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RE: OCME Response to proposed Sec. 1. 22 MRSA §2842, sub-§6

Chair Senator Baldacci; Chair Representative Meyer; and Members of the Committee on Health and Human Services.

Good morning; I am Dr. Mark Flomenbaum, the Chief Medical Examiner of Maine, and appreciate this opportunity to speak before you today in opposition to this act.

I would like to believe that this bill is a well-intentioned attempt to somehow indicate that deaths due to drug overdoses might be related to a pre-existing medical condition, and thereby, somehow, lower any erroneous stigma associated with the current wordings on our death certificates. There was no justification or explanation for why this bill is being submitted.

But as it is written this bill would be almost impossible for any compliance by our office. In addition, it would set a terrible precedent of having legislative mandates supersede the judgment of highly trained medical specialists.

The Maine Office of Chief Medical Examiner (OCME) follows national guidelines for death certification set by the National Association of Medical Examiners (NAME) which are based on the Federal Center for Disease Control (CDC) handbook. When a drug related death needs certification in Maine the only people who are currently qualified to do so are all board-certified forensic pathologists whose authority comes from **MRS Title 22, Chapter 711, §3022, 4. Judgments of the medical examiners.**

The working definition for Cause of Death is the traumatic or natural disease process that perturbs the physiology to a point that is no longer compatible with life. Here, the trauma is chemical, an acute toxicity. The explanation of why, how, or other circumstances may appear elsewhere on the death certificate, but never in the Cause of Death section.

"Substance Use Disorder" is not a casual term that automatically applies to anyone who happens to be a substance abuser. It is a very specific entity described in the Diagnostic and Statistical

Manual of Mental Disorders, Fifth Edition (DSM-5), a text published by the American Psychiatric Association listing the names, symptoms, and diagnostic features of every recognized mental illness. There are eleven criteria outlined in DSM-5 for "Substance Use Disorder" which span a wide variety of problems and are grouped into four primary categories, including physical dependence, risky use, social problems, and impaired control.

"Substance Use Disorder" is a psychiatric diagnosis, made after interview or observation, by a mental health professional on a living patient, to address behavioral issues, with the goal of modifying the patient's behavior. It is emphatically not a pathologic diagnosis. It is almost never made post-mortem. And it is not a competent Cause of Death. A patient may die *with* this diagnosis, but it is the toxic effects of the substance, not the label of the behavior, that is the cause of death.

Whereas the Cause of Death section describes the etiologically specific entity that is incompatible with life, it is the Manner of Death section [Natural, Accident, Suicide, Homicide, etc.] that addresses the circumstances of how or why the Cause of Death came to be. Further, if the death is not Natural, there is another line on the death certificate that asks how the injury occurred. It is on that line where we usually state that accidental overdoses were a result of "acute and chronic substance abuse". Perhaps on that line "Substance Use Disorder" may be inserted, if there is a documented ante-mortem diagnosis.

With only one relatively rare exception that I am aware of (occasionally with schizophrenia), psychiatric diagnoses are never listed in Cause of Death section because they do not describe the physiologic perturbation inconsistent with life. The Cause of Death of a delusional pedestrian wandering into a roadway is *blunt impact*. Manner of Death would be *Accident*. How injury occurred would be *pedestrian struck by motor vehicle*. If known, we may add *while under the influence of...* or maybe add a relevant psychiatric diagnosis.

Consider also this example: we know that many suicide victims are depressed, and may or may not have that psychiatric diagnosis at the time of their deaths; but whether it is a self-inflicted gunshot wound, hanging, or intentional over-ingestion of medication we do not list depression in the cause of death on the death certificate.

As written, this bill is also telling the pathologist to include on the death certificate items that may have had nothing to do with the cause of death. This bill would specifically mandate that the medical examiner include *and identify the substance underlying the disorder.* Or if a person is known to be addicted to heroin but inadvertently overdosed on fentanyl (a very common scenario), we would be required to list heroin, even if it was not present in the blood at time of death. Our toxicologic studies are quite comprehensive and include multiple substances that we believe did not cause or contribute to death, such as marijuana, small amounts of drinking alcohol, caffeine, or nicotine. We ordinarily ignore these substances if we believe they did not contribute to death, but because they absolutely do contribute to "Substance Abuse Disorder" we would now be mandated to include them all. This is not only intellectually absurd (including tea or coffee consumption or smoking cigarettes as contributory to a methamphetamine or

fentanyl death), but professionally embarrassing to any of us who would be required to sign off on it.

I am truly concerned that the authors of this bill do not fully appreciate either the purpose of a Death Certificate or the proper ways of filling one out.

In my ten-year tenure at the OCME (≈8½ years of which as Chief Medical Examiner) I either directly or indirectly have overseen the death certification of thousands of drug overdose deaths. Our office or I personally received inquiries concerning hundreds of them from either: family members, health care workers, insurance companies, law enforcement personnel, prosecutors' and defenders' offices, and the press. Almost all were resolved amicably after explanations or were amended by me when additional information was received. Until this bill was sent to me for comment I never heard of anyone having issues with how or why we choose our words in certifying the Cause of Death. I truly think that a phone call or email to my office or to me directly should have been the first step to address any concerns.

In summary, for the following five reasons I think this bill should not be passed:

1. It would mandate that an explanation of someone's behavior be listed as the physiologic aberration incompatible with life (inconsistent with federal guidelines and national standards of death certification).
2. It would mandate that substances be included in Cause of Death even if they had no fatal potential.
3. It would mandate that board-certified forensic pathologists make psychiatric diagnoses (which none of us feel qualified doing).
4. It would invite other special-interest groups to seek legislative authority over issues concerning medical decision-making.
5. Realistically, even if it were passed it simply could not be complied with.

Thank you.

Sincerely,

Mark Flomenbaum.

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