

CHAPTER 21

CEMETERIES AND DISPOSITION, REMOVAL AND TRANSPORTATION PERMITS

BOARD OF HEALTH ROLE AT A GLANCE

The Board of Health (BOH) functions as burial agent and issues permits for the disposition, removal and transportation of human remains. The BOH also ensures that all death certificates received from a funeral director are complete and are forwarded to the city or town clerk. In addition, the BOH is responsible for annually licensing funeral directors and embalmers operating within their community pursuant to M.G.L. c. 114 sec. 49.

OVERVIEW

In the late 1800's, the Massachusetts legislature adopted laws designed to protect the public from the improper disposal, transport, or exhumation of human remains, (M.G.L. c. 114 §§ 45, 46, and 47). It mandated local issuance of burial permits for burial processes or dispositions and created the position of a burial agent to control and regulate the issuance of the permits. As a condition for issuance of the permits, the agent is mandated to gain physical possession of the death certificate. The submitted death certificate undergoes examination as the first step of death certificate processing. The processing ends when the death certificate information is correlated with other death certificates to supply important health statistical data. Ultimately, the compilation of these data and the resultant actions benefit all citizens through greater health knowledge.

A death certificate is the permanent legal record of the fact of death of an individual. As a permanent legal record, the certificate is extremely important to the decedent's family. It is also needed for a variety of medical and health-related research efforts. The death certificate provides important information about the decedent, such as age, sex, race, date of death, his or her parents, and if currently or previously married, name of the spouse; information on circumstances and cause of death; and immediate disposition. This information is used in the application for insurance benefits, settlement of pension claims, and transfer of title of real and personal property. The certificate is considered to be prima facie evidence of the fact of death. It can be introduced in court as evidence when a question about the death arises. As a service to the decedent's family, the funeral director should prepare the best death record possible. This responsibility makes the funeral director the backbone of this country's death registration system.

Statistical data from death certificates are used to identify public health problems and measure the results of programs established to alleviate these problems. These data are a necessary foundation on which to base effective public health programs. Health departments could not perform their duties without such data. Mortality statistics are of considerable value to individual physicians and to medical science because they can be used to identify disease etiology and evaluate diagnostic techniques. Demographers use mortality statistics in combination with natality statistics to estimate and project population sizes, which are important in forecasting and program planning.

Because the information derived from death certificates can be no more accurate than the data on the certificate, it is very important that all persons concerned with the registration of deaths strive not only for complete registration but also for accuracy and promptness in reporting these events. Death certificates are the most complex of vital records with regards to both their creation as well as their legal and statistical uses.

BOARD OF HEALTH RESPONSIBILITIES

The board of health (or if no board of health exists in a community, the city or town clerk) either functions as the burial agent or designates the burial agent(s). In many communities the city/town clerk has been designated as the burial agent even when a board of health exists.

The board of health (BOH), as burial agent has responsibilities for:

- issuing a permit for disposition, removal or transportation guaranteeing that appropriate legal steps have been taken prior to any disposition (i.e. transportation, cremation, burial, entombment, or exhumation) of human remains (M.G.L. c. 114 §§46-48);
- insuring timely receipt of a satisfactorily completed death certificate from the funeral director or other authorized person prior to issuing a permit. (M.G.L. c. 114 §§46-48); and
- forwarding certificates to the town or city clerk for death registration. If deceased is a veteran, the burial agent will inform the clerk and the veterans grave officer and cite this in the burial permit (M.G.L. c. 114 §46A).

The examination by the BOH of death certificates provides a vital link in the overall quality of death registration. The ability to correct errors is enhanced at this time when the funeral director or other authorized person seeking a permit is present. Once a death record is registered by the city or town clerk, the correcting of information or addition of information requires a formal correction process with the submission of evidence.

Procedures: Disposition, Removal and Transportation Permits:

The board of health or its agent must issue a burial permit before:

- a person may be buried, cremated or otherwise disposed of;
- a person may be removed from the town for disposition;
- a body is exhumed and brought to another town, another cemetery, or another grave or tomb (M.G.L. c. 114 §45);

Arrangements for the issuance of permits must be available seven days a week. If a permit is not obtained within 36 hours after the body has been removed, the body must be brought back to the community from which it was originally removed (M.G.L. c. 114 §45).

Designations of burial agents by the board of health for issuance of permits, particularly for off-hours issuance, must be official and should be in writing. It is important to remember that such designation and subsequent issuance of permits places the same responsibilities on the designee as a BOH employee. This includes responsibilities for examining, acceptance and signing of death certificates.

When the BOH receives and accepts a death certificate, the burial agent must sign the certificate and transmit it to the town clerk for registration (M.G.L. c. 114 §45).

A registered nurse employed by a nursing home, hospice program, Visiting Nurse Association (VNA) or home health agency may, in limited circumstances, make a nurse pronouncement of death. This pronouncement allows the funeral director or other authorized person to remove the remains from the place of death. Such pronouncement is not sufficient for obtaining a permit. A death certificate is required for this purpose. If a nurse pronouncement form has been completed, the death certificate must clearly indicate this fact. The burial agent must forward this form with the death certificate to the town clerk (M.G.L. c. 46 §9 and c. 114 §45).

No permit for the burial of a veteran shall be issued until an affidavit has been filed with the BOH by the undertaker or any person authorized to make a burial or disposition. The affidavit will include the name and last known address of the deceased, the date and place of birth, date and place and cause of his/her death, a summary of his/her service record, and a detailed statement of the location of the burial or other disposition of his/her body. The affidavit will be sent by the board to the town's veteran graves officer (M.G.L. c. 114 §46A).

When a body is brought into a town for burial from outside the Commonwealth, it must be accompanied by a removal permit issued under the laws of the state from which it was taken. This permit is sufficient authority for burial. The board of health must make and retain a copy of this removal permit and return the original to the town from which it came.

If the body is not accompanied by a removal permit, it may not be buried until the board

of health issues a burial permit. This permit will not be issued until a certified copy of the death certificate has been given to the board. The board shall retain custody of this certificate. (M.G.L. c. 114 §46).

Essential information required for permits for initial disposition is available on the death certificate. In cases of permits issued for exhumation or removal, required information includes (M.G.L. c. 114 §46):

- name and age;
- last known residence;
- place of death; if at sea, name of vessel;
- cause of death;
- veteran status.

This information must be obtained from a certified copy of a death record or other affidavits.

Issuing permits for the remains of fetal deaths (stillbirths) has some special requirements. Disposition or removal permits are issued for fetal deaths in one of the following ways:

- If a death is reportable to DPH (either the gestational age of the fetus was at least 20 weeks or the fetus weighed at least 350 grams), the funeral director or other authorized person is provided a photocopy of the report of fetal death to obtain the permit. The board maintains the copy for 30 days. The Report of Fetal Death is not forwarded to the city or town clerk for registration. The disposition or removal permit is issued in the normal manner.
- If the fetus did not meet one of the two criteria listed above for filing a fetal death report, the hospital, or certifying physician/medical examiner must provide a letter on the hospital or physician stationery to the funeral director or other authorized person , stating the facts of the case and the information required for the issuance of the permit (M.G.L. c. 111 §202).

Cemeteries

New or Expanded Cemeteries

No land other than that already used or appropriated can be used for burial unless by permission of the town (town meeting) or of the mayor and alderman of the city in which the land is located (M.G.L. c. 114 s. 34). No approval is to be given until the use is approved in writing by the board of health where the town is located, after giving public notice and holding a hearing.

The board of health must include in its records a description of such lands sufficient for their identification.

No land is to be used for burial if it is so situated that surface water or ground drainage from the site can enter into any stream, pond, reservoir, well, filter gallery or other water used as a source of public water supply or any tributary of a source that is so used, or any aqueduct or other works used in connection with public water supplies, until a plan or description of the lands proposed for such use have been submitted to and approved in writing by DEP. (M.G.L. c. 114, s. 35).

Any person aggrieved by the action of a board of health in approving the purchase, taking or use of any lands for cemetery purposes may, within 60 days, appeal from the order of the board to DEP. DEP, after a hearing, may rescind the order or may modify and amend the order by approving a part of the lands proposed for use as a cemetery. (M.G.L. c. 114, s. 36).

Closing of Tombs, Burial Grounds or Cemeteries

A. Before a tomb, burial ground or cemetery is closed by order of the board of health for more than one month, all persons shall have the opportunity to be heard. (M.G.L. c. 114, s. 38).

1. Personal notice of the time and place of the hearing shall be given to at least one owner of the tomb, and to three at least, if there are so many, of the owners of the burial ground or cemetery.

2. Notice shall also be published for at least two successive weeks preceeding such a hearing in two newspapers published in the county.

B. An owner of a tomb aggrieved by the order of the board of health closing a tomb, burial ground or cemetery may appeal to the Superior Court within six months after the order. Written notice must be given to the board of health 14 days before entering the appeal. The order of the board remains in force until the outcome of the appeal. (M.G.L. c. 114, s. 39).

C. Appeals are to be heard before a jury. If the jury finds that the tomb, burial ground or cemetery was not a nuisance or injurious to the public health at the time of the order and that the closing was not necessary for the protection of the public health, the court shall rescind the order and the appellant may recover the costs of the appeal. If the order is sustained, the board of health shall recover double costs. (M.G.L. c. 114, s. 40).

Cemetery Regulation

Boards of health may make regulations concerning burial grounds and

interments within their towns. (M.G.L. c. 114, s. 37). Notice of the regulations shall be given by publishing them in the newspaper published in the town, or if none, posting in a public place. The regulations may include the following elements:

- Penalties for violation of regulations not to exceed \$100
- Prohibition of the use by undertakers, for the purpose of speculation, of tombs as places of deposit for bodies committed to them for burial
- The right to close any tomb, burial ground, cemetery or other place of burial for such time as they consider necessary for the protection of the public health.

STATE RESPONSIBILITIES

The Department of Public Health (DPH) through the State Registry of Vital Records and Statistics develops, prints and distributes the permits to the boards of health. Technical assistance regarding the acceptance of death certificates for registration and in the issuance of permits is also provided by DPH. In cases, where there are substantial questions about the acceptability of a death certificate, final decisions will be made by DPH. DPH, through the registrar, is responsible for enforcing all requirements relative to the registry and return of births, marriages, deaths, and may prosecute in the name of the commonwealth any violations (M.G.L. c. 17 §4).

For more information contact:

Registry of Vital Records and Statistics
(617) 753-8604