

11/23/68

Dear Jack,

Your midterm question and the answer are interesting and important. It would be good if all doctors had a better concept of the legal responsibilities they bear in unnatural deaths, where they have less experience and less training. How good was the burden of the answers. Do they reflect an adequate understanding after the recent assassinations and the remaining questions about JFK's?

I've been working away from home for a month, and I'm really stacked up with work. More, I am about to go to New Orleans again, perhaps for as much as two weeks, which will put me even further behind.

This time I got to Dallas. The only doctor with whom I spoke was Perry. He was quite friendly. Rose was not around - at least, did not answer the page. I understand he is no longer coroner.

In a way, I am glad you have said nothing further about the suit, for I feel there are other things essential to it. I am continuing to build them, trying as I do to plug possible loopholes, in some cases getting what is withheld and being thereby in a position to show it cannot be, etc.

Excuse the haste. Hope you all had a good Thanksgiving and have a real fine Christmas.

Sincerely,

Harold Eisberg

COMPULSORY ESSAY QUESTION

The following question was asked by the California State Board of Medical Examiners in 1963. Please answer as if it appeared on the corresponding Kansas examination you were taking at that time.

"You, being the only duly licensed practitioner in a large rural area and without special training, interest, knowledge, and experience in pathology, are asked to perform an autopsy. Write an account of what you would do toward complying with this request."

(In answering this question a substantial amount of data mentioned below must be given in order for full marks to be awarded. The method of setting forth this data is of lesser importance. While the style employed in the suggested answer is acceptable, other styles may be equally acceptable. This will, of course, vary with the outlook of the writer.)

ACCEPTABLE ANSWER

Since the specified time is 1963 I may or may not be the coroner; after 1965 I would ipso facto be the coroner. The first part (part A) of my answer will be on the assumption that I am not the coroner and that the asking person is (1) The coroner (lay), (2) Police officer or the County Attorney, (3) Next of kin or member of family, (4) "Outside" person. The second part (part B) of the answer will be on the assumption that I am the coroner and the asking person is (5) Police officer or County Attorney, (6) next of kin or member of family, and (7) "outside" person.

PART "A"

- (1) If the coroner should ask me, then one of two situations would prevail, viz.,
- (i) The deceased should be my patient, if a natural death, and I should know more medical facts about him than anyone else. I would tell the coroner that I have already signed the death certificate or am getting ready to sign it with the appropriate natural causes and that I have no reason for suspicion or I would have notified him myself. I will tell him that the next of kin have already declined my request for autopsy permission. I would try to learn his reason for requesting the autopsy and ascertain if he is exceeding his authority (not uncommon). If, of course, he has adverse facts unknown to me, I would immediately destroy the signed death certificate before it is recorded and yield to the coroner on all points of jurisdiction.
- (ii) If the deceased is unknown to me or, perhaps, is one of my patients found dead under unusual circumstances, then it would be a coroner's case. In this instance I would advise and assist the coroner in all manner possible. This would include reminding him that with the modern communications and transportation existing in Kansas it is unreasonable to ask a general practitioner to conduct an autopsy with view towards obtaining evidence with which to help apprehend and convict an accused or acquit an innocent. I would tell him that pathology is one of the specialties of medicine for which considerable time in study and experience is consumed before acquiring proficiency and further that there is a subspecialty of forensic pathology. I would explain to the coroner that the conviction rates based on evidence obtained at autopsy by a general practitioner are lower than the rates of conviction based on evidence obtained by a competent pathologist and that the highest conviction rates are based on

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Mr Weisberg: This question was on our mid term examination yesterday. I distributed this answer after the exam was over. J Nichols

evidence acquired by a Forensic Pathologist. I would assist the coroner in having the body transported to a suitable morgue where a competent pathologist could conduct the autopsy. Of course, if there were, in my opinion, inadequate reason for autopsy I would so advise the coroner.

- (2) If a police officer should ask me to do an autopsy I would make suitable inquiry of his reasons and talk with him along the lines indicated above and direct him to go, with his source of authentic information, and duly notify the coroner. If the district attorney should ask me to do an autopsy I would inquire of him the reason why the coroner was not functioning and give him the same advice and assistance I gave the coroner as mentioned above.
- (3) If the next of kin asked for an autopsy, in the event the patient was one of my own, I would become highly suspicious that someone is attempting to cover up foul play by getting an autopsy done by an incompetent person. If the next of kin had no medicolegal reasons I would assist in having the autopsy done by a competent pathologist. I certainly would not do such an autopsy because courts are reluctant to exhume a body for a second autopsy. If the next of kin has a valid medicolegal suspicion I would direct him to relay this information to the coroner.
- (4) If an "outside" person (such as a neighbor) should request the autopsy I would become highly suspicious, learn the reasons, and report them to the coroner and/or police.

PART "B"

- (5) Presuming that I am the coroner when a police officer asks me to do an autopsy I would politely remind him that such decision would be made by myself and his job is to provide the authentic first hand facts (not hearsay) for me to use in making (in part) the decision. When he reports an "unnatural" death to me I would go to the scene and take charge of the body as required by Kansas statutes. Inquiry would be made of all persons having first-hand knowledge; hearsay evidence would not be considered. If it appears that a crime has been committed, or negligence is involved, or uncertainty that could lead to litigation, or if it be in the public interest I would have an autopsy performed by a competent pathologist (not myself). I would cooperate with the police in acquiring evidence with which to apprehend and convict the guilty and acquit the innocent. It is most important not to exceed my authority in discharging the duties of my office, otherwise I will be open to a lawsuit for damages.

If the district attorney should ask me to perform an autopsy I would want to know why he is contramanding a previous opinion of myself (or my deputy) that an autopsy, in this particular case, is not indicated and why he thinks I have erred. If, in my opinion, an autopsy is not indicated, I would not authorize or request such autopsy but instead allow the district attorney to assume such responsibility himself as provided in Kansas statutes. It must be remembered that not all coroner's cases of unnatural death require an autopsy. In fact, in many instances, the death certificate may properly be signed without an autopsy. Should an autopsy be done in these circumstances both the pathologist and the coroner are open to damages because the pathologist must also know the extent of the coroner's authority and be able to recognize a valid and invalid autopsy request or permission.

- (6) If the next of kin should ask for an autopsy I certainly would have a high index of suspicion and in both my capacity as a coroner and as a practitioner help arrange for this to be done by a competent pathologist.
- (7) If an "outside" person, such as a neighbor, should ask that an autopsy be done I would have a consultation with the district attorney or police official into the merits or demerits of this request. My response would depend upon the medical facts and opinions of the police and district attorney. I certainly would not get trapped into requesting or authorizing an autopsy on spurious reasons. It is most unlikely that an outside person, such as an insurance company, would ask a general practitioner to do an autopsy since they have their own consultants, etc.