

DEATH CERTIFICATES

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The death of each person in Virginia triggers a statutory requirement that a certificate of death ("certificate") be completed listing a primary cause of death and must be signed by a physician. See § 32.1-263. Funeral directors and their staff routinely handle the delivery of the certificate to the appropriate physician for signature and handle filing of the certificate with the registrar of the jurisdiction where the patient died. Most often, completion and signature of certificates by physicians are uneventful. However, funeral directors and physicians occasionally face challenges when unique factual circumstances present. This article is intended to review the Virginia statutory requirements for certificates and offer practical suggestions for navigating unique factual circumstances.

Virginia Code Section 32.1-263 requires that a certificate be completed and filed for each death occurring in the Commonwealth. This statute requires that death certificates be completed within 24 hours of death. The time in which certificates must be completed and signed by physicians is very important as the family of the decedent (legal term for patient once death has occurred) cannot proceed with administration of the decedent's estate or access life insurance proceeds without a completed certificate having been filed. The following three circumstances are the only exceptions to the 24-hour mandate: 1) a completed or pending medical certification is unavailable; 2) personal data concerning the decedent is temporarily unavailable; or 3) the body must be moved immediately out of the Commonwealth. See 12VAC5-550-410. These exceptions rarely occur and the strict 24-hour requirement is clearly the rule that applies in the vast majority of deaths.

Virginia Code Section 32.1-263 was amended in the 2008 Session of the Virginia General Assembly to clarify which physicians are authorized to complete and sign certificates and the color of ink the physician must use when completing the medical certification on the death certificate. Current law provides that a certificate must be completed by the physician in charge of the patient's condition at the time of death. The amendments achieved through House Bill 1471 (Delegate Todd Gilbert, R-Woodstock), become effective July 1, 2008 and will also permit certificates to be completed and signed by the physician who pronounces death.

The amendment was prompted by a collaborative effort of the Medical Society of Virginia and the Virginia Funeral Directors Association. Physicians and funeral directors reported difficulties interpreting what it means to "be the physician in charge of the patient's condition at the time of death." Several factual scenarios demonstrate the challenges. It is not uncommon for a patient not to have a family physician or a physician whom they routinely sought

treatment from prior to death. If the patient collapses or is brought to an emergency room dead on arrival, the emergency physician may be reluctant to complete and sign the certificate. Likewise, if a patient has a family physician and dies while out of town on a trip, the family physician may be reluctant to complete and sign a certificate given a lack of knowledge of what might have caused the death.

Other practical challenges involve physician schedules. It is not uncommon for a physician who pronounces death to be unavailable to sign the certificate within 24 hours because of call schedules, attendance at conferences or other commitments. Physicians providing call coverage for their partners are hesitant to complete and sign the certificate as they may not have first hand knowledge of the events surrounding death.

The Virginia Department of Health (“VDH”) has enacted regulations that assist in the completion of death certificates. These regulations are available on the VDH website, www.vdh.virginia.gov, referenced as 12VAC5-550. For example, the statute and the regulations provide that if the physician is not available to sign a certificate due to vacation or otherwise, that an associate of the physician is permitted to sign the certificate if he: 1) has access to the medical history; 2) views the decedent at or after death; and 3) determines death is from natural causes. See 12VAC5-550-360. Likewise, if a case has been referred to the medical examiner because the physician who should complete a certificate is incapacitated or deceased, then the medical examiner is to complete and sign the certificate. See 12VAC5-550-370

If a death occurs while the patient is in a hospital or institution, the attending physician may give written permission for the certificate to be signed by the person in charge of the hospital or institution, provided such person is a physician. See 12VAC5-550-360.

Certain deaths require investigation by the Office of the Medical Examiner. The complete listing of deaths is set forth in Virginia Code Section 32.1-283 and includes in part: certain trauma, suicide, poisoning, sudden unattended death, sudden infant death syndrome and others. Medical examiners are required to complete certificates within 24 hours after being notified of the death. Physicians or families of decedents who have questions about the Medical Examiners’ Office and autopsies can access guidance documents available on the VDH website at www.vdh.virginia.gov/medexam/.

If an autopsy has been requested, the results of the microscopic or toxicological test will not likely be completed within 24 hours of death. Physicians are instructed by 12VAC5-550-350 not to defer signing a certificate until the microscopic or toxicological studies are available. Instead the physician is directed to sign the certificate and list the cause of death as “pending.” Once the

gross findings of the autopsy are received, the physician must forward the cause of death to the registrar of the locality where the death certificate was filed.

Changes or amendments to the cause of death listed in a certificate may be requested by the physician who completes and signs the certificate or by the medical examiner who signs the certificate. See 12VAC5-550-440. Physician signatures on some certificates are not acceptable because of the color of the ink used to affix the signature. An amendment to Virginia Code Section 32.1-263.C made during the 2008 General Assembly Session requires that certificates now be signed in black or dark blue ink only. An ink pen with red or green ink will not suffice. Much headache can be avoided by noting which pen is selected before signing.

Liability is always a concern for physicians. A certificate is a legal document which requires the physicians completing it to list, to the best of their ability, the primary and secondary causes of death. Many physicians are reluctant to complete and sign a certificate unless they are completely certain as to what the primary and secondary causes of death were. These physicians are concerned that they may be drawn into a lawsuit surrounding the cause of death listed on a certificate. While physicians who complete and sign death certificates may very well be called to testify as a fact witness in litigation where the cause of death may be contested, recent memory of cases reported in Virginia has not identified one where a physician was sued for completing or signing a certificate.

Good communication is perhaps the greatest risk management tool to avoid being drawn into litigation or causing breakdowns in communication with grieving families. It does not benefit physicians or funeral directors for there to be disagreements about who should complete and sign a death certificate. Families are caught in the middle of these disputes and their grief understandably is overcome by frustration and anger towards physicians and funeral directors.

The importance of physicians being trained properly on how to complete death certificates has reached the VDH and the Virginia Board of Medicine ("BOM"). Efforts currently are underway to create an online educational module to instruct physicians on several components of filing a death certificate. The proposal for this module came out of an ad hoc committee composed of members of the BOM, VDH, Virginia Board of Funeral Directors and Embalmers, Office of the Medical Examiner, and Office of the Attorney General, among others. Janet Rainey, VDH Director of Vital Records, notes, "Although it is unclear presently whether this module will be mandatory, there is general consensus that proactively educating physicians on completing death certificates is a better alternative than a legislative proposal to mandate fines for physicians who do not comply with statutory law."

It is anticipated that the module will go online by spring 2009 and will allow physicians to obtain CME credits while educating them on their statutory obligations, the proper method for completing and filing death certificates, and the sharing of this information with other public health agencies such as the Center for Disease Control and Prevention. William L. Harp, M.D., Executive Director of the BOM, says, "This module is an intensive measure to address complaints the Board of Medicine has received regarding the lack of physician training on how to complete death certificates. It is our hope that physicians in the Commonwealth will take advantage of this opportunity once it becomes available to them."

While the development and approval of this module continue, the Medical Society of Virginia and the Virginia Funeral Directors Association will make this article available on their respective websites as a resource for physicians and funeral directors to consult when challenging situations present themselves. Virginia is attempting to streamline the filing process by moving towards electronic certificates that will most likely be operational in the next two years.

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