



## MCLE ARTICLE: HOW TO GET RID OF A DEAD BODY

By Daniel C. Kim\*

Those of us who watched AMC's hit drama "Breaking Bad" may recall the scene in the pilot episode where Walt and Jesse set out to dissolve a dead body in hydrofluoric acid. Jesse neglects to take Walt's (the chemistry teacher's) advice to dissolve the body in a plastic container and instead uses a bathtub, only to have the acid melt through the dead body and the tub, and come crashing through the floor supporting the tub, and the floor below that. Here, there is some truth in fiction. Pursuant to Assembly Bill 967, signed by Governor Brown in 2017, the liquification of human remains will be permitted soon, at least for professionals and entities operating a licensed hydrolysis facility where such processes may be carried out. The new law becomes operative on July 1, 2020.

Popular culture and criminal activity aside, this article sets out to summarize the basics of disposing of human remains, covering issues such as who has control over the remains, which laws and documents govern such control, the transportation and disposition of remains, and the removal of remains after burial.

### I. STATUTORY AND REGULATORY RESOURCES

The control and disposition of human remains spans numerous statutory and regulatory schemes at the local, state, federal, and international level, depending on the location of death and the desires of the decedent and family with respect to disposition. A person may wish to have his ashes scattered on the white sand beaches of the Caribbean. Another may wish for his body to be transported back to his home country and buried alongside family. No one statutory or regulatory scheme covers every possible scenario. Attorneys and the families of decedents will need to conduct independent research, particularly where the wishes of the decedent, or the wishes of the one in control of the human remains, are not customary.

In most cases legal requirements are regulated at the state level. Statutory schemes in multiple California codes control and regulate the disposition of human remains. Division 7 of the Health and Safety Code, entitled "Dead Bodies" provides numerous statutes relating to the handling of human remains, including such issues as the custody and duty of interment (or burial), the Uniform Anatomical Gift Act, embalming and

transportation, and disinterment and removal. Government Code sections 27460 through 27540 prescribe the duties of the coroner, including inquests and autopsies. Health and Safety Code sections 103050 through 103105 govern permits relating to the disposition of human remains such as permits for disposition (section 103065), permits for remains transported into the state (section 103085), and disinterment and removal permits (section 103105).

At the federal level, the Environmental Protection Agency ("EPA") and the Transportation Security Administration ("TSA") have regulations regarding the transportation and disposal of human remains. For example, a non-cremated body or ashes may be disposed of at sea, however, narrow environmental regulations apply. Travel with remains is also regulated by the TSA and private airlines. Lastly, local governmental agencies have ordinances and regulations that may apply to the transportation and disposal of human remains. Many of the permits, death certificates, and other formal documents are obtained at the local county level. This article addresses some of the common issues and concerns that families and attorneys face after a loved one has passed away.

### II. THE CONTROL OF REMAINS

#### A. Who Has Control?

Subject to a decedent's written wishes, the following individuals, in the order listed, have the exclusive right to dispose of the decedent's remains:<sup>1</sup>

1. The Person Authorized to Direct Disposition (PADD) on a U.S. Department of Defense Record of Emergency Data (DD Form 93) (deaths of military personnel);
2. An agent under a power of attorney for health care under Probate Code sections 4600 through 4806;
3. The decedent's competent surviving spouse or registered domestic partner;
4. The decedent's competent surviving child (or a majority of adult children);
5. The decedent's competent surviving parent(s);
6. The decedent's competent adult sibling (or the majority of adult siblings);
7. The surviving competent adult persons in the next degree of kinship;
8. A conservator of the person;
9. A conservator of the estate; or
10. The public administrator when the deceased has sufficient assets.



Not surprisingly, when the decedent was a victim of murder or voluntary manslaughter and the individual charged with such crimes is the person who has the right to control disposition of the decedent's remains under Health and Safety Code section 7100, that right passes to the person next in priority.<sup>2</sup> Should the charges be dropped or the defendant acquitted, his or her right to control disposition is restored.<sup>3</sup>

Parties who dispute the person(s) vested with authority to dispose of remains under section 7100 may petition a court of competent jurisdiction for an order for control of the disposition.<sup>4</sup>

If the person with the duty to act under section 7100 fails to act or cannot be found within the statutorily required period of time (7 to 10 days), the right to control the disposition and arrange for funeral goods and services is relinquished and passes to the person next in priority under section 7100.<sup>5</sup> When disputes regarding disposition or funeral arrangements arise between persons with equal priority under section 7100, a petition may be filed in the superior court in the county of the decedent's domicile for the determination of the person who has the control of disposition.<sup>6</sup> The court is required to make an order directing that person to make interment of the remains and setting forth an alternate order of who shall act if the person appointed by the court fails to do so within seven (7) days.<sup>7</sup> In general, the person who has the control of the decedent's remains also has the duty of interment which includes the liability for reasonable interment costs.<sup>8</sup>

The authority to dispose of the remains vested under section 7100 is exclusive. For example, there is no right to an autopsy for civil discovery purposes.<sup>9</sup> Further, as discussed below, the person authorized to act under section 7100 has exclusive control over funeral and burial arrangements, including invitees, which may give rise to disputes among the interested parties.

## **B. What Governs the Control?**

So long as the decedent's wishes are not contrary to the coroner's duties set forth in the Health and Safety Code,<sup>10</sup> the person entitled to control disposition must faithfully carry out the decedent's written instructions with respect to funeral arrangements and the disposition of his or her remains.<sup>11</sup> The only legal requirements for the writing are (1) the decedent's instructions clearly and completely set forth the final wishes of the decedent in sufficient detail to preclude any material ambiguity, and (2) arrangements for payment have been made so as to preclude payment by the decedent's survivor(s), if any.<sup>12</sup> If the decedent's instructions are set forth in a will, those instructions are to be faithfully carried out even where the validity of the will in other respects is in dispute.<sup>13</sup> If an indigent

decedent has made no provision and the estate is insufficient to provide for interment, no duty of interment is imposed on any person residing in this state. In that case, the coroner of the county in which the person dies may take possession of the remains and dispose of them.<sup>14</sup>

When the decedent has not expressed his or her wishes by will or other written direction, the right to control disposition of the decedent's remains and to make funeral arrangements rests exclusively with the decedent's fiduciary and/or certain surviving relatives as described above.<sup>15</sup>

## **III. IMMEDIATE CONCERNS POSTMORTEM**

Although dealing with the grief following a person's death is burdensome, many issues must be addressed immediately after death. For example, before a funeral can be arranged, it may be necessary for the coroner to perform an inquest, for an autopsy to be conducted, or for the decedent's wishes regarding organ donation to be honored. Some of the more common, immediate issues following death are addressed here, including anatomical gifts, coroner's inquests into the cause of death, autopsies and other procedures, deaths while abroad, and death certificates.

### **A. Anatomical Gifts**

An anatomical gift is defined under the Health and Safety Code as "a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education."<sup>16</sup> Many of us accurately assume that such a gift can be made to a hospital, accredited medical school, dental school, college, university, or organ procurement organization, for research or education.<sup>17</sup> What is lesser known, however, is that individuals have the right to make an anatomical gift directly to another person.<sup>18</sup> If the decedent has specified the recipient of an anatomical gift, the gift passes subject to the rules set forth in Health and Safety Code section 7150.50, depending on the purpose of the gift. If the anatomical part cannot be used for the named individual, the organ passes to the appropriate eye bank, tissue bank, or organ procurement organization.<sup>19</sup> Additionally, if the gift is not for the proper purpose, i.e., for transplantation, therapy, research, or education, the gift lapses and control of the anatomical part passes to the person under obligation to dispose of the body or part.<sup>20</sup>

An anatomical gift can be made by the donor during the donor's life or by the donor's agent under a valid power of attorney for health care that grants such authority.<sup>21</sup> Donors can make the gift through a valid writing or through the Donate Life California Registry process at the Department of Motor Vehicles. The revised Uniform Anatomical Gift Act allows the



DMV designation to supersede what is stated in an advance directive unless the directive specifically revokes the DMV designation. Unless the decedent has validly expressed a refusal to make an anatomical gift,<sup>22</sup> other individuals may authorize an anatomical gift in the following order of priority: authorized agents under a power of attorney, the decedent's spouse/domestic partner, parents, adult siblings, grandchildren, and grandparents. Interestingly, following the grandparents the next authorized class is persons who have "exhibited special care and concern for the decedent during the decedent's lifetime,"<sup>23</sup> and persons in that class take priority over guardians or conservators and other third parties having authority to dispose of the decedent's body.<sup>24</sup> If the deceased donor was known to possess religious beliefs that would be violated by an anatomical gift, only that donor can authorize the donation.<sup>25</sup>

Following a person's death, "reasonable efforts" must be made to search for the decedent's intent with respect to anatomical gifts. "Reasonable efforts" is defined as a search for at least twelve (12) hours and must include a check of local police missing persons' records, examination of personal effects, and questioning of any persons who visited the decedent before his or her death or in the hospital, accompanied the decedent's body, or reported the death.<sup>26</sup> The search must be conducted by any law enforcement officer, paramedic, firefighter, or other emergency personnel who finds a decedent or near-death individual, or the hospital, following the decedent's arrival.<sup>27</sup>

Pursuant to a valid request, the coroner may permit the removal of organs that constitute an anatomical gift from the decedent even when an inquest is required.<sup>28</sup> If no autopsy is required, the organs comprising the anatomical gifts may be released.<sup>29</sup> If an autopsy is required but the coroner and the county medical examiner agree that the removal of organs comprising an anatomical gift will not interfere with an inquest or autopsy, the organs may be released.<sup>30</sup>

### **B. Coroner's Inquest**

A coroner's inquest is an inquiry into the manner and cause of a person's death. It is required in a variety of circumstances set forth in Government Code section 27491. For example, such inquests are required in any case of violent, sudden, or "unusual" death, unattended death, accidental death, death suspected to be caused by a contagious disease, death of a person not attended by a physician within a period prior to death, and deaths resulting from criminal activity.<sup>31</sup> After the inquest, the coroner has ninety (90) days to deliver the decedent's property to the appropriate party.<sup>32</sup>

### **C. Autopsy and Other Procedures**

An autopsy may be performed if the decedent has authorized an autopsy in writing (by will or otherwise) or if there is a written request from any of the following individuals: (a) the surviving spouse; (b) a surviving child or parent; (c) a surviving brother or sister; (d) any other kin or person who has acquired the right to control the disposition of the remains; (e) a public administrator; or (f) a coroner or any other duly authorized public officer.<sup>33</sup> The cost is borne by the person requesting the autopsy.<sup>34</sup> Additionally, in limited circumstances, the authority to perform an autopsy can be derived from a coroner's inquest.<sup>35</sup> For those who oppose autopsies on religious grounds, an adult may execute a "certificate of religious belief" stating that an autopsy would violate his or her religious beliefs.<sup>36</sup> The decedent's wishes may only be set aside by court order or if the coroner reasonably suspects that the death was caused by criminal act or contagious disease constituting a public health concern.<sup>37</sup>

Litigants should be aware that no court-ordered autopsies are permitted for discovery purposes. The statutes authorizing autopsies are strictly construed. Autopsies will not be ordered by a civil court even where it may be relevant to the determination of a disputed issue of fact.<sup>38</sup> For example, in a medical malpractice wrongful death action, the defendant could not assert a spoliation of evidence argument against the surviving spouse, the plaintiff, who had the exclusive right to control disposition of the decedent's remains and was not required to authorize an autopsy.<sup>39</sup> On the other hand, in criminal actions, defendants may have an implied right to have a body independently examined.<sup>40</sup>

Embalming is a process in which blood is drained from the body and replaced with fluids that delay decomposition. The process is often unnecessary since adequate refrigeration accomplishes the same purpose. All bodies must be embalmed or refrigerated if final disposition will not occur in 24 hours. Embalming is required if the decedent is transported by common carrier.<sup>41</sup>

### **D. Deaths While Abroad**

In the unfortunate event that a California resident dies while traveling abroad, counsel should contact the U.S. Department of State or the U.S. Consulate of the country in which the person died. Since the applicable laws and procedures vary from country to country, the State Department or Consulates can advise on the immediate steps that are necessary, such as transportation of the body, arranging for burial, and obtaining death certificates. Typically, where expenses are paid in advance, arrangements can be made for burial or other disposition in the country of death or shipment of the remains to the United States.



## E. Death Certificates

Following an individual's death, there are a myriad of tasks that require the use of a "Certified Copy" or "Certified Informational Copy" of a death certificate. For example, the estate may need to transfer bank and other financial accounts, access safety deposit boxes, file insurance claims, or record affidavits of death relating to real property. Any interested person may obtain a "Certified Informational Copy." Only an authorized person<sup>42</sup> may obtain a "Certified Copy."

If a death certificate is required from a foreign country and will be produced in a court here, the attorney should review the requirements to properly authenticate that certificate. In the recent case of *Estate of Herzog*,<sup>43</sup> the court excluded German birth certificates offered in evidence because those certificates were not self-authenticating and the public officer who signed the certificate was not identified in a separate attestation that complied with Hague Public Documents Convention.

A death certificate must be filed with the local registrar within eight (8) days of the death and before the body is buried or cremated.<sup>44</sup> One of the more convenient ways of obtaining copies of a death certificates is to ask the person or entity that files the certificate to order them for you. Typically, this will be the funeral home, mortuary, or crematory. To order copies of death certificates at a later point in time, individuals can visit the California Department of Public Health website and download a mail-in order form.

## IV. TRANSPORTATION, INTERNMENT, AND DISPOSAL OF REMAINS

When the certificate of death is properly executed and completed, the local registrar of births and deaths will issue a permit for disposition of remains that specifies any one of the following methods of disposition:<sup>45</sup>

- The name of the cemetery where the remains shall be interred;
- Burial at sea as provided in Health and Safety Code section 7117;
- The address or description of the place where remains shall be buried or scattered; or
- The address of the location where the cremated remains will be kept.

### A. Transportation and Shipment of Remains

If the decedent's body has not been cremated, embalming is required when the decedent is to be transported by common

carrier. Mortuaries and other funeral services will obtain the requisite permitting and facilitate transfer of a decedent's body. Otherwise, in transporting and disposing of a decedent's body that has been cremated, the attorney and responsible parties need to be mindful of several issues.

#### 1. Flying with Cremains

The Transportation Security Administration (TSA) regulations allow parties to transport ashes on an airplane but each airline's policy differs.<sup>46</sup> The cremains will be screened by TSA officers as part of their standard operating procedure, which includes examination through x-ray devices. If the cremains cannot be adequately examined using the machines, the TSA is authorized to apply other, non-invasive means of examination. However, TSA agents are not authorized to open urns or other containers that cannot be scanned by the x-ray machines and may deny parties access past the security checkpoint. Therefore, it may be best to travel with the cremains in a container that can pass through the x-ray machines and avoid anything like metal, stone, granite, or other dense materials for containers. The TSA's recommendation: "To facilitate screening, we suggest that you purchase a temporary or permanent crematory container made of a scannable material. If the container is made of a material that generates an opaque image, the Transportation Security Office will not be able to clearly determine what is inside the container and the container will not be permitted."<sup>47</sup>

#### 2. Shipment of Cremains

The U.S. Postal Service provides the only legal method of shipping cremains domestically or internationally, provided they are packaged accordingly. One must use registered mail with a return receipt or express mail. The package must be marked on the outside with the Postal Service Cremated Remains Label 139. There must be two containers—an inner container and an outer container—and sufficient padding to prevent leakage. For international shipments, the cremains must not be prohibited by the destination country and the applicable customs declarations form must be completed. The Universal Postal Union requires cremated remains to be packaged and mailed in a funeral urn pursuant to the International Mail Manual.

## B. Interment and Funeral Arrangements

Although there is no property right in a dead body, there is an obligation of burial which rests upon the appropriate individual pursuant to Health and Safety Code section 7100. The individual has the right to control the disposition of the remains of a decedent, the location and conditions of interment, and arrangements for funeral goods and services to be provided.<sup>48</sup> Courts will enforce this exclusive right to disposition and protect



the dead body from mutilation or desecration.<sup>49</sup> The right to dispose of a decedent's remains under section 7100 includes the right to private funeral and burial services.<sup>50</sup> As one court summarized: "The one in whom the right to control vests by statute has the right and the power to dispose of the remains without services, with public services or with services attended by invited guests only. Friends or family members who are uninvited have no right to be present."<sup>51</sup>

Persons vested with control of the remains under Section 7100 may bring an action for tortious interference with the right to dispose of a decedent's remains against morticians, cemeteries, relatives, and anyone else who interferes with this right.<sup>52</sup>

### C. Disposition of Cremains

In California, you may choose any of the following methods of disposition of cremated remains:

- Placement in a columbarium or mausoleum;
- Burial in a plot in a cemetery;
- Retention at a residence—the funeral establishment or crematory will have the person receiving the cremains sign a Permit for Disposition showing that the remains were released to that person and will file it with the local registrar of births and deaths. The recipient may not remove the cremated remains from the container and must arrange for their disposition upon that person's death;
- Storing in a house of worship or religious shrine if local zoning laws allow;
- Scattering in areas of the State where no local prohibition exists and with written permission of the property owner or governing agency. The cremated remains must be removed from the container and scattered in a manner so they are not distinguishable to the public;
- Scattering in a cemetery scattering garden; and
- Scattering at sea at least 500 yards from shore, including inland navigable waters but excluding lakes and streams.

Cremated remains may not be transported without a permit from the county health department, and they may not be disposed of in refuse.

Cremated remains may be disposed of or scattered pursuant to Health and Safety Code sections 7054.6, 7116, 7117, and 103060. Generally, cremains may be scattered in any area where no local rule prohibits it, provided that the cremains are

not distinguishable to the public, are not in a container, and the person in control of disposition has obtained written permission from the private property owner or governing state or local agency to scatter the cremains on the property.<sup>53</sup> A permit for disposition must be obtained from the local registrar by the person having the right to control disposition of the cremains.<sup>54</sup> Within ten (10) calendar days of scattering, the permit must be signed, endorsed with the final disposition date, and returned to the local registrar.<sup>55</sup> The remains must be disposed of within sixty (60) days.

Cremated remains may be taken by boat from any harbor, or by air, and scattered at sea. The term "at sea" is defined as the "inland navigable waters of this state, exclusive of lakes and streams, provided that no such scattering may take place within 500 yards of the shoreline."<sup>56</sup> Those wishing to dispose of cremains in lakes, streams, bridges, piers, or other similar locations must obtain the written consent of the property owner or governing agency. For disposal of cremains in state-regulated waters (inland waters, rivers, lakes, bays, etc.), any person in control of disposition is required to file a verified statement with the local registrar of deaths in the county nearest the point where the remains are scattered. That verified statement must contain the name of the deceased person, the time and place of death, the place at which the cremated remains were scattered, and any other information required from the local registrar.<sup>57</sup>

For disposal and burial of human remains in federally regulated ocean waters, the Environmental Protection Agency ("EPA") has additional requirements and restrictions. A Marine Protection, Research and Sanctuaries Act Permit ("MPRSA") permit must be obtained prior to disposal, and parties must notify the EPA of the burial within thirty (30) days.<sup>58</sup> The permit may authorize disposal of both non-cremated and cremated remains at sea.<sup>59</sup> The placement of human remains in ocean waters within three nautical miles from the shore is not permitted.<sup>60</sup> Non-cremated human remains may be disposed at sea, however, adequate measures must be taken to ensure that the remains sink to the bottom of the ocean rapidly and permanently and certain depth requirements may apply depending on the jurisdiction.<sup>61</sup> Cremated remains can be disposed of at any depth provided that the disposal occurs at least three nautical miles from shore.<sup>62</sup>

### D. Water Cremation

As referenced in the introduction, starting in 2020, it will be lawful to dispose of human remains through a process commonly referred to as water cremation, also known as alkaline hydrolysis, aquamation, or bio-cremation. The body is put in steel containers and dissolved in an alkaline solution for about four hours. Afterwards, all that is left are the bones which are then crushed into ashes. Not surprisingly, the movement towards



water cremation is largely due to efforts to make cremation more environmentally friendly, since standard cremation leaves a greater carbon footprint. California will join over a dozen other states where liquid cremation is already legal including Oregon, Minnesota, Maryland, Maine, Kansas, Illinois, Florida, Colorado, Georgia, Wyoming, Idaho, Nevada, and Utah.

## **E. Criminal Consequences for Unlawful Disposition of Remains**

There are a variety of criminal consequences relating to the unlawful treatment and disposition of human remains. Some of the more common issues:

### *1. Removal of Dead Bodies*

Anyone who removes any part of any human remains from any place where it has been interred, or from any place where it is deposited while awaiting interment or cremation, with intent to sell it or to dissect it, without authority of law, without written permission of the person or persons having the right to control the remains under section 7100, or with malice or wantonness, has committed a public offense that is punishable by imprisonment pursuant to subdivision (h) of section 1170 of the Penal Code.<sup>63</sup>

### *2. Unlawful Disposal of Cremains*

Notwithstanding the above, cremated remains may be removed from the place of interment for disposition as provided in Health and Safety Code section 7054.6 or for burial at sea as provided in section 7117.<sup>64</sup> Any unauthorized disposal of cremains in any unauthorized location is a misdemeanor.<sup>65</sup>

### *3. Unauthorized Removal of Personal Property*

Anyone who removes or possesses dental gold or silver, jewelry, or mementos from any human remains without specific written permission of the person or persons having the right to control those remains under section 7100 is punishable by imprisonment pursuant to subdivision (h) of section 1170 of the Penal Code.<sup>66</sup>

### *4. Mutilation of Dead Bodies*

Anyone who willfully mutilates, disinters, removes from the place of interment, or commits an act of sexual penetration on, or has sexual contact with, any remains known to be human, without authority of law, is guilty of a felony.<sup>67</sup>

## **V. DISINTERMENT AND REMOVAL**

Under California law there is a well-established presumption against removing the remains of a deceased person, i.e., against

disturbing “the repose of the dead.” In certain instances, families or other interested parties may seek to have a decedent’s remains moved after burial or other disposition. Such disinterment and removal is regulated. No remains of any deceased person may be removed from any cemetery except upon court order or the written order of the health department with competent jurisdiction.<sup>68</sup> Additionally, the local registrar is required to issue the necessary permits.<sup>69</sup> The remains may be removed from a cemetery plot only with the consent of the cemetery authority and the written consent of the following individuals, in the order of priority named: (a) the surviving spouse, (b) the surviving children, (c) the surviving parents, and (d) the surviving siblings.<sup>70</sup> If the required consent cannot be obtained, parties should seek the permission of the superior court of the county where the cemetery is situated.<sup>71</sup>

Where litigation over disinterment ensues, each case involving disinterment must be considered in equity on its own merits based on the particular circumstances involved.<sup>72</sup> “Many circumstances arise from time to time necessitating a disturbance of the repose of the dead, but it must be some controlling public reason or superior private right which should induce the court to permit that to be done which from time immemorial has been considered abstractly as a work of desecration.”<sup>73</sup> In exercising its direction, a court is to consider:

the interests of the public, the wishes of the decedent, the rights and feelings of those entitled to be heard by reason of relationship or association with the decedent, the degree of relationship to the decedent of those opposing or seeking disinterment, the conduct of the parties seeking and opposing reinterment, especially as it relates to the circumstances of the original interment, the integrity and capacity of the person seeking reinterment to provide a secure and comparable resting place for the decedent, any agreement with, or regulations of, the persons or associations maintaining the cemetery in which the decedent is buried, and whether consent was given, by persons with authority to do so, to the burial in the first place of interment.<sup>74</sup>

Interestingly, there is no requirement that the decedent’s wishes override the other factors relevant to disinterment.<sup>75</sup>

In the court’s exercise of this discretion, even a surviving spouse’s petition to disinter has been denied where the decedent’s brother (who owned the crypt) objected, the surviving spouse had originally consented to initial interment conditions, and the surviving spouse delayed 20 years in seeking disinterment.<sup>76</sup>



Because of the strong public policy of leaving the dead undisturbed, parties should carefully consider the propriety and need for disinterment before pursuing such actions.

## VI. CONCLUSION

As summarized above, the treatment and disposition of human remains is a highly regulated area of law and rightly so. Well-established public policies for the respectful treatment and protection of deceased citizens of this state have resulted in one of the most highly regulated statutory schemes of any state in this country, many violations of which can result in significant civil liabilities and criminal charges. If doubts exist regarding the proper treatment of the deceased, parties and their attorneys should carefully navigate the circumstances and thoroughly investigate the proper steps to comply with all applicable law.

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- 1 Health & Saf. Code, section 7100, subd. (a); *Conroy v. Regents of Univ. of Cal.* (2009) 45 Cal.4th 1244, 1255.
- 2 Health & Saf. Code, section 7100, subd. (b)(1).
- 3 Health & Saf. Code, section 7100, subd. (b)(2).
- 4 Health & Saf. Code, section 7105, subd. (d).
- 5 Health & Saf. Code, section 7105, subd. (a)-(b).
- 6 Health & Saf. Code, section 7105, subd. (c).
- 7 Health & Saf. Code, section 7105, subd. (c).
- 8 One exception to this rule exists for agents under a power of attorney for healthcare. For such agents, the agent is only liable for interment costs where the agent has either specifically agreed to pay the costs or has made decisions concerning disposition that incur costs. Health & Saf. Code, section 7100, subd. (a)(1).
- 9 *Walsh v. Caidin* (1991) 232 Cal.App.3d 159, 161.
- 10 Health & Saf. Code, sections 7100-7117.
- 11 Health & Saf. Code, section 7100.
- 12 Health & Saf. Code, section 7100.1, subd. (a).
- 13 Health & Saf. Code, section 7100.1, subd. (c).
- 14 Health & Saf. Code, section 7104.
- 15 Health & Saf. Code, section 7100; *Spates v. Dameron Hosp. Ass'n* (2003) 114 Cal.App.4th 208, 222.
- 16 Health & Saf. Code, section 7150.10, subd. (a)(3).
- 17 Health & Saf. Code, section 7150.50, subd. (a)(1).
- 18 Health & Saf. Code, section 7150.50, subd. (a)(2).
- 19 Health & Saf. Code, section 7150.50, subds. (b), (g).
- 20 Health & Saf. Code, sections 7150.40, subd. (a), 7150.50, subd. (i).
- 21 Health & Saf. Code, 7150.15, subd. (b).
- 22 Health & Saf. Code, 7150.30.
- 23 Health & Saf. Code, section 7150.40, subd. (a)(8).
- 24 Health & Saf. Code, section 7150.40.
- 25 Health & Saf. Code, section 7150.30, subd. (e).
- 26 Health & Saf. Code, section 7150.40, subd. (a)(10)(B).
- 27 Health & Saf. Code, section 7150.55.
- 28 Health & Saf. Code, section 7151.20, subd. (a).
- 29 Health & Saf. Code, section 7151.20, subd. (b).
- 30 Health & Saf. Code, section 7151.20, subd. (c).
- 31 Gov. Code, section 27491.
- 32 Gov. Code, section 27465.
- 33 Health & Saf. Code, section 7113.
- 34 Gov. Code, section 27520, subd. (c).
- 35 Gov. Code, section 27491.
- 36 Gov. Code, section 27491.43.
- 37 Gov. Code, section 27491.43.
- 38 *Holm v. Superior Court* (1986) 187 Cal.App.3d 1241; *Walsh v. Caidin, supra*, 232 Cal.App.3d at pp. 162-163.
- 39 *Walsh v. Caidin, supra*, 232 Cal.App.3d at p. 161.
- 40 *Holm v. Superior Court, supra*, 187 Cal.App.3d at p. 1248.
- 41 Health & Saf. Code, section 7355.
- 42 Child/Sibling of Decedent; Grandparent/Grandchild of Decedent; Authorized by Court Order; Parent/Legal Guardian of Decedent; An Agent or Employee of a Funeral Establishment; Power of Attorney/Executor of Decedent's Estate; Spouse/Registered Domestic Partner of Decedent; Attorney Representing Decedent or Decedent's Estate; Law Enforcement; Gov. Agency; Surviving Next of Kin.
- 43 *Estate of Herzog* (2019) 33 Cal.App.5th 894.
- 44 Health & Saf. Code, section 102775.
- 45 Gov. Code, section 103055, subd. (a).
- 46 The TSA website has a section called "What Can I Bring?." The hyperlink for that website is: <https://www.tsa.gov/travel/security-screening/whatcanibring/all>. Cremated remains are permitted



- in carry- on bags (with special instructions) and in checked bags, although some airlines do not allow it.
- 47 <https://www.tsa.gov/travel/security-screening/whatcanibring/items/cremated-remains>.
- 48 Health & Saf. Code, section 7100, subd. (a).
- 49 See *Enos v. Snyder* (1900) 131 Cal. 68, 72; *Cohen v. Groman Mortuary* (1964) 231 Cal.App.2d 1, 4.
- 50 *Ross v. Forest Lawn Memorial Park* (1984) 153 Cal.App.3d 988, 994-995.
- 51 *Ross v. Forest Lawn Memorial Park*, *supra*, 153 Cal.App.3d at p. 995 [confirming right to exclude punk rockers from funeral and burial services].
- 52 See e.g. *Sinai Temple v. Kaplan* (1976) 54 Cal.App.3d 1103, 1110.
- 53 Health & Saf. Code, section 7116.
- 54 Health & Saf. Code, section 103060.
- 55 Health & Saf. Code, section 103060.
- 56 Health & Saf. Code, section 7117, subd. (c).
- 57 Health & Saf. Code, section 7117.
- 58 40 C.F.R.229.1(d).
- 59 40 C.F.R. 229.1(a)(2)-(3).
- 60 40 C.F.R. 229.1(a)(2).
- 61 40 C.F.R. 229.1(a)(2).
- 62 40 C.F.R. 229.1(a)(3).
- 63 Health & Saf. Code, section 7051.
- 64 Health & Saf. Code, section 7052.5.
- 65 Health & Saf. Code, section 7054.
- 66 Health & Saf. Code, section 7051.5.
- 67 Health & Saf. Code, section 7052.
- 68 Health & Saf. Code, section 7500.
- 69 Health & Saf. Code, section 7501.
- 70 Health & Saf. Code, section 7525.
- 71 Health & Saf. Code, section 7526.
- 72 *In re Keck* (1946) 75 Cal.App.2d 846.
- 73 *In re Terra* (1952) 111 Cal.App.2d 452, 457.
- 74 22A Am.Jur.2d (2003) Dead Bodies, section 65, p. 59.
- 75 *Estate of Jimenez* (1997) 56 Cal.App.4th 733, 739, quoting *In re Keck*, *supra*, 75 Cal.App.2d at p. 851.
- 76 *Maffei v. Woodlawn Memorial Park* (2005) 130 Cal.App.4th 119, 127.