



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 7, 1992

Honorable Tim Curry
Criminal District Attorney
401 Belknap Street
Fort Worth, Texas 76196-0201

Letter Opinion No. 92-63

Re: Whether a physician who monitors the treatment of a patient in an ambulance by telemetry "attends" that patient for purposes of section 6 of article 49.25 of the Code of Criminal Procedure (ID# 16514)

Dear Mr. Curry:

You have requested an opinion regarding whether a physician who monitors the treatment of a patient in an ambulance by telemetry "attends" that patient for purposes of section 6 of article 49.25 of the Code of Criminal Procedure. Article 49.25 sets forth the circumstances under which a medical examiner must conduct an inquest. Subsections 6 and 7 of that provision provide as follows:

6. When a person dies *without* having been *attended by a duly licensed and practicing physician*, and the local health officer or registrar required to report the cause of death under Section 193.005, Health and Safety Code, does not know the cause of death. When the local health officer or registrar of vital statistics whose duty it is to certify the cause of death does not know the cause of death, he shall so notify the medical examiner of the county in which the death occurred and request an inquest; and

7. When a person dies who has been *attended immediately preceding his death by a duly licensed and practicing physician or physicians*, and such physician or physicians are not certain as to the cause of death and are unable to certify with certainty the cause of death as required by Section 193.004, Health and Safety Code. In case of such uncertainty the attending physician or physicians, or the superintendent or general manager of the

hospital or institution in which the deceased shall have died, shall so report to the medical examiner of the county in which the death occurred, and request an inquest.

(Emphases added).

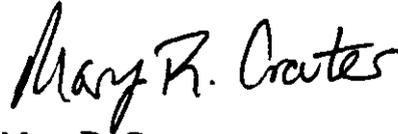
You state that currently, when a patient dies in an ambulance en route to the hospital, the ambulance continues on to the hospital where a physician pronounces the patient dead. Thereafter, the body is transported to the medical examiner's laboratory for an inquest. You explain that the Tarrant County Emergency Physicians Advisory Board would like to alter this procedure "whereby the emergency room physician, using the telemetry link between the hospital and the ambulance, could verify the death in transit and make the pronouncement of death via telemetry. The ambulance could then proceed to the medical examiner's laboratory without stopping at the hospital." Apparently, however, the medical profession in Tarrant County has concluded that the emergency room physician who monitors an ambulance patient via telemetry is an "attending physician," which you state "would prevent the use of subdivision 6, section 6 of Article 49.25 of the Code of Criminal Procedure."

You ask whether a physician who monitors an ambulance patient's care via telemetry "attends" the death for purposes of section 6 of article 49.25 of the Code of Criminal Procedure. The relevant language in article 49.25 of the Code of Criminal Procedure has been law since at least 1965. See Acts 1965, 59th Leg., vol. 2, ch. 722, at 317. To our knowledge, "telemetry" technology was not commonly used in ambulances at that time. Thus, we do not believe that the legislature, in enacting this language in 1965, addressed the situation you describe. You suggest that Health and Safety Code provisions dealing with emergency medical services, see Health & Safety Code, § 773.007, and rules promulgated thereunder, 22 T.A.C. § 197.4(e), imply that such a physician "attends" an ambulance patient for purposes of article 49.25. This is not necessarily the case, however, because there is no indication that the legislature, in enacting standards for emergency medical services in the Health and Safety Code, intended to affect the statutory requirements for conducting an inquest in the Code of Criminal Procedure. In the absence of any meaningful evidence of legislative intent, we are unable to provide a definitive answer to your question. Whether a physician who monitors an ambulance patient's care via telemetry "attends" the death for purposes of section 6 of article 49.25 of the Code of Criminal Procedure is a question which should be resolved by the legislature.

S U M M A R Y

Whether a physician who monitors an ambulance patient's care via telemetry "attends" the death for purposes of section 6 of article 49.25 of the Code of Criminal Procedure is a question which should be resolved by the legislature.

Yours very truly,

A handwritten signature in black ink that reads "Mary R. Crouter". The signature is written in a cursive style with a large initial "M".

Mary R. Crouter
Assistant Attorney General
Opinion Committee