

## MEDICINE AND THE LAW

# What should private-sector doctors do when relatives of deceased patients pressurise them to prevent medicolegal autopsies in cases of unnatural death?

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This article deals with what doctors in the private sector should do if relatives of deceased patients refuse to consent to medicolegal autopsies and demand that the bodies be handed over to them. The law does not require consent by relatives for medicolegal autopsies, because the State has a compelling interest in ensuring that such deaths are properly investigated. Relatives of patients who have died an unnatural death may be criminally prosecuted if they attempt to obstruct doctors from carrying out their duties under the Inquests Act 58 of 1959 and the regulations regarding the rendering of forensic pathology services.

*S Afr Med J* 2019;109(10):743-744. <https://doi.org/10.7196/SAMJ.2019.v109i10.14117>

I was recently asked to advise what private-sector doctors should do when families of deceased patients refuse to consent to medicolegal autopsies or to sign affidavits stating that they do not want a medicolegal postmortem to be done. The matter is aggravated when families become aggressive towards doctors who are required to conduct the autopsies, and demand that the body be handed over to them.

When deciding what doctors should do when attempts are made to prevent them from conducting medicolegal autopsies, the following issues are relevant: (i) the meaning of 'unnatural deaths'; (ii) the duty to report unnatural deaths; (iii) who decides whether a medicolegal autopsy is necessary; (iv) whether consent is required from relatives of the deceased for a medicolegal autopsy; and (v) what doctors should do if such relatives try to pressurise them not to conduct a medicolegal autopsy.

### What are unnatural deaths?

The Births and Deaths Registration Act 51 of 1992<sup>[1]</sup> requires doctors to issue a death certificate and notification-of-death form stating the cause of death, which may be natural or unnatural (section 15).

In terms of the regulations regarding the rendering of forensic pathology services (regulation 1),<sup>[2]</sup> promulgated in terms of the National Health Act 61 of 2003,<sup>[3]</sup> an unnatural death is: (i) any death due to physical or chemical influence, direct or indirect, or related complications; (ii) any death, including those that would normally be considered to be a death due to natural causes, which may have been the result of an act of commission or omission that may be criminal in nature; (iii) the death of a person undergoing a procedure of a therapeutic, diagnostic or palliative nature, or of which any aspect of such a procedure has been a contributory cause;<sup>[4,5]</sup> and (iv) any death that is sudden and unexpected or unexplained, or where the cause of death is not apparent.

### Duty to report unnatural deaths

The Births and Deaths Registration Act<sup>[1]</sup> states that if a medical practitioner is of the opinion that a death was due to other than

natural causes, he or she shall not issue a death certificate and shall inform a police officer as to their opinion in this regard (section 15(3)). The Inquests Act 58 of 1959<sup>[6]</sup> goes further and provides that anyone who has reason to believe that a person has died from 'other than natural causes', shall as soon as possible report this to a police officer, unless he or she believes that such a report was or will be made by any other person (section 2(1)).

Any person who fails to report an unnatural death in terms of the Inquests Act<sup>[6]</sup> will be guilty of an offence and liable to a fine not exceeding ZAR1 000 (section 2(2)). Therefore, doctors who fail to report suspected unnatural deaths to the police in terms of the Act will be liable to criminal prosecution, and the same will apply to relatives of the deceased, where the suspected unnatural death occurs at home and no one else reports it.

In terms of the regulations regarding the rendering of forensic pathology services (regulation 6(1)(a)),<sup>[2]</sup> someone in charge of a health establishment where a person appears to have died from unnatural causes must immediately notify the South African Police Service and the provincial Forensic Pathology Service of such death. The person in charge must also not hand over the body or medical specimens and full medical records to an undertaker (regulation 6(1)(d)). Such specimens and medical records must accompany the body when sent to the Forensic Pathology Service facility for postmortem examination (regulation 6(2)).

Any person who fails to comply with the abovementioned regulations<sup>[2]</sup> is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 5 years or to both a fine and such imprisonment (regulation 21(1)). The same penalties apply to any one who interferes with the execution of their duties by a person, such as a doctor authorised to conduct medicolegal postmortems (regulation 21(2)).

### Who decides whether a medicolegal autopsy is necessary?

In terms of the Inquests Act,<sup>[6]</sup> when a police officer has reason to believe that a person has died from other than natural causes, he

or she must investigate the circumstances of death or alleged death (section 3(1)). Such officer must report the death or alleged death to the magistrate of the district concerned, or to a person designated by the magistrate (section 3(2)).

The body must be examined by the district surgeon or any other medical practitioner, who may, if he or she 'deems it necessary for the purpose of ascertaining with greater certainty the cause of death, make or cause to be made an examination of any internal organ or any part or any of the contents of the body, or of any other substance or thing' (section 3(2)). For the purpose of the examination, any part or internal organ or any of the contents of a body may be removed from it, and the body and such parts, organs or contents may be removed to any place for further examination (section 3(3)).

It has been suggested that if the doctor involved is satisfied at the outset that the death has been due to natural causes, even though 'the precise nature and/or extent of disease or complication may be obscure, a certificate of natural cause of death may be issued'. However, it is recommended that 'it would be advisable to request an anatomical pathology autopsy to be conducted'.<sup>[7]</sup> In the latter case, consent by the deceased's relatives will be required,<sup>[7]</sup> unlike in the case of a medicolegal autopsy.

### Is consent required from relatives of the deceased for a medicolegal autopsy?

The legislation dealing with medicolegal autopsies makes no mention of consent by relatives of the deceased, and such consent is not required.<sup>[7]</sup> Furthermore, there is no good reason to require such consent for cases involving suspected unnatural deaths. In most countries, in cases where death is caused, e.g. by homicide, suicide or accident, the State has 'a compelling interest' in the matter and no consent from relatives for a medicolegal autopsy is required.<sup>[8]</sup> Internationally, most objections to autopsies are based on religious or cultural reasons.<sup>[9]</sup> In South Africa, any objections based on religious or cultural grounds to medicolegal autopsies would be met with the defence that a limitation on such religious or cultural beliefs is reasonable and justifiable in terms of the Constitution (section 36(1)).<sup>[10]</sup> This is because, as mentioned above, the State has a compelling interest to ensure that illegal unnatural deaths are dealt with by the appropriate authorities,<sup>[8]</sup> who should not be frustrated because of relatives refusing to consent to medicolegal autopsies.

In short, relatives may not prevent medicolegal autopsies from occurring. Any attempt to do so is a crime in terms of the regulations regarding the rendering of forensic pathology services (regulation 21).<sup>[2]</sup> As there is no legal requirement for obtaining prior consent from relatives of the deceased for a medicolegal autopsy, it is not clear why some private hospitals require such consent. Likewise, it is not clear why these hospitals request reluctant relatives to sign a refusal of consent affidavit. It may be that the hospitals assume that they require consent from the deceased or their relatives in terms of the National Health Act 61 of 2003 (section 66),<sup>[3]</sup> but these provisions

do not apply to medicolegal autopsies. Such consent is unnecessary and relatives have no choice in the matter, as the abovementioned legislation is prescriptive.

The situation is different if, instead of conducting a medicolegal autopsy, the hospital wishes to conduct an anatomical postmortem dealing with a natural death, when consent from the deceased prior to death, in terms of a will, or from the deceased's next-of-kin, should be obtained.<sup>[7]</sup>

### What should doctors do if relatives try to pressurise them not to conduct a medicolegal autopsy?

When family members aggressively try to put pressure on doctors for religious or other reasons to refrain from conducting a medicolegal autopsy and request such doctors to release the bodies of their loved ones, they need to be informed about the abovementioned provisions of the Inquests Act<sup>[6]</sup> and the regulations regarding the rendering of forensic pathology services.<sup>[2]</sup> Doctors should advise relatives that their hands are tied, as they are required by law to conduct the autopsy if requested by the police. Relatives should also be warned that if they try to obstruct a medicolegal autopsy, they risk being prosecuted for contravening the Inquests Act (section 3(6)).<sup>[6]</sup>

The doctor should further advise the family that if they wish to challenge the doctor's refusal to release the body, they should obtain a court order. However, they should also be informed that their chances of succeeding in such a case are very small, because of the State's interest in ensuring that the administration of justice is not undermined by unnatural deaths that are not being properly investigated.

**Declaration.** None.

**Acknowledgements.** None.

**Author contributions.** Sole author.

**Funding.** National Research Foundation.

**Conflicts of interest.** None.

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*Accepted 20 May 2019.*