



Massachusetts Funeral Directors Association

MEMORANDUM

To: The Individuals/Organizations on the Attached Distribution List

From: Craig Dolan, President, Massachusetts Funeral Directors Association

Date: October 8, 1996

Re: DPH Guidelines for Issuance of Burial Permits to Non-Funeral Directors

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The Massachusetts Department of Public Health (the "Department"), has recently determined that municipal boards of health may issue burial permits to any member of the general public who can provide a valid death certificate, and has issued guidelines in this regard to municipal offices throughout the Commonwealth (the "Guidelines"). The Massachusetts Funeral Directors Association (the "MFDA") is opposed to the Guidelines for many reasons. This memorandum summarizes the MFDA's concerns and presents information that the MFDA has been able to compile with respect to the deficiencies of the Guidelines and the overwhelming public opposition (both generally and within other agencies of the Commonwealth) to them. Additionally, the legal requirements from other New England states are summarized below to contrast the extent to which the Guidelines fail to address important public health and safety issues.

OVERVIEW OF CONCERNS

Not surprisingly, the overwhelming problem with the Guidelines is their failure to address in any meaningful fashion the public health and safety risks associated with the transportation and disposition of dead bodies. This problem has been reiterated by almost every individual/entity that MFDA has spoken with about the Guidelines -- from hospitals to the Chiefs of Police. Most notably, the Commonwealth's Chief Medical Examiner, Richard J. Evans, M.D., has opined that the "prevention of exposures due to contact with human remains is paramount to [his] office's operation on a daily basis. Also, the potential for an untrained individual to quickly fall into unmanageable circumstances caused by the rapid onset of decomposition under common circumstances concerns me greatly. Such instances present a tremendous challenge even to trained and experienced professionals." Further, Dr. Evans noted that "the omni-present risk of infection via contact with blood-borne pathogens in cases known and not known to be infectious cannot be discounted by merely advising the untrained person to observe universal precautions."

In addition to the concerns noted above, there are a myriad of other problems associated with the Guidelines. Among those are the following:



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First, the Department's determination conflicts with a long-standing regulation of the Board of Registration in Embalming and Funeral Directing (the "Board") that limits the issuance of burial permits to licensed funeral directors. The Massachusetts Chiefs of Police Association voted unanimously at its meeting on September 12, 1996, to "recommend that the original regulation of the Board of Registration in Embalming and Funeral Directing that limited the issuance of burial permits to licensed funeral directors should be restored."

Second, despite the Department's determination, many public officials remain concerned that the risk of transmission of infectious diseases may increase when bodies are handled by a public generally unfamiliar with the universal precautions advocated by the National Centers for Disease Control. The Guidelines offer nothing more than vague advice on how to dispose of a dead body and fail to adequately address the public health and safety concerns that everyone but the Department seem to acknowledge.

Third, the Guidelines conflict with Occupational Safety and Health Administration ("OSHA") regulations which require funeral directors and funeral service personnel to be specifically trained and equipped to handle all deceased individuals safely. OSHA's regulations protect not only those individuals in the business of providing funeral services, but the public health of the community as well. They specifically apply to any employers of employees who have a reasonable anticipated risk of exposure to blood or other potentially infectious material in the course of their job duties. It can be argued that the Guidelines circumvent this federal safety requirement.

Fourth, other agencies and individuals have expressed concern regarding the potential legal liability for the improper handling and disposal of bodies, as well as the negative impact on official investigations in the instance of suspicious deaths. The Commonwealth's Chief Medical Examiner, Richard J. Evans, M.D., has recently noted that the Department's reading of "the applicable state laws presents potential for risks to not only public health but also medico-legal investigations under the jurisdiction of this office and those of the District Attorney's." Moreover, he has noted that the Department's "proposed relaxation of the definition of authorized individual under Mass. Gen. L. c. 114, §45, poses some opportunity for a person of "nefarious intent to exercise options to avoid detection or otherwise inhibit medico/legal investigations." This observation was recently confirmed by the Massachusetts Chiefs of Police Association, the members of which recently reached a consensus that the Guidelines "are detrimental to law enforcement activities."



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### MFDA'S CONCERNS

While it is understandable that some individuals may want to bury their own dead, MFDA and its members are extremely concerned that the vague wording of the Guidelines might be interpreted to allow an individual to go into the business of making funeral arrangements while circumventing the rigorous licensing requirements which are presently applicable to funeral directors. There can be no doubt that those requirements exist to protect the public health and safety. They also exist to ensure that police and other investigations are not impeded by the destruction of evidence or the hasty disposition of human remains. Dr. Richard J. Evans, the Commonwealth's Chief Medical Examiner, has stated that he believes cities and towns should not allow anyone other than a funeral director to dispose of bodies. Dr. Evans is concerned that the Guidelines may allow criminal activity to be covered up more easily. Dr. Evans is of the opinion that people need advanced training for the handling and disposition of bodies -- if only to prevent the spread of communicable diseases.

At meetings I have attended with other MFDA representatives, held between the Board and the Department, it has become increasingly clear that the Department has decided that the subject of risking the spread of disease to the public by allowing unlicensed and potentially unskilled citizens to prepare and transport a dead body is not open to discussion. The Department relies on the position advocated by its Chief Epidemiologist, Alfred DeMaria, that the risk of improperly handled human remains spreading infection to the general public is no greater after death than it is during life. Based solely on the opinion of Dr. DeMaria, the Department apparently issued the Guidelines on the day before these very important issues were due to be discussed at the Board. Further, since making its decision, the Department has been seemingly unwilling to entertain any discussion about why its interpretation of Massachusetts law may be incorrect and/or why its action may create unnecessary public health risks.

### APPLICABLE STATE AND FEDERAL LAW

The Board's present restrictions on the disposition, transportation and burial of the dead exist to protect the public from the risks imposed by those who, not out of some sinister motive, but due to lack of sufficient education, knowledge, experience and training, might not handle, prepare or bury a body properly or in a way that protects the public health. Both the treatment of the sick and the disposition of the dead are governed by state and federal laws which have been written for the public's protection. The Guidelines seemingly fly in the face of these laws.

In essence, the Department is attempting to regulate the burial of the dead by "other authorized persons," or more accurately, by untrained individuals, with two pages of



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*guidelines*, while trained individuals such as embalmers and funeral directors continue to be regulated by the Board under comprehensive requirements encompassing many pages in the Code of Massachusetts Regulations (the CMR).

Other New England states have explicit regulations which stand in stark contrast to the Department's "guidelines." The laws from these other New England states demonstrate how illusory the Guidelines really are and illustrate the many issues which the Department thus far has failed to address. Those regulations are summarized below.

### 1. Maine

The Maine statute states that "no dead human body shall be buried, cremated, or otherwise disposed of or removed from the State until a funeral director or other authorized person in charge of the disposition of the dead human body or its removal from the State has obtained a permit from the clerk of the municipality where the death occurred." Me. Rev. Stat. Ann. tit. 22, §2843 (1985). The statute defines "authorized person" as "a member of the immediate family of the deceased, a person authorized in writing by a member of the immediate family of the deceased if no member of the immediate family of the deceased wishes to assume responsibility, or in the absence of immediate family, a person authorized in writing by the deceased." Me. Rev. Stat. Ann. tit. 22, §2846 (1985).

While an authorized person may get a permit to dispose of the body, he/she has to comply with greater procedural hurdles than a funeral director. The statute states that "[n]o such permit shall be issued to anyone other than a funeral director until the clerk of the municipality receives a medical certificate which has been signed by a physician or medical examiner which indicates the physician or medical examiner has personally examined the body after death (emphasis added). The authorized person may transmit a dead body only upon receipt of this permit." Me. Rev. Stat. Ann. tit. 22, §2843 (1985).

The Maine Department of Human Services released guidelines which were adopted as permanent rules in 1982. These guidelines provide many instances where a funeral director and authorized person are treated differently. First, a burial-transit permit is required any time an authorized person transports a dead body, while a funeral director does not need one to transfer the body from the site of death to his establishment. Code Me. R. §146.001, at (2)(A)(1)(a) (1982). Second, in order to remove a body from the state, an authorized person needs a signed medical examiner's release and a completed death certificate. *Id.* at (2)(A)(3)(f). However, a funeral director can present a report of death rather than a signed medical examiner's release to remove a body. *Id.* at (2)(A)(3)(g). Within the state, a funeral director again needs only a report of death, while an authorized person needs a completed death certificate which indicates that a medical examiner has personally examined the body after death. *Id.* at (2)(A)(3)(b-c). The rule also provides that



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a body may be released from an institution to an authorized person only if he obtained a burial transit permit prior to removal. *Id.* at (3)(A). A person whose death was caused by certain communicable diseases may only be released to an authorized person after "suitable precautionary measures are taken . . . to prevent the spread of infection." *Id.* at (3)(B). Neither of these two guidelines apply to funeral directors. Moreover, bodies shipped in a funeral director's coach need not be enclosed in outside shipping cases, while dead bodies shipped in private vehicles by authorized persons must be enclosed in a suitable container and sealed from public view. *Id.* at (4)(D-E). Finally, disinterment may only be done by funeral directors, unless specially authorized by the Department of Health and Human Services. *Id.* at (5)(A).

### 2. Connecticut

The Connecticut statute states that "[o]nly a licensed embalmer may assume charge of the burial of a deceased person who died from a communicable disease . . . ." Conn. Gen. Stat. Ann. §7-62b (1993). While the statute makes no such pronouncement for a normal burial, it lists only a "licensed funeral director" or "licensed embalmer" as the individual in charge of the burial who can complete the death certificate. *Id.* Further, the Connecticut statute provides that "no person except a licensed embalmer or funeral director licensed by the Connecticut board of examiners of embalmers shall remove a body of a deceased person from one town to another or into the city limits of any town in this state unless a permit for such removal has been obtained . . . ." Conn. Gen. Stat. Ann. §7-69 (1949). The statute also provides that "no person except a licensed embalmer or funeral director licensed by said board shall remove the body of any deceased person from this state to another state unless a death certificate signed by a person licensed by said board has been procured, and no burial or removal permit shall be issued unless the death certificate has been signed by a licensed embalmer or funeral director licensed by said board." *Id.* Finally, a temporary transfer of a dead body may be made "by a licensed embalmer, registered student embalmer, or licensed funeral director only." *Id.*

### 3. New Hampshire

The New Hampshire statute provides that it is the duty "of the funeral director to add to the death certificate the date and place of burial, and having signed the same, to forward it to the clerk of the town, and obtain a permit for burial." N.H. Rev. Stat. Ann. §290:3 (1977). The provision does not list anyone else who can do this. Further, the statute provides that "[n]o dead body may be released or transferred from any residence, hospital, or other facility to any person other than a funeral director or his designee . . . ." N.H. Rev. Stat. Ann. §290:11 (1986). Finally, any transfer of a dead body to another town must be made under the direction of a funeral director. N.H. Rev. Stat. Ann. §290:12 (1985).



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### **4. Federal OSHA Requirements**

With respect to federal law, the OSHA regulations require funeral directors and funeral service personnel to be specifically trained and equipped to handle all deceased individuals safely. OSHA's regulations protect not only those individuals in the business of providing funeral services, but the public health of the community as well.

### **HOSPITAL CONCERNS**

Our attorneys have discussed the Guidelines with representatives from their hospital clients and with representatives from the Massachusetts Hospital Association. Based on those discussions, it is clear that Massachusetts hospitals have significant concerns about the Guidelines. Those concerns are multi-faceted and include the following:

#### **1. Public Health Concerns**

The hospitals are concerned about the potential failure of the general public to use universal precautions and whether the hospitals will be thrust into the position of being required to train "other authorized persons" in the use of such precautions with respect to the disposal and transportation of a dead body.

#### **2. Duty to Warn/Emotional Distress**

The hospitals are concerned about what information they must provide to the individual picking up a body with respect to the patient's condition at the time of death, and any associated warnings relative to the risk of communicable diseases/infections. As a corollary to this duty to warn issue, the hospitals are concerned that they will be put into a position of becoming counselors to family members disposing of bodies and, consequently, may be exposed to liability for infliction of emotional distress if they fail to provide such counseling (or if they fail to provide enough of it or to the family member's satisfaction).

#### **3. Medical Records**

The hospitals are concerned about the access of the "other authorized person" to medical information and/or records pertaining to the decedent. This is troubling under existing laws if the "other authorized person" is not the executor or administrator of the decedent's estate.



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### **4. Disposal Issues**

The hospitals are concerned that, under the Guidelines, there will be no checks and balances to ensure that bodies are properly disposed. The hospitals are concerned that because these checks and balances will not exist under the Department's new system, as presently contemplated by the Department under its Guidelines, that it will become a hospital's responsibility to follow-up with families to determine whether their disposal of a body was handled appropriately.

### **5. Individual Disputes**

The hospitals are concerned about their liability and/or obligations in an instance where two "other authorized persons" show up to claim the same body. It is not uncommon for hospitals to be faced with a clear difference of opinion between family members and/or next of kin with respect to the disposition of a body. Presently, the hospitals are able to send the body to a licensed funeral director who then resolves the dispute while ensuring that the body is appropriately stored and/or maintained. The hospitals have neither the facilities nor the resources to become a warehouse for dead bodies in those situations where there is a dispute between "other authorized persons", family members and/or anyone else about how to dispose of the body.

## **OTHER CONCERNS**

### **1. Unregulated Commercial Enterprise**

Assistant Commissioner Nancy Ridley has reported that the Department will take action against any individual or organization holding itself out as doing business as a funeral director/establishment. She has noted that "there is a definite line here. We will not tolerate any suspicious activity, brokering or facilitation for a third party purpose." Further, Ms. Ridley has indicated that violators will be referred to the Board and also to the Massachusetts Attorney General's Office for investigation. In this regard, Ms. Ridley has reported that staff will be reviewing permits for multiple submissions by those who bury their own dead to identify persons who are engaging in repetitive activity. Yet despite all of Ms. Ridley's statements above, none of these considerations are found any place within the Guidelines.

Moreover, the Department has indicated that it is working with the Massachusetts Hospital Association and the Massachusetts Federation of Nursing Homes to develop policies and procedures applicable to these matters. Despite the fact that such policies and procedures do not yet exist, the Department's position is that local municipalities are already free to issue burial permits to "other authorized persons."



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### **2. Instances of Foul Play**

At a meeting of the Massachusetts Health Officers Association on September 19, 1996, Howard Wensley indicated that the Department disputed many of the Medical Examiner's comments noted above. According to Mr. Wensley, the Department conducted an investigation and could not uncover any instance in which a licensed funeral director had uncovered potential "foul play." The MFDA questions the extent of the Department's investigation as it is aware of a situation from as recently as July 11 where one of its members discovered evidence of foul play and brought this information to the attention of public safety officials. Moreover, an informal poll of MFDA members has revealed at least two instances in the past four months of suspected foul play that was initially discovered by a licensed funeral director.

### **3. Open Remains**

At the meeting of the Massachusetts Health Officers Association on September 19, 1996, Mr. Joseph Tabbi of Winchester expressed the opinion that the Guidelines do not adequately address concerns surrounding the transportation and handling of dead bodies. He reminded all of the health agents present at the meeting that most of them issue burial permits from their own homes during the weekends. He further stated that on one occasion, a person came to his house and parked in his driveway with remains which had been transported into the Commonwealth from the State of Maine. The remains were in an open wagon, with no curtains and the container clearly visible. Mr. Tabbi expressed his dismay with this event and said that such an occurrence could happen more frequently if these issues are not adequately addressed in the Guidelines.

### **4. Guideline References**

Lisa Carlson's book, *Caring For Your Own Dead*, is one of the reference books listed at the end of the Guidelines. Interestingly, the Guidelines overlook Carlson's recommendations that a funeral director be used in instances of an autopsied body, for the removal of pacemakers prior to cremation and when death is caused by a communicable disease.

## **SPECIFIC CONCERNS/QUESTIONS ABOUT THE GUIDELINES**

After carefully reviewing the Guidelines, the MFDA has put together the following list of unanswered questions and lingering concerns about each of the Guidelines' specific sections:



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### **1. Introduction and Overview**

- As a general matter, the Guidelines clearly assume that the "authorized other person" will be next of kin. Where is this stated or limited in the Guidelines?
- This section recommends that individuals "be encouraged to plan carefully and communicate in advance with any facilities and agencies that may be dealt with (such as the hospital, hospice, nursing home, board of health, crematory or cemetery) to ensure no difficulties will be encountered due to confusion about the law." How are individuals supposed to be "encouraged" and who will be responsible for such encouragement in advance of death? Will hospitals or nursing homes be charged with the responsibility of raising the issue of burial with families, or providing families with information about obtaining burial permits on their own behalf? Who will be charged with the task of clearing up the "confusion about the law?"

### **2. Death Certificates**

- Is it going to be the responsibility of health care agencies, hospitals, local boards of health, crematories or cemeteries to provide information to families regarding the requirements for obtaining and/or completing a death certificate?
- Who will verify that a death certificate is signed by a licensed physician? Does it have to be a physician who has provided care to the decedent just prior to death? Or a physician who has examined the body post-mortem? If a family member is a physician will his or her signature be sufficient? Does such a signature create a conflict of interest under trusts and estates law? What mechanisms are in place for verifying that signatures/names of physicians (or other information) are not falsified on the death certificate?
- What steps will the Commonwealth take in the event that a document is falsified?
- Who will provide training to citizens regarding the proper and accurate completion of death certificates?
- If a document is accepted by a municipality and a future correction is needed, how will this be accomplished? What if the individual handling the arrangement is: (1) not a resident (2) no longer in the vicinity? Will municipalities now have staff to handle such matters?



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- What is the Commonwealth going to do to improve the system of doctors pronouncing and certifying deaths? Is the Commonwealth now going to enforce the fact that physicians should view the remains?
- Who will enforce the statement that responsibilities and obligations of funeral directors are the responsibility of individuals in charge of the funeral, especially in relation to timely reporting and filing?
- Are there any fines involved for private citizens who do not comply with timely reporting and filing?

### 3. Burial Permits

- The Guidelines recommend that individuals seeking a burial permit do advanced preparation prior to the deceased's death. However, what mechanisms are in place to ensure that the appropriate information will be disseminated to the general public? Will city and town clerks receive any training for dealing with the many issues which will arise when an individual comes to them seeking a burial permit?
- The Guidelines state that "as soon as possible (preferably within 36 hours after death) a burial permit must be obtained." This sentence can be interpreted to mean that burial permits may be obtained after 36 hours. Moreover, the Guidelines do not place any other time restrictions on obtaining a permit. Thus, "as soon as possible" for one family may mean waiting a week until another family member returns from a trip abroad, or any other scenario one can imagine. At a minimum, this language should be tightened to place time limits on an individual trying to obtain a burial permit.
- Since the Guidelines are meant to provide advice to individuals seeking to obtain a burial permit, the Department should reexamine its statement that "it is legal to transport a body within the same town or city after receiving the death certificate, but before obtaining a burial permit." Again, this can be interpreted to mean that the family can keep human remains in the trunk of the car in their garage while waiting for the burial permit. In addition, are there requirements on town clerks to issue burial permits within a certain period of time? Are there standardized methods for issuance of burial permits that will have to be changed as a result of the Guidelines?



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### 4. Cremation

- The Guidelines state that "some crematories will hold a body under refrigeration" while a medical examiner is viewing the body and finishing the required paperwork. What do individuals do with a body if the crematorium does not refrigerate a body? Is the individual required to put the body under refrigeration? If so, can food be stored in the same refrigerator with the body, and/or after the body has been removed? Must the body be refrigerated at a specific temperature? Who is required to counsel a family or individual about decomposition and other attending issues, including handling, storage and leakage of body fluids?
- Where will bodies be stored during the 48-hour waiting period prior to cremation? Will crematories store the remains for the waiting period?
- Will the state require identification of the human remains prior to cremation by someone other than the person conducting the "do it yourself" funeral?
- Where is a Medical Examiner going to view remains prior to a cremation?
- Will crematories accept cremation orders if no licensed funeral establishment is listed?
- Will crematories accept the responsibility of becoming repositories for unclaimed remains?

### 5. Burial

- The Guidelines state that in case of violent death or unexplained death, the body must be examined by a medical examiner or coroner prior to burial. According to Dr. Richard Evans, the Office of the Medical Examiner relies on funeral directors "to report suspicious injuries that they may notice on bodies which would otherwise not come to [the] attention" of the Medical Examiner. How are untrained individuals to be relied upon to provide such critical feedback? There appear to be no checks and balances for protecting against nefarious incidents.
- Will cemeteries accept interment and disinterment orders signed by private citizens?
- Who will enforce Mass. Gen. L. c. 114, §34 to insure that bodies are not buried on private land?



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- What is the time period that a body can be held without final disposition when there is a "do it yourself" funeral?
- What is the Department's recommendations to private citizens for storage during periods of bad weather or winter interments?
- Will the state require identification of remains prior to burial by someone other than the person conducting the funeral?

### 6. Containers/Outer Burial Containers

- What is the time period that a body can be held without final disposition when there is a "do it yourself" funeral?
- What is the Department's recommendations to private citizens for storage during periods of bad weather or winter interments? The Guidelines do not address the appropriate size of a container (*i.e.*, slightly longer than the length of the body).
- The Guidelines do not make recommendations for the type of plastic lining to be used, or how to handle inevitable leakage problems.
- Is the Department suggesting or requiring a "simple covered box"?
- What if a do it yourselfer does not want to use any type of "box"?
- Does the Department have any recommendations regarding the leakage of body fluids from the "simple covered box" if used.

### 7. Transportation

- If funeral directors must follow specific regulations regarding transporting a body, why would individuals with no training or expertise in handling bodies be allowed to transport bodies without some form of applicable regulation?
- What steps will be taken or who will enforce violations of the "recommendations/guidelines" if bodies are not transported with "dignity" (*i.e.*, the length of the box does not fit in the vehicle for transportation). Is this a "violation" or simply an undesired action which could occur?



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- Are individuals required to notify their motor vehicle insurers when they will be transporting a body in an insured vehicle?

### 8. Preparing the Body

- What exactly are "common sense measures to prevent the spread of infection?" Simply because a family member may have cared for a sick relative just prior to death, does not mean that such family member is capable of handling *rigor mortis*, decomposition concerns, disposal of waste and other significant public health matters. In short, advising individuals that "good handwashing" and "good hygiene" is sufficient when preparing a dead body is laughable, at best, and at worst, negligent and woefully inadequate. If the Department was a physician informing a patient about a surgical procedure, and these Guidelines were the extent of the information provided to the patient, the Department would be found negligent for failing to fully inform the patient as to the risks of infection involved in the procedure.
- It is appalling that this Department, created to protect our Public Health, could take such a passive approach on the issue of body preparation.
- The Department should be more graphic regarding the potential hazards and condition of human remains following death, especially with respect to those bodies that might have lesions, autopsy incisions, etc.
- What rights do other citizens have who are offended by noxious odors or other offenses (*i.e.*, bodies stored in vehicles that are not shrouded or leaking fluids)?
- Will the Department provide guidelines for sanitation of pleasure vehicles used to transport deceased human remains?
- Will the owner of the pleasure vehicle be required to disclose the fact that body fluids may have contaminated the automobile, especially to those cleaning the vehicle afterwards at a commercial site or when sold to another party.
- Will automotive companies need to insure that their detailing employees are trained in OSHA related practices.
- Who will remove pacemakers? Does the Department realize that there can be a tremendous explosion if a body is burned with a pacemaker inside it. How will private citizens know that remains with pacemakers should not be cremated until the equipment is removed?



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- Will hospitals advise citizens that autopsied bodies may have parts that are set, but not adhered?
- Massachusetts law requires limited preparation if disposition is beyond 48 hours. Will citizens be required to do this?
- Other specific concerns about the advice under this section include:
  - How cool should the room be where the body is stored?
  - The Guidelines minimize the risk of infection and do not illustrate "ways that allows the infection to be passed."
  - Simply stating that "soiling of the environment or materials with body fluids should be avoided," does not indicate the tremendous public health crisis which could occur if medical waste is disposed of inappropriately. Again, funeral directors, who are properly trained and licensed, are subject to specific requirements for disposal. Why would untrained individuals be allowed to dispose of such potentially dangerous and hazardous waste in any way they see fit?

### 9. Miscellaneous Issues/Concerns

- Is disposal of a body which has been subject of an organ donation or an autopsy different than an intact body?
- Will medical examiners view at private residences or in private vehicles?
- Will the Chief Medical Examiner pursue the system of eliminating cremation viewing and instead rely upon death certificate review? If so, will this be the case in a do it yourself funeral arrangement? If so, will the medical examiner be aware of the situation at the time of determination?
- Will local ordinances permit viewing of remains coordinated by private citizens? Will the public viewing of unembalmed human remains be desirable in a community or have negative effects?



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- Who has legal right to handle burial or cremation of dead? For example, a problem recently existed when the legally authorized next of kin was a suspect in the murder. Who will oversee situations where there is a sibling, domestic or other family dispute. Who will determine who has right to control the disposition of the body?
- When remains are released to a private citizen by hospitals, what is the liability if there is a family dispute following a release to the wrong person?
- Will hospitals and others be receptive or permit private citizens to make removals from their facilities?
- Will hospitals that usually do not identify infectious remains do so for those who might not be aware of universal precautions?
- What is the liability of a hospital if an individual contracts an infectious disease?
- Will do it yourselves charge estates for funeral services? Will probate courts permit payments for funeral service arrangements to private individuals?
- Will life insurers permit payment of claims to beneficiaries who might have conducted the funeral?
- Will property and casualty insurers be willing to pay claims for loss of human remains due to a fire, and perhaps mental anguish claims due to that loss by other family members if the remains are held in private residences? What about theft of a body or parts from a residence vehicle?
- Who determines if human remains are a public nuisance?
- Who will advise citizens that weekend rules or business practices of cemeteries and crematories may not permit immediate burial?
- Will clergy and churches be willing to allow funeral services conducted by private citizens?
- Can funded prearrangements be terminated or paid to a family member for conducting the funeral?



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- Will the State Board resolve the definition issue with the Registry of Motor Vehicles regarding hearse? Will the regulations written limit who can do this (*i.e.*, only legally authorized next of kin)? If not, will livery services or other companies be permitted to operate to provide services to those who need their assistance?

### CONCLUSION

While the MFDA recognizes that certain individuals may wish to take responsibility for the burial of a family member or next of kin, the MFDA and its members are extremely concerned that the Guidelines circumvent the rigorous requirements set forth by regulation to protect the health and safety of the public, and do not go far enough in providing actual guidance to such individuals. Moreover, the MFDA is not alone in voicing its concern. The Massachusetts Hospital Association, the Massachusetts Cemetery Association, the Massachusetts Chiefs of Police Association, the Chief Medical Examiner, members of the Massachusetts Health Officers Association and other agencies and organizations have expressed their concerns over the issuance of the Guidelines and the lack of actual "guidance" they provide. Thus, the MFDA requests that the Department re-examine its position, and address in a meaningful way the many public health and safety concerns raised by the Guidelines.

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