

Lanny Evans

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Sent: Thursday, August 24, 2023 3:07 PM
To: Lanny Evans
Subject: Notice on HB 6: Designation of Fentanyl Poisoning or Fentanyl Toxicity on Death Certificates

To all Texas Medical Examiners and Justices of the Peace:

Notice on HB 6: Designation of Fentanyl Poisoning or Fentanyl Toxicity on Death Certificates

HB 6 passed from the 88th Texas Legislative Session and relates to death certificates. Effective September 1, 2023, if -

1) a toxicology examination reveals a Penalty Group 1-B substance present in the amount or concentration that is considered to be lethal by generally accepted scientific standards in the body; and

2) results of an autopsy performed are consistent with an opioid overdose as the cause of death -

then the medical certification on a death certificate must include either the term "Fentanyl Poisoning" or "Fentanyl Toxicity".

This will apply only to a death that occurs or is discovered on or after September 1, 2023.

Thank you.

Disclaimer

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INQUESTS and AUTOPSIES

INQUESTS

The word "inquest" refers to the investigation of a death.

In Texas, the duty of performing an inquest in most counties falls on the Justice of the Peace. The Justice of the Peace does not "pronounce" the death. They determine cause, manner, and time of death.

The official definition of inquest from Texas law is: "an investigation into the cause and circumstances of the death of a person and a determination made with or without a formal court hearing, as to whether the death was caused by an unlawful act or omission." *Code of Criminal Procedure (CCP) Art. 49.01(2)*.

In a county that does not have a medical examiner, the Justice of the Peace has authority to perform inquests only in their county. *CCP Art. 49.02*.

The majority of inquests are completed informally through in-person or phone interviews, autopsies and/or requesting medical documents. There are times when a formal hearing is held. The choice to hold a formal hearing is up to the judge unless the District Attorney requests that one be held. *CCP Art. 49.14(a)*.

There are times an inquest is required and it has to be an independent investigation by the judge. *CCP Art. 49.03 and 49.04*.

Inquest is Required (CCP 49.04)

- Person dies in jail or prison, except of natural causes or lawful execution.
- Person dies an unnatural death other than legal execution. (car accident, drowning)
- A body or body part is found, and cause or circumstances is unknown. May be an unidentified person.
- Death that might be by unlawful means.
- Person dies without having been attended by a physician.
 - May die at home.
 - Any place away from medical attention.
 - The Justice of the Peace must be called.
- Person dies while attended by a physician who is unable to certify the cause of death.
 - Could be hospital policy.
 - May not consider ER admittance as being admitted to the hospital proper.
- Person is a child younger than six years and death is unexpected or abuse/neglect may be suspected.

This does not mean an autopsy is required, just the investigation (inquest) about the death.

If the Justice of the Peace is not available, the County Judge can investigate. *CCP 49.07(c)(1)*. The information has to be turned over to the Justice of the Peace within five days.

"A justice of the peace shall conduct an inquest immediately or as soon as practicable after the justice receives notification of the death." *CCP Art. 49.05(a)*

The commissioner's court shall pay a reasonable fee for the transportation of a body to a place where an autopsy, if ordered, can be performed. *CCP Art. 49.10(h)*.

INQUESTS and AUTOPSIES

Law enforcement is often involved in an inquest. The justice of the peace has equal and independent investigation rights. *CCP Art. 49.03.*

A judge must wait until law enforcement is finished with an investigation before directing the body to be moved, but law enforcement also may not move the body or the surroundings (unless it is an emergency like a car accident blocking a roadway) until getting permission from the judge. *CCP 49.05(c)&(e).*

A parent can view the body of their child. A parent is any person who has established a parent-child relationship, even if the child is now an adult. Once the Justice of the Peace assumes control of the body during the inquest, the parents must have the judge's permission to view, have contact with, remove a medical device, or alter the condition in any way of the child's body. Any of these actions must be supervised by the judge. *CCP Art. 49.51, 49.52(a)&(b).* The Judge may designate someone (like the staff at a hospital) to act on their behalf to supervise the viewing. That individual cannot be compensated by the commissioner's court. *CCP Art. 49.52(d).*

AUTOPSY

An autopsy is an examination of a dead body by a medical doctor to help determine cause and manner of death. An autopsy will give the judge medical information necessary to describe the cause and manner of death as is required on the death certificate. The official definition is: "a postmortem examination of the body of a person, including X-rays and an examination of the internal organs and structures after dissection, to determine the cause of death or the nature of any pathological changes that may have contributed to the death." *CCP Art. 49.01(1).*

Generally, the decision to perform an autopsy is up to the justice of the peace conducting the inquest. If help is needed to determine if an autopsy should be ordered, the judge may consult a county health officer or a physician.

If an expert is consulted, the commissioners will need to pay a reasonable fee to the that person. *CCP Art. 49.10(a).*

Once the decision is made regarding an autopsy, the justice of the peace shall either direct an autopsy to be performed or certify that an autopsy is not needed. *CCP Art. 49.10(c).*

The commissioners court pays for the autopsy as well as any reasonable transportation fees for moving the body to the location for the autopsy to be performed. *CCP 49.10(g) & (h)* and *Attorney General Opinion KP – 0083(2016).*

There are a few limitations on the judge's discretion to order an autopsy.

- An autopsy may not be ordered if the person dies from a communicable disease during a health disaster, or if the person died from Asiatic cholera, bubonic plague, typhus fever, or smallpox. *CCP Art. 49.10(d).*
- An autopsy must be ordered if the prosecutor directs the judge to order one.
- An autopsy must be ordered for any death of a child younger than six if the death is unexpected or abuse or neglect is suspected. *CCP Art. 49.10(e).*

INQUESTS and AUTOPSIES

A felony prosecutor may request a justice of the peace in another county to order an autopsy on a body of a person who died in that county but was injured in the prosecutor's county. The county where the injury occurred must cover the autopsy costs. *CCP Art. 49.10(o)*.

If there is a motor vehicle accident and a driver who died as a result of the accident is suspected of driving while intoxicated, then a justice of the peace may order a physician, qualified technician, paramedic, chemist, registered professional nurse, or licensed vocational nurse to take a blood sample of the deceased driver. In any other circumstance, it must be a physician who takes the sample. This only applies to the person who died as a result of the accident and would not apply to a driver who survived. *CCP Art. 49.10(j)*.