Death Certificate Responsibilities

Many deaths are referred to the Office of Chief Medical Examiner (OCME) for review and determination of jurisdiction. If there is reason to believe that the death is related to injury, drugs, foul play, or if the person is less than 50 years old with no medical history, the OCME will generally take jurisdiction.

However, once the OCME has determined that the death does not meet the legal criteria to become a medical examiner case, the completion of the death certificate becomes the responsibility of the primary health care provider (PHCP, i.e., attending physician, physician’s assistant or nurse practitioner). The OCME often hears from PHCPs that their patient has no reason to die and they are not comfortable certifying the death, even though the PHCP has been treating that patient for one or more high risk diseases. While it may be true that the disease has been well controlled in treatment, the presence of hypertension, hyperlipidemia, obesity, and diabetes are all associated with an increased risk of sudden death. Since the death certificate is a legal and not a scientific document, the PCHP is not required to establish a specific anatomical reason for the death. The PCHP may feel an autopsy is needed but because the disease provides adequate information for a reasonable cause of death, the OCME will not take jurisdiction in that death. The requirement for certification is a statement of the general disease process or condition most likely responsible for the death. As an example, a cause of death such as Hypertensive Cardiovascular Disease or Acute Coronary Syndrome, n. o. s. is perfectly acceptable for a patient who had been diagnosed with hypertension. In addition, Maine statutes provide that elderly patients, even without such known risk factors, may be referred back to the PCHP for certification if the death appears to be due to natural causes.

The use of the word “probable” is also acceptable. Thus, a cause such as Probable Arrhythmia due to Valvular (or Atherosclerotic) Cardiovascular Disease is also acceptable. However, cardiac arrest or cardiopulmonary arrest is not acceptable because they do not describe any disease process, just the final event.

If the PCHP is out of town and has left their practice in the care of an on-call PCHP, Vital Records does allow that on-call PCHP to sign the death certificate as the ‘Certifying PHCP’ after reviewing the medical records. Thus, it is important that all PCHPs establish a method for their covering PHCPs to be able to access the records to provide this important service for their patient’s family.

In cases where the OCME has referred cases back to PHCP to certify, you may be assured that the OCME has reviewed the information from police or rescue personnel and has inventoried medications at the scene. If the PHCP is aware of a possible issue with substance abuse, suicidal tendencies or domestic violence, the OCME should be made aware so that additional investigation can be done. While certification of death is sometimes frustrating because there is usually less information available than one has when making a diagnosis for treatment, it is still possible to make a reasonable determination based on prior history and the circumstances of the death. Signing the death certificate is the final step in patient care, the completion of the PHCP/Patient relationship and the responsibility of every PHCP.

Accessing Family Medical Records

It is illegal and unethical for physicians and physician assistants to access the medical records of family members without explicit authorization.

Physicians and physician assistants should know that state and federal laws make medical records confidential. In addition to the legal confidentiality of medical records, physicians and physician assistants should know that they have an ethical obligation to maintain the confidentiality of medical records of family members. The ethical and legal principles of confidentiality apply to the medical records of the family members of a physician or physician assistant. Physicians and physician assistants should be careful to avoid violating these legal and ethical principles, especially in light of ready access to electronic medical records.

The American Medical Association Code of Medical Ethics, Principle 7.025, “Records of Physicians: Access by Non-Treating Medical Staff,” provides in relevant part:

Physicians have a responsibility to be aware of the appropriate guidelines in their health care institution, as well as the applicable federal and state laws. Only physicians or other healthcare professionals who are involved in managing the patient, including providing consultative, therapeutic, or diagnostic services, may access the patient’s confidential medical information. All others must obtain explicit consent to access the information.”

Maine law makes healthcare information confidential. Healthcare information, including the medical records of family members, “may not be disclosed by a health care practitioner or facility” except as authorized by law. In addition, Maine law specifically permits a physician or physician assistant, when acting as an on-call PHCP, Vital Records does allow that on-call PCHP to sign the death certificate as the ‘Certifying PHCP’ after reviewing the medical records. Thus, it is important that all PCHPs establish a method for their covering PHCPs to be able to access the records to provide this important service for their patient’s family.

Continued on page three
Adverse Licensing Actions 2010

Revocation, Surrender, Suspension and License Denials

ANDROKITES, ALICE C., M.D.  [License # 014624]  05/11/10
On May 11, 2010 the Board voted to accept the licensee’s surrender of her Maine medical license. The licensee surrendered her license while under investigation for competence issues.

ARATO, HOLLY G. M.D.  [License # 013391]  01/12/10
The licensee agreed the Board had evidence to conclude that: (1) A. she violated the terms of her consent agreement, and (2) B. she currently suffers from a mental or physical condition that may affect her ability to practice medicine in a manner that endangers either the health or safety of patients. As discipline for the foregoing conduct, the licensee agrees to the immediate and voluntary surrender of her Maine medical license.

COOPER, JAMES C., M.D.  [License # TD081107]  10/12/10
The Board voted to reprimand the licensee and deny his appeal of the preliminary denial of his application for a permanent Maine medical license. This action is based on unprofessional conduct.

GRIFFIN, MICHAEL J., M.D.  [License # 010691]  07/13/10
The licensee voluntarily surrendered his Maine medical license effective July 13, 2010 while under investigation.

MCBRIDE, ELIZABETH A., M.D.  [License # 015045]  10/12/10
Thirty (30) day summary suspension of Maine medical license based on the imminent threat to the public posed by the licensee’s continued practice of medicine.

MICHALOWSKI, ELLEN E., M.D.  [License # 014320]  07/13/10
At the conclusion of an Adjudicatory Hearing beginning on April 13, 2010 and continued on July 13, 2010 the Board voted to revoke the licensee’s Maine medical license effective July 13, 2010. This action is based on multiple violations, including fraud or deceit in the practice of medicine, substance abuse issues, unprofessional conduct, incompetence and violation of terms of probation.

NORTHROP, GEORGE E., M.D.  [License # TD081054]  11/09/10
The licensee agrees that the Board has sufficient evidence from which it could reasonably conclude that he: (1) engaged in habitual substance abuse that was foreseeably likely to result in his performing services in a manner that endangered the health or safety of patients, and (2) engaged in unprofessional conduct by self-prescribing medication and by obtaining opioid medication for his personal use by issuing prescriptions in the name of his wife, family and/or friends. The licensee agrees to: (1) accept a reprimand; (2) pay a civil penalty of two thousand dollars and zero cents ($2,000.00); and (3) withdraw his appeal of the Board’s decision to preliminarily deny his application for a permanent Maine medical license, thereby making the Board’s decision to preliminarily deny his pending application final. This action is based on substance abuse issues and unprofessional conduct.

YORK, DAVID A., M.D.  [License # 017967]  07/13/10
The licensee voluntarily surrendered his Maine medical license effective July 13, 2010. This action is based on incompetence and unprofessional conduct related to the licensee’s downloading of child pornography.

Restricted Licenses

BOBKER, DANIEL, M.D.  [License # 013940]  01/27/10
By Consent Agreement, the Board issued a conditional license. This action is based on violation of a previous Consent Agreement and substance abuse issues. The licensee must undergo substance abuse monitoring and must have a Board approved practice location. The licensee agrees to work no more than twenty 20 hours per week (daytime hours only), and shall not take call. The licensee shall have a Board approved Physician Monitor and shall practice pursuant to a written plan of supervision.

BUTLERS, GEORGE H., M.D.  [License # 011759]  09/14/10
By Consent Agreement, the licensee agrees to accept a conditional license to practice medicine in the State of Maine based on the lack of recent medical practice. The licensee shall limit his practice of medicine to a closely supervised primary care medical practice location approved by the Board and will practice under the close supervision of a board certified primary care physician approved by the Board.

TESSIER, PAUL A., M.D.  [License # 006620]  09/14/10
The licensee agrees that the Board has sufficient evidence from which it could conclude that he engaged in unprofessional conduct by conducting F.A.A. aviation medical examinations without having an “active” Maine medical license. As discipline for the unprofessional conduct, the licensee agrees to: (1) accept a reprimand from the Board, and (2) pay a civil penalty of three thousand dollars and zero cents ($3,000.00) on or before September 14, 2011. The Board agrees to issue the licensee an “active” Maine medical license subject to the following conditions: (1) the licensee will limit his practice of medicine to performing as an aviation medical examiner, conducting aviation medical examinations for the F.A.A. and Transport Canada, and performing adult physical examinations for the Coast Guard, the Department of Transportation or life insurance companies; (2) he will not apply to the Board for a full and unrestricted “active” medical license; (3) he will keep careful records of all of his examinations; (4) he will not hold himself out to the public as a fully practicing physician; (5) he will not advertise services other than as an aviation medical examiner; (6) he will not seek hospital privileges, and (7) he will keep current with the continuing medical education requirements.

For complete information on these or any disciplinary actions, visit www.docboard.org/me/discipline/dw_actions.html
Warnings and Reprimands

FESTINO, MICHAEL J., M.D. [License # 006038] 10/12/10
The licensee admits that the Board has sufficient evidence from which it could reasonably conclude that he (1) self prescribed controlled drugs (engaged in self treatment); (2) provided medical treatment, including prescribing controlled drugs to H.D., with whom he had a close, personal relationship; and (3) failed to create and maintain appropriate medical records. The licensee agrees to: (1) accept a reprimand; (2) pay a monetary penalty of one thousand dollars and zero cents ($1,000.00); and (3) successfully complete a course pre-approved by the Board in medical record-keeping within twelve (12) months of the execution of this Consent Agreement. This action is based on unprofessional conduct.

SPEAR, MARK A., M.D. [License # 017044] 06/08/10
The licensee concedes that the Board has evidence from which it could conclude that the alleged conduct occurred and could constitute fraud or deceit in obtaining a license. As discipline for complaint CR 10-092 the licensee agrees to: (1) accept a reprimand; and (2) pay a civil penalty of five hundred dollars ($500.00). This action is based on fraud or deceit in obtaining a license.

Monitoring

KENISTON-DUBOCQ, LINDA, M.D. [License # 012260] 04/30/10
The licensee admits that the Board has sufficient evidence from which it could conclude that the licensee engaged in habitual substance abuse that was foreseeably likely to result in her performing services in a manner that endangered the health or safety of patients. The licensee agrees to accept the following discipline: the licensee’s Maine medical license will be placed on probation for five (5) years with the following conditions: (1) the licensee agrees to abstain from the use of any and all prohibited substances as outlined in the Consent Agreement; (2) the licensee agrees that she shall obtain all prescription medication(s), with the exception of medications prescribed by her treating psychiatrist, from a single primary care physician approved by the Board; (3) the licensee will be subject to substance abuse monitoring; and (4) the licensee shall provide the Board with all locations where she practices medicine and shall permit the Board to conduct announced and/or unannounced inspections of all locations where she practices medicine. This action is based on substance abuse issues.

SINGER, CLIFFORD M., M.D. 07/29/10
By Consent Agreement, the Board granted the licensee a conditional Maine medical license with the following terms and conditions: (1) he will not use sample medication without a prescription for his own treatment; (2) he will only use medications prescribed by his treating physician; (3) he understands and agrees that he will complete all medical record documentation in a timely manner; (4) he agrees to have a Professional Monitor approved by the Board review his medical charts for a period of three (3) years; and (5) he agrees to attend and successfully complete the Case Western Intensive Course in Medical Records Keeping with Individual Preceptorships within six (6) months of the execution of this Consent Agreement. This action is based on unprofessional conduct.

Accessing Family Medical Records

Continued from page one

Maine law permits a health care practitioner or facility to disclose health care information to “a family or household member” without authorization “unless expressly prohibited by the [patient]...” However, the decision to disclose the healthcare information should be made by the facility or practitioner that is involved in managing the patient’s care and not the physician family member who may have access to electronic medical records at the facility.

In many circumstances—but not always—parents are the legal guardians and authorized representatives for the medical care and treatment of their minor children. The medical records of adult children, spouses, ex-spouses, and other adult family members are confidential, and may not be accessed without appropriate authorization. Intentional violation of Maine medical record confidentiality laws is punishable by a civil penalty of up to $10,000.

In addition, it could constitute “unprofessional conduct” and grounds for discipline of licensure by the Maine Board of Licensure in Medicine.

In addition to State law, the Healthcare Portability and Accountability Act (HIPAA) limits a physician/physician assistant’s ability to access a family member’s medical records without appropriate authorization.

1American Medical Association Code of Medical Ethics, principle 7.025.
2“Health care information” means information that directly identifies an individual and relates to an individual’s “physical, mental or behavioral condition, personal or family medical history or medical treatment or the healthcare provided to that individual.” 22 M.R.S.A. § 1711-C(15)(E).
32 M.R.S.A. § 3282-A(2)(F).
4“Disclosure” means the release, transfer of or provision of access to health care information in any manner. 22 M.R.S.A. § 1711-C(1)(B).
5“Healthcare practitioner” means a person licensed in Maine to provide health care (preventative, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, treatment). 22 M.R.S.A. § 1711-C(1)(F).
622 M.R.S.A. § 1711-C(2).
722 M.R.S.A. § 1711-C(5).
822 M.R.S.A. § 1711-C(3).
9Authorized representative” means a “legal guardian, “agent... minor’s parent, legal guardian or guardian ad litem.” 22 M.R.S.A. § 1711-C(1)(A).
10 22 M.R.S.A. § 1711-C(6)(C).
1122 M.R.S.A. § 1711-C(13).
1232 M.R.S.A. § 3282-A(2)(F).
1345 C.F.R. § 160.103.
Notify the Board of Business and Home Address Changes Immediately

Many people experience problems at renewal time because they have neglected to notify the Board of an address change. To prevent delays or even loss of license due to lapse, notify the Board immediately of any change in your addresses.

To verify that the Board has your correct addresses on file, visit either of the following sites:

www.maine.gov/md or www.docboard.org/me/me_home.htm and click on “Find a Licensee” in the lower left.

If the address is incorrect, simply send a signed note with changes to the Board or submit the new information online at www.maine.gov/online/doclicensing/.

Confidential Help Available

The Medical Professionals Health Program: Confidential professional help for substance abuse is available by calling (207) 623-9266. For more information visit the MPHP website at www.mainemed.com/health/index.php or send an email to mphp@mainemed.com.

2011 Meeting Schedule

The Board of Licensure in Medicine meets the second Tuesday of each month at 9:00am in the Board offices at 161 Capitol Street in Augusta.

| January 11 | July 12 |
| February 8 | August 9 |
| March 8 | September 13 |
| April 12 | October 11 |
| May 10 | November 8 |
| June 14 | December 13 |

The PA Committee meets on the following dates at 8:00am in the Board offices at 161 Capitol Street in Augusta.

| March 1 | September 6 |
| June 7 | December 6 |

Questions? Contact the Board office at (207) 287-3601