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November 18, 2019

register@sos.arkansas.gov
and U.S. Mail

Mr. John Thurston
Secretary of State
State Capitol – Room 026
Little Rock, AR 72201-1094

**Re: My Client: Arkansas State Medical Board
Amendment to Rule 34 – Requirements of Licensed Physicians in
Completing Death Certificates**

To Whom It May Concern:

Enclosed please find the following documents:

1. Arkansas Register Transmittal Sheet; and
2. Final Amendment to Rule 34 – Requirements of Licensed Physicians in Completing Death Certificates.

Please file this accordingly.

Sincerely,

HOPE, TRICE, O'DWYER & WILSON, P.A.



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

KMO:ena
enclosure

cc: Ms. Amy Embry, Executive Director (via e-mail Amy.Embry@armedicalboard.org)
Matt Gilmore (via e-mail matt.gilmore@arkansas.gov)

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State
John Thurston
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Little Rock, Arkansas 72201-1094
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For Office
Use Only:

Effective Date _____ Code Number _____

Name of Agency Division of Health Related Board and Commissions/Arkansas State Medical Board

Department Department of Health

Contact Amy Embry, Executive Director E-mail Amy.Embry@armedicalboard.org Phone 501-296-1802

Statutory Authority for Promulgating Rules _____

Rule Title: Amendment to Rule 34 - Requirements of Licensed Physicians in Completing Death Certificates

Intended Effective Date
(Check One)

Date

Emergency (ACA 25-15-204)

Legal Notice Published

9/3/19 9/10/19 9/17/19

10 Days After Filing (ACA 25-15-204)

Final Date for Public Comment

10/3/2019

Other _____
(Must be more than 10 days after filing date.)

Reviewed by Legislative Council

11/15/2019

Adopted by State Agency

10/3/2019

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Kevin M. O'Dwyer

kodwyer@htolaw.com

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Amy E. Embry
Signature

501-296-1892

Amy.Embry@armedicalboard.org

Phone Number

E-mail Address

Executive Director

Title

11-18-19

Date

RULE 34 REQUIREMENTS OF LICENSED PHYSICIANS COMPLETING DEATH
CERTIFICATES

ACA 520-18-601 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:
- (l) 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 Health 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 Department of Health on the use of the system and correct submission procedure;
 - (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 of Health 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.