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Memorandum

November 4, 2020

TO: Interested Persons

FROM: Luisa Altmann, Senior Research Analyst, 303-866-3518

SUBJECT: Laws Concerning Funeral Homes, Crematories, and Organ and Tissue Donations

Summary

This memorandum provides information related to:

- the regulatory oversight of funeral homes and crematories in Colorado and professionals working in these establishments;
- laws regulating organ and tissue donation;
- non-donation tissue banks; and
- recent Colorado legislation related to these topics.

Colorado Mortuary Science Code

The Colorado Mortuary Science Code provides title protection for various professionals who work in funeral homes and crematories and requires funeral homes and crematories in the state to be registered.¹

Professional title protection. Colorado law provides title protection for various professionals who work in funeral homes and crematories. These individuals are required to offer their services through a registered funeral home or crematory, and only individuals who meet the criteria established in law may use the relevant job title.

Mortuary science practitioners. Mortuary science practitioners receive compensation for:

- embalming or cremating human remains;
- arranging, directing, or supervising funerals, memorial services, or graveside services; or
- preparing human remains for final disposition.

¹Section 12-135-101, *et seq.*, C.R.S.

Mortuary science practitioners are required to have:

- at least 2,000 hours working as a mortuary science practitioner, including experience in cremation and embalming;
- graduated with a certificate, diploma, or degree in mortuary science from an accredited institution; and
- passed the mortuary science test.

Funeral directors. Funeral directors receive compensation for:

- arranging, directing, or supervising funerals, memorial services, or graveside services; or
- preparing human remains for final disposition by means other than embalming.

Funeral directors are required to have:

- at least 2,000 hours working as a funeral director; and
- directed at least 50 funerals or graveside services.

Embalmers. Embalmers receive compensation for embalming human remains or preparing human remains for embalming. Embalmers are required to have:

- at least 4,000 hours working as an embalmer; and
- embalmed at least 50 human remains.

Cremationists. Cremationists cremate human remains, or prepare for the cremation of human remains. Cremationists are required to have:

- at least 500 hours working as a cremationist; and
- cremated at least 50 human remains.

Funeral home and crematory registration. In Colorado, funeral homes and crematories must be registered with the Colorado Department of Regulatory Agencies (DORA). The businesses must follow a wide range of requirements, a few of which are included below.

Record keeping. Funeral homes are required to retain all documents and records concerning the final disposition of human remains for at least seven years after the disposition. Crematories are required to maintain a permanent record of each cremation occurring at the facility for at least five years.

Responsibility. Funeral homes and crematories are responsible for identifying and tracking human remains from the time they take custody of human remains until the remains are properly released. They must obtain proper permissions from and make every reasonable attempt to fulfill the wishes of the person with the right of final disposition. Human remains and cremated remains must be released properly and promptly to the correct individual.

General conditions. Funeral homes and crematories must embalm, refrigerate, cremate, bury, or entomb human remains within 24 hours after taking custody of the remains. These establishments must maintain appropriate sanitary conditions, and human remains must be transported in a safe and

sanitary way. Crematories must not cremate the human remains of more than one person at the same time or commingle the cremains of multiple human remains unless proper authorization has been received.

Disciplinary actions. Individuals found to be in violation of the mortuary science code may be guilty of a misdemeanor and be fined up to \$5,000, or jailed up to 24 months. Funeral homes and crematories that violate provisions of their registration may be fined \$100 to \$5,000 for each violation.

DORA may also take administrative action against a registered funeral home or crematory that is found to be in violation of the law. According to DORA, at least six funeral homes or crematories have had their registration revoked, suspended, or surrendered, including recent high-profile cases in Leadville and Montrose.²

Sunset review. The provisions of law related to the professional title protection within the industry and registration of funeral homes and crematories underwent a sunset review in 2014.³ This section of law is scheduled to undergo another sunset review prior to its repeal in 2024.

Federal and Colorado Organ and Tissue Donation Laws

The process of donating human organs and tissue is regulated by both federal and state law.

National Organ Transplant Law. The National Organ Transplant Law is intended to address the nation's shortage of organ donations and improve the organ matching and placement process. The law:

- places strict requirements on organizations that obtain organs meant for human transplant;
- provides for the establishment and operation of the Organ Procurement and Transplantation Network, which is designed to match and equitably distribute donated organs to individuals in need; and
- prohibits buying or selling human organs for human transplant.⁴

Colorado Revised Uniform Anatomical Gift Act. The Colorado Revised Uniform Anatomical Gift Act was drafted by the Uniform Law Commission and subsequently adopted by states, including Colorado. The law seeks to increase the supply of donated organs for human transplant. It applies to anatomical gifts, which includes the donation of all or part of a deceased human body for the purpose of transplantation, therapy, research, or education.

The law outlines who may donate a deceased human body and how the donation may be made. The law also specifies that these donations must be made to:

- a hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, for research or education;

²<https://dpo.colorado.gov/FuneralCrematory>.

³<https://drive.google.com/file/d/0B8bNvcf083ydTVFWQzRvMUJ1S28/view>.

⁴42 USC § 273, *et seq.*

- an individual designated by the person making the gift if the individual is the recipient of the body part; or
- an eye bank or tissue bank.

The law prohibits the sale and purchase of human body parts for transplantation, in line with federal law. However, individuals may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.⁵

Non-transplant Tissue Banks

Non-transplant tissue banks, also known as body brokers, are businesses that solicit, secure, collect, transport, store, and sell dead human bodies and body parts, often for profit. These businesses obtain dead human bodies that are donated for research, education, or training purposes and sell the bodies or body parts to institutions and individuals that use them for those purposes. Businesses in this industry engage in extensive advertising and often offer economic incentives, such as free cremation services, to donors and their families in return for body donations.

Several features of the Uniform Anatomical Gift Act allow non-transplant tissue banks to operate with very little regulatory oversight. Specifically, it does not:

- define who qualifies as an “other appropriate person” who may use a donated human body or body parts for research or education;
- define use for “research or education”;
- prohibit the sale of bodies and body parts that are not intended for transplantation;
- detail requirements for care of a body after it is donated; or
- specify that a body must be used by the entity to which it was gifted.

Recent Colorado Legislation

The legislature has passed two bills in direct response to recent cases that have resulted in registration suspensions and legal action.

[Senate Bill 18-234: Human Remains Disposition Sale Business.](#) This bill prohibits a person from owning a direct or indirect interest in a funeral home or crematory while simultaneously owning a direct or indirect interest in a non-transplant tissue bank. The bill defines a non-transplant tissue bank as an entity that recovers, transports, distributes, screens, stores, and arranges for the storage and distribution of human remains for purposes other than transplantation into a living human being.

The bill requires that non-transplant tissue banks:

- register with the Colorado Department of Regulatory Agencies (DORA) by July 1, 2019;
- maintain records of each transaction for at least three years, including documentation of the deceased person’s or deceased person’s representative’s consent to donate the remains;
- provide disclosure information to the donor or donor’s representative of how the remains may be distributed and that the tissue bank will be compensated; and

⁵Section 15-19-201, *et seq.*, C.R.S.

- comply with standards of practice, such as handling remains in a safe and sanitary manner and maintaining paperwork and identification of all remains the tissue bank receives.⁶

House Bill 20-1148: Offenses Committed Against a Deceased Human Body. This bill increases the criminal penalty for abusing a deceased human body from a class 2 misdemeanor to a class 6 felony. The bill also specifies that the statute of limitations for tampering with a deceased body and abuse of a corpse commences upon discovery of the criminal act.

⁶Section 12-140-102, *et seq.*, C.R.S.