

## In Massachusetts

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*Please refer to Chapter 8 as you use this section.*

Persons and church groups in Massachusetts may care for their own dead. The legal authority to do so is found in:

*Title 46 § 9. Death certificates. A physician . . . shall immediately furnish for registration a standard certificate of death . . . to an undertaker or other authorized person or a member of the family of the deceased. . . .*



There are no other statutes that might require you to use a funeral director.

### ❖ History

The Board of Registration in Embalming issued a regulation in 1905 stating:

*No permits for . . . burial . . . shall be issued . . . to any person . . . not registered . . . [by] the state board of registration in embalming.*

That regulation was found invalid by the Supreme Judicial Court of Massachusetts in 1909, *Wyeth v. Thomas*, 200 Mass. 474, 86 NE 925. The court wrote:

*There is no doubt that the . . . refusal to permit one to bury the dead body of his relative or friend, except under an unreasonable limitation, is also an interference with a private right that is not allowable under the Constitution of the Commonwealth or the Constitution of the United States.*

The regulation remained on the books until 1998, even though it was invalid and unenforceable. The Board of Registration insisted until 1996 that the regulation was valid and even convinced the Vital Statistics department of the Massachusetts Department of Public Health (MDPH) in 1989 to change the wording on one box on the death certificate form to “funeral service licensee” and to tell local boards of health that burial permits could be issued only to undertakers.

The Memorial Society in Boston was also fooled into believing that people were forbidden to care for their own dead in Massachusetts. Jan Burhman Osness, whose experience is recounted in Chapter 4, asked the Memorial

Society to try to get the law changed. After a bit of simple research, it became apparent that the law had *never required* the use of an undertaker.

The MDPH, on reviewing the court opinion, agreed privately that persons could care for their own dead but was unwilling to say so publicly. The Board of Health of the Town of Lexington, after considering the matter for 13 months, voted in April 1996 to issue burial permits to non-undertakers.<sup>1</sup> The Board of Registration went to the MDPH seeking its support in opposing the Lexington decision, but the MDPH said that Lexington was correct. Two days later the Board of Registration agreed to drop their opposition to issuance of burial permits to non-undertakers.

The MDPH in August 1996 sent a memo to all 351 towns telling them it *is* legal to issue burial permits to non-undertakers. With the memo was a set of guidelines from the MDPH to be given to persons caring for their own dead, explaining the law and suggesting appropriate precautions. In 1998, the Board of Registration modified its regulation.

#### **❖ Death Certificate**

The family doctor or a medical examiner will “immediately” supply and sign the death certificate, stating the cause of death. The remaining information must be supplied, typewritten or in black ink. The death certificate must be filed, within five days, with the Board of Health in the town where death occurred in order to obtain the “burial” permit.

#### **❖ Fetal Death**

A fetal death report is required when death occurs after 20 weeks of gestation or when the weight is 350 grams or more. If there is no family physician involved, the local medical examiner must sign the fetal death certificate.

#### **❖ Transporting and Disposition Permit**

The local board of health (or town clerk if there is no board of health) will issue the burial permit. (This is actually a transportation and disposition permit.) This authorization must be obtained prior to moving a body or

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<sup>1</sup> Byron Blanchard, treasurer of The Memorial Society in Boston, handled the negotiation with the MDPH and Lexington.

final disposition. After normal business hours, check with the local police to determine who the after-hours agent is.

Although most boards of health are now willing to work with those caring for their own dead, there are a few recalcitrant ones. If you run into difficulty, suggest that the clerk contact the Department of Health at 617-753-8603. As a member of the public, you may call 753-8604. If that doesn't help, call Howard Wensley at 617-983-6761. The Memorial Society in Boston may be able to assist in seeking an emergency court hearing if necessary.

#### ❖ **Burial**

The Board of Health in each town regulates burial grounds, whether on private land or established cemeteries. There are no state burial statutes or regulations with regard to depth. A sensible guideline is 150 feet from a water supply and at least two feet of earth on top.

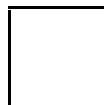
When burial is arranged, the sexton or family member acting as the funeral director must sign the coupon on the burial-transit permit and return it to the issuing registrar.

#### ❖ **Cremation**

A cremation permit from the medical examiner is required. The fee for this is \$50. There is a 48-hour waiting period prior to cremation unless the death was due to a contagious or infectious disease. Authorization by next-of-kin or designated agent is required, and a pacemaker must be removed.

Where there is no spouse or next-of-kin and the decedent did not appoint an agent to authorize cremation, the crematory may demand that a court-appointed guardian sign the authorization to cremate. Where there is an estranged or separated spouse or there are next-of-kin opposed to cremation, it is essential for the decedent to have appointed an agent in writing. The form to appoint an agent is called a Declaration of Intent for Cremation and is available from the crematory; it should be witnessed and notarized.

New regulations (1998) permit a funeral home to require that the next-of-kin view a body *at the funeral home* prior to cremation. This is a blatant ploy to sell cremation caskets. As one funeral director told a niece, "You'll probably want to upgrade to a cremation casket. Most families don't want to see their loved one in a cardboard box." A more responsible requirement would be identification and tagging at the place of death prior to removal,



especially with all the body mix-ups that are becoming endemic at chain-owned mortuaries. For them, it is standard practice to send bodies to a central location for embalming and preparation, and the incidence of negligent body-swapping has spawned a rash of expensive lawsuits that continue afresh as of this writing.

**❖ Other Requirements**

Massachusetts has no other requirements controlling the time schedule for the disposition of unembalmed bodies. Weather and reasonable planning should be considered.

If the person died of a contagious or communicable disease, the doctor in attendance should be consulted.

Regulations—which apply only to the bodies handled by undertakers—require that, if there will be no embalming, all orifices must be ~~stuffed~~ with treated cotton, the body washed, then wrapped in a sheet. Off the record, funeral directors tell me this is rarely done unless there is to be a private family viewing. But by having such a requirement in the regulations, mortuaries may charge for this service, and none is the wiser if it's never done prior to an immediate burial or cremation. (Anyone who considers the cotton-stuffing an indignity may wish to skip the use of a funeral home altogether.)

**❖ Medical Schools for Body Donation**

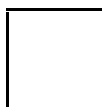
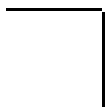
There was at one time a coordinated donor program for all schools, but it is without a director at this time.

Boston University School of Medicine  
80 E. Concord St.  
Boston, MA 02118  
617-638-4245  
After hours: 638-4144  
Low/moderate need

Harvard Medical School  
25 Shattuck St.  
Boston MA 02115  
617-432-1735  
After hours: 432-1379  
Low/moderate need

University of Mass. Medical School  
55 Lake Ave. N.  
Worcester, MA 01605-2397  
508-856-2460 24 hrs.  
Low/moderate need

Tufts University School of Medicine  
136 Harrison Ave.  
Boston, MA 02111  
617-636-6685  
After hours: 636-6610



Cost to family: a modest sum for transportation within the Commonwealth is supplied by the school

Prior enrollment: required

Over-enrollment: shared

Disposition: cremation for donors at University of Mass.; return of cremains by request; for other three, burial or return of remains by request and expense of family

Body rejection: standard,\* previous embalming, missing body parts

\* autopsy, decomposition, mutilation, severe burn victim, meningitis, hepatitis, AIDS, and other contagious or communicable diseases

❖ **Crematories**

Cambridge

Mt. Auburn Cemetery  
580 Mt. Auburn, 02138  
617-547-7105

Newton Center

Newton Cemetery  
791 Walnut, 02159  
617-332-0047

Duxbury

Duxbury Crematory  
774 Tremont St., Rte. 3A, 02331  
781-934-5261

Pittsfield

Pittsfield Cemetery  
203 Wahconah, 01201  
413-447-7953

Everett

Woodlawn Cemetery  
302 Elm, 02149  
617-387-0800

Salem

Harmony Grove Cemetery  
30 Grove, 01970  
978-744-0554

Haverhill

Linwood Crematory  
41 John Ward Ave., 01830  
978-374-4191

Springfield

Springfield Crematory  
171 Maple, 01105  
413-732-0712

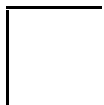
Jamaica Plain

Forest Hills Cemetery  
95 Forest Hills, 02130  
617-524-0239

Worcester

New Swedish Crematory  
7 Island Rd., 01603  
508-753-8842

Rural Cemetery  
180 Grove, 01605  
508-754-1313



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Additional crematories may have been established in this state after the date of publication.

#### ❖ **State Governance**

The Massachusetts Board of Registration in Embalming and Funeral Directing has five members. One is a consumer representative.

Most cemeteries are town or city cemeteries and are regulated by their municipalities. The Board of Health must approve new cemeteries and crematories.

Crematories are generally considered part of a cemetery's operation, and those on cemetery grounds are not licensed separately. The statutes permit, however, that an independent, nonprofit crematory could be established elsewhere with the permission of the local health department. One does not need to be a funeral director to run a crematory.

#### ❖ **Prepaid Cemetery and Funeral Funds**

Cemeteries (and crematories) in Massachusetts established after 1936 must be run by not-for-profit corporations. They may not sell monuments. Several have set up separate companies to vend markers but have been caught making sales on cemetery grounds. Funeral directors may not be employed by a cemetery or crematory.<sup>1</sup> There are no statutes regulating prepaid *cemetery* purchases.

This is one of the few states, however, where there are *no* straight-forward *statutory* protections for preneed *funeral* consumers either. The Board of Registration has enacted some *regulations*, but they are full of such gigantic loopholes and convoluted escape clauses that an industry lawyer no doubt gets the credit for wangling this “creative” writing into the record. Consequently, The Memorial Society of Boston has increased its vigilance in monitoring the Board of Registration. If you'd like to help, be sure to offer your time and assistance. (Meetings can be quite interesting. Initially board members had not been used to having vocal consumers watch what they do or challenge closed-meeting sessions.) This will be an important

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<sup>1</sup> That may or may not be a good restriction. It's one way to avoid a monopoly in the industry. On the other hand, if funeral directing is a part-time job, what more logical place to work. Better to get an outside job to supplement an undertaker's income than to raise funeral prices to consumers and just sit around.

consumer project until the legislature comes to its senses and puts funeral consumer legislation on the front burner.

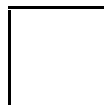
Preneed sellers may not solicit sales in a nursing home, hospital, or other care facility unless invited in writing by the prospective customer. Telephone solicitation is just fine, however. Arrrgh!

Only funeral directors may sell preneed funeral arrangements. A buyer may **cancel** a preneed contract within ten days for a full **refund**. After that time, only 90% must be placed in **trust**. The name of the trustee where the money will be deposited must be disclosed to the buyer. . . .

*Unless!* Unless the agreement is paid in full and the buyer “has received satisfactory evidence that those goods or services will be furnished at the time of death. . . .” Lo and behold: Then there is **no trusting requirement**. One has to wonder what constitutes “satisfactory evidence” or whether an unsophisticated buyer would even know what was “satisfactory.” Would you get a **refund** should you change your mind? I doubt it.

Preneed sellers must make an annual **report** of all preneed accounts to the state Board of Registration. (Does this include the “satisfactory evidence” ones?) The beneficiary of any funeral *trust* must also receive an annual **report** unless waived in writing. If you prepaid for your funeral and are not getting an annual report, find out why. Did the undertaker think you'd gotten “satisfactory evidence” promising delivery? Or did you sign away your rights in some tiny print you didn't notice? If so, simply send a letter to the funeral home stating that you want the annual report to which you are entitled. (There are no annual reports required for funeral insurance.)

Any preneed contract must disclose what penalties might apply if transferred, cancelled, or not fully paid-for at the time of death. They aren't limited in imposing penalties, they just have to tell you what they are. So be sure to read the fine-print on that, too. Preneed agreements must also disclose whether or not the funeral provider is obligated to **substitute** merchandise of equal or greater “value.” That word “value” is a real problem. Substitution should be of equal quality and construction, not price, and any new merchandise that is substituted should be contingent on the approval of survivors. After all, a \$750 casket ten years ago was pretty snazzy. Today, for \$750 an undertaker would show you the “welfare casket.”



Preneed funeral arrangements—whether revocable or irrevocable—may not be altered after death, even at the request of the family. The regs do not anticipate what should happen if insufficient funds are available to complete the arrangements (or there's no one around to come to the wake).

If the preneed contract is a guaranteed-price agreement, the seller may retain all **interest** income or earnings. On a non-guaranteed agreement, the estate gets a refund if funds exceed the actual cost (highly unlikely with the rate of funeral inflation). If the cost exceeds what's in the trust, the estate (or survivors) are liable for the additional costs. If a family may not alter the arrangements as mentioned above, the funeral director may try to stick the family with a funeral bill that wasn't expected.

A funeral establishment must notify preneed customers no later than ten days after a change in ownership.

A preneed seller may amend the funeral contract “at any time”—just let the buyer know ten days prior to the effective date and get the buyer to agree. Do not assume that any such amendment is in your best interest. If, for example, trust funds are being converted to insurance, be to you decline such a change. Insurance has diddley-squat cash value if you want to change your mind and turn it in.

If funeral directors want to sell funeral insurance, they must be licensed by the Division of Insurance. Funeral directors must supply “A Buyer's Guide to Pre-Need Funeral Contracts” before you sign any contract. (Don't assume it's going to tell you the real skinny, though.)

#### ❖ **Consumer Concerns**

- The death rate in Massachusetts can support approximately 220 full-time funeral homes; there are, however, 725. Funeral prices tend to be higher in areas where there are “too many.”
- Cemeteries should be regulated.
- Laws should require cemeteries to repurchase an unwanted lot at the original selling price plus 50% of the difference between that and current market price.
- There is no requirement that when merchandise is selected on a guaranteed-price, preneed agreement that a clear description is given and that merchandise of equal quality and construction must be substituted—to the satisfaction of survivors—if the original item selected is not available.
- There is no state protection to reimburse consumers in case of default on prepaid funeral funds that were never put into trust. One Massachusetts



funeral director managed to spend \$200,000 of his preneed funds before he landed in jail.

- Until there are statutory protections for preneed funeral consumers that eliminate the mischief cited, it is a *terrible* mistake to prepay for a funeral in Massachusetts unless you absolutely must prior to entering a nursing home. At that point, make sure it's a guaranteed-price funeral, that you get a full description of what you are paying for and what you will get, and that you know exactly where your money is with an annual report to verify it.
- The 48-hour wait before cremation is totally unnecessary when survivors are in agreement. Not to mention the additional charges to families for “storage.”
- The coroner or medical examiner's permit for cremation in the case of an *anticipated* death from natural causes is totally unnecessary and creates an additional burden and charge for families.
- Identification and tagging of the body at the place of death before removal should be required.
- There is no requirement that low-cost caskets be included in any display.
- The standards for ethical, professional conduct should be strengthened. That would make it easier for a consumer to prevail when filing a complaint. (See Ethical Standards in the Appendix.) Furthermore, the board has no ability to levy a fine for most offenses; the only punishment available is yanking a license—something that is rarely done. The one fine permitted: \$1,000 for failing to give an itemized price statement when arranging a funeral. The FTC considers this a \$10,000 violation.
- The FTC Funeral Rule should be adopted by reference in the statutes or regulations to make it more enforceable in this state.
- Complaint procedures are unclear and inadequate.
- While case law will give preference to the written wishes of the deceased, there is no law that allows you designate an agent for death care. In situations where you are estranged or distant from next-of-kin, this could be important.

#### ❖ **Miscellaneous Information**

- Educational requirements for becoming a registered funeral director or embalmer: mortuary college (9 months), an exam, and two years of apprenticeship. This apprenticeship period seems excessive compared to other states and more likely imposed as a source of cheap labor for the industry. The board of health for each town where a funeral director has an establishment must issue the actual funeral director's license. An interesting concept . . . Overkill or appropriate local control?
- Medical examiners are physicians who are appointed.

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- Cash advance items must be billed in the same amount as is billed to the funeral director.
- Unprofessional conduct includes: “the use of profane, indecent or obscene language in the presence of a dead human body, or within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of.” Then watch out?
- Each funeral home must have a “chapel”—a for-profit church blessed by the Board of Registration?
- Ownership of a funeral home must be disclosed on all stationery and advertising materials.
- A funeral business may not represent itself as a society, fund, trust or other not-for-profit unless it is, in fact, not-for-profit.
- Undertakers registered with the board “shall be fair with present or prospective customers with respect to quality of merchandise, freedom of choice, quality of service, and reasonableness of price, and shall not misrepresent any material fact with respect to such matters.” Wow! Perhaps consumers should start filing complaints against funeral homes that do not have “reasonable” prices!
- One may not picket within 500 feet of a funeral home when a funeral is in progress.
- Rendering funeral services may not be made contingent on payment or expectation of payment.
- The Commonwealth will pay \$1,100 toward the burial of indigents, provided the total cost is not more than \$1,500.

#### **❖ Nonprofit Funeral Consumer Information Societies**

These consumer groups are run mostly by volunteers. Consequently, contact information may change. If you have difficulty reaching a society or are interested in starting a society in your area, call the FAMSA office: 800-765-0107. Or check the internet directory—

**[www.funerals.org/FAMSA](http://www.funerals.org/FAMSA)**

#### **Boston**

The Memorial Society  
66 Marlborough St., 02116  
781-859-7990 or 888-666-7990

#### **New Bedford**

Memorial Society of SE Mass.  
71 8th St., 02740

#### **East Orleans**

Memorial Society of Cape Cod  
P.O. Box 1375, 02643-1375  
508-862-2522 or 800-976-9552

#### **Springfield**

Memorial Society of Western Mass.  
P.O. Box 2821, 01101-2821  
413-783-7987



*This chapter was sent for review to the Massachusetts Department of Public Health, the Attorney General's Office for Consumer Affairs, and the Board of Registration in Embalming and Funeral Directing. No response was received.*

