

MODERN EMBALMING IN ROMANIA: SOME REGULATIONS AND RESTRICTIONS

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Abstract: *The legal framework on embalming was updated not long ago by the Technical and Health Rules regarding the funeral services, burial, cremation, transport, exhumation and reburial of human corpses, cemeteries, human crematoriums. Recently, the Infectious risk classification methodology for people deceased with infectious diseases has provided clarification on some situations where embalming is permitted or prohibited. As such, this article aims to explore who can perform the embalming, as well as the situations when the embalming is mandatory, forbidden, impossible or optional.*

Key words: *corpse care, modern embalming, hospital morgue, death care industry, funeral services.*

1. Introduction

Funeral services are directed towards the deceased and their family, out of the respect that the society expresses towards human dignity and out of solidarity towards its members, and these include all the services that could be brought to a deceased and to their family after the time of death, according to the provisions of the article 21 from Law no. 102 from 8th of July 2014 on cemeteries, human crematoriums and funeral services.

Preparing the deceased for the funeral is part of the above-mentioned funeral services and includes mortuary care that is directed to the deceased's body, such as the embalming procedure. Embalming, like any other activity or action on the body of a deceased person, is based on respect for the human being and will be done with restraint and care.

Embalming is a part of the thanatopraxy procedures as defined by article 16 paragraph 1 from Technical and Health Rules (approved by the Government Decision no. 741 of 12th of October 2016) which establish that thanatopraxy represents a “set of methods and techniques which are applied to the human body after death, whereby the sanitation, the embalming, the restorations when necessary, the reconstruction and burial aesthetic care for the temporary preservation of the body, as well as the restoration of the deceased’s appearance as close as possible to the previously known

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one – so that he or she could be worthily introduced to the family and prepared for the funerals – are performed”.

According to the legal definition provided by the article 16 paragraph 2 from the Technical and Health Rules, *modern embalming* refers to “techniques whereby after death are injected into the body by vascular or other pathways, if the vascular system is not integral, different chemicals in order to stop the action of bacteria and the natural destruction process as well as to fix the tissues so that the body is temporarily or permanently preserved”.

However, biocidal products used for embalming must be used in quantities which do not lead to the permanent preservation of the body in order to avoid soil contamination and allow for subsequent burials and must be part of the biocidal product category authorized by government decision.

2. Scope of the Technical and Health Rules

According to the provisions of article 2 paragraph (2) from the Technical and Health Rules, these rules do not apply to activities specific to morgue services performed only in hospitals and in the legal medicine institutions. Morgue activity also consists in activities of restoring the appearance of corpses, such as embalming, which, according to art. 8 paragraph (2) of the Law no. 104 from 27th of March 2003 on the manipulation of human corpses and on the removal of organs and tissues from cadavers for transplants, is a *mandatory medical measure* to prevent contamination.

Therefore, the purpose of the Technical and Sanitary Rules will be limited exclusively to the funeral service providers that are legal persons governed by private law. However, we do not exclude the possibility that the hospitals that are not part of the public health system could carry out activities to restore the appearance of corpses to the extent that they also have morgue departments, case in which this activity will not be subject to the Technical and Sanitary Rules, but to Law no. 104/2003.

3. Persons authorized to perform the embalming

Performing mortuary care as a part of the funeral services related to preparing the corpse for the burial or for cremation is made, according to the law, only by persons who have specific competencies in this respect.

Although in COR (Classification of Occupations in Romania) there are two occupations which confer the competence of embalming, respectively the one of autopsy technician (code 321201) and the one of embalmer (code 516303), the training for the embalmer occupation has neither been regulated nor put into practice. Therefore, there is no occupational standard and a training programme for the embalmer occupation at the moment.

The embalming services are included in the CANE Code (Classification of Activities in the National Economy) 9603 - Funeral and similar activities and also the embalming is provisioned as a procedure within the morgue activities, according to article 8 from Law no. 104/2003.

Much of the embalming procedures are done in the sanitary units in which the death takes place or in the forensic units, after the autopsy. According to the Substantiation note on the Government Decision no. 741/2016 (2016, p. 2), the embalming carried out outside the mentioned cases is carried out by the autopsy technicians hired in anatomic pathology or forensic services and, to a lesser extent, by unqualified personnel.

That is why, the Technical and Health Rules, to align with the performance standards applied by the European states in what concerns the funerary services, proposed, in the form subjected to public consultation, a unitary professional training programme, which should have included the professional competencies, theoretical and practical knowledge that would allow approaching any case of death: both the simple ones, that only need embalming, but also the complex ones, that require body restauration and mortuary aesthetics, and the obtained certificate should have allowed practising the autopsy and the thanatopraxis both in the state system (sanitary and forensic units), and in the private system (funeral services).

However, the professional associations and the unions of anatomopathologists opposed a unitary training, motivating that it is not allowed to practise autopsy outside the sanitary units and, as such, the ones who practise the embalming outside sanitary units should not receive training in this regard. On the other hand, thanatopraxis implies, besides embalming, a series of manoeuvres of reconstruction and mortuary aesthetics which, at the moment, are mastered by personnel trained abroad and who had been taught certain patented techniques. Thus, it was established that there are two trainings, one for autopsy technician and one for thanatopractician (embalmer), including notions to be assimilated by both categories, but also specific parts.

To ensure a higher level of professionalism, the pre-condition of training in these qualifications was established to 12 grades, with or without bacalaureate. The professional training would include both theoretical modules, and practical modules, will take place in the organisation of the National School of Public Health, Healthcare Management and Improvement (NSPHHMI), and the diploma will certify the training in the profession of autopsy technician, respectively the one of thanatopractician. For this purpose, NSPHHMI will conclude partnerships with accredited trainers from the sanitary system. The training curricula and the way to organise the training programmes and the examination will be approved by order of the Minister of Health.

The thanatopracticians, as a result of passing the national exam, will achieve the right to sign the certificates of embalming and will bear the entire responsibility of performing this procedure. The autopsy technicians will be able to perform under the authority of the anatomopathologist or of the forensic doctor. Since the two qualifications beneficiate in their training from a series of common notions, each holder of a qualification will be able to complete his / her training to achieve the other qualification as well.

The Classification of Occupations in Romania will be completed and modified by replacing the occupation of embalmer with the one of thanatopractician. Also, the occupational standard for thanatopractician will be elaborated and the occupational standard for the autopsy technician which dates back to the year 2008 will be updated.

For the time being, the Ministry of Health has not issued the order to approve the

organising of the training programmes, of the curricula and of the evaluation for the qualifications of autopsy technician and of thanatopractician. Not even the Classification of Occupations in Romania has been modified in this regard. Thus, according to article 47 from the Technical and Health Rules, until the training of the first generations of thanatopracticians, the certificate of embalming will be signed by the doctor/anatomopathologist or forensic doctor, and the embalming performed outside the sanitary or forensic units will be performed by the autopsy technicians under the supervision of a doctor.

4. Situations where Embalming is Mandatory

The embalming of a person is mandatory in three situations. First of all, the Law no. 102/2014 in article 29 paragraph (4) requires that the *transport of the deceased outside the locality in which the death took place* should be performed only after embalming. In what concerns the transport outside the locality, article 5 paragraph (1) letter b) from the Technical and Health Rules provisions that the embalming would not be mandatory unless the deceased is transported at a *distance of at least 30 km* (in the initial project the expression was clearer, being a *longer distance than 30 km*).

Practically we are in front of an attempt to modify the law through its implementing rules. Thus, *of lege ferenda*, we consider to be necessary the modification of article 29 paragraph (4) from the Law no. 102/2014 to ensure the consistency with its implementing rules, or supressing article 5 paragraph (1) letter b) from the Technical and Health Rules, the more so as the Technical and Health Rules only provision the case in which the transport is made with the purpose of the burial, not in the case of cremation, and, according to art. 58 paragraph (3) from the Law no. 24 of 27 March 2000 on the rules of legislative technique for the preparation of normative acts, the amendment of a normative act can only be ordered through a normative act of the same or higher level.

The Technical and Health Rules also define two more situations when the embalming procedure is mandatory. The deceased persons may be deposited, before burial, in public places, such as mortuary houses, funerary houses, chapels, halls for funeral ceremonies, with a closed coffin or with the lid of the coffin open. In the situation in which the family opts for the *exposal with the lid of the coffin open*, this can be done only based on a certificate of embalming. Being an orthodox majority country, in principle, the families opt for the exposal of the deceased with the lid of the coffin open.

Also, the embalming procedure is mandatory when, due to the medical cause of death that occurred outside sanitary units, the embalming is required as a *measure of prophylaxis and reduction of biological risk*, according to the epidemiological approval of the county public health department or the Department of Public Health Bucharest.

5. Situations where Embalming is Prohibited

Performing the procedure or embalming is prohibited in three situations. In the first hypothesis, the embalming is, in fact, only delayed for the good course of justice. Thus,

in the cases in which, by law, the forensic autopsy by the criminal investigative body or by the court is required, the embalming cannot be performed prior to the judicial investigation, but only subsequent to it.

Another situation in which the embalming is prohibited regards the case of infectious diseases with highly pathogenic biological agents, according to the epidemiological notice of the county public health department or the Department of Public Health Bucharest.

Classifying the causes of death in the category of infections with a highly pathogenic infectious agent in which case the embalming is prohibited or with an infectious risk in the which case the embalming which is mandatory is made by the county public health department or the Department of Public Health Bucharest where the death occurred, based on the Infectious risk classification methodology for people who died of infectious diseases, approved by the Order of the Minister of Health no. 1533 of 29th of December 2018. This methodology attributes a high risk for the following diseases: smallpox, viral hemorrhagic fever (Lassa, Ebola, Marburg, etc.), yellow fever, typhus exanthematicus, plague, anthrax and rabies. Consequently, the embalming of the persons deceased from these maladies is not allowed.

A medium risk was attributed to diseases such as: hepatitis B and C, HIV infection and transmissible spongiform encephalopathies (e.g. Creutzfeldt-Jakob Disease). Although, in principle, the embalming is allowed in the case of these diseases, however, if there is fluid leakage from the corpse, these diseases fall into the category of high risk, and consequently, the embalming is prohibited.

Also, the embalming outside authorized areas is prohibited according to the Technical and Health Rules and, in the case of deaths from infectious diseases, embalming is prohibited even in the vehicles for mobile funeral assistance. Such vehicles can be used if the funeral service provider performs embalming in rural areas where there are no authorised areas.

6. Situations where Embalming is Impossible

Some persons deceased outside sanitary facilities cannot be embalmed for objective reasons (e.g. body fragmentation) or for reasons of public health (e.g. advanced decay). If there is also an infectious risk, steps will be taken to prevent transmission of the infection during autopsy/tanatopraxy, examination, transport, mortuary care, burial, incineration and the like. Also, the burial and / or incineration should take place within a maximum of 36 hours from death and the coffin shall be kept with the lid closed at all times.

7. Situations where Embalming is Optional

After presenting the cases where embalming is compulsory, forbidden or impossible, we have found that embalming is optional in very few practical situations, such as the situation in which, even though the deceased will not be exposed with the lid of the coffin open and the burial or the cremation will take place in the town where the death occurred, the person who has to make decisions regarding the funeral however opts for performing the embalming.

The Law no. 102/2014 provisions in article 17 paragraph (1) a hierarchy of the persons who have the priority to dispose regarding the deceased's funeral, not expressing the will of a person in the preferred rank, thus making it possible for the next person provisioned by the law to be granted the right to determine the deceased's funeral and implicitly to choose regarding the embalming.

8. Instead of a Conclusion

To the extent to which, for objective or public health reasons, it is not impossible or prohibited, the embalming is no longer intended to ensure the permanent preservation of the body, but, together with the other methods and techniques of tanatopraxy, has the role to restore the deceased's appearance as close to the previously known one as possible, so that they can be worthily introduced during the funeral to those who want to bring a final tribute.

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