

OPINION NO. 72-116

Syllabus:

Since R.C. Chapter 4731 limits the diagnosis and treatment of diseases of, and injuries to, the human body to duly licensed physicians alone, only such a physician can make the final diagnosis that the body has become a corpse which must be prepared for burial.

To: Dorothy B. Leupp, Exec. Sec., Board of Nursing Education and Nurse Registration, Columbus, Ohio

By: William J. Brown, Attorney General, December 12, 1972

I have before me your request for my opinion as to who can legally pronounce a person deceased.

You have also submitted for my consideration, as exemplifying your concern, an excerpt from the Wisconsin Board of Nursing Newsletter of April, 1972, which reads in part as follows:

May a nurse pronounce a patient dead?

The pronouncement of death is not within the scope of the practice of the registered professional nurse in this state.

The pronouncement of death is a diagnostic procedure, thus a nurse cannot certify the death of a patient.

Ordering the nurse by telephone to have the body moved to the morgue or funeral home is tantamount to pronouncing the patient dead without seeing the body.

The nurse should not be placed in this dilemma which could have legal consequences for all concerned.

Whatever may be the statutory provision in Wisconsin on this subject, it does not seem to be covered specifically in the Revised Code of the State of Ohio. There is no definition in the Code of the pronouncement of death, and I have been unable to find any pertinent judicial decisions. The closest approach to the matter appears in R.C. Chapter 3705, which provides for a state system of vital statistics. R.C. 3705.26 reads in part:

Each death which occurs in Ohio shall be registered with the local registrar of vital statistics of the district in which the death occurred by the funeral director or other person in charge of interment or cremation of the remains.

And R.C. 3705.27 provides in part:

The personal and statistical particulars in the certificate of death or stillbirth shall be obtained by the funeral director or other person in charge of interment or cremation from the best qualified persons or sources available. * * * 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.)

These Sections provide for a certificate of death to be made from the best sources available, and for a certificate of the cause of death to be made by the attending physician or by the coroner - who, of course, must also be a physician. See R.C. 313.02. But there is no specific provision as to who shall make the decision that the patient is no longer alive. A review of the pertinent statutes, however, leads me to the conclusion that this is a medical decision which can be made only by a qualified physician.

Prior to 1941 the certification of the cause of death of a person who died without medical attendance could be made by the local health officer, who was not necessarily a physician, or by the registrar of vital statistics himself. G.C. 212, repealed April 30, 1941, 119 Ohio Laws 116; see Opinion No. 727, Opinions of the Attorney General for 1939. This was replaced by G.C. 1261-62, now R.C. 3705.27, which, as we have seen in the previous paragraph, allows certification of the cause of death only by a qualified physician. If a physician alone can certify to the cause of death, it would seem to follow that only a physician can make the determination that a human body is no longer informed by a vital principle and must, therefore, be prepared for burial. That this is primarily a medical problem readily appears from current discussions of the definition of death and the legal problems that arise therefrom. See Note, Heart Transplants: Legal Problems and the Need for New Regulation, 19 Case W. Res. L. Rev. 1073, 1080 (1968); Note, Legal Problems in Donations of Human Tissue to Medical Science, 21 Vand. L. Rev. 352, 371 (1968); Boehm, Gift of Body for Research, 41 Ohio Bar 1241 (1968).

The diagnosis and the treatment of injuries to, and diseases of, the human body has been restricted by the General Assembly to duly licensed physicians. R.C. Chapter 4731. R.C. 4731.34 defines a practicing physician as a person

who examines or diagnoses for compensation of any kind, or prescribes, advises, recommends, administers, or dispenses for compensation of any kind, direct or indirect, a drug or medicine, appliance, mold or cast, application, operation, or treatment, of whatever nature, for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease, * * *.

And R.C. 4731.341 provides in part:

The practice of medicine * * * by any person not at that time holding a valid and current certificate * * * is hereby declared to be inimical to the public welfare and to constitute a public nuisance.

The Supreme Court has frequently pointed out that the limita-

tion of the practice of medicine to duly qualified physicians is a proper exercise of the police power of the state. In State, ex rel. Copeland v. Medical Board, 107 Ohio St. 20, 27-28 (1923), the Court said:

[T]he state medical board has a most important function imposed upon it, that of safeguarding the public against the ministrations of those who are not qualified by proper training, education and experience to minister to the wants of those who are afflicted by functional or organic diseases or are the unfortunate victims of accident. Acting under a very proper exercise of police power the general assembly has placed upon the state medical board the duty of thus safeguarding the public interest. * * * If the state board is permitted to satisfy itself as to the actual experience of the applicant, the license not only becomes a recommendation to the licensee, but also serves as a protection to the public, who have no means of making intelligent inquiry.

See also Krause v. Cleveland, 163 Ohio St. 559 (1955); Williams v. Scudder, 102 Ohio St. 305 (1921); State v. Marble, 72 Ohio St. 21 (1905); France v. State, 57 Ohio St. 1 (1897); Opinion No. 72-101, Opinions of the Attorney General for 1972. Since only a physician is allowed to diagnose and treat the ailments of the human body, it seems to follow inevitably that the physician alone can properly make the final diagnosis that further treatment will be of no avail.

The physician must, of course, be prepared to justify his pronouncement of death.

* * * His decision with respect to life and death is subject to review the same as any other medical decision, and he must be prepared to defend it, as he must any medical decision, by showing that he has possessed and exercised the degree of medical knowledge, care and skill ordinarily possessed and exercised by members of the medical profession in the community. (Houts, Courtroom Medicine, Vol. 3, Sec. 1.02; see also R.C. 107 and 3.04.)

A nurse, on the other hand, is not qualified to make a pronouncement of death. Textbooks for nurses often contain statements similar to the following:

Only a person licensed to practice medicine is qualified to pronounce a patient dead. A nurse has no such authority, nor the right to complete and file a death certificate. (Law of Hospital and Nurse, Hayt, Groeschel & McMullan.)

And R.C. Chapter 4723, which provides for regulation of the practice of nursing, specifically prohibits the making of medical diagnosis by nurses. R.C. 4723.06 provides in part:

* * * Acts of medical diagnoses or prescription of medical, therapeutic, or corrective medical measures by a nurse are prohibited.

There will, of course, be instances in which the fact of death is so obvious, even to the least medically experienced layman, that the necessity for a pronouncement of death by a physician will appear to be a useless waste of time. On the other hand, if any ex-

ception is allowed to a layman, there is always the danger of liability as a result of an erroneous decision which can easily be avoided by leaving that decision to a physician.

In specific answer to your question it is my opinion, and you are so advised, that since R.C. Chapter 4731 limits the diagnosis and treatment of diseases of, and injuries to, the human body to duly licensed physicians alone, only such a physician can make the final diagnosis that the body has become a corpse which must be prepared for burial.