Autopsy: Traditional Jewish Laws and Customs “Halacha”

Norman R. Goodman, DDS, VSM,* Jeffrey L. Goodman, JD, Esquire,† and Walter I. Hofman, MD, FNAME, FCAP, FAAFS‡

Abstract: Judaism has many traditions, customs, rules, and laws, which relate to the proper and ethical disposition of a decedent when a Medical Examiner/Coroner is involved. In almost all United States jurisdictions, statutes mandate the need to determine the cause and manner of death (Coroner’s Act PA PI 323, num. 130, section 1237). This article is a review of some religious writings, legal precedents, and forensic authorities, which may help to assist the Medical Examiner/Coroner when confronted with a Jewish decedent. There can be flexibility as to the extent that such forensic studies can and should be performed. The final consent and interpretation of the rules, laws, traditions, and customs will rest with the courts and local rabbinic authority.

Key Words: Judaism, forensic pathology, extensive or complete autopsy, limited or partial autopsy, external examination or noninvasive autopsy, “Halacha,” “Pikuach nefesh,” virtopsy, multislice computed tomography (MSCT), computed tomography (CT), magnetic resonance imaging (MRI), laparoscopic/thoracoscopic autopsy (LTA)

(Am J Forensic Med Pathol 2011;32: 300–303)

“Halacha” is the term for the collective Jewish law as found in the Torah (Hebrew Bible), Talmud (Rabbinic law), as well as Jewish customs and traditions. The 3 most common Jewish sects are the Orthodox (most observant), Conservative (observant), and Reform (liberal). The issue surrounding autopsies primarily is really 2-fold. First and foremost is the inherent sanctity of the body and second is the requirement of a speedy burial within 24 hours of death.

Thus, the starting point of any discussion on the religious interpretation related to autopsies is ancient and set forth in the Torah. It states that “and G-d created Man in His own image, in the image of G-d He created him; male and female, He created them.” The central Jewish belief is that man was created in the image of G-d and in death, man’s body still retains the unity of that image. Accordingly, a body must be rendered the greatest respect, dignity, and honor. As such (under the most traditional interpretation of Jewish law), there is a general prohibition against autopsies as an autopsy disfigures the body and disgraces the corpse. Therefore, Orthodox Jews are strongly opposed to autopsy, Conservative Jews are less likely to object if the value of the autopsy is explained, and Reform Jews may object less or not at all.

The requirement for a speedy burial, is mentioned in the Torah: “…must bury him the same day ….” Accordingly, the available time is of the utmost importance and any delay is considered a disgrace of the corpse. Further, it is written “his body shall not remain all night…. but thou shall in any wise bury him that day…. “ However, a burial may be delayed for the sake of honoring the dead, to procure a coffin, shroud, or to await the arrival of a relative or others who will deliver the funeral oration. Burial may be delayed to establish identity of the deceased. The interpretations of exceptions to the general prohibition against autopsies may differ greatly between, as well as among the different religious communities.

An autopsy will only be approved when the Medical Examiner/Coroner (ME/C) is involved in accidents cases, sudden unexpected or unnatural deaths, homicide, or suicide to determine both the cause and manner of death. In many jurisdictions, the ME/C acts as the ombudsman for the decedent and may request intervention by an appropriate court of law. Jewish tradition teaches that the greatest “mitzvah” (good deed/commandment) that one can perform is “pikuach nefesh” (saving of a life). As a matter of fact, many believe that “pikuach nefesh” takes precedence over virtually all other “Mitzvot” (commandments). Thus it is reasoned, an autopsy is generally permissible to determine if death could have been attributed to an illness that would allow prophylactic therapy for the family and allay a disease where medical intervention is possible. Where an experimental drug or procedure was used to cure a disease, an autopsy may elicit information that could help another individual by avoiding exposure to the drug (Rogev MG, MBChB, Tel Aviv, Israel; [Former Chief of Forensic Medicine, IDF; Former Director of NCFM]).

HISTORY OF THE LAWS REGARDING AUTOPSY IN THE STATE OF ISRAEL

In the treatise, Encyclopedia of Jewish Medical Ethics, the prelude to Israel’s Anatomy and Pathology Act of 1953 states: “In Israel, the autopsy question was debated sharply during the founding of Jerusalem’s Hebrew University in 1920. The opening of the university’s Hadassah Medical School was delayed for over 22 years because of the lack of bodies for dissection and the autopsy issue. Thus, Hebrew University-Hadassah Medical School was not opened until 1947. The University administration posed the autopsy question to then Israel’s Chief Rabbi Herzog, Jerusalem’s Chief Rabbi Frank, and Hadassah Director General Professor Yasski. This resulted in the following agreements/guidelines that would permit an autopsy:

1. If it was required for forensic medicine as requested by the police/court.
2. If 3 physicians attest that the cause of death could not be established without an autopsy.
3. If 3 physicians attest that the results of the autopsy might contribute immediately to the saving of the life of another patient.
4. In the case of a genetic or inherited disease, so as to preserve the health of relations/family with the same disease.
5. All such autopsies must be performed with dignity and respect and all parts of the body, blood, sponges, etc, must be returned for burial.
6. There is no opposition to anatomic dissection where the individuals freely willed their bodies to the medical school.

From the *Office of the Chester County Coroner, West Chester; †Phoenixville; and ‡Montgomery County Coroner’s Office, Norristown, PA.

The authors report no conflict of interest.

Reprints: Walter I. Hofman, MD, FNAME, FCAP, FAAFS, Montgomery County Coroner’s Office, 1430 DeKalb Street Norristown, PA 19401.

E-mail: fourn6path@aol.com

Copyright © 2011 Lippincott Williams & Wilkins. Unauthorized reproduction of this article is prohibited.
provided that all organs and body parts were eventually buried.\textsuperscript{9}

Thus, as shown in this article, the interpretation of what is and what is not allowed by Jewish Law, is at best described as a moving target. This is also the case in Israel where the law’s relative to autopsies have been a source of bitter arguments and are constantly in flux.

An amendment to the aforementioned Act of 1953 was presented to the Knesset (Israel Parliament) 9 years later. It determined that autopsies would be permitted only after notification and consent of the next of kin and under the following circumstances:

1. To immediately save another life;
2. For organ transplantation;
3. If a significant medical error was suspected;
4. If the cause of death needed to be established; and
5. To avoid a danger to the family or general public.

In December 1980, the Knesset passed another amendment to the original 1953 Act. This amendment was passed in a coalition with Agudat Israel an ultra-religious party (Agudat Israel, Political Party Arm of the Orthodox Parties in Israel Knesset). The Israeli Medical Association protested this on grounds that the amendment would hamper the progress of medical science.

Today, in Israel, the following guidelines pertain:

1. Family consent is mandatory to perform an autopsy on all in-hospital deaths (inpatients), even those allegedly due to natural causes.
2. If circumstances of death appear suspicious, and the family desires an autopsy, a formal complaint must be registered with the Israeli Police. If after investigation, the police agree that circumstances warrant an autopsy, it will be performed at the State of Israel National Center for Forensic Medicine, (Greenberg Institute of Forensic Medicine-Abu Kabir) Tel Aviv-Jaffa.
3. When consent for an autopsy has been given by the immediate family, there is still a 5 hour waiting period during which second degree relatives have veto power over the autopsy.
4. The Israeli police have a critical role in requesting an autopsy in the following situations:
   - Death caused by any act of violence;
   - Deaths occur in apparently healthy individuals; and
   - Suspicous deaths in hospital.
5. Following police investigation, the police or forensic pathologist must request permission from the family to perform an autopsy. Should the family refuse permission, only an external examination may be performed.
6. Should the police and the forensic pathologist decide that the evidence indicates a complete autopsy is essential, then they must obtain a court order. Family members and/or Counsel may be present at such court proceedings to voice their opposition to having the autopsy performed. Extremely religious families may be accompanied by their Rabbi to request injunction or temporary restraining order.\textsuperscript{11}
   The court may:
   - Order an extensive and complete autopsy;
   - Order a partial/limited autopsy;
   - Restrict to an autopsy-external examination and permit or preclude the collection of blood and/or fluids for toxicology studies; and/or
   - Deny the request for any form of autopsy. The family still has the right to appeal that court’s decision.
7. In traffic accidents, where the victims are passengers or pedestrians, the police essentially accept the reality of not even requesting an autopsy and settle for an external forensic examination. If the decedent is the vehicle driver, the police may persist in obtaining a court order.
8. The forensic pathologist must accede to the court order but he will request that the family sign a consent form. These are the current conditions that are followed at the National Center for Forensic Medicine. The aforementioned are several complications that the forensic pathologist must contend with to perform an autopsy in Israel. Yet another point of contention has involved the traditional objection to an autopsy,\textsuperscript{10} with regard to the general attitude regarding the respectful care of the dead in Jewish tradition. Many erroneously assume that respect for the dead implies an absolute ban on postmortem examinations. In fact the prohibition is not as absolute as it is often regarded. When the autopsy furthers a criminal investigation and can lead to the apprehension of the perpetrator of the crime, Jewish religious law unequivocally permits autopsy procedures. Investigation of a terror incident that may lead to capture of a terrorist or the breaking of a terrorist network, clearly falls within the scope of the intent of this religious law. Yet, this is not always accepted by the public and may be particularly hard to interpret given the intense emotional attitude to the event of the next-of-kin.

**ADVISORY GUIDELINES FOR AUTOPSIES OF OBSERVANT JEWS**

Orthodox Jews believe in the inviolability of the human body. Rabbinic interpretation has held that the whole body must be available for burial, including all tissue, organs, and body fluids. While among orthodox Jews, there is no single consensus as to how to best perform an autopsy, many of the following key points are noted, which are based on the respect of the dead, who of course are helpless to prevent violation of their body.

1. Every effort should be made to expedite autopsy so that the body can be released for prompt burial.
2. If possible, the autopsy should be performed within a body bag so that all body fluids may be gathered for a ritual burial. The pertinent biblical verse is “If blood is there on or nearby and all that earth, upon which there is blood, should be buried with him.”\textsuperscript{11}
3. The autopsy procedure should be as least intrusive and tissue sample for histopathologic or toxicologic studies should be as small as possible.
4. Where possible, organs must be placed in their proper place; eg, brain in the skull, heart/lungs in the chest, etc. Organs should be placed in a biodegradable bag or container.
5. All instruments should be wiped clean with a damp cloth and those cloths placed in the body bag.
6. When possible, the entire body, especially the genitalia and face should be kept covered out of modesty and respect for the honor of the deceased.
7. As the body will not be reopened for embalming (Orthodox), all incisions should be closed as tightly as possible to avoid leakage and spillage of body fluids.
8. Orthodox Jews may require a “Shomer” (watchman/keeper) to guard against violation of the body. If the watchman cannot be left in the building after working hours, he may wait outside. This individual may be a member of the sacred religious burial society (“Chevra Kadisha”) or a knowledgeable Rabbi. The requested Rabbi may be permitted to attend the autopsy.
9. All tissues, including blood and other body fluids, articles of clothing containing blood that is not needed for pathologic or evidentiary purposes sent along with the body to the funeral home for preparation for burial. “It is forbidden to derive ‘pleasure’ from anything attached to his body such as his wig or artificial teeth... these should be buried with him. Articles not attached to his body are permitted to be retrieved such as ornaments and non-blood-stained garments.”12

NEWER POSTMORTEM METHODS

Virtopsy

The ever improving abilities of computers and medical diagnostic technologies have made minimal invasive autopsies a possibility. Excellent references are now available on this subject.13 Thali et al are the leading proponents of the minimally invasive “virtopsy” forensic autopsy, a term which they introduced and registered as a trademark. This team has adapted the twin medical-imaging technologies of computed tomography (CT) and magnetic resonance imaging (MRI) to create 3-dimensional, high resolution computer images of a decedent.

The result is a head-to-toe cybercorpse that a pathologist can view from any depth and any angle. Thali et al stated “What we see with our own eyes will remain the gold standard in autopsies.”14 The Armed Forces Medical Examiner, United States Department of Defense has instituted CT/MRI to document unexploded ordinance.

At the present time, CT/MRI is very expensive and most likely beyond the financial means of most ME/C offices. There may be a justification for noninvasive autopsies in selected cases for religious considerations.

Laparoscopy/Thoracoscopy

Surgical laparoscopy and thoracoscopy have been used for well over 25 years. These minimally invasive “keyhole” procedures, so effectively used by clinicians, may also serve a useful function in selected autopsy cases.

The visual findings can be documented on photographs, DVD’s (digital video discs), and film. Organs can be biopsied or removed in their entirety and blood loss kept to a minimum. Forensic pathologists can also be trained to use this equipment. Acquisition of such equipment is not out of line with other diagnostic equipment in a well staffed ME/C office.

EXTENT OF EXAMINATIONS

Non Invasive/External Examination/Visual

This type of examination is indicated where there is no external evidence of injury and/or trauma. The decedents are usually over age 55 and there is a sudden, unexplained death. These cases should include toxicology studies and photographs. Case examples are cited in the following:

1. A wife finds her 55-year-old husband dead in bed. The scene is benign as is the body. He had not seen a physician in over a year and was taking medication for hypertension, elevated cholesterol, and maturity onset diabetes mellitus (Type II). A death certificate was issued stating the cause of death as hypertensive cardiovascular disease, with diabetes mellitus mentioned as the contributing cause. The manner of death was natural.

2. A couple aged more than 75 years old is found in their garage, with the vehicle motor running and the garage doors closed. They were seated in the front seat holding hands. Both had extensive medical histories. A joint suicide note was found on their computer (the 21st century method). The question as to the cause of death needed to be resolved. The wife and husband were examined and no external evidence of trauma on either person was found. Blood was drawn and tested for carboxyhemoglobin (HbCO). Woman had an 87% and male 73% levels of HbCO. The cause of death for both was asphyxia due to carbon monoxide, and the manner of death was suicide. The deaths were certified by an external examination with the minimally invasive procedures being toxicology tests (Note: this should only be done if a hospital laboratory is nearby to perform HbCO).

Limited Autopsy

There may be occasions when a restricted autopsy can answer the necessary questions as to the cause and manner of death. This should not be routine but may accommodate family or religious objections and/or customs. Thus, only the heart and brain may be examined.

3. A 56-year-old man had been working out at a gym when he was found unresponsive on the floor next to a treadmill. He usually ran an average of 4 miles per day. His medical records revealed one who was in “great shape.” His father and uncle had died of “heart disease.”

To accommodate the family’s religious objections, a limited autopsy was performed. At autopsy, his heart was enlarged (cardiomegaly), the coronary arteries were 80 to 90% occluded and there were numerous old heart muscle scars. The cause of death was determined to be myocardial fibrosis (remote myocardial infarction), secondary to atherosclerotic coronary artery disease.

The family was advised of this condition. His 11- and 14-year-old sons are now being monitored by a cardiologist and receiving prophylactic therapy.

Complete Autopsy

Complete autopsy is performed when it is required to document all information so as to properly determine the cause and manner of death for future legal proceedings.

Suicide

Many religions, not only Jewish do not permit one who has committed suicide to receive religious burial rites. The Halachic interpretation of suicide is taken from the Torah and Traditional rabbinic explanation. “There is none wicked than one who committed suicide15,” and “but for your own life-blood, I will require a reckoning.”16

Rashi, a renowned 12th century biblical commentator of the 12th century, understood these words as a biblical prohibition of suicide.17 “For the sake of an individual was the world created, thus he who destroys one soul is as though he has destroyed the whole world.”15 However, if an adult killed himself, it is evident that the act was prompted by madness or through fear of terrible torture, he should be treated as an ordinary deceased person.16 This would allow the individual to receive a ritual burial and might avoid causing the family a heartache. In many jurisdictions, a “pending” death certificate is issued to allow the ritual burial and the cause and manner of death are finalized later.

Exhumation/Disinterment

In criminal cases, the ME/C can exhume the body of a Jewish (or other non-Jewish observant religious) person under very extenuating circumstances. The consent of the next-of-kin should be obtained and/or a court order may be necessary. Family emotional and religious support should be obtained from a well qualified religious leader.19
CONCLUSIONS

The ME/C is charged by statute to determine the cause and manner of death. It would be helpful if the ME/C was familiar with Jewish (and non-Jewish) laws, traditions, and customs, and adhered to bounds of religious limitations. An ME/C can communicate with the next-of-kin prior to such an autopsy and when in doubt, consult with an appropriate religious authority. The questions as to permissibility, autopsy and “Halacha” (Jewish law), traditions, and customs have simple but also complex answers. The simple answer is that autopsy is permitted, e.g., (“pikuach nefesh”): saving the life of another person is the greatest good deed or (“mitzvah”) that one can perform. The more complex answer is under what circumstances and to what extent can an autopsy be performed to determine cause and manner of death.

Such questions, as to what is permitted have been discussed, debated, and argued for millennia. After the establishment of the State of Israel, there was anticipation for a “gold standard” for autopsy; however, issues remain and unfortunately these issues are still changing. In the future, with the advent of such medical scientific advancements “virtual” and “laparoscopy/thoracoscopy” some of the objections to autopsy may be eliminated.

ACKNOWLEDGMENTS

The authors thank Milton Alter, MD, John Felicetti, Rabbi Isaac Leider, Dr Jay Levinson, Donald Nicklas, MD, Maurice G. Rogev, MD, Elliot Rosen, Robert O. Satriale, MD, Michael Thali, MD, and Ethel G. Hofman.

REFERENCES

4. Babylonian Talmud. Tractus Sanhedrin, Folio 47A.