



NEWFOUNDLAND
AND LABRADOR

**HEALTH
BOARDS
ASSOCIATION**

NLHBA Mailing Address

P.O. Box 8234
St. John's, NF
A1B 3N4

NLHBA Delivery Address

Beclin Building
1118 Topsail Road
Mount Pearl, NF
A1N 2M3

Telephone (709)364-7701
Facsimile (709)364-6460
Email nlhba@nlhba.nf.ca
Web Site www.nlhba.nf.ca

**PRONOUNCEMENT
OF DEATH
AND
CERTIFICATE
OF DEATH**

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PURPOSE: This paper is intended to clarify what the legislation in this province states about the pronouncement of death and certificates of death, so that protocols on various aspects of death can be based on full knowledge of what the legislation does and does not allow.

1. LEGISLATION

The *Human Tissue Act*, the *Fatalities Investigations Act*, and the *Vital Statistics Act* are the only pieces of legislation governing the circumstances surrounding death.

The *Human Tissue Act* is the only legislation in this province that deals with the actual pronouncement of death and that pronouncement is only in limited circumstances.

2. DEATHS WHERE THERE WILL BE AN AFTER DEATH TRANSPLANT

Human Tissue Act

Where an after death transplant will take place, section 9 of the Act states that:

- the fact of death must be determined by at least 2 legally qualified medical practitioners in accordance with accepted medical practice; and
- a physician who determines the death of the donor or who has some connection with the proposed recipient cannot take part in the transplant procedure.

3. DEATHS THAT REQUIRE INVESTIGATION

Fatalities Investigations Act

This legislation clarifies which deaths require investigation by the medical examiner or an investigator appointed by the medical examiner and sets out the powers of the investigator and the procedures to follow.

a) (Section 5) All deaths under one of the following circumstances require investigation:

- as a result of violence, accident or suicide;
- unexpectedly when the person was in good health;
- where the person was not under the care of a physician;
- where the cause of death is undetermined; or
- as the result of improper or suspected negligent treatment by a person.

Anyone who believes that a death falls into one of the above categories must notify a medical examiner or an investigator. An investigation will be initiated in order to establish the identity of the person, the date, time and place of death, the cause of death and the manner of death (section 10(1)).

b) (Section 6) A death in a health care facility (not defined in the Act) or another place where patients are receiving treatment or care (which would include a nursing home or long term care facility) must be reported by the person responsible for that facility, if the death occurred:

- as a result of violence, attempted suicide or accident, no matter how long the patient had been hospitalized;
- as a result of suspected misadventure, negligence or accident on the part of the attending physician or staff;
- due to an undetermined cause;
- during or following pregnancy in circumstances that might reasonably be related to pregnancy;
- where a stillbirth or neonatal death has occurred where maternal injury has occurred or is suspected, either prior to admission or during delivery (i.e. stillbirths related to some type of trauma to the mother, including delivery); or
- within 10 days of an operative procedure or the patient is under initial induction, under anaesthesia or during the recovery from anesthesia.

The person responsible for the facility must also immediately notify a medical examiner or investigator where a person is declared dead on arrival or dies in an emergency department as a result of one of the circumstances set out above in 2 a) (section 5 of the Act).

c) (Section 7) Deaths that occur:

- while detained in a jail, penitentiary, guard room, remand centre detention centre, youth facility, lock-up or any other place where a person is in custody;
- while an inmate or patient in treatment facilities or parts (of treatment facilities) or psychiatric divisions of treatment facilities or parts (of treatment facilities), or classes of treatment facilities designated under the *Mental Health Act*;
- while in the custody of the Director of Child Welfare (now a Director of Child, Youth and Family Services); or
- while in the custody of a peace officer

must be reported by the person in charge of the institution or having custody.

d) (Section 8) When a person dies as a result of:

- a disease or ill-health;
- an injury; or
- a toxic substance introduced into the person

probably caused by the person's employment or occupation or former employments or occupations, the person attending that person shall immediately notify a medical examiner or an investigator.

An investigation will be initiated in order to establish the identity of the person, the date, time and place of death, the cause of death and the manner of death (subsection 10(1)).

Death Certificate: (Subsections 10 (4), (5), (6)) When a medical examiner has investigated a death, a death certificate must be completed by the medical examiner himself or herself, or, with the consent of the medical examiner, by a physician or nurse practitioner .

4. DEATHS FROM NATURAL OR EXPECTED CAUSES THAT DO NOT REQUIRE INVESTIGATION

Most deaths, however, do not come under the two previous pieces of legislation and therefore need only to be registered according to the two stage procedure set out in the *Vital Statistics Act*. The *Vital Statistics Act* is scheduled to be reviewed in the near future in order to update the legislation.

Vital Statistics Act

When a person dies in this province, and the death does not require investigation nor has consent to organ donation been given, there are two stages to the registration of the death:

a) **Information of deaths:**

Section 13

- Information of a death in the province must be given within 48 hours to the Registrar of Vital Statistics.
- the obligation to provide the information rests:
 - firstly, on the medical attendant;
 - secondly, on the undertaker, and
 - failing the above, on the next of kin
- Where a death has been investigated, the court or person doing the investigation shall provide a certificate stating the cause of death as determined by the investigation.
- If a person dies in hospital under circumstances not needing an inquiry, the resident physician or chief officer in charge of the hospital shall provide a certificate stating the cause of death to the registering officer of the place in which the deceased is to be buried.

b) ***Certificate of death:***

Section 14

- On receiving information of a death, the registering officer may provide a written statement, or certificate, with the date and place of death, the name, age and sex of the deceased and the cause of death, as nearly as can be determined;
- the certificate can be signed by:
 - the medical attendant,
 - the undertaker, or,
 - some other credible person who witnessed the death, or identified the body after death;
- the registering officer shall, where requested, issue to the person entitled to receive it a certificate setting the facts referred to above, for a fee.

Section 15

- A sexton or other person in charge of a cemetery or burial place must not permit the burial of a person in the cemetery, or burial place without first having received a certificate signed by:
 - a medical attendant,
 - a member of the clergy, or
 - two reliable persons who know the factscertifying to the death of the person for whom burial is required, and setting out, so far as is known, the cause of death and the certificates shall be forwarded monthly to the registering officers concerned.

Please note: in current practice, a burial permit is provided by the funeral director to the authorized person at the cemetery or burial place. The funeral director is then responsible for registering the actual death certificate with the Registrar of Vital Statistics.

5. DISCUSSION

There are several major points to be noted from the legislation:

- Actual pronouncement of death is only regulated where consent for organ donation has been given. Otherwise there are no legal restrictions over who must pronounce death and under what circumstances. This does not prevent individual regions from setting out appropriate protocols.
- One of the important aims for pronouncement of death protocols will be to ensure that a death which should be investigated is not treated as a death from natural or expected causes.
- The death certificate itself has to be signed by a medical examiner, other physician or nurse practitioner only where the death has had to be investigated. Even where a death that was not investigated takes place in a hospital (note that nursing homes are not mentioned in the *Vital Statistics Act*), the chief officer in charge of the hospital can sign the certificate in place of the resident physician.

- A variety of people can sign the death certificate for all other natural or expected deaths.
- There is no legal reason for a funeral director to require a death certificate signed by a physician before removing the deceased from a long term care facility to the funeral home. The concerns of funeral directors could therefore be addressed through a consultation process leading to a protocol in order to provide assurance to all parties that the appropriate protections are in place.

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