

MAINE STATE LEGISLATURE

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Mental Health and Corrections

Disposition of Remains of State Hospital and Pineland Hospital and Training Center Patients Before Running of Statutory Seven-day Period

QUESTION PRESENTED: May officials of the State hospitals and Pineland order that the body of a deceased patient be embalmed or may such officials perform an autopsy on such body before the running of the statutory seven-day period during which notice of death is given and published?

Under Section 13 of Chapter 66 of the Revised Statutes of Maine, 1954, seven days are prescribed for giving notice of the death of inmates of State institutions, including State hospitals and Pineland who are required to be buried at public expense. If, during that period, no spouse, kin or other family connection should claim the body, it may be turned over to the board established to distribute dead human bodies to be used for anatomical purposes as set out in the statute. The State hospitals and Pineland may, after the running of the seven-day period, either turn a body over to the board for distribution or may, for the advancement of medical science, perform an autopsy on such body. Between death and the running of the seven-day period, the body is held in trust for the spouse, next of kin, or other family connection of the deceased who has a quasi right of property in the dead body—that right being the right to possession of the body for burial.

It is the opinion of this office that during the seven-day period, the body may not be embalmed and an autopsy may not be performed thereon by, at the request of, or under the direction of State hospital personnel. Authority for this opinion is found in a line of cases which follow the holding in the case of *Toley v. Phelps*, App. Div. N.Y. 550, in which the court said, "The right is to the possession of the corpus in the same condition it was in when death supervened. It is the right to what remains when the breath leaves the body and not merely to such a hacked, hewed

and mutilated corpse as some stranger, an offender against the criminal law, may choose to turn over to an afflicted relative." In the case of Medical College of Georgia v. Rushing, 1. Ga. App. 466 at 470, the court made reference to the Polley case *supra* and in discussing the quasi right of property in a dead body said, "... nor do we deem it necessary to multiply authorities to establish the right of a husband to the sacred remains of his wife untouched and unmutilated or his redress in positive damages for any wrongful and unlawful interference with such right."

These cases and other cases, with similar holdings, establish the general rule in this country that there is a quasi right of property in a dead body which is the right to the possession of such body for burial; and that those, other than the spouse, relatives, or other family connections in control of such bodies, hold them in trust for the relatives, or family connections and must keep them in the same condition in which they were at death; and any violation of such trust is an actionable wrong. It follows naturally from this general rule that the body of the hospital patient which must be held untouched by the hospital during the seven-day notice period before either autopsy or distribution by the board should not be subjected to decomposition by exposure to warmth, but should be refrigerated until the running of the period. An act or an omission to act which would lead to decomposition or deterioration of a body would also be an actionable wrong.

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