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OFFICE OF THE CHIEF MEDICAL EXAMINER
BOARD OF MEDICOLEGAL INVESTIGATIONS

BOARD OF MEDICOLEGAL INVESTIGATIONS
REGULAR MEETING

Board Meeting Minutes from
Thursday, November 5, 2020 at 2:00 p.m.
921 NE 23rd Street, Oklahoma City, OK 73105
405-239-7141
And via videoconference

In conformity with the Oklahoma Open Meeting Act, advance notice of this meeting was transmitted to the Oklahoma Secretary of State on November 20, 2019 at 11:12 AM and public notice of this meeting, together with the agenda, was posted in prominent public view on the front door of the Office of the Chief Medical Examiner, 921 NE 23rd Street, Oklahoma City, OK and on the front door of the Office of the Chief Medical Examiner Eastern Division, 1115 W. 17th, Tulsa.

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Members present: Mr. Ricky Adams, Mr. Rocky McElvany, Mr. Chris Ferguson, and Dr. Eric Pfeifer.

Member present via videoconference: Mr. Glen Huff, Dr. Doug Stewart, Dr. Robert Allen, Dr. Roy Zhang, Dr. Eric Harp.

Others Present: John Crittenden (OAG), Amy Elliott (OCME), Kari Learned (OCME), Dr. Josh Lanter (OCME), Dr. Marc Harrison (OCME), Lori Shively (OCME), Renee Steward (OCME), Jodi Dillon (OCME), Carlos Zambrano (OCME), Patti Parrish and Cathy Christensen.

Mr. Huff called the meeting to order at 2:00 p.m. Roll was called and a quorum was established.

~ Nomination, discussion and possible election of the Board Chairman.

Mr. Huff opened the floor for discussion and nominations for Board Chairman. Mr. Ferguson nominated Mr. Ricky Adams to serve as Chairman. With no other nominations, Mr. McElvany seconded the motion. Roll was called, Mr. Adams abstained and all others were in favor.

At this time, Mr. Adams assumed his role and chaired the remainder of the meeting.

~ Nomination, discussion and possible election of the Board Vice Chairman.

Mr. Adams opened the floor for discussion and nominations for Vice Chairman. Mr. Ferguson nominated Dr. Robert Allen to serve ask Vice Chairman. With no other nomination, Mr. Huff, seconded the motion. Roll was called, Dr. Allen abstained and all others were in favor.

Mr. McElvany motioned to adopt the minutes as written from the March 5, 2020, meeting. Mr. Ferguson seconded the motion. Roll was called and all were in favor.

Update by Chief Medical Examiner, Dr. Pfeifer

● Financial snapshot –
~ On September 30, 2020, the agency had approximately $8M which is down significantly from the previous report. This is due to expenditures on the new Tulsa facility. A major change in monthly receipts from FY19 to present is due to our monthly appropriations being cut by $50K per month. These funds need to be restored if we are to have a chance of recruiting new physicians. Dr. Pfeifer added, if we remain flat this year, the agency will probably go insolvent before the end of the fiscal year. If we receive additional cuts, it will happen much sooner. We need to implore the legislators to keep their end of the agreement since we have moved forward with the construction of the Tulsa facility. Mr. Ferguson asked Dr. Pfeifer if he knows why the agency received the $50K cut. Dr. Pfeifer responded that he was told by the legislators that everyone was receiving a cut, including OCME. He added that we received a $600K cut per year to the budget which was set aside for recruiting physicians. The legislators requested we use the revolving funds to pay for the Tulsa building with the agreement that next year they would supplement us the amount needed to pay for it.

We continue to have monthly expenditures for the Tulsa building project. There are some outstanding equipment items such as the CT scanner with 5 year maintenance plan ($1.1M) and the microscopes for Tulsa that will cost approximately $230K. This does not include expenses such as IT wiring of the building that OMES will complete.

● Priority projects –
~ National Association of Medical Examiners (NAME) reaccreditation is always the main priority. If the budget is restored to what is needed, we anticipate reaccreditation by the end of 2022. If the budget is not restored, we are looking at later than that. Once the Tulsa facility is constructed and we are at the appropriate staffing level, we will invite NAME for a site inspection. With the cut in appropriations, we've stopped actively recruiting forensic pathologists. We have a fellow starting with us in July 2021, who is a Harvard trained neuropathologist. We need to retain him as a staff forensic pathologist once his fellowship is complete but will be unable to if the funding is not there.

~We are also looking at a modernized quality assurance program. This would include staff reviewing case information and automating the process to capture errors.

~ Dr. Pfeifer is still committed the office going paperless. He has seen this successfully achieved in another office and is confident it can be accomplished.

● Agency operations and issues in the COVID era –
~ The agency's had a couple of staff contract COVID and they are both doing well. This is attributed to standard precautions in place. We've implemented teleworking and staggered schedules. With teleworking, Dr. Pfeifer has come to the realization that this may be the new work model for some personnel.

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~ Dr. Pfeifer announced that the first article ever written and published on COVID autopsy findings came out of our agency. Written by Dr. Lisa Barton, Dr. Eric Duval, and Dr. Edana Stroberg along with two other co-authors. Since then, 3 additional articles have been written in the medical literature.

~ Dr. Pfeifer realizes it is unlikely the agency will be able to obtain refrigerated trucks and/or trailers or set up refrigerated building space in a rapid manner during the first crucial hours or days of a mass fatality event. In the initial part of this pandemic, we sought out refrigerated building spaces such as ice rinks and other places where we could set up a refrigeration system. The owners of these types of businesses do not want to give up their places of business. Setting up a refrigerated space that's not built for that purpose could take days. With this in mind, we have purchased 2 self-contained refrigerated trucks with a combined capacity of up to 50 bodies. Five people in the agency, including Dr. Pfeifer are trained to drive the trucks which do not require a CDL to operate. In the event of a mass fatality, these trucks can be deployed within a matter of minutes to any area of the state.

~ It appears the agency will see a record number of cases this year. Partly due to actual COVID cases.

~ We were one of several state agencies selected to have our website modernized through the Pandemic Web Modernization Project which was funded by the CARES Act.

● Legislative items
~ Dr. Pfeifer has been watching McGirt *v.* Oklahoma. The potential impact of this is unknown at this time. We will need clarity from the Commission on Cooperative Sovereignty on how it will work. Depending on the outcome, our staff could end up testifying on these cases again in Federal Court. If this occurs, Dr. Pfeifer estimates each case will take 3-5 physician FTE days per case. This would include case preparation, reviewing slides, writing supplemental reports, meeting with attorneys, going to court, etc.

~ Senate Bill 1893, which has been signed into law, directs our agency to complete a Sudden Unexplained Infant Death (SUID) investigation forms. This bill was authored, promulgated and passed without input from OCME, with the exception of opposition in a Committee hearing, which was ignored. Dr. Pfeifer feels the agency could have helped provide better language. The bill reads "When the death of an infant occurs in this state and the cause of death is considered undetermined, a medical examiner shall conduct a sudden unexplained infant death investigation (SUIDI) not more than forty-eight (48) hours after the death has occurred. The medical examiner or a medical examiner investigator currently certified by the American Board of Medicolegal Death Investigators shall interview the parent, legal guardian or caregiver of, or person who last had contact with, the deceased infant and shall fill out the Centers for Disease Control and Prevention's SUIDI reporting form accordingly…" The problem with this bill is the section directing our office to complete the SUID form within 48 hours of the death on a case where the cause of death is undetermined. The cause of death is typically not known until months after the death, when the case is actually complete by our physicians. Dr. Pfeifer said we will do the best we can to fulfill this but it will cause some issues.

~ We have finally reached an agreement with LifeShare, which is required by law. This was greatly facilitated by a former investigator who now works for LifeShare. This person knows our requirements for preservation and the needs of OCME physicians and is also knowledgeable of LifeShare requirements.

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Mr. McElvany asked Dr. Pfeifer if OCME has been using a private lab for COVID testing or if the agency is using the state labs. Dr. Pfeifer informed the Board that the agency was using the lab at the State Health Department but recently stopped. This was due to the extremely low yield of positive results. (less than 1%) At this point we have stopped COVID testing on every case. However, we continue to test on suspected cases or if the cause of death is undetermined at the time of exam. Mr. McElvany mentioned the rapid result testing. He suggested looking into whether or not these tests provide an acceptable result in a decedent. Dr. Pfeifer agreed and said the ability to triage and have a near instantaneous result to make decisions based on that information is key for efficiency. He expressed his interest at looking into this further with the Health Department.

Mr. Adams acknowledged that the Agency is developing a potential crisis on the finances if help is not received from the legislature. He asked Dr. Pfeifer who at the Capitol is watching this on the Agency's behalf. Dr. Pfeifer responded that during the last legislative session, they worked with the Budget Chairs of the House and Senate respectively, as well as the Governor's office. The agency will be approaching the same groups this time as well.

Update from Chief Administrative Officer – Mrs. Amy Elliott

● Budget -
~ Mrs. Elliott stated she provided the Board with a copy of the budget and the workbook prior to the meeting. She advised there were 2 items in the budget request. The first is for the Tulsa building, which Mrs. Elliott has been assured we will receive the appropriations. However, the documents have not been signed. She is under the impression that Dr. Shrum at Oklahoma State University (OSU) is working directly with Budget Secretary Mike Mazzei to make sure this materializes. They are well aware we must make up the $500K that has been cut from our budget, which would be $6.5M this fiscal year and $6M next fiscal year. The agency will be $1M short for the Tulsa building project if the funding is not received.

The second item on the budget request is for an emergency hire of 2 death investigators. (1 in Oklahoma and 1 in Tulsa) This is to fulfill the requirements of SB1893. We used carryover to fund the investigator salaries and benefits for of total of $170,700.00. Mrs. Elliott has asked for this to be permanently placed in our budget and was advised it would be approved.

● Fontenot Tort Claim -
~ Mrs. Elliott advised the Board the agency has been named in a Tort Claim regarding the wrongful conviction and imprisonment of Mr. Karl Fontenot. As required, she completed the necessary paper work and submitted it to Risk Management. Risk Management has been in contact with the Attorney General's office who feel we should be released from this Claim. Our role in this case was to determine the cause and manner of death of the decedent.

● Strategic plan -
~ Mrs. Elliott, Dr. Pfeifer and Dr. Lanter created a 5 year strategic plan to outline what the agency must do to achieve NAME reaccreditation. A copy of the plan was provided to the Board.

● Annual report -
~ The program which exports the data for the annual report has a couple of issues that need to be addressed. Once that happens, the 2018 annual report will be published. The 2019 report should follow soon after.

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● Agency update -
~ Our Chief Toxicologist, Dr. Byron Curtis, is retiring December 31, 2020 and Dr. Jesse Kemp will transition from the Deputy Chief to Chief Toxicologist. Kacey Cliburn has returned to the agency as the Acting Deputy Chief Toxicologist position.

● Cherokee Nation v. McKesson Corporation -
The agency has received a subpoena to produce an extensive list of discovery items in this case. We have enlisted the assistance of the Attorney General's office and are working through the production process with the attorneys for the Cherokee Nation. Mrs. Elliott advised the Board that Dr. Pfeifer would be expected to play a major role in this case, much like the previous opioid law suit. Pending the outcome of this suit, our agency could potentially be involved in many more tribal law suits over Native American opioid deaths.

● Funeral home accounts -
~ We had many funeral homes that were past due on their accounts. Mr. Ferguson requested the process we follow for collections of past due permit invoices. This procedure was provided to the Board and Mrs. Elliott asked they review it and provide suggestions and advice on how to improve the process. Mr. Ferguson told Mrs. Elliott that he has some suggestions and they will discuss them at a later time.

Update from the Deputy Chief Medical Examiner – Dr. Josh Lanter

● Tulsa office updates –
~ Dr. Lanter provided information on the progress of the new Tulsa office and presented several photos of the construction site. He advised everything is going very well and is currently on time and on budget.

To date, the only inconvenience the Tulsa office has faced is access to the drive used by funeral homes. On two separate occasions (a total of approximately 2 weeks time), the drive has been closed to traffic during the day. A system was devised to use the front entrance after hours to drop off and pick up decedents. The construction company put up screens for privacy when the bodies were loaded/unloaded. If everything stays on track, we are currently looking at a completion date of March 22, 2022.

2021 meeting dates for the Board of Medicolegal Investigations, Office of the Chief Medical Examiner

After some discussion, Mr. Ferguson motioned to accept February 4th, March 4th, April 1st, May 6th, August 5th and November 4th, as regular OCME Board meeting dates for 2021. Mr. McElvany seconded the motion, roll was called and all were in favor.

● A motion was made by Mr. McElvany to enter into executive session for the purpose of discussing the performance, evaluation and employment of the Chief Medical Examiner. Mr. Ferguson seconded the motion, roll was called and all were in favor.

* In accordance with the Administrative Procedures Act, and the Open Meeting Act as amended by HB 661 signed into law by Governor Stitt on March 18, 2020, Board members attending the meeting via videoconference remained in the meeting all others were placed the videoconference waiting room.

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~ Mr. Ferguson motioned to return to open session. Mr. McElvany seconded the motion. Roll was called, Dr. Stewart left the meeting during executive session and all others were in favor. No action was taken.

** The videoconference was re-established and anyone in the waiting room was admitted back into the meeting.

Mr. McElvany made a motion for the Chairman to retain reasonable and necessary employment professional(s) to improve the working environment of the agency. Mr. Ferguson seconded the motion, roll was called and all were in favor.

Mr. Adams appointed Dr. Roy Zhang, Mr. Glen Huff and Mr. Rocky McElvany to the committee approved in the motion above.

No new business.

Mr. Ferguson motioned to adjourn the meeting. Dr. Zhang seconded the motion, roll was called and all were in favor. The meeting was adjourned at 5:06 pm.

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