

January 6, 2025

To: Human Services Committee  
ND House

From: Mary Ann Sens, MD, PhD; Coroner, Grand Forks County, Forensic Pathologist  
Kriste Ross, BS, D-ABMDI Coroner, Cass County

Re: House Bill 1068 Autopsy Reports, working papers and photographs

Honorable Chairman Ruby, Vice Chairman Frelich, and Members of the House Human Services Committee:

I am submitting this testimony to request MODIFICATION of HB1068. I am requesting that the language be changed to restrict working papers to the material generated by the office performing the case and within the final file as the case is finished and signed out. This is STANDARD in every office I have worked in and allows each entity to be responsible for releasing their reports. The problem with the current language is:

- 1) Many records we use, such as medical records, EMS reports, psychiatric and substance use treatment records, school records, etc. are confidential and have restricted release. The proposed law as written tells us to release these, creating a conflict where we may be violating other laws. It also defeats the intent of the original restrictions of the records. Currently, when a complete file is requested, we do NOT release any record we did not generate or is not a part of our report, however, we do tell the requesting entity that we have records from "X", allowing them to request the records themselves.
- 2) It is critical from a simple practicality perspective to define when a "record", "Working notes" are defined. Again, in all previous offices where I worked, that is defined as when the case is being completed and filed – in the old days, the paper file went to a locked storage area because the case was done. In simply working, one may generate doodles, notes (sometimes mixed with personal business like a grocery list or request to make a call), and other temporary materials. In the extreme, if a person takes a note, such as a phone number, while busy and writes it on their arm, the arm does not become part of the case. Defining when you sign the case out and finish it is an excellent and understood point on when to file what is needed to support your position in an orderly, defined manner. This also would include material that may come in AFTER a case sign out, such as subpoenas, demonstrative materials generated at a party's request, and rarely new material for consideration. ALL of these should be available, with the recognition that getting to the sign out completed event may involve temporary materials, like notes on arms, preliminary doodles, etc. that are never part of the official file.
- 3) Forensic pathology services and Coroner investigations are complementary, but independent of law enforcement and judiciary. Our thinking and investigations are distinct and must remain neutral.
- 4) It is already the requirement of accredited facilities that you have complete enough files so the entire case can be reconstructed in case of computer failure and/or independent outside consultation. If file integrity is one of the goals, supporting accreditation of the facilities in ND lacking accreditation might be more productive.

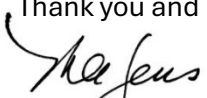
- 5) Finally, individuals argue that individuals and agencies, like States Attorneys, state that they need to know how we reached our conclusions. I agree wholeheartedly and ALWAYS welcome invested parties – States Attorneys, Defense bar, Law enforcement to speak directly to us. It is frankly surprising that we get subpoenas before a telephone call and occasionally show up for testimony, NEVER having spoken to the requesting attorney. Getting a complex file will NOT help understanding of a particularly nuanced case – human communication will. This aspect of the bill is NOT NECESSARY and reflects only poor preparation and a suboptimal approach to expert knowledge and potential testimony.
- 6) Contrary to popular belief, fewer than 3% of our autopsies (at least in the Grand Forks location) are homicides and a lower % end up in the court system. Most of our findings are within public health domain and action and require human discussion integral to understanding, defining risks, and prevention of future deaths. This is NOT done by passing along a file but by hard discussions on multidisciplinary panels, provision of cumulative statistics and knowledge, and other complex but needed communication efforts. Our reports are medical reports on how and why a person died. Although it would be convenient for the judicial and law enforcement if we could identify how, why, and who committed a crime, we cannot, nor can we implicate a particular person. We can identify scenarios that fit, scenarios that do not fit, and scenarios we cannot state anything about. The judiciary and law enforcement work WITH us to communicate those possibilities. All possibilities will never be in any file. Accreditation means that your thinking can be reconstructed by an expert – everything is there. It DOES NOT mean a person trained in a different area can understand all the nuances that are frequently present in an autopsy – essentially the final summary of a human life. The expectation that a file should have encapsulated the training of 12 years of formal education, continued affirmation by certification and licensure, and years of experience is impossible and should not be attempted in legislation.

I am available for discussion. Unfortunately, both professional responsibilities and a nasty cold prevent me from live testimony, however I could answer questions by Zoom if desired. Coroner Ross is representing ND at an important medicolegal meeting in North Carolina but could speak to people when she returns next week.

Again, in keeping in my lane, I am not suggesting specific language, your writers and legislators are better at that. However please effect these changes

- 1) Working papers are materials in the file needed and used for case completion by the entity. They do NOT include records obtained from other agencies which may have different release procedures and regulations. They do not include unofficial or temporary notes a person may use in case evaluation.
- 2) Working papers also include material formally received after completion, such as subpoenas, additional toxicology or other reports, updated historical information based on further case evaluation.
- 3) You cannot legislate professional communication, nor the need for such. Please do not try.

Thank you and respectfully submitted



Mary Ann Sens