

Death certificates

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In any legal proceeding that involves the death of an individual, regardless of whether or not it is a health care liability claim, the importance of the information documented on the decedent's death certificate cannot be overstated. For this reason, completion and execution of these documents should not be taken lightly.

The cause of an individual's death is of paramount importance in both criminal and civil legal proceedings. In criminal proceedings the focus is whether or not the conduct of the accused killed the victim. In civil proceedings the focus is not necessarily so limited. In personal injury actions, including health care liability claims, the key issue is whether or not the conduct of the defendant(s) caused the decedent's death. Cause of death, however, is also key in insurance and workers' compensation claims. In these claims, the cause of death can determine whether or not the surviving spouse and/or children are entitled to death benefits.

The cause of death documented in the decedent's death certificate may very well be the most significant single piece of legal evidence in any dispute in which the cause of death is at issue. In fact, because of certain statutory provisions, what is documented on the death certificate might arguably be more important than what is found on autopsy. For example, under Texas law, a "death certificate certified by the state registrar is prima facie evidence of the facts stated in the record" (1). "Prima facie" evidence is evidence, if not rebutted, that is sufficient to prove a particular proposition or fact. Thus, the cause of death listed in the death certificate, if not rebutted, is sufficient to legally establish the decedent's cause of death. While the "facts" contained in the death certificate are subject to explanation and rebuttal (2), inattention to detail when completing death certificates can cause significant, unnecessary problems for those involved in future legal proceedings in which the cause of death is a central issue.

In addition to the ability to "rebut" the cause of death listed in a death certificate certified by a state registrar, litigants have other means by which they can attack the "facts" set forth in the certificate. For example, the cause of death can be challenged as "hearsay," and the qualifications of the person who completed the certificate can be contested. Oftentimes, however, these challenges are not successful.

For example, hearsay objections can usually be overcome easily by virtue of the fact that the death certificate is a record of vital statistics (3) and/or on the basis that an expert witness, like a physician, can testify about the facts or data upon which his or her opinion is based, even if those facts or data are hearsay (4). Similarly, the Texas Rules of Evidence requirements as to the qualifications needed to express an opinion about cause of death have been liberally construed in certain circumstances (5). Given these circumstances, one has to anticipate that the information contained in a death certificate will be admitted as evidence in a legal proceeding in which the cause of death is at issue. In that situation, generally one side touts the death certificate as an impartial, official document, and the other side attacks either the conclusions contained in the death certificate or the knowledge, skill, and qualifications of the individual who executed the death certificate. Occasionally, a situation exists in which the individual who executed the death certificate must defend the accuracy of his or her statement (6).

The complications that can arise from poorly reasoned or poorly based facts on a death certificate are far-reaching: in a health care liability claim, such "facts" can prevent the dismissal of a case at summary judgment and require the defendant health care providers to either take the case to trial or settle it; in an insurance or workers' compensation dispute, they can lead to denial of a death claim to beneficiaries. These are significant and important matters.

Hinojosa v. Columbia/St. David's Healthcare System involved a wrongful death and survival claim brought by the parents of a child who died from alleged medical negligence during labor and delivery. The matter at issue was whether or not there was a "live birth." Under Texas law, if the child was stillborn (not a "live birth"), neither a wrongful death nor a survival claim could be brought on the dead child's behalf, and the claims would be dismissed (6).

The defendant health care providers moved for dismissal of the claims on the basis that the child was stillborn. In support of their position, the defendants submitted numerous affidavits

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and sworn testimony from health care providers present for the child's delivery establishing that at the time of birth the child had no heart tones, there was no indication that the child ever breathed following birth, and they were unsuccessful in their attempts to resuscitate the child. A neonatologist who came to attempt to resuscitate the child, and who was not a defendant, testified that he did not believe the child had been born "alive." Moreover, the autopsy report referred to the child as "stillborn" and concluded that based on examination of the child's lungs, in reasonable medical probability, the child "had not breathed following delivery" (6).

Despite this overwhelming medical evidence that the child was not born alive, the court denied the defendants' request for dismissal because of the information contained in the child's death certificate. The death certificate listed the child's "duration of life" at 20 minutes, and the court held that that constituted prima facie evidence that the child "survived live birth" (6).

Stroburg v. Insurance Company of North America was a life insurance dispute. The claim arose out of the death of an individual in a motor vehicle accident (MVA). The defendant insurance carrier sought to deny life insurance benefits to the beneficiaries of the decedent on the basis of a policy exclusion for losses (death) caused by illness or disease unrelated to accidents. The key issue was whether or not the insured's death resulted from injuries sustained in the MVA or from a cause independent of those injuries (2).

The insurance company claimed that the policy exclusion applied and denied benefits since the death certificate mentioned an immediate cause of death as being a "bleeding duodenal ulcer" (which caused the driver to pass out and crash) and listed "other significant conditions contributing to death" as including "bullous emphysema" (which purportedly complicated attempts to save the decedent following the MVA). At trial, the physician who executed the death certificate testified that the decedent's death was due to "overwhelming injuries he suffered at the time of his accident" and that at the time of his death "there was no other reason for his death other than the overwhelming injuries that he had received" from the MVA (2).

At trial of the case, the jury found that the decedent's death was caused by the MVA and that the bleeding ulcer and emphysema did not contribute to his death. The insurance company appealed this verdict and the Austin Court of Appeals reversed the trial court verdict in favor of the beneficiaries and ruled that since the cause of death included reasons other than the injuries suffered from the MVA (bleeding ulcer and emphysema), as set forth in the death certificate, the policy exclusion applied (4). While the Texas Supreme Court reversed the Austin Court of Appeals' rationale and remanded the case back for resolution, this case further illustrates how death certificates can significantly complicate legal proceedings.

Texas Workers' Compensation Commission v. Wausau Underwriters Insurance involved a claim for workers' compensation death benefits. In this matter, the widow of a security guard

who died on the job applied for workers' compensation death benefits. Investigation of the incident revealed that the decedent had fallen to his death unobserved on a cold, rainy, and windy night during which there was also lightning. Based on his autopsy, the medical examiner found the cause of death to be a "crushed chest, abdomen, and pelvis." Further, based on apparently cursory reports from investigators of the death (presumably because of the bad weather), the medical examiner concluded that the decedent had committed suicide (7).

The Texas Workers' Compensation Commission (TWCC), however, awarded the decedent's widow death benefits for the death of her husband. The insurance carrier sought judicial review of that award in the district court. For purposes of that case, the parties agreed that if the decedent's death was determined to be a suicide, it would not be covered by workers' compensation benefits, since it would not have been an action within the course and scope of the decedent's employment. At trial, the jury concluded that the decedent's death was the result of suicide, and the TWCC award was set aside. The widow appealed to the Houston Court of Appeals (7).

The Houston Court of Appeals ruled that while the death certificate was not admissible as prima facie evidence of the decedent's suicide under the Texas Health & Safety Code (since it was not certified by the state registrar), the death certificate was admissible as a hearsay exception and the medical examiner's opinion set forth within the death certificate about the decedent's death being the result of suicide ("suicide—jumped from height") was admissible as reasonably based expert testimony. On these bases, the Court of Appeals affirmed the trial court judgment against the widow, and she received no workers' compensation death benefits. The dissent to this opinion pointed out concern with this ruling, given that the only evidence came from "declaring the medical examiner clairvoyant" (7).

These cases illustrate the importance of cause of death conclusions set forth in death certificates and the far-reaching effect that these conclusions can have in legal proceedings. The opinions and conclusions of those who complete and execute these forms can significantly impact numerous individuals and entities on very important legal issues. Accordingly, careful consideration, caution, and thought should go into completing these reports.

1. Tex. Health & Safety Code Ann., Section 191.052 (Vernon 2005).
2. *Stroburg v. Insurance Company of North America*, 464 S.W.2d 827 (Tex. 1971).
3. See Tex. R. Evid., Rule 803 (9); *Martinez v. State*, 1996, WL 179370 at *1 (Tex. App.—Dallas Apr. 16, 1996, no pet.).
4. See Tex. R. Evid., Rule 705 (a).
5. See *Gates v. State*, 24 S.W. 3d 439, 443–444 (Tex. App.—Houston [1st Dist.] 2000, pet. ref'd).
6. *Hinojosa v. Columbia/St. David's Healthcare System*, 106 S.W.3d 380 (Tex. App.—Austin, 2003, no pet.).
7. *Texas Workers' Compensation Commission v. Wausau Underwriters Insurance*, 127 S.W.3d 50 (Tex. App.—Houston [1st Dist.] 2003, pet. ref'd).