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BOARD OF NURSING

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February 12, 1993

TO: Board of Nursing
FROM: Linda Siderius
First Assistant Attorney General
Regulatory Law Section
RE: Determination of Death

The Board of Nursing (the "Board") has requested an informal opinion whether it is legal for a nurse to pronounce death. Please be advised that the opinions contained herein are those of the author and not necessarily those of the Office of the Attorney General.

In preparation of this opinion I have reviewed all Department of Health statutes and rules and regulations which I felt might have any applicability to this situation as well as the Nurse Practice Act, Medical Practice Act and the respective rules from the Board and the Medical Board. Additionally, a search was conducted regarding case law in Colorado. The Medical Practice Act does include a section entitled Determination of Death. See C.R.S. 12-36-136 attached hereto.

In light of 12-36-136, I believe the question before the Board should properly be can a nurse determine death. It is that question that this memorandum addresses.

The first question that must be asked in the analysis is whether or not the determination of death is the practice of medicine. This statutory cite is found in the Medical Practice Act and one might presume that it therefore somehow falls under the practice of medicine. In the statutory definition of the practice of medicine, the determination of death is not specifically noted. The statutory language uses words such diagnose, treat, prescribe for, palliate, or prevent. Determination or determining is not a

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word found in the definition of the practice of medicine.

One might logically argue that the act of determining death is akin to diagnosing. Webster's New Collegiate Dictionary defines diagnosis as: 1. the art or act of identifying a disease from its signs and symptoms.; 2. an investigation or analysis of the cause or nature of a condition, situation, or problem; 3. a statement or conclusion concerning the nature or cause of some phenomenon. This definition would cover the act of determining death as set forth in C.R.S. 12-36-136.

Pursuant to C.R.S. 12-38-103(5) and (10), professional nursing includes the ability to diagnose conditions for which nursing care is indicated or for which referral is appropriate. Throughout the process of death nursing care is certainly called for. Nursing care extends even past death to proper care of the body, family counseling and so forth. (It is interesting to note that in a recent case the Board of Medical Examiners concluded that appropriate medical care extends to a patient even after death, i.e. one should not deliver substandard care to a dead person.)

Yes -> RN

No -> PN

Therefore, if a professional nurse has the knowledge, skill, and training to assess the irreversible cessation of circulatory, respiratory, and entire brain functions, including the brain stem, and that assessment is within acceptable medical standards pursuant to C.R.S. 12-36-136, it is within the scope of practice of a professional nurse to determine whether a patient is dead. Based on the definition found in 12-38-103(9), it does not fall within a practical nurse's scope of practice as that license does not include diagnosis at the level of assessment required under C.R.S. 12-36-136.

Pursuant to statute and regulation of the Department of Health, a death certificate must be signed by a physician. Furthermore, institutions, pursuant to policy or other rule and regulation (possibly federal), may require that a physician sign a chart or some other document confirming or "certifying" the death. Absent any order to the contrary, it is within generally accepted standards of care for a nurse to notify a physician about the death of his/her patient. Additionally, it may be institutional policy for the physician or some person other than a nurse to notify the family of the death.

Attachment

Medical Practice Act

12-36-136. Determination of death. (1) An individual is dead if:

(a) He has sustained irreversible cessation of circulatory and respiratory functions; or

(b) He has sustained irreversible cessation of all functions of the entire brain, including the brain stem.

(2) A determination of death under this section shall be in accordance with accepted medical standards.

(a) "Domestic violence" means an act of violence upon a person with whom the actor is or has been involved in an intimate relationship. Domestic violence also includes any other crime against a person or any municipal ordinance violation against a person when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

(b) "Intimate relationship" means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.

(2) Any licensee who, in good faith, makes a report pursuant to subsection (1) of this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making of such report, and shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

(3) Any licensee who makes a report pursuant to subsection (1) of this section shall not be subject to the physician-patient relationship described in section 13-90-107 (1) (d), C.R.S., as to the medical examination and diagnosis. Such licensee may be examined as a witness, but not as to any statements made by the patient that are the subject matter of section 13-90-107 (1) (d), C.R.S.

12-36-136. Determination of death.

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(a) He has sustained irreversible cessation of circulatory and respiratory functions; or

(b) He has sustained irreversible cessation of all functions of the entire brain, including the brain stem.

(2) A determination of death under this section shall be in accordance with accepted medical standards.

12-36-137. Inactive license.

(1) Any licensee pursuant to section 12-36-114 may apply to the board to be transferred to an inactive status. Such application shall be in the form and manner designated by the board. The board may grant such status by issuing an inactive license or it may deny the application as set forth in section 12-36-116.

(2) Any person applying for a license under this section shall:

(a) Provide an affidavit to the board that the applicant, after a date certain, shall not practice medicine or practice as a physician assistant in this state unless the applicant is issued a license to practice medicine or practice as a physician assistant pursuant to subsection (5) of this section;

(b) Pay the license fee as authorized pursuant to section 12-36-123; and

(c) Comply with any financial responsibility standards promulgated by the board pursuant to section 13-64-301 (1), C.R.S.

(3) Such inactive status shall be plainly indicated on the face of any inactive license issued under this section.

(4) The board is authorized to undertake disciplinary proceedings as set forth in sections 12-36-117 and 12-36-118 against any person licensed under this section for any act committed while the person was licensed pursuant to this article.

(5) Any person licensed under this section who wishes to resume the practice of medicine or to resume practice as a physician assistant shall file an application in the form and manner the board shall designate, pay the license fee promulgated by the board pursuant to section 12-36-123, and meet the financial responsibility requirements promulgated by the board pursuant to section 13-64-301 (1), C.R.S. The board may approve such application and issue a license or may deny the application as set forth in section 12-36-116.

12-36-138. Rules and regulations - compliance with reporting requirements of federal act. (Repealed)

12-36-139. Limitations on liability relating to professional review actions. (Repealed)