body has been removed from the scene of the death for medical examination, the first responsibility of the representative of the OMI shall be to respond to the location of the body in order to pronounce death (if not performed by a physician) and to assume custody of the body. Any subsequent scene investigation is to be performed after the body is secured, sealed and held within a morgue facility or turned over to an authorized transport company. There will be cases where no scene investigation is possible.

(6) Removal from a scene: Only a representative of the OMI may order a body removed from the scene.

(7) Subpoena of records: A representative of the OMI may issue and serve a subpoena within the state of New Mexico for the production of evidence by any necessary witness.
[Recompiled 10/31/01]

7.3.2.12 INVESTIGATION - EXAMINATION:

A. Citations and Regulations:

(1) 24-11-7 NMSA 1978: If the deceased is unidentified, the state, district or deputy medical investigator may order the body fingerprinted and photographed. When the state, district or deputy medical investigator suspects a death was caused by a criminal act or omission or if the cause of death is obscure, he shall order an autopsy performed by a qualified pathologist certified by the state board of medical examiners who shall record every fact found in the examination tending to show the identity and condition of the body and the time, manner and cause of death. The pathologist shall sign the report under oath and deliver it to the state, district or deputy medical investigator within a reasonable time. The state, district or deputy medical investigator may take the testimony of the pathologist and any other persons, and this testimony, combined with the written report of the pathologist, constitutes an inquest.

(2) 24-12-4 NMSA 1978:

(a) An autopsy or postmortem examination may be performed on the body of a deceased person by a physician or surgeon whenever consent to the procedure has been given:

(i) by written authorization signed by the deceased during his lifetime;

(ii) by authorization of any person or on behalf of any entity whom the deceased designated in writing during his lifetime to take charge of his body for burial or other purposes;

(iii) by authorization of the deceased's surviving spouse;

(iv) by authorization of an adult child, parent or adult brother or sister of the deceased if there is no surviving spouse or if the surviving spouse is unavailable, incompetent or has not claimed the body for burial after notification of the death of the decedent.

(v) by authorization of any other relative of the deceased if none of the persons enumerated in Paragraphs 2 through 4 [now (ii) through (iv) of Subparagraph (a) or Paragraph (2) of Subsection A of 7.3.2.12 NMAC] of this subsection are available or competent to give authorization; or

(vi) by authorization of the public official, agency or person having custody of the body for burial if none of the persons enumerated in Paragraphs 2 through 5 [now (ii) through (v) of Subparagraph (a) or Paragraph (2) of Subsection A of 7.3.2.12 NMAC] of this subsection are available or competent to give authorization.

(b) An autopsy or postmortem examination shall not be performed under authorization given under the provisions of Paragraph 4 of Subsection A [now (iv) of Subparagraph (a) or Paragraph (2) of Subsection A of 7.3.2.12 NMAC] of this section by any one of the persons enumerated if, before the procedure is performed, any one of the other persons enumerated objects in writing to the physician or surgeon by whom the procedure is to be performed.

(c) An autopsy or postmortem examination may be performed by a pathologist at the written direction of the district attorney or his authorized representative in any case in which the district attorney is conducting a criminal investigation.

(d) An autopsy or postmortem examination may be performed by a pathologist at the direction of the state, district or deputy medical investigator when he suspects the death was caused by a criminal act or omission or if the cause of death is obscure.

B. Policy: The examination of the body is external only, or both external and internal.

(1) Criteria for examination: In cases where the office of the medical investigator has assumed jurisdiction, the representative of the OMI shall present the results of his initial investigation to the central office to determine whether further investigation is required in determining a cause and manner of death. In all cases where the OMI assumes jurisdiction, regardless of whether or not an autopsy is to be performed, the viewing of the body and taking custody of the body sustains the validity and legality of any report generated by that individual representative of the OMI. In cases where it is determined that an autopsy is to be performed, all the documents produced by the representative of the OMI must accompany the body to the location of the autopsy. These documents, in particular the report of death, provide the authorization for the assigned pathologist to perform the autopsy. Reasons for which medicolegal autopsies are conducted include the following:

(a) determination of the cause and manner of death;

(b) establishment of the identity of the deceased;

(c) to aid in the discovery and prosecution of crime;

- (d) protection of innocent persons accused of crime;
- (e) disclosure of possible hazards to public health such as:
 - (i) dangerous drugs, chemicals, food;
 - (ii) communicable, contagious or infectious disease;
 - (iii) occupational disease,
 - (iv) environmental hazards.
- (f) to aid in the administration of civil justice including:
 - (i) life and accident insurance questions;
 - (ii) worker's compensation liability;
 - (iii) other problems involving questions of civil liability.

(2) Authorization for autopsy: An autopsy under the jurisdiction of the OMI may be authorized by the state medical investigator or the district attorney. No other authorization or consent is required. Family objections will be considered but will not preclude an autopsy when it is clearly required to fulfill the OMI's legal responsibility. In OMI jurisdiction cases where an autopsy is not required to determine cause and manner of death, the attending physician or family may request that an autopsy be performed. In these cases, the autopsy may be performed at the direction of the attending physician after the family has signed the "Consent to Autopsy." A copy of the findings shall be supplied to the OMI.

(3) Autopsy not required: In cases where the investigator supplies adequate information indicating an autopsy is not required, the district or deputy medical investigator will be advised by the OMI central office of the specific examination procedures to perform upon the body. Termed the "External Examination," the OMI investigator will observe the conditions of the body, document the findings with narrative, drawings and appropriate photographs, and extract from the body the specimens required to ultimately document a cause and manner of death. Specific step-by-step guidelines to this exam are included under "Examination" in the procedures manual.
[Recompiled 10/31/01]

7.3.2.13 CERTIFICATION OF DEATH:

A. Citations and Regulations:

(1) 24-11-6 NMSA 1978: If, after reviewing the body, notifying the law enforcement agency with jurisdiction and making an investigation, the state or district medical investigator is satisfied that the death was not caused by criminal act or omission and that there are no suspicious circumstances about the death, he shall execute a death certificate in the form required by law. He shall also execute a certificate on a form prescribed by the health and social services department [health and environment department], authorizing release of the body to the funeral director for burial. In those cases in which the investigation is performed by a deputy medical investigator, if, after viewing the body, notifying the law enforcement agency with jurisdiction and making an investigation, he is satisfied that the death was not caused by criminal act or omission and that there are no suspicious circumstances about the death, he shall report this finding to the state or district medical investigator under whose direction he is working. Upon receipt of a report from a deputy medical investigator under this subsection, the state or district medical investigator may execute a death certificate and a certificate authorizing release of the body for burial.

(2) 24-14-20 NMSA 1978:

(a) A death certificate for each death which occurs in this state shall be filed within five days after the death and prior to final disposition. The death certificate shall be registered by the state registrar if it has been completed and filed in accordance with this section, subject to the exception provided in Section 24-14-24 NMSA 1978; provided that:

(i) if the place is unknown, but the dead body is found in this state, a death certificate shall be filed with a local registrar within ten days after the occurrence. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be approximated by the state medical investigator; and

(ii) if death occurs in a moving conveyance in the United States, and the body is first removed from the conveyance in this state, the death shall be registered in this state and the place where the body is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this state, the death shall be registered in this state but the certificate shall show the actual place of death insofar as can be determined by the state medical investigator.

(b) The funeral service practitioner or person acting as funeral service practitioner who first assumes custody of a dead body shall file the death certificate. He shall obtain the personal data from the next of kin or the best qualified person or source available. He shall obtain the medical certification of cause of death.

(c) The medical certification shall be completed and signed within forty-eight hours after death by the physician in charge of the patient's care for the illness or condition which resulted in death except when inquiry is required by law. In the absence of the physician, or with his approval, the certificate may be completed and signed by his associate physician, the chief medical officer of the institution in which death occurred or the physician who performed an autopsy on the decedent, provided such individual has access to the medical history of the case, views the deceased at or after death and death is due to natural causes.

(d) When death occurs without medical attendance as set forth in Paragraph C of this section [now Subparagraph (c) of Paragraph (2) or Subsection A of 7.3.2.13 NMAC], or when death occurs more than ten days after the decedent was last treated by a physician, the case shall be referred to the state medical investigator for investigation to determine and certify the cause of death.

(e) An amended death certificate based on an anatomical observation must be filed within thirty days of the completion of an autopsy.

(3) 24-14-21 NMSA 1978:

(a) When a death occurring in this state has not been registered, a certificate may be filed in accordance with regulations of the board of medical investigators. The certificate shall be registered subject to evidentiary requirements as prescribed by regulation to substantiate the alleged facts of death.

(b) Certificates of death registered one year or more after the date of death shall be marked "delayed" and shall show on their face the date of the delayed registration.

(4) 24-14-24 NMSA 1978:

(a) The department may, by regulation and upon conditions as it may prescribe to assure compliance with the purposes of the Vital Statistics Act [24-14-1 to 24-14-20 to 24-14-31 NMSA 1978], provide for the extension of the periods prescribed in Sections 24-14-20, 24-1423 NMSA 1978 for the filing of death certificates, spontaneous fetal death reports, medical certifications of cause of death and for the obtaining of burial-transit permits in cases where compliance with the applicable prescribed period would result in undue hardship.

(b) Regulations of the department may provide for the issuance of a burial-transit permit prior to the filing of a certificate upon conditions designed to assure compliance with the purposes of the Vital Statistics Act in cases where compliance with the requirement that the certificate be filed prior to the issuance of the permit would result in undue hardship.

(5) 24-14-25 NMSA 1978:

(a) A certificate or report registered under the Vital Statistics Act [24-14-1 to 24-14-17, 24-14-20 to 24-14-31 NMSA 1978] may be amended only in accordance with that act and regulations thereunder adopted by the department to protect the integrity and accuracy of vital statistics records.

(b) A certificate or report that is amended under this section shall be marked "amended," except as otherwise provided in this section. The date of the amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the record. The department shall prescribe by regulation the conditions under which additions or minor corrections may be made to certificates or records within one year after the date of the event without the certificate or record being marked "amended."

B. Policy: The certificate of death is the permanent record required by the bureau of vital statistics of the New Mexico department of health and environment. The office of the medical investigator is responsible for the completion of the certificate in all deaths reported to that office in which jurisdiction is assumed. This certification is to the cause (the anatomic condition causing death) and the manner (accident, suicide, accidental, homicide). The cause and manner of death shall be finally determined by the designated pathologist, in accordance with the findings and recommendations of the district and deputy medical investigators.

(1) Time limit for completion: The certificate (relating to a decedent at the central office), when completed by the pathologist assigned to the central office, shall be completed and released with the body. Where toxicology results are not available, a letter indicating that the case is pending shall be sent with the body. The certificate of death for all reportable deaths where the body is not brought to the central office must be completed immediately by the district medical investigator of that district and provided to the funeral director chosen by the family.

(2) Place of death unknown: The place where the body is found shall be the place of death. If the date is unknown, it may be approximated by the state medical investigator.

(3) Body in moving conveyance: If the body is in a moving conveyance on land and is first removed in this state, this state shall be considered the place of death. If the body is in a moving conveyance in international waters or air space, or in a foreign country, and the body is removed in this state, death is to be registered in this state, but certification can show the actual place of death if it can be determined by the state medical investigator.

(4) Death without medical attendance: A death occurring without medical attendance, including hospice cases, are reported to the office of the medical investigator. The office of the medical investigator shall certify the cause of death only in those cases in which the OMI retains jurisdiction. In all such unattended cases where the physician of record will certify to the cause of death, the OMI shall not prepare the certificate of death.

(5) Presumptive death: In cases where no body is located following a witnessed fatal event, an order issued by the court in which the presumed death occurred must be presented to the OMI in order for the death certificate to be issued.

(6) Amended death certificate: Amended death certificates based on anatomical observation must be filed within 30 days after completion of the autopsy.

[Recompiled 10/31/01]

7.3.2.14 RECORDS:

A. Citations and Regulations:

(1) 24-11-6 NMSA 1978 B: In those cases where the death resulted from a motor vehicle accident on a public highway, and the state, district or deputy medical investigator performs or causes to be performed a test or tests to determine the alcoholic content of the deceased's blood, a copy of the report of this test shall be sent to the planning division of the state highway department for the department's use only for statistical purposes. The copy of the report sent to the planning division of the state highway department of the results shall not contain any identification of the deceased and shall not be subject to judicial process.

(2) 24-11-8 NMSA 1978 - The state or district medical investigator shall promptly report his findings, or the findings of a deputy medical investigator that has performed an investigation under his direction, to the district attorney in each death investigated. Upon request of the district attorney, the state or district medical investigator shall send a complete record of the medical investigation in any case, including a transcript of the testimony of witnesses examined at any inquest.

(3) Memorandum: "Records of the office of the medical investigator" legal opinion, university of New Mexico legal counsel, September 1983: Public records: Internal correspondence is protected by executive privilege; Records from other agencies are exempt.

(4) COMPLIANCE GUIDE - The Inspection of Public Records Act, Sections 14-2-1, to 14-2-3, NMSA 1978, state of New Mexico, office of the attorney general, September 30, 1980.

B. Policy: Records documenting the investigation and subsequent findings of those investigations of deaths reported to the OMI are prepared and stored and made available for appropriate and legitimate requests. The central OMI is the record repository, and all reports, investigative findings, slides and photography and any other material gathered during a death investigation anywhere in the state shall be forwarded to the central office. The information gathered in the course of these investigations is compiled at public expense. Therefore, any person having a legitimate cause for requesting specific reports or any information concerning the cause and manner of death, may do so from the central OMI and shall receive the reports after prepaying an administrative processing fee. Computer generated statistics are available upon legitimate request and prepayment of a designated fee. Internal correspondence, represented by reports, memoranda, opinions, photographs or other parts of a case file are protected by executive privilege and may be released only by specific authorization of the chief medical investigator when a legitimate purpose has been demonstrated and an administrative processing fee has been received. Records within case files obtained from other agencies, including hospitals, mental health facilities, law enforcement agencies, or physicians' records, may not be released by the OMI. These documents must be requested from the primary source of the record.

(1) Maintain records - provide reports: A subpoena duces tecum is a court order to appear at a court hearing and to bring specified records to that hearing. The term "all files and/or records" shall mean the entire file. When records within the OMI file are copies of records generated by other agencies, such as a hospital or law enforcement agency, the subpoenaing agency must be so advised. The records and reports of the OMI that are created at public expense and, therefore, are considered public record, are the final report of death, the autopsy report, and the toxicology report. The final report of death contains the summary of the investigation and lists the appropriate district attorney and law enforcement agency having jurisdiction. Both of these agencies are routinely provided, copies of these reports at no charge. It is prepared by the responsible deputy medical investigator and recorded in final form at the central office. The cause and manner of death are provided on this report. The autopsy report is prepared by the designated pathologist following an internal examination. The toxicology report is prepared by the state laboratory division at the request of the OMI. It reflects results of only those tests requested. In those cases where the death resulted from a motor vehicle accident on a public highway, a copy of the report of any test made upon the deceased for blood alcohol shall be provided to the planning division of the state highway

department for statistical purposes. The report shall contain no identification of the deceased and shall not be subject to the judicial process.

(2) Information to the public: The information gathered in the course of an OMI investigation forms a public record. Any person having a legitimate reason to review the information may do so at the office of the medical investigator. Police, hospital or physicians' records acquired by the OMI in the course of the investigation are exempt from public viewing and must be obtained from the originating agency. Once the identification of an individual has been determined by the OMI or any other agency, it is the responsibility of the local law enforcement agency to assure that next of kin has been notified prior to releasing the identity to the media.

[Recompiled 10/31/01]

7.3.2.15 COURT:

A. Citations and Regulations:

(1) 24-11-8 NMSA 1978: The state or district medical investigator shall promptly report his findings, or the findings of a deputy medical investigator that has performed an investigation under his direction, to the district attorney in each death investigated. Upon request of the district attorney, the state or district medical investigator shall send a complete record of the medical investigation in any case, including a transcript of the testimony of witnesses examined at any inquest.

(2) Memorandum #1790: 9/30/82 from department of finance and administration, budget division, subject: expert witness fee guidelines: Expert witness fees are all expenses charged by a witness who is called for court testimony as a direct result of that persons' expertise or specialized skill. An expert witness is not a character witness or witness-of-fact. In most cases, the prosecution or the defense will call the expert witnesses; however, a judge may also occasionally choose to call an expert witness for testimony.

(a) The office of the medical investigator (OMI) is not to charge the state professional fees for consultation or testimony by its staff or faculty. However, it may charge mileage and per diem, or chartered plane costs as necessary. Therefore, the agency using OMI is responsible for notifying OMI immediately if a plea bargain or cancellation occurs to avoid unnecessary travel expenses to the state and inconvenience to OMI.

(b) An OMI faculty forensic pathologist will participate in all autopsies and will sign the report along with the resident who assisted in the autopsy. Therefore, either the resident or the faculty member may be subpoenaed to testify. The OMI would prefer to have the resident testify if he/she is still available as part of his/her training in forensic pathology. When preparing the subpoena, please contact OMI to determine if the resident is still with OMI. If the resident has left OMI, the supervising faculty member is to be subpoenaed for court testimony. Use of former OMI staff or faculty should only occur as a last resort.

(c) In general, the agency which calls the expert witness will be responsible for payment of the fees.

(d) Criminal proceedings:

(i) Criminal proceedings in district court: Whoever calls an expert witness shall pay the fees of that witness.

(ii) Preliminary hearings and bond arraignments in magistrate court: Whoever calls an expert witness shall pay the fees of that witness. Since the purpose of a preliminary hearing is to determine probable cause, and not determine guilt or innocence, the need for expert witnesses in magistrate court should be minimal.

(iii) Criminal grand jury proceedings: Whoever calls an expert witness shall pay the fees of that witness. The administrative office of the courts shall pay for any expert who is called specifically by the grand jury and who conducts an examination testimony at the direct request of the judge. Since the purpose of a grand jury is to determine probable cause, and not to determine guilt or innocence, the need for an expert witness in a Grand Jury proceeding should be minimal.

B. Policy:

(1) All representatives of the office of the medical investigator may be subpoenaed to a variety of legal hearings to provide information in a particular case.

(2) Subpoenas may be issued by prosecution or defense; at times, the representative of the OMI can be subpoenaed by both for the same case.

(3) The testimony of the representative of the OMI is based on the factual observations of that individual. As such, the testimony is neutral testimony. The supporting or refuting of an allegation is the responsibility of the counsels in the case, based on the hearing of the neutral testimony.

(4) Failure to respond to a subpoena represents contempt of court, and a bench warrant may be issued for the subpoenaed person at the discretion of the judge.

(5) ALL representatives of the OMI upon receiving subpoenas must notify the central office. The only official file on any OMI case is at the central office. Any notes made by the DMI at the scene of a death are considered original source materials and may be used during court testimony.

(6) Any representative receiving a subpoena duces tecum is to bring designated records or documents with him to the court appearance. Only records at the central office will be used in this matter, and they are to be reproduced and certified by central office personnel prior to the court appearance.

(7) See also - Records, Section G [now 7.3.2.14 NMAC]
[Recompiled 10/31/01]

7.3.2.16 TRANSPORTATION:

A. Citations and regulations:

(1) 24-11-5 NMSA 1978: When any person comes to a sudden, violent or untimely death or is found dead and the cause of death is unknown . . . the state or district medical investigator, or a deputy medical investigator under his direction, shall, without delay, view and take legal custody of the body.

(2) Regulation - state corporation commission of New Mexico, New Mexico ambulance tariff no. 3-B, June 8, 1972. Containing rates, rules, regulations and charges governing the transportation of persons alive or dead or dying en route by means of ambulance service in the state of New Mexico.

B. Policy:

(1) Only the medical investigator or his/her representative may authorize removal of a body from the scene of death.

(a) Authority may be granted by telephone or other means of communication when he/she does not attend the actual scene of death.

(b) Authority may be granted by the medical investigator to remove the body to a hospital or other medical facility for official pronouncement of death prior to transportation to the designated place for examination or subsequent funeral arrangements.

(2) Transportation may be conducted by:

(a) a funeral director designated by the family to conduct subsequent funeral arrangements.

(b) public conveyance designated for the purpose of transporting bodies.

(c) a licensed commercial ground carrier holding a valid permit for such transportation within the state of New Mexico.

(d) a licensed commercial air carrier with an operating certificate issued by the FAA.

(3) The office of the medical investigator does not contract with any individual or agency for transportation services. Service providers are chosen based on cost, availability and timeliness. Authority for all such transportation will originate with the medical investigator.

(4) Payment for all transportation authorized by the medical investigator will originate at the central office of the medical investigator in Albuquerque, New Mexico. Payment will be approved only upon receipt of the original invoice itemizing the following:

(a) the name of the deceased;

(b) date of transportation;

(c) location from which the body was transported;

(d) location to which the body was transported;

(e) total loaded miles of transportation;

(f) response charge;

(g) charge per mile;

(h) name of the deputy or district medical investigator who authorized such removal.

(5) The medical investigator pays only those transportation charges incurred to conduct the investigation and subsequent examination. This does not include any charge ordinarily incurred when the OMI does not assume jurisdiction.

(6) Authorized payments for transport:

(a) must be submitted by agencies chartered by New Mexico state corporation commission to transport dead bodies.

(b) transportation from the scene of death to a designated place for storage and examination other than a mortuary designated to conduct subsequent preparation or funeral arrangements;

(c) transportation to return remains from the place of examination to the locality where the remains were initially discovered.

(7) Unauthorized pay:

- (a) any transportation by a transport other than those chartered by the New Mexico state corporation commission to transport dead bodies.
 - (b) transportation from the scene of death to a mortuary designated to conduct subsequent preparation or funeral arrangements;
 - (c) transportation from the place of examination to a mortuary within the same locality for subsequent preparation for funeral arrangements;
 - (d) transportation from the place of examination to a mortuary outside the locality of the place of death;
 - (e) waiting time unless authorized by the central office.
 - (8) Miscellaneous transportation fees: The medical investigator may require that bodies be transported in sealed bags or containers for the purpose of preservation of evidence.
 - (a) Medical investigator will usually supply body bags, if needed, for preserving evidence or to avoid contamination of the transporting vehicle.
 - (b) If such body bags are supplied by the transporting agency at the request of the medical investigator, the OMI reserves the option of payment for the bag or replacement of the bag with a bag of similar quality.
 - (c) Body bags or containers supplied by agencies for the purpose of preventing odors and contamination will be returned to those agencies ultimately receiving the body.
- [Recompiled 10/31/01]

7.3.2.17 REMAINS:

A. Citations and Regulations:

- (1) 24-11-6 NMSA 1978 A: Upon receipt of a report from a deputy medical investigator under this subsection, the state or district medical investigator may execute a death certificate and a certificate authorizing release of the body for burial.
- (2) 24-11-7 NMSA 1978: If the deceased is unidentified, the state, district or deputy medical investigator may order the body fingerprinted and photographed.
- (3) 24-12-1 NMSA 1978:
 - (a) State, county or municipal officials having charge or control of bodies to be buried at public expense shall use due diligence to notify the relatives of the deceased.
 - (b) If no claimant is found who will assume the cost of burial, the official having charge or control of the body shall notify the medical investigator stating, when possible, the name, age, sex and cause of death of any person required to be buried at public expense.
 - (c) The body shall be embalmed according to regulations of the state agency having jurisdiction. After the exercise of due diligence required in Subsection A [now Subparagraph (a) of Paragraph (3) of Subsection A of 7.3.2.17 NMAC] of this section, and the report to the medical investigator required in Subsection B [now Subparagraph (b) of Paragraph (3) of Subsection A of 7.3.2.17 NMAC] of this section, the medical investigator shall be furnished detailed data demonstrating such due diligence and the fact that no claimant has been found. When the medical investigator has determined that due diligence has been exercised and that reasonable opportunity has been afforded relatives to claim the body and that the body has not been claimed, he shall issue his certificate determining that the remains are unclaimed. In no case shall an unclaimed body be disposed of in less than two weeks from the date of the discovery of the body.
- (4) 24-12-2 NMSA 1978:
 - (a) Upon the issuance of his certificate that the remains are unclaimed, the medical investigator shall retain the body for use only for medical education or shall certify that the body is unnecessary or unsuited for medical education and release it to the state, county or municipal officials having charge or control of the body for burial.
 - (b) If the body is retained for use in medical education, the facility or person receiving the body for such use shall pay the costs of preservation and transportation of the body and shall keep a permanent record of bodies received.
 - (c) If a deceased person was an inmate of a public institution, the institution shall transmit, upon request of the medical investigator, a brief medical history of the unclaimed dead person for purposes of identification and permanent record. The records shall be open to inspection by any state or county official or district attorney.
- (5) 24-12-3 NMSA 1978:

(a) Any person who conducts a postmortem examination on an unclaimed body without express permission of the medical investigator is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than one year or by the imposition of a fine of not more than one thousand dollars (\$1,000), or both such imprisonment and fine.

(b) Any person who unlawfully disposes of, uses or sells an unclaimed body is guilty of a fourth degree felony and shall be punished by imprisonment in the state penitentiary for a term of not less than one year nor more than five years or by the imposition of a fine of not more than five thousand dollars (\$5,000), or both such imprisonment and fine.

(6) 24-13-1 NMSA 1978: It shall be the duty of the board of county commissioners of each county in this state to cause to be decently interred, the body of any dead person having no visible estate out of which to defray the cost of his burial, and when no relative or friend of such decedent will undertake to bury him.

(7) 24-13-2 NMSA 1978: No deceased person shall be considered to be an indigent if there are any sums, no matter how small, with which to defray the cost of such burial.

(8) 24-13-3 NMSA 1978: The expenses for the burial or cremation of an indigent person shall be paid by the county out of the general fund in the amount of one hundred dollars (\$100) for the burial of any adult or minor over the age of six years and seventy-five dollars (\$75) for the burial of any minor up to the age of six years.

(9) 24-13-4 NMSA 1978: The board of county commissioners, after proper investigation, shall cause any deceased indigent to be decently interred or cremated. The cost of opening and closing a grave shall not exceed thirty-five dollars (\$35), which sum shall be in addition to the sums enumerated in Section 24-13-3 NMSA 1978.

(10) 24-14-22 NMSA 1978:

(a) Each spontaneous fetal death, where the fetus has a weight of five hundred grams or more, which occurs in this state shall be reported to the state registrar.

(b) When a dead fetus is delivered in an institution, the person in charge of the institution or his designated representative shall prepare and file the report.

(c) When the spontaneous fetal death occurs on a moving conveyance and the fetus is first removed from the conveyance in this state, or when a dead fetus is found in this state and the place of fetal death is unknown, the fetal death shall be reported in this state. The place where the fetus was first removed from the conveyance or the dead fetus was found shall be considered the place of fetal death.

(d) When a spontaneous fetal death required to be reported by this section occurs without medical attendance at or immediately after the delivery or when inquiry is required by law, the state medical investigator shall investigate the cause of fetal death and shall prepare and file the report.

(e) The names of the parents shall be entered on the spontaneous fetal death report in accordance with the provisions of Section 24-14-13 NMSA 1978.

(f) Except as otherwise provided in this section, all spontaneous fetal death reports shall be completed and filed with the state registrar within ten days following the spontaneous fetal death.

(11) 24-14-23 NMSA 1978:

(a) For deaths or spontaneous fetal deaths which have occurred in this state, no burial-transit permit shall be required for final disposition of the remains if such disposition occurs in this state and is performed by a funeral service practitioner or if disposition takes place in an institution with authorization from the next of kin.

(b) A burial-transit permit shall be issued by the state registrar or a local registrar for those bodies which are to be transported out of the state for final disposition or when final disposition is being made by a person other than a funeral service practitioner.

(c) A burial-transit permit issued under the law of another state or foreign country which accompanies a dead body or fetus brought into this state shall be authority for final disposition of the body or fetus in this state.

(d) A permit for disinterment or reinterment shall be required prior to disinterment of a dead body or fetus except as authorized by regulation or otherwise provided by law. The permit shall be issued by the state registrar or state medical investigator to a licensed funeral service practitioner.

(e) A permit for cremation of a dead body shall be required prior to the cremation. The permit shall be issued by the state medical investigator to a licensed funeral service practitioner.

(12) 24-14-24 NMSA 1978:

(a) The department may, by regulation and upon conditions as it may prescribe to assure compliance with the purposes of the Vital Statistics Act [24-14-1 to 24-14-17, 24-14-20 to 24-14-31 NMSA 1978], provide for the extension of the periods prescribed in Sections 24-14-20, 24-14-22 and 24-14-23 NMSA 1978 for the filing of death certificates, spontaneous fetal death reports, medical certification of cause of death and for the

obtaining of burial-transit permits in cases where compliance with the applicable prescribed period would result in undue hardship.

(b) Regulations of the department may provide for the issuance of a burial-transit permit prior to the filing of a certificate upon conditions designed to assure compliance with the purposes of the Vital Statistics Act in cases where compliance with the requirement that the certificate be filed prior to the issuance of the permit would result in undue hardship.

(13) Regulation - state board of thanatopractice of the state of New Mexico regulations, adopted 2/2/79 and revised 1984, No. 22.

(a) Subject to the provisions of Subsection G of Section 61-29A-23, NMSA 1978, all human and fetal remains shall be embalmed in accordance with the Thanatopractice License Law, where;

(i) required by an applicable regulation of the office of the medical investigator or of the secretary of the health and environment department or by an order of the state or a district medical investigator;

(ii) the remains are not stored under refrigeration at a temperature not exceeding 5 degrees C (40 degrees F) when Subsection A of Section 61-29A-21, NMSA 1978, is applicable; or

(iii) Subsection F of Section 61-29A-23, NMSA 1978, is applicable.

(b) When embalming is not required under the preceding paragraph A [now Subparagraph (a) of Paragraph (13) of Subsection A of 7.3.2.17 NMAC], then no human or fetal remains shall be embalmed without the oral or written authorization by the:

(i) surviving spouse or next of kin; or

(ii) legal agent or personal representative; or

(iii) person assuming responsibility for final disposition.

(c) Where embalming is not required under paragraph A [now Subparagraph (a) of Paragraph (13) of Subsection A of 7.3.2.17 NMAC] and prior to obtaining authorization under paragraph B [now Subparagraph (b) of Paragraph (13) of Subsection A of 7.3.2.17 NMAC], remains may be washed and other health procedures, such as closing the orifices, preparatory to actual embalming, may be performed.

B. Policy:

(1) In all cases where the OMI has assumed jurisdiction, the remains will be released for burial or other means of disposal only after the investigation of the death is concluded.

(2) All permits for cremation on any death occurring within the State are issued by the OMI.

(3) In cases where the remains are unidentified, all means of recording features of the remains shall be used prior to release of the remains.

(4) In cases where the remains are identified but unclaimed, the body shall be released no sooner than two weeks after death with the assurance that due diligence has been put forth to find a claimant for the body. This release is granted by the office of the medical investigator.

(5) In cases where the remains are identified but ruled indigent, the cost of the burial shall be assumed by the county authority in which the death occurred. Personal property of an unidentified person will be turned over to the county assuming responsibility for burial. In all cases where the OMI has assumed jurisdiction, there shall be no charge for transportation and storage imposed on any common carrier or funeral director.

(6) The office of the medical investigator and the state registrar may issue disinterment permits. This permit will be issued to a licensed funeral director who will be in charge of the disinterment procedure. A request for a disinterment permit can be made by a district attorney or any private individual with a legitimate purpose. In any case where the disinterment is requested for purposes requiring legal documentation of the procedure, the OMI shall be present and shall assure the chain of custody upon removal and transportation to the office of the medical investigator for any subsequent examination.

(7) In the event that unidentified skeletal remains are discovered, the office of the medical investigator shall respond and conduct an investigation to determine if there is medicolegal significance to the remains.

(8) In any case where the cause of death is deemed dangerous to the public health, the office of the medical investigator may require that the body be embalmed or be encased in an airtight container.

[Recompiled 10/31/01]

7.3.2.18 DISASTER:

A. Citations and Regulations:

(1) 24-11-5 NMSA 1978: When any person comes to a sudden, violent or untimely death or is found dead and the cause of death is unknown, anyone who becomes aware of the death shall report it immediately to law enforcement authorities or the office of the state or district medical investigator. The public official so notified,

shall in turn notify either, or both, the appropriate law enforcement authorities or the office of the state or district medical investigator. The state or district medical investigator, or a deputy medical investigator under his direction, shall, without delay, view and take legal custody of the body.

(2) Document - department of transportation, federal aviation administration, "Aircraft Accident and Incident Notification, Investigation, and Reporting", JULY, 1976, document #8020.11. In carrying out its duties under this title, the board is authorized to examine and test to the extent necessary any civil aircraft, aircraft engine, propeller, appliance, or property aboard an aircraft involved in an accident in air commerce. In the case of any fatal accident, the board is authorized to examine the remains of any deceased person aboard the aircraft at the time of the accident, who dies as a result of the accident, end to conduct autopsies or such other tests thereof as may be necessary to the investigation of the accident: Provided, that to the extent consistent with the needs of the accident investigation, provisions of local laws protecting religious beliefs with respect to autopsies shall be observed.

(3) Obtaining autopsy. A strong attempt should be made to obtain an autopsy on the crew and members in every fatal general aviation accident. It is also desirable to obtain complete skeletal x-rays in certain accidents. Even in extreme cases of incineration, blood and tissue can often be obtained for studies. The heart in such cases is often intact and will be found to contain blood suitable for carbon monoxide, cyanide, ethyl alcohol, and other studies. In "survivable" accidents, a general x-ray survey of the body is desired. Simple fractures are often missed on autopsy. Many fatal accidents in general aviation fall in the survivable category.

(a) Pre-crash planning. Embalming invalidates most toxicological studies. Obtaining the early cooperation and understanding of the local coroner/medical examiner results in smoother operation in this area of the investigation.

(b) When the AME is the first federal representative at the scene, he should request that local authorities guard the wreckage.

(c) The coroner/medical examiner should be contacted to arrange for autopsy/toxicology studies. The state or local police may be of help in this communication. Good communication is the key to a well-conducted investigation and the local law enforcement agency, e.g., state police, is an effective place for the AME to keep in contact concerning the whereabouts of the coroner/medical examiner.

(i) If the AME does not personally know the coroner or mortician, he should introduce himself as the authorized AME of the federal aviation administration. This will establish the proper rapport. The coroner can be of great assistance to the investigation but sometimes is not fully oriented to the aviation medical aspects.

(ii) After autopsy permission has been secured, it is then determined whether it will be done by a local pathologist or by an FAA consultant pathologist.

(4) Federal Aviation Act of 1958, Title 7, Aircraft Accidents. Procedures.

(5) National Transportation Safety Board, Public Notice PN-1. Scope of authority.

B. Policy:

(1) When a situation occurs that causes death to individuals and presents complications that prevent the timely retrieval of bodies and/or the subsequent identification of those bodies, a disaster can be stated to have occurred.

(2) The office of the medical investigator is charged with taking custody of all bodies in situations deemed disasters, with the responsibility for the identification of those remains, the determination of a cause and manner of death, and the timely release of those remains to the family.

(3) The office of the medical investigator shall establish and maintain a current written disaster plan and shall supply a copy to appropriate individuals or agencies. Further, a list of all agencies that may be required to respond to the scene of a particular disaster shall be maintained in the central office of the medical investigator, and all telephone numbers and contact directions shall be kept in an up-to-date fashion.

[Recompiled 10/31/01]

7.3.2.19 FEES: Policy:

A. Fees are charged by the medical investigator for reports and services. A current list of such fees is available from the central office.

B. Fees are paid by the medical investigator for services provided by field personnel and common carriers. Fees will only be paid upon receipt of an itemized bill for those services. A current list of such fees is available from the central office.

[Recompiled 10/31/01]

7.3.2.20 AGENCIES:

A. Citations and regulations:

(1) 50-9-4 NMSA 1978: The agency is the state occupational health and safety agency for all purposes under federal legislation relating to occupational health and safety and may take all action necessary to secure to this state the benefits of that legislation.

(2) 69-5-17 NMSA 1978: The state mine inspector shall proceed immediately upon notification to the site of any mine accident causing the loss of life or imminent danger and assist in the rescue of persons within the mine, investigate the causes of the accident, conduct a closeout conference and make necessary recommendations for the present and future safety of the miners. So far as possible, the operator shall not change the surroundings of an accident until the state mine inspector has made his investigation, provided, however, that such investigation is made within a reasonable time.

(3) Document - Department of Transportation, Federal Aviation Administration, Aircraft Accident and Incident Notification, Investigation and Reporting, 7/76, Document #8020.11. Provided, that to the extent consistent with the needs of the accident investigation, provisions of local laws protecting religious beliefs with respect to autopsies shall be observed.

(a) Pre-crash Planning. Embalming invalidates most toxicological studies. Obtaining the early cooperation and understanding of the local coroner/medical examiner results in smoother operation in this area of the investigation. The state or local police may be of help in this communication. Good communication is the key to a well-conducted investigation and the local law enforcement agency, e.g., state police, is an effective place for the AME to keep in contact concerning the whereabouts of the coroner/medical examiner.

(i) If the AME does not personally know the coroner or mortician, he should introduce himself as the authorized AME of the federal aviation administration. This will establish the proper rapport. The coroner can be of great assistance to the investigation but sometimes is not fully oriented to the aviation medical aspects.

(ii) After autopsy permission has been secured, it is then determined whether it will be done by a local pathologist or by an FAA consultant pathologist.

(b) The coroner/medical examiner should be contacted to arrange for autopsy/toxicology studies.

(4) Regulation - bureau of Indian affairs 1968, IAM 3.13 AND 3.13.2, Relations with Other Services and Agencies.

(a) Autopsy service. The policy is that where the United States attorney requests a postmortem autopsy on a human body and the case comes within the purview of the federal courts, the FBI will pay the expenses for the transportation of the corpse, the use of an operating room (usually a mortician's facility), and the fees of the medical officer performing the examination. The expenses incident to autopsy service prior to referral to the U. S. attorney may not be the responsibility of the FBI. The FBI will not pay burial expenses incident to such cases.

(b) Land surveys. In substantially all cases where the FBI investigates a crime on an Indian reservation pursuant to special laws applicable to Indian reservations, it is necessary to establish legal jurisdiction by determining the focus and status of the land on which the crime occurred. The bureau of Indian affairs has the responsibility to determine this requirement and for the payment of any land surveys incident thereto. Bureau officers should familiarize themselves with the location, custody, and availability of land records and the identity of Indian bureau or bureau of land management personnel who are qualified to testify thereto. Working arrangements should be established within Indian bureau facilities to provide for these surveys and to provide personnel qualified to make and testify to land surveys in court. This is an important prerequisite in federal and state prosecutions and cannot be overlooked. This information shall be made available to the FBI and the United States attorney. It will also be furnished to state prosecuting attorneys where such surveys develop that crimes being investigated occurred on non-federal jurisdiction lands.

(5) 32-1-15 NMSA 1978:

(a) Any licensed physician, resident or intern examining, attending or treating a child, any law enforcement officer, registered nurse, visiting nurse, schoolteacher or social worker acting in his official capacity or any other person knowing or suspecting that a child is an abused or neglected child shall report the matter immediately to:

(i) the criminal prosecution division of the office of the district attorney.

(ii) the county social services office of the human services department in the county

where the child resides; or

(iii) the probation services office of the judicial district in which the child resides.

(b) An oral report shall be made promptly by the recipient of the report under Paragraph 2 or 3 of Subsection A [now (ii) and (iii) of Subparagraph (a) or Paragraph (5) of Subsection A of 7.3.2.20 NMAC] of this

section to the district attorney by telephone or in person, and a written report shall be submitted to the district attorney as soon thereafter as possible. The written report shall contain the names and addresses of the child and his parents, guardians or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person or persons responsible for the injuries.

(6) Memorandum 6-6 - Veteran's administration, medical center, Albuquerque, NM, April 18, 1984

(7) Responsibility to report deaths to the office of the medical investigator.

B. Policy: The office of the medical investigator shall appear and assume custody of the body in all cases of sudden and unexpected deaths occurring within the state of New Mexico. In addition to the local law enforcement agency of jurisdiction, certain state and federal agencies are, by law and regulation, to be notified when the specific incident is related to their area of specialization.

(1) Aircraft: In the case of civil aircraft disasters, the federal aviation administration (FAA) and national transportation safety board (NTSB) are to be notified and permitted into the scene of investigation.

(2) Industrial: In the case of work-related industrial accidents, (excluding mining and vehicular) officials of the occupational safety and health agency are to be notified and permitted into the scene of investigation.

(3) Mining: In the case of mining deaths, the state mine inspector (mining safety agency) is to be notified and permitted into the scene of investigation.

(4) Contagious disease: In cases of contagious diseases, in particular botulism, meningococcal infections and the plague, but including the entire list of notifiable diseases/conditions published by the epidemiology office of the New Mexico health and environment department, that department is to be notified and supplied with information of the incident.

(5) Consumer product: In cases of consumer products being involved or present, the consumer product safety commission is to be notified and supplied with information of the incident.

(6) Federal jurisdiction: In cases where the death appears to be on federal land, the FBI or appropriate branch of the military shall be notified.

(7) Child abuse: In all cases of suspected child abuse, the human services department of the local county shall be notified and supplied with information of the incident and postmortem examination.

(8) Current list: The agencies cited here are required to provide the OMI with a current list of representatives to be notified for response within the state of New Mexico.

[Recompiled 10/31/01]

7.3.2.21 CENTRAL OFFICE: Policy: Established by authority of the board of medical investigators, the central office of the state medical investigator:

- A. receives all reports of death reported to any deputy medical investigator in the state;
- B. receives all bodies for autopsy except those designated by the central office to remain within the jurisdiction of death for autopsy by a designated pathologist;
- C. receives all toxicology specimens removed from a body by a deputy medical investigator;
- D. receives and is the sole possessor of film and subsequent slides and photographs taken of a body or surrounding death scene by any representative of the OMI;
- E. is responsible for all payments for services rendered by any representative of the OMI or their service provider, upon receipt of the itemized bill described under "FEES", SECTION L [now 7.3.2.19 NMAC];
- F. receives all payments for services or reports and maintains all fiscal records pertaining to same;
- G. generates all final reports;
- H. enters all pertinent data into the central facility computer data base;
- I. is responsible for all information disseminated to the media unless directed otherwise;
- J. maintains final authority over the disposition of a dead body and the processing of that body in all cases where jurisdiction is assumed;
- K. assumes responsibility for all hiring and termination of deputy medical investigators, district medical investigators, and designated pathologists;
- L. develops, maintains and distributes to the deputy medical investigators a list of authorized transportation providers and mortuary services within each jurisdiction;
- M. is responsible for all body storage required in the processing of any case, for all unidentified remains, and for unclaimed remains under OMI jurisdiction;
- N. directs deputy medical investigator personnel to districts other than their own for assignment when required;
- O. provides all training for deputy medical investigators;

P. allocates supplies for field deputy medical investigators.
[Recompiled 10/31/01]

HISTORY OF 7.3.2 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Center: OMI 86-1, Policies of the Office of the Medical Investigator, 6/4/86.

History of Repealed Material: [RESERVED]