



# County of San Mateo

## Inter-Departmental Correspondence

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**Department:** CORONER

**File #:** 22-607

Board Meeting Date: 8/2/2022

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**Special Notice / Hearing:** None

**Vote Required:** Majority

**To:** Honorable Board of Supervisors

**From:** Robert J. Foucrault, Coroner

**Subject:** Forensic Pathology Agreements with Thomas Rogers, M.D., Forensic Doctors Group, PC, Pathemis, PC, and NAAG Pathology Labs

**RECOMMENDATION:**

Adopt a resolution:

- A) Amending Agreement No. 0718917(a) with Thomas Rogers, M.D. ("Dr. Rogers") to revise the terms of payment for the provision of forensic pathology services to include a 4% increase per year for cost-of-living adjustments and decrease the not-to-exceed amount by \$529,754 from \$639,574 to a new total not-to-exceed amount of \$110,000; and
- B) Amending Agreement No. 078917(c) with Forensic Doctors Group, PC, owned by Dr. Michael D. Hunter, M.D. ("Forensic Doctors Group") to revise the terms of payment for the provision of forensic pathology services to include a 4% increase per year for cost-of-living adjustments and decrease the not-to-exceed amount by \$190,000.00 from \$300,000 to a new total not-to-exceed amount of \$110,000; and
- C) Amending Agreement No. 0718917(b) with Pathemis, PC, owned by Dr. Angellee Chen, M.D. ("Pathemis") to revise the terms of payment for the provision of forensic pathology services to include a 4% increase per year for cost-of-living adjustments and decrease the not-to-exceed amount by \$529,754 from \$639,574 to a new total not-to-exceed amount of \$110,000; and
- D) Authorizing an agreement with NAAG Pathology Labs PC, owned by Dr. Evan Matshes, M.D. ("NAAG Pathology Labs"), for the provision of forensic pathology services for the term August 7, 2022 through August 6, 2025 with a not-to-exceed amount of \$2,497,280; and
- E) Granting a waiver of the competitive bidding process for the provision of the above forensic pathology services by NAAG Pathology Labs pursuant to County Ordinance Code 2.83.050 (e).

## **BACKGROUND:**

The Coroner's Office is required by statute to investigate and determine the cause and manner of death in all violent, sudden, or unusual deaths in the County of San Mateo. To carry-out this statutory duty, the Coroner's Office contracts with forensic pathologists certified by the American Board of Forensic Medicine.

Since January 2020, the Coroner's Office has contracted for such services based on a fee-for-service model, under which the forensic pathologists are paid based on the type and number of clinical inspections and/or autopsies they actually perform, rather than receiving set monthly payments regardless of the amount of work performed. Under the fee-for-service model, the Coroner's Office has contracted with Dr. Rogers since January 28, 2020, Forensic Doctors Group since March 12, 2020, and Pathemis since January 31, 2022.

Over the course of the past two-plus years, however, the Coroner's Office has found that, while the fee-for-service model has allowed the Coroner's Office to recruit new forensic pathologists available for on-call or part-time work, the model has, on its own, failed to result in the provision of consistent, reliable, full-time forensic pathology services.

Indeed, since March of 2020, the Coroner's Office has had only 16 (out of 123) weeks fully covered by forensic pathologists. In March of 2022, the Coroner's Office experienced an entire week without any available forensic pathologists to perform examinations; no cases were held during this time as a result of a low case load period. Scheduling difficulties like these mean that cases could potentially be held for several days, delaying the decedent's loved ones in making final disposition arrangements and receiving closure.

Although several counties in the Bay Area have adopted a fee-for-service model in recent years, the Coroner's Office found that many of these agencies require exclusive contracts with forensic pathologists; while other agencies have chosen to employ, rather than contract with, forensic pathologists or have continued to utilize the standard monthly fee model.

Thus, the Coroner's Office believes that a combination of the fee-for-service model and standard monthly fee model would provide consistent and optimal support for the County's Forensic Pathology Service needs, especially should there be a mass fatality disaster requiring more pathologists to handle a higher caseload than normal.

For fiscal year (FY) 2022-23, a total of \$904,900.00 has been budgeted for forensic pathology services. The Coroner's Office anticipates a 4.1% increase in caseload each year based on the six-year average of increase in case load. Thus, for FY 2023-24, the anticipated need for forensic pathology services is \$942,000.00 and, for FY 2024-25, the anticipated need for such services is \$980,622.00, resulting in a three-year budgeted total of \$2,827,522.00 (\$904,900.00 + \$942,000.00 + \$980,622.00).

On June 14, 2022, Board approved the following fee-for-service agreements:

- \$639,754.00 for the agreement with Dr. Rogers;
- \$300,000.00 for the agreement with Forensic Doctors Group; and
- \$639,754.00 for the agreement with Pathemis; and

Each agreement has a term of three years (July 1, 2022 through June 30, 2025) and, combined, the maximum fiscal obligation of the three agreements totaled \$1,579,508, less than the three-year

budgeted amount for such services.

As explained below, the recommended combination of the existing fee-for-service model, with reduced fiscal obligations under the applicable agreements, and the standard monthly fee model will result in a total maximum fiscal obligation of \$2,827,280, which is within the budgeted amount for the provision of forensic services over the three-year period.

## **DISCUSSION:**

### **A. Proposed Agreement with NAAG**

Staff recommends approving an agreement with NAAG Pathology Labs with a three-year term of August 7, 2022 through August 6, 2025 and a not-to-exceed amount of \$2,497,280.00. The payment schedule below includes a 4% increase in the monthly flat rate in both Year 1 and Year 2.

#### **Year 1**

A monthly flat rate of \$66,666.67 per month regardless of the number or type of examinations performed.

#### **Year 2**

A monthly flat rate to include a 4% increase from Year 1 of \$69,333.34 per month regardless of the number or type of examinations performed.

#### **Year 3**

A monthly flat rate to include a 4% increase from Year 2 of \$72,106.67 per month regardless of the number or type of examinations performed.

NAAG Pathology Labs will provide two forensic pathologists to perform exclusive forensic pathology services to San Mateo County, seven days a week. In the event the two Forensic Pathologists are unable to perform the services as required by the Coroner's Office, NAAG Pathology Labs will either provide a covering forensic pathologist approved by the Coroner's Office or prorate their monthly amount based on the number of days they are unable to provide forensic pathology services.

### **B. Requested Waiver of Competitive Bidding Process**

The Coroner's Office is also requesting a waiver of the competitive bidding process for NAAG Pathology Lab's provision of the above forensic pathology services pursuant to County Ordinance Code 2.83.050(e) because, as physicians and/or a physician group providing medical services, NAAG Pathology Services is specifically exempt from the process under County Administrative Memorandum B-1, Section IV.B.15.

Moreover, the forensic pathologists at NAAG Pathology Services are all part of an exclusive group of less than 500 full-time licensed practicing, board-certified forensic pathologists in the entire United States. Thus, there are an extremely limited number of qualified and available medical professionals to perform these services. The Coroner's Office became accredited by the medicolegal death investigation office accreditation board, International Association of Coroners and Medical Examiners (IAC&ME), in November 2019. A requirement of accreditation mandates performance of forensic autopsies by board-certified forensic pathologists.

### **C. Proposed Amendments to Existing Fee-for-Service Agreements**

Staff also recommends amending the fee-for-service agreements with Dr. Rogers, Forensic Doctors Group, and Pathemis to reduce the maximum fiscal obligation under each agreement to \$110,000.00.

The maximum fiscal obligation under the reduced fee-for-service contracts would total \$330,000.00 (\$110,000.00 x 3). Agreement Nos. 078917(a-c) would continue to utilize the same fee-for-service model previously approved by the Board in Resolution Nos. 077191, 077579, and 078444(a-c); however, since March 2020 there has been no increase in fees to account for cost-of-living adjustments. Staff therefore recommends an immediate 4% increase in the fees for each service type and 4% each subsequent year starting on the first day of the new fiscal year, and, thus, payment would be based on fees for the following services:

Description of Service	Fee			
	March 1, 2020 through August 2, 2022	August 3, 2022 through June 30, 2023	July 1, 2023 through June 30, 2024	July 1, 2024 through June 30, 2025
Clinical Inspection (External) and/or Review of Records	\$500.00	\$520.00	\$540.80	\$562.43
Limited Autopsy	\$800.00	\$832.00	\$865.20	\$899.81
Full Autopsy	\$1,850.00	\$1,924.00	\$2000.96	\$2,081.00
Specialized Protocol (SUID/Homicide)	\$2,550.00	\$2,652.00	\$2,758.08	\$2,868.40

A clinical inspection refers to an external examination and review of case history and medical records. A review of records refers to an accepted non-removal case where the decedent does not undergo any type of physical examination but includes a thorough review of medical records and determination of a cause and manner of death. A limited autopsy refers to a partial internal examination. A full autopsy refers to a complete internal examination including cranial vault examination. A specialized protocol refers to a complete internal examination including cranial vault examination and following specialized protocols. Each forensic pathologist will be required to submit monthly invoices specifying the types of services provided under their respective agreement.

Finally, the Coroner’s Office requests that it be authorized to execute additional amendments to each agreement that modify the County’s maximum fiscal obligation by no more than \$25,000 for each agreement (\$100,000.00 in total), and/or modify the contract term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions.

The County Attorney has reviewed and approved the resolution and agreements as to form.

**PERFORMANCE MEASURE:**

The Coroners’ Office has been accredited since November 2019 by the International Association of Coroners and Medical Examiners (IAC&ME). IAC&ME recommends the completion of all autopsy reports within 60 calendar days of autopsy performance as a forensic pathology best practice and requires the completion of all autopsy reports within 90 calendar days of autopsy performance. The actual and projected performance are not expected to change with the proposed amendments and new agreement with NAAG Pathology Labs.

Measure	FY 21-22 Actual (as of 12/31/2021)	FY 22-23 Projected
% of autopsy reports completed within 60 days (IAC&ME standard)	63%	75%
% of autopsy reports completed within 90 days (IAC&ME requirement)	93%	95%
Average number of days elapsed from date of autopsy performance to date of autopsy report completion	49	49

**FISCAL IMPACT:**

Approving the amendments to Agreement Nos. 078917(a-c) will authorize three contracts for forensic pathology services under the fee for service model with a total not-to-exceed amount of \$330,000.00.

Approving the agreement with NAAG Pathology Labs will authorize a monthly standard fee-based contract for forensic pathology services bringing in reliable forensic pathology coverage to the Pathology Division. The total not-to-exceed amount of this agreement is \$2,497,280.00.

The total maximum fiscal obligation for all anticipated forensic pathology needs through August 6, 2025 is \$2,827,280.00.