

September 2009

Dear MN Hospital/Clinic Care Providers,

I have been visiting hospitals and clinics lately to check in, share resources, and hear about any issues that might be at the forefront. One has come to the surface that I have researched. Please allow me to share what I have learned, noting that I am not an attorney and that I ask you to use this as a guide for discussion and research purposes as it impacts your policies. To be clear, this is my opinion, not a legal opinion. While I have consulted with staff at the MN Health Department, they cannot endorse a private party letter such as this. However, you may call them directly in your own research. I suggest you talk with someone in the Mortuary Science Division, 651-201-3829.

The issue appears to be the following –

Hospitals must alert parents of miscarried babies of their rights regarding disposition. In addition, the question has come up, “Can hospitals allow parents to directly take the remains of their miscarried or stillborn infant from a clinic or hospital without directly engaging/hiring a ‘licensed’ professional, eg. Mortician?” Some hospitals are taking the position that they can only release the remains to such a licensed professional, not the parents.

From my research, it appears that parents can do this without engaging a licensed professional. But to protect the facility it makes sense to have each parent sign a form stating their intention and the law they are expected to follow. (I have drafted a sample one to consider...use your legal staff for decision-making, of course)  
It does not appear to be legal, however, to insist a family *must* use a licensed Mortician in order to control the remains of their unborn fetus/baby. While doing so ought to be encouraged (my opinion) so they can have the services of a knowledgeable professional, it does not appear to be required.

In addition, some hospitals test the remains without the parent’s permission. In the past, there have been threatened lawsuits about this. As in virtually all cases with other medical/body issues, it is the right of the patient and in this case, parent, to make such decisions. It appears the law affirms this.

## **Background Information:**

On Jan. 15, 2009 the following law went into effect:

### **145.1622 Policy for Notification of Disposition Options**

“Hospitals, clinics, and medical facilities must have in place by January 15, 2009, a policy for informing a woman of available options for fetal disposition when the woman experiences a miscarriage or is expected to experience a miscarriage.”

Since this law came into effect, there has been discussion at most hospitals about what your policies are re: releasing the remains of the unborn baby/fetus to the family, funeral homes, and/or hospital disposition. I understand some have interpreted this to mean that families can only have their unborn baby/fetus released to a funeral home if they wish to make their own arrangements and NOT use the hospital option. This is not accurate.

**Therefore, your hospital/clinic policies must reflect the current laws on the books.**

Minnesota statutes 145.1621 directs hospitals and clinics to properly dispose of aborted or miscarried fetuses (see attached law) through cremation or burial by internment.

Some hospitals refer to MN State Statute 149A.01 as a reason to only release the remains to a licensed mortician rather than directly to the parents who then would be responsible for following the law and taking care of their baby/fetus.

Since a miscarried or stillborn baby is NOT considered a dead human body because s/he have not taken a breath...therefore, the Statute 149A.01 does not apply to miscarried or stillborn babies.

The Statute 149A.01 does offer an exception to morticians (Sub. 3. C.) if it is a ‘noncompensated person with the right to control the dead human body.’ It seems that this may mean that even a neonate can be taken from the hospital by a parent without hiring a ‘licensed’ professional.

Thank you for your careful consideration of the laws and the policies that your facility creates. It is very important that they not take away any parental rights while trying to do the right thing regarding fetal testing and fetal disposition.

Sincerely,

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[www.wintergreenpress.com](http://www.wintergreenpress.com)

[www.babiesremembered.org](http://www.babiesremembered.org)

## **145.1621 DISPOSITION OF ABORTED OR MISCARRIED FETUSES**

### **Subdivision 1.Purpose.**

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The purpose of this section is to protect the public health and welfare by providing for the dignified and sanitary disposition of the remains of aborted or miscarried human fetuses in a uniform manner and to declare violations of this section to be a public nuisance.

### **Subd. 2.Definition; remains of a human fetus.**

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For the purposes of this section, the term "remains of a human fetus" means the remains of the dead offspring of a human being that has reached a stage of development so that there are cartilaginous structures, fetal or skeletal parts after an abortion or miscarriage, whether or not the remains have been obtained by induced, spontaneous, or accidental means.

### **Subd. 3.Regulation of disposal.**

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Remains of a human fetus resulting from an abortion or miscarriage, induced or occurring accidentally or spontaneously at a hospital, clinic, or medical facility must be deposited or disposed of in this state only at the place and in the manner provided by this section or, if not possible, as directed by the commissioner of health.

### **Subd. 4.Disposition; tests.**

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Hospitals, clinics, and medical facilities in which abortions are induced or occur spontaneously or accidentally and laboratories to which the remains of human fetuses are delivered must provide for the disposal of the remains by cremation, interment by burial, or in a manner directed by the commissioner of health. The hospital, clinic, medical facility, or laboratory may complete laboratory tests necessary for the health of the woman or her future offspring or for purposes of a criminal investigation or determination of parentage prior to disposing of the remains.

### **Subd. 5.Violation; penalty.**

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Failure to comply with this section constitutes a public nuisance. A person, firm, or corporation failing to comply with this section is guilty of a misdemeanor.

### **Subd. 6.Exclusions.**

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To comply with this section, a religious service or ceremony is not required as part of the disposition of the remains of a human fetus, and no discussion of the method of disposition is required with the woman obtaining an induced abortion.

# Disposition of Fetal Remains (miscarriage and stillbirth)

## **149A.01 PURPOSE AND SCOPE.**

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### **Subdivision 1.Purpose.**

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This chapter regulates the removal, preparation, transportation, arrangements for disposition, and final disposition of dead human bodies for purposes of public health and protection of the public.

### **Subd. 2.Scope.**

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In Minnesota no person shall, without being licensed by the commissioner of health:

- (1) take charge of or remove from the place of death a dead human body;
- (2) prepare a dead human body for final disposition, in any manner; or
- (3) arrange, direct, or supervise a funeral, memorial service, or graveside service.

### **Subd. 3.Exceptions to licensure.**

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(a) Except as otherwise provided in this chapter, nothing in this chapter shall in any way interfere with the duties of:

- (1) an anatomical bequest program located within an accredited school of medicine or an accredited college of mortuary science;
- (2) a person engaged in the performance of duties prescribed by law relating to the conditions under which unclaimed dead human bodies are held subject to anatomical study;
- (3) authorized personnel from a licensed ambulance service in the performance of their duties;
- (4) licensed medical personnel in the performance of their duties; or
- (5) the coroner or medical examiner in the performance of the duties of their offices.

(b) This chapter does not apply to or interfere with the recognized customs or rites of any culture or recognized religion in the ceremonial washing, dressing, and casketing of their dead, to the extent that all other provisions of this chapter are complied with.

**(c) Noncompensated persons with the right to control the dead human body may remove a body from the place of death; transport the body; prepare the body for disposition, except embalming; or arrange for final disposition of the body, provided that all actions are in compliance with this chapter.**

(d) Persons serving internships pursuant to section [149A.20, subdivision 6](#), or students officially registered for a practicum or clinical through a program of mortuary science accredited by the American Board of Funeral Service Education are not required to be licensed, provided that the persons or students are registered with the commissioner and act under the direct and exclusive supervision of a person holding a current license to practice mortuary science in Minnesota.

(e) Notwithstanding this subdivision, nothing in this section shall be construed to prohibit an institution or entity from establishing, implementing, or enforcing a policy that permits only persons licensed by the commissioner to remove or cause to be removed a dead body or body part from the institution or entity.

(f) An unlicensed person may arrange for and direct or supervise a memorial service after final disposition of the dead human body has taken place. An unlicensed person may not take charge of the dead human body, however an unlicensed person may arrange for and direct or supervise a memorial service before final disposition of the dead human body has taken place.

**Subd. 4. Nonlimiting.**

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(a) Nothing in this chapter shall be construed to limit the powers granted to the commissioner of health, commissioner of commerce, state attorney general, or a county attorney in any other statute, law, or rule, except as described in paragraph (b).

(b) A county, within its jurisdiction as a coroner or medical examiner, may establish transportation standards for transporting a dead human body from the death scene to the place where an autopsy is to be conducted, so long as the standards do not specifically require that the transporter be a licensed funeral director.

# Patient Authorization for Testing and Disposition of Fetus/Baby

( DRAFT for your consideration, not a legal document)

Your baby was born without signs of life. You have choices to make about testing and final disposition. You may choose to make arrangements for your baby yourself or have the hospital take responsibility. You must understand that once the hospital disposes of your baby (through cremation or burial), his/her remains are irretrievable, meaning you will be unable to get them back.

I/we represent that I/we are the parents(s) of the miscarried fetus/baby and are entitled to make decisions about testing and disposition of the remains.

**TESTING AUTHORIZATION** - I/we authorize the following:

	Yes	No
External testing only	___	___
External and internal testing	___	___
No testing	___	___

According to the law 145.1621

**Subd. 3.Regulation of disposal.**

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**DISPOSITION AUTHORIZATION** - I understand that if my fetus/baby was induced or occurred at a hospital, clinic, or medical facility, I/we, \_\_\_\_\_, am responsible or have chosen to make arrangements for the remains of my fetus/baby and will (choose one)

\_\_\_ I will take control of the remains, taking them with me upon leaving this facility or picking them up after testing (which I have authorized above)

\_\_\_ I authorize \_\_\_\_\_ (funeral home, mortician, crematorium) to take care of disposition. They will be notified to pick up my fetus/baby's remains at the facility.

\_\_\_ I authorize (give permission) for the hospital \_\_\_\_\_ (name) to make final disposition of my fetus/baby's remains either through cremation or interment by burial.

Signature \_\_\_\_\_ Phone no: \_\_\_\_\_ Date: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_