REPORT ON PROCEDURES FOLLOWING DEATHS IN NURSING HOMES IN KENNEBEC - SOMERSET COUNTIES

BY: DISTRICT ATTORNEY'S OFFICE
KENNEBEC - SOMERSET COUNTIES
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I. INTRODUCTION

The care of the living has a high priority in our society; nevertheless, procedures following a person's death should be uniform, thorough and precise. In our modern society where the exact time and cause of death is a matter of medical diagnosis, it cannot be left to non-professionals. Modern medicine is presently struggling with a definition of death, as evidenced in the famous Quinlin case, and is struggling with the issue of euthanasia. There is also the complex medical-legal questions surrounding transplants. It is for these reasons that we must tighten up our procedures surrounding death in our society and not loosen them.

The District Attorney's Office has undertaken an inquiry into the procedures followed by local nursing homes in Kennebec and Somerset Counties, upon the death of patients. This examination was prompted by complaints received by this office that bodies of deceased nursing home patients were being released to funeral homes without being viewed by a doctor in order to certify the fact of death and its cause. We have undertaken this inquiry in order to give notice to patients, their families and the community what these procedures are. It has not been our intent to pursue any individual or to seek criminal prosecutions concerning the practices we have observed. Our inquiry has found that the steps taken relevant to patient deaths are so varied and

informal that in many cases it is difficult to determine whether the death was properly verified or if the causes ascribed to it were reasonably accurate. Evidence of lax procedures following deaths in nursing homes should not be interpreted as an indication that patients are necessarily receiving inadequate care; however, lax procedures following patient death can permit an atmosphere in which neglect can develop and flourish undetected.

We have recommended legislative and/or regulatory changes which may serve to erase some of the ambiguity of some of the requirements and to insure that post-mortem procedures are handled by competent persons.

II. SOURCES OF INFORMATION

The inquiry has been supported by a wide range of information sources. Interviews were conducted with the administrators and/or nurses at most of the nursing homes in Kennebec-Somerset Counties. Personnel were encouraged to comment on the practices they observed in their home or in the nursing home profession generally. Executives of professional associations were also contacted. They included officials of the Maine State Medical Association, Maine State Nursing Association, the Maine Health Care Association, the Federation of Long Term Care. Individuals in the following state agencies also provided information: the Division of Hospital Services, the Department of Health Services, the State Board of Nursing, the Bureau of Vital Statistics, the Chief and District Medical Examiners Office, the Bureau of Health, the Maine Legislative Committee on Aging. Funeral directors, individual physicans and other health care professionals were similarily interviewed. Individual complaints also provided a source of potential information.

The death certificates of patients who died in Waterville over the past 1½ years were surveyed in order to get a sample of the general death certification process in a single community. We have no indication that the practices which we found reflected in these records were significantly different than those which are followed in the entire Kennebec - Somerset County area. In fact our research indicates that the local practices may correspond to the customary procedures of certifying nursing home patient deaths throughout the state.

III. LEGAL DUTIES RE: THE CERTIFICATION OF DEATH

Much of the law surrounding the certification of death is unclear. Under the Maine Medical Examiner's Act any person who dies without the attendance of a physican or for some unexplained reason must be examined by a medical examiner, (Title 22, Sections 3021-3032 of the Maine Revised Statutes Annotated). If the examiner feels that the death is suspicious or unexplained he will order an autopsy. However, this law has not been interpreted to require an inspection by the medical examiner every time a person dies without a doctor being present. "Attendance of a Physican" at a death has been construed by the Attorney General to mean that if the person was under the care of a doctor prior to death, then he was attended by a physician. Since most nursing home patients have the periodic care of a doctor almost all of the deaths at nursing homes occur with the attendance of a physican and consequently the medical examiner is rarely called in to inspect a nursing home death.

When a nursing home patient or any other individual dies with the"attendance of a physican", the law requires that a doctor in charge of the patients care complete a medical certification of the cause of death. (Title 22, Section 2842, M.R.S.A.) The doctor is not legally required to view the body or to have seen the patient before death in order to complete the certificate. The statute requires that this document be signed by the doctor within 24 hours after the death; however, the law does not set standards for the thoroughness of the doctors post-mortem inspection.

The funeral director is given the responsibility of completing the other biographical aspects of the death certificate. Morticians are required by state regulation to at least attempt to have a death certificate completed, including the physican's portion, before the body is removed to a funeral home. (Sec 1 Rules and Regulations of the Department of Human Services Re: the Transportation and Final Disposition of Dead Human Bodies).

The law does require a physican in charge of a patient's care to certify the likely cause of death, but it fails to set forth minimal standards for the inspection of the body. The statute also fails to set forth how recently the doctor had to have seen the living patient in order to be categorized an "attending physican" in charge of the patient's care. The apparent result is that the door is left upon for loose and careless procedures to develop which could defeat the intent of the statute to have a doctor familiar with the patient immediately prior to death make a reasonably informed statement as to the cause of the death.

The law does not use the term "pronouncement of death". Although this term is commonly used by lay people, it has no medical-legal significance. The law states that a doctor must sign a certificate of death within 24 hours of death, and this may be done without viewing the body. Consequently, this still leaves the question as to who determines when a person dies. There is a great deal of ambiguity as to who initially determines that a patient is dead. If death is a medical diagnosis, how can it be done by a physician without him viewing the body?

IV. FINDINGS

A. Failure to view body

Our inquiry has found that when an elderly patient dies in a nursing home the chances are that the attending physican will certify the death and attest to its cause without ever actually seeing the body. Although there are some nursing homes where physicans are required to personally view the body of a deceased patient before it is released to a funeral home, the customary practice appears to be otherwise. The common procedure when a nursing home patient is discovered by one of the staff to be dead is to telephone the patient's physician or the house physican and relay the facts which seem to indicate death. On the basis of this information the doctor will ordinarily "informally" pronounce the patient dead, or authorize release of the body to the funeral home.

It is also our finding that many nursing homes do not handle any other aspect of the death certification process. The body of the deceased patient is picked up from the nursing home by the mortican before the death certificate has been signed by the doctor. The funeral director then customarily contacts the doctor to get a signature on the death certificate.

None of these procedures appear to necessarily indicate a violation of the law.[1] The practices are defended by many nursing home operators as providing adequate opportunity for the inspection of patient deaths. The justifications for the current procedure are basically that a physican attending to a

"chronically ill" patient whose health is in a steady decline knows that very soon the patient will die. The cause of death will be a combination of old age and some more specific ailment. The argument is that since the death is expected and inevitable it is not important that a doctor be required to perform a post-mortem inspection to insure that the cause was in fact expected. The administrator of one home put it this way:

> "Once the doctors have confidence in us then they leave it up to us (the pronouncement of death). They'll take our word for it (that the patient is dead), and have us call the funeral home after we discover that one of the patients has died."

Other operators of nursing homes say that a policy which would require a doctor to view the body of the deceased patients would be impractical and entail an undesireable delay in the dead body leaving the nursing home.

Acceptance of these customary procedures is not, however, universal. Individual doctors, and nursing home operators as well as executives of the State Board of Nursing and the Maine Medical Association have criticized the current practice. They maintain that the custom has varied so far from the ideal that many doctors are irresponsible in their handling of the deaths of elderly nursing home patients. These and other critics agree that a physician who completes a death certificate, stating the cause of death, without viewing the body or having seen the patient at least 24 hours before death is not doing his job. Our finding is that most physicians who are involved with the death certification

process are not fulfilling the expectations of their profession. An illustration of the extent of the sub-standard practices is found in the recent death of nursing home patients in the Waterville area. During the last 1½ year period there were approximately 144 nursing home deaths in the Waterville area. Only 23 of the death certificates of those patients indicated that the body was viewed by a doctor at the time of the certification of death. Another 70 physicians failed to fill in the space on the death certificate which asked whether they viewed the body prior to signing the death certificate and attesting to the cause of death.[2]

The sampling of Waterville death certificates also substantiated complaints that the certification process was not being carried out within the 24 hours of death required by law. In fact the sample revealed that the majority of death certificates were not signed within 48 hours of the patient deaths. Out of 134 certificates over a 1½ year period, 48 were signed within 48 hours. The tardiness in the certification process represents a clear violation of the law. There are however no clear penalties for the failure to comply with the required 24-hour certification period.

B. Questions of Responsibility

It is not immediately clear whether the doctor or the nursing home or the funeral home bares the ultimate responsibility of insuring that death certificates are signed by physicians within the statutorily alloted period. When a patient dies and a doctor

is not immediately available to come to the home, the practical responsibility for the actual prouncement of death falls to the nursing home. Many nursing homes also have said that they are willing to take the practical responsibility for the prouncement of death of a patient; nevertheless, there may be legal complications with having non-physicians performing a medical function. An official of the State Board of Nursing added that although registered nurses are in most cases qualified to make a determination of death they should not shoulder the job which is clearly the physican's legal and professional duty. There is no doubt that the diagnosis of death is a medical determination. In this era of modern medical technology, it has become an increasingly complex area.

C. Real and Potential Results of Lax Practices

It is conceivable that errors may occur in the determination of death, however, in most instances the error is insignificant. The more serious consequence of a physician failing to view the body of a patient who has died in a nursing home or any other health care institution is that the doctor's certification of the cause of death is likely to be inaccurate. Some nursing home administrators have defended the current policy by making the point that a doctor's foremost duty is to patients who are living and that more stringent policies would mean that doctors would have to give a lesser share of their attention to the living patients. Nevertheless, a determination of the cause of death has a significant impact on the treatment of living patients. A policy that requires a strict overseeing of the type of health care that is

given in a community is not an accusation that the care is presently inadequate. It is instead a common sense precaution that if carelessness and neglect should be the cause of the death of a patient it will be discovered and properly dealth with.

In 1970 an employee of a local nursing home was accused of drowning an elderly patient. There were also allegations of other patient homicides. The body of the dead patient was not properly examined upon her death. By the time the charges came to the attention of the Attorney General's Office and the District Attorney's Office, the corpse had been embalmed and buried and it was impossible to accurately prove whether the woman had died naturally or by drowning. If a doctor was required to carefully view the body of every patient who died in that nursing home prior to his signing their death certificates, it would have been possible for the suspicions to have arisen in time to determine the real cause of death. It seems obvious that the determination of the cause of death is more informed if the doctor has seen the patient at some time immediately following the death.

D. Difficulties in Changing Proceedures

Our interviews have underlined several possible factors which might work against the implementation of more strict requirements concerning the certification and post-mortem inspection of nursing home patients. Several nursing home administrators and nurses said that there was hesitancy on the part of many nursing homes to require the doctors to view bodies of deceased patients before they leave the home. The concern was that the doctors

represent a good deal of business to the homes in the form of patient referrals and that there would be considerable resistance to any policy which would potentially endanger nursing homes' relationship with local doctors. Other sources report that a shortage of doctors makes it difficult to get them to come to homes under any circumstances and that the added requirements would only make matters worse. Whatever the reasons, there is clearly a fear that doctors would not be willing to take increased patient care responsibilities at nursing homes. One physician who does handle nursing home cases which have often been discarded by other doctors said:

> "I don't seek the cases. I take care of them (nursing home patients) because I fell sorry for them, nobody else will take care of them... Once they begin to get really old or once they go on Medic-aid their doctors want to get rid of them as patients. There's no more money in it."

Clearly all doctors do not fit into this unbecoming categorization. However, our research indicated that there are numerous disgruntled health care officals that maintain that many local doctors are careless and irresponsible when it comes to the care of the elderly. If those accusations have substance, it is not surprising that the absence of care would be dramatically reflected in the procedures followed when an old person dies in a nursing home.

IV. RECOMMENDATIONS & CONCLUSION

The most glaring criticism of the death certification procedure in nursing homes is that physicians do not view the body of dead patients when certifying deaths and their cause. The standard which was repeatedly offered as a reasonable requirement is that an attending physician who has not seen a patient within the last 24 hours preceding death should be required to view the body in order to complete the post-mortem certification process. It has also been suggested by some that if the attending physician is unavailable to come that the medical examiner or some other physician be required to make the certification. Whatever the alternative, a physician should view the body and pronounce the person dead.

The requirement that the death certificate be completed and signed by a doctor within 24 hours should be complied with. Appropriate penalties should be set forth in statute or regulation to insure that the death certification process is fully and conscientiously followed.

The specific statutory or regulatory amendments or alternatives are not within the scope of this inquiry. Our finding is that informal and often careless procedures do surround the certification of death at local nursing homes. The problem involves more serious concerns than mere record keeping. It reflects upon the amount and quality of care that patients receive when they enter a nursing home. The aim of our efforts has been to

suggest some shortcomings which if corrected may contribute to an atmosphere of health and dignity for the elderly. It is a legislative function to change our statutes in order to tighten up what appears to be lax procedures following a nursing home patient's death. It is conceivable that these lax procedures may be accepted by this state through its legislature as a consequence of our overworked medical profession. Nevertheless, this District Attorney's Office believes that the legislature should at least address the problem and make that decision.

F O O T N O T E S

1. Maine and all but two other states have law which allows the death certification process to be completed without the doctor actually viewing the body. See, "Nursing Home Care in the United States: Failure in Public Policy", Supporting Paper No. 3 prepared by the Subcommittee on Long-Term Care of the Special Committee on Aging, The U. S. Senate, February, 1975.

2. It is difficult to obtain precise figures concerning the death certification process because many doctors do not answer the questions set forth on the death certificate. Often the answer spaces on the death certificate are left blank which inquire: Whether the physician viewed the body prior to signing the death certificate; When the doctor last saw the deceased (date); or Whether there was an autopsy.

§ 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.

R.S.1954, c. 25, § 382; 1955, c. 326, § 3; 1959, c. 291, § 3.

Cross References

Burial requirements, see § 1022 of Title 13.
Death without medical attendance, see § 513 of this Title.
Duties of municipal clerks, see § 2702 of this Title.
Medical examiners and autopsies, generally, see § 511 et seq. of this Title.
Penalty for transporting dead body without permit, see § 2708 of this Title.
Veterans Administration Center, death certificates, see § 2701 of this Title.

§ 2843. Permits for final disposition of dead human bodies

Except as authorized by the department, no dead human body shall be buried, cremated or otherwise disposed of, or removed from the State, until the person in charge of such final disposition or removal has obtained a permit from the clerk of the municipality where death occurred.

1. Permit for transportation. Each dead human body transported into this State for final disposition shall be accompanied by a permit issued by the duly constituted authority at the place