

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date August 19, 1976

To All Law Enforcement Officials

Dept. _____

From Joseph E. Brennan, Attorney General

Dept. Attorney General

Subject Definition of attendance of a physician for the purposes of certifying the causes of death

STATEMENT OF FACTS:

Law enforcement officials have received complaints regarding the removal of dead bodies from nursing homes to funeral homes when a physician has not been present at the time of death and subsequently a physician completes the medical certificate as to cause of death without personally examining the dead body.

QUESTIONS:

1. Does the term "attendance of a physician," as found in 22 M.R.S.A. § 3026, require that a physician actually be present to constitute an attending physician?
2. May an attending physician complete and sign a medical certificate of death containing the cause of death if he receives information concerning the cause of death from 3rd parties and does not examine the dead body himself?

ANSWERS:

1. A physician who is not present at the time a patient dies may qualify as an attending physician under 22 M.R.S.A. § 3026 provided certain conditions exist.
2. Although there may be situations where an attending physician may complete a medical certificate of death based on information received from 3rd parties, an appropriate discharge of the attending physician's duty requires that an examination of the dead body be made before the medical certificate of death be signed.

REASONS:

1. 22 M.R.S.A. § 3026, entitled "Death without medical attendance," provides in part as follows:

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"When any person shall die without the attendance of a physician, the head of the household in which such death occurred, the person finding the body, any funeral director called to remove the dead body or any physician called to examine the dead body shall call the medical examiner to examine the body and shall give him all information which they may have concerning the death." (emphasis added)

22 M.R.S.A. §3027 provides as follows:

"Upon receipt of notice, as stated in sections 3025 and 3026, the medical examiner shall take charge of the dead body, making inquiries regarding the cause and manner of death, reduce his finding to writing, and promptly make a full report thereof to the Chief Medical Examiner. . ."

22 M.R.S.A. §3026 requires that a physician who has been called to examine a dead body and who was not an attending physician, to notify a medical examiner in case of such a death. The section, by differentiating between an attending physician and a physician who is merely called to examine the dead body of a previously non-examined person seeks to separate deaths where a physician's conclusion as to cause of death is informed, from those where it is not. An informed conclusion as to cause of death certainly may arise if a physician has, prior to death, examined, diagnosed and treated a person for an illness or sickness and death results from such illness or sickness.

Each death has its individual facts, and attending physicians are ultimately left with the responsibility of deciding the cause of death. The attending physician, in arriving at that decision, need not have been at the patient's bedside at the time of death. Such a requirement would unduly burden the medical examiner system and unnecessarily restrict the historic role played by physicians in identifying the cause of death. A physician who is thoroughly familiar with the terminal illness of a patient and who is not present at the time of death certainly could satisfy himself or herself as to cause of death from information provided by others or

by personal examination subsequent to death. (See discussion of second issue.)

Although 22 M.R.S.A. §3026 does not require that a physician be present at the time of death, the physician must be an attending physician. An attending physician must have had sufficient professional contact with the deceased prior to death to render his conclusion informed. Such a professional relationship would be satisfied if the physician had previously examined, diagnosed, and treated the illness of the dead person prior to death, the physician still had a continuing responsibility for the treatment of the illness, and the facts establish that the death resulted from that illness.

Thus, in the case of a death occurring in a nursing home, a physician may be an attending physician although he is not present at death. However, in such a case, the physician must have assumed and had the continuing responsibility for the care and treatment of the person for the illness from which the person died. Otherwise, the physician is not an attending physician.

2. 22 M.R.S.A. §2824 provides as follows:

§2842. Registration of deaths

"Except as authorized by the department, a certificate of each death which occurs in this State shall be filed with the clerk of the municipality where death occurred within 3 days after the day on which death occurred and prior to the removal of the body from the State.

"1. Certificate filed by funeral director.

The funeral director or other person in charge of the disposition of the dead human body or its removal from the State shall be responsible for filing the certificate. He shall obtain the personal data from the best qualified person or source available and he shall present the certificate to the physician or medical examiner responsible for completing the medical certification of the cause of death."

"2. Medical certificate by physician. The medical certification of the cause of death shall be completed and signed within 24 hours after death by the physician in charge of the patient's care for the illness or condition which resulted in death, except when an inquiry as to the cause of death is required by law.

"3. Medical certificate by medical examiner. When death occurs without medical attendance, or when inquiry as to the cause of death is required by law, the medical examiner shall complete and sign the medical certification and verify or provide the date of death within 24 hours after death."

This section requires, in non-medical examiner cases, that the ". . . physician in charge of the patient's care for the illness or condition which resulted in death, . . ." fill out the medical certificate within 24 hours after death. There is no statutory requirement that the physician personally examine the body after death. However, such a procedure would seem to be necessary, at least in some instances, in order to determine whether death did in fact result from the illness or condition for which the physician was treating the patient. Although the decision as to whether the body must be examined is left to the discretion of the physician in charge of the patient's care for the illness or condition which resulted in death, there are few situations where a responsible and non-negligent physician would sign a death certificate without first examining the body.

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