

# Funeral Ethics Organization

Summer Newsletter 2005



Hinesburg, Vermont

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## Hospice and Funeral Home Relationships: How to Avoid a Conflict of Interest

*by Randall Hedrick*

In the course of providing end of life care to patients and their families it is inevitable that hospice staff will work with all of the funeral homes in the community. Familiarity can obscure objectivity when relationships between the hospice and funeral home become too cozy and convenient. In communities where there are several funeral homes the competition for business can be more intense, resulting in discreet, as well as fairly aggressive marketing. Hospice then becomes a marketing target because it is a constant source of new business for the funeral home. Hospice and funeral homes are subject to both federal and state laws which regulate the conduct of their operations. Due to the realities stated above, the hospice and funeral home must maintain a good working relationship, but both entities need boundaries so that ethical and legal conduct is practiced for the overall benefit to the community served.

From the perspective of hospice, our goal is to provide the best care we are able to provide to the terminally-ill patient and their family based on what their desires allow us to do. In the process of providing care, funeral arrangements and planning for disposition of the remains of the deceased are discussed. For those patients and their families where planning has already been accomplished, we merely facilitate their decisions. There are many times when no planning has been done. It is in these situations where hospice personnel must assist the patient and/or their family in making these decisions. This is the time when a patient or family member is most dependent on the information and advice that the hospice professional provides them.

How does the hospice help the patient/family make funeral home decisions without showing favoritism? First, we listen to what they want in the manner of services. Secondly, we ask questions to clarify and solidify their desires. We may advise them of options they hadn't considered, like interment in a Veteran's cemetery or non-traditional memorial ceremonies or gatherings. Thirdly, we do ask if finances are a consideration and advise the relative difference in cost between some options. Finally, we recommend they contact a number of funeral homes and cemeteries to determine which best meet their needs and desires.

We make it a practice to remain relatively neutral in recommending a funeral home. When we are asked to suggest funeral homes, we provide the names and phone numbers of at least three different companies in our community that provide the kind of services that our patients and families desire. Sometimes a family cannot come to decision on a funeral home. If a funeral home has not been selected upon the death of the patient, then we use a list provided by the Coroner which designates the monthly on-call mortuary (All of the hospitals, nursing homes, etc. use this same list).

Our hospice staff interact with the funeral homes in a variety of ways: our physicians sign death certificates; nurses call for and assist in removals; social workers assist with making arrangements; chaplains officiate at services. Because we need to work together effectively, our hospice invites representatives from several of the funeral homes to provide education for our staff periodically. These sessions also allow the hospice staff an opportunity to explain to the funeral home our process in assisting patients and families in their funeral planning.

Funeral homes like any business endeavor to increase sales. Marketing to referral sources is logical, but boundaries need to be understood. Our hospice office will accept the occasional gift of candy or food for a staff training session, but gifts to individuals are against company policy. Similarly, funeral home personnel have not been invited to serve on standing committees or boards of the hospice. When their input has been needed, we have sought informa-

tion from several sources to achieve an accurate and balanced perspective.

Another factor in maintaining a boundary with funeral homes are the regulatory issues that both entities face. Hospice, as a healthcare provider is subject to random surveys and routine scrutiny by government agencies. Our licensed employees must comply with professional standards as well. Failure to adhere to these regulations and standards could place the hospice and their employees in jeopardy. This reality should be enough of an incentive to prevent any appearance of an improper relationship with a funeral home.

By following the practices outlined above, our patients and families are in control of their decision making and we at hospice avoid any ethical problems in maintaining an effective working relationship with the funeral homes in our community. §

*Rev. Randall Hedrick is a chaplain with VistaCare Hospice in Reno, Nevada. He has an M.Div. from Golden Gate Baptist Theological Seminary and a B.S. from the University of California at Berkeley.*

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# Cemetery ~ Monument Dealer Complaints

The Attorney General's office regulates cemeteries in Kentucky. The following is a letter they have used when receiving complaints against cemeteries that try to restrict the business of outside monument dealers. This should be useful not only to various state agencies charged with such oversight but to others seeking redress from unfair business practices.

Dear [Cemeterian]:

Enclosed please find a copy of a complaint this office received regarding your policies on setting monuments. These issues were addressed in the case of *Rosebrough Monument Company v. Memorial Park Cemetery Association*, 736 F.2d 441 (8th Cir., 1984) and an opinion from this office, OAG 85-70 (copies enclosed).

Under Federal law, 15 U.S.C. Section 1-2, the Sherman Anti-Trust Act provides that every contract or conspiracy in restraint of trade or commerce is declared to be illegal and that every person who shall monopolize, or attempt to monopolize, any part of the trade or commerce shall be deemed guilty of a felony.

Kentucky has adopted similar language in KRS 367.175(1) and (2), which provide that every contract or conspiracy in restraint of trade or commerce in the Commonwealth shall be unlawful and that it shall be unlawful for any person or persons to monopolize, or attempt to monopolize, any part of the trade or commerce in the Commonwealth.

These state and federal laws strike a balance between encouraging free trade and prohibiting unreasonable restraints on trade. This includes prohibiting monopolies or attempts at tying the purchase of one product or service to the mandatory purchase of another product or service.

It is this tying of products and services that warrants further elaboration for cemeteries operating in Kentucky. As discussed in *Rosebrough* and OAG 85-70, a set of cemetery rules regarding third party foundation installers were examined under the scrutiny of the Sherman Anti-Trust Act. The rules in question were as follows:

- (1) The cemetery may establish specifications for the foundation of each type of memorial which it permits in the cemetery. These specifications shall be the same as the cemetery itself utilized in preparing foundations for particular type memorials;
- (2) The cemetery may schedule, upon reasonable notice, all installations, taking into account weather and ground conditions, cemetery burial services, availability of personnel, etc.;
- (3) The cemetery may require that the foundation site be laid out by cemetery personnel;
- (4) The cemetery may supervise the foundation and installation process and require the installation meet specifications after inspection and prior to placement of a memorial;
- (5) The cemetery may require removal of excavated dirt and cleanup of the installation site;
- (6) The cemetery may require:
  - (a) Evidence that the installer's employees are covered by workman's compensation insurance and that the installer carries adequate public liability insurance in which the cemetery is named insured, and
  - (b) A bond to insure compliance with the rules and regulations;
- (7) The cemetery may charge a fee based on its actual labor costs in connection with the third party memorial foundation services;

- (8) If the cemetery contributes separately to a fund for the care of memorials, it may require the third party installer to contribute to such fund the same percentage of the charge by said installer as is contributed by the cemetery from its own installation charge;
- (9) The cemetery may require that the installer expeditiously correct any deviations from the specifications. If, after notice, any deviation is not corrected the cemetery may make such corrections at the installer's expense. All such rules and regulations which the cemetery may hereinafter adopt are to be reasonable in nature and application.

*Rosebrough*, 736 F.2d 441, 444. The *Rosebrough* court, in examining these rules held that "[b]y requiring that the foundation sites be laid out by cemetery personnel and that the work of third party installers be supervised at a fee, ... , the cemeteries could gain an unfair competitive advantage over the third party installers and thus maintain the market control which was achieved through the illegal tying arrangements." The court further notes that "there is no evidence in the record to indicate that third party installers cannot lay out the foundation sites and perform their work without cemetery supervision." *Id.* at 445. As a result of this analysis, **the court rejected rules 3 and 4 above.**

**The court modified rule 7 to read:** "The cemetery may charge a fee based on its actual labor costs to inspect the finished work product of third-party memorial foundation services." (emphasis added) *Id.* The court notes that this fairly accomodates the cemetery's concern and need for quality control as well as covering the cemetery's labor costs in inspecting the foundation. *Id.*

Lastly, the court in *Rosebrough* **rejected rule 8 in its entirety.** They found it contrary to Missouri state law, which requires only a percentage of grave space sales be trusted. There is no statutory requirement that a percentage of foundation installation fees be trusted. As a result, a cemetery's voluntary decision to do so does not obligate a third party installer to also contribute. Kentucky's laws are similar in that while a percentage of grave sales must be trusted in a perpetual care fund, there is no trusting requirement on fees from foundation installations. The remaining cemetery rules were upheld by the *Rosebrough* court, allowing for the establishment of foundation specifications, the scheduling of installations, the cleanup of installation sites by the installer, a bonding and insurance requirement for third party installers, and the correction of deviations by the installer or at their expense.

In OAG 85-70, this office opined on the issue of third party foundation installers. This office was presented substantially similar rules as those in question in *Rosebrough*. After citing *Rosebrough* as authority in that opinion, this office reached the same conclusion as did the court in *Rosebrough*. When Kentucky cemeteries draft rules pertaining to third party foundation installers, it is important that they consider these decisions and opinions.

Specific requirements of Kentucky cemeteries that have come to our attention include a requirement that foundations be laid out by cemetery personnel and that installation be supervised by cemetery personnel. Rules of this type have been flatly rejected by previous courts as well as this office. These rules have been found to be a means by which to gain unfair competitive advantage and maintain market control through the use of a tying arrangement.

In addition, inspection fees based upon the square inches of the foundation raise a significant issue. While it is true that cemeteries are permitted to charge an inspection fee, this fee must be based on its "actual labor costs" incurred while inspecting the finished work product. A cemetery's method for calculating their inspection fee should reflect their actual costs in inspecting the foundation. The purpose of the inspection fee is not to recoup profits lost when the consumer goes to a third party for foundation installation rather than the cemetery. If the inspection fee does not reflect the "actual labor costs" of the inspection and is an attempt to either recoup lost profits or make third party installation cost prohibitive for

the consumer, the cemetery runs the risk of being found in violation of both state and federal anti-trust laws. Violation of the federal anti-trust laws, 15 U.S.C. section 1-2, is a felony, punishable by imprisonment for up to three years and carrying a fine of up to \$10,000,000 for corporations and \$350,000 for individuals. Violation of state anti-trust laws, KRS 367.175(1) and (2), is a Class C Felony and carries a fine of \$5,000 or \$200 per day for each violation, whichever is greater.

The determination of actual labor costs is a calculation left to the particular cemetery, recognizing that expenses vary to some degree from cemetery to cemetery. However, as in *Rosebrough*, third party foundation installers are free to file a complaint, challenging that calculation as reflecting something other than actual labor costs. Cemeteries should be mindful of these decisions and consequences when examining their rules regarding third party foundation installers.

Please provide this office with a written response within ten (10) days indicating what your intentions are in resolving this complaint. If you have any questions regarding your individual pricing method for third party foundation installers, you should contact private legal counsel.

Mary T. Dailey  
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## Netherlands Crematories Offer Advanced Technology & Service

by Lisa Carlson

Interest in heat recovery from crematories prompted a recent trip to the Netherlands. (Apparently no crematories are doing this in the U.S.) But what we learned far exceeded our expectations and left us eager to share new ideas with others.

Fok de Wtt, Treasurer of the International Cremation Federation (ICF), set up our itinerary and met us at the airport. At the first facility we visited, Den en Rust in Bilthoven, we were shown into a conference room and immediately served coffee and pastries. (We had wonderful coffee the whole trip.) Representatives from the two major retort manufacturers were there.

The Oslo-Paris Agreement (OSPAR) is requiring European crematories to filter out mercury and dioxins, mercury being the major pollutant. In fact, according to a 1999 British environmental agency report, **crematories are the third largest source of air-borne mercury.** Not all crematories will be able to meet this commitment, as the cost for the filtering system is high (\$500,000) and the equipment takes up a huge amount of space. There will likely be grandfathered exceptions, but all newly-built crematories will be faced with meeting this challenge.

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Heat recovery is not permitted in Germany for perceived ethical reasons. However, human body fat contributes only a minimal amount to the total heat output, and the environmental advantages have made it socially acceptable in all other countries.

Because part of the filtration process depends on a rapid reduction in the heat of the exhaust, heat recovery has now become a logical and affordable by-process. Given the current design, the cost of the heat recovery system would not make economic sense otherwise. (Some of us are researching more low-tech options that might make heat recovery more affordable in the future.)



The crematory in Bilthoven was on cemetery grounds with a service taking place when we got there. The



architecture was stunning (very “modern” although most of the building was built in 1936), with a chapel, a “restaurant” full of round tables set with coffee cups and pastries for the after-service gathering (they

have a full-service kitchen), and attractive landscaping all around.

Although there were no family members in the cremation chamber area when we got there, it was immaculate and attended by professionally-appearing staff (including women). Retorts in Europe are much larger and very different from the cold-start retorts in the U.S. There, the casket is sent on a motorized track into the cremation chamber where the furnace has been heated to glowing-brick stage before the casket is introduced. The wooden casket ignites immediately. Bone fragment residue is retrieved quickly at the end of the cremation process so that the heat remaining in the cremation chamber is captured for the next cremation.

Heat recovery has cut the winter hot-water heating costs at this Bilthoven facility by 40% to 50%. In the summer, the excess heat is disbursed by a quiet bank of outdoor fans.



The second crematory we visited, de Boskamp, was in Assen in the northern part of the country. It was also on cemetery grounds with stunning modern architecture. We were again greeted with coffee and pastry. The heat

recovery system there is not yet complete but will take advantage of a 35,000-liter insulated storage tank to bank the heat for use in the building’s heating system.

This Assen facility also operates as a funeral home. In addition to the similar after-the-funeral gathering spaces that we saw in Bilthoven, the Assen facility had many additional areas including a large atrium with plants surrounded by private rooms for quiet family viewing.



Embalming is never or rarely done. Instead, the platform under the casket provides some cooling during the up to five days permitted by law before burial or cremation. Each family is given a key card and can visit at any time of day or night, staying as long as they wish. There were also two double family “suites,” with kitchenette and a sleeping sofa. One relative from Australia took advantage of that when all the hotels were full, we were told.

The Netherlands cremation rate is rising, now over 50%. England is about 80% and Germany about 30%. The cost is similar to that of burial as most funerals incorporate all the same services prior to final disposition. It is typical for the Dutch to have funeral insurance for about \$5,000 Euro (\$6,000 US). Some parents purchase it for their children when they are born. There is some state assistance for the very poor, but that tends to be a rare occasion. “People don’t die of poverty in the Netherlands,” said Fok de Wit, “because of the social benefits.”

Mr. de Wit was instrumental in setting up a nation-wide program for recycling titanium or other metal implants that, in the past, had been discarded after cremation. OrthoMetals is now active in collecting implants in six other countries, as well as the Netherlands. The recycling program has donated over \$700,000 to charity in the few years since the program was started. I will plan to meet with the Netherlands representatives of OrthoMetals at the CANA conference this August to get practical advice for setting up such a program in the U.S. §

## The Great Amalgam Debate

While there is much arguing going on about whether amalgam (50% mercury) fillings are detrimental to one's health, the American Dental Association continues to support amalgam fillings as acceptable. However, Maine has passed a law requiring dentists to inform consumers about mercury toxicity, as has California. Sweden, Norway, Germany, Denmark, Austria, Finland, and Canada have taken steps to limit and phase out the use of mercury fillings. The ADA seems unaware that the (additional) ultimate harm from amalgam fillings comes during the cremation process when mercury becomes air-borne. *Unless the use of amalgam fillings declines in the U.S., crematories can expect to eventually face the cost of very expensive filters, a cost that will undoubtedly be passed on to consumers.*

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## Professional Challenge

*The following question was put to a number of funeral directors and others. If you have a question that you would like to see discussed (including issues that involve cemeteries, monument dealers, law enforcement, hospice, etc.), please drop us a line — [news@funeraethics.org](mailto:news@funeraethics.org)*

**You operate as an independent monument dealer (even if you may also be a funeral director or casket seller). There's another monument dealer in town with some aggressive sales tactics that have come to your attention. As nearly as you can figure out, after reading an obituary the monument dealer makes an assumption on the kind of monument the family will buy based on the standard monuments of the chosen cemetery. He then mails to the family a sketch of the memorial showing the name name of the deceased along with date of death and an invoice for a bill due now, with the remaining cost due on delivery. The consumers who have received these bills tell you they've never been to this dealer. What should you do?**

Suggest that the dealer be reported to the Better Business Bureau.

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I'd recommend calling the Attorney General and report this issue followed by a letter to the editor and to the television consumer editor.

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If the dealer is mailing out fraudulent invoices, the appropriate action is obvious — it's fraud and that's criminal. Of course, the defense could be the fine print often used in mail solicitations that "discloses" that this is a solicitation and not a real bill. In that case, it's back to an ethical matter. I don't know but I am guessing the monument industry isn't heavily regulated. So there is probably no governing body to complain to. Therefore, the options the first dealer has are limited to trying to head off the customers at the pass. Maybe he/she could write letters of warning or conduct some form of information campaign via the funeral homes in the market area.

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If the family had not agreed to this purchase, they would be wise to tell the monument dealer they will make their own selection and financial arrangements. Any TACTIC such as you have listed identifies this company as being crooked, and well advised to decline any offer at the first evidenced tactic.

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Billing a family before merchandise is delivered or even ordered is illegal and should be reported to the proper authorities. Families should be forewarned about this practice before they fall victim.

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Advise the family to make a copy of the bill and then return it to the monument dealer, saying this was never ordered. Then call the department of Consumer Affairs, the Attorney General, Better Business Bureau, and if it exists, the monument dealers association. Lastly, write a letter to the editor of the local newspaper stating exactly what happened.

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Sell your product to the consumer suggesting he/she should ignore the hard sell approach.

**Is it acceptable to mind your own business and do nothing?**



Coming next issue ~

**Standards for an  
effective state  
regulatory board**

*Summer 2005*

## **Funeral Ethics Organization**

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**How well regulated is the funeral industry in your state? Is regulation fragmented among too many agencies? Is it responsive to industry members' concerns? To consumers? Who's doing a great job? Who's doing a terrible job? We'd like to tackle this in the next FEO newsletter, so let us know your thoughts.**

**What are your thoughts about Continuing**



*We are happy to supply multiple copies of the FEO newsletter for classroom use.*

### **We Can Do Better**

( Some airlines are giving funeral directors frequent dier miles for shipping bodies with their airlines . . . even though the family has paid for the trip.

( The legislature in Louisiana has limited preneed payments to the face value of the 30-40-year-old policies, typically \$500, even though they were supposed to pay for a full funeral.

( Deposits have been taken and monuments never delivered by some memorial dealers. Licensing is not required in any state, and consumers rarely know where to file complaints.

### **. . . And Some Do!**

( Some hospice involvement ceases immediately upon death. But one Pittsburgh hospice worker brought her curling iron to help the son after he had bathed his mother's body and dressed her in one of her typical casual outfits, along with tennis shoes. "She looked cute as a button," he said. "Just great."



