



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 13, 1993

Honorable Eddie G. Shell
Burnet County Attorney
220 South Pierce
Burnet, Texas 78611

Letter Opinion No. 93-28

Re: Authority to pronounce death and
the requisites of a death certificate
(ID# 17647)

Dear Mr. Shell:

You have requested our opinion regarding the authority to pronounce a person dead and the requisites of a death certificate. You indicate that an individual confined in a nursing home was pronounced dead by a registered nurse, and then transferred to a crematorium. The crematorium requested a death certificate signed by a justice of the peace.

Chapter 671 of the Health and Safety Code describes the standards used in determining death. Subsection (d) of section 671.001, provides that

[a] registered nurse may determine and pronounce a person dead in situations other than those described by Subsection (b) [relating to persons on life support systems] *if permitted by written policies of a licensed health care facility, institution, or entity providing services to that person.* [Emphasis added.]

Thus, a registered nurse may pronounce a person dead, so long as the health care facility wherein he or she is employed has written policies authorizing a registered nurse to do so.

Unless the county clerk and justice of the peace have, with the approval of the county commissioners court, transferred local registrar duties to the county clerk, the "justice of the peace is the local registrar of births and deaths in a justice of the peace precinct." Health & Safety Code § 191.022(a). Sections 193.002 and 193.003 of the Health and Safety Code instruct "the person in charge of interment" to obtain the death certificate and file it in the office of the local registrar within ten days of the date of death. The person who is required to file the death certificate must obtain "the required personal information from a competent person with knowledge of the facts" and "the required

medical certification from the physician who was last in attendance on the decedent if the death occurred with medical attendance."¹ *Id.* § 193.004(a).

On its face, section 193.004(a) authorizes only that *physician* last in attendance on the decedent to provide the required medical certification if the death occurred with medical attendance. *See* Attorney General Opinion C-124 (1963) at 3 (stating that to sign death certificate as physician person must be licensed by State Board of Medical Examiners). Thus, section 193.004(a) precludes the registered nurse who was in attendance at the death from providing the required medical certification. Section 193.004(a) also precludes the justice of the peace from providing the required medical certification.

Our conclusion that the registered nurse who pronounced a patient dead pursuant to section 671.001(d) of the Health and Safety Code may not provide the medical certification section 193.004(a) requires is consistent with the legislative history of section 671.001(d). The legislature enacted that section as Senate Bill 823 in 1991. *See* Acts 1991, 72d Leg., ch. 201, § 1. Senate Bill 823 and its companion bill, House Bill 983, initially were introduced essentially in the form that the legislature ultimately enacted. Notably, in public hearings before the House Committee on Public Health, Representative Madla, the sponsor of House Bill 983, affirmed a witness's testimony that the bill, if enacted, would not authorize a registered nurse to sign a death certificate. Hearings on H.B. 983 Before the House Comm. on Public Health, 72d Leg. (Mar. 18, 1991) (statement of Representative Madla, sponsor) (affirming statement of Ann Calvert, Texas Hospice Organization) (tape on file with House Committee Coordinator); *see also id.* (statement of Susan Pascoe, Texas Nurses Ass'n). Instead, according to Representative Madla, a physician would continue to be necessary to sign death certificates. Hearings on H.B. 983 Before the House Comm. on Public Health, 72d Leg. (Mar. 18, 1991) (statement of Representative Madla, sponsor).

Representative Park subsequently proposed to amend section 193.004(c) of the Health and Safety Code to authorize a registered nurse to certify the death certificate if the physician who last attended the patient could not certify the death certificate and if the same registered nurse had pronounced the patient dead. Committee Amendment No. 1 to H.B. 983, 72d Leg. (1991). In the end, however, the legislature did not adopt Representative Park's amendment. In our opinion, therefore, the legislature explicitly chose not to authorize a registered nurse to provide the medical certification section

¹Subsection (a) of section 193.005 of the Health and Safety Code provides that, "[i]f a death or fetal death occurs without medical attendance, the funeral director or the person acting as funeral director shall notify the local registrar of the death." (Emphasis added.) The local registrar is directed to "refer the case to the local health authority for immediate investigation and certification." Health & Safety Code § 193.005(b). In the absence of a local health authority, the local registrar "may complete the death certificate or fetal death certificate and return from the statement of relatives or other persons having adequate knowledge of the facts." *Id.* Under certain circumstances, the local registrar may require that an inquest be performed. *Id.* § 193.005(c) - (e).

193.004(a) of the Health and Safety Code requires the person who must file a death certificate to obtain.

S U M M A R Y

Section 671.001(d) of the Health and Safety Code authorizes a registered nurse to pronounce a patient dead if the licensed health care facility that employs the nurse has enacted written policies permitting a registered nurse to do so. However, section 193.004(a) of the Health and Safety Code authorizes only that physician last in attendance on the decedent to provide the required medical certification if the death occurred with medical attendance. Neither a registered nurse nor a justice of the peace is authorized to provide the required medical certification.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee