



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

To prevent an autopsy, these laws can prove helpful.

To: Agudath Israel of America
From: Stephen McArthur, then a law student at Columbia Law School
Re: Summary of Autopsy Consent Laws
Date: April 27, 2007

Summary of Autopsy Consent Laws

In addition to the list of states you gave me, I researched the autopsy laws for Maryland and Rhode Island because I discovered that both states have a specific statutory exception for religious objections. I also researched the statutory and case law for Vermont because there is an important Vermont autopsy case that was repeatedly referenced in other jurisdictions.

The following states have specific statutory carve-outs for religious objections to autopsies: New York, New Jersey, California, Ohio, Maryland, and Rhode Island.

TABLE OF CONTENTS

* CALIFORNIA	2
COLORADO	5
CONNECTICUT	7
FLORIDA	10
GEORGIA.....	13
ILLINOIS.....	15
INDIANA	17
* MARYLAND	19
MASSACHUSETTS.....	21
MICHIGAN	22
MINNESOTA	25
* NEW JERSEY	29
* NEW YORK	34
* OHIO.....	40
PENNSYLVANIA.....	45
* RHODE ISLAND	47
TEXAS.....	50
VERMONT.....	52
VIRGINIA	55
WISCONSIN	58



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

CALIFORNIA

The Legislature has recognized the religious aspect of autopsies by enacting Government Code section 27491.43. This statute permits a person, while living, to execute a written 'certificate of religious belief' against autopsy, which will prevent that person's autopsy except in limited circumstances.

CAL. GOV. CODE § 27491.43 Certificates of religious belief; Procedure when decedent has executed certificate

(a)

(1) Notwithstanding any other provision of law, except as otherwise provided in this section in any case in which the coroner, before beginning an autopsy, dissection, or removal of corneal tissue, pituitary glands, or any other organ, tissue, or fluid, has received a certificate of religious belief, executed by the decedent as provided in subdivision (b), that the procedure would be contrary to his or her religious belief, the coroner shall not perform that procedure on the body of the decedent.

(2) If, before beginning the procedure, the coroner is informed by a relative or a friend of the decedent that the decedent had executed a certificate of religious belief, the coroner shall not perform the procedure, except as otherwise provided in this section, for 48 hours. If the certificate is produced within 48 hours, the case shall be governed by this section. If the certificate is not produced within that time, the case shall be governed by the other provisions of this article.

(b) Any person, 18 years of age or older, may execute a certificate of religious belief which shall state in clear and unambiguous language that any postmortem anatomical dissection or that specified procedures would violate the religious convictions of the person. The certificate shall be signed and dated by the person in the presence of at least two witnesses. Each witness shall also sign the certificate and shall print on the certificate his or her name and residence address.

(c) Notwithstanding the existence of a certificate, the coroner may at any time perform an autopsy or any other procedure if he or she has a reasonable suspicion that the death was caused by the criminal act of another or by a contagious disease constituting a public health hazard.

(d)

(1) If a certificate is produced, and if subdivision (c) does not apply, the coroner may petition the superior court, without fee, for an order authorizing an autopsy or other procedure or for an order setting aside the certificate as invalid. Notice of the proceeding shall be given to the person who produced the certificate. The



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

proceeding shall have preference over all other cases.

(2) The court shall set aside the certificate if it finds that the certificate was not properly executed or that it does not clearly state the decedent's religious objection to the proposed procedure.

(3) The court may order an autopsy or other procedure despite a valid certificate if it finds that the cause of death is not evident, and that the interest of the public in determining the cause of death outweighs its interest in permitting the decedent and like persons fully to exercise their religious convictions.

(4) Any procedure performed pursuant to paragraph (3) shall be the least intrusive procedure consistent with the order of the court.

(5) If the petition is denied, and no stay is granted, the body of the deceased shall immediately be released to the person authorized to control its disposition.

(e) In any case in which the circumstances, manner, or cause of death is not determined because of the provisions of this section, the coroner may state on the certificate of death that an autopsy was not conducted because of the provisions of this section.

(f) A coroner shall not be liable for damages in a civil action for any act or omission taken in compliance with the provisions of this section.

It is important to note the Life Insurance issues that are raised when Section 27491.43 is invoked. *See* CAL. GOV. CODE § 10111.5 - Liability of insurer when autopsy prohibited by certificate of religious belief. "An insurer shall not be liable for payments claimed under an individual or group policy of life insurance if the duty to make those payments depends upon a factual determination of whether the death of the insured was an accident or a suicide and that fact cannot be established without an autopsy and the autopsy is prohibited under Section 27491.43 of the Government Code. Insurers refusing or delaying payments in those circumstances in good faith shall not be liable for exemplary or punitive damages."

Interestingly, California's statute used to have a religious objections for autopsies performed on babies who died of sudden infant death syndrome. However, they removed the exception in 1998. *See* 1998 Amendment to CAL GOV CODE § 27491.41 (added subdivision designation (c)(1); (2) added subd (c)(2); and (3) deleted the former second sentence of subd (i) which read: "However, if the physician of record certifies the cause of death is sudden infant death syndrome and the parents object to an autopsy on religious or ethical grounds, no autopsy shall be required.").



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

Case Law

“The Legislature has recognized the religious aspect of autopsies by enacting Government Code section 27491.43. This statute permits a person, while living, to execute a written ‘certificate of religious belief’ against autopsy, which will prevent that person's autopsy except in limited circumstances.” *Walsh v. Caidin*, 232 Cal. App. 3d 159, 165 (Cal. Ct. App. 1991).

By statute the surviving spouse has the right to control disposition of a decedent's remains. (See *Ross v. Forest Lawn Memorial Park* (1984) 153 Cal.App.3d 988, 993-994 (203 Cal.Rptr. 468, 42 A.L.R.4th 1049) (right to disposition includes right to freedom from interference with that right). Health and Safety Code section 7100 provides, "The right to control the disposition of the remains of a deceased person, unless other directions have been given by the decedent, vests in, and the duty of interment and the liability for the reasonable cost of interment of such remains devolves upon the following in the order named: "(a) The surviving spouse. . . ."

The person charged by law with the duty of interment is entitled to custody of the remains for the purpose of interment. (Health & Saf. Code, § 7102.) Cremation is an authorized disposition. (Health & Saf. Code, §§ 7009, 7010.) The person having the right to custody may, but is not required to, authorize an autopsy. (Health & Saf. Code, § 7113.) However, in cases where the coroner is required by law to investigate the cause of death, the coroner has a paramount right to custody, including the right to conduct an autopsy, until the conclusion of the autopsy or medical investigation by the coroner. Health & Saf. Code, § 7102; Gov. Code, §§ 27491, 27491.4.) *Walsh v. Caidin*, 232 Cal. App. 3d 159, 165 (Cal. Ct. App. 1991).

Defendant has no right to an autopsy for civil discovery purposes: In *Holm v. Superior Court* (1986) 187 Cal.App.3d 1241, 1248-1249 (232 Cal. Rptr. 432), the court held that, "the courts of this state have no legal authority, inherent or expressly conferred, to disturb the repose of the dead as an aid to civil litigants in their trial preparations." The appellate court found that neither the statutes relating to dead bodies nor the statutes relating to civil discovery authorize a court to order an autopsy for civil discovery purposes.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

COLORADO

Colorado has no Specific statutory carve-out for religious objections to autopsies.

CRS 30-10-606. Coroner - inquiry - grounds - postmortem - jury - certificate of death

(1) The coroner shall immediately notify the district attorney, proceed to view the body, and make all proper inquiry respecting the cause and manner of death of any person in his jurisdiction who has died under any of the following circumstances:

- (a) From external violence, unexplained cause, or under suspicious circumstances;
- (b) Where no physician is in attendance or where, though in attendance, the physician is unable to certify the cause of death;
- (c) From thermal, chemical, or radiation injury;
- (d) From criminal abortion, including any situation where such abortion may have been self-induced;
- (e) From a disease which may be hazardous or contagious or which may constitute a threat to the health of the general public;
- (f) While in the custody of law enforcement officials or while incarcerated in a public institution;
- (g) When the death was sudden and happened to a person who was in good health;
or
- (h) From an industrial accident.

(1.2) When a person dies as a result of circumstances specified in subsection (1) of this section or is found dead and the cause of death is unknown, the person who discovers the death shall report it immediately to law enforcement officials or the coroner, and the coroner shall take legal custody of the body. The body of any such person shall not be removed from the place of death except upon the authority of the coroner in consultation with the district attorney or local law enforcement agency, nor shall any article on or immediately surrounding such body be disturbed until authorized by the coroner in consultation with the district attorney or local law enforcement agency.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

(2) The coroner shall, if he or the district attorney deems it advisable, cause a post-mortem examination of the body of the deceased to be made by a licensed physician to determine the cause of death.

(5) Nothing in this section shall be construed to require an investigation, autopsy, or inquest in any case where death occurred without medical attendance solely because the deceased was under treatment by prayer or spiritual means alone in accordance with the tenets and practices of a well-recognized church or religious denomination.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

CONNECTICUT

Connecticut has no specific statutory exception for religious objections to autopsies.

Conn. Gen. Stat. § 19a-406. Powers and duties of Chief Medical Examiner. Certified pathologists. Autopsies.

(a) The Chief Medical Examiner shall investigate all human deaths in the following categories: (1) Violent deaths, whether apparently homicidal, suicidal or accidental, including but not limited to deaths due to thermal, chemical, electrical or radiational injury and deaths due to criminal abortion, whether apparently self-induced or not; (2) sudden or unexpected deaths not caused by readily recognizable disease; (3) deaths under suspicious circumstances; (4) deaths of persons whose bodies are to be cremated, buried at sea or otherwise disposed of so as to be thereafter unavailable for examination; (5) deaths related to disease resulting from employment or to accident while employed; (6) deaths related to disease which might constitute a threat to public health. The Chief Medical Examiner may require autopsies in connection with deaths in the preceding categories when it appears warranted for proper investigation and, in the opinion of the Chief Medical Examiner, the Deputy Chief Medical Examiner, an associate medical examiner or an authorized assistant medical examiner, an autopsy is necessary. The autopsy shall be performed at the Office of the Chief Medical Examiner or by a designated pathologist at a community hospital. Where indicated, the autopsy shall include toxicologic, histologic, microbiologic and serologic examinations. If a medical examiner has reason to suspect that a homicide has been committed, the autopsy shall be performed at the Office of the Chief Medical Examiner or by a designated pathologist in the presence of at least one other designated pathologist if such other pathologist is immediately available. A detailed description of the findings of all autopsies shall be written or dictated during their progress. The findings of the investigation at the scene of death, the autopsy and any toxicologic, histologic, serologic and microbiologic examinations and the conclusions drawn therefrom shall be filed in the Office of the Chief Medical Examiner.

(b) The Chief Medical Examiner shall designate pathologists who are certified by the Department of Public Health to perform autopsies in connection with the investigation of any deaths in the categories listed in subsection (a) of this section. Any state's attorney or assistant state's attorney shall have the right to require an autopsy by a pathologist so designated in any case in which there is a suspicion that death resulted from a criminal act. The official requiring said autopsy shall make a reasonable effort to notify whichever one of the following persons, eighteen years of age or older, assumes custody of the body for purposes of burial: Father, mother, husband, wife, child, guardian, next of kin, friend or any person charged by law with



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

the responsibility for burial, that said autopsy has been required, however performance of said autopsy need not be delayed pending such notice.

(c) If there are no other circumstances which would appear to require an autopsy and if the investigation of the circumstances and examination of the body enable the Chief Medical Examiner, the Deputy Chief Medical Examiner, an associate medical examiner or an authorized assistant medical examiner to conclude with reasonable certainty that death occurred from natural causes or obvious traumatic injury, the medical examiner in charge shall certify the cause of death and file a report of his findings in the Office of the Chief Medical Examiner.

Conn. Gen. Stat. 19a-286. Autopsy consent. Autopsy arrangements, rights and responsibilities. Informed autopsy consent form.

(a) Whenever any person dies and no postmortem examination or autopsy has been ordered pursuant to subsection (b) of section 19a-406, no physician shall conduct or assist in conducting any postmortem examination or autopsy upon the body of such deceased person without first obtaining the consent of whichever one of the following persons, eighteen years of age or older, assumes custody of the body for the purposes of burial: Father, mother, husband, wife, child, guardian, next of kin, friend, a person designated by the deceased person in accordance with section 45a-318 or any person charged by law with the responsibility for burial. If two or more persons assume custody of the body, consent of one of them shall be deemed sufficient. Prior to January 1, 2002, any such consent may be in writing or may be given by telegram, and any telegram purporting to have been sent by a person authorized to give such consent shall be conclusively presumed to have been sent by such person, or may be given by telephone, provided a record of any such consent by telephone shall be kept by such physician for not less than three years. On and after January 1, 2002, such consent shall be made pursuant to subsection (c) of this section, provided such consent may be communicated in person, by telephone, electronically, by mail or by courier. If the physician who is to conduct or assist in conducting any postmortem examination or autopsy, after due inquiry and diligence, is unable to find any person authorized to give consent as provided for in this subsection, such postmortem examination or autopsy may be made by such physician without such consent but only after a reasonable time, which shall not be less than twelve hours nor more than forty-eight hours, has elapsed. Any person violating any provision of this subsection or subsection (b) of this section shall be fined not more than five hundred dollars.

(b) Any person authorized to consent to an autopsy under subsection (a) of this section may make arrangements for an autopsy to be performed at any institution that routinely performs autopsies by any physician who is qualified to perform



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

autopsies at such institution. The person requesting the autopsy shall be responsible for arranging for the autopsy and any necessary associated services and for the payment of any costs incurred. Information concerning the rights and responsibilities under this subsection shall be contained in the institution's patient bill of rights and shall be included in all written material that describes the institution's autopsy policy. A copy of the institution's patient bill of rights containing such information shall be given to the person who assumes custody of the body of the deceased person prior to the signing of an autopsy consent form by the person who assumes such custody. The institution shall provide such information in writing in a language understood by the person who assumes custody of the body of the deceased person.

(c) Not later than January 1, 2002, the Commissioner of Public Health, in consultation with the Chief Medical Examiner, shall develop minimum requirements for an informed autopsy consent form that: (1) Includes clear information naming the institution and department that will perform the autopsy; (2) provides the family member or other person who assumes custody of the body of the deceased person as provided in subsection (a) of this section with an opportunity to place any restrictions or limitations on the autopsy or to express any concerns that such family member or other person may have; and (3) provides for documented and witnessed consent. Such minimum requirements shall include procedures for the oral communication of the information required by subdivisions (1) to (3), inclusive, of this subsection, including communication by telephone, as provided in subsection (a) of this section, and shall include procedures for the written or telephonic acknowledgment of receipt of an institution's patient bill of rights containing its autopsy policy. Such minimum requirements shall not be deemed to be regulations, as defined in section 4-166.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

FLORIDA

Florida has no specific statutory carve-out for religious objections to autopsies. However, unless otherwise authorized by law, no autopsy shall be performed without the written consent by the health care surrogate, if one has been designated. If a health care surrogate has not been designated, then written consent may be provided by 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. When two or more persons assume custody of the body for such purposes, then the consent of any one of them shall be sufficient to authorize the autopsy.

Fla. Stat. § 406.11. Examinations, investigations, and autopsies

(1) In any of the following circumstances involving the death of a human being, the medical examiner of the district in which the death occurred or the body was found shall determine the cause of death and shall, for that purpose, make or have performed such examinations, investigations, and autopsies as he or she shall deem necessary or as shall be requested by the state attorney:

(a) When any person dies in the state:

1. Of criminal violence.
2. By accident.
3. By suicide.
4. Suddenly, when in apparent good health.
5. Unattended by a practicing physician or other recognized practitioner.
6. In any prison or penal institution.
7. In police custody.
8. In any suspicious or unusual circumstance.
9. By criminal abortion.
10. By poison.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

11. By disease constituting a threat to public health.

12. By disease, injury, or toxic agent resulting from employment.

(b) When a dead body is brought into the state without proper medical certification.

(c) When a body is to be cremated, dissected, or buried at sea.

(2) (a) The district medical examiner shall have the authority in any case coming under subsection (1) to perform, or have performed, whatever autopsies or laboratory examinations he or she deems necessary and in the public interest to determine the identification of or cause or manner of death of the deceased or to obtain evidence necessary for forensic examination.

(b) The Medical Examiners Commission shall adopt rules, pursuant to chapter 120, providing for the notification of the next of kin that an investigation by the medical examiner's office is being conducted. A medical examiner may not retain or furnish any body part of the deceased for research or any other purpose which is not in conjunction with a determination of the identification of or cause or manner of death of the deceased or the presence of disease or which is not otherwise authorized by this chapter, part V of chapter 765, or chapter 873, without notification of and approval by the next of kin. Reviser's note

(3) The Medical Examiners Commission may adopt rules incorporating by reference parameters or guidelines of practice or standards of conduct relating to examinations, investigations, or autopsies performed by medical examiners.

Fla. Stat. § 872.04. Autopsies; consent required, exception

(1) "Autopsy" means a postmortem dissection of a dead human body in order to determine the cause, seat, or nature of disease or injury and includes the retention of tissues customarily removed during the course of autopsy for evidentiary, identification, diagnostic, scientific, or therapeutic purposes.

(2) Unless otherwise authorized by statute, no autopsy shall be performed without the written consent by the health care surrogate, as provided in s. 765.202, if one has been designated. If a health care surrogate has not been designated, then written consent may be provided by 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. When two or more persons assume custody of the body for such purposes,



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

then the consent of any one of them shall be sufficient to authorize the autopsy.

(3) Any such written consent may be given by telegram, and any telegram purporting to have been sent by a person authorized to give such consent will be presumed to have been sent by such person. A duly witnessed telephone permission is acceptable in lieu of written permission in those circumstances where obtaining written permission would result in undue delay.

(4) If after diligent search and inquiry it is established by the chief law enforcement officer having jurisdiction, through his or her examination of missing persons records and other inquiry, that no person can be found who can authorize an autopsy as herein provided, then after a reasonable time, any person licensed to practice medicine under chapter 458 or osteopathic medicine under chapter 459, and whose practice involves the usual performance of autopsies, may conduct an autopsy, without written consent, on the remains for purposes of confirming medical diagnosis and suspected communicable diseases; and no cause of action will be brought against such physician for performance of such autopsy. A reasonable time for purposes of this provision shall be not less than 48 hours or more than 72 hours after death.

Fla. Stat. § 765.202. Designation of a health care surrogate

(1) A written document designating a surrogate to make health care decisions for a principal shall be signed by the principal in the presence of two subscribing adult witnesses. A principal unable to sign the instrument may, in the presence of witnesses, direct that another person sign the principal's name as required herein. An exact copy of the instrument shall be provided to the surrogate.

Cases: *Hammer v. Rosenthal Jewelers Supply Corp.*, 558 So. 2d 460 (4th Dist. Of Florida, 1990) (sustained an order of autopsy of plaintiff's body over well-founded religious objections where the defendant could only obtain information necessary to their defense by performing an autopsy on the deceased).



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

GEORGIA

Georgia has no specific statutory exception for religious objections to autopsies.

O. C. G. § 45-16-28. Performance of autopsy when not required under Code Section 45-16-24

In the case of death of any person under such circumstances as would not require a medical examiner's inquiry under Code Section 45-16-24, any physician who is duly licensed under the laws of this state or any other state having licensing requirements equal to or greater than those imposed by this state shall be deemed to have been legally authorized to perform an autopsy upon the body of a deceased person when such autopsy has been consented to by the person assuming custody of the body for the purposes of burial, such as the husband, wife, father, mother, child, guardian, next of kin, or, in the absence of any of the foregoing, a friend of such deceased person charged by law with the responsibility of burial. If two or more of such persons assume custody of the body, the consent of one of them shall be deemed sufficient legal authorization for the performance of the autopsy.

O. C. G. § 45-16-24. Notification of suspicious or unusual deaths; court ordered medical examiner's inquiry; written report of inquiry

(a) When any person dies in any county in this state:

(1) As a result of violence;

(2) By suicide or casualty;

(3) Suddenly when in apparent good health;

(4) When unattended by a physician;

(5) In any suspicious or unusual manner, with particular attention to those persons 16 years of age and under;

(6) After birth but before seven years of age if the death is unexpected or unexplained;

(7) As a result of an execution carried out pursuant to the imposition of the death penalty under Article 2 of Chapter 10 of Title 17;

(8) When an inmate of a state hospital or a state, county, or city penal institution;



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

or

(9) After having been admitted to a hospital in an unconscious state and without regaining consciousness within 24 hours of admission,

it shall be the duty of any law enforcement officer or other person having knowledge of such death to notify immediately the coroner or county medical examiner of the county wherein the body is found or death occurs. For the purposes of this Code section, no person shall be deemed to have died unattended when the death occurred while the person was a patient of a hospice licensed under Article 9 of Chapter 7 of Title 31.

(b) A coroner or county medical examiner who is notified of a death pursuant to subsection (a) of this Code section shall order a medical examiner's inquiry of that death.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

ILLINOIS

Illinois has no specific statutory carve-out for religious objections to autopsies.

55 ILCS 5/3-3015. Circumstances under which autopsy to be performed

(a) Where a death has occurred and the circumstances concerning the death are suspicious, obscure, mysterious, or otherwise unexplained and in the opinion of the examining physician or the coroner the cause of death cannot be established definitely except by autopsy, and where a death has occurred while being pursued, apprehended, or taken into custody by or while in the custody of any law enforcement agency, it is declared that the public interest requires that an autopsy be performed, and it shall be the duty and responsibility of the coroner to cause an autopsy to be performed, including the taking of x-rays and the performance of other medical tests as the coroner deems appropriate.

(b) The coroner shall instruct involved parties that embalming of the body is not to be conducted until the toxicology samples are drawn. If a child dies from suspicious or unexplained circumstances, the coroner shall secure the services of a pathologist. The Department of Public Health shall provide coroners and pathologists with a child death autopsy protocol.

(c) If the coroner determines it advisable to exhume a body for the purpose of investigation or autopsy or both, and the coroner would have been authorized under this Section to perform an investigation or autopsy on the body before it was interred, the coroner may exhume the body after consulting on the matter with the state's attorney and upon the order of the circuit court directing the exhumation upon the petition of the state's attorney.

§ 410 ILCS 505/2. Authorization for autopsy

Sec. 2. Any physician may perform an autopsy upon the body of a decedent; provided,

a. he has a written authorization from the decedent (or from an agent of the decedent as authorized by the decedent under the Powers of Attorney for Health Care Law [755 ILCS 45/4-1 et seq.], as now or hereafter amended) to do so; or

b. a written authorization from a surviving relative who has the right to determine the method for disposing of the body or a next of kin or other person who has such right; or



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

c. a telegraphic or telephonic authorization from (i) a surviving relative who has the right to determine the method for disposing of the body or a next of kin or other person who has such right or (ii) an agent of the decedent as authorized by the decedent under the Powers of Attorney for Health Care Law, as now or hereafter amended [755 ILCS 45/4-1 et seq.]; provided, the telegraphic or telephonic authorization is verified, in writing, by at least 2 persons who were present at the time and place the authorization was received;

d. where 2 or more persons have equal right to determine the method for disposing of the body, the authorization of only one such person shall be necessary, unless, before the autopsy is performed, any others having such equal right shall object in writing or, if not physically present in the community where the autopsy is to be performed, by telephonic or telegraphic communication to the physician by whom the autopsy is to be performed, in which event, the authorization shall be deemed insufficient.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

INDIANA

Indiana has no specific statutory religious exception to autopsies, and no case law discussing the issue.

Ind. Code 16-36-2-3. When consent to autopsy sufficient.

(a) For the purpose of this chapter, consent for a licensed physician to conduct an autopsy of the body of a deceased person is sufficient when given by the following persons if the persons survive the deceased:

(1) By the surviving spouse. However, if the deceased and the surviving spouse were legally separated at the date of death, the survivor is not considered a surviving spouse.

(2) If there is no surviving spouse, then by any one (1) adult child of the deceased.

(3) If there is no surviving spouse or adult child of the deceased, then by one (1) parent of the deceased.

(4) If there is no surviving spouse, adult child, or parent and there is an adult who is next of kin of the deceased residing in the county in which the deceased died a resident, then by any one (1) next of kin.

(5) If there is no surviving spouse, adult child, parent, or next of kin, then by any person assuming custody of and financial responsibility for the burial of the body.

(b) If there is more than one (1) person authorized to consent, consent of one (1) of the persons is sufficient.

Case Law:

The only time that objections to autopsies come up in the case law is when widows file for worker compensation claims because their husband died at work, and the employer requests an autopsy. Several cases have upheld the widow's refusal to the autopsy.

Delaware Machinery & Tool Co. v. Yates, 170 Ind. App. 6 (1976) ("An employer requesting an autopsy must show that an autopsy is reasonable and necessary. In general, requests for autopsies are granted only if there is a strong showing by the party making the request that an autopsy will be likely to establish the disputed fact and that the truth cannot be obtained through other evidence. An autopsy is not essential where there is sufficient external evidence to support a doctor's opinion



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

that there is a causal relationship between either strenuous work or surgery and subsequent heart failure, even when other doctors would draw a contrary inference.”).



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

MARYLAND

Maryland has a specific statutory exception for religious objections, but it also has a case narrowly construing it.

§ 5-310. Autopsies

(a) When cause of death established. -- If the cause of death is established to a reasonable degree of medical certainty, the medical examiner who investigates the case shall file in the medical examiner's office a report on the cause of death within 30 days after notification of the case.

(b) Autopsy required; exception. --

(1) If the medical examiner who investigates a medical examiner's case considers an autopsy necessary, the Chief Medical Examiner, the Deputy Chief Medical Examiner, an assistant medical examiner, or a pathologist authorized by the Chief Medical Examiner shall perform the autopsy.

(2) If the family of the deceased objects to an autopsy on religious grounds, the autopsy may not be performed unless authorized by the Chief Medical Examiner or by the Chief Medical Examiner's designee.

(c) Autopsy on fire fighter. --

(1) A medical examiner shall conduct an autopsy of any fire fighter and any sworn personnel of the State Fire Marshal's Office who dies in the line of duty or as a result of injuries sustained in the line of duty.

(2) The autopsy shall include:

(i) A toxicological analysis for toxic fumes;

(ii) Gross and microscopic studies of heart, lung, and any other tissue involved;

(iii) Appropriate studies of blood and urine; and

(iv) Appropriate studies of body fluids and body tissues.

(3) If the medical examiner determines toxic fumes were the cause of death, the medical examiner shall:



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

- (i) Investigate to the extent possible the source of the fumes; and
- (ii) Prepare a written report on the specific effects of the fumes on human tissue.

(4) The autopsy and analysis shall be sufficient to determine eligibility for benefits under the federal Public Safety Officers' Benefits Act of 1976.

Case Law:

Snyder v. Holy Cross Hospital, 30 Md. App. 317 (1976). This is *the* definitive autopsy case for the state of Maryland. In *Snyder*, the right of the state to conduct a post-mortem examination of the son was challenged on religious grounds. The father, an Orthodox Jew, asserted that the tenets of his religion did not permit post-mortem examinations. However, the medical examiner was obligated by law to take charge of the son's body. Further, it was a "medical examiner case" in that the son was only 18 years of age and in apparent good health when he suddenly died; thus, the medical examiner had to investigate the death to determine its cause. The challenge to the law was bottomed on constitutional "freedom of religion" rights. The court determined that the father had a justiciable right in his son's body as would permit him to seek equitable relief from untoward interference with the father's possession and custody of that body for the purpose of decent burial. Nonetheless, the court found that the religious practices of the father were properly abridged by the state in the application of the statutes concerning post-mortem examinations because there were compelling state interests which outweighed the interest of the father in his religious tenets. *Snyder* is still good law in Maryland.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

MASSACHUSETTS

Massachusetts has no specific statutory religious exception to autopsies, and no case law discussing the issue.

Annotated Laws of Massachusetts GL Chapter 38 § 5. Autopsies.

Before surrendering the body of any such person as provided in the four preceding sections, the chief medical officer of any institution named in section one may, if the cause of the death cannot otherwise be determined and if such body is unclaimed by relatives or friends, cause an autopsy to be made upon it.

Case Law:

In absence of bad faith determination of medical examiner within his jurisdiction to make authorized autopsy cannot be questioned. *Gahn v Leary*, 318 Mass 425, 61 NE2d 844 (1945). No consent of surviving spouse is required in making autopsy as such rights are subordinate to paramount public interests. *Id.*



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

MICHIGAN

No specific statutory carve-out for religious objection.

MCLS § 52.202. Investigation by county medical examiner as to cause and manner of death; prisoners; medical records, papers, or documents; exemption from disclosure; definitions.

Sec. 2. (1) A county medical examiner or deputy county medical examiner shall investigate the cause and manner of death of an individual under each of the following circumstances:

(a) The individual dies by violence.

(b) The individual's death is unexpected.

(c) The individual dies without medical attendance by a physician, or the individual dies while under home hospice care without medical attendance by a physician or a registered nurse, during the 48 hours immediately preceding the time of death, unless the attending physician, if any, is able to determine accurately the cause of death.

(d) The individual dies as the result of an abortion, whether self-induced or otherwise.

(2) If a prisoner in a county or city jail dies while imprisoned, the county medical examiner or deputy county medical examiner, upon being notified of the death of the prisoner, shall examine the body of the deceased prisoner.

MCLS § 52.205. Notice of body; manner of death; removal of body to morgue; investigation; designation and duties of medical examiner investigator; list of investigators and qualifications; autopsy; ascertaining identity of deceased and notifying next of kin; impossible identification or knowledge that 2 individuals share same attributes; records; disposition of body.

Sec. 5. (1) When a county medical examiner has notice that there has been found within his or her county or district the body of a person who is supposed to have come to his or her death in a manner as indicated in section 3, the medical examiner shall take charge of the body, and if, on view of the body and personal inquiry into the cause and manner of the death, the medical examiner considers a further examination necessary, the county medical examiner or a deputy may cause the dead body to be removed to the public morgue. If the investigation is for the reason only that the dead person had no medical attendance during 48 hours before the hour of death, and if the dead person had chosen not to have medical attendance because of his or her bona fide held religious convictions, removal shall not be required unless there is evidence of other conditions stipulated in section 3. If there



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

is no public morgue, then the body may be removed to a private morgue as the county medical examiner has designated.

Infants

MCLS § 52.205a. Sudden death, cause unknown, of child under age of 2 years; report; request for autopsy; notice of results; costs; rules.

Sec. 5a. (1) When a child under the age of 2 years dies within this state under circumstances of sudden death, cause unknown, or found dead, cause unknown, that death shall be immediately reported to the county medical examiner or deputy county medical examiner of the county where the body is located. The county medical examiner or deputy county medical examiner shall inform the parents or legal guardians of the child that they may request an autopsy to be performed on the child. The state shall cover the costs of an autopsy requested under this section. The county medical examiner or the deputy county medical examiner shall arrange the autopsy requested under this section and shall promptly notify the parents or legal guardians of the results of that autopsy. The county medical examiner or the deputy county medical examiner shall report the costs of the autopsy performed under this section to the director of the department of community health. If the director determines the claim to be reasonable and proper, he or she shall reimburse the person for the costs incurred under this section out of funds appropriated for this purpose by the legislature. Nothing in this section shall be construed to interfere with the duties and responsibilities of the county medical examiner or deputy county medical examiner as provided in this act.

CASES

Montgomery v. County of Clinton, 743 F. Supp. 1253 (W.D. Mich. 1990): The county and its officials filed motions for summary judgment in an action in which a mother alleged that they subjected her son to an unreasonable seizure of his person in violation of the Fourth Amendment and deprived him of life without due process of law. The son was killed when, in the course of fleeing two pursuing police vehicles, he lost control of the automobile he was driving and it left the roadway and crashed. The mother, who was Jewish, also claimed that the performance of an autopsy on her son's body without her prior notice and consent infringed her First Amendment right to freely exercise her religion. The trial court granted the motions to dismiss because there was no seizure and the use of high-speed pursuits to apprehend traffic violators was not unreasonable. The trial court noted that the performance of an autopsy was not actually in contravention of the religious tenets of the Jewish faith. The trial court then held that because the statutory requirement for an autopsy after a violent death was religion-neutral, the conduct of an autopsy need only have been reasonably related to a legitimate governmental objective. The court permitted the state to conduct an autopsy, which apparently had no purpose given that there was no indication of foul play or use of drugs in the



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

accident. The district judge called the decision "regrettable," but stated that under Smith, while "local officials making decisions concerning the care and disposition ought to proceed conscientiously and with great sensitivity to the emotional and religious sensibilities of the next of kind," there was no constitutional requirement that they do so.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

MINNESOTA

Summary: No specific statutory exceptions for religious objections, and no case law addressing the matter. The only exception the statute gives is: “[n]othing herein shall require the coroner or medical examiner to order an autopsy upon the body of a deceased person if the person died of known or ascertainable causes or had been under the care of a licensed physician immediately prior to death or if the coroner or medical examiner determines the autopsy to be unnecessary.”

Minn Stat. 390.11 INVESTIGATIONS Subdivision 1. Reports of death.

All sudden or unexpected deaths and all deaths that may be due entirely or in part to any factor other than natural disease processes must be promptly reported to the coroner or medical examiner for evaluation. Sufficient information must be provided to the coroner or medical examiner. Reportable deaths include, but are not limited to:

- (1) unnatural deaths, including violent deaths arising from homicide, suicide, or accident;
- (2) deaths due to a fire or associated with burns or chemical, electrical, or radiation injury;
- (3) unexplained or unexpected perinatal and postpartum maternal deaths;
- (4) deaths under suspicious, unusual, or unexpected circumstances;
- (5) deaths of persons whose bodies are to be cremated or otherwise disposed of so that the bodies will later be unavailable for examination;
- (6) deaths of inmates of public institutions and persons in custody of law enforcement officers who have not been hospitalized primarily for organic disease;
- (7) deaths that occur during, in association with, or as the result of diagnostic, therapeutic, or anesthetic procedures;
- (8) deaths due to culpable neglect;
- (9) stillbirths of 20 weeks or longer gestation unattended by a physician;
- (10) sudden deaths of persons not affected by recognizable disease;



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

- (11) unexpected deaths of persons notwithstanding a history of underlying disease;
- (12) deaths in which a fracture of a major bone such as a femur, humerus, or tibia has occurred within the past six months;
- (13) deaths unattended by a physician occurring outside of a licensed health care facility or licensed residential hospice program;
- (14) deaths of persons not seen by their physician within 120 days of demise;
- (15) deaths of persons occurring in an emergency department;
- (16) stillbirths or deaths of newborn infants in which there has been maternal use of or exposure to unprescribed controlled substances including street drugs or in which there is history or evidence of maternal trauma;
- (17) unexpected deaths of children;
- (18) solid organ donors;
- (19) unidentified bodies;
- (20) skeletonized remains;
- (21) deaths occurring within 24 hours of arrival at a health care facility if death is unexpected;
- (22) deaths associated with the decedent's employment;
- (23) deaths of nonregistered hospice patients or patients in nonlicensed hospice programs; and
- (24) deaths attributable to acts of terrorism.

The coroner or medical examiner shall determine the extent of the coroner's or medical examiner's investigation, including whether additional investigation is needed by the coroner or medical examiner, jurisdiction is assumed, or an autopsy will be performed, notwithstanding any other statute.

Subd. 1a. Commissioner of corrections; investigation of deaths.

For deaths occurring within a facility licensed by the Department of Corrections, the



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

coroner or medical examiner shall ensure that a forensic pathologist who is certified by the American Board of Pathology reviews each death and performs an autopsy on all unnatural, unattended, or unexpected deaths and others as necessary.

Subd. 1b. Hospice registration.

Each coroner and medical examiner shall establish a registration policy regarding hospice patients. If a hospice patient is determined to be properly preregistered, the coroner or medical examiner may treat the death as attended by a physician.

Subd. 2. Autopsies.

The coroner or medical examiner may order an autopsy, at the coroner or medical examiner's sole discretion, in the case of any human death referred to in subdivision 1, when, in the judgment of the coroner or medical examiner the public interest would be served by an autopsy. The autopsy shall be performed without unnecessary delay. A report of the facts developed by the autopsy and findings of the person performing the autopsy shall be made promptly and filed in the office of the coroner or medical examiner. When further investigation is deemed advisable, a copy of the report shall be delivered to the county attorney. Every autopsy performed pursuant to this subdivision shall, whenever practical, be performed in the county morgue. Nothing herein shall require the coroner or medical examiner to order an autopsy upon the body of a deceased person if the person died of known or ascertainable causes or had been under the care of a licensed physician immediately prior to death or if the coroner or medical examiner determines the autopsy to be unnecessary.

Autopsies performed pursuant to this subdivision may include the removal, retention, testing, or use of organs, parts of organs, fluids or tissues, at the discretion of the coroner or medical examiner, when removal, retention, testing, or use may be useful in determining or confirming the cause of death, mechanism of death, manner of death, identification of the deceased, presence of disease or injury, or preservation of evidence. Such tissue retained by the coroner or medical examiner pursuant to this subdivision shall be disposed of in accordance with standard biohazardous hospital or surgical material and does not require specific consent or notification of the legal next of kin. When removal, retention, testing, and use of organs, parts of organs, fluids, or tissues is deemed beneficial, and is done only for research or the advancement of medical knowledge and progress, written consent or documented oral consent shall be obtained from the legal next of kin, if any, of the deceased person prior to the removal, retention, testing, or use.

Subd. 2a. Deaths caused by fire; autopsies.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

The coroner or medical examiner shall conduct an autopsy or require that one be performed in the case of a death reported to the coroner or medical examiner by the state fire marshal or a chief officer under section 299F.04, subdivision 5, and apparently caused by fire, and in which the decedent is pronounced dead outside of a hospital or in which identification of the decedent has not been confirmed. If the decedent has died in a hospital and identification is not in question, an autopsy may be performed or ordered by the coroner or medical examiner.

Subd. 3. Exhumation; disinterment.

The coroner or medical examiner may exhume any human body and perform an autopsy on it in the case of any human death referred to in subdivision 1 when the coroner or medical examiner judges that the public interest requires an autopsy. No exhumation shall be conducted unless the surviving legal next of kin consents to it, or the district court of the county where the body is located or buried orders it. Notice of such exhumation shall be given as directed by the district court. Application for an order may be made by the coroner, medical examiner, or county attorney of the county where the body is located or buried, and shall be granted upon a showing that the court deems appropriate.

Subd. 4. Assistance of medical specialists.

If during an investigation the coroner or medical examiner believes the assistance of pathologists, toxicologists, laboratory technicians, or other medical, scientific, or forensic experts is necessary to determine or confirm the cause or manner of death, identification, time of death, or to address other issues requiring expert opinion, the coroner or medical examiner may obtain their assistance.

Subd. 7. Custody of body.

Upon notification of a death subject to this section, the sheriff or deputy shall proceed to the body, take charge of it, and, when necessary, order that there be no interference with the body or the scene of death.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

NEW JERSEY

Statutes concerning declaration of death and autopsies.

With respect to religious objections, see specifically N.J.S.A.26:6A-5 (determination of death) and N.J.S.A. 52:17B-88.2 (autopsy).

Autopsy

N. J. Stat. 52:17B-88.1. Definitions

As used in this act:

a. "Compelling public necessity" means

(1) That the dissection or autopsy is essential to the criminal investigation of a homicide of which the decedent is the victim; or

(2) That the discovery of the cause of death is necessary to meet an immediate and substantial threat to the public health and that a dissection or autopsy is essential to ascertain the cause of death; or

(3) That the death was that of an inmate of a prison, jail or penitentiary; or

(4) That the death was that of a child under the age of 12 years suspected of having been abused or neglected or suspected of being a threat to public health, and the cause of whose death is not apparent after diligent investigation by the medical examiner; or

(5) That the need for a dissection or autopsy is established pursuant to the provisions of section 4 of this act.

b. "Friend" means any person who, prior to the decedent's death, maintained close contact with the decedent sufficient to render that person knowledgeable with the decedent's activities, health and religious beliefs; and who presents an affidavit stating the facts and circumstances upon which the claim that the person is a friend is based and stating that the person will assume responsibility for the lawful disposition of the body of the deceased.

52:17B-88.2. Dissection or autopsy; contrary to decedents' religious beliefs

Notwithstanding any other provision of law to the contrary, no dissection or autopsy shall be performed, in the absence of a compelling public necessity, over the objection of a member of the deceased's immediate family or in the absence thereof, a friend of the deceased that the procedure is contrary to the religious belief of the decedent or if there is an obvious reason to believe that a dissection or autopsy is contrary to the decedent's religious beliefs.

52:17B-88.3. Waiting period

Whenever, in the opinion of a medical examiner, there is a compelling public necessity under paragraphs (1), (2), (3), and (4) of subsection a. of section 1 of this act to perform an autopsy or dissection, and a member of the deceased's immediate



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

family or, in the absence thereof, a friend objects that the autopsy or dissection is contrary to the religious beliefs of the deceased or there is an obvious reason to believe that the autopsy or dissection is contrary to the religious beliefs of the deceased, then no dissection or autopsy shall be performed until 48 hours after notice thereof is given by the medical examiner to the objecting party, or, if there is no objecting party, to such party as the court may name. During that 48-hour period, the objecting party or the party named by the court may institute action in the Superior Court to determine the propriety of the dissection or autopsy, but the court may dispense with the waiting period upon ex parte motion if it determines that the delay may prejudice the accuracy of the autopsy or dissection.

52:17B-88.4. Action by medical examiner for order authorizing autopsy or dissection

Whenever, in the opinion of a medical examiner, there is a compelling public necessity in circumstances not provided for in paragraphs (1), (2), (3) and (4) of section 1 of this act to perform an autopsy or dissection; and a member of the deceased's immediate family or, in the absence thereof, a friend objects that the autopsy or dissection is contrary to religious beliefs of the deceased or there is an obvious reason to believe that the autopsy or dissection is contrary to the religious beliefs of the deceased, then the medical examiner may institute an action in the Superior Court for an order authorizing the autopsy or dissection. The action shall be instituted by an order to show cause on notice to the member of the deceased's immediate family or friend, or if none is known, then to such party as the court may direct.

52:17B-88.5. Priority of action; summary nature of action; permission granted or denied

Any action brought pursuant to the provisions of this act shall have preference over all other cases and shall be determined summarily upon the petition and oral or written proof, if any, offered by the parties. The court shall permit the autopsy or dissection to be performed if it finds that the medical examiner establish a compelling public necessity for the autopsy or dissection under all of the circumstances of the case or if the objecting party or party named by the court fails to swear or affirm that an autopsy or dissection would be contrary to the deceased's religious beliefs. If permission to perform an autopsy or dissection is denied and no stay is granted by the court or by the appellate division, the body shall immediately be released for burial.

52:17B-88.6. Intrusiveness of autopsy or dissection

A dissection or autopsy performed pursuant to this act shall be the least intrusive procedure consistent with the compelling public necessity.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

§ 52:17B-88.11. Protocol for participation of medical examiners in certain research activities concerning SIDS

[Mandates autopsies for all children under the age of one year that die of SIDS]. Notwithstanding the provisions of this section to the contrary, the protocol shall provide that no tissue sample shall be taken from a deceased infant or young child whose parent or legal guardian has objected to an autopsy because it is contrary to the religious beliefs of the deceased, in accordance with section 2 of P.L. 1983, c. 535 (C. 52:17B-88.2).

N.J. Administrative Code § 13:49-1.6 Objections to autopsy on religious grounds

(a) When the medical examiner determines that an autopsy is a compelling public necessity, as defined by N.J.S.A. 52:17B-88.1a(1) through (4), but the circumstances of the death or the appearance or personal effects of the decedent indicate an obvious reason to believe that it would have been against the religious beliefs of the decedent to be autopsied, or a member of the decedent's immediate family, or, in the absence thereof, a friend of the deceased (as defined by N.J.S.A. 52:17B-88.1b), has objected to the autopsy, then the medical examiner shall proceed as follows:

1. If the medical examiner has obvious reason to believe that it is against the decedent's religious beliefs, and a member of the decedent's immediate family, or, in the absence thereof, a friend of the deceased, does not raise the religious objection, then the medical examiner shall request a judge of the Superior Court to appoint a representative to act on behalf of the decedent and shall postpone the autopsy for 48 hours.
2. If a member of the decedent's family, or, in the absence thereof, a friend of the deceased, objects because the procedure is contrary to the decedent's religious beliefs, the medical examiner shall postpone the autopsy for 48 hours.
3. After making the decision to postpone the autopsy, the medical examiner shall reevaluate all of the facts, seek any necessary additional information, and examine the body and perform any examinations that do not invade the body, including, but not limited to, external examinations, photography, X-rays, laser examination, computerized tomography, and magnetic resonance.
4. At the conclusion of any procedures set forth in (a)3 above, the medical examiner shall reconsider whether the autopsy is a compelling public necessity, as defined by N.J.S.A. 52:17B-88.1a(1) through (4). If the medical examiner concludes that the autopsy constitutes a compelling public necessity, he or she shall notify the



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

objecting party, shall advise the party of the party's right to institute an action in the Superior Court to determine the propriety of the autopsy, and, if any court proceeding is pending, shall notify the Superior Court judge that the autopsy constitutes a compelling public necessity. If at the end of this evaluation the medical examiner concludes that the autopsy is not a compelling public necessity, pursuant to N.J.S.A. 52:17B-88.1a(1) through (4), and that there are sufficient facts to complete a competent death certificate and to satisfy the forensic needs of the investigation, he or she shall issue a death certificate and may release the body for burial.

5. Notwithstanding the provisions of this subsection, the medical examiner may make ex parte application to the judge to dispense with the waiting period if the medical examiner determines that any compelling necessity exists, as defined by N.J.S.A. 52:17B-88.1a(1), (2), (3) or (4), and concludes that the delay may prejudice the accuracy of the autopsy, and makes a good faith effort to notify any court-appointed representative or objecting family member or friend.

(b) The waiting period of 48 hours shall begin upon earliest notice by the objecting party or court-appointed party that an objection to autopsy exists based on the religious beliefs of the decedent, even prior to the transfer of documentary evidence to that effect. The progress of the proceedings shall be recorded on forms provided by the State Medical Examiner Office for that purpose. If at the end of 48 hours the objecting party has not provided to the medical examiner documentary evidence or a sworn statement or affidavit that the autopsy is contrary to the decedent's religious beliefs, or the objecting party has not instituted an action in the Superior Court to determine the propriety of the autopsy, or the court grants permission to conduct the autopsy, the medical examiner may proceed with the autopsy.

(c) In any other instance of compelling public necessity, pursuant to N.J.S.A. 52:17B-88.4, the medical examiner may apply to a Superior Court judge for permission to perform an autopsy. The medical examiner shall institute such action by an order to show cause, on notice to the member of decedent's immediate family, or, in the absence thereof, a friend, who objects to the autopsy as contrary to the decedent's religious beliefs. If no family member or friend objects, but there is an obvious reason to believe that the procedure is contrary to the decedent's religious beliefs, the medical examiner shall request the judge to appoint a representative to act on the decedent's behalf. The medical examiner may then seek an order authorizing the autopsy by filing an order to show cause, on notice to the court-appointed representative, if any.

(d) No final decision regarding whether a compelling public necessity exists, pursuant to N.J.S.A. 52:17B-88.1a, shall be made by the medical examiner unless a



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

court proceeding is instituted or the objecting party provides documentary evidence or a sworn statement of the objection, including, but not limited to, an affidavit stating that an autopsy is contrary to the decedent's religious beliefs.

(e) If the court prohibits an autopsy that the medical examiner determined was a compelling public necessity, and the medical examiner cannot establish a cause of death by other means, the cause of death shall be certified as "Cause of death undetermined", and notations shall be made in the appropriate place on the death certificate (currently Part II, section 27) that the autopsy was prohibited by court order, and shall include the name of the judge and the date of the court order.

(f) If the court grants permission to perform the autopsy, the autopsy shall be performed immediately and shall be the least intrusive procedure that is consistent with the medical examiner's finding that a compelling public necessity exists. Under such circumstances, a complete external examination, any non-invasive procedures described in (a)3 above, and an internal examination of the body viscera in situ and the collection of minimal samples for toxicologic and microscopic testing shall be deemed acceptable procedure. Permission may be granted by the medical examiner to a designated representative of the family to attend the autopsy and perform any religious rites that do not conflict with the compelling public necessity.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

NEW YORK

“Autopsies:

a. No autopsy, except as required by law, may be performed on any person carrying wallet card stating that he or she is opposed to autopsy

Public Health Law §4209-a

Except as required by law, no dissection or autopsy shall be performed on the body of any person who is carrying an identification card upon his person indicating his opposition to such dissection or autopsy. To be valid, this card must be signed and dated by the person opposed to the dissection or autopsy and must be notarized.

The card shall measure at least two inches by three inches and shall be made of a cardboard based material. The card shall state:

"I,,

(insert the name of the person opposed to dissection or autopsy)

do not consent to the dissection or autopsy of my body except as is required by law."

b. In the absence of “compelling public necessity”(as defined by the statute), no autopsy shall be performed where there is evidence that such procedure is contrary to the religious belief of the decedent

Public Health Law §4210-c

1. Notwithstanding any other provision of law, in the absence of a compelling public necessity, no dissection or autopsy shall be performed over the objection of a surviving relative or friend of the deceased that such procedure is contrary to the religious belief of the decedent, or, if there is otherwise reason to believe that a dissection or autopsy is contrary to the decedent's religious beliefs.

2. For the purposes of this section: (a) "compelling public necessity" shall mean:

(i) that the dissection or autopsy is essential to the conduct of a criminal investigation of a homicide, as defined in section 125.00 of the penal law, of which the decedent is the victim, or

(ii) that discovery of the cause of death is necessary to meet an immediate and substantial threat to the public health and that a dissection or autopsy is essential to ascertain the cause of death, or



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

(iii) that the need for a dissection or autopsy is established in accordance with subdivision five of this section.

(b) "relative" shall mean the person most closely related to the decedent by consanguinity or affinity. In the event such person is unavailable, the objection may be raised on his behalf by the next most closely related person. The official who has authority to order a dissection or autopsy of the decedent's body may require a relative to present an affidavit stating his relationship to the decedent, the religious affiliation of the decedent, if any, that the decedent had religious objections to an autopsy, the basis for such belief, and that he will assume responsibility for the lawful disposition of the body of the deceased.

(c) "friend" shall mean any person who, prior to the decedent's death, maintained such regular contact with the decedent as to be familiar with his activities, health and religious beliefs and who presents an affidavit stating the facts and circumstances upon which the claim that he is such friend is based, the religious affiliation of the decedent, if any, that the decedent had religious objections to an autopsy, the basis for such belief, and that he will assume responsibility for the lawful disposition of the body of the deceased.

3. All dissections or autopsies performed pursuant to this section shall be the least intrusive procedure consistent with the compelling state interest as defined herein.

4. Except as provided in subdivision three of section forty-two hundred ten of this article, no dissection or autopsy shall be performed over the objection of a surviving relative or friend that such autopsy is contrary to the religious beliefs of the deceased, or where there is otherwise reason to believe that a dissection or autopsy is contrary to the decedent's religious beliefs, until notice thereof is given to the next of kin or friend as defined herein, or until forty-eight hours have elapsed, whichever is greater, to permit an objecting party to institute legal proceedings to determine the propriety of such dissection or autopsy; provided, however, that a court upon ex parte motion may dispense with the waiting period if it determines that such delay may prejudice the accuracy of the autopsy or dissection or if the objecting party is a suspect in the homicide.

5. Whenever any coroner or medical examiner shall deem it necessary to perform an autopsy over the objection of a surviving relative or friend that such autopsy is contrary to the religious beliefs of the deceased, or where there is otherwise reason to believe that a dissection or autopsy is contrary to the decedent's religious beliefs, in circumstances not provided for in subparagraphs (i) and (ii) of paragraph (a) of subdivision two of this section, he may institute a special proceeding, without fee, in



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

the supreme court or county court for an order authorizing such autopsy. Such proceeding shall be instituted as soon as practicable, brought on by an order to show cause on notice to the next of kin or friend, or if none is known to the petitioner, then to such party as the court may direct, returnable at the earliest possible time. The proceeding shall have preference over all other cases in the court and shall be determined summarily upon the petition and such oral or written proof as may be offered by the parties. The court shall grant the relief sought in the petition if it finds that the petitioner had established a demonstrable need for such autopsy or dissection under all circumstances of the case. If the petition is denied, and no stay is granted by the court or the appellate division, the body shall immediately be released for burial to the surviving relative or friend."

Commentary: Under N.Y. Pub. Health Law § 4210-c(1), "compelling public necessity" is required only when a surviving relative or friend objects to an autopsy on religious grounds or there is other reason for the medical examiner to believe that an autopsy is contrary to the decedent's religious beliefs. 'Other reason' could include the medical examiner knowing that the deceased is Jewish.

New York Case Law Interpreting the Autopsy Objection Statute:

Dick v. City of New York, 2002 NY Misc Lexis 1597 2002 (Sup. Ct. N.Y. Co. 2002): "The burden is on a decedent's next of kin to convey a religious objection to the Medical Examiner's office. The City argues that, as a matter of law, the autopsy performed upon Steven Dick's body was authorized pursuant to Section 557(f) of the New York City Charter; which provision, in conjunction with Section 4210 of the Public Health Law, provides that the chief medical examiner shall have the power or right to perform an autopsy upon, "...the bodies of persons dying from ...casualty, ...suddenly when in apparent health, ...or in any suspicious or unusual manner..." But the circumstances in which Steven Dick's body was discovered did not necessarily fit into any of these categories. [See, e.g., *Foley v. Phelps*, supra (autopsy was not authorized where decedent fell down elevator shaft); *Atkins v. Medical Examiner of Westchester County*, 100 Misc.2d 839 (S.Ct., West. Co., 1979) (performance of autopsy stayed where decedent struck by automobile)] Where, as here, the circumstances surrounding death were unwitnessed, with no indicia of foul play -- such as, for example, bullet or stab wounds, or prior complaints of physical attacks upon, or suicidal behavior by, the decedent -- but there were indicia of death by accidental means, the question of whether the autopsy was authorized involves findings of fact which preclude summary judgement. (See *Brown v. Broome County*, 8 N.Y.2d 330, 207 N.Y.S.2d 657, 170 N.E.2d 666 (1960) Indeed, it has been held that Section 17-203 of the New York City Administrative Code mandates that the chief medical examiner certify death and file a report without an autopsy where he can, "... conclude with reasonable certainty that death



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

had occurred from natural causes or obvious traumatic injury [i.e., accident]..." (NYC Adm. Code 17-203). (*Kellogg v. Office of the Chief Medical Examiner of the City of New York*, supra at 766)

Even if an autopsy is otherwise authorized, the power to perform one is further constrained by Section 4210-c(1) of the Public Health Law which provides:

"Notwithstanding any other provision of law, in the absence of a compelling public necessity, no dissection or autopsy shall be performed over the objection of a surviving relative ... that such procedure is contrary to the religious belief of the decedent, or, if there is reason to believe that a dissection or autopsy is contrary to the decedent's religious beliefs."

"The burden is upon a decedent's next of kin to convey a religious objection to the medical examiner's office. [See *Banks v. United Hospital*, 275 A.D.2d 623, 713 N.Y.S.2d 53 (1st Dept., 2000); *Harris-Cunningham v. Medical Examiner of New York County*, 261 A.D.2d 285, 690 N.Y.S.2d 253 (1st Dept., 1999)] But whether or not Martin Dick explicitly objected, if he advised the OCME that the family was Jewish, there certainly should have been reason to believe that an autopsy would be contrary to Steven Dick's religious beliefs. It can hardly be seriously contended that the Office of the Chief Medical Examiner for the City of New York was not aware that the tenets of the Jewish faith require that a decedent's remains be disposed of within twenty four hours after, and in the same state it was in at, the time of death; or that the performance of an autopsy, which necessarily involves dissection, is regarded as a desecration of the body [see *Lieberman v. Riverside Memorial Chapel, Inc.*, 225 A.D.2d 283, 650 N.Y.S.2d 194 (1st Dept., 1996)]." *Dick v. City of New York*, 2002 NY Misc Lexis 1597 2002 (Sup. Ct. N.Y. Co. 2002).

-In New York you don't even have to voice an objection, all you have to do is say that your family is of the Jewish faith and that will put the Medical Examiner on notice that they should not perform an autopsy. I wonder how far you could take this reasoning: for example, if the deceased has a Jewish name, should that be enough to put the medical examiner on notice not to do an autopsy?

In *Lieberman v. Riverside Memorial Chapel*, Plaintiff decedent's children sued defendant's funeral home and city hospital for allowing a partial autopsy to be performed on their father. The decedent was a devout Orthodox Jew and because of his and plaintiff's religious beliefs did not want an autopsy performed. The jury awarded plaintiff \$ 75,000 in compensatory damages and \$ 1,350,000 solely against defendant funeral home. The trial court vacated the punitive damage award. On appeal, the court held that the trial court erred by setting aside the entire award because the evidence showed that defendant funeral home instigated the call for a reevaluation of the "no-case" decision of the medical examiner and also "rushed" the body to the chief medical examiner's office to have the autopsy performed immediately for its own scheduling convenience, without notifying plaintiff, in



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

disregard not only of Jewish religious law but of the provisions of the N.Y. Pub. Health Law § 4210-c.

Lieberman v. Riverside Memorial Chapel, Inc., 225 AD2d 283, 287-292:

Case law has exonerated the New York County Medical Examiner from civil liability where, as here, the Medical Examiner had no reason "to believe that an autopsy is contrary to the decedent's religious beliefs (see, *Rotholz v. City of New York*, 151 Misc 2d 613, 616-617)" (*Harris-Cunningham v. Medical Examiner of New York County*, 261 AD2d 285-286). In requiring the Medical Examiner's knowledge of decedent's religious beliefs or an autopsy-objection notice to the Medical Examiner, *Harris-Cunningham* "reject[ed the] argument that under Public Health Law §4210-c (1),[8] the Medical Examiner was under an affirmative duty to seek the consent of a surviving family member or friend, and that absent such consent, or 'compelling public necessity', could not perform the autopsy" (*id.*; see also *Banks v. United Hospital*, 275 AD2d 623, 624). Hence, "[t]he burden is upon a decedent's next of kin to convey a religious objection to the medical examiner's office" (*Dick v. City of New York*, Misc 2d, 2002 NY Slip Op 50482 3).

However, the *Harris-Cunningham* decision crucially distinguishes "Public Health Law §4214, which imposes an affirmative duty on hospitals to seek consent before performing autopsies ..." (261 AD2d at 286). Such duty also seems applicable under prevailing case law where a hospital, though not performing the autopsy, causes the autopsy, as here, by transferring the body to the Chief Medical Examiner's Office. Prior decisions have already found that a hospital may be held liable as causing or procuring an unauthorized autopsy where known objections to an autopsy existed and the hospital nonetheless released the body to a medical examiner who thereafter performed an autopsy (*Rotholz v. City of New York*, 151 Misc 2d 613), or otherwise caused or enabled a coroner to perform an autopsy (*Darcy v. Presbyterian Hospital in City of New York*, 202 NY 259, rearg denied 203 NY 547). Liability plus punitive damages resulted where a funeral home which knew generally that an autopsy violated a decedent's religious beliefs still instigated the autopsy to avoid rescheduling a funeral (thus itself transporting the body to the Medical Examiner's office).

In *Juseinoski v. New York Hosp. Medical Center of Queens* 18 A.D.3d 713, 795 N.Y.S.2d 753 (N.Y.A.D. 2nd Dept., 2005), the decedent, a Muslim, collapsed at work and was taken by ambulance to the hospital, where he was pronounced dead. Although the hospital's "Notice of Death" form contained questions with respect to whether the family consented to an autopsy, the answers to those questions were left blank. The wife claimed that she told hospital personnel that she wanted to take the decedent's body to a mosque. When the family returned to claim the body, the body was no longer at the hospital. The attending physician had notified the medical examiner, and the medical examiner had performed an autopsy. N.Y. Pub. Health



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

Law § 4214(1) prohibited a hospital from ordering the performance of an autopsy within 48 hours of death absent written consent of a person legally entitled to consent. However, the appellate court held that N.Y. Pub. Health Law § 4214(1) did not apply in this case on the basis that the autopsy was not performed by hospital personnel and was not ordered by the hospital. Where an autopsy was performed by the medical examiner, written consent was not required. Therefore, the appellate court held that the trial court erred in granting summary judgment on liability to plaintiffs. "Public Health Law 4214(1) prohibits a hospital from ordering the performance of an autopsy within 48 hours of death absent written consent of a person legally entitled to consent. However, Public Health Law 4214(1) does not apply in this case on the basis that the autopsy was not performed by hospital personnel and was not ordered by the hospital. Where an autopsy is performed by the Medical Examiner, written consent is not required."

If a jury believes that the decedent's wife informed the hospital that the decedent was a Muslim and further informed the hospital that she wanted to take the body to a mosque, there is an issue of fact as to whether that information was sufficient to give "reason to believe" that the autopsy was contrary to the decedent's religious beliefs (Public Health Law 4210-c[1]). Further the fact that the "Notice of Death" form prepared by the hospital contained questions as to whether the family consented to an autopsy which were left blank constitutes some evidence that there may have been a protocol to ask such questions. The violation of such a protocol would constitute some evidence of negligence

"New York Public Health Law § 4210-c generally prohibits the performance of an autopsy over the religious objections of a surviving relative or friend, however, autopsies are permitted over such objections in situations where there is "compelling public necessity." See *Hendriksen v. Roosevelt Hosp.*, 297 F. Supp. 1142, 1144 (S.D.N.Y. 1969) ("the authority to perform an autopsy derives solely from statute"); *Kellogg v. Office of Chief Med. Exam'r of City of New York*, 189 Misc.2d 756, 763, 735 N.Y.S.2d 350, 357 (Sup. Ct. Bronx Co. 2001). Section 4210-c(2)(a)(i) goes on to state that: "for the purposes of this section . . . 'compelling public necessity' shall mean . . . that the dissection or autopsy is essential to the conduct of a criminal investigation of a homicide, as defined in section 125.00 of the penal law, of which the decedent is the victim . . ." The statute further limits to forty-eight hours the amount of time an objecting party is allotted to "institute legal proceedings to determine the propriety of such dissection of autopsy." Pub. Health L. § 4210-c(4). The statute does not address a party's withdrawal of an objection." *Word v. Lord*, 2002 U.S. Dist. LEXIS 19923 (2002).



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

OHIO

Ohio has a statutory exception for religion objections to autopsies.

ORC. § 313.131. Procedure when autopsy is contrary to decedent's religious belief

(A) As used in this section:

(1) "Friend" means any person who maintained regular contact with the deceased person, and who was familiar with the deceased person's activities, health, and religious beliefs at the time of the deceased person's death, any person who assumes custody of the body for burial, and any person authorized by written instrument, executed by the deceased person to make burial arrangements.

(2) "Relative" means any of the following persons: the deceased person's surviving spouse, children, parents, or siblings.

(B) The coroner, deputy coroner, or pathologist shall perform an autopsy if, in the opinion of the coroner, or, in his absence, in the opinion of the deputy coroner, an autopsy is necessary, except for certain circumstances provided for in this section where a relative or friend of the deceased person informs the coroner that an autopsy is contrary to the deceased person's religious beliefs, or the coroner otherwise has reason to believe that an autopsy is contrary to the deceased person's religious beliefs. The coroner has such reason to believe an autopsy is contrary to the deceased person's religious beliefs if a document signed by the deceased and stating an objection to an autopsy is found on the deceased's person or in his effects. For the purposes of this division, a person is a relative or friend of the deceased person if the person presents an affidavit stating that he is a relative or friend as defined in division (A) of this section.

(C) (1) Except as provided in division (F) of this section, if a relative or friend of the deceased person informs the coroner that an autopsy is contrary to the deceased person's religious beliefs, or the coroner otherwise has reason to believe that an autopsy is contrary to the deceased person's religious beliefs, and the coroner concludes the autopsy is a compelling public necessity, no autopsy shall be performed for forty-eight hours after the coroner takes charge of the deceased person. An autopsy is a compelling public necessity if it is necessary to the conduct of an investigation by law enforcement officials of a homicide or suspected homicide, or any other criminal investigation, or is necessary to establish the cause of the deceased person's death for the purpose of protecting against an immediate and substantial threat to the public health. During the forty-eight hour period, the objecting relative or friend may file suit to enjoin the autopsy, and shall give notice



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

of any such filing to the coroner. The coroner may seek an order waiving the forty-eight hour waiting period. If the coroner seeks such an order, the court shall give notice of the coroner's motion, by telephone if necessary, to the objecting relative or friend, or, if none objected, to all of the deceased person's relatives whose addresses or telephone numbers can be obtained through the exercise of reasonable diligence. The court may grant the coroner's motion if the court determines that no friend or relative of the deceased person objects to the autopsy or if the court is satisfied that any objections of a friend or relative have been heard, and if it also determines that the delay may prejudice the accuracy of the autopsy, or if law enforcement officials are investigating the deceased person's death as a homicide and suspect the objecting party committed the homicide or aided or abetted in the homicide. If no friend or relative files suit within the forty-eight hour period, the coroner may proceed with the autopsy.

(2) The court shall hear a petition to enjoin an autopsy within forty-eight hours after the filing of the petition. The Rules of Civil Procedure shall govern all aspects of the proceedings, except as otherwise provided in division (C)(2) of this section. The court is not bound by the Rules of Evidence in the conduct of the hearing. The court shall order the autopsy if the court finds that under the circumstances the coroner has demonstrated a need for the autopsy. If the court enjoins the autopsy, the coroner shall immediately proceed under section 313.14 of the Revised Code.

(D) (1) If a relative or friend of the decedent informs the coroner that an autopsy is contrary to the deceased person's religious beliefs, or the coroner otherwise has reason to believe that an autopsy is contrary to the deceased person's religious beliefs, and the coroner concludes the autopsy is necessary, but not a compelling public necessity, the coroner may file a petition in a court of common pleas seeking a declaratory judgment authorizing the autopsy. Upon the filing of the petition, the court shall schedule a hearing on the petition, and shall issue a summons to the objecting relative or friend, or, if none objected, to all of the deceased person's relatives whose addresses can be obtained through the exercise of reasonable diligence. The court shall hold the hearing no later than forty-eight hours after the filing of the petition. The court shall conduct the hearing in the manner provided in division (C)(2) of this section.

(2) Each person claiming to be a relative or friend of the deceased person shall immediately upon receipt of the summons file an affidavit with the court stating the facts upon which the claim is based. If the court finds that any person is falsely representing himself as a relative or friend of the deceased person, the court shall dismiss the person from the action. If after dismissal no objecting party remains, and the coroner does not have reason to believe that an autopsy is contrary to the deceased person's religious beliefs, the court shall dismiss the action and the



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

coroner may proceed with the autopsy. The court shall order the autopsy after hearing the petition if the court finds that under the circumstances the coroner has demonstrated a need for the autopsy. The court shall waive the payment of all court costs in the action. If the petition is denied, the coroner shall immediately proceed under section 313.14 of the Revised Code.

Any autopsy performed pursuant to a court order granting an autopsy shall be performed using the least intrusive procedure.

(E) For purposes of divisions (B), (C)(1), and (D)(1) of this section, any time the friends or relatives of a deceased person disagree about whether an autopsy is contrary to the deceased person's religious beliefs, the coroner shall consider only the information provided to him by the person of highest priority, as determined by which is listed first among the following:

- (1) The deceased person's surviving spouse;
- (2) An adult son or daughter of the deceased person;
- (3) Either parent of the deceased person;
- (4) An adult brother or sister of the deceased person;
- (5) The guardian of the person of the deceased person at the time of death;
- (6) A person other than those listed in divisions (E)(1) to (5) of this section who is a friend as defined in division (A)[(1)] of this section.

If two or more persons of equal priority disagree about whether an autopsy is contrary to the deceased person's religious beliefs, and those persons are also of the highest priority among those who provide the coroner with information the coroner has reason to believe that an autopsy is contrary to the deceased person's religious beliefs.

(F) (1) Divisions (C)(1) and (2) of this section do not apply in any case involving aggravated murder, suspected aggravated murder, murder, suspected murder, manslaughter offenses, or suspected manslaughter offenses.

(2) This section does not prohibit the coroner, deputy coroner, or pathologist from administering a chemical test to the blood of a deceased person to determine the alcohol, drug, or alcohol and drug content of the blood, when required by division (B) of section 313.13 of the Revised Code, and does not limit the coroner, deputy



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

coroner, or pathologist in the performance of his duties in administering a chemical test under that division.

ORC § 313.121. Death of apparently healthy child under age of two to be reported; autopsy; supportive services for parents; information on sudden infant death syndrome

(B) If a child under two years of age dies suddenly when in apparent good health, the death shall be reported immediately to the coroner of the county in which the death occurred, as required by section 313.12 of the Revised Code. Except as provided in division (C) of this section, the coroner or deputy coroner shall perform an autopsy on the child. The autopsy shall be performed in accordance with public health council rules adopted under section 313.122 [313.12.2] of the Revised Code. The coroner or deputy coroner may perform research procedures and tests when performing the autopsy.

(C) A coroner or deputy coroner is not required to perform an autopsy if the coroner of the county in which the death occurred or a court with jurisdiction over the deceased body determines under section 313.131 [313.13.1] of the Revised Code that an autopsy is contrary to the religious beliefs of the child. If the coroner or the court makes such a determination, the coroner shall notify the health district or department of health with jurisdiction in the area in which the child's parent resides. For purposes of this division, the religious beliefs of the parents of a child shall be considered to be the religious beliefs of the child.

ORC § 2108.521. Order authorizing autopsy or post-mortem examination where mentally retarded or developmentally disabled person dies under suspicious circumstances

(A) If a mentally retarded person or a developmentally disabled person dies, if the department of mental retardation and developmental disabilities or a county board of mental retardation and developmental disabilities has a good faith reason to believe that the deceased person's death occurred under suspicious circumstances, if the coroner was apprised of the circumstances of the death, and if the coroner after being so apprised of the circumstances declines to conduct an autopsy, the department or the board may file a petition in a court of common pleas seeking an order authorizing an autopsy or post-mortem examination under this section.

(B) Upon the filing of a petition under division (A) of this section, the court may conduct, but is not required to conduct, a hearing on the petition. The court may determine whether to grant the petition without a hearing. The department or board, and all other interested parties, may submit information and statements to



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

the court that are relevant to the petition, and, if the court conducts a hearing, may present evidence and testimony at the hearing. The court shall order the requested autopsy or post-mortem examination if it finds that, under the circumstances, the department or board has demonstrated a need for the autopsy or post-mortem examination. The court shall order an autopsy or post-mortem examination in the circumstances specified in this division regardless of whether any consent has been given, or has been given and withdrawn, under section 2108.50 of the Revised Code, and regardless of whether any information was presented to the coroner pursuant to section 313.131 [313.13.1] of the Revised Code or to the court under this section regarding an autopsy being contrary to the deceased person's religious beliefs.

ORC § 313.123. Autopsy defined; disposal of medical waste; autopsy contrary to decedent's religious beliefs; retention of DNA specimens; immunity of employee (2) If an autopsy is performed on a deceased person and pursuant to section 313.131 of the Revised Code the coroner has reason to believe that the autopsy is contrary to the deceased person's religious beliefs, the coroner shall not remove any specimens, including, but not limited to, tissues, organs, blood, or other bodily fluids, from the body of the deceased person unless removing those specimens from the body of the deceased person is a compelling public necessity. Except as otherwise provided in division (B)(3) of this section, if the coroner removes any specimens from the body of the deceased person, the coroner shall return the specimens, as soon as is practicable, to the person who has the right to the disposition of the body.

Case Law:

Everman v. Davis, 54 Ohio App. 3d 119 (Ohio Ct. App. 1989): The wife sustained fatal injuries in an automobile accident. The husband notified the hospital that he did not want an autopsy. The hospital notified the county coroner of the death, but not of the request for no autopsy, and the body was transported to the coroner's office. The coroner's office performed an autopsy the following morning. The husband alleged emotional distress and the ensuing physical result of the coroner's conduct in performing the autopsy. The trial court dismissed his action. He argued that the dismissal of the complaint deprived him from establishing that the coroner abused his discretion in deciding to perform the autopsy and that his right to possession of his wife's body was protected against unreasonable search and seizure on U.S. Const. amend. IV. In affirming, the court held that the decision of the coroner was within his discretion and the scope of his authority as a quasi-judicial officer with limited liability and no facts were alleged of bad faith or corrupt motive. Further, the compelling interest of the state in determining the true cause of death overrode the interest of the husband to immediate possession for burial.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

PENNSYLVANIA

An important Pennsylvania case in 2000 recognized the right to object to autopsies on religious grounds even though Pennsylvania has no specific statutory exception.

16 P.S. § 1238. Autopsy; inquest; records

(a) If, upon investigation, the coroner shall be unable to determine the cause and manner of death, he shall perform or order an autopsy on the body.

16 P.S. § 9521. Coroner to investigate facts in deaths under suspicious circumstances

It shall be the duty of the coroner or the deputy coroner of any county in this Commonwealth, in all cases where death is sudden or violent or is of a suspicious nature and character, to cause a careful investigation of the facts concerning said death to be made, to ascertain whether the death was due to other than natural causes, and to make or cause to be made such an autopsy as the facts of the case may demand.

Case Law:

United States v. Hammer, 121 F. Supp. 2d 794 (M. D. Penn. 2000) (ruling that inmate's "religious belief far outweighs the government's interest in an autopsy").

"Under Pennsylvania law the decision to conduct an autopsy is at the discretion of the county coroner and absent compelling reasons that discretion should not be disturbed." *United States v. Hammer*, 121 F. Supp. 2d 794, 801 (M. D. Penn. 2000).

One reason to disturb that discretion is if [the deceased] has a sincerely held religious belief opposing autopsies. There are religious groups which oppose autopsies. See, e.g., *Kickapoo Traditional Tribe of Texas v. Chacon*, 46 F. Supp. 2d 644, 645 (W.D. Tex. 1999) ("The issue in this case is whether the Kickapoo Traditional Tribe of Texas (the "Tribe") can prevent authorities of the State of Texas from disinterring the body of one of its tribe members, Ms. Norma Rodriguez, in order to conduct an autopsy to determine how she died. It brings into play the clash between the Tribe's sincerely held religious beliefs and the State's interest in assuring that the death was not the result of foul play."); *Yang v. Sturner*, 750 F. Supp. 558, 558 (D.R.I. 1990) ("The Yangs are Hmongs, originally from Laos, and believe that autopsies are a mutilation of the body and that as a result 'the spirit of Neng [their son] would not be free, therefore his spirit will come back and take another person in his family."); *Montgomery v. County of Clinton, Michigan*, 743 F. Supp. 1253, 1257-



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

58 (W.D. Mich. 1990) ("Plaintiff Joan Montgomery, who is Jewish, alleges the performance of the autopsy without her prior notice and consent infringed her First Amendment right to freely exercise her religion. She believes autopsies are offensive to the tenets of Judaism"); *Kohn v. United States*, 591 F. Supp. 568, 572-73 (E.D. N.Y. 1984) ("Most religions in the world hold that the remains of a deceased must be treated with honor and respect. Judaism believes in the principle that body and soul are sacred because both are the handiwork of God and hence are entitled to reverence.").

Id.

"[The deceased] is not required to establish that his religious belief is considered central to his religion. *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 713-14, 67 L. Ed. 2d 624, 101 S. Ct. 1425 (1980) ("The determination of what is a "religious" belief or practice is more often than not a difficult and delicate task . . . The resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection."); *Hernandez v. C.I.R.*, 490 U.S. 680, 699, 109 S. Ct. 2136, 104 L. Ed. 2d 766 (1989) ("It is not within the judicial ken to question the centrality of religious beliefs or practices to a faith or the validity of particular litigants' interpretation of those creeds."); *Muslim v. Frame*, 891 F. Supp. 226, 230 (E.D.Pa 1995)(Pollak, J.) ("The Supreme Court has never required that a plaintiff bringing a free exercise claim demonstrate the centrality of a religious practice or belief burdened by the government"). The basic question is whether Mr. Hammer has a sincerely held religious belief.

Id. at 801-02.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

RHODE ISLAND

Rhode Island has a statutory carve-out for religious objections to autopsies.

R. I. General Laws § 23-4-4.1. Procedure for performance of autopsies against a family's religious beliefs

(a) Notwithstanding any other provision of law, in the absence of a compelling public necessity, no dissection or autopsy shall be performed over the objection of a surviving relative or friend of the deceased that the procedure is contrary to the religious belief of the decedent.

(b) For the purposes of this section:

(1) "Compelling public necessity" means:

(i) That the dissection or autopsy is essential to the conduct of a criminal investigation of a suspected homicide, of which the decedent is the victim,

(ii) That discovery of the cause of death is necessary to meet an immediate and substantial threat to the public health and that a dissection or autopsy is essential to ascertain the cause and/or manner of death, or

(iii) That the dissection or autopsy is necessary to obtain proper toxicologic or other specimens which may represent evidence of a crime and will deteriorate over time, or the need for a dissection or autopsy is otherwise established in accordance with subsection (e) of this section.

(2) "Relative" means the person most closely related to the decedent by consanguinity or affinity. In the event that person is unavailable, the objection may be raised on his or her behalf by the next most closely related person. The official who has authority to order a dissection or autopsy of the decedent's body may require a relative to present an affidavit stating his or her relationship to the decedent, the religious affiliation of the decedent, if any, that the decedent had religious objection to an autopsy, the basis for that belief, and that he or she will assume responsibility for the lawful disposition of the body of the deceased.

(3) "Friend" means any person who, prior to the decedent's death, maintained such regular contact with the decedent as to be familiar with his or her activities, health, and religious beliefs and who presents an affidavit stating the facts and circumstances upon which the claim that he or she is a friend is based, the religious affiliation of the decedent, if any, that the decedent had religious objections to an



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

autopsy, the basis for that belief, and that he or she will assume responsibility for the lawful disposition of the body of the deceased.

(c) All dissections or autopsies performed pursuant to this section shall be the least intrusive procedure consistent with the compelling state interest as defined in this section.

(d) Whenever, in the opinion of a medical examiner, there is a compelling public necessity under subsection (b)(1)(i) or (b)(1)(ii) to perform an autopsy or dissection, and a member of the deceased's immediate family or, in the absence of a member of the deceased's immediate family, a friend objects that the autopsy or dissection is contrary to the religious beliefs of the deceased or there is an obvious reason to believe, based on written information or records provided the medical examiner, that the autopsy or dissection is contrary to the religious beliefs of the deceased, then no dissection or autopsy shall be performed until forty-eight (48) hours after notice of the dissection or autopsy is given by the medical examiner to the objecting party, or, if there is no objecting party, to any party that the court may name. During that forty-eight (48) hour period, the objecting party or the party named by the court may institute action in the superior court to determine the propriety of the dissection or autopsy, but the court may dispense with the waiting period upon ex parte motion if it determines that the delay may prejudice the accuracy of the autopsy or dissection.

(e) Whenever, in the opinion of a medical examiner, there is a compelling public necessity in circumstances not provided for in subsection (b)(1)(i) or (b)(1)(ii), but authorized by § 23-4-4, to perform an autopsy or dissection, and a member of the deceased's immediate family or, in the absence of a member of the deceased's immediate family, a friend objects that the autopsy or dissection is contrary to religious beliefs of the deceased or there is an obvious reason to believe, based on written information or records provided the medical examiner, that the autopsy or dissection is contrary to the religious beliefs of the deceased, then the medical examiner may institute an action in the superior court for an order authorizing the autopsy or dissection. The action shall be instituted by an order to show cause on notice to the next of kin or friend, or if none is known to the petitioner, then to any party that the court may direct, returnable at the earliest possible time. The proceeding shall have preference over all other cases in the court and shall be determined summarily upon the petition and the oral or written proof that may be offered by the parties. The court shall grant the relief sought in the petition if it finds that the petitioner has established a demonstrable need for the autopsy or dissection that, under all circumstances of the case, outweighs the state's interest in observing the decedent's religious beliefs. If the petition is denied, and no stay is



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

granted by the court, the body shall immediately be released for burial to the surviving relative or friend.

R. I. General Laws § 23-4-4. Jurisdiction

The office of state medical examiners shall have the authority to make postmortem examinations, to undertake inquests, and to perform autopsies where there may be in its judgment a reasonable belief that the manner of death could be pronounced as:

- (1) Death by a homicide, suicide, or casualty;
- (2) Death due to a criminal abortion;
- (3) Death due to an accident involving lack of due care on the part of a person other than the deceased;
- (4) Death which is the immediate or remote consequences of any physical or toxic injury incurred while the deceased person was employed;
- (5) Death due to the use of addictive or unidentifiable chemical agents; or
- (6) Death due to an infectious agent capable of spreading an epidemic within the state.

Case Law:

Yang v. Sturner, 750 F. Supp. 558 (D. R. I. 1990): The Yang's son suffered a seizure while he was sleeping and was rushed to the hospital, where he died. Because the physicians did not know the cause of death, the Medical Examiner, pursuant to Rhode Island law, which requires an autopsy in those situations in which death occurs "in any suspicious or unusual manner," performed an autopsy on the young man without consulting his parents. The Yangs' religious beliefs prohibited any mutilation of a body, including autopsies and the removal of organs during autopsies. Relying on the "compelling state interest test," the United States District Court for the District of Rhode Island found that the state need not make any accommodation for religious objections to autopsies, so long as the law authorizing autopsies is one of general applicability and is not aimed specifically at religious objections.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

TEXAS

No specific statutory carve-out for religious objections to autopsies.

Tex. Code Crim. Proc. Art. 49.10: Autopsies and tests

(a) At his discretion, a justice of the peace may obtain the opinion of a county health officer or a physician concerning the necessity of obtaining an autopsy in order to determine or confirm the nature and cause of a death.

(c) Except as required by Section 264.514, Family Code, for each body that is the subject of an inquest by a justice of the peace, the justice, in the justice's discretion, shall:

(1) direct a physician to perform an autopsy; or

(2) certify that no autopsy is necessary.

(d) A justice of the peace may not order a person to perform an autopsy on the body of a deceased person whose death was caused by Asiatic cholera, bubonic plague, typhus fever, or smallpox. A justice of the peace may not order a person to perform an autopsy on the body of a deceased person whose death was caused by a communicable disease during a public health disaster.

(e) A justice of the peace shall order an autopsy performed on a body if:

(1) the justice determines that an autopsy is necessary to determine or confirm the nature and cause of death;

(2) the deceased was a child younger than six years of age and the death is determined under Section 264.514, Family Code, to be unexpected or the result of abuse or neglect; or

(3) directed to do so by the district attorney, criminal district attorney, or, if there is no district or criminal district attorney, the county attorney.

(f) A justice of the peace shall request a physician to perform the autopsy.

(g) The commissioners court shall pay a reasonable fee to a physician performing an autopsy on the order of a justice of the peace, if a fee is assessed.

(h) The commissioners court shall pay a reasonable fee for the transportation of a



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

body to a place where an autopsy can be performed under this article if a justice of the peace orders the body to be transported to the place.

(i) If a justice of the peace determines that a complete autopsy is unnecessary to confirm or determine the cause of death, the justice may order a physician to take or remove from a body a sample of body fluids, tissues, or organs in order to determine the nature and cause of death. Except as provided by Subsection (j) of this article, a justice may not order any person other than a physician to take samples from the body of a deceased person.

(j) A justice of the peace may order a physician, qualified technician, paramedic, chemist, registered professional nurse, or licensed vocational nurse to take a specimen of blood from the body of a person who died as the result of a motor vehicle accident if the justice determines that circumstances indicate that the person may have been driving while intoxicated.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

VERMONT

No statutory exception for religious objections to autopsies.

18 V.S.A. § 505. Autopsies

When a superior judge or the attorney general orders an autopsy on the body of a person, as provided in section 504 of this title, he shall therein direct that such autopsy shall be made by the chief medical examiner, or under his direction, unless, for good cause shown, such judge or the attorney general otherwise directs.

18 V.S.A. § 5205. Death certificate when no attending physician; autopsy

(a) When a person dies from violence, or suddenly when in apparent good health or when unattended by a physician or a recognized practitioner of a well-established church, or by casualty, or by suicide or as a result of injury or when in jail or prison, or any mental institution, or in any unusual, unnatural or suspicious manner, or in circumstances involving a hazard to public health, welfare or safety, the head of the household, the jailer or the superintendent of a mental institution where such death occurred, or the next of kin, or the person discovering the body or any doctor notified of the death, shall immediately notify the medical examiner who resides nearest the town where the death occurred and immediately upon being notified, such medical examiner shall notify the state's attorney of the county in which the death occurred. The state's attorney shall thereafter be in charge of the body and shall issue such instructions covering the care or removal of the body as he shall deem appropriate until he releases same.

(b) The medical examiner and a designated law enforcement officer shall thereupon together immediately make a proper preliminary investigation.

(c) Unless the cause and manner of death is uncertain, such medical examiner shall complete and sign a certificate of death. He and the designated law enforcement officer shall each submit a report of investigation to the state's attorney and the chief medical examiner. If, however, the cause or circumstances of death are uncertain he shall immediately so advise the state's attorney of the county where the death occurred, and notify the chief medical examiner.

(d) The state's attorney of each county, with the advice of the commissioner of public safety or his designee, the sheriff and the chief of police of any established police department, shall prepare a list of law enforcement officers in his county qualified to make an investigation and report. This list shall be made available to the medical officers concerned and such other persons as the state's attorney deems



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

proper.

(e) If an undertaker or embalmer shall, in the course of his employment, find evidence of physical violence on the body or evidence of an unlawful act sufficient to indicate to such a person that death might have been the result of an unlawful act, he shall immediately notify the state's attorney of the county where the body is then located and shall proceed no further with the preparation and embalming process of such body until permitted to do so by the state's attorney.

(f) The state's attorney or chief medical examiner, if either deem it necessary and in the interest of public health, welfare and safety, or in furtherance of the administration of the law, may order an autopsy to be performed by the chief medical examiner or under his direction. Upon completion of the autopsy the chief medical examiner shall submit a report to such state's attorney and the attorney general and shall complete and sign a certificate of death.

(g) When a person who is committed to the custody of the department of corrections or who is under the supervision of the department of corrections dies, the commissioner of corrections may request to be provided with a copy of any and all reports generated pursuant to subsection (f) of this section. No such request shall be granted where the medical examiner is unable to determine a manner of death or the manner of death is classified as a homicide. In other circumstances, the request shall be granted in the discretion of the medical examiner for good cause shown. Reports disclosed pursuant to this subsection shall remain confidential as required by law and shall not be considered to be a public record pursuant to 1 V.S.A. § 317.

Case Law:

State v. Chambers, 144 Vt. 234 (S. C. Vt. 1984): Defendant's daughter died during her home birth. After briefly examining the baby, the examiner was unable to determine the cause of death and therefore refused to sign a death certificate. Instead, the examiner informed the prosecution and the chief medical examiner, who decided that an autopsy should be performed. Defendant refused to allow an autopsy, claiming that his religious beliefs forbade the performance of an autopsy on his child. As a result of this refusal, defendant was unable to obtain a death certificate. Defendant buried his daughter without the burial permit. Defendant appealed, arguing that: (1) Vt. Stat. Ann. tit. 18, § 5205(f), which allowed the prosecution or chief medical examiner to order autopsies, was unconstitutional; (2) the prosecution failed to prove beyond a reasonable doubt that defendant's daughter was a "person;" and (3) the prosecution's questions to witnesses about the death of another child in the defendant's church, and the autopsy performed on that child, denied defendant a fair trial. The court affirmed defendant's conviction. Defendant



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

has failed to show that his church believed in the practice of burying the dead without autopsies.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

VIRGINIA

Virginia has no specific statutory religious exception to autopsies, and no case law discussing the issue.

Virg. Code. § 32.1-283. Investigation of deaths; obtaining consent to removal of organs

A. Upon the death of any person from trauma, injury, violence, poisoning, accident, suicide or homicide, or suddenly when in apparent good health, or when unattended by a physician, or in jail, prison, other correctional institution or in police custody, or who is a patient or resident of a state mental health or mental retardation facility, or suddenly as an apparent result of fire, or in any suspicious, unusual or unnatural manner, or the sudden death of any infant less than eighteen months of age whose death is suspected to be attributable to Sudden Infant Death Syndrome (SIDS), the medical examiner of the county or city in which death occurs shall be notified by the physician in attendance, hospital, law-enforcement officer, funeral director or any other person having knowledge of such death. Good faith efforts shall be made by such person or institution having custody of the dead body to identify the next of kin of the decedent, and such identity, if determined, shall be provided to the Chief Medical Examiner upon transfer of the dead body. After identification of the next of kin, the person or institution, or agent of such person or institution, having custody of the dead body shall attempt to obtain consent for removal of the pituitary or other organs, glands, eyes or tissues for use in transplants or therapy.

B. Upon being notified of a death as provided in subsection A, the medical examiner shall take charge of the dead body, make an investigation into the cause and manner of death, reduce his findings to writing, and promptly make a full report to the Chief Medical Examiner. In order to facilitate his investigation, the medical examiner is authorized to inspect and copy the pertinent medical records of the decedent whose death he is investigating. Full directions as to the nature, character and extent of the investigation to be made in such cases shall be furnished each medical examiner by the Chief Medical Examiner, together with appropriate forms for the required reports and instructions for their use. The facilities and personnel under the Chief Medical Examiner shall be made available to medical examiners in such investigations.

E. Nothing herein shall be construed to interfere with the autopsy procedure or with the routine obtaining of consent for removal of organs as conducted by surgical teams or others.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

Virg. Code. § 32.1-285. Autopsies

A. If, in the opinion of the medical examiner investigating the death or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy be made or if an autopsy is requested by the attorney for the Commonwealth or by a judge of the circuit court of the county or city wherein such body is or where death occurred or wherein any injury contributing to or causing death was sustained, an autopsy shall be performed by the Chief Medical Examiner, an assistant chief medical examiner or a pathologist employed as provided in § 32.1-281. Upon petition of a member of the immediate family or the spouse of the deceased in a case of death by injury, such circuit court may, for good cause shown, order an autopsy, after providing notice and an opportunity to be heard to the attorney for the Commonwealth for the jurisdiction wherein the injury contributing to or causing death was sustained or where death occurred. Further, in all cases of death suspected to be attributable to Sudden Infant Death Syndrome (SIDS), an autopsy shall be advisable and in the public interest and shall be performed as required by § 32.1-285.1.

Virg. Code. § 32.1-285.1. Death of infants under eighteen months of age; autopsies required; definition of Sudden Infant Death Syndrome

An autopsy shall be performed in the case of any infant death which is suspected to be attributable to Sudden Infant Death Syndrome (SIDS).

For the purposes of this section, "*Sudden Infant Death Syndrome*" (SIDS), a diagnosis of exclusion, means the sudden and unexpected death of an infant less than eighteen months of age whose death remains unexplained after a thorough postmortem examination which includes an autopsy.

Virg. Code. § 32.1-287. Authority of Chief Medical Examiner or deputies to provide organs, tissues and pituitary glands for transplant or therapy; immunity from liability for nonnegligent compliance

Upon consent being obtained, the Chief Medical Examiner or any of his assistant chief medical examiners may provide such body organ, gland, eye or other tissue to the transplanting surgeon or the physician prescribing therapy or the appropriate tissue, organ or eye bank operating in accordance with the laws of Virginia if providing such body organ, gland, eye, or other tissue will not interfere with the subsequent course of the investigation or autopsy.

However, if no consent has been obtained by the person or institution having first or original custody of the dead body because the next of kin cannot be contacted as



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

provided in § 32.1-283, then the Chief Medical Examiner or an assistant chief medical examiner may remove and preserve the pituitary gland. If consent has not been obtained before the body is removed from custody of the Chief Medical Examiner or an assistant chief medical examiner then the pituitary gland shall be replaced.

There shall be no civil or criminal liability on the part of, and no cause of action for damages shall arise against, the Chief Medical Examiner or an assistant chief medical examiner for nonnegligent compliance with the provisions of this section.

Nothing herein shall be construed to interfere with the autopsy procedure or with the routine contact with the decedent's family and the obtaining of consent for removal of organs in compliance with § 32.1-127.

Workers Comp Issues:

Va. Code. § 65.2-607. Medical examination; physician-patient privilege inapplicable; autopsy

C. The employer or the Commission may in any case of death require an autopsy at the expense of the party requesting the same. Such autopsy shall be performed upon order of the Commission, and anyone obstructing or interfering with such autopsy shall be punished for contempt.



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

WISCONSIN

No specific statutory exception for religious objections to autopsies. However, there is some case law limiting the right of the state to perform autopsies: “If a body is not to be cremated and if the medical examiner has no reason to believe that death was caused by circumstances set forth in former Wis. Stat. § 979.01 (now Wis. Stat. § 979.04), the medical examiner has no power to conduct or to order an autopsy.” *Scarpaci v. Milwaukee County*, 96 Wis. 2d 663, 679 (Wis. 1980).

Wis. Stat. 157.05. Autopsy; Consent.

Consent for a licensed physician to conduct an autopsy on the body of a deceased person shall be deemed sufficient when given by whichever one of the following assumes custody of the body for purposes of burial: Father, mother, husband, wife, child, guardian, next of kin, or in the absence of any of the foregoing, a friend, or a person charged by law with the responsibility for burial. If 2 or more such persons assume custody of the body, the consent of one of them shall be deemed sufficient.

Wis. Stat. 979.02. Autopsies.

The coroner, medical examiner or district attorney may order the conducting of an autopsy upon the body of a dead person any place within the state in cases where an inquest might be had as provided in s. 979.04 notwithstanding the fact that no such inquest is ordered or conducted. The autopsy shall be conducted by a licensed physician who has specialized training in pathology. The district attorney may move the circuit court for the county in which the body is buried for an order disinterring the body for purposes of autopsy. The order shall be granted by the circuit court upon a reasonable showing that any of the criteria specified in s. 979.04 exists. This section does not prevent additional autopsies or examinations of the body if there are unanswered pathological questions concerning the death and the causes of death.

Wis. Stat. 979.04. Inquests: when called.

(1) If the district attorney has notice of the death of any person and there is reason to believe from the circumstances surrounding the death that felony murder, first-degree or 2nd-degree intentional homicide, first-degree or 2nd-degree reckless homicide, homicide by negligent handling of dangerous weapon, explosives or fire, homicide by negligent operation of vehicle, homicide resulting from negligent control of a vicious animal or homicide by intoxicated user of a vehicle or firearm may have been committed, or that death may have been due to suicide or unexplained or suspicious circumstances, the district attorney may order that an



AGUDATH ISRAEL OF AMERICA LEGAL SUPPORT SERVICES

42 Broadway, New York, NY 10004 • (212) 797-9000 • Fax (646) 254-1650

inquest be conducted for the purpose of inquiring how the person died. The district attorney shall appear in any such inquest representing the state in presenting all evidence which may be relevant or material to the inquiry of the inquest. The inquest may be held in any county in this state in which venue would lie for the trial of any offense charged as the result of or involving the death. An inquest may only be ordered by the district attorney under this subsection or by the circuit judge under sub. (2)

Infants: Wis. Stat. 979.03. Autopsy for sudden infant death syndrome.

If a child under the age of 2 years dies suddenly and unexpectedly under circumstances indicating that the death may have been caused by sudden infant death syndrome, the coroner or medical examiner shall notify the child's parents or guardian that an autopsy will be performed, at no cost to the parents or guardian, unless the parents or guardian object to the autopsy. The coroner or medical examiner shall conduct or shall order the conducting of an autopsy at county expense, unless parent or guardian requests in writing that an autopsy not be performed. If the autopsy reveals that sudden infant death syndrome is the cause of death, that fact shall be so stated in the autopsy report. The parents or guardian of the child shall be promptly notified of the cause of death and of the availability of counseling services.

Cases: If a body is not to be cremated and if the medical examiner has no reason to believe that death was caused by circumstances set forth in former Wis. Stat. § 979.01 (now Wis. Stat. § 979.04), the medical examiner has no power to conduct or to order an autopsy. *Scarpaci v. Milwaukee County*, 96 Wis. 2d 663, 679 (Wis. 1980).