

CHAPTER 406

MEDICAL EXAMINERS

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406.01 Short title.—This chapter shall be known as the "Medical Examiners Act."

History.—s. 1, ch. 70-232.

406.02 Medical Examiners Commission; membership; terms; duties; staff.—

(1) There is created the Medical Examiners Commission within the Department of Law Enforcement. The commission shall consist of nine persons appointed or selected as follows:

- (a) The Governor shall appoint:
 1. Two members who are physicians licensed pursuant to chapter 458 or chapter 459 and who are active district medical examiners;
 2. One member who is a funeral director licensed pursuant to chapter 470;
 3. One member who is a state attorney;
 4. One member who is a public defender;
 5. One member who is a sheriff; and
 6. One member who is a county commissioner.
- (b) One member shall be the Attorney General or his designated representative.

(c) One member shall be the Deputy Assistant Secretary for Health of the Department of Health and Rehabilitative Services or his designated representative.

(2) The term of office of the physicians appointed to the commission shall be 4 years. The term of office of the state attorney, public defender, sheriff, and county commissioner each shall be 4 years unless he leaves that office sooner, in which case his appointment will terminate. The term of office of the funeral director shall be 4 years. Upon the expiration of the present terms of office, the Governor shall appoint two members for terms of 4 years, two members for terms of 3 years, two members for terms of 2 years, and one member for a term of 1 year. An appointment to fill a vacancy shall be for the unexpired portion of the term.

(3) Members of the commission shall not receive any compensation for their services, but shall be reimbursed for travel and expenses incurred in the performance of their duties as provided in s. 112.061.

(4) The Medical Examiners Commission shall:

(a) Submit annual reports to the Governor and Legislature correlating and setting forth the activities and findings of the several district medical examiners appointed pursuant to this act. A copy of that report shall also be provided to each board of county commissioners.

(b) Initiate cooperative policies with any agency of the state or political subdivision thereof.

(c) Remove or suspend district medical examiners pursuant to this act and have the authority to investigate violations of this act.

(d) Oversee the distribution of state funds for the medical examiner districts and may make such agreements and contracts, subject to approval of the executive director of the Department of Law Enforcement, as may be necessary to effect the provisions of this chapter.

(5) All staffing and budgetary decisions involving the commission shall be subject to the approval of the executive director of the department.

(6) The Department of Law Enforcement shall employ staff for the commission pursuant to subsection (5).

History.—s. 2, ch. 70-232; s. 1, ch. 70-439; s. 1, ch. 72-392; s. 1, ch. 77-174; s. 4, ch. 78-323; s. 15, ch. 79-8; ss. 1, 5, 6, 7, ch. 81-89; ss. 1, 4, ch. 82-46; s. 2, ch. 83-265; s. 16, ch. 86-220; ss. 1, 7, 8, ch. 87-359; s. 5, ch. 91-429.

406.03 Organization and meetings of commission.

The commission shall annually select a chairman from among its own membership and shall meet at least four times each year and on the call of the chairman.

History.—s. 3, ch. 70-232; s. 4, ch. 78-323; ss. 6, 7, ch. 81-89; ss. 1, 4, ch. 82-46; s. 2, ch. 83-265; ss. 7, 8, ch. 87-359; s. 5, ch. 91-429.

406.04 Rules and regulations.—The commission shall promulgate rules and regulations, pursuant to chapter 120, necessary to effectuate this chapter and to ensure minimum and uniform standards of excellence, performance of duties, and maintenance of records so as to provide useful and adequate information to the state in regard to causative factors of those deaths investigated.

History.—s. 3, ch. 70-232; s. 4, ch. 78-323; ss. 6, 7, ch. 81-89; ss. 1, 4, ch. 82-46; s. 2, ch. 83-265; ss. 7, 8, ch. 87-359; s. 5, ch. 91-429.

406.05 Medical examiner districts.—The Medical Examiners Commission shall establish medical examiner districts within the state, taking into consideration population, judicial circuits of the state, geographical size of the area of coverage, availability of trained personnel, death rate by both natural and unnatural causes, and similar related factors. No county may be divided in the creation of a district. However, this limitation shall not prohibit cooperative arrangements among the several districts.

History.—s. 3, ch. 70-232; s. 2, ch. 72-392; s. 4, ch. 78-323; ss. 6, 7, ch. 81-89; ss. 1, 4, ch. 82-46; s. 2, ch. 83-265; ss. 7, 8, ch. 87-359; s. 5, ch. 91-429.

406.06 District medical examiners; associates.—

(1)(a) A district medical examiner shall be appointed by the Governor for each medical examiner district from nominees who are practicing physicians in pathology, whose nominations are submitted to the Governor by the Medical Examiners Commission. The term of office of each district medical examiner shall be 3 years. An appointment to fill a vacancy shall be for the unexpired portion of the term.

(b) A physician member of the Medical Examiners Commission shall be eligible to serve as a district medical examiner upon approval by the Governor.

(2) The district medical examiner may appoint as many physicians as associate medical examiners as may be necessary to provide service at all times and all places within the district. Associate medical examiners shall serve at the pleasure of the district medical examiner. The district medical examiner shall file an affidavit with the supervisor of elections in the county in which he resides assuring that associate medical examiners have no conflicting financial interests or clients represented before agencies pursuant to s. 112.3145.

(3) District medical examiners and associate medical examiners shall be entitled to compensation and such reasonable salary and fees as are established by the board of county commissioners in the respective districts.

(4) District medical examiners and associate medical examiners may engage in the private practice of medicine or surgery, if licensed pursuant to chapter 458 or chapter 459, insofar as such private practice does not interfere with their duties as prescribed herein.

(5) District medical examiners and associate medical examiners are public officers for purposes of s. 112.313 and the standards of conduct prescribed thereunder.

History.—ss. 4, 5, ch. 70-232; s. 3, ch. 72-392; s. 2, ch. 81-89; s. 68, ch. 83-218; s. 2, ch. 87-359; s. 2, ch. 90-169.

406.075 Grounds for discipline; disciplinary proceedings.—

(1) A district or associate medical examiner may be removed or suspended by the Medical Examiners Commission for any of the following:

(a) Failure to comply with the provisions of this chapter or with the rules of the commission.

(b) Misuse or misappropriation of public funds or property.

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the duties of the district medical examiner or the ability to perform the duties of the medical examiner.

(d) Disciplinary action against him by any state board licensing him as a physician.

(e) Having a financial interest in any funeral or direct disposal establishment or transportation service which does business, directly or indirectly, with the office of the district medical examiner.

(f) A material misrepresentation of his education, training, experience, or expertise while in his capacity as a medical examiner.

(g) A material misrepresentation of data upon which an opinion or conclusion as a medical examiner is based.

(2) The commission shall cause to be investigated any complaint which is filed before it if the complaint is in writing, signed by the complainant, and legally sufficient. A complaint is legally sufficient if it contains ultimate facts which show a violation of this chapter or of any rule promulgated by the commission. The commission may investigate and take action on a complaint even though the complainant withdraws the complaint. The commission may investigate a complaint from a confidential informant if the complaint is substantial, if the alleged violation is substantial, if the complaint is legally sufficient, and if the commission has reason to believe, after inquiry, that the allegations are true. When an investigation of any district medical examiner or associate medical examiner is commenced, the commission shall notify the person against whom the complaint was made of the substance of the investigation, unless the commission chairman agrees in writing that such notification would be detrimental to the investigation. The commission may conduct an investigation without notification to any person if the act under investigation is a criminal offense. The commission chairman shall direct the commission staff to perform an expeditious investigation into the facts of the case, with the assistance of the Department of Law Enforcement, if needed. The staff report shall contain investigative findings and recommendations as to probable cause.

(3)(a) The commission chairman shall appoint a probable cause panel of three members from among the commission membership, one of whom shall be a medical examiner. The probable cause panel may request staff to perform additional investigations as it sees fit.

1. The determination as to whether or not probable cause exists shall be made by a majority vote of the probable cause panel within 30 working days of its receipt of staff investigative findings and recommendations. The commission chairman may grant 30-day extensions of the 30 working day time limit.

2. All proceedings and findings of the probable cause panel are exempt from the provisions of s. 286.011 until probable cause has been found or until the subject of the investigation waives confidentiality. This exemption is subject to the Open Government Sunset Review Act in accordance with 's. 119.14. The complaint, all investigative findings, and the recommendations of the probable cause panel are exempt from the provisions of s. 119.07(1) until 10 days after probable cause has been found or until the subject of the investigation waives confidentiality. This exemption is subject to the Open Government Sunset Review Act in accordance with 's. 119.14. The commission may provide such information at any time to any law enforcement agency or to any regulatory agency.

(b) If the probable cause panel finds that probable cause exists, it shall direct the commission to file a formal complaint against the subject of the investigation. The commission shall file a formal complaint pursuant to the provisions of chapter 120. The probable cause panel may also direct the commission to suspend a district medical examiner from office immediately, under the provisions of s. 120.60(8), if a danger to public health, safety, or welfare so requires.

(c) A formal hearing before a hearing officer from the Division of Administrative Hearings of the Department of Management Services shall be held pursuant to chapter 120 unless all parties agree in writing that there is no disputed issue of material fact. The hearing officer shall issue a recommended order pursuant to chapter 120. If any party raises an issue of disputed fact during an informal hearing, the hearing shall be terminated and a formal hearing pursuant to chapter 120 shall be held.

(d) The commission, with those members of the probable cause panel who reviewed the case being excused from voting, shall determine and issue the final order in each disciplinary case, and such order shall constitute final agency action. Any consent order or agreed settlement shall be subject to the approval of the commission.

(e) The commission shall periodically notify the person who filed the complaint of the status of the investigation, whether probable cause has been found, and the status of any civil action or administrative proceeding or appeal.

(4) A privilege against civil liability is hereby granted to any complainant or any witness with regard to information furnished during any investigation or proceeding pursuant to this section, unless the complainant or witness acted in bad faith or with malice in providing such information.

History.—s. 3, ch. 87-359; s. 2, ch. 88-303; s. 9, ch. 90-344; s. 5, ch. 91-429; s. 128, ch. 92-279; s. 55, ch. 92-326.

Note.—

A. Repealed by s. 1, ch. 95-217.

B. Section 4, ch. 95-217, provides that "[n]otwithstanding any provision of law to the contrary, exemptions from chapter 119, Florida Statutes, or chapter 286, Florida Statutes, which are prescribed by law and are specifically made subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes, are not subject to review under that act, and are not abrogated by the operation of that act, after October 1, 1995."

406.08 Payment of fees, salaries, and expenses; transportation costs; facilities.—

(1) Fees, salaries, and expenses may be paid from the general funds or any other funds under the control of the board of county commissioners. The district medical examiner shall submit an annual budget to the board of county commissioners.

(2) In the event that an examination or autopsy is performed by the district medical examiner or his associate upon a body when the death occurred outside his district, the governmental body requesting the examination or autopsy shall pay the fee for such services.

(3) When a body is transported to the district medical examiner or his associate, transportation costs, if any, shall be borne by the county in which the death occurred. Nothing within this chapter shall preclude payment for services to the district medical examiner by the state, either in part or on a matching basis.

(4) Notwithstanding any provision of law to the contrary, if an examination, investigation, or autopsy is performed by the district medical examiner or his associate upon the body of a person who died while in the custody of a facility or institution operated by a state agency, that state agency shall pay for such services and for any costs of transporting the body to the district medical examiner.

(5) Autopsy and laboratory facilities utilized by the district medical examiner or his associates may be pro-

vided on a permanent or contractual basis by the counties within the district.

History.—s. 5, ch. 70-232; s. 144, ch. 77-104; s. 3, ch. 81-89; s. 1, ch. 85-268; s. 4, ch. 87-359.

406.09 Expert witness fees.—District medical examiners or associate medical examiners shall be entitled to expert witness fees as provided by law.

History.—s. 5, ch. 70-232; s. 4, ch. 81-89.

406.11 Examinations, investigations, and autopsies.—

(1) In any of the following circumstances involving the death of a human being, the medical examiner of the district in which the death occurred or the body was found shall determine the cause of death and shall make or have performed such examinations, investigations, and autopsies as he shall deem necessary or as shall be requested by the state attorney:

(a) When any person dies in the state:

1. Of criminal violence.
2. By accident.
3. By suicide.
4. Suddenly, when in apparent good health.
5. Unattended by a practicing physician or other recognized practitioner.
6. In any prison or penal institution.
7. In police custody.
8. In any suspicious or unusual circumstance.
9. By criminal abortion.
10. By poison.
11. By disease constituting a threat to public health.
12. By disease, injury, or toxic agent resulting from employment.

(b) When a dead body is brought into the state without proper medical certification.

(c) When a body is to be cremated, dissected, or buried at sea.

(2)(a) The district medical examiner shall have the authority in any case coming under any of the above categories to perform, or have performed, whatever autopsies or laboratory examinations he deems necessary in the public interest.

(b) The Medical Examiners Commission shall promulgate rules, pursuant to chapter 120, providing for the notification of the next of kin that an investigation by the medical examiner's office is being conducted.

History.—s. 6, ch. 70-232; s. 26, ch. 73-334; s. 1, ch. 77-174; s. 1, ch. 87-166.

406.12 Duty to report; prohibited acts.—It is the duty of any person in the district where a death occurs, including all municipalities and unincorporated and federal areas, who becomes aware of the death of any person occurring under the circumstances described in s. 406.11 to report such death and circumstances forthwith to the district medical examiner. Any person who knowingly fails or refuses to report such death and circumstances, who refuses to make available prior medical or other information pertinent to the death investigation, or who, without an order from the office of the district medical examiner, willfully touches, removes, or disturbs the body, clothing, or any article upon or near the body, with the intent to alter the evidence or circumstances surrounding the death, shall be guilty of a mis-

demeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 7, ch. 70-232; s. 353, ch. 71-136.

406.13 Examiner's report; maintenance of records.—Upon receipt of such notification pursuant to s. 406.12, the district medical examiner or his associate shall examine or otherwise take charge of the dead body and shall notify the appropriate law enforcement agency pursuant to s. 406.145. When the cause of death has been established within reasonable medical certainty by the district medical examiner or his associate, he shall so report or make available to the state attorney, in writing, his determination as to the cause of said death. Duplicate copies of records and the detailed findings of autopsy and laboratory investigations shall be maintained by the district medical examiner. Any evidence or specimen coming into the possession of said medical examiner in connection with any investigation or autopsy may be retained by him or be delivered to one of the law enforcement officers assigned to the investigation of the death.

History.—ss. 7, 8, ch. 70-232; s. 26, ch. 73-334; s. 1, ch. 86-234.

406.14 Duty of law enforcement officers.—Any evidence material to the determination of the cause of death in possession of the law enforcement officers assigned to the investigation of the death shall be made available to the medical examiner. It is the duty of the law enforcement officer assigned to and investigating the death to immediately establish and maintain liaison with the medical examiner during the investigation into the cause of death.

History.—s. 8, ch. 70-232.

406.145 Unidentified persons; reporting requirements.—When an unidentified body is transported to a district medical examiner pursuant to this chapter, the medical examiner shall immediately report receipt of such body to the appropriate law enforcement agency, provided such law enforcement agency was not responsible for transportation of the body to the medical examiner. If the medical examiner cannot determine the law enforcement agency having jurisdiction, he shall notify the sheriff of the county in which the medical examiner is located, who shall determine the law enforcement

agency responsible for the identification. It is the duty of the law enforcement officer assigned to and investigating the death to immediately establish the identity of the body. If the body is not immediately identified, the law enforcement agency responsible for investigating the death shall complete an Unidentified Person Report and enter the data, through the Florida Crime Information Center, into the Unidentified Person File of the National Crime Information Center. An Unidentified Person Report is that form identified by the Florida Department of Law Enforcement for use by law enforcement agencies in compiling information for entrance into the Unidentified Person File.

History.—s. 2, ch. 86-234.

406.15 Designation of substitute in absence of official examiner.—In the absence of the district medical examiner or associate medical examiner, the state attorney of the county may appoint a competent physician to act in their stead.

History.—s. 9, ch. 70-232; s. 26, ch. 73-334.

406.16 Professional liability insurance.—The district medical examiners and associate medical examiners shall obtain professional liability insurance in an amount to be determined by the board of county commissioners of the county or counties served. The fees for such insurance shall be paid from funds appropriated by the board of county commissioners of such county or counties. No county shall be liable for any acts of a medical examiner not within the scope of his official duties.

History.—s. 10, ch. 70-232.

406.17 Application and construction.—This chapter supersedes all parts of statutes, general law, and special acts, with which it may be in conflict. Nothing in this chapter shall be construed to repeal or amend s. 925.09 or to affect the right of prosecutors to investigate and determine causes of death which, in their opinion, may have been criminally caused. In home rule counties which have established medical examiners under provisions of a home rule charter or a code or ordinance enacted pursuant to the charter, the medical examiner shall also serve as the district medical examiner who would otherwise be appointed under this chapter.

History.—s. 11, ch. 70-232; s. 1, ch. 81-233; s. 5, ch. 87-359.