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The Private Autopsy: Problems of Consent

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THE PRIVATE AUTOPSY: PROBLEMS OF CONSENT

FOREWORD

In the hospital practice of pathology, the problem of proper authority to perform a private autopsy on the body of a deceased patient arises regularly. While numerous articles[1] have investigated the authority of the coroner, the medical examiner and, in some jurisdictions, the district attorney, to authorize an autopsy, little has been said concerning the post-mortem examination which has no initial medical-legal implications.

Every state, through the exercise of its police power, has some mechanism by which the body of a person who dies under "suspicious" circumstances can be examined.[2] But the great majority of autopsies are not of this type; many more are performed for purely medical reasons and must be authorized by some person who possesses sufficient interest in the body to do so. To facilitate the obtaining of this required permission, hospitals generally have a form designed to satisfy the legal requirements.[3] When the patient

[1] See, *e.g.*, Black, *Authority of Coroner to Order Autopsy, At Common Law and Under South Carolina Statutes*, 5 S.C.L.Q. 543 (1953); Letter from Attorney General Anderson of Kansas to Kansas Law Review, July 16, 1958, in 7 KAN. L. REV. 232 (1958); Comment, 46 J. CRIM L.C. & P.S. 232 (1955); Comment, 1951 WIS. L. REV. 529 (1951); Comment, 25 SO. CAL. L. REV. 68 (1951); 11 CLEV.-MAR. L. REV. 279 (1962).

[2] See, *e.g.*, N.Y. PUBLIC HEALTH LAW §4210; OHIO REV. CODE § 313.13 (1958); WIS. STAT ANN. § 966.121.

[3] The form provided by Denver General Hospital is typical:

AUTOPSY AUTHORIZATION

This form is to be filled out in duplicate.
The original must be attached to patient's chart.
The copy is to be retained by the Coroner's Office.

The authorization must be from the nearest relative that is assuming custody of the body for purposes of burial, as follows:

1. The nearest relative is the father, mother, husband, wife, child, or legal guardian (but not necessarily in that order).
2. The brothers and sisters who are making burial arrangements in the event there is no father, mother, husband, wife, child or legal guardian.
3. If there be none of the above individuals, then the next of kin: nieces, nephews, aunts, uncles, grandchildren and grandparents, etc.
4. If there is no next of kin living, then a friend who is making burial arrangements.

In the event authorization for post mortem examination is obtained by letter or telegram, the patient's name and identifying information are to be completed by the physician, and the letter or telegram of authorization attached to this form for permanent filing. Any part of this authorization to which the next of kin will not agree is to be crossed out prior to obtaining signatures.

If an objection to autopsy is received from any person in the same class as the one consenting, the autopsy will not be performed.

I, the nearest (relative), (friend), assuming custody of the remains for purposes of burial, do hereby grant Denver General Hospital permission to perform a post-mortem examination of the body of

.....

It is understood that this permission is given to promote medical knowledge in order to help others suffering from similar ailments, to insure the pathological cause of death for certificate purposes, and to confirm the medical diagnosis.

I authorize the removal and retention of such organs or tissues as are deemed necessary for pathologic diagnosis. I further authorize the hospital to

dies in the hospital and there are no circumstances which would interest the coroner, it is usually the attending physician, intern, or resident physician upon whom the obligation of obtaining the proper consent devolves. He is in the most favorable position to immediately contact the family of the deceased. But in many instances his task is not as easy as it would appear. The members of the family of the deceased are not often situated according to the order of kinship suggested by the usual statutes of descent and distribution. They may be scattered across a wide geographical area, or they may have distributed various terminal duties among themselves. Consequently a recently deceased man may have a surviving spouse, several adult children, adult and competent brothers and sisters, and even parents *in esse*. Where the law requires that the consent to the private autopsy be given by the one who is charged with the duty of burial, the harried intern may in fact be asked to become a legal expert on kinship in order to obtain the proper signature of authorization. Some hospital forms help him in this quandary by clearly outlining the order in which the survivors may grant permission; yet this aid is no panacea, for he must seek out and obtain a particular signature from the several available.

The problems of proper authorization do not end when the intern or resident fills out the permission form and obtains the appropriate signature. He may be greatly disappointed after his apparent success to find that the pathologist refuses to perform the autopsy. The pathologist tends to be a cautious, at times skeptical, critic when the permission form purporting to be a proper authorization is presented to him. The form may be signed, for example, by "Mary Citizen, sister of the deceased." At this point the pathologist, who may have had a previous tempering in the fire of litigation, should wonder *inter alia*, if this sister (a) is indeed the sister of the deceased, (b) if there is not in fact a closer kin who not only survives but may object to the autopsy and (c) if the parties who signed the form fully understand the essential nature of the consent they have granted. Some of these points the pathologist learns

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provide and forward information relating to the ilness [sic] and death of the deceased to any and every insurance company which may require same.

I further authorize the Denver General Hospital to take such photographs as may be necessary and permit the use of such photographs only for publication in scientific and professional journals in connection with medical research and teaching.

Witness.....M.D. Signed.....

.....

Approved..... Address.....

Coroner's Office Relation to Deceased.....

DEPARTMENT OF HEALTH AND HOSPITALS
Denver General Hospital

AUTOPSY AUTHORIZATION
(Reproduced with the permission of Robert B. Skinner, M.D.
Manager of Health & Hospitals, Denver, Colorado)

MED. REC. 16 (REV. 6/59) DHH

Date

Ward

Name

Hosp. No.

Age/Sex

to accept *per fidem,* encouraged by his repeated instruction to the constantly changing house physician staff. Comfortingly, the house physician usually performs properly in his role of "informed consent obtainer." Unfortunately, the law is far from uniform. It may vary geographically, as well as according to whether the hospital is public, private, charitable, non-profit, military, or of some other administrative type. As a result, house-physicians may never be quite certain what the law is on the question of private autopsy consent.

This article is offered in an effort to review some of the underlying common law principles involved and then to outline statutory regulations which have been enacted in several jurisdictions. Some legislatures seeking to clarify the law have merely clouded it, while others have greatly simplified the involved procedures for doctor and family alike. An attempt will be made to emphasize these distinctions.

Consent to the Private Autopsy

Under old English law, the protection of the body of a deceased person was reserved exclusively to ecclesiastical jurisdiction.[4] Common law courts recognized no property or property rights in the body. Byles, J., of The Court of Queen's Bench, in 1867, observed that

> "A dead body by law belongs to no one, and is, therefore, under the protection of the public. If it lies in consecrated ground, the ecclesiastical law will interpose for its protection. . . ."[5]

This doctrine apparently had its origin in dictum of Lord Coke: "The buriall of the *cadaver* (that is *caro data vermibus*) is *nullius in bonis,* and belongs to ecclesiasticall cognisance. . . ."[6] It should be noted that Coke did not assert that no individual can have a legal interest in a corpse, but only that the matter of sepulture was the concern of the Church and ecclesiastical courts. The Church took complete charge of the burial and the custody of the body. The courts of law had no function in this regard until the repudiation of the ecclesiastical court.[7]

[4] Osteen v. Southern Ry., 101 S.C. 532, 86 S.E. 30 (1915); Tyler, American Ecclesiastical Law § 970 (1866); Annot., 82 Am. Dec. 509 (1887).
[5] Foster v. Dodd 3 Q.B. 67, 75, (1867).
[6] 3 Co. Inst. 203 (1797).
[7] Jackson, Law of Cadavers (2d ed. 1950).

The American courts have not gone so far as to treat dead bodies as property in the strict sense. But they have turned to the time honored concepts of "property rights" in seeking grounds upon which the sensibilities of the surviving spouse or next of kin could be protected. In the early case of *Meagher v. Driscoll*[8] the defendant had exhumed and removed the dead body of the child of the plaintiff. Holding that the body itself was not property, the court felt constrained to rely upon the technical trespass to the plaintiff's land to grant relief. Later cases have rejected the technical requirement of trespass to land as a prerequisite to relief, and have faced the real issue in a more straightforward manner, holding:

> that the right to the possession of a dead body for the purposes of decent burial belongs to those most intimately and closely connected with the deceased by domestic ties, and that this is a right which the law will recognize and protect.[9]

Judge Mitchell's statement in *Larson v. Chase* is significant.

> [I]t would be a reproach to the law if a plaintiff's right to recover for mental anguish resulting from the mutilation or other disturbance of the remains of his dead should be made to depend upon whether in committing the act the defendant also committed a technical trespass upon plaintiff's premises, while everybody's common sense would tell him that the real and substantial wrong was not the trespass to the land, but the indignity to the dead.[10]

This expression of the plaintiff's right to recover for mental anguish is dictum, and ahead of its time. Courts take considerable time in divesting themselves of traditional concepts. Consequently, the right to a body for the purpose of burial was treated as a property right in the bulk of the cases which followed. But the courts did not seem to feel too comfortable in this application:

> That there is no right of property in a dead body, using the word in its ordinary sense, may well be admitted. Yet the burial of the dead is a subject which interests the feelings of mankind to a much greater degree than many matters of actual property. There is a duty imposed by the universal feelings of mankind to be discharged by some one towards the dead; a duty, and we may also say a right, to protect from violation; and a duty on the part of others to abstain from violation; it may therefore be considered as *a sort of a quasi property*, and it would be discreditable to any system of law not to provide a remedy in such a case.[11]

A later attempt met with a similar feeling of malaise:

> It is undoubtedly the law that while a dead body is not con-

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[8] 99 Mass. 281, 282 (1868). It is of irelevant interest to note that in this old Massachusetts case, among the conditions for use of the grave site were prohibitions against interring "persons dying in drunkeness, duel, or by self destruction, unbaptized, non-Catholics, or otherwise opposed to the Catholic Church."

[9] Larson v. Chase, 47 Minn. 307, 309, 50 N.W. 238, 239 (1891).

[10] *Id.* at 312, 50 N.W. at 240.

[11] Pierce v. Proprietors of Swan Point Cemetery, 10 R.I. 227, 237 (1872). (Emphasis added.)

> sidered as property in the technical sense of the word, yet the law recognizes *a right somewhat akin to property,* arising out of the duty of the nearest relatives to bury their dead, which authorizes and requires them to take possession of the dead body for the purpose of burial. The right is a personal and exclusive right to the custody and possession of the remains, and, in the absence of a testamentary disposition, belongs to the surviving husband or wife, if any, or, if there be none, then to the next of kin.[12]

Dean Prosser is less willing to accept the concept of "property rights":

> [T]he courts have talked of a somewhat dubious "property right" to the body, usually in the next of kin, which did not exist while the decedent was living, cannot be conveyed, can be used only for the one purpose of burial, and not only has no pecuniary value but is a source of liability for funeral expenses. It seems reasonably obvious that such "property" is something evolved out of thin air to meet the occasion, and that it is in reality the personal feelings of the survivors which are being protected, under a fiction likely to deceive no one but a lawyer.[13]

Recent cases have recognized with Prosser that the real injury is to the sensibilities of the survivor, not to any rights of property. In *Darcy v. Presbyterian Hospital,*[14] the plaintiff mother sued for damages occasioned by her wounded feelings resulting from an unpermitted autopsy on her twenty year old son. The trial court held that the complaint did not state a cause of action, but the Court of Appeals reversed:

> [T]he plaintiff, being the mother and nearest surviving next of kin to the decedent, is entitled to maintain the action and to recover damages for her wounded feelings and mental distress.[15]

The wounded feelings of the survivor was reaffirmed as a ground for complaint in *McPosey v. Sisters of the Sorrowful Mother.*[16] The court said:

> The wrongful dissection of a dead body is regarded as a willful and intentional wrong against the person entitled to the possession and control of the body for burial, and a recovery may be had for the mental anguish resulting from such a mutilation. . . .
>
> We feel that a petition which alleges the right to a body, a refusal to deliver up said body on demand, and the performance of an unauthorized and wrongful dissection thereon while it is withheld, states a cause of action for damages for the interference with legal rights, and that mental anguish is a proper element for such damages.[17]

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[12] Nichols v. Central Vermont Ry., 94 Vt. 14, 109 Atl. 905 (1919). (Emphasis added.)
[13] PROSSER, TORTS 51 (3d ed. 1964).
[14] 202 N.Y. 259, 95 N.E. 695 (1911).
[15] *Id.* at 260, 95 N.E. at 696.
[16] 177 Okla. 52, 57 P.2d 617 (1936).
[17] *Id.* at 53, 54, 57 P.2d at 619.

The Kansas Court, in the following year, recognized this right in the surviving widow to sue for damages based on mental suffering even though she suffered no physical injury.[18]

The cause of action for an unauthorized autopsy is not one that can be maintained by any member of the surviving family. In *Gostkowski v. Roman Catholic Church*,[19] the parish priest had had the body moved from one grave to another without permision from or notification to the plaintiff-husband. Agreeing that this action on the part of the priest was unpermitted, the court went on to consider who was the proper party to sue. The court said:

> [W]e conceive the rule to be that the surviving spouse whose duty it is to bury the deceased has the sole right to sue, during his or her lifetime, for damages due to interference with the dead body. To such a one is intrusted the duty to guard the dead. True it may be that he may neglect to exercise such right. Others may then act. Possibly the surviving members of the deceased's family might join as plaintiffs (*Boyle v. Chandler*, 3 w.w.Harr. (Del.) 323, 138 A. 273), but it is inconceivable that each member of the family could maintain a separate action to recover for mental pain and anguish.[20]

Although this case limits the number of actions to one, the dictum to the effect that other members of the family may maintain the action in the event of default or the spouse or next of kin appears to be unusually liberal. Occasionally more than one kin are permitted to join in the action[21] but this is not the general rule. In *Stephenson v. Duke University*,[22] the mother and father joined in an action for damages arising from the mutilation of the body of their deceased son. The suit was dismissed as to the mother on the ground that the father alone had the duty of burial and that therefore he was the only party who could sue for interference with that right.

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[18] Alderman v. Ford, 146 Kan. 698, 72 P.2d 981 (1937).

[19] 262 N.Y. 320, 186 N.E. 798 (1933).

[20] *Id.* at 325, 186 N.E. at 800.

[21] Boyle v. Chandler, 3 W.W. Harr. (Del.) 323, 138 A. 273 (1927). The surviving husband and children of deceased were allowed to join as party plaintiffs in an action to recover damages from the undertaker for improper and indecent burial.

[22] 202 N.C. 624, 163 S.E. 698 (1932).

Similarly in *Steagall v. Doctors Hospital*,[23] it was held that the right to the possession of the dead body belonged solely to the surviving spouse living with the decedent "in the normal relation of marriage," and if no spouse be living, "then to the next of kin in the order of their relation to the decedent . . . ." The court dismissed the appeal of the sons of the decedent who had attempted to join with their mother as parties plaintiff. If the court can be believed, it might seem that in the District of Columbia, the intern or resident seeking a permission signature from the surviving wife would have to indelicately inquire as to the "normalcy" of her relationship with the decedent. In the brief opinion, Judge Prettyman did not elaborate on his use of the term "living in the normal relation of marriage."

Although a Canadian case[24] may be understood as giving the right of possession to the decedent's body to the executor, the weight of authority in the United States seems to hold that the executor or administrator has no such rights to the disposition of the dead body.[25] The court in *Simpkins v. Lumbermen's Mutual Casualty Co.*[26] stated that the administrator of an estate had no property right in the cadaver of his intestate and could not therefore maintain an action to recover damages for mutilation of the body.

Under some circumstances the decedent can consent to his own autopsy. Many states now have statutes allowing a person during his lifetime to provide for the disposition of his body upon his death.[27] Situations have also arisen in which the decedent, while living, has by contract granted the right to conduct or request a post-mortem examination. In *Aetna Life Insurance Co. v. Lindsay*[28] an insurance contract signed by the decedent contained a clause authorizing a post-mortem examination at the election of the insuror. The insuror took the additional precaution of obtaining permission from the surviving wife, but was nevertheless sued by the daughter of the decedent. The court said:

> It seems to be recognized in Illinois . . . as well as in other states . . . that one may make testamentary disposition of his own body . . . . If he may do this by will, we see no lawful objection to his doing it by contract.[29]

On the other hand, in *American Employer's Liab. Ins. Co. v. Barr*,[30] the court seems to indicate that the beneficiary of the policy rather

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[23] 171 F.2d 352 (D.C. Cir. 1948).

[24] Hunter v. Hunter, 65 Ont. L.R. 586, [1930] 4 D.L.R. 255.

[25] 25 C.J.S., Dead Bodies, § 3 (1941). See, *e.g.*, O'Donnell v. Slack, 55 Pac. 906, 123 Cal. 285 (1899), in which the court held that as against the wife of the decedent, neither the probate court nor the personal (non-related) representative of a decedent has a superior right to his body. There were no directions in the decedent's will but his widow alleged that the decedent's "last request" had been to be buried in Ireland; she applied for a court order to obtain money from the decedent's estate to carry out this last wish personally.

[26] 200 S.C. 228, 20 S.E.2d 733 (1942).

[27] See, *e.g.*, COLO. REV. STAT. § 91-3-9 (Supp. 1961).

[28] 69 F.2d 627 (7th Cir. 1934).

[29] *Id.* at 629.

[30] 68 Fed. 873 (8th Cir. 1895).

than the widow was the person entitled to give permission for an autopsy under the provisions of the policy.

A further complication was introduced in New York for those attempting to obtain permission to perform an autopsy. In *Beller v. City of New York*[31] the court said,

> In the absence of a testamentary disposition, the right to the possession of the body of one who has died belongs to the surviving husband or wife or next of kin for the purpose of preservation and burial. Any one infringing upon such right by mutilating the remains without consent of the person or persons entitled to the possession thereof may be required to pay damages for the injury to the feelings and for mental suffering resulting from such unlawful act, even though no pecuniary damage is alleged or proved.

In its use of "person or persons entitled to the possession" it would seem that the court, absent the present New York statute, would have required the permission of more than one person where more than one were entitled to possession.

In *Deeg v. City of Detroit*,[32] the husband of the plaintiff was killed by a city bus. At the direction of a doctor at the city hospital where the victim died, an autopsy was performed to determine whether the decedent had been drinking. The wife sued on the grounds that she had not granted permission for the autopsy. While the action was pending, the plaintiff-wife also died. The administrator continued the suit and was awarded judgment over defendants' motion for a directed verdict. On appeal, the case was reversed with direction to dismiss. The appellate court said that while the surviving spouse has an action for an unpermitted autopsy on her husband's body, the right of action did not survive the death of the plaintiff-wife.

Further problems arise when the law recognizes the right to grant permission in the next of kin but fails to indicate a preferred order among the survivors of that class. A dispute for and against the autopsy of a widowed parent, when waged between several adult brothers and sisters, leaves the attending physician and the pathologist in a quandary. Unfortunately the safer course is usually elected, the autopsy not performed, and valuable medical knowledge lost.

VARIATION IN STATE STATUTES

Recognizing this difficulty, several states have enacted statutes in an attempt to simplify the procedure by indicating clearly who is authorized to sign the consent form. Legislatures have proceeded cautiously in this area, lest the hospital pathologist be given too much liberty. However, the pathologist's role in the autopsy is not to inflict needless willful and wanton injury upon the feeling of the survivors or to mutilate the deceased body. Rather he is charged with the vital responsibility of determining the cause of death and the extent of the disease process for the protection of the community and for the advancement of medical knowledge. Those

[31] 269 App. Div. 643, 58 N.Y.S.2d 113 (1945).
[32] 345 Mich. 371, 76 N.W.2d 16 (1956).

statutes which facilitate this important post-mortem investigation are to be lauded.

A statute prescribing the necessary authorization for private autopsies should give those concerned with performing the autopsy a safeguard against suit by members of the family of the decedent, but should also protect the family's sensibilities. The statute should be easily read and understood by the nonlegal persons who will be required to follow it.

An example of a needlessly involved statute is provided by the Mississippi Code.[33] The power to authorize an autopsy is recognized as existing in the decedent before death, or in any one of those persons who assume custody for the purposes of burial. However, certain restrictions are included. When the deceased party was a minor, the consent of either parent is deemed sufficient *unless* the other parent submits written objection prior to the commencement of the autopsy. One can envision the pathologist beginning his autopsy immediately upon receipt of one parent's permission, in order to foreclose the objecting parent's power to revoke. The Mississippi legislature further provided that no autopsy shall be held under this section over the objection of a surviving spouse, or absent the spouse, a parent; or absent both spouse and parent, a surviving child. It is submitted that such a provision unnecessarily complicates the autopsy procedure.

The drafters of Oklahoma's statute[34] on the subject failed to consider that if a law specifically mentions a member of a class, it is interpreted as specifically omitting those members of the same class not mentioned. Hence the Oklahoma statutes provide that the right to dissect the dead body of a human being exists whenever any husband, or next of kin, of the deceased person so authorizes. It might be assumed that such a small point as failure to mention the wife of the decedent would never cause difficulty. However, in the case of *In Re Kyle's Autopsy*,[35] precisely this point was in issue. The surviving widow granted permission for an autopsy to be performed on her deceased husband. The surviving sisters of the dead man sued for damages alleging that the statute did not provide for the widow and that they were "the next of kin." The court held that such a strict construction of the statute would be contrary to any reasonable intention of the legislature. While this result was

[33] MISS. CODE § 7158-08 (Cum. Supp. 1962).
[34] OKLA. STAT. ANN. tit. 21, § 1154 (1951).
[35] 309 P.2d 1070 (Okla. 1957).

probably equitable and desirable, *quaere* whether the decision conformed to proper principles of jurisprudence, and whether the judge should have left it to the legislature to correct an improper statute.

The statutes of Nevada[36] and North Dakota,[37] in provisions similar to the Oklahoma one, specificallly include the wife with the husband and next of kin.

Wyoming[38] provided that the autopsy could be authorized by the "nearest living kin of deceased." This constitutes an unfortunate narrowing of the common law. Requiring a search for the nearest relative rather than either a nearby kin or a non-relative who has assumed the burial duties places an undue burden on the doctor seeking the permission.

Several states have recognized the right of a person, before he dies, to authorize a private autopsy. Unless the statute provides for recognition of a defective testamentary instrument for the purpose, it probably adds little. It seems clear that all jurisdictions would uphold a valid testament in which the testator gives directions for his own autopsy, and to which there were no objections by survivors.

Some states approve non-testamentary instruments executed by its deceased to authorize an autopsy. The Montana statute is an example:

> The right to perform an autopsy upon, or to dissect the dead body of a human being, or make any post-mortem examination involving dissection of any part of such body, shall be limited to the following cases, viz: . . . (c) cases where dissection, autopsy or post-mortem examination is directed or authorized by the last will and testament, or codicil thereto or other written statement of the deceased, whether such statement be of testamentary character or otherwise . . . .[39]

This apparently includes the standard hospital autopsy form when signed by the decedent prior to death, even though it usually will not meet the requirements of a will.

Kentucky[40] provides, *inter alia,* that the autopsy will be authorized, ". . . whenever written consent thereto, duly signed and acknowledged prior to his death, has been granted by the deceased."

In New Jersey[41] the medical director of an institution may, with the approval of the board of managers of that institution, authorize an autopsy on an *indigent* patient to determine the cause of death or the cause of mental ailment. The statute makes no mention of the decedent's family whose objections presumably could be disregarded.

New Mexico[42] allows the state department of public health to authorize the dissection of a decedent's body in the absence of

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[36] NEV. REV. STAT. § 451.010 (1957).
[37] N.D. CENT. CODE § 23-06-13 (1959).
[38] WYO. STAT. § 6-100 (1957).
[39] MONT. REV. CODE § 69-2308 (1947).
[40] KY. REV. STAT. ch. 72.070(2) (1960).
[41] N.J. STAT. ANN. tit. 30: 4-104 (1964).
[42] N.M. STAT. § 12-7-7 (1953).

surviving relatives. The statute allows the anatomical or pathological department of a properly incorporated hospital, school or college to perform the autopsy. Connecticut[43] also provides that where there has been a fruitless but diligent search for surviving relatives or, in their absence, a friend assuming the burial duties, an autopsy may nonetheless be performed without liability provided that not less than 12 hours nor more than 48 hours has elapsed from time of death. Measures like the New Mexico and Connecticut ones, which provide the medical staff with a legitimate method of securing an autopsy where the relatives and friends are not found after reasonable search are commendable. The autopsy to have maximum value as an educational aide or protection for the community should be performed without undue delay.

The Montana Code provides that where the decedent died in a state-operated institution, and left no relatives charged with the duty of burial, the superintendent of that institution may apply for an order from the district court to authorize the autopsy.[44] This method may be too cumbersome to be practical.

The Tennessee Code,[45] The Michigan Statutes,[46] The Wisconsin Statutes[47] and the Colorado Revised Statutes[48] all provide a simple and apparently workable method for obtaining proper permission to perform an autopsy while safeguarding the rights of those parties interested. With minor variations, each of these brief, clearly worded statutes provides that the father, mother, husband, wife, guardian, next of kin, or in the absence of the foregoing, a friend or agency which is assuming the responsibility for burial, may authorize an autopsy. They further provide that if two or more of the above persons assume custody of the body, consent of one of them is sufficient. These statutes provide a reasonable and workable method of coping with the autopsy permission problems in our modern hospitals.

Some states have failed to provide any statutory mechanism by which the citizens of those states may authorize an autopsy. In these states the common law prevails. With the increased ease of travel from one state to another persons with few or little remembered relatives, or none, often die in distant hospitals. Where the staff doctors, interns, residents and students have contributed time, energy and talent to provide medical treatment for these unfortunate souls, the state legislature should make it easier, rather than more difficult, to obtain a proper authorization for post-mortem examinations. The future of medicine itself depends on the dissemination of knowledge and the opportunity to learn. A state which hampers these ends through a particularly difficult autopsy permission statute should re-examine it to see if it can better protect the interests of its citizens. It is submitted that the rights of the people are ultimately better protected by the liberal autopsy statute than those which stifle medical research by a virtual prohibition of post-mortem investigation.

JOHN R. FEEGEL, M.D.

[43] CONN. GEN. STAT. ANN. § 19-143 (1958).
[44] MONT. REV. CODE § 69-2308 (1947).
[45] TENN. CODE ANN. § 53-513 (Supp. 1964).
[46] MICH STAT. ANN. § 14.524 (1956).
[47] WIS. STAT. ANN. § 155:05 (1957).
[48] COLO. REV. STAT. § 91-1-33 (Supp. 1960).