

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
PROFESSIONAL LICENSURE COMMITTEE

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PUBLIC HEARING IN RE: H.B. 416, P.N. XXXX

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BEFORE: REP. MICHAEL P. MCGEEHAN, Chairman
REP. NICK KOTIK, Member
REP. SUSAN HELM, Member
REP. FRANK BURNS, Member
REP. JOSEPH PETRARCA, Member
REP. JARET GIBBONS, Member
REP. MARC J. GERGELY, Member
WAYNE CRAWFORD, MARLENE TREMMEL,
DIANNE NICHOLS

HEARING: Tuesday, February 17, 2009
Commencing at 2:00 p.m.

LOCATION: Comfort Inn
455 Theatre Drive
Johnstown, PA 15904

WITNESSES: Rep. Bryan Barbin, David Kaltenbaugh,
Joseph Nypaver

Reporter: Richard J. Lipuma, CCR
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<u>Number</u>	<u>Description</u>	<u>Page</u> <u>Offered</u>
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P R O C E E D I N G S

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CHAIRMAN:

The hour of two o'clock having arrived, I'm going to convene this meeting of the House Professional Licensure Committee. I want to welcome the members, the guests and those who are going to testify here today. I have our court reporter, Rich. Thank you for your help and assistance today.

I want to begin by having the members introduce themselves so that you're familiar with the members of the House Professional Licensure Committee and guests. Let's start with my left, Representative Petrarca.

REPRESENTATIVE PETRARCA:

Representative Joe Petrarca, 55th District, Westmoreland County.

REPRESENTATIVE BURNS:

Frank Burns. I cover Cambria and Somerset County, the 72nd District.

REPRESENTATIVE KOTIK:

Representative Nick Kotik, 45th Legislative District, Allegheny County.

REPRESENTATIVE MCGEEHAN:

I'm Mike McGeehan. I'm the Chairman of

1 the Committee and I represent Philadelphia County.

2 REPRESENTATIVE HELM:

3 Sue Helm, 104th District, Dauphin County.

4 ATTORNEY CRAWFORD:

5 Wayne Crawford. I'm the Executive
6 Director of the Committee for Republican Caucus.

7 ATTORNEY TREMMEL:

8 Marlene Tremmel, Executive Director for
9 the Democratic Caucus.

10 CHAIRMAN:

11 I want to thank, again, the members for
12 attending. There will be members coming in and out.
13 I want to thank the host for this beautiful facility
14 today. This is my first time in Johnstown in my 18
15 years in the legislature. It's due to the persuasive
16 abilities of Bryan Barbin that the Committee is here
17 in Johnstown. This is the first time, I think in
18 memory, that the House Professional Licensure
19 Committee has had a hearing in Johnstown. I know he's
20 a new member. He's certainly been vocal about the
21 attention being paid to Johnstown and this district
22 and this region, so I appreciate your advocacy for
23 your district and for this region and I hope it's not
24 the last time we return to Johnstown.

25 We're going to talk about the Bill that

1 Representative Barbin is sponsoring. It's an
2 important Bill. It's House Bill 416, which penalizes
3 and makes it a crime to impersonate a licensee. I
4 want the first testifier to be the prime sponsor of
5 the Bill, Representative Barbin. I'm glad you can
6 make it. And at the end of your testimony, I'd ask
7 that, if you would, field any questions. And once
8 that's done, ask you to join us here at the Committee
9 table. You're welcome to begin when you're
10 comfortable and ready to start.

11 REPRESENTATIVE BARBIN:

12 Thank you, Chairman McGeehan, and all of
13 the members of this Committee. I am very happy to be
14 here in Johnstown to be part of an opportunity to make
15 the laws work a little better for all of the citizens
16 of the Commonwealth. I have the fortune to also serve
17 in the State Attorney General's Office. I'm very
18 familiar with consumer protection issues that relate
19 to licensees.

20 And the Bill, House Bill 416, is a Bill
21 that is necessary mostly because of the economic
22 circumstances creating additional opportunities for
23 people to impersonate licensees. Up to now, most of
24 the attention has been on the civil side with the
25 Department of State. I practiced before the Bureau of

1 Professional and Occupational Affairs. I'm familiar
2 with their process. In general, if someone is a
3 licensee and is misusing, or impersonating or holding
4 themselves out as a licensee when they're not, that
5 matter will be referred on a civil basis to the Bureau
6 of Professional Occupational Affairs. A determination
7 will allow a respondent to answer a rule to show
8 cause. And if cause is found, a rule will be issued
9 to order that individual to stop and a fine will be
10 imposed, generally \$1,000.

11 The problem that we have in the
12 Commonwealth --- in Johnstown and throughout the
13 Commonwealth, is that as the economic circumstances
14 change more and more people are looking to gain an
15 advantage by holding themselves out as a licensee.

16 Now, we've always handled that as a civil
17 remedy up to now with four exceptions. What this Bill
18 would do would be to say all licensees, all
19 occupational licensees, all professional licensees
20 would have the same ability to protect their various
21 clients by having the law step in and say at some
22 point, in addition to the civil remedy, we're going to
23 have a criminal remedy. And that criminal remedy will
24 be a misdemeanor of the second degree for a person who
25 does two things.

1 Number one, that person will have to hold
2 themselves out knowingly as being a professional or
3 holding an occupational license. And secondly, that
4 they'll take some act in coming up with a benefit as
5 if they were that licensee to the harm of another
6 person.

7 The problem with the civil remedy side is
8 because people that go through the civil process don't
9 have an avenue for restitution. Restitution is a
10 criminal benefit. And if you go through a court case
11 and someone has committed a crime against you, the
12 judge, as part of the sentence, is allowed to order
13 restitution for the economic harm that is suffered.
14 In the context of the civil proceeding, a judge isn't
15 in the position to do that. If the law now applies to
16 all licensees then a judge will be able to say, and
17 you caused Mrs. Smith \$5,000 of economic damage. I'm
18 imposing as part of the two --- of a sentence of up to
19 two years, an additional condition would be to repay
20 the amount of damage that you caused.

21 That's why this is an important issue.
22 It's something --- the statistics bear this out as
23 well. In 2006 we had approximately 300 incidents of
24 this type of impersonation of licensee going before
25 the Board. We're now up to --- in 2008 it was 454

1 incidents. It's almost a 200 percent increase in a
2 short period of time. If the economic downturn
3 continues we can expect, reasonably, this number to go
4 up again because people are going to take advantage of
5 holding themselves out as a licensee. So this is a
6 good step to take now because it does --- it puts
7 everyone in the same position. Anyone that holds a
8 license will be protected by the law, the criminal
9 law, as well as the opportunity to go to the Board,
10 the Bureau of Professional Occupational Affairs.

11 Now, the Bill has been submitted, 416. I
12 would also ask --- or point to the Committee's
13 attention one additional fact. Normally, when you go
14 out and you impose a crime for impersonation, that's a
15 police officer, that's a public servant, the
16 misdemeanor is of the second degree. And under our
17 crimes code what that means is you can be sentenced up
18 to two years in prison. A misdemeanor of the first
19 degree you can be sentenced up to five years in
20 prison. The way that --- this is the consolidated
21 statutes 18PaCSA Section 4913, and the Bill as
22 proposed would add a provision 4913.1 to apply a
23 second degree misdemeanor to all licensees, not just
24 notary publics.

25 Now, I would suggest that in the process

1 of going through the technical amendments to this Bill
2 that the Committee consider making 4913 a provision
3 which could be titled impersonating a licensee.
4 Because a notary public is a licensee and that the
5 offense be a standard offense, which would be the same
6 offense if you attempted to impersonate a police
7 officer, which would be a misdemeanor of the second
8 degree. The Bill, as drafted, suggests that it be a
9 misdemeanor of the second degree, which is a sentence
10 of up to two years. I would suggest that if you are
11 going to do technical amendments to this Bill that you
12 would consider, number one, changing the title to
13 impersonating a licensee and then having the same
14 penalty apply across the board to all licensees,
15 including a notary public.

16 And, again, I guess --- and the last
17 point would be that no matter what amendments you make
18 to this Bill or whether you pass the Bill in the form
19 that is immediately before you, it will not have any
20 effect on the process that is now a civil process
21 before the Bureau of Professional Occupational
22 Affairs. This is just another tool that law
23 enforcement can use when they deem it necessary, when
24 an economic harm has occurred.

25 Up to now, we have no way of protecting

1 victims of these crimes unless you're specifically
2 identified as a notary public, as an ambulance
3 personnel or as a public servant, so this is a very
4 necessary law. But my suggestion is there should be
5 one law and it should have the same penalty, and it
6 should apply across the board. Because in that
7 circumstance, a district attorney is going to be in
8 the position of saying, you know, this one crossed the
9 line. This one we need to protect the victim. And
10 it's an appropriate sentence. It's a misdemeanor two
11 and applies to everybody if you cross the line.

12 So I just want to thank you for the
13 opportunity to testify today to bring those points to
14 your consideration. And I'd be happy to answer any
15 questions you might have concerning the Bill.

16 CHAIRMAN:

17 I have a couple observations to begin
18 with and the other members are free to ask questions.
19 One is that we --- the Committee will be happy to work
20 with you to straighten out that language. I think the
21 clarification that you pointed out is an important
22 one, in that we need to make it uniform and across the
23 board. And I think that that's an excellent
24 observation. And the Committee, with the members'
25 indulgence, will do just that, work to incorporate

1 that language into the existing Bill.

2 I have to tell you, honestly, when I
3 first heard about this Bill, on the face of it, I
4 thought, well, what's the big deal? Your observation
5 that with these economic times, more and more people
6 are going to be tempted to do just that, practice
7 professions without the certification, practice
8 professions without the licensure, practice
9 professions without the education or ability. And we
10 don't have to look far for headlines where this is
11 going on. We have cases where people have
12 impersonated doctors, nurses and chiropractors. And
13 fields that if somebody is practicing without a
14 license, a barber, what damage is done, really, except
15 a bad haircut, a bad hair day? But when we have ---
16 we license many, many trades and occupations that
17 really affect peoples very lives.

18 When we look beyond the surface of this
19 Bill and see the types of licenses, professional
20 licenses, that are granted in this Commonwealth, you
21 see real consequences when people abuse the system.
22 And I think your efforts should be applauded in
23 recognizing this, particularly as you observed
24 correctly. These economic times are going to be
25 tempting for people to cross that line and do things

1 they may not normally do under normal circumstances.
2 So I think it's incumbent that this Committee act on
3 your legislation and I commend you for it. And I'll
4 entertain any questions from the members.
5 Representative Kotik.

6 REPRESENTATIVE KOTIK:

7 Thank you, Mr. Chairman. Thank you,
8 Representative Barbin, for your testimony. I'm just
9 thinking as I look --- peruse the particulars of your
10 Bill, and maybe you can educate me a little bit on
11 this section. Do we address restitution of people
12 that are harmed under these circumstances?

13 REPRESENTATIVE BARBIN:

14 Currently the law on both impersonating a
15 public servant or impersonating a notary public only
16 provides that a violation of the statute would be a
17 misdemeanor two or a misdemeanor one. And it's up to
18 the judge, under sentencing guidelines, to determine
19 how that should be handled. It's not really --- it's
20 generally in a criminal statute that there would be an
21 additional provision for restitution. That's the
22 other branch of government. They have the right in
23 handing down their sentence to impose restitution.

24 So that's where we fall down when there
25 is no criminal statute for, say, impersonation of a

1 CPA, where if someone loses \$5,000. That's going to
2 have to go to the Bureau of Professional Occupational
3 Affairs. They're going to say cease and desist, a
4 \$1,000 fine. You pay the money or it goes over to the
5 Attorney General's collections Bureau, but that's
6 civil. There's no way to get that money back to that
7 person in the proceeding.

8 The person could file a civil action and
9 say, we have an order here that this person has been
10 proven to have violated the licensing laws with regard
11 --- by holding themselves out as a certified
12 professional, you know, accountant, but we have
13 another lawsuit. In a criminal proceeding the judge
14 makes it part of the proceeding, that before you can
15 be released you're going to have to satisfy the
16 conditions of the sentence and one of those conditions
17 can be restitution.

18 REPRESENTATIVE KOTIK:

19 Thank you very much. Thank you, Mr.
20 Chairman.

21 CHAIRMAN:

22 Thank you, Representative Kotik.
23 Representative Petrarca.

24 REPRESENTATIVE PETRARCA:

25 Thank you, Mr. Chairman. And I do agree

1 with the Chairman, Bryan. I think, you know, you're
2 doing a great job, you and Representative Burns. You
3 guys have hit the ground running in Harrisburg and
4 it's a pleasure to see that, and I'm glad to be here.

5 How many incidents of impersonation did
6 you say there were in 2006 or this year?

7 REPRESENTATIVE BARBIN:

8 In 2006 there were over 300 --- there
9 were 300 incidents that were reported and processed.
10 By 2008 we are now up to 454. That goes --- I think
11 that's more than anecdotal evidence to show there is a
12 big increase. And it makes sense because if you were
13 going to look at robbery numbers, or burglary numbers,
14 all of those things are going to go up when economic
15 pressures are getting worse. And the only question
16 is, should we be doing something about it that is a
17 full remedy instead of a civil remedy, which is a
18 partial remedy?

19 REPRESENTATIVE PETRARCA:

20 And when --- and we're talking about the
21 different acts of impersonation. It could be of a
22 licensee, it could be of any licensee; correct?

23 REPRESENTATIVE BARBIN:

24 Yes. And part of the Act also amends the
25 Section 4501 definitions to include, as a licensee,

1 anyone who holds a license issued by any of the Boards
2 of Professional or Occupational Affairs.

3 REPRESENTATIVE PETRARCA:

4 And in terms of criminal remedy or
5 penalty, let's say, it makes no distinction between
6 --- or of a licensee?

7 REPRESENTATIVE BARBIN:

8 No. Under my Bill everyone would be
9 treated as a misdemeanor second degree, but penalties,
10 as far as the economic harms that are --- that go
11 along with that impersonation, that would be up to the
12 judge in sentencing.

13 REPRESENTATIVE PETRARCA:

14 Thank you, Mr. Chairman.

15 CHAIRMAN:

16 Thank you, Representative Petrarca.

17 We've been joined by Representative Jaret Gibbons. I
18 recognize Representative Helm for a question.

19 REPRESENTATIVE HELM:

20 Thank you, Mr. Chairman. Of the 454
21 cases that you mentioned, I'm just curious, is there
22 any one profession that seems to be impersonated more
23 than another one?

24 REPRESENTATIVE BARBIN:

25 I would like to have that information for

1 you, but I do not have that information. What I can
2 tell you is that in those 454, we had 3 alone here in
3 Cambria County. So it isn't just an issue for any one
4 region of the state, it's really an issue for
5 everyone. And it doesn't really matter whether those
6 are, you know, a cosmetology license or a barber's
7 license or --- you know, or a chiropractic license.
8 The problem is if you don't insist that people that
9 hold themselves out as having a license, be held
10 accountable then there will be no way of keeping
11 people from taking advantage of those licenses no
12 matter what they are.

13 I mean, it could be a person going in and
14 saying, I have a barber's license or I have a funeral
15 license and they make a deal, a financial deal, on the
16 basis that they own a license. And then all of a
17 sudden you find out the person is just like any other
18 con artist and he doesn't have any license. Now, that
19 person's not just going to affect the person that has
20 a real license, he's also potentially going to affect
21 real estate markets, financial transactions. Lots of
22 people can get hurt by holding --- by a person holding
23 themselves out as a Licensee, so it's the economic
24 portion of the crime that really requires a uniform
25 and overall approach. That's the reason for the Bill.

1 REPRESENTATIVE HELM:

2 And I agree. I made the statement a
3 little while ago, I have five licenses. I don't want
4 anybody impersonating any of my licenses, you know.
5 But I just wondered if there was any trend that was
6 happening?

7 REPRESENTATIVE BARBIN:

8 I don't know of trends. The only trend I
9 know about is a 200 percent increase over 2 years is
10 something to stand up and take notice.

11 CHAIRMAN:

12 Any other questions? Representative
13 Barbin, thank you very much for your testimony. I
14 want to thank you, Representative Barbin, for allowing
15 us to come here and hold a hearing on this important
16 Bill. And I can promise you, with the indulgence of
17 the members, that we'll give this speedy consideration
18 in Committee. Thank you very much.

19 REPRESENTATIVE BARBIN:

20 Thank you very much.

21 CHAIRMAN:

22 You're welcome to join us, please. We
23 next want to hear from David Kaltenbaugh. He is the
24 Cambria County District Attorney's Office. Did I say
25 that right?

1 ATTORNEY KALTENBAUGH:

2 Kaltenbaugh (corrects pronunciation).

3 CHAIRMAN:

4 Kaltenbaugh. Thank you, Mr. District
5 Attorney.

6 ATTORNEY KALTENBAUGH:

7 No, I'm here for the District Attorney,
8 which would be Patrick T. Kiniry.

9 CHAIRMAN:

10 Okay. With that office then?

11 ATTORNEY KALTENBAUGH:

12 Yes.

13 CHAIRMAN:

14 Thanks very much for your attendance and
15 please begin when you feel comfortable.

16 ATTORNEY KALTENBAUGH:

17 First of all, before I begin, the
18 materials that I was given, the Act, the Bill, I was
19 given last year, House Bill 1120, so where I reference
20 1120 in my written materials, I'm referring to House
21 Bill 416 now of 2009. And I think --- if you wish me
22 to start reading from the materials.

23 My name is David J. Kaltenbaugh and I am
24 the Chief Deputy, Appellate Division, for the District
25 Attorney of Cambria County. The District Attorney of

1 Cambria County is Patrick T. Kiniry. Mr. Kiniry is
2 unable to be present due to other commitments, but he
3 has reviewed House Bill 1120 and is familiar with its
4 contents and the purposes.

5 From my job title, obviously, I deal with
6 appeals from convictions for the violation of
7 statutes, and those appeals deal with challenges based
8 on the weaknesses, real or perceived, in those
9 statutes. From that perspective I have reviewed House
10 Bill 1120, consulted with Mr. Kiniry and make this
11 statement.

12 When first considering the conduct that
13 House Bill 1120 is intended to criminalize, one thinks
14 of licensed healthcare professionals such as doctors
15 and pharmacists. Quite frankly the crimes involving
16 unlicensed healthcare professionals are adequately
17 legislated in many statutes. It is with other
18 occupations and endeavors requiring a license for
19 which House Bill 1120 is needed. For example,
20 cosmetology requires a license and there is
21 information indicating that, in many areas,
22 counterfeit and adulterated licenses are not uncommon.
23 While documented cases are few in Cambria County, I
24 believe that the reason for this is that the
25 counterfeit and adulterated licenses are undetected.

1 The concern that the District Attorney has expressed
2 is that cosmetologists, as with many licensed
3 occupations, handle chemicals and other dangerous
4 substances where the risk of harm to person and
5 property from use by an untrained, undocumented
6 person, is significant. Therefore the need for the
7 criminal offense to be created by House Bill 1120 is
8 established.

9 In addition, pertaining to the felony
10 grading provision --- and I hope that's the same in
11 both Bills. For the criminal offense, when there is
12 an intent to injure anyone, it is submitted that
13 consideration should be given for such grading when a
14 fraudulently licensed person causes injury by criminal
15 negligence in performing the occupation for which he
16 or she is fraudulently licensed. In other words, to
17 include recklessness, criminal negligence, in addition
18 to intentional harm, if you were considering the issue
19 of restitution before the courts.

20 CHAIRMAN:

21 Thank you very much for your testimony on
22 behalf of the Office and the District Attorney. I'll
23 open it up for any questions by any of the members
24 that may have any questions.

25 I have one, that --- are there cases that

1 you're familiar with in Cambria County, and what was
2 that case if there are any?

3 ATTORNEY KALTENBAUGH:

4 There have been none that have been
5 handled criminally that would have been covered by
6 this, at least that we are aware of. And that may be
7 a factor more of --- if it's not in the crimes code.
8 The police are not charging it.

9 Also, you discussed the factor that ---
10 or it has been discussed that the economic downturn
11 increases the crimes. And to have the counterfeit
12 fraudulent licenses, you know, we deal quite often
13 with counterfeit, which we didn't a few years ago.
14 But you see the new and ingenious ways that persons
15 counterfeit and simulate objects. And I can imagine
16 what would happen --- what is happening, potentially
17 happening, in this field.

18 CHAIRMAN:

19 Representative Barbin.

20 REPRESENTATIVE BARBIN:

21 The way this Bill is proposed is to allow
22 higher grading if an actor is harming, defrauding or
23 injuring. And I'm assuming from your testimony that
24 there are incidents that license --- occupational
25 licensees have access to dangerous chemicals or

1 dangerous materials, which could otherwise hurt the
2 public. And if --- is a felony of the third degree an
3 appropriate grading if someone were to come in,
4 impersonate a cosmetologist --- a cosmetologist or
5 some other person, a pharmacist, a funeral director
6 maybe, to receive materials they wouldn't otherwise be
7 allowed to have, but use them for another criminal
8 purpose. Would a felony three allow the seriousness
9 of the crime to be dealt with differently by a judge
10 as opposed to a misdemeanor two classification?

11 ATTORNEY KALTENBAUGH:

12 Part of this goes to the question that
13 you were asked about restitution. In Pennsylvania
14 restitution --- and we're talking about "but for"
15 damages, it is mandated to be made. And we spend
16 quite a good amount of time collecting restitution
17 especially in Cambria County. And, you know, you can
18 think of the crimes such as the theft crimes where if
19 the loss is greater than the grade --- and the other
20 factor that has to be considered in that, if the
21 grading is increased to a felony of the third degree,
22 when there's harm done, when there's a loss. Now, in
23 most cases when you're dealing with a misdemeanor two
24 you have two years to recover restitution. Any more
25 restitution can be quite expensive. By going to a

1 greater degree, a felony of the third degree, that
2 gives you seven years as opposed to two years to do
3 the collection in those cases. So in other
4 words, ---.

5 REPRESENTATIVE BARBIN:

6 You'd be on probation until you met the
7 terms of restitution. And by having a seven year
8 total sentence, you have five more years to recover
9 the economic harm from the crime.

10 ATTORNEY KALTENBAUGH:

11 And since that is the purpose of the
12 higher grade for the felony of the third degree, that
13 would be --- that would make sense.

14 REPRESENTATIVE BARBIN:

15 So it would be your position that if you
16 have a law like this that applied to everyone, you
17 really do need the second part of the law, which would
18 allow much higher grading in the event of harm?

19 ATTORNEY KALTENBAUGH:

20 Yes. It's amazing, as we go on, how it
21 doesn't take much to have substantial restitution be
22 required in cases such as this.

23 REPRESENTATIVE BARBIN:

24 Thank you.

25 CHAIRMAN:

1 Thank you, very much, Chief Deputy. I
2 appreciate that. And express our thanks to the
3 District Attorney as well. Thank you for sharing your
4 expertise.

5 Our final testifier is Joe Nypaver. He's
6 with Serbin, Kovacs and Nypaver on behalf ---
7 testifying on behalf of the Pennsylvania Association
8 for Justice. Good afternoon, sir.

9 ATTORNEY NYPAVER:

10 Good afternoon. Mr. Chairman and members
11 of the Committee, my name is Joe Nypaver. I'm from
12 the Altoona Blair County law firm of Serbin, Kovacs
13 and Nypaver, as I was introduced. While I practice
14 primarily in Blair County, I also practice in Cambria,
15 and Westmoreland and the surrounding counties,
16 Clearfield, Indiana and whatnot. And I appreciate the
17 opportunity to talk to you this afternoon. I was
18 sitting, listening to Representative Barbin's remarks
19 and I couldn't help but think that my dear departed
20 ninth grade Pennsylvania civics teacher, Fred Watson,
21 is probably looking down upon you right now shaking
22 his finger thinking, you better have been paying
23 attention when we talked about this. So it really is
24 an honor to talk to you.

25 While I have prepared written testimony,

1 with your permission, I would prefer to just speak
2 with you extemporaneously. I don't intend to be long,
3 but I do feel your consideration of this proposed
4 legislation is very important.

5 When I was actually contacted to speak on
6 behalf of the Pennsylvania Association for Justice,
7 formerly the Pennsylvania Trial Lawyers Association, I
8 was convinced that someone was making a big mistake
9 here and that certainly there had to have been
10 legislation already on the books. And I went to my
11 law library in my office next door and started reading
12 through the statute, and sure enough I couldn't find
13 anything. So I would like to commend the sponsor and
14 author of this legislation, and this Committee, for
15 considering this legislation, and would strongly urge
16 and support its proposal --- excuse me, its enactment,
17 not only on my behalf, but on behalf of the
18 Pennsylvania Association for Justice.

19 And our mission is to represent those who
20 have been injured by the misconduct or negligence of
21 others, and to support attorneys in their endeavor to
22 help those individuals obtain justice in the court
23 system. And it's in that context of promoting the
24 health and safety that I'm here today.

25 And, Representative Helm, you had asked

1 earlier as to a trend, and unfortunately there doesn't
2 seem to be a trend. And the more I thought about this
3 legislation the more I thought of albeit anecdotal
4 evidence, was that it was of a wide variety. And I
5 mentioned in my written testimony that there was a
6 case in 2005 in the State of New York where an
7 individual had posed as a licensed architect, and he
8 was actually submitting permit applications,
9 submitting architecture plans. There was work being
10 considered to be developed. Fortunately the
11 individual was caught.

12 Well, the State of New York had a
13 criminal statute to deal with that individual and he
14 was charged. I believe they ended up charging him
15 with 133 counts. One can imagine that if that
16 individual were left to continue in that direction,
17 the cataclysmic ramification that could happen if
18 architectural plans went forward. So I think you can
19 look at a lot of different anecdotal concerns.

20 The Pennsylvania Association for Justice
21 has a concern within the medical arena. There are
22 certainly paraprofessionals that are now more involved
23 in providing medical services, which we applaud and
24 support. But those are licensed and properly trained
25 individuals.

1 There was a case last year that went
2 before the Commonwealth Court that dealt with a
3 midwife who was actually holding herself out as a
4 doctor and was in the midwife field. She was not
5 licensed to practice as a midwife and, of course,
6 there were complications involved. In other arenas
7 there was a case just last month that I read that
8 dealt with a physical therapist. In this particular
9 scenario the physical therapist treated someone who
10 was involved in an automobile wreck, and that
11 individual received physical therapy.

12 The injured person submitted the bills
13 from the therapist to their insurance company, their
14 auto insurance company, because she fortunately had
15 medical coverage complying with the state law that she
16 have medical coverage. The insurance company wrote
17 back to her and denied payment because the therapist
18 that she received the care from was not licensed. And
19 so that individual is possibly going to be stuck with
20 having to fight with that therapist as to whether or
21 not that Bill must be paid.

22 One other situation that I had to deal
23 with about a year and a half ago in Blair County, I
24 was sitting on a compulsory arbitration panel
25 appointed by the Court. And there was a financial

1 lawsuit that I and two other members on the panel we
2 presided over. And a woman came to the arbitration
3 hearing to do --- present her defense. The financial
4 institution had an attorney from Allegheny County who
5 did a fine job of pursuing the case. And
6 unfortunately, this elderly woman brought with her an
7 individual who initially tried to act as her attorney.
8 One of the other members on the panel had heard of
9 this individual, who has done this in the past, and we
10 of course agreed that we were not going to permit him
11 to what we perceived as an engagement of the practice
12 of law, and we did not let him participate.

13 However, there was nothing that we could
14 do to prevent this individual from talking to her and
15 clearly he was giving her advice on the whisper, but
16 it was without a doubt that this fellow had told this
17 woman previously about some financial direction that
18 she should take in the way of handling and approaching
19 her case. And of course there was nothing we could do
20 about it. We even had considered whether we could
21 possibly have a continuance, but we're not permitted
22 in my county to do that in compulsory arbitration.
23 And we ended up ruling in favor of the financial
24 institution and against this woman.

25 The sad thing of it was as the three

1 members of my panel, as we deliberated, it was clear
2 that if she would have perhaps received not only
3 proper legal advice, but perhaps more significant to
4 her issue was proper financial advice, that she could
5 have had a basis to defend, if not completely defeat,
6 the claim against her or significantly reduce it. And
7 so that was a very concrete example whenever I was
8 presented with the opportunity to come speak to you
9 today.

10 Before we got started I had the
11 opportunity to meet one of the County Commissioners
12 from Cambria, Mr. Harris, and he reminded me, or
13 informed me, that one of his other hats was as a
14 funeral director. And I was reminded of a case that I
15 had been called in to be involved in. Gee, this might
16 have been the late '80s, early '90s when I first
17 started to practice. There were a number of funeral
18 directors in my county who were concerned about ---
19 not an individual, but actually a business that was
20 offering certain, for lack of a better term, funeral
21 packages. And they were not properly licensed. And
22 they backed off and they left the area. It seemed
23 like it might have been a scam. And fortunately one
24 of the funeral directors was alerted to it right away,
25 and I think they knew the troops were being rallied,

1 so to speak.

2 But just this afternoon I was reminded of
3 yet another anecdotal situation where you have a
4 paraprofessional of some field coming in and
5 presenting to the public that they are holding
6 themselves out as a professional. And this is such
7 commonsense legislation, I would ask that you promptly
8 deliberate and do what you can to move forward on it.
9 And I congratulate Representative Barbin. I live in
10 Representative Stern's district. My office is
11 Representative Geist's District. I was hoping he
12 would be here today, but I'm sure he is busy on some
13 other work. But I would like to think that they would
14 both support this legislation. I intend to write both
15 of them and ask for their support, and I would be
16 happy to answer any question you have. And, again,
17 thank you for your efforts. I appreciate it.

18 CHAIRMAN:

19 Well, thank you very much, Mr. Nypaver,
20 for your testimony and sharing your experiences and
21 your expertise with the Committee. I want to begin
22 the questioning by asking you a point directly that
23 Representative Barbin had eluded to, and that is the
24 times dictating the crimes. And because of the dire
25 financial straits many people are finding themselves

1 in, they're looking for opportunities, for lack of a
2 better word, to scam other people. And I didn't think
3 of it until Representative Barbin had raised it, the
4 enormous financial consequences of someone who may
5 practice without a license, say a CPA or a public
6 accountant, and the consequences for individuals
7 around the Commonwealth who are getting advice from
8 people who may or may not know any more than you or I
9 do about financing.

10 In your experience, are you finding an
11 increase, or are there stories that may be out there
12 that would really bring this problem home to the
13 Committee and to the public at large?

14 ATTORNEY NYPAVER:

15 Other than the situations that I had told
16 you about, Chairman McGeehan, I can't say that I have
17 a number of cases, fortunately, where that has
18 happened. I would raise one concern, first of all,
19 that depending on the particular pseudo-professional,
20 or charade, in a particular field it may or may not be
21 a situation where an individual who was victimized by
22 a chiropractor, or a cosmetologist or all the
23 different professional areas may not feel, gee, if I
24 have to go get an attorney involved, at least from the
25 civil standpoint. It may not be something where it's

1 going to be worthwhile because I end up winning the
2 battle but loosing the war and may not get anything.

3 So the criminal resolution seems to have
4 a great deal of practical consequence for it. What
5 would help for me, as a civil practitioner, was that
6 if there is that criminal conviction that would then
7 make it easier to pursue on that individual's behalf
8 that civil remedy that they may or may not need. And,
9 quite honestly, it may be very small in one context or
10 it can be extremely large in the context of a realtor,
11 or the context of an architect. So the whole spectrum
12 of relief and resolution, it just could be enormous
13 where it wouldn't really be worth it on the one end to
14 hire somebody to go after maybe \$600 or \$700, where as
15 if it were \$60,000 or \$100,000 it may be something
16 where that individual could justify getting an
17 attorney involved.

18 But it does --- there is so much
19 commonsense. Just recently they're talking about the
20 need of increasing police staff in --- all across the
21 country because as the economy continues,
22 unfortunately, on its downward spiral, the crime is
23 going to be a direct correlation that will increase.
24 And I was just amazed that this has not already been
25 enacted. I would have expected that if somebody is

1 going to practice in one of the different professional
2 fields where a license is required, that it would be
3 something that would have been already been in a law,
4 quite honestly. But I can't say that I've noticed any
5 increase. The only evidence I have are the anecdotes
6 that I had explained to you.

7 CHAIRMAN:

8 Yes. Thank you. We've been joined by
9 Representative Gergely. Thank you for joining us,
10 Representative. Any questions? Thank you, Mr.
11 Nypaver, for sharing your expertise with us.

12 ATTORNEY NYPAVER:

13 Thank you very much. It was a pleasure.

14 CHAIRMAN:

15 Mr. Nypaver did point him out, but I
16 wanted to recognize Bill Harris. He's a Cambria
17 County Commissioner and the self-proclaimed ears of
18 the PA Funeral Director's Association. The
19 Vice-Chairman of this Committee, Harry Readshaw, would
20 beg to differ about whether you're the eyes and ears
21 of the funeral directors in Pennsylvania. Welcome and
22 thank you for allowing us to be in your beautiful part
23 of the state.

24 COMMISSIONER HARRIS:

25 Thank you for coming here. We really

1 appreciate you and the rest of the Committee for
2 convening here. Thanks very much.

3 CHAIRMAN:

4 If there is no other business before the
5 Committee, I want to thank, again, Representative
6 Barbin for bringing this important matter to the
7 attention of the Committee. Thank you for hosting
8 this meeting today. And as I said before, this is the
9 first time in memory that this Committee has met in
10 Johnstown and I hope it's not the last. We appreciate
11 the consideration and the accommodation. Thank you
12 very much. This concludes then this meeting of the
13 House Professional Licensure Committee.

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HEARING CONCLUDED AT 2:45 P.M.

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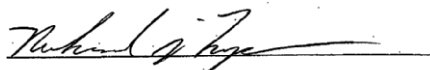
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CERTIFICATE

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.


Court Reporter