

Funeral Ethics Organization

Summer~Fall Newsletter 2007



Hinesburg, Vermont

Funeral Secrecy in Massachusetts

by Byron Blanchard

Massachusetts regulation of funeral directors and funeral establishments is conducted almost entirely in secret.

Public Records

The Board of Registration in Embalming and Funeral Directing will not provide access to any the following public records:

- Meeting Agendas
- Meeting Minutes
- Establishment Inspection Blank Forms
- Establishment Inspection Reports
- List of Disciplinary Cases referred for prosecution
- Disciplinary Case Final Decisions
- Disciplinary Case Charges (Orders to Show Cause)
- Disciplinary Case Consent Agreements
- Disciplinary Case Negotiated Settlements

Annual Reports from funeral homes about their pre-need funeral contracts are available, but at an unaffordable price. For details see the Funeral Consumers Alliance of Eastern Mass newsletter on line at <<http://fcaemass.org/boardofregistration.html>>.

The Board does issue brief press releases on final decisions in some disciplinary cases.

Public records requests to the Board are not acknowledged or denied, just ignored. That is because the current Supervisor of Public Records (SPR) in the Secretary of State's office will not accept an appeal of the refusal by non-response. Previous SPRs over at least the last twenty years have routinely accepted appeals of denials by non-response (as their regulations provide) and have been very helpful. The current SPR will accept an appeal only

when there is a written denial of the public records request. The Attorney General is authorized to intervene only when a case is referred via the SPR appeal process. The Board understands well that no help is available from any state agency for those whose requests for public records are just ignored. The only remaining recourse is a lawsuit.

The Board's non-response strategy started about two years ago when their long-time counsel retired and was replaced with a new more aggressive attorney. Under their former counsel most public records were available. The few cases of denials were almost all settled in favor of the requestor with the assistance of the SPR and, in one case, the Attorney General.

Open Meetings

Large portions of each of the Board's meetings are closed as executive sessions under the litigation strategy exemption. A few of these executive sessions are legal and proper when they concern lawsuits in which the Board is the defendant. But the Board also uses the litigation strategy exemption for their discussions of how to handle complaints against licensees. Hearing such complaints, which they will later judge, without notice to and presence of the accused is a major violation of due process. It is like having the preliminary hearing in a criminal case with no notice to the accused.

There are some complaints that should not be discussed in open meeting because of their sensitive nature. The open meeting law has an exemption for such cases. It differs from the litigation strategy exemption in that it requires notice to the accused and opportunity to attend the meeting. That would be due process. The Board doesn't ever use that exemption!

What to do?

Massachusetts should abolish the Board. Its secrecy, failure to enforce consumer protections in its regulations, and blocking of innovation in funeral service are ample reasons for abolition. The Board's thinking remains where it started, a century ago, that embalming is the key element of funeral service and that funerals should be

held only in funeral home. Funeral homes must have elaborate embalming rooms of specific dimensions, and chapels of so many square feet. But they don't have to have refrigeration.

Colorado abolished its Funeral Board a decade ago, but business goes on with no more abuses than before. Full-service funeral homes continue to co-exist with others offering minimal facilities and service at a lower cost because of lesser overhead. Massachusetts should follow Colorado's lead. §

Byron Blanchard has been active with the FCA of Eastern Massachusetts for many years. He regularly monitored the Board of Registration meetings . . . until they started conducting business in secret.

Alabama Audit

The following excerpts come from an audit of the Alabama Board of Funeral Service that was prepared for the legislature's Sunset Committee. A good idea for every state to consider?

SIGNIFICANT ITEMS

1. Failure of the board's offices to embrace electronic technology limits the board's ability to perform its work.

The board does not maintain an Internet website. Minutes of the board's July 25, 2006 board meeting show a unanimous desire by the board to have a website. One establishment licensee responding to our survey responded "Suggestions: 1) Need to have a website 2) computerize the office". At the board's January 30, 2007 meeting, the executive secretary informed the board that the website should be available in the next few months. [Not up as this is written.]

The board pays for email addresses for the board staff, supplied and maintained by the Department of Finance Information Systems Division (ISD) but the examiner was not able to utilize e-mail to communicate with the board's office.

The board's staff does not have Internet access. Reluctance to utilize the Internet limits the office's access to the state's resources and dissemination of important

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information to state agencies, which are increasingly Internet based. Payroll processing, disbursement vouchering, purchase requisitioning, and equipment inventory processing are now normally done online at state agencies. At the board's offices, these functions are performed manually on paper.

A large majority of the board's records are paper-based and written in longhand. The board's staff prepares and maintains voluminous reports, paper logs, writing tablets, and folders in order to complete day-to-day activities, tasks that could be more effectively and efficiently done with word processor documents and electronic databases and spreadsheets.

The board's staff was unable to provide a listing of its licensees with accompanying information that is required to be made available by law, without retrieving the information from written records and compiling it by hand. The *Code of Alabama 1975*, Section 34-13-23(e) states, "The executive secretary of the board shall keep a record in which shall be registered the name and business address of every person to whom licenses have been granted in accordance with this chapter, the number

and date of the license and the date of each renewal. Upon request to do so, the executive secretary of the board shall supply each person licensed for the practice of embalming and funeral directing with a list of all persons and establishments holding a license under this chapter, then in force, giving the names of the persons, their business addresses and the numbers of their licenses.” When the examiner asked for the listing, the associate executive secretary stated that the only way the information could be provided is if he went through all of the licensee files to gather the information. This information could easily have been retrieved from a properly constructed electronic database.

The board’s staff could not provide a pamphlet containing information required by law.

The *Code of Alabama 1975*, Section 34-13-4 states, “Upon request, the board shall distribute to funeral directors, embalmers and apprentices and such other persons as may be interested therein, in pamphlet form, the provisions of this chapter together with all rules and regulations prescribed, adopted or promulgated pursuant to this chapter, together with a complete and current list of all persons and establishments licensed under this chapter.” No such document was available. The board did provide a list of licensees with the licensee’s address for 2006. No other information was provided. This information could easily have been produced on demand from a properly constructed database.

2. Of the 40 licensees responding to our questionnaire, the following appears significant.

- Twenty-nine percent responded that they are not adequately notified of changes or interpretations of the positions, policies, rules, or laws of the Board of Funeral Service
- Fifty-nine percent responded that continuing education is necessary, while thirty-three percent believe it is not necessary, and the remaining eight percent did not have an opinion. (Continuing education is not required of the board’s licensees)
- Three establishment licensees responded that the associate executive secretary has requested money (other than normal fees) for performing a board service

3. The board is not actively monitoring unlicensed funeral homes.

Although unlicensed practice is a recurrent concern among the responses we received from board members and licensees, the board’s staff stated that they do not actively monitor unlicensed activity. The examiner performed an Internet search for funeral homes in Alabama and compared the results to a list of licensees provided by the board. Twenty of the funeral homes found in the Internet search were not on the board’s licensee list. Realizing that some of the establishments

could have changed owners or names, the examiner contacted these establishments by telephone. Seven of the twenty establishments were not on the establishment licensee list provided by the board’s executive secretary, and the board could not find any record of the establishments’ being licensed.

4. The board did not obtain adequate examining facilities for its January 2007 examination.

The examiner observed the board’s January 2007 examination of applicants held in the Capitol Room of the Capitol Inn hotel in Montgomery, AL. The room appeared too small for the examination. Hotel staff informed the examiner that the Capitol Room seats 40 people classroom style and has an area of 1200 square feet. During the examination, forty-four (44) applicants were seated at three long tables, shoulder to shoulder. All board members were also present, as were the executive secretary and the assistant executive secretary. Two of the tables were placed so closely that the backs of chairs at one table touched the backs of the chairs at the other table. Board members and staff left and entered the room during the examination. The room was warm. Outside noises, such as car horns and laundry carts, filtered into the room. As applicants in the center of a table completed the exam, persons to the side of the applicant were disturbed as the applicants left the table.

5. The board’s enabling statutes concerning the examination of candidates for licensure are not consistent with the procedures now being used by the board and do not allow the use of modern testing methods.

State statutes require the board to administer and grade examinations for funeral directing. Consequently, computerized testing and other on-demand examinations administered by professional testing services are not alternatives that can be lawfully utilized by the board. A search of the Internet for availability of testing locations for funeral examinations in Alabama revealed that computerized testing services are available in Alabama for the board’s examinations. The Pearson Professional Center offers the ICFSEB examination on demand at its testing facilities in Alabama in Birmingham, Decatur, Dothan, Mobile, and Montgomery. The Pearson Testing Center, an international testing service, claims on its Internet website at <http://www.pearsonvue.com/ICFSEB> to provide the funeral service examinations for both the professional examination and the laws, rules, and regulations examination for approximately half the states. The Board was unable to provide pass/fail results.

6. Inspection logs do not support the board’s compliance with state law that requires at least annual

inspection of all licensed establishments.

The examiner's review of the boards' inspection logs for the 2005 and 2006 fiscal years revealed 892 total entries for funeral home inspections. Four hundred twenty-four (424) establishments were recorded as having been inspected twice in the two-year period. Eight establishments having less than two entries were new licensees, one was closed, seven had name changes, and two were possibly checked twice but the record was not sufficiently legible to determine that this was case. Twenty-five establishments were recorded as inspected only once during the 2 year period. Funeral establishments are required to be inspected at least annually by the *Code of Alabama 1975*, Section 34-13-111(b).

7. Records of inspections of funeral establishments create doubt as to the thoroughness of the inspections.

The board is required to complete an inspection of every funeral establishment at least annually. The majority of inspections are recorded as made during the months of August and September. Two persons perform all of the inspections. Our review of the board's inspection log for the period August 1, 2005 through September 1, 2005 indicated that inspections were performed as follows:

[The auditors prepared a chart of travel claims and inspection visits over thirteen days showing 222 inspections made in 107 towns involving travel of 3,054.98 miles.]

There does not appear to be sufficient time for the reported volume of inspections shown in the preceding table to have occurred on the days indicated, if thoroughly done.

8. The board failed to provide quarterly SMART Performance Report information required by the Department of Finance for the 2006 fiscal year.

The board provided the first quarter performance information for the 2006 fiscal year but did not provide the remaining three quarters of information to the SMART budget office. As of April 26, 2007, performance information continued not to be reported. Further information about the board's SMART Budget effort can be found in the SMART BUDGETING section of this report.

9. The board does not require the Social Security number of applicants for establishment license as a condition of licensure, as required by law (*Code of Alabama 1975*, Section 30-3-194).

Section 30-3-194 requires that, "(a) Any agency

charged with the administration of any law concerning the issuance or renewal of a license, certificate, permit, or other authorization to drive a private or commercial motor vehicle or to engage in a profession, occupation, or recreational, sporting, or commercial activity shall require all applicants for issuance or renewal of the license, certificate, permit, or other authorization to provide the applicant's Social Security number to the agency, which agency shall record the Social Security number on the application and related records maintained by the agency." The Attorney General, in his opinion 2004-022, stated that such an agency must require the Social Security number of the individual or individuals in a corporation, partnership, or limited liability corporation required to make application for license for that entity.



10. A survey by the Funeral Consumers Alliance found violation of federal funeral regulations in nearly all local [Montgomery] funeral establishments surveyed.

Minutes of the board's meeting of October 27, 2006 show that Dr. Carolyn Pevey, an Assistant Professor of Sociology at Auburn University Montgomery representing the Funeral Consumers Alliance, presented to the board a report of a survey the group had made of local funeral establishments. The purpose of the survey was to determine compliance by funeral establishments with the Federal Trade Commission's "Funeral Rule". The Funeral Rule consists of regulations governing pricing and availability of funeral goods and services. Dr. Pevey reported that nearly all establishments contacted had some violation of the rule, some with major infractions. On its Internet website, the Funeral Consumers Alliance presents itself as a "federation of nonprofit consumer information societies dedicated to a consumer's right to a meaningful, dignified, affordable funeral" that has operated since 1963. The organization is national in scope and is headquartered in Burlington Vermont. It lists affiliates in all but six states (Alabama, Kansas, Mississippi, Nebraska, North Dakota, and Wyoming) and claims that an affiliate is "coming soon" in Alabama.

After Dr. Pevey's presentation, Dr. Pevey was informed by the board that the board's authority of enforcement ended at the state level and did not extend to federal laws or regulation. The board stated that it would inform the state's establishments that the surveys would be continuing and would encourage the establishments to review their policies to ensure compliance with the FTC regulations.

11. The board has not yet adopted a rule regarding an identification system for funeral establishments taking possession of a dead human body.

Act 2006-608 provides in Section 1(a) that “Each funeral establishment taking possession of a dead human body shall maintain an identification system approved by the Alabama Board of Funeral Service. The identification system may include any dignified method, including, but not limited to, an arm band or a wrist band, that will ensure the ability to identify the body from the time of taking possession of the body until the body is transferred to another entity or until final disposition.

The board discussed the issue in its meeting of April 26, 2006 as House Bill 428, which became law as Act 2006-608 and is codified as the *Code of Alabama 1975*, Section 22- 19-5. A board member moved that the board approve identification methods that allow non-detachable ankle bracelets. The motion was seconded, but minutes of the meeting do not record a vote on the motion. Since the board’s action on this issue will result in a regulation of the board arising from law and which applies to the public, the action must be adopted as an administrative rule in accordance with the rulemaking provisions of the Administrative Procedure Act.

12. The board’s enabling statutes require its applicants for licensure to be United States citizens, a condition that may be unconstitutional.

13. When requested by the examiner, the Ethics Commission was unable to produce filed statements of economic interest for members of the board (past and present), and for the executive secretary and the associate executive secretary.

Statements of Economic Interest are required by law to be filed annually with the Alabama Ethics Commission. The examiner contacted the Ethics Commission by telephone and asked to review the Statements of Economic Interest for the board members and the executive secretary and associate executive secretary. The examiner provided the names of all members who should have filed during the review period and the name of the executive secretary and the assistant executive secretary. The examiner was informed that none of the statements could be located.

14. The board did not post its membership information to the Secretary of State’s Internet website, as required by law.

Act 2006-630, effective July 1, 2006 and codified as the *Code of Alabama 1975*, Section 36-14-17 requires each board and commission to post information about its

members to an Internet website maintained by the Secretary of State. The board had not done so.

15. An I-9 form was not on file for the board’s recently hired employee.

Completion of a form I-9 is a federal immigration law requirement. The form documents an employer’s determination that a newly-hired employee is eligible for employment under federal immigration law. This determination is required by the Federal Immigration Reform and Control Act of 1986, as amended, and is required whether or not the employer believes the employee is a United State citizen. Employees hired by all state agencies are subject to the requirement. It is the responsibility of each employing agency to complete the form.

STATUS OF PRIOR FINDINGS

In the most recent prior examination, we found that the board failed to comply with Alabama’s Sunshine Law by notifying the public of board meetings.

Review of the board’s records and subsequent questioning of the board’s executive secretary revealed that public notification of board meetings had not been accomplished for an extended length of time. The executive director stated he had faxed notice of the meetings to a local newspaper for publication, but the notices were never published. The executive director failed to take the steps necessary to ensure that the notices were published.

The Alabama Sunshine Law (*Code of Alabama 1975*, Section 13A-14-2) requires that reasonable notice be given to the public of those meetings that must be open to the public; the public must be given a reasonable opportunity to be aware of the place where the notice will be posted; and the time, date, and place of the meeting must be available to the public upon reasonable inquiry, and when special circumstances arise or when a meeting is called for truly emergency purposes, the agency holding the meeting should so declare and should give such notice as is reasonable under the circumstances, unless the giving of such notice is impractical or impossible. *Slawson v. Alabama Forestry Com’n*, 631 So.2d 953 (Ala.1994).

Status: The board began to post notice of its meetings on the Secretary of State’s Internet website on January 28, 2006, as required by the state’s Open Meetings Act, which replaced Alabama’s Sunshine Law effective October 1, 2005. Although the board set its meetings two months in advance and notified its licensees, the board did not post public notice of the meetings on the Secretary of State’s Internet website until seven to

eight days prior to the meeting date. The Open Meetings Act requires posting “as soon as practicable”, which means as soon as feasible after the meeting date is known. §

The full audit is posted on-line and can be read at <http://www.examiners.state.al.us/PDFs/Audit28S-0013.pdf> including some candid feedback from a licensee questionnaire.

Hospital Body Release Policy

by Lisa Carlson

First one Brady twin died, and then the other premie died. At the same hospital, a Bramley baby also had died. The funeral director who had been sent for the Brady bodies went to the morgue where one baby’s body was quickly found. After some searching, he was given a second body. The grandmother arranged for burial together in one casket. The Bramley family arranged for cremation. Exhumation of the Brady twins two months later showed that only one body was the premie Brady. The other was a full-term Bramley baby.

After Mr. Pettigrew died, the small hospital called the only funeral home in town. The family, however, would not pay the expensive removal fee, as they had planned to use an out-of-town funeral home for a low-cost cremation. The family suggested that the funeral home send its bill to the hospital.

Rebecca was Mr. Brown’s girlfriend and spent many hours at the hospital prior to his death. She was the one who told the hospital staff which funeral home to call. When Mr. Brown’s out-of-state children finally heard about their father’s death, he had already been cremated. The children are suing the hospital for failing to contact the legal next-of-kin.

The Walker family had been in regular and caring attendance prior to the death of the husband and father. Mrs. Walker and her sons were planning to handle all funeral arrangements themselves, they told hospital staff. Nurses on that floor had never heard of such a thing and told them they would have to hire a funeral director; they were sure it was illegal for a family to transport a body.

Only after the Walker lawyer spoke with the hospital lawyer threatening a lawsuit did the hospital finally agree to release the body.

The following question was e-mailed to hospital associations in various states around the country:

Does your organization have a recommended policy and protocol for the release of a body when a death has occurred? How do you avoid body mix-ups? How do you determine who has the legal right to custody of the body? If a family member is choosing to handle a death without a funeral director – legal in your state – will there be a problem in having the body released to the family member rather than a funeral director?

Of the 30 or so hospital associations queried—both national and statewide—not one had a policy on hand. New Jersey law requires such a policy for each hospital, but the association did not have any example to share. New Mexico law requires that an effort be made to locate next-of-kin unless the deceased has left other instructions. With Native Americans often driving deceased relatives back to the reservation for burial, the hospital association didn’t think release of the body to family members was a problem in that state.

Fortunately, Fletcher Allen Healthcare here in Vermont has an excellent policy. It will be amended in the future to take into account the new Advance Directive that permits a person to name an “agent for body disposition.”

SUBJECT: Postmortem Care

PURPOSE: To ensure that the patient’s continuum of care is completed in a timely manner.

POLICY STATEMENT: Upon the death of a patient, a uniform process will be followed in order to assure proper care of the patient.

PROCEDURE:

I. When the death of a patient is anticipated, the patient will be moved into a private room whenever possible to facilitate the grieving process and to provide privacy.

II. Post mortem care begins following the pronouncement of death: see Decedent Flow Sheet (Form #029899), which is part of the Death Packet Kit (In-house supply ProClick order #026748)

A) Preparation of the body

1) Follow instructions as outlined on Decedent Flow Sheet. Further guidance on bathing the body and replacing dentures is provided on page 113 of the Nursing Procedure book.

2) Special considerations

(a) Medical Examiner (ME) cases . . .

(b) Infection Control . . .

(c) Fetal and neonatal death . . .

(iii) Care of fetus/neonate

(01) Do not elevate patient's head; do not apply ice to eyes or tape eyes closed. Loosely wrap body in plastic chux and secure with tape. [Plastic side is to be touching pt's skin. Paper or cloth touching the skin of the fetus/neonate draws the fluid out of the body, causing dehydration]. Secure additional ID tag to chux.

(02) Social Worker should be called for all neonatal deaths to provide support to family and offer options for disposition of remains. Necessary paperwork will be filled out by Social Worker stating family's wishes for disposition of remains.

(03) If the fetus is stillborn, a death certificate is not required. However, a "Burial Transit Disposition Permit for Fetal Remains" is required in order to release the fetus from FAHC.

(iv) Checklist/forms

(01) Refer to form # 027754, Checklist for Pregnancy, Terminations, Stillborns and Neonatal Deaths

(02) Utilize "Memory Box" in Birthing Center or NICU. The Memory Box contains clothing with which to drape, dress or bundle the body per parental preference.

(03) Give parents the option to see, hold and care for the fetus/neonate to facilitate the grieving process. Fetus/neonate may stay with family until family is ready to release infant to the morgue.

(04) Make ID bracelets, footprints/handprints and take pictures of fetus/neonate.

(05) Offer items to parents. If parents not willing to accept patient belongings, give to Case Management and Social Work in a labeled envelope. . . .

III. Transfer of the body to the Morgue

A) Deceased patients may be kept on the nursing unit in their private room for up to two hours following the pronouncement of death to allow time for their family members to come to the hospital.

B) If the patient expires in a semi-private room, the body will be transported directly to the Morgue. Family members may request to view the body in the Viewing Room adjacent to the Morgue. . . .

IV. Family Responsibilities

A) Cultural and religious issues

1) Cultural or religious practices which are to be followed in the event of death should be clearly indicated in the medical record. If this information is not in the medical record, the family should be questioned regarding any cultural or religious wishes.

2) Contact Pastoral Care if special assistance is needed in managing religious requests, or for spiritual support by a chaplain for the family (before, during, or after) a patient's death. Social Work or Pastoral Care may be contacted if special assistance is needed in managing cultural requests.

B) Viewing the body

1) See III A) and B), above.

2) If, after the body has been transferred to the Morgue, the family of the deceased expresses a desire to view its family member prior to autopsy, staff should contact the following:

(a) During work hours (8AM-4:30PM) the Autopsy Service can be contacted at 73570 to arrange a viewing time. The family should be queried as to their possible desire for a chaplain from Pastoral Care to be present with them for support at the time of viewing.

(b) After hours and on weekends the ANC (Administrative Nurse Coordinator) should be contacted. The ANC will contact Patient Support Services to help with transport and/or preparation of the body.

(c) The ANC should query the family regarding their possible desire for Pastoral Care to be present with them for support at the time of viewing.

3) While the viewing of the body is done in the Morgue Viewing Room whenever possible, if the family has a desire to view the body in the Chapel, they may do so by requesting that the ANC contact the on-call chaplain or social worker. If it is a Medical Examiner case, the viewing must first be approved by the Medical Examiner.

4) If viewing is after hours or on a weekend the employee that is present with the family at the viewing (ANC, Social Worker, Pastoral Care) should contact Patient Support Services on pager 0603 to return the body to the Morgue Cooler.

- C) Notification of funeral home:
 - 1) The family is to make its own funeral arrangements and may contact the funeral home of its choice. There are several questions the funeral home will need to ask the family pertaining to arrangements.
 - 2) Neither the Nursing Staff nor the Autopsy Service is to contact funeral homes to make arrangements.
 - 3) If a family is in such severe distress that it appears unable to manage contacting a funeral home, Case Management and Social Work should be contacted to support and counsel the family.
- D) Collection of patient items:
 - 1) If the family is present at the time of a patient's death, all valuables and belongings will be given directly to the family. . . .

V. Release of body from FAHC:

A) Release of the body from the nursing unit (for bodies that **ARE NOT** having an autopsy, being used for tissue donation or are ME cases)

- 1) Release of Body From Nursing Unit directly to Funeral Home:
 - (a) Check to make sure that the family has already been asked about an autopsy and has indicated that they do **not** want one. Be careful not to ask again as the family may perceive it to be may be disrespectful or even considered harassment to do so. Also make sure that the CDT has released the body, and that the deceased is **not** considered to be a Medical Examiner case.
 - (b) Family should contact funeral home of their choice.
 - (c) Funeral Home will require the following documents:
 - (i) Completed Vermont Certificate of Death. A copy **MUST** be sent to morgue also.
 - (ii) Verification of the patient's identity by two people, such as the funeral home employee and a nurse, or a security officer and the funeral home employee, using two methods of identification.
 - (d) The nursing unit should complete both the "Patient Information" and "Disposition" section of the Morgue Control Form and take to the Morgue along with the Death Certificate, if available.
- 2) Release of Body From Nursing Unit directly to Family:
 - (a) Check to make sure that the family has already been asked about an autopsy and has indicated that they do **not** want one. Be careful not to ask again as the family may perceive it to be may be disrespectful or even considered harassment to do so. Also make sure that the CDT has released the body, and that deceased **is not** considered to be a Medical Examiner case.

(b) Family should contact funeral home of their choice. The funeral home can ensure that the family will have the correct forms for transport of the body. (See V A 1 C, above).

(c) If the family does not wish to involve a funeral home they **must** have the Vermont Certificate of Death filed at the Burlington City Hall as well as a Vermont Department of Health Permit for Temporary Removal of Dead Human Remains from Burlington City Hall (which they would receive after filing the Vermont Certificate of Death). The family should be made aware that Burlington City Hall only has these documents available during normal business hours. If the original copy of the Certificate of Death is released to the family, a copy must be made and placed in the patient's medical record.

(d) Documentation

- (i) The nursing unit should complete both the "Patient Information" and "Disposition" section of the Morgue Control Form and take to the Morgue along with the Death Certificate, if available. . . .

- B) Release of the body from the Morgue
 - 1) For bodies that **ARE** having an autopsy, tissue donation, or are a ME case:
 - (a) During or after work hours, notify the Autopsy Service (73570) of the death. Bring body to morgue and place in morgue cooler as soon as possible.
 - (b) Autopsy Staff requires the following paperwork:
 - (i) Completed Morgue Control Form
- C) Donation of the body to UVM:
 - 1) Donation of a body to the University of Vermont Medical School is arranged through the University of Vermont Department of Anatomy and Neurobiology (656-2230) during regular business hours. UVM prefers that the donors pre-register, but now is allowing the donor's next of Kin or a representative holding Power of Attorney to sign for the donor. . . . §

The full policy with attachments can be read on-line at
 <www.funeralethics.org/hospital.pdf>.

How does your local hospital compare?

Abuse of Power or Blatant Incompetence?

by Lisa Carlson

July 11, 2007

Robert S. Mueller, III, Director
Federal Bureau of Investigation
J. Edgar Hoover Building
935 Pennsylvania Ave., NW
Washington, DC 20535-0001

Dear Director Mueller:

After 9/11, your staff promulgated a policy that a dead body under FBI jurisdiction must be released only to a funeral director. A dead body poses no threat to national security, and funeral directors have no relevant special training. Therefore, any claim that this action is required during a time of national crisis is a tax on one's imagination.

This policy violates the civil rights of a family that might wish to care for its own dead, as permitted in 43 states and on all Indian reservations. The problem was brought to the FBI's attention a year and a half ago in various phone, fax, and mail correspondence, without any subsequent change in policy. I am stunned that your staff has not had the good manners to reply to correspondence received or any sense of responsibility to address a serious concern.

The failure of your staff to correct this problem in a timely way certainly raises questions of racial bias, as Native Americans have been the ones most harmed by this policy. Not only is there no terrorist event, their sovereign rights are being totally ignored when a sudden death occurs on a reservation and must be investigated by the FBI. Native American families are being forced to hire funeral directors they don't want in order to get their family members back. This has interfered with their native funeral customs.

As director of the FBI, I am assuming you have the authority to rescind such a policy and to notify all field offices that the policy has been cancelled. I am asking Senator Leahy's Judiciary Committee to monitor your response to this violation of people's civil rights by the FBI.

Sincerely,

Lisa Carlson
Executive Director
Funeral Ethics Organization

[I sent Senator Leahy's office a full copy of nearly two year's worth of the correspondence I'd mailed to the FBI. (My initial letters were non-confrontational in which I made helpful suggestions for re-writing their misguided and sometimes poorly-worded policy. I received no responses.) I was finally put in touch with a concerned staffer handling

Judiciary issues. She quickly contacted North Dakota's Senator Dorgan because he is chair of the Indian Affairs Committee. A staffer there immediately started some additional investigations. The following response was received nearly two months later on U.S. Department of Justice letterhead, Federal Bureau of Investigation. Now that some senators are watching, FEO finally merits a reply.]

September 4, 2007

Ms. Lisa Carlson
Executive Director
Funeral Ethics Organization
87 Upper Access Rd.
Hinesburg, VT 05461

Dear Ms. Carlson:

Your numerous letters to the FBI regarding policies about the handling of human remains were forwarded to me for a reply. Your letters expressed concern about the disposition of deceased victims' bodies by the FBI in past investigations on Indian reservations in Idaho and elsewhere which prevented family members from obtaining the remains of their loved ones. While I am sympathetic to your concern about this issue, I wish to clarify what FBI policies are as they relate to this matter.

The FBI policy you refer to was drafted for international terrorism investigations and does not apply to the investigations you referenced. Additionally, as previously communicated to you during telephone calls to the Office of General Counsel, the disposition of the victims' bodies in the possession of state medical examiners, coroners, and hospital staff is dictated by the state and county law. This is true even when these state-licensed medical professionals obtained a victim's body pursuant to an FBI investigation. Once the victim's body may be released, the determination of which family members control its disposition and to whom the body is released is dictated by the laws of the state and county where the body is located. FBI personnel in Idaho have taken the time to explain the process to victims' families. However, this may have unintentionally created the impression that the process for obtaining the victim's body is an FBI policy.

In the future, we will ensure that family members speak directly to the medical personnel responsible for such decisions. I appreciate you bringing this issue to our attention.

Sincerely,

Elaine N. Lammert
Deputy General Counsel

[I have been told that Senator Dorgan's staffer is finding NEW and related allegations against the FBI. Apparently, a Native American body might be transported hundreds of miles away for a questionable autopsy and the family forced to pay hundreds of dollars for the retrieval. Another mentioned to me that on the reservations FBI stands for "Federal Bureau of Intimidation."]

September 21, 2007

Att: Katherine Neal
Senator Patrick Leahy
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

I believe we have three serious problems with the FBI: dereliction of duty, prejudice against Native Americans, and abuse of power.

I've enclosed a recent letter from Elaine Lammert, Deputy General Counsel at the FBI. At least we both agree that a policy written for a terrorist event has no business being applied to a drunk driving death on an Indian reservation. However, I am stunned that Ms. Lammert would falsely state that "FBI personnel in Idaho have taken the time to explain the process to victims' families" when such is not the case. She implies that the Native American family simply misunderstood when told they had to hire a funeral director. There was no "unintentional impression" whatsoever; the agent refused to release the body to the Native American family or anyone other than a funeral director and was clear in stating that to both me and Joshua Slocum of Funeral Consumers Alliance at that time, when we were called by the family for help.

Although Ms. Lammert has whitewashed the FBI episode in Idaho, I at least assumed that the agency had by now informed its various offices—and certainly the ones where we have identified a problem—that a body may be released according to state or reservation law, not necessarily to a funeral director. Today I called the FBI agent, Joe Servell, in Pocatello. I asked him if the policy for releasing a body had been clarified or was the FBI still requiring the use of a funeral home. He insisted that a funeral home would need to be used. I then called the regional office in Salt Lake City. The agent of the day, Mark Martinez, knew nothing about any policies for the release of a dead body. In fact, he had no idea what the current policy was or what was permitted by law in the three states his region covers. He refused to pass my call along to the agent in charge, suggesting I write a letter instead. I asked him if a family had a dead body to deal with, would they be told to write a letter, too? He didn't think that question was relevant.

The fact that the FBI has failed to educate its regional offices on the appropriate procedures to use for releasing a body under its jurisdiction, especially those on Indian reservations, certainly raises the concern that racial bias has gotten in the way of the FBI's duty and ability to serve the public, especially Native Americans.

Lastly, the original policy that trampled the civil and Constitutional rights of families by limiting their funeral choices under the guise of fighting terrorism needs to be promptly amended. I will appreciate any effort you can extend in helping us correct these problems.

Sincerely,

Lisa Carlson

cc: Elaine Lammert, FBI
Stephen Pevar, ACLU
Joshua Slocum, Funeral Consumers Alliance
Dave and Marcia Robles, Pocatello, ID



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Summer~Fall 2007

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We Can Do Better

➔A crematory operator received a “notice of complaint” from the Vermont Board of Funeral Service. A high-priced funeral home competitor claimed that the crematory was having “showings” and wasn’t that against the law, he asked? The crematory owner responded in writing that, yes, there was a family witnessing room for the use of families prior to and during the cremation, and cited the Vermont regulation giving families the right to witness a cremation. In spite of his explanation, and with no additional information, he was notified two months later that a formal investigation would be now gotten under way by the Funeral Board. At no time did staff inform him what statute or regulation he had supposedly violated nor was he advised of his right to an outside administrative law clerk, per the regulations, rather than a board made up of funeral director competitors.

➔There are two florists in town. The woman who had recently purchased one of the shops learned that the other florist offered a 20% kickback to the funeral directors who sent their orders to that shop. So the new florist offered the same discount. . . to no avail. She called the FEO office to complain, as she likely will not be able to stay in business, she says even though her prices are competitive or sometimes lower than those of the other shop. FEO has no way of knowing if the quality of the flowers and arrangements are equal between the two shops. All things being equal, do funeral directors have an obligation

to alternate orders? Or should funeral directors simply ask their clients which florist to use? Should funeral directors pass along the discount to the customers, or is that a legitimate commission?

. . . And Some Do!

➔Forty years ago, the social worker had lead 14-year-old “Shannon” into the morgue to identify her mother. Now middle-aged, with a teenage daughter of her own, Shannon wanted to find out what had happened to her mother’s body. With the help of one of her caring foster mothers, they discovered that the cremated remains were at the Loma Vista Memorial Park and could be “disinterred” from the storage room for \$516. That was more than Shannon could afford. A phone call from the FEO office managed to convince the manager, Kurt Adams, to release them for \$75, the price of a new disposition permit. Kudos to Loma Vista—not only for reuniting a daughter with her mother but for having stored the cremated remains in a well-documented, well-organized way all these years.