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WILLIAM H. TRICE III (1946-2014)

September 9, 2019

Via email and U.S. Mail
jessica@arkleg.state.ar.us

Ms. Jessica Sutton, Committee Staff
Bureau of Legislative Research
State Capitol Building, Room 315
Little Rock, AR 72201

**RE: My Client: Arkansas State Medical Board
Rule 34 Requirements of Licensed Physicians in Completing Death Certificates**

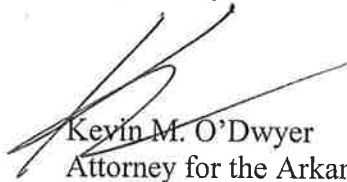
Dear Jessica:

Enclosed please find the following:

1. Two copies of the completed Questionnaire and Financial Impact Statement.
2. Two copies of the Mark-Up Amendment.
3. Two copies of the Proposed Amendment (clean copy).
4. Two copies of a Summary.
5. Two copies of the Notice of Hearing that is being published, setting forth the public hearing for October 3, 2019.

Please let me know if you need anything further at this time.

Respectfully,



Kevin M. O'Dwyer
Attorney for the Arkansas State Medical Board

KMO:ena
Enclosures

cc w/encl.: Arkansas Secretary of State, register@sos.arkansas.gov
Amy Embry, Executive Director, amy.embry@armedicalboard.org

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Arkansas State Medical Board
DIVISION _____
DIVISION DIRECTOR Amy Embry, Interim Executive Director
CONTACT PERSON Kevin M. O'Dwyer, Attorney
ADDRESS 211 S. Spring Street, Little Rock, AR 72201
PHONE NO. 501-372-4144 FAX NO. 501-372-7480 E-MAIL kodwyer@htolaw.com
NAME OF PRESENTER AT COMMITTEE MEETING Kevin M. O'Dwyer
PRESENTER E-MAIL kodwyer@htolaw.com

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

**Jessica Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201**

- Rule 34 – Requirements of Licensed Physicians in Completing
1. What is the short title of this rule? Death Certificates
 2. What is the subject of the proposed rule? To add new regulation for physicians completing death certificates
 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation. _____
 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes No
If yes, what is the effective date of the emergency rule? N/A

When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?
Yes No

5. Is this a new rule? Yes No

If yes, please provide a brief summary explaining the regulation. To add new regulation regarding licensure of genetic counselors.

Does this repeal an existing rule? Yes No

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes No

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. ACA §20-18-601; Act 975 of 2019

7. What is the purpose of this proposed rule? Why is it necessary? To add new regulation regarding licensure of genetic counselors.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.armedicalboard.org

9. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____
Time: 8:00 a.m.
1401 W. Capitol Ave. Suite 340,
Place: Little Rock AR 72201

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. Please see attached. Proof of publication will be provided as soon as it is received.

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). Will provide after approval by Governor.

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. Arkansas Medical Society; Arkansas Osteopathic Association.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas State Medical Board

DIVISION _____

PERSON COMPLETING THIS STATEMENT Kevin M. O'Dwyer, Attorney

TELEPHONE 501-372-4144 **FAX** 501-372-7480 **EMAIL:** kodwyer@htolaw.com

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Regulation 34 – Requirements of Licensed Physicians in Completing Death Certificates

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;
N/A

(b) The reason for adoption of the more costly rule;
N/A

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;
N/A

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.
N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue N/A
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue N/A
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue N/A
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total _____

General Revenue N/A
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ N/A

\$ N/A

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ N/A

\$ N/A

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

RULE 34 REQUIREMENTS OF LICENSED PHYSICIANS IN COMPLETING DEATH CERTIFICATES

ACA §20-18-601 requires physicians in the State of Arkansas to comply with the requirements when completing death certificates. ACA §17-95-409 (a)(2)(P) provides that the Arkansas State Medical Board may revoke or suspend a license of physicians, or impose other sanctions as provided by law, if a licensed physician violates a rule of the Board.

- A A licensed Physician who has been in charge of a patient's care for the illness or condition that resulted in the death of the patient shall complete, sign and return to the funeral director the medical certification on the death certificate within ~~two (2)~~ three (3) business days after receipt of the death certificate, except when an inquiry is required by law pursuant to ACA §12-12-315 as set forth herein:
- (1) The county coroner, prosecuting attorney, and either the county sheriff or the chief of police of the municipality in which the death of a human being occurs shall be promptly notified by any physician, law enforcement officer, undertaker or embalmer, jailer, or coroner or by any other person present with knowledge of the death if:
 - (A) The death appears to be caused by violence or appears to be the result of a homicide or a suicide or to be accidental;
 - (B) The death appears to be the result of the presence of drugs or poisons in the body;
 - (C) The death appears to be the result of a motor vehicle accident, or the body was found in or near a roadway or railroad;
 - (D) The death appears to be the result of a motor vehicle accident and there is no obvious trauma to the body;
 - (E) The death occurs while the person is in a state mental institution or hospital and there is no previous medical history to explain the death, or while the person is in police custody or jail other than a jail operated by the Department of Correction;
 - (F) The death appears to be the result of a fire or an explosion;
 - (G) The death of a minor child appears to indicate child abuse prior to death;
 - (H) Human skeletal remains are recovered or an unidentified deceased person is discovered;
 - (I) Postmortem decomposition exists to the extent that an external examination of the corpse cannot rule out injury, or in which the circumstances of death cannot rule out the commission of a crime;
 - (J) The death appears to be the result of drowning;
 - (K) The death is of an infant or a minor child under eighteen (18) years of age;
 - (L) The manner of death appears to be other than natural;
 - (M) The death is sudden and unexplained;
 - (N) The death occurs at a work site;
 - (O) The death is due to a criminal abortion;
 - (P) The death is of a person where a physician was not in attendance within thirty-six (36) hours preceding death, or, in prediagnosed terminal or bedfast cases, within thirty (30) days;

- (Q) A person is admitted to a hospital emergency room unconscious and is unresponsive, with cardiopulmonary resuscitative measures being performed, and dies within twenty-four (24) hours of admission without regaining consciousness or responsiveness, unless a physician was in attendance within thirty-six (36) hours preceding presentation to the hospital, or, in cases in which the decedent had a prediagnosed terminal or bedfast condition, unless a physician was in attendance within thirty (30) days preceding presentation to the hospital;
 - (R) The death occurs in the home; or
 - (S) (i) The death poses a potential threat to public health or safety.
(ii) Upon receiving notice of a death that poses a potential threat to public health or safety, the county coroner shall immediately notify the Department of Health.
- (2) Nothing in this section shall be construed to require an investigation, autopsy, or inquest in any case in which death occurred without medical attendance solely because the deceased was under treatment by prayer or spiritual means in accordance with the tenets and practices of a well-recognized church or religious denomination.
With regard to any death in a correctional facility, the county coroner and the State Medical Examiner shall be notified, and when previous medical history does not exist to explain the death, the Department of Arkansas State Police shall be notified.

Or pursuant to ACA 12-12-318; or pursuant to ACA §14-15-301 *et seq* as set forth herein:

When a death is reported to a coroner, he shall conduct an investigation concerning the circumstances surrounding the death of an individual and gather and review background information, including, but not limited to, medical information and any other information which may be helpful in determining the cause and manner of death.

- B. In the absence of the physician or with his or her approval, the certificate may be completed and signed by his or her associate physician, by the chief medical officer of the institution in which death occurred, by the pathologist who performed an autopsy upon the decedent, or by a registered nurse as provided in this subsection c, if the individual has access to the medical history of the case and has reviewed the coroner's report if required and if the death is due to natural causes. The individual completing the cause-of-death section of the certificate shall attest to its accuracy either by a signature or by approved electronic process.
- C. (i) If a physician refuses or otherwise fails to complete, sign, and return the medical certification to the funeral director within three (3) business days as required by subdivision (A) of this section, the funeral director may notify the board of the failure to complete, sign or return the medical certification within three (3) business days as required by subdivision (A) of this section.
- (ii) The board shall assess against a physician described in subdivision (c) of this section a fine not to exceed two hundred fifty dollars (\$250) unless the physician shows good cause for the refusal or failure.
- D. Except as provided herein below, a medical certification shall be completed using the

electronic process or system designated by the division, except;

(i) Upon request, the department may grant a waiver from the requirement of subdivision (ii) of this section that a medical certification be completed using an electronic process or system if a person requesting the waiver:

(A) Lacks reliable internet connectivity sufficient to endure access and secure submission to the electronic system;

(B) Has not received requested training or technical assistance from the division on the use of the system and correct submission;

(C) Regularly signs fewer than five (5) medical certifications per month; or

(D) Shows other good cause for a waiver as determined by the department in its discretion

(2) A physician who is granted a waiver under subdivision (D) of this section.

(A) Shall not be fined under subsection (c)(ii) of this section for failure to submit medical certification using an electronic process or system; and

(B) Is liable for failure to submit a medical certification in a timely manner under subdivision (C) of this section.

RULE 34 REQUIREMENTS OF LICENSED PHYSICIANS IN COMPLETING DEATH CERTIFICATES

ACA §20-18-601 requires physicians in the State of Arkansas to comply with the requirements when completing death certificates. ACA §17-95-409 (a)(2)(P) provides that the Arkansas State Medical Board may revoke or suspend a license of physicians, or impose other sanctions as provided by law, if a licensed physician violates a rule of the Board.

- A A licensed Physician who has been in charge of a patient's care for the illness or condition that resulted in the death of the patient shall complete, sign and return to the funeral director the medical certification on the death certificate within three (3) business days after receipt of the death certificate, except when an inquiry is required by law pursuant to ACA §12-12-315 as set forth herein:
- (1) The county coroner, prosecuting attorney, and either the county sheriff or the chief of police of the municipality in which the death of a human being occurs shall be promptly notified by any physician, law enforcement officer, undertaker or embalmer, jailer, or coroner or by any other person present with knowledge of the death if:
 - (A) The death appears to be caused by violence or appears to be the result of a homicide or a suicide or to be accidental;
 - (B) The death appears to be the result of the presence of drugs or poisons in the body;
 - (C) The death appears to be the result of a motor vehicle accident, or the body was found in or near a roadway or railroad;
 - (D) The death appears to be the result of a motor vehicle accident and there is no obvious trauma to the body;
 - (E) The death occurs while the person is in a state mental institution or hospital and there is no previous medical history to explain the death, or while the person is in police custody or jail other than a jail operated by the Department of Correction;
 - (F) The death appears to be the result of a fire or an explosion;
 - (G) The death of a minor child appears to indicate child abuse prior to death;
 - (H) Human skeletal remains are recovered or an unidentified deceased person is discovered;
 - (I) Postmortem decomposition exists to the extent that an external examination of the corpse cannot rule out injury, or in which the circumstances of death cannot rule out the commission of a crime;
 - (J) The death appears to be the result of drowning;
 - (K) The death is of an infant or a minor child under eighteen (18) years of age;
 - (L) The manner of death appears to be other than natural;
 - (M) The death is sudden and unexplained;
 - (N) The death occurs at a work site;
 - (O) The death is due to a criminal abortion;
 - (P) The death is of a person where a physician was not in attendance within thirty-six (36) hours preceding death, or, in prediagnosed terminal or bedfast cases, within thirty (30) days;

- (Q) A person is admitted to a hospital emergency room unconscious and is unresponsive, with cardiopulmonary resuscitative measures being performed, and dies within twenty-four (24) hours of admission without regaining consciousness or responsiveness, unless a physician was in attendance within thirty-six (36) hours preceding presentation to the hospital, or, in cases in which the decedent had a prediagnosed terminal or bedfast condition, unless a physician was in attendance within thirty (30) days preceding presentation to the hospital;
 - (R) The death occurs in the home; or
 - (S) (i) The death poses a potential threat to public health or safety.
(ii) Upon receiving notice of a death that poses a potential threat to public health or safety, the county coroner shall immediately notify the Department of Health.
- (2) Nothing in this section shall be construed to require an investigation, autopsy, or inquest in any case in which death occurred without medical attendance solely because the deceased was under treatment by prayer or spiritual means in accordance with the tenets and practices of a well-recognized church or religious denomination.
- With regard to any death in a correctional facility, the county coroner and the State Medical Examiner shall be notified, and when previous medical history does not exist to explain the death, the Department of Arkansas State Police shall be notified.

Or pursuant to ACA 12-12-318; or pursuant to ACA §14-15-301 *et seq* as set forth herein:

When a death is reported to a coroner, he shall conduct an investigation concerning the circumstances surrounding the death of an individual and gather and review background information, including, but not limited to, medical information and any other information which may be helpful in determining the cause and manner of death.

- B. In the absence of the physician or with his or her approval, the certificate may be completed and signed by his or her associate physician, by the chief medical officer of the institution in which death occurred, by the pathologist who performed an autopsy upon the decedent, or by a registered nurse as provided in this subsection c, if the individual has access to the medical history of the case and has reviewed the coroner's report if required and if the death is due to natural causes. The individual completing the cause-of-death section of the certificate shall attest to its accuracy either by a signature or by approved electronic process.
- C. (i) If a physician refuses or otherwise fails to complete, sign, and return the medical certification to the funeral director within three (3) business days as required by subdivision (c)(1) of this section, the funeral director may notify the board of the failure to complete, sign or return the medical certification within three (3) business days as required by subdivision (c)(1) of this section.
(ii) The board shall assess against a physician described in subdivision (c)(2)(B)(i) of this section a fine not to exceed two hundred fifty dollars (\$250) unless the physician shows good cause for the refusal or failure.

D. Except as provided herein below, a medical certification shall be completed using the electronic process or system designated by the division.

(i)(1) Upon request, the department may grant a waiver from the requirement of subdivision (c)(1)(A)(ii) of this section that a medical certification be completed using an electronic process or system if a person requesting the waiver:

- (A) Lacks reliable internet connectivity sufficient to ensure access and secure submission to the electronic system;
 - (B) Has not received requested training or technical assistance from the division on the use of the system and correct submission;
 - (C) Regularly signs fewer than five (5) medical certifications per month; or
 - (D) Shows other good cause for a waiver as determined by the department in its discretion
- (2) A physician who is granted a waiver under subdivision (i)(1) of this section.
- (A) Shall not be fined under subsection c(3)(B) of this section for failure to submit medical certification using an electronic process or system; and
 - (B) Is liable for failure to submit a medical certification in a timely manner under subdivision (c)(1)(A) of this section.

SUMMARY

REGULATION 34 REQUIREMENTS OF LICENSED PHYSICIANS IN COMPLETING DEATH CERTIFICATES

Changes necessary pursuant to Act 975 extending time to complete death certificate to three (3) days from two (2) days and requiring electronic process.