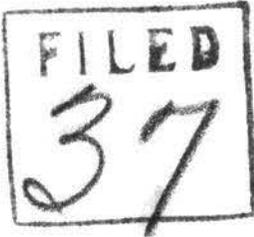


SIGNING DEATH CERTIFICATES:
DEFINITION OF "PHYSICIAN":

A dentist is not a "physician" as that term is used in the Laws of Missouri authorizing a "physician" to sign a death certificate under certain circumstances.



August 1, 1957

H. M. Hardwicke, M. D.
Acting Director
Division of Health
Jefferson City, Missouri

Dear Dr. Hardwicke:

Your recent request for an official opinion reads:

"We have received a request for clarification of the law as it may relate to practicing dentists in the State of Missouri. Apparently this matter is of some very real importance to those dentists who, either in hospitals or in their private offices, give general anesthesia and as a result are presented with the possibility of sudden death of the patient from anesthetic causes. The question of whether a dentist licensed in the State of Missouri has a right to sign a death certificate is an important one, particularly in relation to the organization of a hospital staff which accepts dentists as members.

"The memorandum in question is quoted in its entirety for your information:

'I have been appointed to a committee of the St. Margaret's Hospital Dental Staff to investigate the legality of a doctor of dental surgery signing a death certificate.

'Kindly inform me as to the interpretation of the Revised Statutes of Missouri, 1949, (L. 1947, VII, p 232, PP 14) in regard to the term "physician". In the index, "physician" appears to be an all inclusive term including not only doctors of dentistry, but also osteopathic physicians and chiropractors.'

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Section 193.140, RSMo 1949, which is the statute to which you refer, provides as follows:

"Person in charge of interment to secure what facts--referral to coroner, when.--

(1) The person in charge of interment shall file with the local registrar of the district in which the death or stillbirth occurred or the body was found a certificate of death or stillbirth within 3 days after the occurrence.

"(2) In preparing a certificate of death or stillbirth the person in charge of interment shall obtain and enter on the certificate the personal data required by the division from the persons best qualified to supply them. He shall present the certificate of death to the physician last in attendance upon the deceased or to the coroner having jurisdiction who shall thereupon certify the cause of death according to his best knowledge and belief. He shall present the certificate of stillbirth to the physician, midwife or other person in attendance at the stillbirth, who shall certify the stillbirth and such medical data pertaining thereto as he can furnish.

"(3) Thereupon the person in charge of interment shall notify the appropriate local registrar, if the death occurred without medical attendance, or the physician last in attendance fails to sign the death certificate. In such event the local registrar shall inform the local health officer and refer the case to him for immediate investigation and certification of the cause of death prior to issuing a permit for burial, cremation or other disposition of the body. When the local health officer is not a physician or when there is no such officer, the local registrar may complete the certificate on the basis of information received from relatives of the deceased or others having knowledge of the facts. If the circumstances suggest that the death or stillbirth was caused by other than natural causes, the local registrar shall refer the case to the coroner for investigation and certification."

The following cases hold that a dentist is not a "physician" as that term is used in the law.

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In the case of *People v. De France*, 62 N.W. 709, at l.c. 711, the Supreme Court of Michigan stated:

"Counsel contend that the testimony of the witness Land was a privileged communication, under the provisions of section 7516, How. St., which provides that 'no person duly authorized to practice medicine or surgery, shall be allowed to disclose any information which he may have acquired in attending any patient in his professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon.' The question presented is whether this language includes a dentist. At the common law, information gained by a physician or surgeon while in attendance upon his patient was not privileged. The purpose of this statute was to throw around such disclosures as the patient is bound to make for the information of his attending physician the cloak of secrecy, and the prime object of the act was to invite confidence in respect to ailments of a secret nature, and the spirit of the act would not include a case where the infirmity was apparent to every one on inspection. In practice, however, the statute has not been so limited in construction, for the reason that the words of the act are broad enough to include any information necessary to enable the physician to prescribe or the surgeon to act. Nevertheless, the purpose of the act is to be considered in determining whether the dentist was intended to be included within its terms. Certainly the terms 'dentist' and 'surgeon' are not interchangeable, and if a dentist is to be held to be a surgeon, within the meaning of this act, it must be because his business as a dentist is a branch of surgery. It is apparent that the act related to general practitioners, and to those whose business as a whole comes within the definition of 'physician' or 'surgeon.' A dentist is one whose profession it is to clean and extract teeth, repair them when diseased, and replace them, when necessary, by artificial ones. The only case which we have found which bears directly upon this question is that of

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State v. Fisher (Mo. Sup.) 24 S.W. 167, in which a majority of the supreme court of Missouri held that a dentist is not to be considered a surgeon. * * *."

In the case of The State ex rel. v. Fisher (119 Mo. 344), the issue before the Court was whether a dentist was exempt from jury service. Exemption was granted by a dentist on the basis of the following portion of Section 6062, RSMo 1889, which exempted a "person exercising the functions of a * * * practitioner of medicine." In regard to the claim of the dentist relator that he came within the provisions of this portion of the statute, the court, in holding that the relator did not come within this statute, stated:

"Here it can not be successfully claimed that relator finds any exemption in the terms of the statute, for certainly he is not a 'practitioner of medicine and surgery in any of their departments,' as defined in section 6871, nor does he exhibit the qualifications required by that section, to wit, a diploma from a legally chartered medical institution in good standing and a certificate from the board of health. His contention, stripped of all verbiage and disguises, and stated baldly and boldly, simply is, that, inasmuch as he possesses a diploma, granted him by a reputable dental college, and a certificate of the city register showing the filing of that diploma and the enrollment of his name on the 'Roll of Dental Surgeons,' that, therefore, he is entitled to the same exemptions from jury service as if, instead of qualifying under the provisions of section 6889, he had actually qualified under those of section 6871. This contention, for reasons already given, can not prevail; it will not bear a moment's scrutiny. Either relator is a practitioner of medicine and surgery, or he is not. If not, that determines this litigation against him; if he is such practitioner, then this fact avails him nothing until he complies with the terms and conditions of section 6871 and its associate sections. The law, by the terms it employs, means a lawful 'practitioner of medicine,' not one who fails to comply with its requirements. Relator makes no pretense of such compliance. The statute in question being

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couched in unambiguous terms, its words are to be taken 'in their plain or ordinary and usual sense. R. S. 1889, Sec. 6570."

In the case of State v. McMinn, 24 S.E. 523, at l.c. 524, the Supreme Court of North Carolina stated:

"The court instructed the jury that a prescription from a dental surgeon was not 'a prescription from a physician,' which would protect one who sold intoxicating liquor on Sunday. Code, § 1117. 'A physician is one authorized to prescribe remedies for and treat diseases; a doctor of medicine.' Webst. Dict. To the same purport are the Century and the Standard Dictionaries. A dentist or dental surgeon is one who performs manual or mechanical operations to preserve teeth, to cleanse, extract, insert, or repair them. The statutes of this state recognize that dentists are not included in the term 'physician,' the latter being regulated by Code, §§ 3121-3134, with the amendatory acts of 1885 (chapters 117 and 261) and 1889 (chapter 181), while dentists are governed by Code, §§ 3148-3156, and the amendatory acts of 1887 (chapter 178) and 1891 (chapter 251). If dentists came within the term 'physician' as used in Code, § 1117, 'toothache' would become more alarmingly prevalent than 'snake bite'; and that it would, with usage, become more dangerous, is evident from the fact that the very first dental surgeon's prescription for toothache, coming before us, is for 'one pint of whiskey.' The size of the tooth is not given, nor whether it was a molar, incisor, eye tooth, or wisdom tooth; and yet there are 32 teeth in a full set, each of which might ache on Sunday. The duties of a dentist are limited to the 'manual or mechanical operations' on the teeth. Whenever the use of liquor is necessary, it being a remedy to act on the body, and only indirectly in any case for the teeth, within the purview of the statute, it must be prescribed by a 'physician,' to authorize a sale on Sunday."

In the case of Gulf, Mobile and N. R. Co. v. Willis, 157 So. 899, at l.c. 901, the Supreme Court of Mississippi stated:

"(2-4) We are of opinion that a dentist is not a physician within the intent and meaning

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of section 1536, Code of 1930. The purpose of this statute was to protect physicians and surgeons from having to testify as to communications made to them in their professional capacity, and to protect patients from having to disclose statements made to physicians. * * *."

On the basis of the above, we do not believe that a dentist comes within the meaning of the word "physician" as that term is used in the law of Missouri regarding the signing of death certificates.

CONCLUSION

It is the opinion of this department that a dentist is not a "physician" as that term is used in the laws of Missouri authorizing a "physician" to sign a death certificate under certain circumstances.

The foregoing opinion, which is hereby approved, was prepared by Assistant Attorney General Hugh P. Williamson.

Yours very truly,

John M. Dalton
Attorney General

By

Robert R. Welborn
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HPW/bA