

505 CMR: OFFICE OF THE CHIEF MEDICAL EXAMINER

505 CMR 1.00: DISCLOSURE OF AUTOPSY REPORTS

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1.01: Scope and Purpose

505 CMR 1.00 is authorized by M.G.L. c. 38, § 2. The purpose of 505 CMR 1.00 is to establish and provide clear, uniform rules and procedures for the disclosure of autopsy reports to those who are legally entitled to receive them.

1.02: Definitions

As used in 505 CMR 1.00:

Authority Compiling Statistical Data means any local, state, or federal agency or entity, excluding the Attorney General and respective District Attorneys of the Commonwealth, authorized by law to collect or receive information for the purpose of preventing or controlling disease, injury, disability, or death.

Chief means the chief medical examiner or his designee.

Health Care Provider means any doctor of medicine licensed under the provisions of M.G.L. c. 112; an intern, fellow or medical officer licensed under M.G.L. c. 112, § 9; a hospital licensed under the provisions of M.G.L. c. 111 and its agents and employees; or a public hospital and its agents and employees.

Investigatory Body means any local, state, federal, or military law enforcement or regulatory agency or entity, excluding the Attorney General and respective District Attorneys of the Commonwealth, authorized or mandated with the oversight, regulation, standardization, or review of investigations related to causes of death.

Medical Peer Review Committee means a committee as defined by M.G.L. c. 111, § 1.

Office means the Office of the Chief Medical Examiner.

1.03: Disclosure of Autopsy Reports to Spouse or Next of Kin

The Office may, in its discretion, provide a copy of the autopsy report of a decedent to the decedent's surviving spouse or next of kin, who shall have priority in the order named, if the following conditions are met:

- (1) The Office receives a written request for a copy of the autopsy report from the surviving spouse or next of kin;
- (2) The surviving spouse or next of kin provides an affidavit, signed under the pains and penalties of perjury, indicating and verifying his or her relationship to the decedent; and
- (3) In cases of unnatural or suspicious death where the district attorney or his law enforcement representative is directing and controlling the investigation of the death pursuant to M.G.L. c. 38, § 4, the district attorney or his law enforcement representative has determined, in his discretion and in writing, that he does not object to the disclosure of the autopsy report to the spouse or next of kin.

1.04: Disclosure of Autopsy Reports in Civil Cases

The Office may, in its discretion, provide a copy of the autopsy report of a decedent to a requesting party in a civil case if the following conditions are met:

- (1) The moving party demonstrates to the court having subject matter jurisdiction over the litigation that the autopsy report likely contains information that is relevant, material, and necessary for preparation or use in the litigation;
- (2) The moving party obtains a specific court order, authorizing disclosure of the autopsy report, issued by a judge of the court having subject matter jurisdiction over the litigation;
- (3) The Office has been afforded the opportunity to oppose and object to the disclosure of the autopsy report for reasons of confidentiality, privacy, investigative interests or as justice may require;
- (4) In cases of unnatural or suspicious death where the district attorney or his law enforcement representative is directing and controlling the investigation of the death pursuant to M.G.L. c. 38, § 4, the district attorney or his law enforcement representative has determined, in his discretion and in writing, that he does not object to the disclosure of the autopsy report to the spouse or next of kin; and
- (5) The Office issues, along with the release of the autopsy report, a statement that autopsy reports are not public records and should not be disseminated or used for any purposes other than those authorized by the court order or by law.

1.05: Disclosure of Autopsy Reports to Investigatory Bodies

The Office may, in its discretion, provide a copy of the autopsy report of a decedent to a requesting investigatory body if the following conditions are met:

- (1) The investigatory body demonstrates that the autopsy report likely contains information that is relevant, material, and necessary for the complete and proper investigation of the death;
- (2) In cases of unnatural or suspicious death where the district attorney or his law enforcement representative is directing and controlling the investigation of the death pursuant to M.G.L. c. 38, § 4, the district attorney or his law enforcement representative has determined, in his discretion and in writing, that, that he does not object to the disclosure of the autopsy report to the investigatory body; and
- (3) The Office issues, along with the release of the autopsy report, a statement that autopsy reports are not public records and should not be disseminated or used for any purposes other than those authorized by law.

1.06: Disclosure of Autopsy Reports to Persons or Entities Statutorily Entitled to Receive Autopsy Reports

- (1) Nothing in 505 CMR 1.06 shall be construed or interpreted to contravene or circumvent the provisions of M.G.L. c. 38 or any other Massachusetts statute, which authorizes or mandates the disclosure of autopsy reports.
- (2) The Office shall provide a copy of an autopsy report of a decedent to the Attorney General or District Attorney having lawful jurisdiction of the investigation of the death, forthwith upon request.

1.07: Disclosure of Autopsy Reports to Health Care Providers

The Chief may, in his discretion, provide a copy of an autopsy report to a health care provider if the following conditions are met:

- (1) The autopsy report is requested by a medical peer review committee and will only be used by the committee to review the medical care provided to the decedent;

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1.07: continued

(2) The autopsy report is requested as part of, and will only be used in furtherance of, a review of the medical care provided to the decedent by the requesting health care provider;

(3) In cases involving hospital deaths, the autopsy report may be provided to the hospital without a request; and

(4) In cases of unnatural or suspicious death where the district attorney or his law enforcement representative is or has been directing or is or has been controlling the investigation of the death pursuant to M.G.L. c. 38, § 4, the district attorney or his law enforcement representative has determined, in his discretion, and has stated in writing that he does not object to the disclosure of the autopsy report to the health care provider.

Any autopsy report released pursuant to 505 CMR 1.00 shall have accompanying it a statement that autopsy reports are not public records and must not be disseminated or used for any purposes other than those authorized by 505 CMR 1.00 or by law.

Health care providers who obtain an autopsy report pursuant to 505 CMR 1.00 may disseminate the autopsy report to others only if necessary to review the medical care provided by the health care provider or the relationship, if any, between the medical care and the decedent's death. Dissemination of the autopsy report or any information contained within the autopsy report for any other purpose, without the express written consent of the Office or the decedent's next of kin, is prohibited unless required by law.

1.08: Disclosure of Autopsy Reports to Authority Compiling Statistical Data

The Office may, in its discretion, provide a copy of the autopsy report or information contained therein to a requesting Authority Compiling Statistical Data if the following conditions are met:

(1) The authority compiling statistical data demonstrates in writing to the satisfaction of the Office that the information sought is relevant, material, and necessary for the complete and proper fulfillment of its federal or state or statutory requirements; and

(2) The authority compiling statistical data demonstrates that all publicly accessible reports containing Office data received pursuant to this regulation will contain only aggregate data and no individual names or other personally identifying information or information that could lead to the identification of an individual decedent, or other information that is protected by statute, regulation, or executive order, including but not limited to M.G.L. c. 214, § 1B, c. 66A, c. 93H, c. 93I, c. 4, § 7(26), 5 USC 552, and Massachusetts Executive Order 504, will be published or released.

1.09: Construction and Severability

(1) Nothing in 505 CMR 1.08 shall be construed or interpreted to contravene or circumvent the provisions of M.G.L. c. 38, the Massachusetts Rules of Civil and Criminal Procedure pertaining to the rules of discovery, or any other Massachusetts statute.

(2) If any article, section, subsection, sentence, clause, or phrase of 505 CMR 1.00 is for any reason determined to be unconstitutional, contrary to statute, in excess of authority, or otherwise inoperative, such determination shall not affect the validity of any other article, section, subsection, sentence, clause, or phrase of 505 CMR 1.00.

1.10: Liability

As provided in M.G.L. c. 38, § 2, neither the Chief Medical Examiner, nor any employee of the Office, shall be subject to civil or criminal liability for disclosing an autopsy report or any part thereof, pursuant to the regulations set forth in 505 CMR 1.00 *et seq.*

REGULATORY AUTHORITY

505 CMR 1.00: M.G.L. c. 38, § 2.