

BOARD OF HEALTH: Children born in wedlock are presumed to be legitimate, but if person filling in standard certificate of live birth is informed that child is illegitimate it must be so recorded on certificate.

August 30, 1945



Dr. R. M. James  
State Board of Health  
Jefferson City, Missouri

Dear Sir:

This acknowledges receipt of your several communications requesting an opinion for the Bureau of Vital Statistics upon the following proposition:

What is the proper procedure to be followed in filling in certain spaces in the standard certificate of live birth issued by the State Board of Health when the answer in Space 8 of that form is that the mother is married and the mother, or other person giving the information to the person filling out the birth certificate, gives the information that the child is illegitimate.

The sections of the Missouri Statutes requiring the registration of births is covered in Sections 9771, 9772, 9773, 9774, 9775 and 9782, R. S. Mo. 1939.

Section 9771 requires that all births that occur in the state shall be immediately registered in the district in which they occur, as hereinafter provided.

Section 9772 provides:

"It shall be the duty of the attending physician or midwife to file a certificate of birth, properly and completely filled out, giving all the particulars

required by this article, with the local registrar of the district in which the birth occurred, within ten days after the date of the birth. And if there be no attending physician or midwife, then it shall be the duty of the father or mother of the child, householder or owner of the premises, manager or superintendent of public or private institutions in which the birth occurred, to notify the local registrar within ten days after the birth of the fact of such birth having occurred. It shall then, in such case, be the duty of the local registrar to secure the necessary information and signature to make a proper certificate of birth: Provided, that in cities the certificate of birth shall be filed at a less interval than ten days after birth, if so required by municipal ordinance (or regulation) now in force or that may hereafter be enacted."

Section 9773 provides what the birth certificate shall contain, as follows:

"The certificate of birth shall contain the following items:

"(1) Place of birth, including state, county, township or town, village or city. If in a city, the ward, street and house number; if in a hospital or other institution, the name of the same to be given, instead of the street and house number.

"(2) Full name of child. If the child dies without a name, before the certificate is filed, enter the words 'died unnamed.' If the living child has not yet been named at the date of filing certificate of birth, the space for 'full name of child' is to be left blank, to

be filled out subsequently by a supplemental report, as hereinafter provided.

"(3) Sex of child.

"(4) Whether a twin, triplet, or other plural birth. A separate certificate shall be required for each child in case of plural birth, giving number of child in order of birth.

"(5) Whether legitimate or illegitimate.

"(6) Full name of father.

"(7) Residence of father.

"(8) Color or race of father.

"(9) Birthplace of father; city or town, state or foreign country.

"(10) Age of father at last birthday, in years.

"(11) Occupation of father. (Answers shall not be recorded to items 6, 7, 8, 9, 10 and 11 in case of illegitimate births.)

"(12) Maiden name of mother.

"(13) Residence of mother.

"(14) Color or race of mother.

"(15) Birthplace of mother; city or town, state or foreign country.

"(16) Age of mother at last birthday in years.

"(17) Occupation of mother.

"(18) Number of child of this mother, and number of children of this mother now living.

"(19) Born at full term.

"(20) The certificate of attending physician or midwife as to attendance at birth, including statement of year, month, day and hour of birth, and whether the child was alive or dead at birth. This certificate shall be signed by the attending physician or midwife, with date of signature and address; if there is no physician or midwife in attendance, then the father or mother of the child, householder or owner of the premises, or manager or superintendent of public or private institution, or other competent person, whose duty it shall be to notify the local registrar of such birth, as required by section 9772 of this article.

"(21) Exact date of filing in office of local registrar, attested by his official signature, and registered number of births, as hereinafter provided.

"All certificates, either of birth or death, shall be written legibly, in unfading black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for herein, or satisfactorily account for their omission."

It is the duty of the attending physician, or midwife, to file the above certificate of birth, properly and completely filled out, giving all the particulars required in Section 9773, with the local registrar of the district in which the birth occurred, within ten days after the date of the birth. And, if there be no attending physician or midwife, then it shall be the duty of the father or mother of the child, householder or owner of the premises, manager or superintendent of public or private institutions in which the birth occurred, to notify the local registrar within ten days after the birth, of the fact of such birth having occurred. It shall then, in such case, be the duty of the local registrar to secure the necessary information and signature to make a proper certificate of birth.

Section 9773, subsection (21), supra, requires that  
" \* \* \* all certificates, either of birth or death, shall be  
written legibly, in unfading black ink, and no certificate  
shall be held to be complete and correct that does not  
supply all of the items of information called for herein,  
or satisfactorily account for their omission."

Section 9782 provides:

" \* \* \* And any physician or midwife in  
attendance upon a case of confinement,  
or any other person charged with respon-  
sibility for reporting births, in the  
order named in section 9772 of this  
article, who shall neglect or refuse to  
file a proper certificate of birth with  
the local registrar, within the time  
required by this article, shall be  
deemed guilty of a misdemeanor, and,  
upon conviction thereof, shall be fined  
not less than five dollars nor more than  
fifty dollars. \* \* \* And any person who  
shall willfully alter any certificate of  
birth or death, or the copy of any certi-  
ficate of birth or death, on file in the  
office of the local registrar, shall be  
deemed guilty of a misdemeanor, and, upon  
conviction thereof, shall be fined not  
less than ten dollars nor more than one  
hundred dollars, or be imprisoned in the  
county jail not exceeding sixty days, or  
suffer both fine and imprisonment, in  
the discretion of the court. And any  
other person or persons, who shall vio-  
late any of the provisions of this art-  
icle, or who shall willfully neglect or  
refuse to perform any duties imposed upon  
them by the provisions of this article,  
or shall furnish false information to a  
physician, undertaker, midwife, or infor-  
mant, for the purpose of making incorrect  
certification of births or deaths, shall  
be deemed guilty of a misdemeanor, and,  
upon conviction thereof, shall be fined  
not less than five dollars nor more than  
one hundred dollars. \* \* \* \* \*"

The policy of the law is to confer legitimacy upon children born in wedlock and there is a presumption that a child so born is the child of the husband and is legitimate. 10 C. J. S. page 18. So firm was this presumption originally it could not be rebutted unless the husband was incapable of procreation or was absent beyond the four seas, that is, absent from the realm, during the whole period of the wife's pregnancy. This strict rule was, however, relaxed and eventually repudiated or, at least, greatly modified, and gave way to the modern doctrine that the presumption may be rebutted by competent and relevant evidence showing that the husband could not have been the father of the child.

The commonly accepted statement of the facts which will overcome the presumption under the modern doctrine is that the presumption of the legitimacy of a child born in wedlock may be wholly removed by proper and sufficient evidence, showing that the husband was (1) incompetent; (2) entirely absent, so as to have no intercourse or communication of any kind with the mother; (3) entirely absent at the period during which the child must, in the course of nature, have been begotten; or (4) only present under such circumstances as afford clear and satisfactory proof that there was no sexual intercourse. 10 C. J. S., supra. Even under the modern rule, however, the presumption is a strong one, one of the strongest and most persuasive known to the law, which means that, in addition to performing its essential function as a rule of evidence, the presumption, like the presumption of innocence, is accompanied by another rule that it becomes conclusive in the absence of any sufficient proof that the husband could not have been the father. In *Needham v. Needham*, (Mo. App.) 299 S. W. 832, citing numerous authorities, it is stated, l. c. 834:

"It is well agreed among all the authorities that a child born in wedlock is presumed to be legitimate, until the contrary is shown. Indeed, such presumption is one of the strongest known to the law, so jealously regarded, in fact, that the courts will not permit it to be overthrown, unless there is no judicial escape from that dire conclusion. \* \* \* \* \*

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The person authorized and required to fill out the standard certificate of live birth enters upon the certificate information supplied by the mother of the child, or other persons. Under the provisions of Section 9782 it would be a misdemeanor to furnish false information to a physician, undertaker, midwife, or informant, for the purpose of making incorrect certification of births.

In case the mother, or person giving the information to the person filling out the birth certificate, gives the information that the child is illegitimate, then the answers to items 6, 7, 8, 9, 10 and 11 of Section 9773, supra, as set out in items 9, 10, 11, 12, 13 and 14 of the standard certificate of live birth, should not be recorded.

In case the mother of the child is married and refuses to give the information required in items 6, 7, 8, 9, 10 and 11 above, as set out in items 9, 10, 11, 12, 13 and 14 of the standard certificate of live birth, then the person filling out the standard certificate will state in the blank spaces that the answers were refused, or satisfactorily account for their omission.

#### CONCLUSION

Therefore, it is the opinion of this department that (1) in the event the mother, or other person giving the information to the person filling out the birth certificate, gives the information that the child is illegitimate, then in item 8 of the standard certificate of live birth should also be entered "illegitimate" and the answers to items 9, 10, 11, 12, 13 and 14 of said certificate should not be recorded, and that (2) in the event items of information required under Section 9773, R. S. Mo. 1939, are omitted, a satisfactory reason for such omission must be stated.

Respectfully submitted,

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APPROVED:

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