



DEPARTMENT OF HEALTH

Wes Moore, Governor · Aruna Miller, Lt. Governor · Meena Seshamani, M.D., Ph.D., Secretary

March 26, 2026

The Honorable Pamela Beidle
Chair, Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, Maryland 21401

RE: House Bill 1143 - Public Health – Office of the Chief Medical Examiner – Perinatal Autopsies (Lung Float Test Ban) – Letter of Concern

Dear Chair Beidle and Members of the Committee:

The Office of the Chief Medical Examiner (OCME) respectfully submits this letter of concern to House Bill 1143-Public Health - Office of the Chief Medical Examiner - Perinatal Autopsies (Lung Float Test Ban). HB 1143, as amended, establishes a two-year moratorium on the use of the lung float test in perinatal autopsies and requires the Maryland Department of Health to conduct a study and report on its usefulness and whether it should continue as an autopsy tool. While the civil liability provision has been removed, the bill still imposes physician disciplinary consequences for violations and will automatically sunset on September 30, 2028.

We appreciate the thoughtful consideration that has gone into this legislation and the efforts made to reach a balanced approach through the inclusion of a study component. We recognize the intent to thoughtfully examine complex and sensitive issues and to support women and families through informed policy. At the same time, we write to share several concerns regarding the proposed moratorium and its broader implications.

OCME would like to clarify that the lung float test is not used as a “determinative” or “standalone” method for establishing live birth. This terminology does not reflect modern forensic practice. The National Association of Medical Examiners (NAME) has consistently emphasized that autopsy findings must never be interpreted in isolation and that cause and manner of death determinations rely on the synthesis of multiple factors. The lung float observation is not used as the sole determinant of live birth. Since 1990, out of more than 1,200 reported fetal death cases to the OCME, only 15 have been certified as homicide, *none of which relied upon the lung float observation in isolation*. This statistic underscores a critical point: homicide determinations are exceedingly rare, are made with the highest level of scrutiny, and take many determinants into account.

The proposed moratorium raises concerns about legislating aspects of medical practice. Cause and manner of death determinations are inherently clinical decisions that rely on specialized professional training, experience, and the totality of investigative and medical findings. These determinations cannot be reduced to or constrained by a single prescribed approach without risking unintended consequences. Removing a tool, even temporarily, from consideration limits the ability of medical professionals to apply appropriate judgement on a case-by-case basis.

NAME guidance does not call for the prohibition of the lung float test. As reflected in the NAME position paper on the *Investigation and Certification of Fetal Demise, Stillborn, and Early Neonatal Deaths*¹, many of the considerations that the proposed study seeks to examine have already been evaluated at the national level. The paper explicitly states that:

- It is reasonable to conclude that the float test is not a test, but an autopsy finding
- If performed, it must be interpreted within the totality of the case, alongside all other findings
- There is no basis to mandate the performance of the lung float procedure
- There is no diagnostic tool or finding, aside from food in the stomach, that can stand alone as the sole determinant of whether an infant was liveborn or stillborn
- Ultimately, forensic pathologists should use their individual medical judgment to make a clear, scientifically sound determination

It is important to note that the proposed moratorium also creates an internal inconsistency in expectations placed upon this office and the field of forensic medicine. Medical examiners are frequently criticized when cause and/or manner of death is certified as undetermined, with the suggestion that additional effort or analysis should lead to clearer conclusions. At the same time, this legislation seeks to remove one of the observational components that may, in appropriate circumstances, contribute to a more informed medical determination. If the expectation is that medical examiners should strive to reach medically supported conclusions whenever possible, it is counterproductive to legislatively restrict the range of observations physicians may consider in reaching those determinations.

We do acknowledge the broader concerns raised regarding the treatment of pregnant individuals within the legal system. This is an extremely important and complex issue. To the extent that questions exist regarding how medical findings are interpreted or applied, those considerations may be more appropriately addressed within legal or policy framework, rather than through restrictions on the underlying medical evaluation, differing from national organizations recommendations.

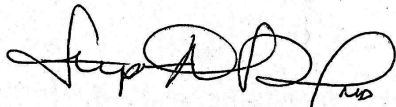
Finally, OCME urges careful consideration this approach may establish for the field of medicine as a whole. Even well-intentioned statutory direction may have broader implications for how medical decision-making is governed, extending well beyond the scope of this specific issue. In this case, the

¹ National Association of Medical Examiners (NAME), *Investigation and Certification of Fetal Demise, Stillborn, and Early Neonatal Deaths*. Am J Forensic Med Pathol (2025).

moratorium introduces constraints without demonstrated benefit and risks unintended consequences, while the study component alone would allow for thoughtful, evidence-based review.

The OCME remains fully committed to transparency, accountability, and collaboration, but it is equally important that policy decisions in this space are grounded in evidence and do not unintentionally constrain the clinical judgement required to do this work correctly. Accordingly, we strongly urge reconsideration of the proposed moratorium of a single observational postmortem finding, which is not supported by evidence and carries unintended risks to the integrity of medical decision-making.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Stephanie A. Dean, MD'. The signature is fluid and cursive, with a small 'MD' at the end.

Stephanie A. Dean, M.D.

Chief Medical Examiner

State of Maryland