

Chain of Custody

*Avoid Litigation
with Proper
Identification of
the Dead*

Problems?

by Wendy Russell Wiener



EVEN THE MENTION OF A RECESSION drives litigation and regulatory discipline up. There's no good explanation for the uptick in cases against the deathcare industry when people get anxious financially, but it happens. I handled more disciplinary and civil cases between 2007 and 2009 than at any other time in my nearly 30-year career as a deathcare regulatory lawyer. And there is one simple and undeniable fact regarding nearly every case: It involved the identification of the decedent's remains.

Sometimes remains are not properly identified, sometimes tags are switched, sometimes failure to check identification results in the wrong final disposition, sometimes remains are cremated when they are not intended to be. The failure to confirm identification throughout the entire period within which the remains are in the control of the funeral establishment leads to minor errors and major legal problems.

What follows is guidance on best practices for identifying and maintaining control and custody of remains from first call to final disposition.

Start with gathering information

So many things identify a person, yet deathcare forms solicit only a modicum of the information about the decedent. Most forms collect the decedent's name, sex, date of birth, and date of death but few forms go further.

Better forms gather additional identifying information such as age, *current* height, *current* weight, hair color, and eye color. The best forms get all that plus requiring descriptions and images of visual markings such as tattoos, scars, and piercings.

Why request age when date of birth and death are present? If the date of birth is 1923 and the age is listed as 35, more investigation is required as to the identity of the decedent.

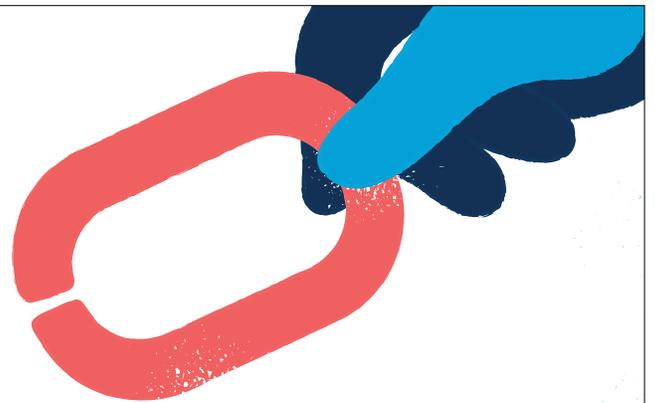
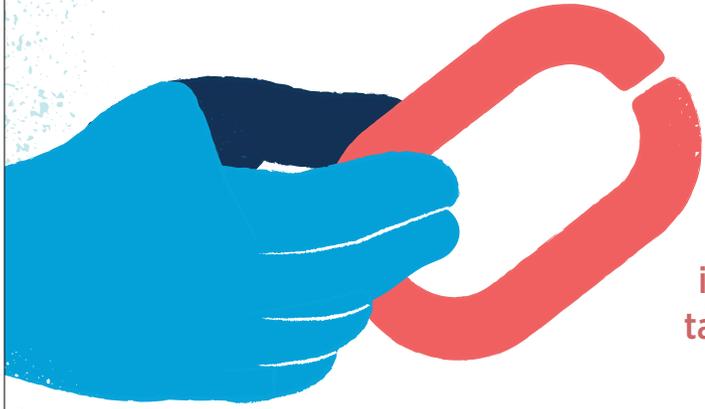
Why request current height and current weight? A long illness will have changed the height and weight from that set forth on the decedent's driver's license.

Why request a description or image of a tattoo? Tattoos are commonplace now, but no two are identical—the tattoo can be dispositive evidence of the identity of the decedent.

The more opportunities presented to correctly identify the decedent, the more likely the decedent is to be correctly identified upon first contact with the funeral establishment or crematory.



Take time to train and retrain yourself and your staff on the basics that underpin the relationship between the family of the decedent and the funeral home or crematory.



The decedent should be visually identified, including confirming affixed identification markers such as bands and tags, during every change of location—no matter how small or temporary.

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Maintain the chain of custody

Clients often complain that their employees don't want to complete more forms or provide more information; that it takes too much time. My response is that the extra five minutes associated with properly maintaining custody of a decedent is worth millions of dollars in today's litigious environment.

The public has recently seen the television news stories and articles about the family seeking damages of \$50 million for burying a loved one in the wrong burial space. And, though such a case may not generate damages of nearly that amount, the public does not know that and thus expectations are set.

Those expectations are that if a funeral home or crematory loses control over a deceased family member, that \$50 million is what they are due to compensate for the error. That's why I want my clients' staff to take extra time to check and document the identification and location of the decedent at every single stop along their deathcare journey at the funeral home or crematory. The decedent should be visually identified, including confirming affixed identification markers such as bands and tags, during every change of location—no matter how small or temporary. More checking is better.

Documentation is everything!

In a world that values transparency, the only way for the funeral home or crematory to prove that it properly identified the decedent and maintained custody of the remains is through the records that are created throughout the process. Those records should be measured by my four-part test: the CCNP test.

1. Are the records COMPLETE? Every box should be filled in, full middle names should be used; if the

item called for is not applicable, indicate that, don't leave a blank.

2. Are the records CONSISTENT? Full name every time; refrain from getting lazy where information must be duplicated. Give the form the attention it deserves.
3. Are the records NEAT? I often remind my clients that they are not doctors and sloppy handwriting is not a virtue. Remember, the records you create are the primary way you will express the care you took with the decedent when called to account for something years after the arrangements occurred.
4. And finally, are the records something you are PROUD of? If your files contain sticky notes containing extraneous comments about a decedent's family member or the receipt from your lunch is stuck to the embalming authorization, you will not appear to a family to have cared about their decedent.

Good records and forms that pass the CCNP test can save your business from regulatory and civil damages. They speak for you long after the decedent is out of your care.

Attention to detail carries the day

Take time to train and retrain yourself and your staff on the basics that underpin the relationship between the family of the decedent and the funeral home or crematory. The basics are called basics for a reason—they are the base of the trust that families place in the deathcare industry. ☑

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