

Chapter 330, Acts of 1980, resolved the situation by (1) reenacting Art. 43, § 359(a) which prohibits the practice of the unified occupation without a license, (2) permitting holders of certain current funeral director licenses to renew those licenses, and (3) defining the limited scope of practice that is authorized by the funeral director license.

The revision uses a single term "mortician" for the primary practitioner licensed under this title, and the term "practice mortuary science" to designate the primary practice that is regulated.

Common Law Rights.

At English common law, a decedent and certain surviving relatives and friends of a decedent had various rights associated with the care and custody of a dead human body and the manner of its final disposition. Although this is an area that is seldom litigated, it is clear that at least some of the common law is still the law in this State. See Unterstützung Verein v. Posner, 176 Md. 332 (1939); Painter v. United States Fidelity & Guaranty Co., 123 Md. 301 (1914); Snyder v. Holy Cross Hospital, 30 Md. App. 317 (1976). See also P. Jackson, The Law of Cadavers (2d ed. 1950).

These common law rights, because they include broad discretion as to the manner of disposition of a body, appear to include the right to arrange and carry out final disposition of a dead human body without the assistance of a licensed mortician, if disposition otherwise is made in accordance with the law. There is no statutory law in this State that appears to prohibit this possibility. The question at present is unresolved partly because the present laws do not define the term "funeral directing".

Several other health occupations involve the practice of acts that also may be done by unlicensed individuals. In those titles, the "practice of _____" is defined to mean doing the specified acts for compensation. This language allows individuals who traditionally have done these acts without a license to continue to do so, yet requires that individuals who do the same acts as a business be licensed and, therefore, regulated by this State. See present Art. 43, § 860(c) regarding "social workers" and present Art. 43, § 604(b)(1) regarding "physical therapists".

Because there are common law rights for certain individuals to choose the manner for burying their dead, and because the present law that relates to "funeral directing" does not define that practice but does refer repeatedly to the "business" or "occupation" of funeral directing, the Commission to Revise the Annotated Code concluded that the General Assembly intended to regulate only individuals who dispose of dead human bodies for compensation. Therefore, the Commission included that phrase in the new definition of