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February 8, 1977

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ARIZONA ATTORNEY GENERAL

Suzanne Dandoy M.D., M.P.H.
Director, Arizona Department
of Health Services
1740 West Adams
Phoenix, Arizona 85007

Re: 77-23 (R76-232)

Dear Dr. Dandoy:

This letter is in response to a letter dated May 10, 1976, from your department requesting our opinion on the following:

1. Who is authorized to make a pronouncement of death in Arizona?
2. Under what circumstances, if any, may a person be determined to have expired by someone other than a physician licensed to practice medicine and surgery?

The phrase "pronounced dead" is found in regulations pertaining to the licensing of nursing homes (R9-10-548) and sheltered care homes (R9-10-851). The former, in pertinent part, provides:

A. Every person who dies in a nursing home shall be "pronounced" dead by a physician currently licensed in Arizona and so recorded on the patient's record.

Identical language is found in R9-10-851.A except that the phrase "sheltered care home" is substituted for "nursing home". Both of these regulations are located in Chapter 10 of the Health Services regulations. The definitions section of this chapter, R9-10-113, in subsection A provides:

Words defined in A.R.S. § 36-401 have the same meaning when used in this chapter.



Suzanne Dandoy M.D., M.P.H.
February 8, 1977
Page Two

Reference to A.R.S. § 36-401 discloses that physician is defined as follows:

19. "Physician" means any person licensed under provisions of title 32, chapter 13 and 17.

These chapters respectively pertain to the licensing of medical doctors and doctors of osteopathy.

Therefore as to persons who may die in Arizona nursing homes and sheltered care facilities (personal care homes)¹ only medical doctors and doctors of osteopathy are authorized to "pronounce death".

It is more difficult from the legal or medical standpoint to pinpoint the meaning of the phrase "pronounce death". We are unable to locate any reference to this phrase or variation thereof in any Arizona statute or reported decision. Moreover, the phrase is not found in any standard medical or legal text nor in any reported decision from other jurisdictions. In the absence of a clearly defined intent, words and phrases are to be construed and understood according to the common and approved usage of the language. Kuts-Cheraux v. Wilson, 71 Ariz. 461, 465, 230 P.2d 512 (1951). Reference to dictionaries discloses that "pronounce" means "to declare officially or ceremoniously; to declare authoritatively or as an opinion", Webster's 3rd International Dictionary, and that death means "the termination or cessation of life; the state or condition of being dead". C.J.S. Death, # 1; Black's Law Dictionary, 4th ed; Websters, supra. Thus, for the purposes of the nursing home and personal care home regulations, "pronounced dead" means an official and authoritative declaration that life has ceased.

1. R9-10-811, Interim definition, in part, states:

"Personal Care Home" is referred to in this Article as "Sheltered Care Home".

Suzanne Dandoy M.D., M.P.H.
February 8, 1977
Page Three

The phrase appears to have no reference and, therefore, no legally recognizable applicability to deaths which may occur in Arizona but outside a nursing home or personal care home.

It is noted, however, that the Arizona Corporation Commission, in its capacity of licensing ambulance drivers and attendants, has for several years maintained a policy that its licensees are not legally qualified to determine when a patient has expired and that all of their patients should be given every life-saving technique until a physician has pronounced the person dead. Exception is made where the body is decapitated, the trunk is completely severed or there is obvious decomposition. This policy is apparently founded upon the proposition that only physicians are legally qualified to perform a diagnosis regarding the health of persons living and until death is determined by a final diagnosis the person should be presumed alive and given every available opportunity to survive. This policy is supportive of public policy that persons in extremis should not be abandoned or neglected.

The Legislature has not directly addressed the questions of how or when death is to be determined or who is qualified to make such a determination. Certain medical practitioners are exclusively authorized to make diagnosis of health related conditions, but if in fact the person has expired it is no violation of those statutes for a non-physician to diagnose or attempt to diagnose the health status of a dead body provided that the means used do not involve a mutilation or removal of any part of the body in violation of A.R.S. §§ 36-~~581~~ or 36-862 relating to crimes involving bodies.

861

2. A.R.S. § 12-509, which concerns a presumption of death from a five year absence does not apply to the question at hand.

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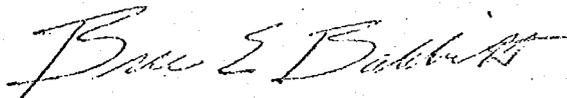
February 8, 1977

Page Four

A.R.S. § 36-327 relating to vital statistics requires a medical certification concerning the cause and manner of death within seventy-two hours after death. A.R.S. § 36-336, also relating to vital statistics, requires the management of hospital, sanitarium or other institutions to make a diligent effort to give immediate notice to persons interested in the welfare of a patient or boarder who dies and prohibits the removal of the dead body until such a person has named the funeral director or person acting as such. Exception is made where none of the designated persons can be located. A.R.S. § 11-593 requires that deaths which have occurred in certain enumerated circumstances be reported to the medical examiner. Clearly these statutes pertain to deaths which have already occurred and have no determinative bearing on the circumstances under which a non-physician might determine whether death has in fact occurred.

While it is apparent that only a medical doctor or doctor of osteopathy may make a pronouncement of death when the person in question has died in a nursing or personal care home we conclude that no such requirement presently exists without the scope of these licensed facilities. Because of the important concerns raised by this question it would be appropriate for the Legislature to address this issue.

Sincerely,



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Attorney General

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