
Anomalies and Ambiguities in the Disposal of the Dead

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During the past 150 years legislation relating to the disposal of the dead has developed in a somewhat piecemeal fashion, causing several inherent anomalies that reduce its efficiency and the accuracy of information derived from it.

The Medical Certificate of Cause of Death

It is the statutory duty[1] of the registered medical practitioner who has been in attendance upon the deceased to issue the medical certificate of cause of death. This duty includes deaths which fall within the coroner's jurisdiction although it is standard practice in such cases to withhold the 'death certificate'. The Registrar General recommends that the statutory duty should be strictly observed[2] but the death certificate in such cases is of little practical use because the Registrar of Births and Deaths must register the details as provided by the coroner. For those deaths falling within the coroner's jurisdiction because their causes are unknown, any death certificate completed by the attending doctor obviously would be meaningless.

There is no obligation to view the body of the deceased in respect of whom the death certificate is to be issued; such a view of the body is a legally acceptable alternative to having seen the deceased within 14 days before death[3]. The fact of death, the identity of the deceased and the absence of signs of extraneous violence cannot be ascertained without seeing the body. Examination of the external surface of the body, in the absence of recent clinical attendance, is inadequate evidence upon which to base an opinion of the cause of death.

In National Health Service hospitals most death certificates are completed by pre-registration house officers, the least experienced members of the clinical staff. Many of these certificates do not contain a true cause of death, merely unqualified modes of death[4], and it is not uncommon for these certificates to escape the notice of the Registrar of Births and Deaths despite his statutory duty to report such deaths to the coroner[5]. Imprecise or inadequate recording of causes of death may lead to requests for further information from the Office of Population Censuses and Surveys; there is no statutory duty to

reply to these requests. No matter how firm the opinions upon which causes of death are based or how accurate their wording, subsequent autopsies reveal an appreciable proportion to be incorrect[6]. It is apparent that data derived from medical certificates of cause of death may be subject to considerable error.

The Medical Act 1956, s.29, states that 'a certificate required . . . from any physician . . . or other medical practitioner shall not be valid unless the person signing it is fully registered'. It is standard practice, however, for the provisionally registered house officer to issue the death certificate. It would appear that this certificate is not only frequently inaccurate but also always invalid.

Still-birth

A certificate of still-birth may be issued by a registered medical practitioner (or registered mid-wife) who has seen the body of a still-birth but was not present at that birth; if a certificate is requested by a qualified informant in these circumstances it cannot be withheld. It is difficult enough to ascertain the 'cause of death' at autopsy; a mere view of a still-birth cannot be considered adequate for certification. It remains a legal alternative, where a certificate of still-birth cannot be obtained, for a qualified informant to make a statutory declaration that a child was not born alive[7]. A qualified informant is allowed 42 days in which to register a still-birth; there may be much delay before a need for further enquiry becomes apparent. The Registrar of Births and Deaths, unlike the medical practitioner or mid-wife, has a statutory duty to report to the coroner any case where he has reason to believe that the child may have been born alive[8]; he is not required to report a case in which the cause of death is unknown[9]. Such legislation is hardly a deterrent to subtle child destruction or infanticide.

The format of the cause of death on the certificate of still-birth is different from that on the medical certificate of cause of death: it has three parts, divided into five sections labelled (a) to (e). There is an apparent lack of appreciation of the principles underlying death certification[4]; it seems somewhat sanguine to increase the complexity of the cause of death when the certifying

medical practitioner or mid-wife may have made only an external examination of the still-birth.

There is no obligation to notify the Registrar of Births and Deaths of the disposal of the body of a still-birth.

Cremation

The Acts and Regulations pertaining to cremation date from 1902, the latest regulations having come into force on 1st April, 1985; these latter regulations, which dispense with the necessity for the confirmatory Form C in certain circumstances, represent the only major departure from the essence of the original Regulations of 1903. Before the Births and Deaths Registration Act 1926 there was no legal obligation to obtain a certificate of disposal from the Registrar of Births and Deaths before disposing of a body and it was therefore possible to dispose of that body before the death had been registered; it was also possible to register a death without a medical certificate of cause of death having been issued by a registered medical practitioner. The original Cremation Regulations were designed to prevent the near-total destruction of a body before the appropriate authority was aware of any need for investigation. Since the Act of 1926 any need for investigation should be indicated during the process of certification and registration of a death: the fundamental argument upon which the necessity for the cremation certification procedure was based has not existed for the last 60 years.

The Cremation Regulations 1930, upon which all later regulations are based, refer to the 'registered medical practitioner'. Provisional registration was introduced in the Medical Act 1950; it is the opinion of the Home Office that those duties which may be carried out by a provisionally registered practitioner as though he were fully registered do not include duties imposed under the Cremation Regulations. As mentioned in relation to death certification, s.29 of the Medical Act 1956 implies that it is not legal for the provisionally registered house officer to issue Form B.

There appears to be some ambiguity as to whether the practitioner who issues Form C is under obligation to view the body of the deceased. At the time of the Brodrick Report (1971)[10] there was no necessity to view the body; no new regulation regarding this has been issued since that time but it is now stated in the rubric of Form C that 'the doctor must see the body of the deceased'.

The Brodrick Committee gave its opinion that '... a certificate in Form C not given by a pathologist after an autopsy is, in our views, no more than a statement of confidence in the judgement of the Form B doctor'. Home Office guidance that the practitioners issuing Forms B and C should be clinically independent would tend to reinforce this opinion: it seems strange to continue to charge a fee for a mere statement of confidence but to dispense with that fee when a post-mortem examination, which provides verification or otherwise, is performed[11].

The situation of the Medical Referee is similarly ambivalent. Regulations require him to be 'satisfied that the fact and cause of death have been definitely ascertained'[12]; such satisfaction is impossible to obtain

without post-mortem examination. Even post-mortem examination may fail. The Coroner's Certificate E for Cremation, Form 102, may be issued when an inquest has been opened but does not state the cause of death: the bodies in five of nine cases known to the authors in which the cause of death remained unascertained at the close of the inquest were cremated!

The Regulations state that when a death 'might be due to poison, to violence, to any illegal operation, or to privation or neglect' the Medical Referee 'shall require a post-mortem examination to be held'[12]. Except when directed by the coroner all post-mortem examinations are subject to the Human Tissue Act 1961: the Medical Referee cannot 'require a post-mortem examination' without ensuring that there is lack of objection on the part of the deceased or his nearest relative. Even when there is no objection to such an examination, the Regulations do not empower the Medical Referee to pay for one. Moreover he has no statutory duty to report such deaths to the coroner.

Her Majesty's Coroner

There is no statutory duty upon a medical practitioner to report a death to H.M. Coroner although, as 'a person about the deceased', there is a common law duty 'to give information which may lead to the coroner having notice of circumstances requiring the holding of an inquest'[13]. This common law duty, long fallen into desuetude, applies to any 'person about the deceased'; a medical practitioner may be considered to be better placed than the man in the street to know what circumstances require the holding of an inquest but the current decline in education in medico-legal matters[14] does not permit confidence in such an opinion.

The Registrar of Births and Deaths has a statutory duty to report such deaths as are cited in his Regulations[15]. The information available to him upon which to make a decision is limited to the medical certificate of cause of death and the answers to questions he may put to the qualified informant: he may be at a disadvantage in comparison with the medical practitioner. He must report to the coroner any death 'the cause of which appears to be unknown'[5]. Many medical certificates of cause of death do not contain a true cause of death[4] and, therefore, should be reported to the coroner. However, the coroner has no jurisdiction over a death the cause of which appears to be unknown unless it is 'a sudden death'[16]; there is no legal definition of the word 'sudden'.

If a death is reported by the Registrar of Births and Deaths because of inaccurate or imprecise wording on a death certificate, but the coroner, after preliminary enquiry, does not assume jurisdiction, the Registrar must nevertheless register that imprecise or inaccurate cause of death[17].

H.M. Coroner may direct[18] or request[19] any legally qualified medical practitioner to carry out a post-mortem examination although such an examination 'should be made, when ever practicable, by a pathologist with suitable qualifications and experience and having access to laboratory facilities'[20]. A recent report[21]

suggests that such an examination has not always been 'practicable'.

An inquest may be held without a post-mortem examination. The only situation in which the coroner must direct that a post-mortem examination be performed is on the written requisition of his jury[22]; by the time such a requisition may be made there has been usually both release and disposal of the body. In the absence of a post-mortem examination, the inquest might be quashed on the grounds of insufficiency of enquiry. There is little evidence that the 'psychological autopsy' developed in the USA in the investigation of 'equivocal deaths'[23], forms a part of the medico-legal investigation of death in the UK. Might not the lack of such an autopsy sometimes be described as insufficiency of enquiry?

Comment

Much of the legislation pertaining to disposal of the dead is anachronistic, ambivalent and ambiguous. Medical undergraduates (and post-graduates) find it difficult to grasp even when tuition is adequate. These qualities detract from the accuracy of death certification and may permit inadequate enquiry into equivocal deaths.

There should be both consolidation and streamlining in new legislation which would:

(a) make it the statutory duty of the fully registered medical practitioner, who had attended during the last illness, to view the body and to either issue the death certificate (if the cause of death can be stated with accuracy and precision) or report the death to H.M. Coroner. Still-births should be treated in an identical manner;

(b) define precisely the circumstances in which a practitioner cannot issue a death certificate and thus clarify the role and duties of H.M. Coroner;

(c) abolish cremation certification.

It is a final anomaly that these recommendations were made 15 years ago by the Brodrick Committee when

education in the legal aspects of medical practice was more prominent in the curriculum than it is today.

References

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