

## Asbestos Litigation Update

# Inconsistent Protocols by California Coroners Leads to Inaccurate Diagnosis of Mesothelioma as Cause of Death

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### Background

It is well accepted within the medical community that mesothelioma<sup>1</sup> is primarily caused by exposure to asbestos.<sup>2</sup> Asbestos is a natural mineral made popular by its toughness, flexibility, and resilience to heat. Asbestos can be woven into most products and was typically found in break pads, transit pipes and panels, plaster, insulation and a variety of other products. Nearly everyone has been exposed to asbestos during their lifetime due to the fact that asbestos can be found in the ambient air. When encapsulated in a product or not disturbed in the earth, the mineral is considered harmless. It becomes dangerous when encapsulated material is pulverized or minerals are excavated and released into the air to be inhaled.

As a cancer originating in tissue, a biopsy<sup>3</sup> is necessary to confirm a mesothelioma diagnosis. An alarming trend reveals that some coroners may only rely on prior chest x-rays, CT scans, physical examinations, and a review of the patient history of asbestos exposure to make a mesothelioma diagnosis. Mesothelioma symptoms—shortness of breath, dry cough, fatigue, fever, pain under rib cage, and swelling of the abdomen—can be mistaken for a variety of illnesses including pleural

plaques, asbestosis, lung cancer or adenocarcinoma. Mesothelioma's most common symptom is pleural effusion, which is a build up of fluid between the chest wall and diaphragm and the tissue covering the lungs. Pleural effusions are diagnosed with a simple x-ray and may be symptomatic of a variety of diseases, including infections or heart complications. A biopsy of the pleura is necessary to determine if the fluid build up is symptomatic of mesothelioma.

Because mesothelioma can easily be mistaken for other cancers and illnesses whose primary cause is not asbestos exposure, a confirming tissue biopsy is vital for an accurate diagnosis. If abnormal tissue is found during a biopsy, the doctor will remove a piece of the cavity lining for examination by a pathologist—a doctor trained in the study of cells, tissue, and fluid taken from the body. For the most accurate diagnosis, a pathologist trained in mesothelioma is required.

### Inconsistencies in Protocol Determining Mesothelioma as Cause of Death

Based on a sample of fourteen counties in the state of California, it is clear there is no consistent standard in place for diagnosing mesothelioma as the cause of death. Many coroner departments defer

<sup>1</sup> Generally speaking there are three types of mesothelioma - pleural, pericardium and peritoneum. Pleural mesothelioma originates in the tissue surrounding the lungs and internal chest wall and accounts for nearly 70% of mesothelioma cases.

<sup>2</sup> Other causes of mesothelioma include: exposure to erionite mineral, found in specific locations in Turkey; SV40 Polio Vaccine contaminated with Simian Virus; Therapeutic Radiation Exposure, common with Hodgkins Disease. Mesothelioma can also be idiopathic.

<sup>3</sup> There are many different types of biopsies, including: excisional biopsies, where an entire organ or lump is removed; incisional biopsies, where only a portion of a lump or tissue is removed; endoscopic biopsies, where a fiberoptic endoscope removes a tiny piece of tissue; and fine needle aspiration biopsies, where a needle is inserted into a tumor and removes cells for microscopic examination.

to a decedent's medical history when declaring a cause of death, without performing an independent autopsy.<sup>4</sup> This failure to perform an autopsy can perpetuate a mesothelioma misdiagnosis, especially if the treating physician never sent a tissue sample to a trained pathologist, or never took a tissue sample at all. Although some counties, such as Los Angeles,<sup>5</sup> require a biopsy or autopsy in order to declare mesothelioma as the cause of death, there appears to be no bright line for examiners to follow when certifying mesothelioma as the cause of death.

**Death Certificates Declaring Mesothelioma as Cause of Death are Called into Question because of Inconsistencies in Coroner Protocol**

The lack of procedural requirements in determining mesothelioma as a cause of death creates uncertainty in death certificates. A simple declaration of mesothelioma on a death certificate does not lead to the conclusion that mesothelioma was in fact the cause of death. When faced with a death certificate stating mesothelioma as the cause of death, you must analyze the patient's medical history for tissue biopsy or autopsy and pathology done by a doctor trained in mesothelioma.

Further, statewide statistics on mesothelioma may be inaccurate because of broad criteria for reporting requirements. California Health and Safety Code section 103875-103885 established the California Cancer Registry for the collection of information on cancer statistics statewide and requires hospitals to report all cancer diagnoses. In determining whether a tumor is reportable, "the basic criterion is a diagnosis of cancer by a physician, surgeon, or dentist, even if it is not pathologically confirmed." (Cancer Reporting in California: Abstracting and Coding Procedures for Hospitals, Ninth Edition, June 2009.) This broad reporting requirement, including the reporting of diagnoses

without pathological confirmation, can inflate statewide statistics of mesothelioma cases because of the huge potential for misdiagnosis before a tissue examination by a pathologist trained in mesothelioma.<sup>6</sup>

**Conclusion**

Lax standards on reporting and diagnosing mesothelioma creates unworthy plaintiffs and a public perception that mesothelioma is a commonly diagnosed cancer. A death certificate declaring mesothelioma as the cause of death must be met with skepticism when not accompanied by a tissue examination by a pathologist specializing in mesothelioma. Defense counsel must consider the following questions when defending a wrongful death claim: (1) Was an autopsy performed? (2) What type of autopsy? (3) Were tissue samples taken? (4) Are tissue samples stored and available from the coroner's office? (5) Is the forensic pathologist who performed the autopsy trained to identify mesothelioma? (6) Did the coroner talk to the decedent's treating physician and/or review medical records? (7) Was the coroner's determination influenced by his/her conversation with the treating physician? (8) Are there local rules that must be satisfied before taking the coroner's deposition? (9) Is a court Order necessary to obtain a complete copy of the coroner's file?



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<sup>4</sup> There are three basic types of autopsies: external, partial, and complete. An external autopsy is a detailed examination of the external body, typically used where the cause of death is obvious to the eye. A partial examination includes a detailed examination of the external body plus a detailed examination of one area of the internal body. A complete examination is the examination of all internal organs.

<sup>5</sup> Los Angeles County has approximately 60,000 deaths per year, averaging 164 per day. The Los Angeles County Coroner's Office has approximately 205 staff members and conducts an average of 13 autopsies per day.

<sup>6</sup> Neither the Center for Diseases Control (CDC) nor the National Institute of Health (NIH) collect data regarding mesothelioma as it is not a communicable disease.