

## SPOTLIGHT

### Laws Concerning the Timing of Embalming, Final Disposition, and Funeral Establishment Inspections

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The Occupational Code and its mortuary science administrative rules govern the practice of embalming, funeral directing, and mortuary science in the State of Michigan and are administered by the Department of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing (the Department). Additionally, portions of the Public Health Code along with its associated administrative rules and the Michigan Penal Code contain provisions on the proper handling, custody, care, and transportation of a dead human body. Section 1810(h) of the Occupational Code, MCL 330.1810(h), states that a person is subject to penalties under the Occupational Code for violating any of these provisions as well as any applicable municipal or county ordinance affecting the handling, custody, care and transportation of a dead human body.

The purpose of this Bulletin is to alert licensees and the public to the various statutory provisions and administrative rules surrounding the issues of embalming, the final disposition of a dead human body, and the Department's inspection of licensed funeral establishments.

#### **When is embalming necessary?**

The Occupational Code prohibits a person from obtaining possession of or embalming "a dead human body without first being expressly directed or authorized to do so by a relative of the deceased person or other person entitled to custody." MCL 339.1810(1)(k). However, administrative rules promulgated under the Public Health Code require that a dead human body be embalmed before being transported or before being accepted for transportation when the cause of death was "diphtheria, meningococcal infections, plague, poliomyelitis, scarlet fever, or smallpox." Mich Admin Code, R 325.1(1). If the cause of death is anything other than one of these enumerated conditions, embalming is also required if the body is to be transported more than 48 hours from the time of death and the body is not addressed to the demonstrator of anatomy of a medical college or for other demonstration purposes. Mich Admin Code, R 325.2.

Therefore, once 48 hours has passed from the time of death, an un-embalmed body cannot be transported, unless the above exception exists. It is important that licensees consider these timeframes and requirements when agreeing to take possession of a dead human body. While section 2848(1) of the Public Health Code, MCL 333.2848(1), states that a funeral director has 72 hours after death or the finding of a dead body to obtain authorization for the final disposition, the requirement to embalm if the body will not reach its place of final disposition within 48 hours of death may require obtaining the necessary approvals within this shorter timeframe. The Department recognizes that the religious or cultural requirements of the deceased may prohibit the practice of embalming and require burial or cremation within 48 hours or less of death.

### **How long can a body remain at a funeral home before final disposition?**

Once a funeral director agrees to provide his or her services, final disposition must occur within 60 days or the funeral director is guilty of a criminal misdemeanor, MCL 750.160c(1)(a) & (2)(a), and is in violation of the Occupational Code. If final disposition does not occur within 180 days, the funeral director is guilty of a felony. MCL 750.160c(2)(b). Exceptions to this statute exist where the failure or refusal of the funeral director to supervise the final disposition is due to:

1. Delays due to seasonal factors relating to the method of final disposition of the dead human body.
2. Delays due to the availability of services required to complete the final disposition of the dead human body.
3. The directives of the person having lawful authority over final disposition of the dead human body to postpone that disposition pending funeral services, the presence of certain family members, or other activities.
4. Delays due to the inability to obtain the necessary authorizations regarding the method of final disposition of the dead human body or due to the inability to locate individuals essential to making a decision regarding the final disposition of the dead human body.
5. Delays due to an autopsy, investigation of the cause of death, the gathering of evidence, or other activity or procedure required by a governmental or law enforcement agency.
6. Delays pursuant to an order issued by a court of competent jurisdiction upon petition and showing of good cause for a delay in the final disposition of a dead human body. [MCL 750.160c(3).]

### **What requirements exist for the storage of unclaimed cremated remains?**

The Occupational Code provides protection from civil liability to licensed funeral directors and funeral establishments (licensees) for disposing of unclaimed cremated remains, provided that they follow the procedures outlined in sections 1809a and 1809b of the Occupational Code, MCL 339.1809a and MCL 339.1809b. A previously issued [bulletin](#) discussed in more detail the requirements for the proper disposition of unclaimed cremated remains.

Until cremated remains are claimed by a family member of the deceased or a licensee proceeds with the final disposition of unclaimed cremated remains as outlined in the Occupational Code, these remains should be treated and stored with the utmost respect and dignity. This includes, at a minimum, ensuring that they are properly labeled and stored off the floor in a manner that ensures they will not be at risk of damage from fluids or pests. It is recommended that they be stored in a designated, single-purpose room. At a minimum they should not be stored in the embalming or preparation room or in a location accessible to members of the public. Licensees should maintain thorough and organized records of all cremated remains in their possession including the name of the deceased, date of death, veteran status designation, and any contact information for the deceased's next of kin.

**What options are available for assisting families with the financial burdens of a funeral or for licensees seeking to collect outstanding debts?**

For those with demonstrated financial need, state and federal assistance is available through Medicare, Medicaid, and the Michigan Department of Health and Human Services. Additionally, while the State of Michigan does not officially endorse any private business or entity, the National Funeral Directors Association (NFDA) endorses Lending USA, <https://www.lendingusa.com/>, to provide short term loans to families for funeral expenses, and the Michigan Funeral Directors Association (MFDA) endorses Express Funeral Funding, [www.expressfuneralfunding.com](http://www.expressfuneralfunding.com), which acts as a middleman between a licensee and a customer's insurance company, resulting in the licensee being paid immediately, while Express Funeral Funding works to obtain the insurance payment.

It is imperative that licensees be aware that the Occupational Code expressly prohibits the refusal to promptly surrender the custody of a dead human body, after the express order of the person lawfully entitled to custody. MCL 339.1810(1)(i). Under no circumstances can withholding dead human body or cremated remains be used to get a customer to pay a financial obligation. This includes refusing to supervise the final disposition of a dead human body because the licensee was not paid for any amounts owed under a contract for funeral services, whether those services were already provided or whether the amounts still owed are for services yet to be performed, including supervision of the final disposition. Licensees are instead encouraged to consult with legal counsel at their own expense about appropriate options for collecting outstanding debts.

**When is a funeral home subject to inspection and what is required in order to obtain a satisfactory inspection?**

Administrative rules under the Occupational Code require that funeral establishments be inspected during working hours to ensure compliance with the law if the establishment undergoes structural changes, if there is a change in ownership, when an establishment is first opened, and where the inspection is part of the investigation of a complaint. Mich Admin Code, R 339.18933(1), (2)(b), (2)(c), (2)(d), & (3). Additionally, all funeral establishments may be inspected on a routine basis. Mich Admin Code, R 339.18933(2)(a).

Licensees must be in full compliance with the Occupational Code and rules to obtain a satisfactory inspection, this includes, but is not limited to, ensuring that its embalming room:

1. Is clean and sanitary at all times, and all instruments are cleaned and sterilized after each use.
2. Contains a linoleum or tile floor, walls and ceiling made of or covered by washable and waterproof material, hot and cold running water, a plumbing system that meets the requirements of Mich Admin Code, R 325.11401 through R 325.11407, and a fan capable of moving 250 cubic feet of air per minute.
3. Is equipped with a porcelain or stainless-steel embalming table, the instruments necessary to embalm a body, the means of sterilizing

equipment, such as an autoclave, gas sterilizer, or an instrument solution sterilizer large enough to accommodate an adult sized trocar.

4. Is not used as a location to store items not involved with the embalming or preparation of a dead human body. [See Mich Admin Code, R 339.18931(3)-(5).]

Upon identifying a violation or issue of concern with a funeral establishment, whether by complaint related or routine inspection, the Department may exercise its authority to conduct a follow up inspection to monitor and assure ongoing compliance with the Occupational Code and rules. The Department may also, either before or after a follow up inspection, proceed with filing a formal complaint. If the public's health, safety, and welfare are at risk the Department may summarily suspend a license, order a person to cease and desist from violating the law, and/or make a referral to the appropriate law enforcement authority. Each case is evaluated on an individual basis to determine the most appropriate course of action. Corrective action is almost always a condition of a settlement agreement to resolve an administrative proceeding, if the corrective action did not occur before the settlement is reached. The degree of severity of the violations and harm to the public are foremost in making these determinations.