

PART II

POWERS AND DUTIES OF HEALTH DEPARTMENTS

CHAPTER VII

VITAL STATISTICS

THE collection, recording, and keeping of vital statistics, including notices of births, deaths, stillbirths, marriages, and divorces, is now an established function of government, although at one time it was chiefly the responsibility of religious organizations under canon law.

Because of the importance of permanent records of vital statistics to the State and its citizens, proper requirements that such data shall be reported by appropriate persons to duly appointed state and local registrars of vital statistics for permanent filing are generally recognized as a valid exercise of the police power of the State.¹

The obligation of sovereignty to collect and preserve such valuable records was recognized in North America as early as 1639. In the proceedings of the General Court of the Massachusetts Bay Colony for that year, it was ordered, "that there bee records kept of all wills, administrations, inventories, as also of every marriage, birth and death of every person within this jurisdiction."² Acting pursuant to this law and subsequent statutes adopted between 1639 and 1644, the Massachusetts Bay Colony is stated to have been the first political unit in the world to record these vital facts.³ In 1644 the Connecticut Colony required "Town Clarkes or Registers" to keep records of marriages and births, and in 1650 included records of deaths.⁴ Similar legislation was enacted in Virginia and other colonies during this same period.

Today, every State in the United States provides by law for the collection and keeping of vital statistics, a duty that is mentioned specifically in the constitutions of two States, Texas and Washington. Only in comparatively recent times, however, has the obligation been recognized by many of the States, and its administration undertaken in an efficacious manner.

In order to stimulate more adequate and accurate reporting of deaths in this country, a national death registration area was estab-

1. W. T. Fales, E. W. Kopf, and J. A. Tobey, *Vital statistics: constitutional, statutory, and administrative aspects*, *Am. J. Pub. Health*, 17:799, August 1927.

2. *Records of the Governor and Company of the Massachusetts Bay in New England*, Boston, 1853, volume I, page 270.

3. Fales, Kopf, and Tobey, *op. cit.*

4. *The Public Records of the Colony of Connecticut (1636-1776)*, Hartford, 1850-1890.

lished in 1880 by the United States Bureau of the Census, the federal bureau charged with the taking of our decennial censuses. This original death registration area included only the States of Massachusetts and New Jersey, the District of Columbia, and nineteen cities, since at that time these were the only places having satisfactory laws, suitable systems of registration, and at least 90 per cent completeness of reporting.

By an act of Congress approved March 6, 1902 (32 Stat. L. 51, U.S.C. title 13, sec. 101), providing for a permanent Census Office, the collection of national birth and death statistics was authorized, and a Division of Vital Statistics was created in the Bureau of the Census for that purpose.⁵ A national birth registration area, comparable to the death registration area, was established in 1915 with a nucleus of ten States and the District of Columbia.

Both the national death and birth registration areas were gradually extended until in 1933 all States were included in each of these areas. The Division of Vital Statistics does not keep public records of the births and deaths of individuals, which are on file in the States, but collects and scrutinizes certificates for necessary corrections, and compiles and publishes useful data on birth and death statistics for the entire country, prepares and issues national life tables and other valuable statistical material, and stimulates more accurate and complete reporting and recording. In 1938 this division issued a preliminary draft of a state model vital statistics law, which was submitted in 1939 to the National Conference of Commissioners on Uniform State Laws. After securing approval of the American Bar Association, a Uniform Vital Statistics Act was issued by the Conference in 1942, with the recommendation that it be enacted in all the States. This law has been adopted, in whole or in part, in a considerable number of the States.

The Importance of Vital Statistics

Vital statistics are necessary to the efficient administration of state and local health departments, which are particularly concerned with birth and death rates and stillbirths but are not especially interested in marriages and divorces. The application of mathematical methods

5. J. A. Tobey, *The National Government and Public Health*, Baltimore, Johns Hopkins Press, 1926. The Division of Vital Statistics was transferred in 1946 from the Bureau of the Census in the Department of Commerce to the Public Health Service in the Federal Security Agency.

to these data is known as the science of biometry or biometrics,⁶ while the statistical study of all the broad aspects of human life is known as demography, of which vital statistics is but one division.

To the individual, a birth record is of importance as a legal document, which may be necessary to prove age, parentage, legitimacy, sex, place of birth, citizenship, and other significant personal facts. A birth certificate is usually necessary to prove age for such purposes as permission to enter or leave school; to secure working papers under state laws; to decide questions of child labor; to have the right to vote, to marry, to obtain a passport, to hold public office, to inherit property, to obtain a pension, to enter or be exempt from military service; to obtain licenses of various kinds; to determine the age of consent in sex crimes; to determine criminal responsibility of minors; to establish liability of parents for acts of minor children; to determine the validity of contracts made by alleged minors; to obtain insurance at certain rates; and for many other purposes.

Similarly, a death certificate is or may be necessary to secure a burial permit; to prove the fact of death in insurance or workmen's compensation matters; to secure inheritance or a pension; to remarry; to aid in the prosecution or defense of malpractice or the illegal practice of medicine, nursing, or midwifery; and for many other purposes.

The importance of vital statistics to the State has been recognized by the courts on numerous occasions since 1882, when an Iowa statute requiring physicians to report births and deaths was upheld as a valid exercise of the police power.⁷ This decision was followed by a Kentucky case in 1903,⁸ but in 1911 the Supreme Court of Ohio ruled that reports of the fact of birth or death might be required from physicians and others by the legislature, but that supplementary data, such as the status of legitimacy of newborn infants, could not be required without the payment of compensation.⁹ This ruling, which stands alone in the jurisprudence applicable to vital statistics, was predicated upon certain provisions in the "Ordinance of 1787," an act of Congress providing for the government of the Northwest Territory, which is said to be fundamental law in Ohio, superior even to the state constitution.

6. Raymond Pearl, *Introduction to Medical Biometry and Statistics*, Philadelphia, Saunders, 1930.

7. *Robinson v. Hamilton* (1882), 60 Ia. 134, 14 N.W. 202, 46 Am. R. 63.

8. *Commonwealth v. McConnell* (1903), 116 Ky. 358, 76 S.W. 41, 25 Ky. L.R. 552.

9. *State v. Boone* (1911), 84 Oh. St. 346, 95 N.E. 924, Ann. Cas. 1912 C 683, 39 L.R.A. (N.S.) 1015; 85 Oh. St. 313, 97 N.E. 975, 39 L.R.A. (N.S.) 1019.

Constitutionality of Vital Statistics Laws

Subsequent to this decision, state laws providing for comprehensive systems of reporting births and deaths to state health departments were upheld as constitutional in Tennessee¹⁰ and Michigan.¹¹ "Such a system," declared the Supreme Court of Tennessee, "is just as necessary to a campaign by the board of health as is information concerning the enemy's movements to the general in command of an army. There can be no specialized or well-directed effort by the board without such knowledge." This case was an appeal by an undertaker from an indictment for handling and removing a dead body without a permit as required by one section of the law.

In the Michigan case, the conviction of a physician for failure to register a birth within five days, as required by law, was affirmed, the court dismissing as untenable and without merit the defendant's contentions that the five-day reporting period imposed undue hardship upon physicians, and that lack of compensation for the report was a deprivation by the State of property without due process of law, as well as being class legislation. The penalties imposed, a fine of \$5 for the first offense and a fine of not less than \$25 or more than \$100 or imprisonment in the county jail not to exceed 60 days for each subsequent offense, were held not to be cruel or unusual punishment. Delegation of authority to the state health department to adopt rules and regulations was likewise sustained.

A state law providing for a system of vital statistics for the entire State has been held to abrogate a local ordinance enacted prior to the statute, which imposed a local fee for a burial permit, when the state law provided that no second permit or additional fee should be required.¹² In this case an undertaker had secured a burial permit in one county and had been improperly convicted for failure to pay a fee in another borough.

Administrative Aspects of Vital Statistics¹³

The administrative features of the various state vital statistics laws are, in general, fairly uniform since they are based upon a model vital statistics law. A central bureau of vital statistics in the state

10. *State v. Norvell* (1917), 137 Tenn. 82, 191 S.W. 536, L.R.A. 1917 D 586.

11. *People v. Cramer* (1929), 247 Mich. 127, 225 N.W. 595. *Department of Health v. Dunn* (1911), 129 N.Y.S. 29.

12. *Borough of Yeadon v. Galen* (1933), 108 Pa. Sup. 114, 164 A. 837.

13. See also J. S. Strahorn, A lawyer's view of vital statistics, *Am. J. Pub Health*, 27:1207, December 1937.

health department, with a state registrar in charge, is usually set up to enforce the law and to be responsible for the collection and custody of reports of births and deaths. The state health department may enact rules and regulations to carry out the law.

Local registrars and deputies in registration districts throughout the State are appointed and removed by the state health department, although sometimes certain local officials, such as health officers or city and town clerks, are made ex-officio registrars of vital statistics. The power of a state board of health to appoint local registrars in accordance with law has been upheld by the courts.¹⁴

Births are usually required to be reported on standard forms to local registrars within ten days by physicians, midwives, persons acting as midwives, or where no one was in attendance by the father, mother, or householder, although a shorter time for making reports may be required.¹⁵

Whoever assumes custody of a child of unknown parentage, or a foundling, must immediately report to the local registrar. This report constitutes the certificate of birth, the place and date of birth being determined by approximation. Adopting parents cannot require a state registrar of vital statistics to issue a birth certificate where the birth has not been registered in the State.¹⁶

Since the duties of the registrar are ministerial, he cannot refuse to accept a birth certificate from a person duly licensed by the State to practice the healing art, whether it be osteopathy or medicine.¹⁷ An osteopath who officiates at a birth, or is in attendance at the time of death, is now generally required to report,¹⁸ although it has been held in the past that osteopaths and chiropractors could not report under state laws then in existence.¹⁹

Where a birth is not reported within the ten days or other period required by law, a registrar must accept a report made subsequently

14. *People ex rel. Hershey v. McNichols* (1932), 91 Colo. 141, 13 P. (2d) 266. *McNichols v. Hershey* (1933), 92 Colo. 469, 22 P. (2d) 131. *Darnaby v. Furlong* (1926), 216 Ky. 475, 287 S.W. 913. *State ex rel. McKittrick v. Langston* (Mo. 1935), 84 S.W. (2d) 131.

15. *People v. Cramer* (1929), 247 Mich. 127, 225 N.W. 595.

16. *Penick v. Abercrombie* (1945), — Ga. —, 33 S.E. (2d) 293.

17. *People v. Heckard* (1927), 244 Ill. App. 112, modif. in 341 Ill. 144, 173 N.E. 124.

18. *People ex rel. Gage v. Simian* (1917), 278 Ill. 256, 115 N.E. 817. *In re Opinion of Justices* (1919), 42 R.I. 249, 107 A. 102.

19. *Keiningham v. Blake* (1919), 135 Md. 320, 109 A. 65, 8 A.L.R. 1066 (osteopath). *State v. Fahey* (1922), 152 Minn. 220, 188 N.W. 260 (chiropractor).

by the parent, since the primary object of the statute is to make a record of births.²⁰ The time mentioned is not a limitation of power or right on the part of the registrar, whose duty it is to file a report if he is satisfied as to its correctness. A delayed birth certificate should, in general, be reported upon a special form, and great care taken to assure its accuracy.

Where a commissioner of public health refused to have a birth recorded, it has been held in New York that the proper remedy under the statutes is to apply first to the board of health, and then have the action of the commissioner reviewed in a court by an action of certiorari, and not by an application to the court for an order directing the commissioner to record the birth.²¹

In the reporting of deaths it is usually required that the standard death certificate be used, that the medical certificate be signed by the physician in attendance and submitted within three days, that no burial permit be issued until an accurate and complete death certificate has been filed, that in case of death without medical attention the undertaker notify the local registrar and that he in turn notify the health officer, that no person in charge of a place of interment shall permit interment or other disposition of the body unless accompanied by a burial, removal, or transit permit.²² Coffin makers are generally required to keep records of sales and names of deceased persons, which are open to inspection by the state registrar.

A stillbirth, or delivery of a dead fetus after the twentieth week of gestation, was formerly required to be registered as both a birth and a death, though the notation of stillbirth was made on the certificates in place of the name of the child. Midwives are not permitted by the vital statistics laws to sign certificates of stillborn children, and such cases are treated in the same manner as deaths without medical attention. In the new model vital statistics law, a stillbirth is reported only as a stillbirth and not as a birth and a death.

Reports of births and deaths are transmitted by local registrars to the state registrar at monthly intervals, the originals being forwarded and copies being retained in the local office. The local registrar must see to it that all certificates received are correct, complete, and satis-

20. *Seung v. Mikkelson* (1929), 150 Wash. 289, 272 P. 968. See F. J. Reeder, Delayed certificates. *Am. J. Pub. Health*, 27:1216, December 1937. In *Department of Health v. Owen* (1904), 88 N.Y.S. 184, 94 App. Div. 425, it was held that a report of a birth can be mailed by a physician.

21. *Matter of Kunhardt* (1920), 181 N.Y.S. 142, 111 Misc. 240.

22. See Survey of state certificates of birth, stillbirth, and death, *Vital Statistics—Special Reports* (U. S. Bureau of the Census), 3:271, November 20, 1937.

factory. Causes of death are usually required to be reported in accordance with the *International List of Causes of Death*, which has been issued in pamphlet form by the United States Bureau of the Census.

If the circumstances suggest that a death or stillbirth was caused by other than natural causes, the local registrar must refer the case to the coroner or medical examiner for investigation and certification.

Payment of Fees to Registrars

The vital statistics laws generally provide for the payment of fees, usually 25 to 50 cents, to local registrars for each birth or death certificate, and suitable fees may also be charged by registrars for furnishing copies of the certificates to interested and proper persons. Sometimes fees are likewise authorized for physicians and others who make the reports to the registrars, although as previously pointed out, the reports may be legally required without compensation.²³

The payment to local registrars of fees from public monies has been upheld by the courts as valid,²⁴ even when such fees are in addition to the regular salary received by the officer charged with the collection of vital statistics.²⁵ The denial of such payments has been upheld, however, in a case where a definite arrangement was made with a secretary of a board of health to act as registrar without added compensation, even though the statutes provided for the fees.²⁶ In this case, the registrar was held to have waived the privilege.

Where a state constitution permitted the legislature to delegate to counties the power to levy taxes for "necessary sanitation," it was held by the Georgia Supreme Court in 1925 that this language did not empower counties to levy taxes to pay fees of registrars of vital statistics, as the term "sanitation" was not considered or intended to cover vital statistics.²⁷ Subsequent to this decision a constitutional amendment was adopted granting the power, and a new law passed in 1927 included authorization of the payment of these fees.

23. Fees to physicians and midwives were upheld in *Asher v. Stacy* (1945), 299 Ky. 476, 185 S.W. (2d) 958.

24. *Burgess v. Johnson County* (1923), 158 Ark. 218, 250 S.W. 10. *City of Sacramento v. Simmons* (1924), 66 Cal. App. 18, 225 P. 36. *People ex rel. Hershey v. McNichols* (1932), 91 Colo. 141, 13 P. (2d) 266. *Darnaby v. Furlong* (1926), 216 Ky. 475, 287 S.W. 913. *State v. Rose* (1926), 313 Mo. 369, 281 S.W. 396.

25. *Minnehaha County v. Foster* (1933), 61 S.D. 406, 249 N.W. 688.

26. *Fox v. City of Monroe* (1930), 15 La. App. 192, 131 So. 483.

27. *Smith v. State* (1925), 160 Ga. 857, 129 S.E. 542.

Vital Statistics as Public Records

The vital statistics laws usually provide that certified copies of birth and death records shall be furnished to citizens on application to state and local registrars, and upon the payment of legal fees.²⁸ Inspection of these public records is likewise permitted, although the officer having custody of the records may exercise a reasonable discretion in making regulations in regard to the inspection and use of the records, such as with respect to the hours during which the inspections may be made, the production of evidence from an attorney or other person as to his authority to examine the records, the payment of suitable fees for this privilege and for abstracts or copies, and the proper conduct of all persons involved. The citizen has a right to examine public records, but he cannot abuse that right and must exercise it only under proper supervision.

With respect to disclosure of illegitimacy of birth, or of information from which it can be ascertained, the Uniform Vital Statistics Act provides that such disclosure should be made only upon order of a court in a case where such information is necessary for the determination of personal or property rights, and then only for such purpose. In cases of legitimation the state registrar, upon receipt of proof thereof, prepares a new certificate of birth in the new name of the legitimated child, and seals and files away the evidence, to be opened only upon court order. The same procedure is used in cases of adoption.

Although a birth or death certificate may be corrected or amended within a reasonable time after it has been received, it usually cannot be changed or altered after it has become a public record. Where, for example, a physician reported a death as due to a certain cause and ten months later a coroner's inquest found a different cause of death, it was held that the state registrar of vital statistics could not supplant the original record.²⁹

Vital Statistics as Evidence

Statutes generally provide that public records such as birth and death certificates shall be prima facie evidence of the facts they set forth, and they may be introduced in court actions for that purpose.

28. *Scott v. Culpepper* (1930), 220 Ala. 393, 125 So. 643. *Prudential Insurance Co. v. Calvin* (1933), 227 Ala. 146, 148 So. 837. *Labofish v. Berman* (D.C. 1932), 60 Wash. L.R. 100, 55 F. (2d) 1022.

29. *Continental Casualty Co. v. Nashville & American Trust Co.* (1933), 166 Tenn. 342, 61 S.W. (2d) 461.

Since the original record is appropriate as evidence of this nature, a certified copy issued by a qualified officer is equally valid.³⁰ This is one exception to the rule of evidence prohibiting testimony in court that is hearsay.

Under the rules of evidence there are, however, some distinct limitations to the information revealed in a birth or death certificate, since these facts are presumptive only. Thus, a death certificate is good evidence as to the fact of death and the time of death, but is not conclusive as to the cause of death, especially in cases of litigation between private parties,³¹ nor can it be offered in evidence as to who caused the death.³² The information given by a physician on a death certificate is acquired through his professional relationship with the patient, and is, therefore, privileged and need not be divulged by him except in criminal cases.³³

In the absence of records of vital statistics, there may be admitted as evidence in courts data from family Bibles, gravestones, genealogical charts, and baptismal and other religious records, provided that suitable proof of their authenticity is adduced.

Mortality tables to indicate the expectation of life of individuals are admissible as evidence in civil litigation, according to numerous decisions.³⁴

The question of morbidity reports as public records is treated in Chapter VIII, on the Control of Communicable Diseases.

30. *Mass. Mutual Life Insurance Co. v. Bush* (1930), 236 Ky. 400, 33 S.W. (2d) 351. *State v. Worden* (1932), 331 Mo. 566, 56 S.W. (2d) 595. *Hunter v. Derby Foods* (1940), 110 F. (2d) 970, 133 A.L.R. 255.

31. *Bozicevitch v. Kenilworth Mercantile Co.* (1921), 58 Utah 458, 199 P. 406, 17 A.L.R. 346. *Washington Fidelity National Life Ins. Co. v. Anderson* (1933), 187 Ark. 974, 63 S.W. (2d) 535. *State v. Hecht* (1934), 165 Md. 415, 169 A. 311. *Mayor and City Council of Baltimore v. State* (1937), 173 Md. 267, 195 A. 571. *Aitken v. John Hancock Mut. Life Ins. Co.* (1940), 124 N.J.L. 58, 10 A. (2d) 745.

32. *Okla. Aid Ass'n v. Thomas* (1927), 125 Okla. 190, 256 P. 719.

33. *Davis v. Supreme Lodge, Knights of Honor* (1900), 165 N.Y. 159. *Beglin v. Insurance Co.* (1903), 173 N.Y. 374, 66 N.E. 102. *Key v. Cosmopolitan Life, Health & Accid. Ins. Co.* (Mo. 1937), 102 S.W. (2d) 797.

34. *Donoghue v. Smith* (1931), 114 Conn. 64, 157 A. 415. *Penley v. Teague & Harlow Co.* (1928), 126 Me. 583, 140 A. 374. *Fournier v. Zinn* (1926), 257 Mass. 575, 154 N.E. 268. *Lyons v. Joseph* (1933), 124 Neb. 442, 246 N.W. 859. *Auer v. Sinclair Refining Co.* (1927), 103 N.J.L. 372, 137 A. 555. *Paine v. Gamble Stores* (1938), 202 Minn. 462, 279 N.W. 257, 116 A.L.R. 416.