

OPINION NO. 76-026

Syllabus:

1. "The physician who attended the deceased" as used in R.C. 3705.27 means a physician who has cared for or had contact with the deceased at the time of or immediately prior to death.

2. There is no requirement by statute or rule that a physician personally examine the body of the deceased before signing the death certificate and certifying that death was due to the cause stated on the certificate. Whether to perform such an examination is a professional judgment to be made by the physician prior to certification.

To: The State Medical Board of Ohio, Columbus, Ohio
By: William J. Brown, Attorney General, April 8, 1976

I have before me your request for my opinion which reads as follows:

"1. What is the meaning of 'the physician who attends the deceased' as used in Section 3705.27, Ohio Revised Code?

"2. Must the physician personally examine the body of the deceased before he may sign the death certificate?"

The relevant portion of R.C. 3705.27 reads as follows:

"The funeral director shall then present the certificate of death to the physician or coroner for certification of the cause of death. The medical certificate of death shall be made and signed by the physician who attended the deceased or by the coroner within forty-eight hours after death. . . ." (Emphasis added.)

With respect to the first question, the phrase "physician who attended the deceased" is not defined anywhere in the Ohio Revised Code, and I have been unable to find any case law which interprets this provision of the statute.

The similar phrase "attending physician" has been defined by the Public Health Council of the Department of Health of the State of Ohio. Pursuant to authority granted by R.C. 3705.01, the Public Health Council has adopted regulations to govern the collection of vital statistics, including information about the causes of death. In Regulation HE-5-01(E), the phrase "attending physician" is defined as:

"[T]he physician in charge of the patient's

care for the illness or condition which resulted in death. . . ."

Although the foregoing definition cannot control interpretation of the statutory language in question, the definition does provide guidance. As in the above definition, the use of the verb "attend" permits the inference that the physician must have cared for or had contact with the deceased at the time of or immediately prior to death. Thus, "the physician who attended" should be distinguished from any other physician without professional contact with the deceased at or just prior to death.

With respect to the second question, neither R.C. 3705.27, nor any other section of the Revised Code addresses the question of whether the physician must personally examine the body of the deceased before he may sign the death certificate. Therefore, there is no express statutory requirement that such a personal examination must be conducted.

There is no pertinent case law to provide a direct answer to the question asked. The only reported case law that is relevant to this issue is State v. Nunley, 56 Ohio Op. 2d 329, 330 (Ct. App. Ross Cty. 1971). In that criminal action the defendant argued that a death certificate was inadmissible as evidence because the physician who signed the certificate did not examine the body after death. Citing R.C. 3705.27, the Court ruled that the objection went to the weight and not the admissibility of the evidence. This ruling supports the conclusion that personal examination of the body of the deceased by the attending physician is not required as a condition precedent to the signing of the death certificate.

Pursuant to R.C. 3705.02 the Director of Health has prescribed the standard form for the certificate of death. The standard form makes a specific inquiry as to whether the certifying physician did or did not view the body after death. On the other hand, a coroner certifying the cause of death must base his opinion on an examination of the body. The regulations adopted by the Public Health Council also support this dichotomy. Presumably this dichotomy is based on the assumption that the attending physician will have knowledge of anamnestic data which will allow him to determine the cause of death without an actual examination of the body. The adoption of the standard form and the regulations do not provide a definitive answer to the question raised, but are merely illustrative of the manner in which the Department of Health has interpreted the statute under discussion.

In Opinion No. 72-116 the Attorney General concluded that only a physician can make a final diagnosis that a body has become a corpse which must be prepared for burial. This opinion addressed itself only to a situation in which the fact of death might be an issue, and did not advance any conclusions, regarding preparation of the death certificate or personal examination by the attending physician. Furthermore, its conclusion cannot be extrapolated to resolve the question regarding personal examination, because the anamnestic knowledge of an attending physician would not necessarily be shared by any particular physician that determined the fact of death. Thus, Opinion No. 72-116 does not provide any guidance in answering the questions raised.

A requirement that the physician who attended the deceased

must examine the body prior to signing the death certificate cannot be implied from the language of R.C. 3705.27 or any other portion of the Revised Code. Therefore, in the absence of an express statutory requirement, it must be concluded that under existing Ohio law there is no requirement that the physician personally examine the body of the deceased before signing the death certificate. It does, then, remain a professional decision for the physician whether to personally examine the body of a deceased person prior to certifying on the certificate that death was due to the cause stated on the certificate.

In conclusion it is, therefore, my opinion and you are so advised that:

1. "The physician who attended the deceased" as used in R.C. 3705.27 means a physician who has cared for or had contact with the deceased at the time of or immediately prior to death.
2. There is no requirement by statute or rule that a physician personally examine the body of the deceased before signing the death certificate and certifying that death was due to the cause stated on the certificate. Whether to perform such an examination is a professional judgment to be made by the physician prior to certification.