

## What to Do When Families' Home Funeral Rights Are Challenged

By Lee Webster

Having the law on your side is sometimes only half the battle when it comes to carrying out after-death care without hiring a professional. Chances are good that a person obstructing you is operating out of fear or ignorance, not willfulness. Even authorities such as police and municipal or state office workers are often skeptical or uninformed about the rights of families to care for their own dead.

Policies in place in institutions such as hospitals or care facilities sometimes conflict with your legal rights to care for the dead. Along with pointing out the difference between law and policy, you may need to explain firmly and with persuasion and compassion why their policy is not in the best interests of the family or their agency.

Hospitals and care facilities sometimes claim they cannot release a body to the family because of "liability." Reframing this may be useful in helping staff understand why this is not a valid concern. A suggested response: *"There is no liability to your hospital for releasing the body to the next of kin, just as you would release the patient to the family when discharging a living patient such as a child or an elder being cared for by their relatives. However, you may be creating liability for the hospital by refusing to recognize the family's legal, custodial rights and insisting on releasing the body only to an anonymous commercial firm over the family's objections."* If necessary, insist on speaking to the hospital's legal department and patient advocate immediately.

Here are some suggestions for what you can do:

- 1) Obtain the obstructive person's name, title, and contact information.
- 2) Ask for the pertinent policy in writing.
- 3) Ask for contact information for any other personnel who are obstructing along the chain of command (*e.g., head of nursing, legal department, patient advocate, etc.*).
- 4) Be prepared to provide in writing any state laws that prove the rights of next-of-kin to custody and control (these can be found on line by going to your Secretary of State's office, or to [funerals.org](http://funerals.org), or by purchasing *Final Rights*). **Note**—State laws will not necessarily state your rights in explicit terms. Don't expect to find a sentence that says, "Families in this state may care for their own dead without a funeral director." That doesn't mean that you have to use a funeral director. State laws don't say "citizens may repair their own sink without hiring a licensed plumber," but that does not mean it's illegal to perform your own home maintenance. If someone challenges the family's rights, ask *them* to show in writing the law that they believe makes a home funeral illegal.
- 5) Contact any of the following to be on hand in person or by phone to provide back-up:
  - The home funeral guide nearest you
  - The local Funeral Consumers Alliance (FCA) affiliate nearest you

- A clergy member in the know
  - Your local Town or City Clerk
  - A home funeral-friendly funeral director nearest you
  - A law enforcement officer who understands your state's funeral law
  - Your State's Attorney General's office
- 6) If the family wants or needs definitive authorities to intervene or support the effort, contact the National Home Funeral Alliance (NHFA) and/or Funeral Consumers Alliance to help with calls or letters.
  - 7) Approach the original contact person calmly and suggest that you meet to share paperwork. Bring a witness/advocate from the list above if possible.
  - 8) If this isn't successful, ask for the next person in the chain of command and do the same.
  - 9) If the person in charge of decision-making is not readily available, contact an authority (or authorities) from the list above and ask for their direct intervention. It's important that your supporters initiate contact on your behalf rather than asking an obstructive person to make calls.

**Above all, keep the family in charge!** You can help best by providing this blueprint for resolving difficult situations. While solving very real problems is paramount, empowering families to meet the challenges of family-directed after death care on their own is vital.