



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 314

128th General Assembly  
(As Introduced)

Reps. Ujvagi, Harris, Yuko, Letson

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## BILL SUMMARY

- Permits registered nurses to determine and pronounce death except in cases when certain bodily functions are being artificially sustained.
- Specifies that registered nurses are not permitted to complete any portion of a death certificate.
- Establishes immunities from civil liability and criminal prosecution relative to a registered nurse's determination and pronouncement of death.

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## CONTENT AND OPERATION

### Determination and pronouncement of death

(R.C. 2105.35(A)(1) and 2108.40; O.A.C. 4731-14-01)

#### Background

Current law specifies that an individual is considered dead if it is determined, in accordance with accepted medical standards, that the individual meets either of the following criteria:

(1) The individual has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the brain, including the brain stem;

(2) The respiratory and circulatory functions of the individual are being artificially sustained and a physician determines that the irreversible cessation of all functions of the brain has occurred. The physician's determination is to be made by observing and testing the individual.

While this provision includes references to a physician making the determination of death, the Revised Code does not address the issue of who is authorized to pronounce death. The State Medical Board, however, has adopted rules specifying that only a physician may pronounce a person to be dead.<sup>1</sup>

Under the Board's rules a physician may pronounce death without personally examining the body of the deceased. The physician may do this, however, only if a competent observer has recited the facts of the deceased's present medical condition to the physician and the physician is satisfied that death has occurred. The rules identify the following as competent observers:

- (1) A registered nurse or licensed practical nurse;
- (2) An emergency medical technician (EMT), including an EMT-basic, EMT-intermediate, or paramedic;
- (3) A physician assistant;
- (4) A chiropractor;
- (5) Another physician;
- (6) A podiatrist;
- (7) A coroner's investigator.

### **Registered nurses**

Except in cases where the respiratory and circulatory functions of an individual are being artificially sustained, the bill permits registered nurses to determine and pronounce death. The bill specifies that registered nurses are not permitted to complete any portion of an individual's death certificate.<sup>2</sup>

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<sup>1</sup> As used in the State Medical Board's rules on pronouncement of death, "physician" means an individual holding (1) a current certificate to practice medicine and surgery or osteopathic medicine and surgery, (2) a physician training certificate issued to participate in an internship, residency, or clinical fellowship program, (3) a visiting medical faculty certificate, or (4) a physician's special activities certificate issued in conjunction with a special activity, program, or event taking place in Ohio (O.A.C. 4731-14-01(A) and (B)).

<sup>2</sup> Under existing law governing vital statistics, a death certificate must be completed and signed by the decedent's attending physician or by the coroner or medical examiner, as appropriate (R.C. 3705.16, not in the bill).

To correspond with the bill's provisions permitting registered nurses to determine and pronounce death, the bill includes provisions that expressly authorize physicians to engage in those activities.

### **Immunity from liability**

(R.C. 2105.35(A)(2) and 2108.40)

#### **Physicians and registered nurses**

Currently, a physician who makes a determination of death in accordance with current law and accepted medical standards is immune from liability for damages in any civil action, and is not subject to prosecution in any criminal proceeding, for the physician's acts or the acts of others based on the determination. The bill extends these protections to a physician's pronouncement of death and specifies that the protections apply when there is a determination *and* pronouncement of death.

In a manner similar to the immunity that is established for physicians, the bill provides immunity from civil liability and criminal prosecution to a registered nurse who makes a determination and pronouncement of death in accordance with the bill's provisions and accepted medical standards. The immunity applies to the registered nurse's acts or the acts of others based on the nurse's determination and pronouncement of death. The bill also extends immunity to a physician for the acts of a registered nurse who makes a determination and pronouncement of death.

#### **Other persons**

Current law provides immunity from civil liability and criminal prosecution to any person who acts in good faith in reliance on the determination of death made by a physician. The bill specifies that this immunity also applies to a pronouncement of death by a physician.

Similar to the immunity that applies when a person acts in reliance on a physician's actions, the bill grants immunity from civil liability and criminal prosecution to a person who acts in good faith in reliance on a determination and pronouncement of death that has been made by a registered nurse.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	10-14-09

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