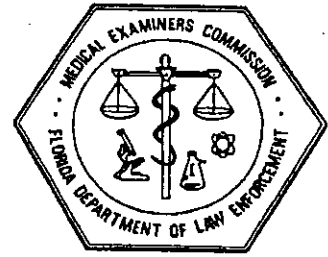


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Florida Department
of Law Enforcement



Medical Examiners Commission

Ethical Advisory Committee

1998

Report

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PREFACE

The Ethical Advisory Committee was initially created in 1987 to examine and study ethical and moral issues relating to autopsies performed by medical examiners and make recommendations to the Medical Examiners Commission concerning the same. The intent of the Advisory Committee was to provide the Medical Examiners Commission a unified viewpoint on these issues. The Committee, which is without the authority to make policy, serves and deliberates at the pleasure of the Medical Examiners Commission, through the Commission's Chairman. The Committee was comprised of members representing the fields of medicine, bio-ethics, law and clergy. This Committee was reconvened in 1989 to review the medical examiners' role in the procurement of organs and tissues for transplantation and their role as it relates to organizations that serve the public in performing these tasks.

Two separate reports were issued by the Committee and submitted to the Medical Examiners Commission and the District Medical Examiner Offices throughout Florida.

In 1997, the Chairman of the Medical Examiners Commission reconvened the Committee to discuss several contemporaneous issues before the Medical Examiners Commission. The current Committee was comprised of four of the members of the original committee and two new members.

After a number of meetings, research, public input, deliberations and debate, the Committee presents these observations and recommendations to the contemporaneous issues discussed. This report encompasses the 1987 and 1989 report as well as the recommendations from the current committee.

Further, information contained in the original reports was reviewed and updated to reflect current materials as they relate to the specific topic areas.

COMMITTEE MEMBERS

1987 and 1989 Committees

Paul Watson Lambert, JD, Chair

Rabbi Warren Kasztl Isaac Bruce Koran, JD David Smith, Ph.D.

Theodore Malinin, M.D. Father James J. McCartney, O.S.A., Ph.D.

1997 Committee

Paul Watson Lambert, JD, Chair

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INTRODUCTION

Autopsies serve the public interest in many ways. The most apparent interest is answering forensic questions. Without an autopsy, the cause and mode of death cannot be determined in a number of instances. In some cases, an autopsy is required to determine the cause of death. In all cases, it provides additional information that gives the medical examiners' opinion additional credibility. Though less apparent, a more important interest is to help the living by providing information useful in curing, preventing and correcting human diseases and conditions. Simply stated: the purpose of autopsies is to acquire medical information and to provide material needed for the study of disease processes and sometimes treatment of patients.

For example, autopsies made it possible to develop vaccines preventing poliomyelitis, helped solve the "Legionnaires Disease" puzzle, and provided information for new surgical techniques of repair, correction, and transplantation of organs to replace damaged or defective ones.

Over the past three centuries advances in treating, curing or correcting human diseases, injuries and conditions have been made through autopsies performed in a scientific atmosphere. In contrast, during periods in which autopsies were discouraged, restricted or prohibited, (because of social, moral, cultural or religious tenets or laws), knowledge about human ills or conditions was lacking. For over fifteen-hundred years, Western physicians mistakenly relied upon the works of the Greek physician Galen (c. 130-200 A.D.) for their knowledge about the human body. Greek law did not permit autopsies and Galen's works were not based on direct examination of human bodies. He obtained most of his information from dissections of animals and the examination of gladiators' wounds from which he drew erroneous conclusions. Galen's ideas were slow to be corrected because autopsies were not favorably viewed in Europe until relatively recent times. Physicians blindly relied upon misconceptions which would have been dispelled by scientific dissections. Modern physicians would have also relied upon misconceptions were these not dispelled through continued learning from scientific autopsies.

A scientific autopsy is properly performed with the utmost respect to the dignity of the body and the person it represents. Some autopsies performed by medical examiners are obligatory, because they are mandated by law to answer questions about the cause of death. These are for investigations about crimes or matters relating to public health. Some autopsies are desirable, even though they are not mandated by law, because they provide information, knowledge and education.

Information gained from autopsies does not add to the body of medical or scientific knowledge unless it is shared. Sharing of information includes distribution of reported observations or findings. Sharing of information also includes participation in autopsies by students of science and medicine for education or research.

Autopsies are frequently performed in the United States. These include both the medical-legal autopsies performed by the medical examiners and general autopsies performed by pathologists who are not medical examiners. The cause of death is often the main focus of an autopsy.

However, there are other purposes for autopsy, such as confirming a clinical diagnosis. Many discrepancies between clinical diagnosis and autopsy findings are often reported. As many as one-third of clinical diagnoses are totally or partially wrong¹.

Autopsies often reveal unsuspected disorders or previously unknown or little known conditions². Studies of these lead to a fuller and better understanding of disease. This, in turn, results in a more effective treatment.

A properly conducted autopsy plays a crucial role in the investigation of disease. This type of autopsy is not limited to a simple gross anatomical inspection of the structures of the body. It relies on detailed and thorough study of the organs and tissues by using modern light and electron microscopy, microbiology, biochemistry and biophysics. Because of the complexity of these disciplines and techniques, it is impossible for a single individual to master all of them. Thus, pathologists often call in other scientists to aid them in the study of postmortem material.

In the conduct of any autopsy, medical examiners have a professional responsibility to perform technical procedures to the best of their ability and in accordance with currently established standards. They must use modern analytical techniques which cross interdisciplinary barriers. Medical examiners have a moral obligation to perform autopsies in such a manner as to obtain maximum information. This includes the cause of death and various events and pathological changes which may have led to the death.

Medical examiners obtain from the autopsy medically pertinent information used to document the nature and extent of disease. This information is needed for epidemiological purposes and for determining the appropriateness and effectiveness of treatments. Medical examiners have broad discretionary powers to carry out these tasks.

PURPOSE OF THE AUTOPSY

A. *Medicolegal Purpose*

As has been indicated, autopsies serve the public interest in many ways. Some of the most important ways relate to forensic pathology and the use of autopsies to determine the cause, mechanism, and manner of death. The cause of death is understood as the disease, or injury mechanism that alters the physiology and biochemistry exerting a lethal effect. The manner of death explains the cause, either natural or violent. Natural deaths are due exclusively to disease. Violent deaths include accidents, homicides, and suicides³. In the context of the law, medical opinion as to the cause of death is rarely challenged. Occasionally, opinion about the mechanism of death is challenged. Discovery of natural causes of death usually ends official interest in the death. Homicide always stimulates criminal prosecution interest. Accident discovery usually stimulates civil interest and occasionally criminal prosecution interest. Undetermined causes

¹ Goldman, L, Sayson, R, Robbins, S, Cohn, L.H., Beltman, M, & Weisky, H. *The Value of the Autopsy in Three Medical Eras*. *N. Engl. J. Med.* 308(17):1000, 1983

² *Ibid.*

³ Hirsch, C.S. *Forensic Pathology and Autopsy Arch Pathol Lab Med* 108 (1984):488

(usually only 1-2% of the total diagnosed) stimulate varied interest depending on the circumstances⁴.

The Rules of the Florida Medical Examiners Commission require that a complete autopsy be performed when the death:

- a) is alleged or suspected to be by criminal violence
- b) occurred while in police custody
- c) occurred in any prison or penal institution
- d) appears to have been by gunshot wound
- e) is suspected to be as a result of poisoning
- f) is suspected to be as a result of Sudden Infant Death Syndrome,
- h) appears to have been by suicide, or
- g) whenever requested or directed by the State Attorney under law⁵.

Medicolegal autopsies also provide information to document effects of environmental influences on occupational health and safety in workplaces⁶.

Thus, it can be seen that medicolegal autopsies serve significant purposes with regard to both criminal and civil aspects of the law.

B. Public Health Purpose

Autopsies also serve the general public health. At the time of an imminent threat to the health of the community, autopsies may be needed to determine the cause or nature of some deaths. The information from such studies helps to warn the community of danger and reassures the community that its fears are unfounded. The public autopsies assist in determining the extent of the spread of disease when epidemic strikes or threatens. Autopsies aid in determining both the means of transmission and the likely conditions for further spread of disease.

C. Knowledge Generation

The autopsy has been vital to the development of modern medical science. Systematically accumulated information derived from autopsies has provided understanding of human

⁴ Gantner, G.E. *The Autopsy and the Law* Am J Clin Path 69 (1978) :237

⁵ The Rules of the Medical Examiners Commission are available at 2331 Phillips Road, Tallahassee, Florida, 32308 or may be found in public or legal libraries in a publication entitled the Florida Administrative Code, Chapter 11G.

⁶ Gantner, G.E. *The Autopsy and the Law* Am J Clin Path 69 (1978) :237

physiology, anatomy, knowledge of disease processes and identification of causes of death. This information has played a critical role in medical advances benefiting mankind. Generation of new knowledge provides an important purpose for autopsies.

D. Educational Purpose

Effective training of health care providers requires an understanding of the human body and its pathologies. Effective understanding can only be acquired through first hand observation and dissection. Autopsies are carried out to further this purpose. Some autopsies assist in the general education of students. Others make possible the advanced training of specialists.

E. Organ Supply

The development of the ability to benefit human health through transplantation of organs from one human to another generates hope for those destined for death or infirmity. When tissues are transplanted from a deceased individual, the law requires that the donor cadaver be autopsied to protect the health of the recipient⁷. Whether a complete or partial autopsy is required depends upon the circumstances of the case. At times, cadavers presented for autopsy or other purposes offer another source of tissues for transplantation.

The FLORIDA LAW: AUTOPSIES AND THE MEDICAL EXAMINER

Florida Statute 406.11 charges medical examiners with the responsibility and authority to investigate certain categories of death. The statute also authorizes performance of "autopsies as he shall deem necessary. . .". This language acknowledges the legislative determination that the protection of the deceased and the public benefit derived from such autopsies is sufficiently important to outweigh any need for consent. The Rules of the Medical Examiners Commission specify deaths from some causes as always necessitating an autopsy⁸. These autopsies are referred to in this report as "mandated" autopsies.

"Non-mandated" autopsies are also listed in the Rules of the Medical Examiners Commission⁹. "Non-mandated" autopsies are recognized as "generally needed". They include deaths "resulting from motor vehicle or aircraft accident", "by drowning", "in a state institution", and "otherwise by violence".

A third group of autopsies does not fall under the jurisdiction of the Medical examiner. They are performed by hospital pathologists on patients who die in hospitals. These autopsies require consent from the next of kin.

⁷ Florida Statute 382.009(1) reads: "For legal and medical purposes, where respiratory and circulatory functions are maintained by artificial means of support so as to preclude a determination that these functions have ceased, the occurrence of death may be determined where there is the irreversible cessation of the functioning of the entire brain, including the brain stem, determined in accordance with this section."

⁸ For information on where to obtain a copy of these Rules, see footnote #5

⁹ Ibid

Exercise of responsibility by medical examiners to perform "mandated" and "non-mandated" autopsies as defined by Florida Statute 406.11 requires use of discretionary judgments. The guidelines that follow are intended to assist medical examiners in the exercise of that discretion.

DISCUSSION OF TISSUE RETENTION UNDER FLORIDA LAW

Ethical considerations differ from legal ones. The former often go beyond the latter. Nevertheless, it is important to note the legal status of tissue retention whether or not the autopsies are performed under the jurisdiction of a medical examiner.

Florida Law authorizes retention of tissues customarily removed during the course of autopsy for evidentiary, identification, diagnostic, scientific or therapeutic purposes. See Section 872.04 (1), Florida Statute.

It is noted that the removal of corneas by the medical examiners is authorized by Section 732.9185, Florida Statutes, which reads:

(1) In any case in which a patient is in need of corneal tissue for a transplant, a District Medical Examiner or an appropriately qualified designee with training in ophthalmologic techniques may, upon request of any eye bank authorized under s. 732.918, provide the cornea of a decedent whenever all of the following conditions are met:

(a) A decedent who may provide a suitable cornea for the transplant is under the jurisdiction of a medical examiner and an autopsy is required in accordance with s. 406.11.

(b) No objection by the next of kin of the decedent is known by the medical examiner.

(c) The removal of the cornea will not interfere with the subsequent course of an investigation or autopsy.

(2) Neither the District Medical Examiner nor his appropriately qualified designee nor any eye bank authorized under s. 732.918 may be held liable under any criminal or civil action for failure to obtain consent of the next of kin.

Some autopsies are mandated by law and require no consent. Compare Section 406.11 and Section 872.04(2)(4), Florida Statutes.

When an autopsy is not performed under the jurisdiction of a medical examiner, written consent is necessary to authorize the autopsy. The consent must be from the spouse, nearest relative, or, if no such next of kin can be found, the person who has assumed custody of the body, for purposes of burial. See Section 872.04(2), Florida Statutes.

The consent may be by telegram or by a duly witnessed telephone statement. See Section 872.04(3), Florida Statutes.

If, after diligent search and inquiry, it is established by the chief law enforcement officer having jurisdiction that no person can be found who can authorize the autopsy, an autopsy may be performed without written consent for the purposes of confirming medical diagnosis and suspected communicable diseases; a reasonable time is defined as not less than 48 hours or more than 72 hours after death. See Section 872.04 (4), Florida Statutes.

Since "autopsy" is defined by Florida Statute to include retention of customarily removed tissue for scientific or therapeutic purposes, and since some autopsies are mandated by Florida Statute to be performed without consent, it is concluded, a priori, that tissues may be retained without consent of legal next of kin during autopsies for scientific or therapeutic purposes, if those tissues are customarily removed during the course of autopsy.

A medical examiner is required to retain tissue samples, organs, body fluids, portions of or the entire skeletal remains and body parts necessary for the identification of the body, determination of cause of death, presence of disease and identification of the person or persons or conditions involved in or causing the death. The medical examiner does not need consent to retain the tissues, organs or body parts, since the investigation is required by Section 406.11(1), Florida Statutes.

A medical examiner should advise family members or other representatives of the deceased of retention of the head or an extremity as part of carrying out the duties prescribed in Section 406.11, Florida Statutes. The family members or representative should be given the option of taking the body without the retained body part for burial or cremation or waiting until the retained body part is returned upon completion of its examination and studies. The family members or the representative of the deceased has a right to claim the deceased's remains exclusive of pathological specimens retained for examination. As used here, "specimen" does not include an entire head or extremity. A medical examiner should fully disclose to a family member which organs were retained for examination upon inquiry from the family member.

DISCUSSION OF AUTOPSIES OUTSIDE OF A MEDICAL EXAMINER'S JURISDICTION

During those autopsies requiring consent the question arises whether the consent includes retention of customarily removed tissues for scientific or therapeutic purposes. The definition of "autopsy" authorizes such retention of tissue. Therefore, it can be argued that consent for autopsy means consent for autopsy as defined by Florida Statute which includes retention of customarily removed tissue for scientific or therapeutic purposes. Whether it is desirable to inform the legal next of kin giving the consent for autopsy that the definition of "autopsy" includes such tissue retention is a logical question. Obviously, where an explanation is provided, followed by consent, it is easier to conclude that consent is given for retention of customarily removed tissue, absent a specific objection.

When there is no legal next of kin which can be located and when an autopsy is not mandated, an autopsy may be performed upon authorization of a physician referred to in 872.04(4), without

written consent, for the purposes of confirming medical diagnosis and suspected communicable diseases. See Section 872.04(4), Florida Statutes.

In this situation the issue arises as to retention of tissue for scientific or therapeutic purposes. Since "autopsy" is defined to include retention of tissues customarily removed during the course of autopsy for scientific and therapeutic purposes, it can be argued that the customarily removed tissues may be retained. Whether the tissues are appropriate for therapeutic purposes would, obviously, depend upon the cause of death or presence of disease, since one of the reasons for authorizing a non-mandated autopsy, without consent of next of kin, is suspected communicable diseases.

Decisions on whether to retain tissues for scientific or therapeutic purposes must be made relatively quickly, depending upon the circumstances. Some tissues and organs may be retained for several days before transplantation or preparation for therapeutic purposes. Similarly, some organs or tissues must be used immediately. Delay in obtaining consent from legal next of kin can negate the benefit of retention of tissues for scientific or therapeutic purposes, regardless of whether it is desirable. A medical examiner's office is not expected to search for and locate the legal next of kin through efforts and in a time frame which are not reasonable or practical.

More and more people are carrying organ donor cards or other similar directives authorizing retention of tissue upon their deaths for scientific or therapeutic purposes. There, probably, is no more direct or more informed consent than that given by the person authorizing use of his or her own organs or tissues in contemplation of mortality. On ethical and moral grounds, the deceased's wishes should be honored.

THE NEED TO RESPECT SENSITIVITY TO DEATH INVESTIGATION

Death is viewed from different perspectives by different people.

Societies, various religions, cultural and racial groups respond to death through a series of observances and ceremonies. Philosophies dealing with death vary, as much as the beliefs which dictate how the dead body is treated. The offices of medical examiners, when investigating deaths in the State, are called upon, not only to perform a technically exact task, but to deal with the families and friends of the deceased in their greatest moment of grief. Medical examiners also deal with religious, racial and social sensitivities of the family of the deceased. These religious and personal beliefs, shock, grief, fear, superstitions, feelings of loss and guilt affect the reactions of relatives, friends and the community. The symbolism associated with the body of the deceased may be particularly powerful. Reactions which may seem to have little cognitive force can be emotionally compelling.

In some instances, and in jurisdictions outside of Florida, disregard of these issues has led to misinterpretation of the purpose of the medical examiner system and led to legislation that inhibits the function of the medical examiner. Misunderstanding does not serve the public interest. Therefore, it behooves the medical examiners and all those associated with the process of death investigation to interpret the existing statutes and ordinances in the light of existing

circumstances and with due consideration for the survivors of the deceased. This must be done without compromise in the cause of justice or the interest of the society at large.

The entire operation of the medical examiner system must be built on a compassionate understanding and acceptance of these perspectives.

It is fair to presume that when a deceased individual is examined in the office of the medical examiner, the death occurred suddenly, either as a result of an accident or violence or unattended from natural causes. Although the medical examiner is obligated to research and report the findings regarding the cause of death to the proper authorities, being sensitive to the deceased's family during this most difficult time will go a far way in developing a positive relationship with the community at large.

There are times when family or friends will want to view the deceased, either for purposes of closure or to confirm what they refuse to believe. This can be very difficult since the medical examiner's office is not a funeral establishment and, therefore, frequently lacks the proper setting for this to take place. Nevertheless, there are family and friends who insist on viewing the remains of the deceased and, under certain circumstances, should be accommodated. The factors that should be taken into account are: whether the requesting person is a family member or friend, whether the mental state of the person or persons making the request is able to accept the viewing, whether the condition of the deceased is gruesome and whether the viewing will compromise a criminal investigation. A medical examiner need not feel compelled to provide body viewing to family members when the body is kept less than 24 hours and is being sent to a funeral home at the family's request.

Family members may feel that they have a right to view the deceased. Refusal of a request to view the body often leads some to conclude that something covert, illegitimate, may be taking place when, in fact, a medical examiner may be refusing the request due to the condition of the deceased or the frail, unstable emotional state of mind of those making the request. The medical examiner should be both tactful and honest regarding the situation. There are ways to satisfy the family's needs to view the body while taking into account their emotions: the medical examiner can offer to show the family members photographs of the deceased and provide them with a picture or offer to video tape the body and provide a copy of the tape to the family or allow the family members to touch the body enclosed in a body bag or allow the family members to view the body via closed circuit television.

A medical examiner should contact a member of the clergy of the family or any other family support person for support and assistance if it is perceived that the family members have an unstable, overly emotional state of mind. A member of the clergy is perceived by most family members as being there for them as their advocate. The clergy becomes a buffer between the medical examiner's office and the family. Often, families accept their clergy's advice that the body is too gruesome to view.

In situations in which the body is not presentable, it is proper for a medical examiner to request family members to sign a release holding the medical examiner's office harmless from any accidents which may occur from the reaction to viewing the body. A member of the clergy is

most helpful in this circumstance. Medical examiners can further help family members deal with this difficult situation by avoiding an adversarial attitude.

A standard policy is difficult to develop relating to non-family members requesting to view bodies. In this instance, the medical examiner can only use his or her best professional and personal judgment. The methods regarding family viewing may apply here. The dignity of the deceased and confidentiality issues must be taken into account in these situations.

No set of guidelines can be specific enough to spell out every act to be taken. No such listing is desirable. Medical examiners must apply the law faithfully and carefully, with maximum respect for the human sensitivities of all involved. The best ethical practice stresses the values of respect, compassion, kindness and courtesy beyond the minimum required by any policy or guideline. Good ethics demonstrate a belief in the importance of humanity when required and, often, difficult duties are carried out.

Generally, the medical examiner has an ethical obligation to answer inquiries from the family members of the deceased. The only exception is when disclosure of the requested information would interfere with an ongoing criminal investigation. However, the medical examiner should consider speaking about the prohibited matter with family members once criminal justice questions are resolved.

Questions from family members can often range beyond requests for factual conclusions. The sudden, perhaps violent death of a loved one is a highly emotional experience. Under such circumstances, questions to the medical examiner may be emotional in nature and call for subjective or speculative answers, e.g. "Did my sister suffer?" In these situations the medical examiner must make every effort to deal with the family in a thoughtful and sensitive way. In this regard, the medical examiner may choose to enlist the help of a counselor or a member of the clergy.

INTERACTION WITH PROCUREMENT ORGANIZATIONS

If attendance at our meetings when this topic was discussed is any judge, this issue is one of great importance to a number of people. It seems apparent that our recommendations will have some impact beyond medical examiner's offices.

Through our deliberations, we found that while the number of organizations involved in organ procurement is growing, the individual medical examiner has been given virtually no criteria to decide which of several potentially competing organizations to choose.

While organ procurement is important, it remains a collateral aspect of a medical examiner's duties. Therefore, we set out to develop recommendations to help the medical examiner simplify his responsibilities by limiting the number of organizations with which he or she deals.

Nothing in these recommendations should be taken as an indication that we believe that medical examiners are precluded to limit the number of organizations. We are simply trying to provide guidelines in the event that they decide to do so.

During our deliberations we learned that not all procurement organizations are organized alike. Some organizations are set up on a not-for-profit basis, while some are profit making organizations. We spent considerable time worrying about the distinction between the two. Because donor families are asked to make donations of organs and tissues without recompense, as philanthropic acts, and because of other ethical considerations, there are restrictions upon what aspects of the procurement and transplantation process may be undertaken for profit.

Distinguishing between not-for-profit and profit organizations, however, was of little help to the committee in attempting to consider the issues above. Those working for all these organizations receive salaries and other remuneration for their efforts. Legally, the important distinction seems to be that not-for-profit organizations are forbidden from paying dividends. We did find it useful, however to distinguish a group of organizations that we call "charitable organizations". These are organizations which finance their operations entirely or largely from means other than fees for products or services. These organizations may use the income from endowments or from various forms of community fund raising to provide products and services at little or no cost to clients. Charitable organizations are to be lauded particularly because they make service to the indigent possible in some communities. It may be useful to distinguish charitable organizations from other organizations and may be wise to give some preference to them so long as in every other way they are effective and efficient in their operations and meet the criteria set forth in the recommendations section of this report.

The committee also spent some time discussing the reluctance of hospitals and procurement organizations to remove organs and tissues for transplant from individuals carrying signed donor cards in the absence of specific consent from the next of kin. We urge and encourage hospitals to change that practice. Hospitals and procurement organizations are reluctant to court the possibility of litigation or bad publicity by removing the organ from a card carrying donor without the consent of the next of kin. That means in some cases when a family cannot be reached and in rare cases when a family will not approve the donor's wishes, the organs the decedent had wished to make available for transplant, are not utilized. The failure to use such organs on the part of the procurement organizations and hospitals is inconsistent with the expressed wish of the deceased and, consequently, compromises the individual's autonomy. It further defeats the purpose of the organ donor card statute.

There appear to be various ways to address the problem. The committee did not discuss these in detail. There was some sentiment for legislation which would require the harvest of suitable organs and would forbid the seeking of permission from relatives. There may be additional measures short of additional legislation which would be effective in making sure the wishes of donors are carried out. This question was not directly relevant to the problem presented to the Ethical Advisory Committee, but it did arise in the course of our deliberations. We believed that the Medical Examiners Commission would like to be aware of the issue and our views on the matter.

RECOMMENDATIONS OF THE COMMITTEE

With this general caveat in mind, the Committee believes that recognized ethical considerations can serve to guide medical examiners in making decisions consistent with acceptable current standards.

Ethical guidelines must encourage autopsies, not discourage them. They should encourage development and sharing of knowledge not curtail healthy curiosity. They should protect medical examiners from unearned criticism while giving confidence to the public and bereaving family or friends.

Ethical guidelines will assure the public that autopsies are performed with the highest respect for the dignity of the person represented by the autopsied body. We hope ethical guidelines will assist the medical examiners, pathologists, physicians, the Medical Examiners Commission and the public to better understand the "when's", "how's" and "why's" of autopsies and will remove the doubts, suspicions or fears about them.

Finally, ethical guidelines will help balance emotional feelings, knowledge and the needs of science. They will encourage scientific and practical learning. To that end, the following guidelines are offered to the Medical Examiners Commission for consideration.

ETHICAL GUIDELINES CONCERNING AUTOPSIES

1. **PERFORMANCE OF AUTOPSIES--** Autopsies should be performed in accordance with the law as expeditiously and thoroughly as possible. Pertinent information should be provided to the family and/or those with a close emotional relationship with the deceased, when this can be done without hindering the legal purpose of the autopsy. When practical, the medical examiner should contact the family or those with a close emotional relationship with the deceased and tell them what is taking place and when the body will be released.
2. **RESPONSE TO RELIGIOUS OR PERSONAL OBJECTIONS OR CONCERNS--** People differ in lifestyle, ethnic identity, religion, tradition, and philosophy. These affect beliefs about death and autopsies. The medical examiner should understand these beliefs, be sensitive to them and respect them as legitimate expressions of individual freedom. Thus, medical examiners have found it useful to seek out representatives, clergy or leaders of various religious and ethnic groups prevalent in the community to become familiar with their beliefs. Sometimes the legal requirements of an autopsy can be satisfied using procedures which produce the desired information while respecting those beliefs. Therefore, where practical and reasonable, a medical examiner should perform his or her duties while respecting those life styles or values of the deceased and the deceased's family, to the extent the purpose or quality of the autopsy are not unreasonably affected or compromised. Consequently, where there may be religious or personal objections to a complete autopsy, the medical examiner should exercise discretion in determining how much

dissection, if any, of the cadaver there needs to be performed in order to fulfill the purpose of the law. When there is a specific objection for religious reasons, knowledgeable representatives of the decedent's faith may be contacted to assist the medical examiner to help resolve these situations.

- 3. WITNESSING OF AUTOPSIES--** Medical examiners decide who may witness autopsies. Because of the great educational benefits involved, health care providers and law enforcement personnel should be encouraged to witness autopsies when appropriate. Others who might request such permission would be judges, legislators, and criminal justice professionals.

The medical examiner should determine the appropriateness of the circumstances when witnesses are allowed in the autopsy room. Generally, there should be some significant societal benefit involved. In every case, medical confidentiality is to be assured.

- 4. RELEASE OF PUBLIC RECORD INFORMATION TO PRESS OR PUBLIC--** Generally, reports of autopsies performed as required by Chapter 406 and section 872.04(2), Florida Statutes, are public records¹⁰. (Reports of autopsies performed outside of a medical examiner's jurisdiction are not public records.) A medical examiner may discuss public record information about an autopsy during a telephone or personal interview, but must exercise good judgment in volunteering information or responding to inquiries. Aside from complying with proper requests for public records, there may be instances when a medical examiner chooses not to discuss public record information about an autopsy or investigation, in whole or part. A medical examiner must comply with a proper request for public records. Under the Public Records Law, a custodian of public records must make available for inspection or provide copies (at a reasonable cost) of public records during business hours and in a reasonable manner. This does not mean that the custodian of public records is required to comment upon or discuss the contents of the public records during a telephone or personal interview or inquiry. Under no circumstances should information which is not a part of the public record, and which is considered legally confidential, be released to or discussed with unauthorized persons.

- 5. RETENTION OF TISSUES AND ORGANS--**Retention of tissues and body fluids is a routine procedure during the dissection portion of an autopsy. An autopsy cannot be completed without such retention. Tissues have to be examined under a microscope and subjected to toxicological and microbiological analyses. Entire organs, particularly those of the central nervous system, may be retained for examination after fixation (the hardening process allowing macroscopic and microscopic examination). These examinations are often performed by specialists. Likewise, organs and tissues may be sent away for an opinion of a specialist. Tissues routinely obtained at autopsy are frequently used for follow-up studies. Prudent

¹⁰ Please refer to Chapter 119., Florida Statutes for specific details.

medical-legal practice dictates retention of tissues for at least one year¹¹. One reason for retention is re-examination of the tissues if the case is reopened. The medical examiner should be alert to the possibility that some people are not aware of the nature of an autopsy and the purpose for the retention of tissues. The medical examiner should be prepared to explain both the purpose and the procedures involved.

6. THERAPEUTIC USE AND TRANSPLANTATION OF TISSUES AND ORGANS--Individuals and society benefit from the therapeutic use and transplantation of tissues and organs. Expanded use of donor cards and other directives encourage tissue and organ transplantation. Medical examiners are often the "gate keepers" of tissues and organs for transplantation or other therapeutic uses. To fulfill this role, the following should be applied:

- A. A medical examiner should retain tissues or organs needed for investigative or identification purposes.
- B. When the decedent has authorized retention of tissues and organs as evidenced by an organ donor card or similar directive, a medical examiner may retain and make available all tissues and organs specified by the deceased.
- C. When the decedent is not carrying an organ donor card or other similar directive, permission from the known legal next of kin must be obtained to remove tissues and organs for therapeutic, transplantation, or research purposes when these are not commonly retained during the course of an autopsy.
- D. Florida Law authorizes retention of tissues customarily removed during the course of autopsies performed under the authority of Chapter 406 & 872, Florida Statutes, for therapeutic purposes¹². It is desirable that the known next of kin be notified that an autopsy is being performed and that tissues may be retained for further study and/or therapy. Families should also be given the opportunity to make known any objection to the therapeutic use of retained tissue. Given time constraints and the limitation of medical examiners resources, it may not always be practical to notify families, but a reasonable effort should be made to do so.

The Commission and individual medical examiners should use their knowledge and creativity to find workable means to provide desirable information without endangering the supply of tissues for transplantation.

7. MEDICAL EXAMINERS ASSISTANCE IN RESEARCH STUDIES-- Medical examiners' assistance is requested from time to time for scientific study. The medical

¹¹ Rule 11G-2.04, Florida Administrative Code specifies the length of time medical examiners are required to retain samples collected at time of autopsy.

¹² See page 7 for the discussion of tissue retention under Florida Law.

examiner should determine that the research serves a useful purpose and follows good scientific procedure. The medical examiner is likely to find the opinions of peer review panels, institutional review boards or other institutional review useful in such determinations. If the study uses only slides and materials customarily obtained during the autopsy, no special consent of the next of kin is needed. If the study requires removing and/or retaining material not customarily removed, the consent of the next of kin is required.

- 8. INVOLVEMENT WITH PROCUREMENT ORGANIZATIONS--** Sale of anatomical parts is prohibited by Chapter 873, Florida Statutes. But, non-profit corporations may, under Chapter 873, make human organs and tissue available for transplantation at the reasonable cost associated with the removal, storage and transportation of the organs or tissue. The Federal Hospital and Medical Facilities Amendments of 1964 (Public Law Number 88-443) requires organizations that procure human organs for transplantation to be certified by the Secretary of the United States Department of Health and Human Services. Sections 381.0041 & 381.6021-381.6026, Florida Statutes, regulate human organ procurement for transplantation by non-profit organizations designated by the Secretary of the United States Department of Health and Human Services and designate the Florida Agency for Health Care Administration as the sole agency to the state to carry out the purposes of and administer the Federal Hospital and Medical Facilities Amendments of 1964 (Public Law Number 88-443).

In accordance with Section 381.6021 - 381.6022, Florida Statutes, organ and tissue procurement organizations must be certified by the Agency for Health Care Administration (AHCA) in order to operate in Florida. This certification process is addressed in Chapter 59A-1, Florida Administrative Code. Operating minimum standards, policies and procedures, and medical protocols are clearly delineated in this Rule. Before this certification process was in place, a medical examiner had the burden of assuring that recommended guidelines for the retrieving, processing and distributing procedures of a procurement organization were met prior to the medical examiner selecting an organization with which to assist. However, the medical examiners, and the public in general, can now be confident that a certified procurement organization that is in operation in Florida is closely monitored and operates in accordance with established guidelines.

Making tissues and organs available for transplantation is a laudable aspect of the medical examiner's activity, so long as doing so does not interfere with the medical examiner's obligations under Section 406.11, Florida Statutes. Individual medical examiners will need to give careful thought as to how their offices will cooperate with the appropriate procurement organizations, in making tissues effectively available and without undo disruption of the efficient ongoing operation of the medical examiner's office. Although it is not unethical for medical examiners to abstain from participating in the procurement of organs and tissues for transplantation purposes, it is desirable that they participate.

It is ethical for the medical examiner to select the number of organizations with which his office will cooperate to as few as one to minimize interference in carrying out Chapter 406 responsibilities of the office. Some examiners may wish to make such selections while others may not. A decision to select should take into account the workload of the office, the nature of the facility and the medical examiner's ability to carry out Chapter 406 responsibilities.

We recommend that any decision to select among organizations be on the basis of the following criteria:

- (a) The efficient operation of the medical examiner's office. The medical examiner should feel free to create constraints and procedures which will make it possible for the office to operate well and to fulfill its various purposes.
- (b) The quality of the operation of the procurement organization. It is an important goal for procurement organizations to be effective in procuring and making tissues and organs available. Occasionally, it is necessary to limit the number of procurement organizations seeking permission to operate within a particular venue to avoid adverse effect upon the efficiency of a medical examiner's office. Any selection process of procurement organizations should assure this goal

If a medical examiner decides to select the organizations with which the office will cooperate, it is important that open and fair procedures be used in the decision process. The medical examiner must avoid a conflict of interest, or even the appearance of one, that could occur if he as an individual or any private practice with which he is associated, benefits financially from arrangements with any of the procurement organizations. This ought not to preclude the rendering of appropriate charges to procurement organizations consistent with the providing of organs and tissues for transplants. It is important, however, that both the conflict of interest and the appearance of such conflict be avoided when financial transactions between a procurement organization and the medical examiner or the medical examiner's office are undertaken. Under no circumstances should the medical examiner receive a personal benefit from this relationship.

Appropriate procedures for selecting organizations would include providing an open opportunity to all eligible organizations to provide information relevant to criteria the medical examiner wishes to use in making a decision. Ample notice should be given in sufficient detail about the information required. The various organizations should be reviewed in regard to the criteria specified and the choice be made on a clearly identifiable basis.

That choice should be made promptly and information about it should be open and communicated early. The choice of an organization should be made for a time period sufficient to allow for effective cooperation, but periodic review of that choice is also appropriate. The medical examiner should specify at the outset a time period for which the particular arrangement envisioned will be made.

The overarching goal in all this should be to facilitate the medical examiners' efforts to make available organs and tissues for transplant. Selection of organizations should be undertaken so that the administrative process will not become so complicated that it discourages medical examiners from making transplantable materials available.