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Medicolegal Death Investigation: Terms and Definitions

#	Section			Type of Comment (E-)	Comments	Proposed Resolution	Final Resolution
7	General			T	<p>Manner of death is not only limited to use for public health and vital statistics purposes, but is also used in criminal proceedings. Medical examiners routinely opine on manner of death in ways that dictate whether to investigate a crime or indict a person of interest. While cause of death determinations are based on medical evidence, manner of death determinations go beyond the scope of a medical examiner's trained expertise. Manner determinations require consideration of external factors, clearly stated here as "the circumstances under which death occurred." Thorough review of the full extent of case-relevant information (e.g., medical history) is necessary for a medical examiner to reliably opine on the mechanism that caused death. However, using additional nonmedical, nonscientific information to make what is really a legal determination such as manner should not be the duty of the medical examiner. We have learned through many cases of wrongful conviction how nonscientific information has been relied upon by pathologists to reach erroneous conclusions as to the manner of death. Therefore, rather than a pathologist opining on manner of death, the nonmedical, nonscientific information should be presented by other appropriate witnesses for manner to ultimately be determined by the fact finder. The idea that manner of death falls outside the range of medical opinions a forensic pathologist can offer is demonstrated through the use of the words "intent" and "volitional" in these classifications. Consider a case in which a medical examiner is presented with a body with a contact gunshot wound to the head. The medical examiner can determine based solely on examination of the body that the gunshot was the cause of death. However, choosing between a suicide or a homicide requires context information such as the other individuals involved, the events leading up to the discharge of the gun, and details about the physical scene. This contextual information can be testified to by lay witnesses who have either observed or heard relevant evidence. However, a pathologist should not present opinions outside of their expertise, as it will unduly influence the fact finder. It is the responsibility of the fact finder to determine the appropriate weight that evidence should receive.</p>	<p>The terms described in this technical document establishing manner of death terminology for use by the medicolegal community should not be included in this proposed standard. It presents innumerable risks for medical experts to testify to their conclusions which are not based solely on scientific, medical, or clinical data, but rather informed by externally sourced information including police interviews with third parties, alleged confessions (which may be proven false many years later following DNA testing), social history, or circumstances relating to the crime. Furthermore, the introduction of new vocabulary such as "intent" and "volition" creates more uncertainty. There is no standard of measurement or criteria for these terms to justify their integration into the standard. The vague and broad definitions for manner of death allow a single death to be too easily defined by multiple manners of death. This is a serious problem, as an "accident" and a "homicide" have drastically different consequences in the criminal legal system.</p>	<p>reject- the definitions specify that manner of death is intended for the use of public health purposes and does not imply a legal or judicial conclusion. this document is not a standard, but rather definitions for MDI terms as specified in the scope. This document defines terms as currently in use in MDI. Appropriate application in the judicial context is outside the scope of this document.</p>
10	2.2	accident	Unexpected or unforeseen death due to injury without intent to harm or cause death	T	<p>We are especially concerned with the definitions of accident and homicide because of the potential overlap due to the aforementioned terminology. The murders of George Floyd, Anton Black, Daniel Prude, and the many other unarmed individuals in police custody who have died by the use of restraints exemplifies the need for these terms to be mutually exclusive. Despite the fact that life-threatening restraints were employed, an officer may argue that the intent was neither to harm nor cause death, but to merely control the subject. This behavior on the part of the police should not be able to fit both definitions of accidental death and homicide. Given the overlap between definitions, the uncertainty allows medical examiners to find that manner of death is undetermined in many situations where it should have been a homicide. All too frequently, police are not held accountable for deaths in custody that occur when using restraints.</p>	<p>Remove this definition or consider changing to, "Death as a result of an unexpected or unforeseen event or happening"</p>	<p>Accept with modification: Revised to: "Unexpected or not reasonably foreseen death that results from an event or happening."</p>
20	2.3			E	<p>What other specially trained persons would be allowed to perform an autopsy? If it's a medical procedure, it needs to be a doctor. Just saying "other specially trained medical personnel" without also at least requiring some certification about the training required feels like it could be an end run around having actual qualified people performing autopsies.</p>	<p>Postmortem diagnostic medical procedure conducted by a forensic pathologist or other physician certified to conduct autopsies....</p>	<p>Reject: Determining qualifications is outside the scope of a terminology document.</p>

1	2.4			E	There needs to be some specification on what individuals are qualified to render such a "medical opinion" as to the cause of death. There needs to also be statement that a sufficient examination of some sort needs to be performed prior to rendering an opinion as to cause of death.	Medical opinion rendered, after sufficient medicolegal investigation, by a forensic pathologist or other medical personnel certified to opine of the disease or injury that resulted in a person's death.	Reject: Determining qualifications is outside the scope of a terminology document.
2	2.5			E	There needs to be a statement that the certification is given by a qualified person. A certification without qualification is meaningless	Procedure by which a qualified third party gives written assurance that a person, product, process, or service conforms to specific requirements.	Accept.
8	2.18	homicide	Death as a result of a volitional act or act of omission (e.g., injury, poisoning, gross neglect of a child) committed by another person to cause fear, harm or death. Intent to cause death is a common element but is not required for use of the manner of homicide. The classification of homicide for the purposes of death certification is a "neutral" term and neither indicates nor implies criminal intent, which remains a determination within the province of legal processes.	T	The use of terms such as "volitional act" or "act of omission" carry the same weight as the word "intent." Therefore, stating that "intent to cause death is a common element but is not required for the use of homicide" unfairly relies on minor linguistic differences.	Remove this statement, or include definitions for volition, omission, and intention.	Reject: this statement is important for definition of homicide. We rely on common definitions of volition, omission and intention and will not define terms within the definition.
9	2.18			T	Similarly, denying the implication of crime through the use of "homicide" is a dangerous attempt to neutralize the consequences of its use. In layman's terms, homicide is defined as the killing of one person by another, which is punishable by law. The discrepancy between non-criminal and criminal homicide is not common knowledge, and members of a jury may conflate these terms.	Remove this statement.	Reject: For MDI purposes, for which these terms are intended as state in the scope, the use of homicide is not implying a criminal act or criminal intent, that is outside the purview of an MDI office. The CB considers this statement an important clarification of the use of the term as it related to MDI.
16	2.18			T	The definition considered volitional acts and acts of omission as potential causes of death, labelling them both as homicide. Acts of omission might be considered homicide in a medical sense, but not in a legal sense.	The subcommittee should consider whether they wish to clarify the definition to address this ambiguity/gap between legal understandings of homicide and medical understandings of cause of death.	Reject: The scope of the document specifies that these terms are for MDI purposes. This term is indicated as a manner of death, not addressing cause of death.
3	2.22	manner	Classification system based on the circumstances under which death occurred and any available postmortem findings, as known to the MDI authority at the time of certification; usually consists of accident, homicide, natural, suicide, and undetermined. Manner of death classification is a statutory function of the medicolegal death investigation authority, as part of death certification for purposes of vital statistics and public health, and does not imply a legal or judicial conclusion.	E	Should state that the opinion as to manner of death shall not be used for legal or judicial conclusions. If the manner of death is needed for statistical purposes, that is one thing. But such a bland statement of "does not imply a legal or judicial conclusions" is tantamount to admitting it can be considered. Especially in light of concerns expressed in my other comments about not requiring, at a minimum, certified medicolegal investigators or forensic pathologists to render such opinions, this wording will allow a significant amount of potential bias into criminal proceedings.	Classification system based on the circumstances under which death occurred and any available postmortem findings, as known to the MDI authority at the time of certification; usually consists of accident, homicide, natural, suicide, and undetermined. Manner of death classification is a statutory function of the medicolegal death investigation authority, as part of death certification for purposes of vital statistics and public health. An opinion as to manner of death shall not be used in any [criminal] legal or judicial proceedings	reject- the definition already specifies that manner of death is intended for the use of public health purposes and does not imply a legal or judicial conclusion. this document is not a standard, but rather definitions for MDI terms as specified in the scope.
4	2.22			E	In addition to my "manner of death" comment above, there should be definitive categories, not just the suggestion of "usually consists of..." The five categories listed seem to be the only possible options - no external cause other than natural; death caused by the decedent; death caused by someone else; death caused by accidental events; impossible to determine who/what cause death. Allowing for additional "categories" by others introduces possible bias into the system. Also, since this is supposedly for statistical purposes, it seems logical to have definitive categories. As a personal example of the harm not having defined categories, I have seen a manner of death opinion state "homicidal violence." The addition of "violence" is unnecessary and if admissible at trial would be arguably prejudicial.	Specifically state the only permissible categories for manner of death are: accident, homicide, natural, suicide, and undetermined.	reject- These are not the only permissible categories, in at least two jurisdiction there is currently an additional manner of death.
11	2.22			T	While it is evident why "any available postmortem findings" should be accessible to the MDI in order to make these determinations, this is an easy way for contextual bias to be introduced. It is difficult to differentiate between task-relevant and task-irrelevant information, while also performing a fully informed medicolegal death investigation. This supports the idea that medical examiners should not be tasked with making both cause of death and manner of death determinations.	Remove this definition.	reject- this is a common term within the MDI community and therefore necessitates defining. MDI authorities are required by statute and public health convention to classify manner of death.
12	2.22			T	As stated above, it is ignorant to say that the manner of death determination "does not imply a legal or judicial conclusion." Manner of death undoubtedly carries weight in a courtroom, and will be treated as such in the eyes of the jury.	Remove this definition.	reject- this is a common term within the MDI community and therefore necessitates defining. This document is not a standard, but rather definitions for MDI terms as specified in the scope.

14	2.24			T	Current language places no restrictions on the nature of the information used to conduct a medicolegal death investigation. The HFTG would like to see the definition restrict the analyst's review and examination to information directly relevant to the medicolegal death investigation.	" medicolegal death investigation - Formal inquiry into the circumstances surrounding the death of a human being; [task-relevant or relevant] investigative information is considered with autopsy findings and adjunctive studies (if performed) to determine the cause and manner of death." *Edits in bold and red	Reject: Establishing the process is outside the scope of a terminology document.
17	2.30			T	Next of kin is defined in terms of the person(s) having authority over the deceased's remains. This seems to incorporate a legal standard which might vary by jurisdiction and might have little in common with ordinary understandings. The HFTG suggests a definition that is more generalizable.	" next of kin - The person(s) who stand(s) in the closest legally recognized relationship to a deceased individual and who may have the authority to determine how the individual's remains are treated."	Accept with modification: Revised to: "The person(s) who stand(s) in the closest legally recognized relationship to a deceased individual." Next of kin is broader than dealing with just the remains.
6	2.31			E	I think the designation of "specially trained medical personnel" is vague. Is it a forensic pathologist? Then say so. Also, if it's not a requirement that a forensic pathologist perform the postmortem examination, then specify the training or certification. You have the term "certification" defined, but the only place it seems to be used is with respect to the certification of a death, not in the qualification of individuals involved in the medicolegal death investigation process.	Examination of a decedent and associated information by a forensic pathologist or other medical personnel certified to perform such examinations; this may include autopsy, external examination, ancillary tests, evaluation of circumstances, review of medical records and other contextual information.	Accept.
15	2.31			T	Current language places no restrictions on the nature of the information used to conduct a medicolegal death investigation. The HFTG would like to see the definition restrict the analyst's review and examination to information directly relevant to the medicolegal death investigation.	" postmortem examination - Examination of a decedent and associated [task-relevant or relevant] information by specially trained medical personnel; this may include autopsy, external examination, ancillary tests, evaluation of circumstances, review of medical records and other contextual information." *Edits in bold and red	Reject: Establishing the process is outside the scope of a terminology document.
13	2.35	undetermined	Manner of death used when the information pointing to one manner of death is no more compelling than another when the circumstances surrounding the death are unknown.	T	The use of "compelling" in this definition is subjective, as there is no standardized way of measuring how "compelling" one manner may be over another to be decided.	Remove this terminology.	Reject with modification: Unclear what the proposed resolution is, to remove the term compelling is unclear and incomplete. Manner of death determination is inherently subjective, and cannot be determined by a rubric alone, thus this word conveys the thought appropriately. Definition revised for clarity.
18				Ballot comment	Consider adding the term "time of death". Is this found time, 911 initial call time, EMS pronouncement time, or other? Provider pronouncement of TOD is obvious. Scene TOD is not so. Conducting research related to time it is critical all collect the same variable in the same manner.		Reject: This is not a comprehensive list of term an MEC office may include, and this was not defined due to jurisdictional and statutory differences.
19				Ballot comment	I'm very happy with the compromise on the Homicide & manner terms.		Comment Noted, no actionable comment or resolution.