

by **Poul Lemasters, Esq.**



513.407.8114
poul@lemastersconsulting.com

**ICCFA
MAGAZINE
AUTHOR
SPOTLIGHT**

► Lemasters is principal of

Lemasters Consulting, Cincinnati, Ohio, a funeral profession consulting firm.

www.lemastersconsulting.com

► He is an attorney and funeral director, graduated from the Cincinnati College of Mortuary Science in 1996 and from Northern Kentucky University, Chase College of Law, in 2003. He is licensed as a funeral director and embalmer in Ohio and West Virginia and admitted to practice law in Ohio and Kentucky.

► He is the ICCFA's special cremation legal counsel. **ICCFA members in good standing may call him to discuss cremation-related legal issues for up to 20 minutes at no charge to the member.** The association pays for this service via an exclusive retainer.

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for information on Lemasters' presentation, "The \$10,000 cremation: A look at your true costs," part of the **Cremation Arranger Certification** program to be held at the **2010 ICCFA Convention & Expo, March 10-13**, San Antonio, Texas.

► Lemasters will also participate in the annual **Government and Legal Session** at the convention and will speak on "**Pet Cremations: Legal and liability issues.**"

CREMATION

How often do you allow a body to be cremated without a positive ID from the family or its representative?
If you didn't say "never," it's time to change your ways.

Getting an ID *every* time

It is amazing how hard it is to break bad habits and start good ones. Surveys show that many, if not most, New Year's resolutions are broken early in the year. But there is one bad habit some cremation providers practice at least some of the time, and it's one they need to break no matter how hard it is, because it affects the financial health of their businesses.

Despite all the lawsuits and the warnings from attorneys and other consultants, there are still people who sometimes go ahead with a cremation even though the body has not been identified by the authorizing agent or representative. All people who handle cremations need to get into the habit of making sure that identification is done every time.

Good intentions gone wrong

I have written several articles on cremation and specifically on the identification process (see the October 2008 issue of ICCFA Magazine). However, I have not addressed the basic identification procedure before, so that is what I will do in this article. As a cremation provider, your procedure should be that every deceased individual is properly identified before cremation.

Many providers do have identification as part of their standard procedures, but even the best make exceptions. Among the most common reasons for exceptions:

- the removal was made from the residence;
- the family does not want to see the body;
- the provider does not want to push a family who is reluctant for whatever reason to come in and do the identification.

The common factor in each of these cases is a desire to make things easier for the family, a natural inclination for people involved in funeral and cemetery work. Unfortunately, good intentions are not a valid defense in a court of law. Believe me, I wish they were, because I've seen many people end up being sued who meant well, who were trying to spare the family more grief and trouble.

But the fact is, unless the authorizing agent or his/her representative identifies the deceased, the cremation provider takes on additional potential

liability. Even when the best of procedures are followed, cremation is already fraught with potential areas of liability—providers should never expose themselves to additional ones.

An example of what not to do

Here is a prime example of a cremation provider setting itself up for potential problems. I recently reviewed a Cremation Authorization and Disposition form. The identification section included the typical forms of identification—ID by authorizing agent, ID by representative and ID by photograph. But there was a fourth option, "other," followed by a blank line.

I asked what "other" might include. The firm informed me that many families just didn't want to ID the deceased, so in those cases they would check "other" and write in that the family refused to ID the body. "Other" was also used in cases where the body was identified by someone else, such as hospital staff or a coroner. This is a prime example of good intentions with bad liability implications.

There are several problems with the use of "other" and the fill-in-the-blank line. The main one is that most people will gravitate toward the easiest option available. If you give the family the choice of coming in to do an in-person ID or refusing to do so (letting you take on the liability of possibly cremating the wrong person), the latter will be the first choice for a lot of people.

It also gives staff members uncomfortable with pressing the family to make the identification an easy out. After all, "other" wouldn't be listed unless it was OK to select it, right?

The provider needs to limit the options to positive identification by the family, the authorizing agent or a representative, and to enforce those options. I understand that in some cases, there may be legitimate and overriding reasons why an in-person identification cannot be made (such as trauma, religious reasons, family located out of town), but those cases should be rare exceptions handled on a case-by-case basis. Do not include the easy out on your forms—easy does not equal right.

Another problem with allowing a "fill-in-the-

blank option is the inconsistency it necessarily introduces. Your cremation procedures need to be consistent from family to family. If a provider “fills in the blank” for the identification process, there can be a lot of variation on how identification is handled from family to family. Such differences in your procedures can be used to establish that you acted improperly if you are ever faced with a lawsuit.

Lastly, it is not wise to allow someone such as the coroner or doctor or nurse to identify the body. Such people may give you a verbal identification but most likely will not sign the form and assume liability if their identification is wrong.

As a matter of fact, almost all coroners enjoy protection under the doctrine of sovereign immunity which, simply stated, protects governments and government officials from being sued. This means coroners who mistakenly identify a deceased cannot be sued—even if they did sign a form. There are exceptions, but this is the basic rule.

A provider should limit identification to the authorizing agent or that person’s representative. The authorizing agent is established under state law and typically is the spouse, adult children, parents, and so on through classes of people defined by their relationship to the deceased.

A representative is someone the authorizing agent has designed to handle the identification. A representative works well in cases where the authorizing agent is out of town, or when there are other reasons family members do not wish to see the body.

The provider should not rely on anyone to identify the deceased who is not appointed by the authorizing agent or who refuses to sign the authorizing form as a party assuming liability. Most important, the provider should never be the one who identifies the deceased.

A good procedure

Implementing proper identification procedures may take some determination but is simple. It absolutely should be part of your best practices. The rule: Identify every deceased person before cremation.

As part of the procedure, make sure that during the arrangement conference you inform the family that your policy is that every body is identified before cremation. In at-need situations, the arranger should allow the family to choose the container in which the cremation will take place, then allow the

family to review the Cremation Authorization and Disposition Form.

While the family is reviewing the form, the arranger can prepare (or have someone else prepare) the deceased for identification by placing the body in the chosen container. Some providers have the identification take place while the deceased is on a table, but it is a good practice to have the identification take place with the body in the container the family has chosen. (This is to try to eliminate later claims that the chosen container was not used.)

Once the deceased is ready for the viewing, the family can be escorted in to make a positive identification of both the deceased and the cremation container.

Many providers ask if they can charge for the identification process. The answer is no. Remember, though, an identification is purely that—identification. There is a difference between that and viewing. The provider has a right to limit the identifica-

tion to a certain amount of time and a certain number of people.

If the family wants more time with the body, you can charge for that service. Some providers are beginning to offer, for a fee, minimal, private viewing times prior to direct cremation. This is permissible so long as it is in fact an option, in addition to the identification provided at no cost.

There are many providers who go beyond the basics of identification, and they should be applauded on their practices and procedures. However, there are many who consider identification a burden rather than a necessary protection. If you are among the latter, or if you find yourself worrying more about sparing families the necessity of identification than about protecting your business and reputation, it’s time to think again. Review your cremation identification procedures. They should help ensure that you will always cremate the right body and return the right remains to the family. □