

The Ad Hoc Committee on Organ Retention spent a year and developed the following policy statement which was endorsed by the NAME Executive Committee on 11/18/2008.

#### NAME Position Statement on the Collection, Retention, and Disposition of Biologic Specimens by Collection, Retention, and Disposition of Biologic Specimens by Medicolegal Investigative Agencies

**Collection and Retention:** Complete autopsies, when necessary, encompass the removal and examination of all visceral organs, including the brain from the cranium. Autopsies are invasive procedures and some tissue and fluid loss necessarily accompanies all autopsies. The National Association of Medical Examiners (NAME) recognizes the necessity of the collection and retention of tissue and fluid specimens as an important aspect of routine forensic autopsy practice and necessary for an optimal medicolegal death investigation. Usually only fluids for toxicology and other laboratory analyses and small portions of tissues for microscopy are retained. However in some cases, as best determined by the forensic pathologist performing the autopsy, as a professional expert and governmental official or agent, whole organs or large tissue blocks may be collected and retained for further examination, testing, or for evidentiary purposes. Non-biologic evidence, such as bullets and medical appliances, may also be removed and retained. Furthermore, the nature and extent of these specimen collections are not always known prior to autopsy. NAME supports this collection and retention of specimens, in cases of medicolegal death investigation jurisdiction, as fulfilling the duty of the medicolegal death investigation office to determine cause and manner of death and otherwise to protect society. By contrast, absent special legislation, organs and tissues collected for transplantation or research are not collected for forensic purposes and specifically require the consent of the next-of-kin.

**Disposition:** The next-of-kin have sepulchral custodial interests in the corporeal remains of their loved ones and may choose the disposition of such remains. However, it is the view of NAME that these interests do not extend to the biological (including organs, tissues and fluids) and non-biological specimens that are specifically collected and retained for forensic examination, testing, potential future diagnostic use, or evidentiary purposes. Medicolegal death investigation offices have a public interest that supersedes private interests of next-of-kin to such specimens specifically collected for forensic purposes based upon an overarching investigative authority. Some biologic specimens must be kept beyond release of the corporeal remains to the next-of-kin (for burial or other disposition) in the course of customary and optimal medicolegal death investigation. Such biologic specimen collection should not normally affect funerary viewing. Standards exist in the field that mandate minimum storage requirements for certain materials. After such analysis or storage such specimens are usually considered medical waste and disposed of as biohazardous materials as is done by hospitals on a daily basis. On the other hand, medical examiners should attempt to accommodate family wishes as a matter of policy to the extent reasonable and practicable. Thus, with the assent of the medicolegal office, some large specimens, such as hearts or brains, may be returned to the custody of next-of-kin specifically for reburial or other such disposal according to their wishes.

**Notification:** Some next-of-kin may wish the return of retained specimens, while other next-of-kin are disturbed or distraught by discussion or later contact of disposition of retained specimens. NAME recognizes and supports that varying policy considerations cause medicolegal death investigation offices to vary in their policies and practices, but also that they must follow applicable state law. Some offices choose to treat all biologic specimens the same and not to concern families with details of their practices. Other offices, unless public safety concerns preclude it, may approach next-of-kin, either

before or after autopsy, verbally or in writing, to request their desires for disposition of retained whole organ or large specimens. NAME notes that such apparent and practical distinction between small and large specimens is imprecise, artificial, and illusory and no true distinction exists. Still other offices may notify next-of-kin through pamphlets that describe specimen collection and retention and that families may make requests of specimen disposition, thereby placing an affirmative duty on the families to notify offices of any objection. However, NAME believes that such notice or request should not imply a right or create an expectation that the desires of the next-of-kin will necessarily be honored or that any requirement for consent for disposition as medical waste is necessary. Furthermore, NAME believes that such family accommodation should not inhibit collection and retention of organ, tissue, and fluid specimens as well as medical appliances and nonbiologic evidentiary items where indicated for the optimal medicolegal death investigation.