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## Practical Approach to Investigative Ethics and Religious Objections to the Autopsy

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**REFERENCE:** Mittleman, R. E., Davis, J. H., Kasztl, W., and Graves, W. M., Jr., "Practical Approach to Investigative Ethics and Religious Objections to the Autopsy," *Journal of Forensic Sciences*, JFSCA, Vol. 37, No. 3, May 1992, pp. 824–829.

**ABSTRACT:** The application of investigative ethics to religious objections to the autopsy is essential for harmony in achieving the mission of medical legal death investigation. In Florida, an ethical advisory committee composed of religious, ethics, legal, and medical leaders established a unified statement for the practice of discretionary judgment and liaison with clergy. Our approach to religious objections to the autopsy as well as illustrative cases will be discussed.

**KEYWORDS:** pathology and biology, ethics, postmortem examinations, religious objections

Human response to the death of a loved one varies among different societies, religions, cultures, and races through a series of ceremonies and observances [1]. Since postmortem examination may be offensive to some of these groups, the determination of the need for autopsy should be based on ethical as well as legal principles.

Ethics is the "science which treats of human nature and the grounds of moral obligation; the science of human duty" [2]. Although it is the responsibility of society and the duty of a medical examiner/coroner to provide medicolegal death investigation, establishing dogmatic policy is apt to create confrontation rather than fulfillment of statutory obligations. The approach to an objection to autopsy should stress values of "respect, compassion, kindness and courtesy beyond the minimum required by any policy or guideline" [1]. The purpose of this paper is to provide a practical approach to death investigative ethics in the face of personal or religious objections.

An ethical dilemma for the death certifier is statutory authority versus family autonomy, which necessitates a balance between societal implications of the death investigation and respect for the family's wishes [3]. The problems consist of satisfying legal requirements in the public interest and the avoidance of needless publicity, litigation, and legislative reactions. Controversy over the autopsy wastes valuable personnel time and effort, which could paralyze a busy day at the office. In addition, it is conceivable that a family might later claim that a medical examiner had a duty to perform an autopsy despite family objection and bring suit on the basis that the family lacked ability to make a sound judgement decision in the matter.<sup>5</sup>

Received for publication 22 Oct. 1991; accepted for publication 14 Nov. 1991.

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Florida Statute 406.11 charges the medical examiner with the responsibility and authority to perform autopsies and investigations for certain types of death. The phrase "autopsies as he shall deem necessary" permits discretion. The Florida State Medical Examiners Commission formed an ethical advisory committee to recommend ethical approaches to investigations in order to allay family concerns. The committee consisted of an Orthodox rabbi, a Roman Catholic priest specializing in ethics, a public defender, a tissue bank director, an attorney specialist in administrative law, and a doctor of philosophy bioethicist [1]. The charge to this group was to investigate ethical and moral issues relating to medicolegal autopsies, explore varying viewpoints, and provide a unified advisory statement for use by the Florida Medical Examiners Commission [1].

Autopsy permission may be of two types: nonmedical examiner, where family permission is required, and medicolegal cases where permission is granted by law. The Advisory Committee divides medical examiner autopsies into mandated versus nonmandated categories in accordance with the Rules of the Medical Examiners Commission [4]. Mandated autopsies are those where death is associated with criminal violence, police custody, gunshot wound injury, prison, poisoning, suspected sudden infant death syndrome, suicide, and when ordered by the State Attorney. Autopsies are usually performed in mandated cases but common sense and judgement must prevail in certain individual situations. Nonmandated autopsies consist of motor vehicle or aircraft accidents, diseases constituting a threat to public health, drownings, death in state institutions, and otherwise by violence. In nonmandated cases, discretionary judgements will also be used to determine whether or not an autopsy will be performed. The basic approach to these categories is similar and contingent upon statutory requirements, local practices, and whether or not objections are personal or religious.

When faced with the initial contact of an objecting family, it is important to remember that a normal grieving process may be expressed by irate emotional outbursts. Office representatives should be tactful and listen carefully, politely, and respectfully while considering the various options [5]. The family should be assured that *nothing will be done until it is fully discussed with them*. The investigator should determine if the autopsy is mandated, nonmandated, or necessary at all. If the family's objections are personal, such as fear of mutilation or delay in release of the body, informative discussion may easily alleviate the situation. If the objections are religious, consultation with clergy will be of assistance. Autopsy is generally acceptable to Baptists, Hindus, and Roman Catholics. It is only permitted in certain circumstances by the Greek Orthodox Church, Islamic societies, and Judaism. Boglioli and Taff have written a comprehensive article listing the positions of various religious groups [3].

Prior liaison with leaders of religious and ethnic groups may assist in establishing alternative procedures satisfactory to law and family beliefs. For example, an in situ examination or even limited autopsy may well be satisfactory and will be discussed subsequently.

The orientation process for forensic pathology residents at the Dade County Medical Examiner Department (Miami, FL) includes a lecture delivered by an Orthodox rabbi to familiarize the staff with these objectives and their religious legitimacy and second, to outline necessary procedures. It is emphasized that the family can rest assured that clergy will be present during any examination of their loved one.

It is important to remember that investigators should never argue religion with the family members. If objections persist, keep in mind that certain procedures may be performed in lieu of an autopsy and may well alleviate the need:

- (1) In-depth investigation of the scene, environment, terminal circumstances, and past social and medical history of the deceased;
- (2) Careful exclusion of criminal act suspicion;
- (3) External examination;

- (4) Use of radiographs for discovery of skeletal fractures;
- (5) Toxicology via external procedures to acquire blood, urine, or gastric aliquot; and
- (6) Consideration of antemortem procedures that can be performed on a dead body (for example, laryngoscopy to search for aspirated meat fragment if rigor mortis had not advanced, cisternal tap to exclude subarachnoid hemorrhage, and so on).

In the face of a nonmandated case, the autopsy may be waived if the following criteria are met:

- (1) Terminal event witnessed or readily acceptable or both;
- (2) No civil or criminal litigation anticipated;
- (3) No controversy regarding the cause or manner of death;
- (4) No public health concern; and
- (5) External examination not remarkable.

Obviously, medical records may provide additional corroboration of the above. However, in Florida's winter months, the descent of out-of-state tourists sometimes precludes access to existing medical records. Nevertheless, careful consideration of the above listed factors will be of assistance.

In our jurisdiction, a mandated autopsy, if challenged, may result in a consultation with the State Attorney, who may choose to order an autopsy or seek a court order. We would then notify the family of the necessity for the autopsy and proceed with every effort to be sensitive to their beliefs.

Our approach to people of Orthodox Jewish faith will be discussed in detail as an example of how to proceed when an autopsy may be contrary to family religious belief. The Jewish faith never views a deceased person as a "corpse." Having housed G-d's soul, the body, even after death, is considered a holy vessel. Furthermore, the soul remains in close proximity to the body immediately after cessation of physical life, thereby suffering a sense of separation anxiety. The dissection of the body can be perceived as "painful" to the soul which should be treated with the highest level of dignity. Hence, the binding of the body and soul does not permit the mutilation of the deceased by the autopsy procedure, a perceived disgrace to the dead. However, the conceptual debate of "Nivul hamet" or "the dishonoring of the dead" versus "Pikkuach Nefesh" or "the duty of saving and maintaining life" permits an autopsy in select circumstances. Thus, a concordant [6] was signed between the Chief Rabbinate of Israel and Hadassah University Hospital, permitting autopsy when:

- (1) The cause of death is uncertain, necessitating an autopsy;
- (2) Information may be gained in order to save a life;
- (3) Foul play is suspected; and
- (4) Genetic counseling is necessary, that is, hereditary disease.

As a result of the Jewish tenet that the body must be buried as a "whole," we proceed with a minimal procedure or in situ examination. The latter permits the organs to remain in their original anatomical locations instead of the usual evisceration. A sheet is placed under the body before commencing the autopsy, to trap blood and fluids during the procedure. The tenet is that the body is buried with the blood that has inadvertently left the body as a result of the examination. Instruments are wiped with a paper towel that is then placed back with the body so that it can be buried as a "whole." Blood and fluids within body cavities should either be left in place or returned to the body in a sealed container. Small tissue portions, equivalent to surgical biopsies, may be removed during the autopsy for retention for microscopy since potentially any procedure performed during life is permitted during the autopsy. This includes specimen acquisition for toxicological analysis.

After the procedure, the body is sutured tightly to avoid further leakage and is neatly

wrapped within the underlying sheet. The performance of an autopsy in this fashion may be awkward to some and time-consuming but will usually, in the vast majority of situations, adequately suit the mission of the forensic science autopsy.

The establishment of a consulting council of rabbis who are available and willing to witness such autopsies is advisable. It is quite comforting for the family to know that their personal representative is present at the examination. The clergy can also assist in obtaining sensitive information that the family may not divulge to the police or the medical examiner/coroner. If upon finding a lethal anatomical lesion, such as a ruptured myocardial infarction, the pathologist may forego examining the brain if the circumstances bespeak a natural death. Once more, judgement should be utilized in each and every case to determine the extent of the autopsy procedure.

Organ and tissue donation to alleviate human suffering is a debatable subject, but may be effected in Orthodox cases, especially if a sympathetic rabbi intervenes with the family. One of our religious consultants, a recipient, is admirably suited to participate in such discussions.

In the Orthodox Jewish religion, Saturday is the Sabbath and the rabbi may not be available for consultation. In such instances, the autopsy may proceed on Sunday with the rabbi in attendance. Embalming and cremation are not permitted in the Orthodox Jewish religion, and if at all possible, the body should be buried before sundown of the day of death. Accordingly, there may be pressure to complete the task for timely burial. Every cooperative effort should be made in such instances. The body is buried in a *tachrichin*, which is a white burial gown without pockets. The tenet is that everyone is the same during life as he is during death and thus leaves this world without material possessions. A "shomer" or "honor guard" is often provided for the body to show respect for the dead. The shomer consists of one or several persons who sit with the body or in an adjoining office until removal and burial. The *chevra kadisha* is the society which prepares the body for burial requiring the "tahara" or traditional final bathing of the deceased. The latter ritual will usually occur at the funeral home although it has occurred within our department.

The following cases are examples of how various situations arose and were handled using the previously prescribed procedure.

### Case 1

A six-year-old boy was found face down at the bottom of a family swimming pool. The child was extracted immediately and taken to a local hospital, where continued resuscitative efforts were unsuccessful. Upon notification that the child was now a medical examiner's case, a great emotional outburst culminated in the parents' refusing extraction of the child from the hospital. The Orthodox Jewish family demanded a release of their son and that no autopsy be done.

Because of the emotional nature of the situation, the medical examiner went to the hospital emergency room and examined and photographed the child in the presence of a rabbi, police, and family representative. The body showed no evidence of external trauma. A rigorous police investigation excluded suspicion of foul play. The child had gained access to the pool via an unlocked patio door. There was no evidence of prior medical illnesses in the family and no other plausible explanation for the child's death. Drowning was reasonably presumed to be the cause of death and the manner of death was accident.

### Case 2

A 28-year-old police officer was shot during an effort to apprehend criminals. The family was concerned over the autopsy because the officer was an Orthodox Jew.

Since this was a mandated autopsy and it was important to extract a projectile from the officer's head, detectives counseled the family on the necessity for a postmortem examination. An Orthodox Jewish rabbi was available to witness the autopsy (which was warranted in the Jewish religion). The retrieval of evidence aided the conviction of the murderer and thus, according to religious principle, was a greater honor to the deceased. The desecration of the body, in this instance, was secondary. The head wound was carefully dissected, photographed in detail, and the bullet recovered. Torso viscera were examined in situ. The documentation was perfectly adequate for a successful prosecution.

### Case 3

A 34-year-old attorney had car trouble and parked her disabled vehicle by the side of the road. She then crossed the highway and was inadvertently struck by another motor vehicle. She was taken to a local hospital where she eventually expired. Her attorney/ex-husband objected to an autopsy for personal reasons. No explanation was given as to the basis for his objections.

This was a witnessed accident with injuries well documented in the medical record. Since the family was attuned to the legal ramifications, it was understood that they knew the implications of not having an autopsy in terms of future lawsuits. Therefore, this nonmandated autopsy was waived in lieu of detailed photography and external examination correlated with hospital records.

### Case 4

A 46-year-old man was found lying on the ground in an alleyway. A laceration of the scalp vertex, bilateral orbital swellings, and bleeding from the left ear and the nose were noted. A large group of family members descended upon the office. A man introduced himself as "King of the Gypsies." He said that because of gypsy custom, no autopsy was permitted.

The evidentiary purpose of this mandated autopsy was discussed with the family, who eventually understood the purpose of postmortem examination. A compromise consisted of a visceral in situ examination with detailed documentation.

### Case 5

A 90-year-old woman died of natural causes after a prolonged hospitalization. During the hospitalization, she developed a large decubitus ulcer, which was alleged by the State Health and Rehabilitative Services (HRS) to be caused by hospital negligence. HRS contacted our office and demanded an autopsy, which the family objected to on religious grounds.

It was established that there was no medical examiner jurisdiction because after review of the medical records, the large decubitus ulcer was not an unexpected consequence of her illness even with the best of medical care. Examination of the body did not reveal evidence of elder abuse. The autopsy was waived by our office since this was not within our jurisdiction. The HRS representatives subsequently agreed with this determination. If they had continued to request an autopsy, we would refer them to the State Attorney's Office, who would have had the burden of deciding whether or not to order an autopsy or seek a court order for same.

## Conclusion

In summary, the mission of medicolegal death investigation is to provide society with an accurate data base to judge how and why people die. Statutory laws are developed with the concordance of populations to promote this endeavor. The procedure by which one proceeds must be ethical and not stranded in unchangeable policies. Concern, respect, politeness, and appropriate judgement tends to disperse anxiety and temper objections. Dogmatism sets the stage for confrontation and misinterpretation of the purpose of the medical examiner/coroner. Such action eventually leads towards inhibitory litigation or legislation.

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