



## INDIANA ACADEMY OF FAMILY PHYSICIANS

### Reminder About Death Certificate Laws for IAFP Members

The death certificate law passed in 2011 continues to be the subject of questions from Academy members. To be of assistance, the IAFP compiled a review of the statutes on death certificates to help remind members of their duties. Key parts of the statutes have been marked and IAFP comments were added for clarity.

*This article is provided for general information purposes only and is not legal advice.*

#### IC 16-37-1-3.1

##### Establishes Indiana birth registration and Indiana death registration systems

Sec. 3.1. (a) Beginning January 1, 2011, the state department shall establish the Indiana birth registration system (IBRS) for recording in an electronic format live births in Indiana.

(b) Beginning January 1, 2011, the state department shall establish the Indiana death registration system (IDRS) for recording in an electronic format deaths in Indiana.

(c) Submission of records on births and deaths shall be entered by:

- (1) funeral directors;
- (2) physicians;
- (3) coroners;
- (4) medical examiners;
- (5) persons in attendance at birth; and
- (6) local health departments;

using the electronic system created by the state department under this section.

(d) A person in attendance at a live birth shall report a birth to the local health officer in accordance with IC 16-37-2-2.

(e) Death records shall be submitted as follows, using the Indiana death registration system:

(1) The:

(A) **physician last in attendance upon the deceased; or**

(B) **person in charge of interment;**

**shall initiate the document process.** If the person in charge of interment initiates the process, the person in charge of interment shall electronically submit the certificate required under IC 16-37-3-5 to the physician last in attendance upon the deceased not later than five (5) days after the death.

**(2) The physician last in attendance upon the deceased shall electronically certify to the local health department the cause of death on the certificate of death not later than five (5) days after:**

**(A) initiating the document process; or**

**(B) receiving under IC 16-37-3-5 the electronic notification from the person in charge of interment.**

(3) The local health officer shall submit the reports required under IC 16-37-1-5 to the state department not later than five (5) days after electronically receiving under IC 16-37-3-5 the completed certificate of death from the physician last in attendance.

*As added by P.L.61-2009, SEC.5. Amended by P.L.156-2011, SEC.33.*

#### IC 16-37-3-4

##### Securing personal data for certificates

Sec. 4. **The physician last in attendance upon the deceased or the person in charge of interment shall secure the personal data** required by the state department by rules adopted under IC 4-22-2 **for preparation of the certificate of death or of stillbirth from the persons best qualified to give the information.**

*As added by P.L.2-1993, SEC.20. Amended by P.L.156-2011, SEC.36.*

The word “shall” in these statutes means that it is required by law for the physician in last attendance of the deceased to certify the cause of death. Often the person in charge of interment (funeral director) initiates the death certificate and then sends the death certificate to the physician in last attendance to certify the cause of death.

So the question here is: Who qualifies as the “physician last in attendance upon the deceased”?

#### **IC 16-18-2-282.2**

##### **Physician last in attendance**

Sec. 282.2. (a) **"Physician last in attendance" means the individual who pronounced the time of death for a deceased individual.**

(b) For purposes of IC 16-37-3, the term includes an individual who holds any medical license issued under IC 25-22.5.

*As added by P.L.156-2011, SEC.9.*

From the above statute we know that if you are the physician that pronounced the time of death, then you are the physician in last attendance.

If you did not pronounce the time of death, you are not required to file the death certificate. If you receive a request from a funeral director to complete a death certificate but you are not the “physician in last attendance” instead of letting a death certificate sit uncompleted, it would be wise to alert the funeral director.

If you were the physician who pronounced the individual’s time of death and you do not file a death certificate or you file it late, you are subject to sanctions. Which is what we will explore next.

#### **IC 16-37-1-13**

##### **Violations; sanctions**

Sec. 13. (a) Except as provided in subsection (c) or (d) or as otherwise provided, a person who recklessly violates or fails to comply with this chapter commits a Class B misdemeanor.

(b) Each day a violation continues constitutes a separate offense.

**(c) A person who:**

**(1) is licensed under IC 25 in a profession listed in section 3.1(c) of this chapter; and**

**(2) recklessly violates or fails to comply with this chapter;**

**is subject only to sanctions under IC 25-1-9-4(a)(3).**

(d) The state department may not begin sanctioning a person for failing to submit a document in electronic format as required in section 3.1 of this chapter until January 1, 2012.

#### **IC 25-1-9-4**

##### **Standards of professional practice; findings required for sanctions; evidence of foreign discipline**

Sec. 4. (a) **A practitioner shall conduct the practitioner's practice in accordance with the standards established by the board regulating the profession in question and is subject to the exercise of the disciplinary sanctions under section 9 of this chapter if, after a hearing, the board finds:**

(1) a practitioner has:

- (A) engaged in or knowingly cooperated in fraud or material deception in order to obtain a license to practice, including cheating on a licensing examination;
- (B) engaged in fraud or material deception in the course of professional services or activities;
- (C) advertised services in a false or misleading manner; or
- (D) been convicted of a crime or assessed a civil penalty involving fraudulent billing practices, including fraud under:
  - (i) Medicaid (42 U.S.C. 1396 et seq.);
  - (ii) Medicare (42 U.S.C. 1395 et seq.);
  - (iii) the children's health insurance program under IC 12-17.6; or
  - (iv) insurance claims;
- (2) a practitioner has been convicted of a crime that:
  - (A) has a direct bearing on the practitioner's ability to continue to practice competently; or
  - (B) is harmful to the public;
- (3) a practitioner has knowingly violated any state statute or rule, or federal statute or regulation, regulating the profession in question;**

The specific sanctions the Medical Licensing Board could assign are detailed in the statute below.

#### **IC 25-1-9-9**

##### **Disciplinary sanctions**

Sec. 9. (a) The board may impose any of the following sanctions, singly or in combination, if it finds that a practitioner is subject to disciplinary sanctions under section 4, 5, 6, 6.7, or 6.9 of this chapter or IC 25-1-5-4:

- (1) Permanently revoke a practitioner's license.
  - (2) Suspend a practitioner's license.
  - (3) Censure a practitioner.
  - (4) Issue a letter of reprimand.
  - (5) Place a practitioner on probation status and require the practitioner to:
    - (A) report regularly to the board upon the matters that are the basis of probation;
    - (B) limit practice to those areas prescribed by the board;
    - (C) continue or renew professional education under a preceptor, or as otherwise directed or approved by the board, until a satisfactory degree of skill has been attained in those areas that are the basis of the probation; or
    - (D) perform or refrain from performing any acts, including community restitution or service without compensation, that the board considers appropriate to the public interest or to the rehabilitation or treatment of the practitioner.
  - (6) Assess a fine against the practitioner in an amount not to exceed one thousand dollars (\$1,000) for each violation listed in section 4 of this chapter, except for a finding of incompetency due to a physical or mental disability. When imposing a fine, the board shall consider a practitioner's ability to pay the amount assessed. If the practitioner fails to pay the fine within the time specified by the board, the board may suspend the practitioner's license without additional proceedings. However, a suspension may not be imposed if the sole basis for the suspension is the practitioner's inability to pay a fine.
- (b) The board may withdraw or modify the probation under subsection (a)(5) if it finds, after a hearing, that the deficiency that required disciplinary action has been remedied, or that changed circumstances warrant a modification of the order.

But, because of the existence of the following statute, physicians may expect to receive a fine from the medical licensing board for certifying late or failing to certify the cause of death if you are the physician in last attendance.

**IC 25-22.5-2-8**

**Implementation of program to investigate violations; penalties; appeal; report certain actions to National Practitioner Data Bank; physician compliance fund**

**Sec. 8. (a) The board shall implement a program to investigate and assess a civil penalty of not more than one thousand dollars (\$1,000) against a physician licensed under this article for the following violations:**

- (1) Licensure renewal fraud.
- (2) Improper termination of a physician and patient relationship.
- (3) Practicing with an expired medical license.
- (4) Providing office based anesthesia without the proper accreditation.
- (5) Failure to perform duties required for issuing birth or death certificates.**

(6) Failure to disclose, or negligent omission of, documentation requested for licensure renewal.

(b) An individual who is investigated by the board and found by the board to have committed a violation specified in subsection (a) may appeal the determination made by the board in accordance with IC 4-21.5.

(c) In accordance with the federal Health Care Quality Improvement Act (42 U.S.C. 11132), the board shall report a disciplinary board action that is subject to reporting to the National Practitioner Data Bank. However, the board may not report board action against a physician for only an administrative penalty described in subsection (a). The board's action concerning disciplinary action or an administrative penalty described in subsection (a) shall be conducted at a hearing that is open to the public.

(d) The physician compliance fund is established to provide funds for administering and enforcing the investigation of violations specified in subsection (a). The fund shall be administered by the Indiana professional licensing agency.

(e) The expenses of administering the physician compliance fund shall be paid from the money in the fund. The fund consists of penalties collected through investigations and assessments by the board concerning violations specified in subsection (a). Money in the fund at the end of a state fiscal year does not revert to the state general fund.

Physicians should also be aware that in cases of an unnatural death the attending physician should contact the local coroner.

**IC 16-37-3-7**

**Unnatural cause of death; coroner's investigation**

**Sec. 7. (a) If the circumstances suggest that the death was caused by other than natural causes, the following individual shall refer the case to the coroner for investigation:**

**(1) The attending physician.**

**(2) If there is no attending physician or the attending physician has failed to refer the case to the coroner, the local health officer.**

(b) The coroner shall report a death coming under the coroner's supervision upon official death certificate blanks to the health officer having jurisdiction not more than three (3) days after the inquest is held. Another person may not report the death.