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# Deciding on Autopsy

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Deciding on whether to have an autopsy can be heart wrenching and painful after the loss of a loved one. This article is designed to help you make a more informed decision that can have a profound effect on the outcome of any future legal case that you may wish to pursue.

## What is an Autopsy?

An autopsy is a thorough examination by a doctor (usually a forensic pathologist) to determine cause and manner of death.

Each county has a coroner that is charged with the duty of investigating the manner and cause of death.

## Autopsy May Not Be Performed

The coroner may not perform an autopsy in every case.

The coroner decides whether an autopsy is required. Physicians may provide the medical cause of death and the coroner may waive the autopsy.

The attending physician may even sign the death certificate on certain natural cause cases.

## Mandatory Investigation

The law requires coroner's to inquire into and determine the circumstances, cause and manner of violent, sudden, or unusual deaths, unattended deaths, deaths caused by or resulting from accident either old or recent, drownings, fire, criminal means, hanging, suicide, occupational diseases and hazards.

This list is not comprehensive but represents the majority of deaths caused by third party negligence.

Deaths classified as mandatory investigations almost always cause the coroner to perform an autopsy.

Nonetheless you should always inquire immediately whether an autopsy is being performed.

## Coroner's Decision or Inquiry

Certain types of deaths must be reported to the coroner so as to trigger a coroner's inquiry and/or decision. The coroner has discretion in how to handle these deaths and whether an autopsy will be performed.

These deaths include: Deaths of patients in the emergency room or that occur within 24 hours of hospital admission. Deaths of patients who underwent surgery during hospital admission. Deaths occurring during a therapeutic or diagnostic procedure or from complications of the those procedures. Deaths to comatose persons when the coma was caused by anything other than a natural disease process. Deaths of unidentified persons. And finally, and most commonly, *deaths in which any type of injury is the cause or contributing cause regardless of how distant or remote in time or place the injury may have occurred.*

Again, deaths may not always cause the coroner to perform an autopsy.

## Fees for Coroner Performed Autopsy

There are no fees for a family of the coroner chooses to perform the autopsy.

The coroner may, however, recover transportation and storage charges from you. See California Government Code §27472. This charge is up to \$100 per statute. This charge is waived in certain circumstances.

## Communicating with the Coroner

You can call the coroner's office and determine whether an autopsy is being performed and if not you can ask why.

You can advise the coroner of any suspected foul play or negligent conduct that caused the death. They will then decide on whether a coroner performed autopsy is required.

## Cause of Death

If you suspect that someone caused or contributed to the death of your loved one you must be able to prove in a court of law that the cause of your loved one's death was the wrongdoer's negligence and conduct.

You will have two legal burdens to overcome. First, you bear the burden of production. This means you have to produce some evidence that establishes the cause of death to be the negligent or wrongful conduct of others. At the minimum you will need testimony of a doctor or coroner to establish cause of death.

The second legal burden is the burden of persuasion. You must have testimony and/or evidence that causes a jury to believe your contention that the death was caused by a third party. In a civil setting this is known as the preponderance of evidence standard.

Your bear the legal burdens when you bring a claim.

## Autopsy as Evidence

The autopsy and the coroner's investigation are often key pieces of evidence and testimony needed to prove cause of death. Failure to secure evidence of cause of death can adversely affect your wrongful death claim.

A defendant, seeing that no autopsy was performed, may attack your position on cause of death by suggesting something else caused the death of your loved one.

Arguments over causation may have a significant impact on whether or not you will be able to win your legal case.

### **Medical Malpractice Deaths**

Death caused by medical malpractice or prescribed drugs will usually require an autopsy to determine cause of death.

*A negligent physician or health care provider may try to hide or cover up their negligence and declare a death natural.* The coroner is more likely to accept this declaration if the circumstances are that the decedent had an underlying medical condition that would likely result in death.

If a private employed physician or health care provider caused or contributed to the death of your loved one you may need to deliver a letter to the coroner so that a decision can be made regarding an autopsy for your loved one.

As a wrongful death lawyer I can send letters to the coroner advising of your concerns and asking for a decision. If they decide not to do an autopsy you have other rights.

### **Right to Request an Autopsy**

The surviving spouse of a decedent has a legal right to request that coroner allow an autopsy. See California Government Code §27520. If there is no surviving spouse, the surviving child or parent or other close relatives (brothers or sisters, etc.) may ask the

coroner to perform an autopsy. The request needs to be made in writing.

The county can charge you a fee for the autopsy. Riverside County currently charges \$4800. San Bernardino currently charges \$3500.

The coroner's office will then conduct the autopsy.

### **Private Autopsy**

There are certain cases that may warrant your desire to have a private forensic pathologist to conduct the autopsy of your loved one.

The first case is when the coroner has decided not to perform the autopsy and you wish to have one performed.

The second case is if your loved one died from law enforcement conduct or while in law enforcement custody. You may not want the government paid coroner to be the only testimony and evidence that the jury hears.

Also, when the death of your loved one was caused by the death of government employed physicians and/or health care workers, you may want a private autopsy.

There are independent forensic pathologists that conduct private autopsies. Sometimes the private autopsy is performed at county facilities and other times the autopsy is performed at a funeral home.

### **When Autopsy Not Performed**

If an autopsy was not performed and your loved one has since been laid to

rest, you may still have a legally viable case. The case must be examined by an experienced wrongful death lawyer to determine what evidence you will be able to offer to meet your duty to produce evidence of cause of death.

Do not give up on your case without first speaking to a lawyer and allowing the lawyer to decide if there is sufficient evidence to proceed with a wrongful death claim or lawsuit.

### **Need More Information?**

This article is designed to be informative and can not possibly address all issues that may arise.

When in doubt or having questions, you should immediately seek legal advice.

*Richard Harris is the principal of Rich Harris, A Law Corporation located in Riverside, California and has successfully concluded more than 100 wrongful death cases in his 20 years combined claims experience.*

*His practice is dedicated to helping individuals and families pursue their wrongful death claims against reckless motorists, greedy insurance companies, and careless government agencies.*

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