

10.4

**Reclaiming the Autopsy as the Practice of Medicine:
A Pathway to Remediation of the Forensic Pathology Workforce Shortages?**



Victor Weedn, M.D., J.D.
George Washington University
Washington, DC



M.J. Menendez, J.D.
National Medical Services
Horsham, PA

TUESDAY, OCTOBER 22, 2019
SESSION 10: ADMINISTRATIVE
9:30 AM – 9:50 AM



United States



500 Forensic Pathologists
Population: 327 M
Homicides: 17K

Brazil



>2,000 Forensic Pathologists
Population: 211 M
Homicides: 64K

Recent Attention from George Lundberg

May 21, 2019
How Many Pathologists Does the United States Need?

George Lundberg, MD
14000 Wilshire - 14000 Wilshire
www.lundberg.com 408.227.4200 408.227.4200

Is the decline of the U.S. pathology workforce 'a blip or a trend' ...
<https://www.pathologytoday.com/CAP/2019/Recommendations>
At 17, 2019 - George D. Lundberg, MD, addresses that question and makes a point, 2019

PATHOLOGY RESIDENTS ARE EXPOSED TO FORENSIC PATHOLOGY THROUGH THE ACGME AUTOPSY REQUIREMENT, BUT SUPPORT FOR THIS REQUIREMENT IS WEAK & DWINDLING

Acad Pathol. 2018; Aug 18; 22(7):620-673. doi: 10.1177/2274329118783886. eCollection 2018. Apr-Oct.

Report and Recommendations of the Association of Pathology Chairs' Autopsy Working Group.

Chen, D.J.¹, Hinkle, D.L.², Fry, B.S.³, Turner, J.E.⁴, Hagan, J.C.⁵, Adams, D.A.⁶, Harkness, P.J.⁷, Harkins, W.J.⁸, Gendron, M.P.⁹, Skovron, B.B.¹⁰, Hennen, J.J.¹¹, Skala, J.H.¹², Turner, C.L.¹³, Sullivan, D.J.¹⁴

At the 2014 meeting of the Association of Pathology Chairs, ...In response to a call to abolish autopsy from pathology training on the one hand and for more rigorous autopsy training on the other, the Association of Pathology Chairs formed the Autopsy Working Group ... recommends the following:

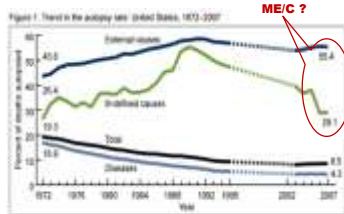
- Autopsy should remain a component of anatomic pathology training...
- The current minimum number of 50 autopsies should not be reduced until the changes recommended above have been implemented.

In 1950, an autopsy was conducted on one-half of the patients dying in American hospitals and was conducted 90% of the time in teaching hospitals.



How Common Is Death with No Apparent Cause on an Autopsy?, Quora, 2011, <https://www.quora.com/How-common-is-death-with-no-apparent-cause-on-an-autopsy>

AUTOPSY DECLINE: WHAT ARE THE REASON? WHAT ARE THE LESSONS?



Autopsy rates declined >50% from 1972 to 2007

In 1972, almost 1 out of 5 deaths were autopsied. From 1972 through 2003, however, the autopsy rate dropped 58% from 19.3% to 8.1%. Although the autopsy rate has increased slightly since 2003, only 8.5%, or fewer than 1 out of 10 deaths, were autopsied in 2007.

Source: CDC / NCHS National Vital Statistics System

Autopsy rates declined precipitously after the 1971 decision by the Joint Commission on Accreditation of Hospitals (JCAH) (now JCAHO) to eliminate the 20% autopsy requirement for hospital accreditation.

The decline further accelerated in 1986, Health Care Financing Agency (HCFA) (now CMS) ruled that autopsies were not part of patient care and thus were not the practice of medicine to be funded by the federal government.

WHY THE DECLINE IN AUTOPSIES?

- ✓ Greater confidence in antemortem diagnostics
- ✓ Advanced imaging technologies & new laboratory tests
- ✓ Lack of interest of hospitals, physicians, regulators, & payors
- ✓ Perception that they will expose hospital liability
- ✓ Concerns over liability from NOK
- ✓ Lack of interest & expertise in hospital pathologists
- ✓ (time consuming, costly, engenders hostility with medical peers)
- ✓ No morgue facility
- ✓ They are unfunded

**BENEFICIAL ATTRIBUTES OF AUTOPSY
COMMON TO CLINICAL AND FORENSIC AUTOPSIES**

- Determine the cause of death of a patient
- Reveal familial conditions
- Reveal new and previously unknown conditions
- Quality assurance measure / Monitor for foul play
- Epidemiologic trending analysis
- Education
- Research

POST mortem

Without Autopsies, Hospitals Bury Their Mistakes

Researchers say hospitals that don't perform autopsies are more likely to miss medical errors and miss opportunities to improve patient care. Autopsies can also help identify causes of death.

By Robert M. Wachter, MD, MPH, and David A. Asch, MD



<https://www.propublica.org/article/without-autopsies-hospitals-bury-their-mistakes>

2011
PROPUBLICA

**THE CENTER FOR MEDICARE & MEDICAID SERVICES
(CMS)**

**DOES NOT PAY FOR AUTOPSIES
BECAUSE
AUTOPSIES ARE NOT THE PRACTICE OF MEDICINE**

**THE AUTOPSY IS
THE PRACTICE OF MEDICINE**

**Medical Interpretation
Medical Procedure**

THE AUTOPSY HAS A LONG MEDICAL TRADITION



Herophilus and Erasistratus
The Butchers of Alexandria
3rd Century BCE
Alexandria, Greece



Bartolomeo De Varignana
1302 performs 1st medicolegal
autopsy in Bologna, Italy



Giovanni Battista Morgagni
(1682-1771)
"Father of Anatomic Pathology"
De Sedibus (1769)



Rudolf Virchow
(1821-1903)
"Father of Cellular Pathology"
*Vorlesungen über
Cellularpathologie* (1858)



Julius Caesar
44 BCE
autopsied by Antistius
giving rise to term "forensic"



Paolo Zacchia (1584-1659)
"Father of Forensic Medicine"
Questiones Medico-Legales
(1621-1651)



John Hunter
(1728-1793)
"Father of Modern Surgery"



William Osler
(1849-1919)
"Father of Modern Medicine"
*The Principles and Practices of
Medicine* (1892)

Practice of Medicine = Patient Care

What about diagnosis and prevention?

...hospital pathology is basically diagnostic,
CMS pays for it because it is patient care

AUTOPSIES:

- ❖ involve diagnosis of patients.
- ❖ are performed by physicians.
- ❖ are preventive medicine & public health.
- ❖ are a form of quality assurance.

Relevant Sources of Law

- Medical Practice Statutes
- Licensure Board Regulations
- Caselaw

Lexis-Nexis Search

- **No court failed to recognize the autopsy as the practice of medicine**
- **No case addressed the CMS ruling**

Who argues that it isn't the practice of medicine?

Pathologists who aren't licensed

Pathologists who are challenged by licensure boards

ME/C offices that hire an FP before licensed in the state

Funding agencies

1937

“Chiropractors advertise in telephone directories and elsewhere in the Commonwealth, and they tell their legislative committees that they will continue to practice without authorization. ...how ridiculous are their claims that they do not practice medicine.”

S Rushmore, A Definition of the Practice of Medicine, N Eng J Med 217:342-5, 1937 <https://www.nejm.org/doi/full/10.1056/NEJM193708262170902>

Sean Parcels



Summary of news articles about Sean Parcels, including mentions of the Vermont Board of Health, a lawsuit, and a resignation.

Prosecutors are reluctant to prosecute these cases!

Recent NAME Listserv case

- List of case details including: MEO procedure for cervical nerve root hemorrhage, out-of-state lab assistance, autopsy assistant allegations, employment lawsuit, criminal investigation, personal injury lawsuit, and medical licensure action.

California code 27522. (a)

A forensic autopsy shall only be conducted by a licensed physician and surgeon. The results of a forensic autopsy shall only be determined by a licensed physician and surgeon.

- > **Intended:**
Sheriff's can't perform or interpret autopsies
- > **Unintended:**
Creates uncertainty about use of assistants & students
-- presumably, they can be used under the supervision of the forensic pathologist

"I checked the CDC public health law website on the ME/C state statutes and the following states: AZ, CO, CT, DE, FL, HI, IN, IA, KS, KY, MD, NH, NM, ND, OK, OR, UT, VA, WV, WI, DC specifically make reference to a **FP performing autopsies** (at least by our lawyers reading of the statute)."

Margaret Warner
Sep 13, 2019

Is an Autopsy a Medical Procedure?

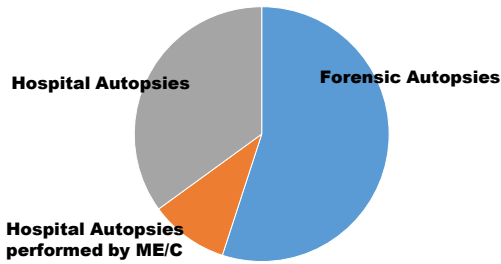
A 'medical procedure' is merely a label that it is procedure performed in a healthcare facility and can be billed for under CMS codes. It does not mean that prosecution must be physically performed by a physician.

Cut down for Tox?
Virtual Autopsy?
Molecular Autopsy?

PAYING FOR AUTOPSIES WOULD RESULT IN:

- **MORE HOSPITAL AUTOPSIES**
- **GREATER SUPPORT FROM DEPTS OF PATHOLOGY**
- **GREATER EXPOSURE OF PATH RESIDENTS**
- **MORE FPS IN THE PIPELINE**
- **POSSIBLY, FINANCIAL SUPPORT FOR ME/C**

Theoretical Distribution of Autopsies



Should ME/C be funded as public health entities?

In fiscal year 2018, state spending on **public health** increased by 2% to a total of \$11.8 billion. ... Both state and local **health** departments receive the majority of their **funding** from grants provided by the Prevention and **Public Health Fund** established under the Affordable Care Act. Apr 24, 2019