

[CREMATION COLUMN]

Avoiding Painful Claims: How to Mitigate Common Crematorium Risks

By Domenic Antinucci, program manager, the Brownyard Group

Death is the new black, or at least that is what surveys are showing. According to a recent survey by life insurance provider Ethos, 68% of Americans are comfortable discussing end-of-life preparations with loved ones. This, combined with changing views on end-of-life care, has created a surge around discussions of nontraditional burials. While some of these types of burials, such as green funerals, are still evolving, the use of cremation has spiked.

In fact, a report from the National Funeral Directors Association shows that the U.S. annual cremation rate is expected to grow from 60.5% in 2023 to 81.4% in 2045. Changing perspectives and options in the handling of death have created opportunities for the cremation industry, bringing in new business and allowing crematoriums to grow. While crematorium professionals take precautions and follow careful processes, risks remain. Fortunately, for every new risk, there are safeguards crematoriums can put in place.

THE RISKS:

While slips, trips, and falls are part of everyday industry risks, there are unique threats crematorium professionals must consider as well. Although rare, these risks pose unique hazards to those operating crematoriums.

- **Mental anguish.** Mental anguish insurance claims are typically covered by the insured's professional liability coverage and are related to an interference of the right of sepulcher. One of the bigger challenges facing crematoriums and cemeteries is not impeding the right of sepulcher in any way.

Simply put, mental anguish claims stem from situations where the family or loved ones are put through an emotionally traumatic event. For crematorium owners and operators, mistakes like providing the wrong belongings, giving the family the wrong cremated remains, or cremating the wrong body top the list of incidents that might expose a facility to mental anguish claims. It is difficult to quantify the harm caused in such claims and, should these matters proceed to litigation, crematorium owners can be exposed to extremely large jury awards.

- **Medical implant risks.** The number of people with medical implants, such as pacemakers, hypoglossal nerve stimulators (sleep apnea implants), and other materials due to rising surgeries, is rapidly increasing. As Americans continue to address age and health issues through the use of implants, crematorium owners and operators must be thorough in removing problematic materials such as pacemakers, which may include plastics and, even worse, batteries, which may explode, putting crematorium staff at risk and damaging equipment such as the retort. Some metals, such as titanium and steel, do not break down during the process and can be removed afterward with magnets. Other metals should be removed due to the extremely high heat the retorts burn. Crematorium staff will

also need to remain up to date on the rules and regulations regarding implant removal and disposal. These can vary by state.

- **Negligence:** Failing to uphold the proper standards of care for bodies can result in a negligence claim. Improper storage is a major cause of negligence insurance claims. For example, a funeral home in Colorado is under investigation for improper storage of bodies. Improper storage can refer to bodies not being properly refrigerated, bodies not being properly embalmed, or it can refer to storage spaces being overcrowded. While not always intentional, improper storage of remains can be severely damaging to a crematorium's reputation as well as risking financial and legal damages.

During the height of COVID, crematoriums, funeral homes, and cemeteries were tested, and unfortunately, there were many cases similar to the above example in Colorado due to lack of preparedness and ability to service the number of families they committed to.

MITIGATING THE RISKS: BEST PRACTICES IN CREMATION

Fortunately, there are a number of steps crematorium operators can take to help prevent such situations, as well as helping crematoriums prepare for when accidents do happen.

- **Stay up to date.** There are specific rules and regulations crematoriums must abide by to remain licensed and open in every state. In addition, there are processes and industry best practices to follow. To best avoid legal issues, crematoriums should stay up to date on all changes to rules, regulations, laws and even recommended procedures.

One way to stay up to date is through the help of associations such as the International Cemetery, Cremation and Funeral Association or the Cremation Association of North America. Such groups and associations will work to ensure their members remain up to date when laws or regulations are changed and provide information on current and helpful industry best practices.

- **Create a cremation checklist:** A clearly defined and printed checklist of the expected steps for before, during, and after a body is cremated can be a helpful resource to ensure crematory employees follow the correct procedures. For example, checklists can include a step requiring staff to check for and remove any medical implants, helping to ensure the safety of employees and the facility. Checklists can also include sections for families and loved ones to include notes regarding any foreign materials that might be in the body, such as metal plates. These notes can also provide a final check for any personal effects, such as jewelry, to ensure those items can be returned to loved ones unharmed.

Crematoriums can also ensure the checklist is followed by requiring another employee to review and verify each step was taken before marking it off. Such small, seemingly minor tasks can help reduce the number of damage and mental

anguish insurance claims while ensuring the body is cremated correctly.

- **Training and awareness:** Proper training and awareness are at the core of every crematory employee's career. While resources such as checklists and educational materials can help employees stay up to date on industry best practices, those with a thorough understanding of and respect for the work are likely to make fewer mistakes.

Crematoriums that require new hires to all go through comprehensive, introductory training are less likely to be at risk for accidents. Those who take an extra step and require regular training review will benefit from an added layer of protection. Associations and groups such as those listed often offer helpful educational materials and resources for members to use when training employees.

- **Maintenance:** Regular maintenance of the crematorium facility, as well as appliances such as the retort and refrigerators, will help reduce basic risks such as slips, trips, and falls as well as property damage. Ensuring the retort is clean, free of damage and well-functioning will also cut down on any damage to remains or urns. Finally, good maintenance helps raise the standard of care that workers offer their clients, putting them at less risk for negligence claims.

- **Know your capacity:** Do not oversell or overbook your facility. A full cremation and processing procedure can take up to 10 hours per retort. If your facility is at full capacity, it is important to change your process or prepare for more business by purchasing additional equipment, such as refrigerators or incinerators.

- **Properly insured:** The cemetery and cremation industry has several specific needs. With these needs in mind, it is important for crematory owners to ensure their business is properly protected and covered with a professional liability policy that covers the risks noted here as well as others.

While some accidents are unavoidable, there are ways for crematoriums to overcome and prepare for the industry's more unique risks. Crematoriums that follow the rules, take extra precautions and maintain a high standard level of care are less likely to face reputational, financial, and legal risks. Those who are unsure of where to start can speak with their insurance provider, who can help identify areas of concern and develop a plan of action to ensure they have the right coverage for their needs. •



Domenic Antinucci is a program manager at the Brownyard Group, which offers cemetery and crematory insurance coverage through the Memorialpro insurance program and has been a part of the ICCFA for more than four years. He can be contacted at dantinucci@brownyard.com or 800-645-5820.