

1975 WL 29149 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 22, 1975

*1 Gordon R. Hennigar, M.D.
Medical Examiner's Commission
Office of the Chief Medical Examiner
80 Barre Street
Charleston, South Carolina 29401

Dear Dr. Hennigar:

You have requested an opinion of this Office regarding when a person will be considered medically and legally dead. You also inquired whether there are any proposals to establish a South Carolina statute on death and whether non-physicians are legally empowered to decide when a person has died.

South Carolina statutes and decisions fail to provide a basis from which a reliable and uniform definition of death can be derived. Though legislative action in this area is certainly desirable, I must respond that, at the present, death will be deemed to have occurred when a physician says that it has occurred, unless contradicted. Though desirable, there is not at present any proposal to establish a South Carolina statute on death.

Non-physicians are, in some circumstances, legally empowered to certify that death has occurred. For example, a coroner may in some instances, in the absence of an attending physician complete and sign the medical certification of death. However, when there is some real question whether death has occurred, only a person possessed of the requisite medical training and experience should declare a person dead. Under South Carolina licensing standards only doctors of medicine and doctors of osteopathy have the skill and training necessary to determine whether a person's vital functions have ceased. I believe this opinion, by the way, concurs with your feelings about the questions as you expressed it in your letter.

I regret that I cannot be any more definite in this response.

Sincerely,

Daniel R. McLeod
Attorney General

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