



## MYRTLE BEACH POLICE DEPARTMENT

### GENERAL ORDER

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**Subject:**     *Deceased Persons Investigative Searches*

**Number:**    806

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**Effective Date:**   *January 1, 2001*

**Revised Date:**

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**Rescinds:**        *GO-006*

**Dated:**   *October 10, 2000*

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Approved By:

### PURPOSE

The purpose of this General Order is to establish guidelines for responding to deceased persons investigations. These guidelines are more specifically concerned with search and seizure issues that are encountered in many of our deceased person scenes (excluding traffic fatalities for which there are existing guidelines in place). They are being referred to as "guidelines" rather than as a regulation or procedure because it is realized that each incident will have its own set of unique circumstances. Responding officers and investigators will have to make decisions on the best way to proceed with an investigation based on the existing conditions at that time.

### GENERAL ORDER

1. The majority of our deceased person investigations are going to involve death from natural causes. We have developed an appropriate philosophy to proceed with any such investigation as if it were a homicide case. This is often a tough job and sometimes causes some conflict with our "First in Service" attitude towards grieving family members. Understandably, loved ones who had knowledge of the deceased's failing health and were somewhat prepared for the death often have the hardest time accepting the Police and Coroner presence at such a tragic time. It is important that when we are dealing with these very difficult humanitarian issues we remember that, absent any exigent circumstances, we must have either valid consent or a search warrant to conduct our investigation if this scene is in someone's residence or other private place. (Note: Some of our scenes, usually involving some of our area homeless, are in vacant lots or wooded areas. In many of these situations, the "open field" doctrine should permit us to do our investigation without need of consent or warrant.)

2. In cases when we respond to a residence of a deceased person where the initial investigation reveals no suspicious circumstances and the victim's age, prior medical condition, etc. are such that it is most probable that death did result from natural causes, it is recommended that oral consent be obtained to authorize our on-scene investigation. This consent should be done in the presence of another officer and should be given by someone who has the authority and the mental capacity to do so freely and voluntarily. The obtaining officer/investigator needs to later document that this consent was:

- A. Given by the named person;
- B. This person's position relating to their authority to give such consent;
- C. The witnessing officer to this consent;
- D. Provide a statement relating that this person was mentally rational and competent to give consent.

In many cases, the responding Police Officer and his/her Supervisor will obtain this consent. The circumstances involved in this consent need to be passed on to the responding Investigator and an arrangement agreed upon for the written documenting of this consent.

3. If at anytime during a consent search a circumstance is detected that raises some concern about this death being from natural causes, then the below guidelines should be considered.

- A. In cases where any circumstances are present that indicate a death may be the result of a homicide, suicide or accidental cause, it is recommended that a search warrant be obtained to conduct the investigative search. In the past, we have often used a written consent form to obtain the right to search. However, it is now recommended that as a practice we obtain the search warrant. The main advantage of the warrant is that in a search by consent, the consenter has the right to withdraw consent at any time. Thus, not only could it be argued by defense attorneys that valid consent was not given (typically for reasons such as the consenter did not have the authority, was too distraught to give it knowingly, was intimidated by the police presence, etc.) but can also argue that the client at some point withdrew his consent but the police continued to search anyway. By obtaining a search warrant, none of the above-mentioned scenarios should become an issue.
- B. At some scenes, the deceased is the only known resident of that particular location. It is still recommended that consent or a warrant be obtained in these cases although some case law would indicate that no other person would have standing to object to a crime scene search. With consent or a warrant being obtained, there becomes no issue of someone later arguing that the demised victim's possession of the

property reverted to another (next of kin, landlord, etc.) at the time of his/her passing. The same basic guidelines apply to this situation as well. If believed to be a death from natural causes, the oral consent is acceptable.

4. Again, in a consent search, written documentation is crucial. As a wise veteran police manager was fond of stating, "If it is not documented, then it did not happen!" If any suspicious circumstance is present, then obtain the search warrant.

5. Concerns or questions regarding these guidelines should be forwarded through the Chain of Command.