

COMMONWEALTH OF PENNSYLVANIA

HOUSE OF REPRESENTATIVES

PROFESSIONAL LICENSURE COMMITTEE

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PUBLIC HEARING IN RE: HB299, PN322

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BEFORE: REP. MICHAEL P. MCGEEHAN, Chairman
Rep. Nick Kotik, Member
Rep. James Wansacz, Member
Rep. Frank Burns, Member
Rep. Susan C. Helm, Member
Rep. Marc J. Gergely, Member
Rep. Joseph A. Petrarca, Member
Wayne Crawford, Diane Nichols,
Marlene Tremmel,

HEARING: Wednesday, February 18, 2009
Commencing at 9:55 a.m.

LOCATION: Comfort Inn
455 Theatre Drive
Johnstown, PA 15904

WITNESSES: Basil Merenda, Chris Stewart, Meredith
Biggica

Reporter: Richard J. Lipuma, CCR
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P R O C E E D I N G S

CHAIRMAN MCGEEHAN:

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4 I want to convene this hearing of the
5 House Professional Licensure Committee. We're
6 starting just a little bit early and hopefully ending
7 rather expeditiously because of the weather and
8 knowing that the members have to travel back to
9 Harrisburg and their home districts.

10 I want to begin by acknowledging and by
11 thanking members of my staff, Marlene Tremmel, she's
12 the Executive Director, and Diane Nichols, she's the
13 Legal Counsel, for the work they in setting this
14 hearing up, and the spread here, and for all the
15 efforts you made into making this hearing a success in
16 Johnstown. So thank you very much. And I want to
17 thank Wayne Crawford for his help, and the Republican
18 staff, and his involvement in this hearing. We hope
19 to have many more around the state as the term
20 progresses.

21 We're today discussing House Bill 299,
22 it's prime sponsor is Representative Goodman. Because
23 of the weather, Representative Goodman could not be
24 here. We do have two testifiers. And I want to begin
25 by asking Commissioner Basil Merenda, he's the

1 Commissioner of the Bureau of Professional and
2 Occupational Affairs and no stranger to this
3 Committee, and asking you, Commissioner to weigh in on
4 this bill. And begin when you're comfortable.

5 COMMISSIONER MERENDA:

6 Thank you, Mr. Chairman. Good morning.
7 And good morning to all the members of the Committee.
8 Thank you for inviting the Department of State to
9 provide testimony on House Bill 299, which would
10 provide the Commonwealth's licensure boards the
11 authority to increase the maximum civil penalty in
12 disciplinary adjudications and authority to impose
13 cost of investigation on a licensee determined to be
14 in violation of the Licensing Act and regulations as
15 part of a board's order and adjudication.

16 For the record, my name is Basil Merenda,
17 and I am the Commissioner of the Bureau of
18 Professional and Occupational Affairs, which is a part
19 of the Department of State. We refer to the Bureau as
20 BPOA. And that's not the professional four-letter
21 equivalent of a dirty word. As Commissioner, I
22 administer the Commonwealth's 27 licensing boards, and
23 I sit as a voting member on 25 of those 27 boards.
24 Soon I will be required to also administer and sit on
25 two additional boards, the State Board of Crane

1 Operators and the State Board of Massage Therapists.
2 That should present some interesting challenges and
3 interesting issues.

4 BPOA has a two-fold mission. First, to
5 maintain the integrity of the professions we license
6 and regulate, and most importantly, to protect the
7 health, safety, and welfare of every consumer in the
8 Commonwealth of Pennsylvania. Despite the reach and
9 the importance of its mission, BPOA has been referred
10 to, on occasion, as quote, the best kept law
11 enforcement secret in the Commonwealth.

12 In a nutshell, House Bill 299 will
13 provide BPOA licensing boards and commissions with the
14 tools necessary to better protect the health, safety,
15 and welfare of every consumer in the Commonwealth.
16 The proposal addresses two important issues. First,
17 the bill provides the boards with authority to impose
18 fines of a maximum of \$10,000. In addition, the bill
19 provides the board with authority to require
20 disciplined licensees that violate the law to pay the
21 cost of investigation in their case. This proposal
22 has the support of all of the BPOA licensing boards
23 and commissions, and has the enthusiastic backing of
24 the men and women who chair all of our licensing
25 boards.

1 I urge the Committee to support this
2 proposal without reservation, because it has been
3 thoroughly considered and is truly pro-consumer. In
4 fact, the Committees supported the proposal last
5 session when it was introduced as House Bill 1188 by
6 the prime sponsor, Representative Goodman, who is the
7 prime sponsor on 299, also. House Bill 299 increases
8 the authorized civil penalty ceiling to \$10,000 and
9 permits boards to assess the cost of investigation.
10 Those two provisions have been my mantra of sorts
11 since I've been the Commissioner of BPOA, arriving in
12 Harrisburg in January of '04. So I would like to
13 personally thank the committee for its efforts.

14 Perhaps the best thing that I can do with
15 my testimony today is to inform the Committee how
16 these legislative initiatives were formed and to
17 identify the issues to be addressed. I was appointed
18 BPOA Commissioner, as I mentioned, in January of '04,
19 and subsequently confirmed in March of that year. At
20 that time, I convened several meetings with our
21 lawyers in an effort to identify what they needed to
22 assist them in bringing dishonest, unethical, and
23 incompetent licensees to the bar of justice, and
24 making sure that the penalties our boards and
25 commissions are authorized to impose can serve as an

1 effective deterrent to the so-called bad licensees,
2 the so-called unlicensed operators who prey on
3 consumers throughout the Commonwealth.

4 Our prosecutors informed me that the
5 current provisions in our respective licensing
6 statutes, which limit the boards and commissions to
7 imposing a \$1,000 maximum civil penalty per violation,
8 serve as little or no deterrent to the defiant
9 licensee practicing without a license or the
10 individual who commits continued violations, the
11 repeat offender, of the acts. In fact, our
12 prosecutors informed me that the \$1,000 maximum
13 penalty is viewed as a slap on the wrist, or
14 considered the mere cost of doing business, by the
15 defiant unlicensed individual or the licensee who
16 commits repeated violations of the law. This is very
17 troubling to our board members, prosecutors, and me as
18 BPOA Commissioner. Therefore, I respectfully urge
19 this Committee and the General Assembly to pass this
20 legislation and send a clear, unequivocal message that
21 the defiant and the continued violations of our
22 licensure laws and regulations will not be tolerated
23 in Pennsylvania and will moreover result in stiff
24 monetary penalties.

25 Significantly, the legislature has

1 already established precedent by enacting statutory
2 language that provides the Commonwealth's licensing
3 boards with the authority to increase the maximum
4 civil penalty they can impose to \$10,000. First, the
5 legislation was first passed by the General Assembly
6 in 2002, and was enacted as part of Act 13, also known
7 the MCare Act. Indeed, as a result of Act 13, BPOA's
8 State Board of Medicine and the State Board of
9 Osteopathic Medicine were provided with authority to
10 impose maximum civil penalties of \$10,000 per
11 violation of the Commonwealth's Medical Practice Acts.

12 Second, with the passage of Senate Bill
13 838 in 2008, the CPA Law now authorizes the State
14 Board of Accountancy to impose a maximum civil penalty
15 of \$10,000, as well as authority to impose costs of
16 investigation on a disciplined CPA. Furthermore, the
17 Massage Therapy Act, which was enacted in October of
18 2008, includes this same provision.

19 For the sake of uniformity, and the
20 consistency of regulations and enforcement, I would
21 ask this Committee and the General Assembly to extend
22 this pro-consumer policy identified in the
23 aforementioned acts to the Commonwealth's other
24 licensing boards and commissions. This action will
25 provide all of BPOA's licensing boards with the

1 authority to impose the maximum civil penalty of
2 \$10,000 per violation of the law and cost of
3 investigation.

4 Next, the provision in the bill providing
5 BPOA boards and commissions with the authority to
6 impose costs of investigation as part of a
7 disciplinary action is a dollar-and-cents fairness
8 issue. Simply put, this cost of investigation
9 provision rightfully seeks to recoup from disciplined
10 licensees, the resources the boards and commissions
11 used to bring dishonest, and unethical, and
12 incompetent licensees to the bar of justice, and
13 protect the consumers of the Commonwealth. I submit
14 that the question of the source of the funds and
15 resources for conducting investigations of unlawful,
16 dishonest licensees should be of paramount concern of
17 this Committee, because BPOA boards and commissions do
18 not use any tax revenues and general revenue funds to
19 carry out their missions to protect the health,
20 safety, and welfare of every consumer in the
21 Commonwealth. Forcing code violators to pay the costs
22 that ultimately brings them to justice is simply
23 exacting fairness and equity for the complainant
24 licensees.

25 For the record, all of BPOA's activities

1 are financed and subsidized by licensing and renewal
2 fees paid by our approximately 850,000 licensees to
3 their respective boards and commissions. By law,
4 those fees can only be used by those boards for board-
5 related activities. Funds that are used to track
6 down, investigate, and prosecute bad licensees are not
7 available for other projects. This creates an
8 anomalous and unfair situation in which our honest and
9 hard-working licensees are basically subsidizing and
10 financing, through their licensing and renewal fees,
11 the investigation of individuals whom the board
12 determines have violated the law.

13 I respectfully submit that a portion of
14 the financial burden that is being placed on our
15 licensing boards and commissions to investigate
16 licensee wrongdoing should be shifted to the actual
17 licensees who are found to have violated the law.

18 I support this proposition by pointing
19 out to the Committee that imposing the costs of
20 investigation on a disciplined licensee is a
21 compelling matter of fairness on two levels. On one
22 level, disciplined licensees should be required to pay
23 the cost of a investigation as part of their final
24 adjudication, because they made the conscious decision
25 and choice to violate the law, and as such should be

1 held accountable. On a separate level, our law-
2 abiding licensees should be entitled to the dollar-
3 and-cents fairness and equity, because they, unlike
4 their sanctioned colleagues, are serving the consumer
5 of the Commonwealth in an honest, competent, and
6 professional matter. Accordingly, the provisions in
7 this proposal will accomplish this goal of dollar-and
8 cents fairness, and I ask the Committee for favorable
9 consideration of this legislative initiative.

10 Moreover, authority to impose increased
11 civil penalties, and to impose the costs of
12 investigation as an added financial benefit, has an
13 added financial benefit to our boards and commissions.
14 The additional funds the boards would be able to
15 recoup through these increased authorities would help
16 the financial bottom line for all our boards and
17 commissions. Our boards maintain balanced budgets
18 that, by law, can only be used for the respective
19 Board's activities and cannot be used for any other
20 Board or general revenue fund. The added revenue from
21 increased fines and the payment of costs of
22 investigation would provide the boards and commissions
23 with added financing that will ensure that the boards
24 and commissions are on and continue to be on strong
25 financial footing.

1 Most notably, as previously mentioned,
2 the same two provisions were considered and passed by
3 the House unanimously in House Bill 1188 in the last
4 session. That was followed by the Senate version,
5 Senate Bill 147, sponsored by Senator Tomlinson, which
6 passed the Senate Chamber unanimously. Unfortunately,
7 neither bill was enacted. I therefore, would
8 respectfully request that the Committee consider House
9 Bill 299, excuse me, as promptly as possible and that
10 a concerted effort be made to pass this initiative in
11 the first year of this session.

12 In closing, I would like to thank
13 Chairman McGeehan and Chairman Adolph for this
14 opportunity. As I noted, these consumer protection
15 initiatives represents a very high priority for the
16 Rendell Administration and BPOA. I respectfully
17 submit that these initiatives are truly the type of
18 pro-consumer legislation that both sides of the aisle
19 of the General Assembly can support without
20 hesitation. I conclude by submitting that the end
21 result is clear. These legislative initiatives offer
22 a plan of action for strengthening consumer protection
23 efforts in the Commonwealth.

24 I welcome your questions at this time.

25 CHAIRMAN MCGEEHAN:

1 Thank you very much, Commissioner
2 Merenda. And certainly your strong advocacy of the
3 Goodman bill is not lost on the Committee. We're
4 grateful. Obviously, our strong working relationship
5 with you and the Department, again, means a lot to
6 this Committee, and we appreciate that and we'll act
7 expeditiously on this bill. Are there questions from
8 the Members? Yes, Representative Wansacz?

9 REPRESENTATIVE WANSACZ:

10 Thank you, Mr. Chairman. I thank the
11 Commissioner for traveling to Johnstown. One
12 question, can you just give me an example how this
13 affecting you and why this needs changed now? Is it
14 common prevalence that people are just, as you stated
15 in your testimony, it's just the cost of doing
16 business?

17 COMMISSIONER MERENDA:

18 Yes, absolutely. One glaring situation
19 is with the Cosmo Boards and Barber Boards. Most
20 cosmo shops are licensed. However, there's a big
21 portion of barber shops and cosmo shops, especially in
22 urban areas that are not licensed, our inspectors go
23 in, they cite them for failing to have a proper
24 license, who knows what they're doing in terms of
25 sanitation and things of that nature, and they view a

1 \$1,000 fine, a maximum fine that can be imposed on
2 them, as a slap on the wrist, the cost of doing
3 business. And sometimes they'll pay the fine and just
4 continue doing what they're doing. Sometimes they'll
5 just ignore the fine. And a \$10,000 fine and the
6 ability for the board to impose the cost of
7 investigation will certainly get their attention and
8 require them to take some action.

9 That, in turn, will give the Attorney
10 General, who has to go into court to enforce our
11 orders and to collect unpaid fines more of an
12 incentive. Right now, it doesn't pay for the Attorney
13 General to gear up and go after an unpaid fine of a
14 \$1,000. However, \$10,000 and cost of investigation
15 imposed by the Board, changes that whole calculus for
16 the Attorney General's Office. And hopefully that
17 will result in paid fines, and more importantly, those
18 unlicensed individuals out there, require them to get
19 in line, and get licensed, and abide the law.

20 REPRESENTATIVE WANSACZ:

21 What happens if the --- as you just said,
22 right now, they just choose to ignore a fine and not
23 even pay it, and just continue operating?

24 COMMISSIONER MERENDA:

25 Well, what we try to do is BPOA will send

1 investigator, or inspector, back to that location and
2 try to build up a track record of number of times that
3 a Board order has been ignored and not complied with.
4 And the more times that is done, the more times we're
5 able to document that. Then our lawyers could
6 possibly go into Commonwealth Court, or maybe even
7 Common Pleas Court, and try and get an injunction
8 against that unlicensed operator. But that's a long
9 haul on that. That requires a lot of resources and a
10 lot of effort on our part.

11 REPRESENTATIVE WANSACZ:

12 Well, is there anything maybe that you
13 suggest that maybe we can add powers into this bill
14 that would speed up that process of having people that
15 should be practicing doing that?

16 COMMISSIONER MERENDA:

17 That's a good point. Let me go back and
18 huddle up with our lawyers to see if they have some
19 innovative approaches to this. And I'll certainly get
20 back to you. I appreciate it.

21 REPRESENTATIVE WANSACZ:

22 Thank you.

23 CHAIRMAN MCGEEHAN:

24 Thank you Representative.

25 Representative Gergely?

1 REPRESENTATIVE GERGELY:

2 Thank you, Mr. Chairman. Mr.
3 Commissioner, always a pleasure to work with you.

4 COMMISSIONER MERENDA:

5 Absolutely.

6 REPRESENTATIVE GERGELY:

7 I have a couple of questions, is that
8 okay?

9 CHAIRMAN MCGEEHAN:

10 Yes.

11 REPRESENTATIVE GERGELY:

12 We're going to have testimony from the
13 American Resort Development Association, and I think
14 they're going to provide that --- one of their
15 concerns. And they said they've worked with you in
16 the last session ---

17 COMMISSIONER MERENDA:

18 Yes.

19 REPRESENTATIVE GERGELY:

20 --- concerning addressing these issues is
21 specific language regarding the implementation of this
22 authority.

23 COMMISSIONER MERENDA:

24 Correct.

25 REPRESENTATIVE GERGELY:

1 --- and let me, even looking at that
2 more, have you set a ceiling on your investigative
3 costs that might be assessed to any individual that
4 you may find that is in violation?

5 COMMISSIONER MERENDA:

6 No, we haven't --- we haven't done that.
7 And we don't have any plans to set a cost for
8 investigation. If the investigation takes five hours,
9 or takes five days, that depends on the circumstances
10 of the cases.

11 REPRESENTATIVE GERGELY:

12 Do you know the general costs --- a 100
13 cases, 100 investigations, that the average cost is --
14 -

15 MS. BIGGICA:

16 750 --- excuse me ---

17 CHAIRMAN MCGEEHAN:

18 Thank you.

19 MS. BIGGICA:

20 The average costs of investigation is
21 about \$710.

22 CHAIRMAN MCGEEHAN:

23 Okay. That's pretty --- that's pretty --
24 -

25 COMMISSIONER MERENDA:

1 For the record, that's our fine
2 legislative director, Meredith Biggica, who does a
3 great job for the Department of State and BPOA.

4 MS. BIGGICA:

5 That includes salary and benefits. It's
6 primarily for our investigators to go out and take a
7 look. We're not going to be assessing legal costs and
8 costs of prosecution.

9 REPRESENTATIVE GERGELY:

10 Okay. That's what I was asking.

11 COMMISSIONER MERENDA:

12 Yes, correct.

13 REPRESENTATIVE GERGELY:

14 So, it's not another \$10,000 additional -

15 --

16 COMMISSIONER MERENDA:

17 No.

18 REPRESENTATIVE GERGELY:

19 --- on top of the \$10,000?

20 COMMISSIONER MERENDA:

21 No, we ---.

22 REPRESENTATIVE GERGELY:

23 I think that's a lot of ---.

24 COMMISSIONER MERENDA:

25 We initially contemplated also requiring

1 the payment of legal costs. The costs that our
2 lawyers or prosecutors incur to prosecute a case.
3 Well, it was brought to our attention that maybe a bit
4 of an overreach. The Medical Society, in fact, had
5 some concerns about that. And we huddled up with our
6 prosecutors and decided that we would just focus on
7 the cost of investigations and not legal costs.

8 REPRESENTATIVE GERGELY:

9 Okay. So in the previous bill that
10 passed before that you referenced to the other
11 committee --- the other licensure boards, that wasn't
12 already included?

13 COMMISSIONER MERENDA:

14 No. The other --- the two provisions
15 that passed the House, 1188, and 147 that passed the
16 Senate, included just cost of investigation and
17 maximum fines of \$10,000.

18 REPRESENTATIVE GERGELY:

19 I was referring to the bills that already
20 passed that raised the ceiling with the investigative
21 ---

22 COMMISSIONER MERENDA:

23 In all those --- excuse me. Yes, also in
24 all those --- all those legislative initiatives
25 modeled after 1188 ---

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REPRESENTATIVE GERGELY:

All right. I follow.

COMMISSIONER MERENDA:

--- and 147 and included cost investigation only and the maximum \$10,000.

REPRESENTATIVE GERGELY:

So it's already been in place, for the crane operators, the massage therapists ---.

COMMISSIONER MERENDA:

And accountants.

REPRESENTATIVE GERGELY:

Accountants and the two medical boards?

COMMISSIONER MERENDA:

Right. Well, the two medical boards have the maximum \$10,000 fine, but they don't have costs of investigation.

REPRESENTATIVE GERGELY:

Okay. So they would new to it?

COMMISSIONER MERENDA:

Correct.

REPRESENTATIVE GERGELY:

That's where I was coming from.

COMMISSIONER MERENDA:

Yes, exactly.

REPRESENTATIVE GERGELY:

1 And the last question.

2 COMMISSIONER MERENDA:

3 Sure.

4 REPRESENTATIVE GERGELY:

5 In last session, did you get resolutions
6 from those Boards in favor of this to submit to the
7 Committee to encourage the passage of this?

8 COMMISSIONER MERENDA:

9 Yes, I --- what I did --- a lot of our
10 Board Members wanted this legislation passed. And a
11 lot of our Board Members went out, and speaking as
12 constituents, approached their State Reps and/or
13 approached their State Senators, and explained from
14 the point of view of a citizen, from the point of view
15 of a Member of a Licensing Board, why these two
16 provisions are so important. I thought it was good
17 for the State Reps and State Senators to hear from a
18 Board Member as, you know, he's not hearing from a
19 political appointee like myself, you're hearing from a
20 constituent and, you know, a citizen who basically is
21 volunteering their time to serve the Commonwealth.
22 And I thought that would be a good perspective for the
23 legislators to hear.

24 REPRESENTATIVE GERGELY:

25 And I hope that continues.

1 COMMISSIONER MERENDA:

2 Yes, yes. Absolutely. That's one thing
3 since I've been at BPOA, I think our Board members
4 have been underutilized. And they're honest hard-
5 working people. They're, you know, accomplished in
6 their own professions. Most, if not all of them, are
7 accomplished entrepreneurs and business operators. We
8 have a lot of good ideas. And in the past, they were
9 underutilized. And I've made them a full partner, and
10 they've had some good suggestions, and we've followed
11 up on a lot of their recommendations. And we're going
12 to continue that until --- as long as I'm here.

13 REPRESENTATIVE GERGELY:

14 Thank you, Mr. Commissioner, Mr.
15 Chairman.

16 CHAIRMAN MCGEEHAN:

17 Thank you, Representative Gergely.
18 Representative Helm?

19 REPRESENTATIVE HELM:

20 Thank you, Mr. Chairman and Commissioner
21 ---.

22 COMMISSIONER MERENDA:

23 The Representative is one of our best
24 licensees.

25 REPRESENTATIVE HELM:

1 I just have a question. You made the
2 statement that the Attorney General's office --- it
3 wasn't worth their while to investigate because it was
4 a \$1,000 fine. And to me that's like letting people
5 off that shouldn't be left off. Now, I agree it
6 should be raised. I'm not against the bill. But I
7 just wondered why just because it was a \$1,000 --- I
8 mean, that seems to leave it open for other people to
9 ---.

10 COMMISSIONER MERENDA:

11 Yes. I mean I guess --- I mean I can't
12 speak for the Attorney General's Office, but I would
13 imagine that they have to do their own cost benefit
14 analysis on how much of their resources they want to
15 devote to collecting fines as apposed to investigating
16 and prosecuting a crime, and other activities that
17 their responsible for doing. And it just --- it makes
18 a difficult situation even worse when you have fines
19 that are of a limited amount like that, and the effort
20 that you have to put in to collect fines of that
21 nature. And that amount, I guess, doesn't really pay.

22 REPRESENTATIVE HELM:

23 And still that doesn't go over too well
24 with me ---

25 COMMISSIONER MERENDA:

1 No, I agree.

2 REPRESENTATIVE HELM:

3 --- I think I need to ask the Attorney
4 General's Office that question. And I know you said
5 this before, the best kept law enforcement secret in
6 the Commonwealth. Every time you say that, I kind of
7 wonder, why it is the best kept secret?

8 COMMISSIONER MERENDA:

9 Well, that was a quote that I heard
10 mentioned by the District Attorney of Dauphin County,
11 Mr. Marsico. And I was at a --- I'm an Attorney, so I
12 took a few --- I have to take the continuing legal
13 education courses. And I took a CLE course on BPOA,
14 and he spoke. And he was on the panel. And he
15 mentioned that BPOA is the best kept law enforcement
16 secret in the Commonwealth. And that the District
17 Attorneys, and the Attorney General, the U.S.
18 Attorney, are not fully aware what BPOA does, how it
19 carries out its duties, how it's a part of consumer
20 protection, and can help them in criminal
21 investigations that involve some of our licensees who,
22 you know, violate the law. A physician, a health care
23 provider, who is involved with selling drugs and
24 things of that nature, or a CPA, or a business
25 licensee who defrauds consumers and may be subject to

1 theft charges or fraud charges.

2 What we do at BPOA is supplement how they
3 carry out their criminal investigations. So we, since
4 I've been here, have tried to reach out to the
5 District Attorneys Association, and the Attorney
6 General's Office, and we've developed a little better
7 working relationship. But we still have a long way to
8 go, and there's a whole list of other legislative
9 initiatives that maybe we can speak to the Committee
10 about that would help strengthen that relationship
11 between BPOA and the law enforcement --- criminal law
12 enforcement agencies in the Commonwealth.

13 REPRESENTATIVE HELM:

14 You know, maybe with continuing ed, there
15 could be a required course that teaches about what you
16 do and the Boards.

17 COMMISSIONER MERENDA:

18 Well, what I've been doing is two things,
19 taking the Boards on the road. And we have organized
20 and scheduled Board meetings of various Boards outside
21 of Harrisburg at a college or an institution that
22 teach that particular profession, so that the students
23 will understand what will be expected of them when
24 they're out practicing their profession, when they're
25 licensed, and they pass their licensure exams.

1 Also, I, as Commissioner, have gone to a
2 number of various professional associations and made
3 presentations of what BPOA does, how it carries out
4 its duties, what its role is in licensure and consumer
5 protection. And that has been pretty successful. So
6 if there's groups that --- in your district --- if you
7 want me to come out and speak to any groups about
8 BPOA, consumer groups, or things of that nature, just
9 give us a little notice, and I'll be there. I have a
10 PowerPoint put together, and I often remember the old
11 TV show, Have Gun Will Travel. I have PowerPoint,
12 will travel, so.

13 REPRESENTATIVE HELM:

14 Thank you.

15 CHAIRMAN MCGEEHAN:

16 Thank you, Representative. I have two
17 questions. One's to follow up to Representative
18 Gergely's on the cost of investigation. Is there a
19 direct correlation between the maximum fine imposed
20 and the cost of the investigation? Has there been a -
21 -- or is it just blanket overall ---?

22 MS. BIGGICA:

23 It's separate.

24 CHAIRMAN MCGEEHAN:

25 There's no difference between a \$1,000

1 fine and a \$10,000 fine. You've seen no increase in
2 the cost of investigation?

3 MS. BIGGICA:

4 It would just depend on how long it would
5 take our investigators to actually go out and
6 investigate. On average it takes about 15.9 hours to
7 open and close a case, which is how we come up with
8 that \$710.

9 CHAIRMAN MCGEEHAN:

10 Thank you. And a follow up, if I may, to
11 Representative Wansacz's question about where's the --
12 - where's the punch in the bill if you can't enforce
13 it? You know, I represent an urban area where we have
14 cosmetology and barber shops opening up on corners
15 with no licenses.

16 COMMISSIONER MERENDA:

17 Right.

18 CHAIRMAN MCGEEHAN:

19 You know, no local licenses, no state
20 licenses. What do they care if they're fined \$20,000
21 or \$50,000? They'll continue to operate. What's ---
22 what --- what's the punch?

23 COMMISSIONER MERENDA:

24 I guess the punch is that those larger
25 fines that are imposed, a \$10,000 judgment, a \$20,000

1 judgment will give the Attorney General more incentive
2 to go into court and get a judgment against that
3 establishment for the unpaid fine. And then they have
4 to deal with, you know, the court costs and the
5 judgment that's been imposed on their, you know,
6 business. So that's the real incentive.

7 CHAIRMAN MCGEEHAN:

8 And is the Attorney General interested in
9 doing --- we have bodies piling up like cordwood in
10 Philadelphia. That's not exactly the height of
11 concern. I know it is for your department, certainly
12 ---

13 COMMISSIONER MERENDA:

14 Correct.

15 CHAIRMAN MCGEEHAN:

16 --- but is there a hook? Do you
17 interface with the local L and I? I mean, have you
18 had a history of working with local governments and
19 their enforcement arms to shutter these places that
20 aren't paying these fines? And I think Representative
21 Wansacz's concern is something that concerns me.

22 COMMISSIONER MERENDA:

23 Right.

24 CHAIRMAN MCGEEHAN:

25 And maybe we need to put more muscle into

1 this bill, give the Department more authority to act
2 on shuttering these places who continually thumb their
3 nose at the Department and the Commonwealth.

4 COMMISSIONER MERENDA:

5 Sure. That's certainly a good point.
6 And I will definitely go back and huddle up with our
7 lawyers and see if we could come up with some
8 innovative approach to that. In addition, we are
9 continuing our outreach to the DA and the Attorney
10 General and the U.S. Attorney. And you just make a
11 good point, Mr. Chairman, about perhaps we should even
12 reach out for the municipalities, and make sure they
13 know what we do, and how we operate, and see if we
14 could coordinate our efforts, too. That's a good
15 point.

16 CHAIRMAN MCGEEHAN:

17 Well, the apparatus is there in many
18 localities to shutter these places. Rather than
19 reinvent the wheel on the State level, maybe there
20 needs to be more cooperation between the licensing
21 inspection and these localities.

22 COMMISSIONER MERENDA:

23 Right. It stands to reason that if they
24 don't have state license, that they probably don't
25 even have a local license.

1 CHAIRMAN MCGEEHAN:

2 You're probably correct. We've been
3 joined by Representative Petrarca.

4 REPRESENTATIVE PETRARCA:

5 Mr. Chairman. Good morning.

6 CHAIRMAN MCGEEHAN:

7 Thanks very much.

8 REPRESENTATIVE GERGELY:

9 Mr. Chairman, I have another follow up.

10 CHAIRMAN MCGEEHAN:

11 Yes.

12 REPRESENTATIVE GERGELY:

13 Yesterday's House Bill 416, it was about
14 impersonating a license professional. So there's a
15 correlation to Representative Wansacz's questioning.
16 And yesterday's --- the language in yesterday's bill
17 doesn't impose a \$10,000 fine; is that correct? Okay.
18 So we're going to impose a \$10,000 fine for violators
19 that have a license, but those that impersonate would
20 not be subjected to the same level of fines then;
21 correct?

22 COMMISSIONER MERENDA:

23 No, I would submit that this authority
24 would give the boards the right to impose a \$10,000
25 fine on an unlicensed individual, also, that's charged

1 by a board. Right now, if the investigator or
2 inspector goes out and inspects a business
3 establishment and determines that they don't have a
4 proper BPOA license, they're charged with an order to
5 show cause, just like any licensee. And the Board
6 adjudicates their case just like any licensee. But
7 because they're not a licensed individual, the Board
8 can't impose a suspension or probation of their
9 license. The only thing the Board can impose is a
10 financial monetary fine. And right now, that monetary
11 fine --- the maximum that can be imposed is a \$1,000.
12 So this authority would also give the Boards authority
13 --- this provision, excuse me, would the Boards
14 authority to impose a \$10,000 max fine on an
15 unlicensed operator that's adjudicated by the Board,
16 also.

17 REPRESENTATIVE GERGELY:

18 And then the 416 would give additional
19 powers to the DA to prosecute?

20 COMMISSIONER MERENDA:

21 Right. Generally, correct.

22 REPRESENTATIVE GERGELY:

23 It makes more sense then. Thank you.

24 CHAIRMAN MCGEEHAN:

25 Thank you, Mr. Gergely. Representative

1 Kotik?

2 REPRESENTATIVE KOTIK:

3 Thank you, Mr. Chairman. Commissioner
4 Merenda, I'm just wondering how this conversation
5 we're having --- the Attorney General, does he have
6 any power of attachment at this present time under the
7 law? In other words, you can get somebody to assess
8 the judgment, oftentimes judgments are very hard to
9 collect on.

10 COMMISSIONER MERENDA:

11 Yes, yes.

12 REPRESENTATIVE KOTIK:

13 Is there anything in the law that says
14 that the Attorney General --- if the judgment isn't
15 paid or ---?

16 COMMISSIONER MERENDA:

17 I would think just, you know, basic law,
18 they would have that authority. Yes.

19 REPRESENTATIVE KOTIK:

20 Because, you know, I know there's often
21 judgments handed down by District Magistrates and
22 Judges, and those judgments stay there forever.

23 COMMISSIONER MERENDA:

24 Yes, yes.

25 REPRESENTATIVE KOTIK:

1 There's no back up to those judgments.

2 COMMISSIONER MERENDA:

3 To execute. They have to get together
4 with the Sheriff's office and execute the judgment,
5 you know, just like any other judgment against an
6 individual.

7 REPRESENTATIVE KOTIK:

8 But you can assess all the judgments you
9 want, ---

10 COMMISSIONER MERENDA:

11 Right.

12 REPRESENTATIVE KOTIK:

13 --- but if you never collect on them ---.

14 COMMISSIONER MERENDA:

15 Correct. Right. Correct.

16 CHAIRMAN MCGEEHAN:

17 Representative Wansacz?

18 REPRESENTATIVE WANSACZ:

19 As a follow up to Representative Kotik's,
20 and I think Representative Helm's, and Representative
21 McGeehan's, I think we're all thinking on the same
22 page here. The Attorney General has the power now to
23 do --- from what you're saying, he's not doing it
24 maybe because of the \$1,000 fine. But again, I'm in
25 agreement with Representative Helm, he should be doing

1 that no matter what. So can you look at provisions
2 that would maybe give you guys more power working with
3 the local Sheriff's or something else? Do you have
4 any tracking or capabilities to say how many cases are
5 not going to be prosecuted by the Attorney General?
6 How many, like, do you find in violations now that
7 say, you know, this barber shop has been open five
8 months without a license. If we keep fining them,
9 nobody is doing anything about it, do you have any of
10 that back up ---

11 COMMISSIONER MERENDA:

12 Let me look into that.

13 REPRESENTATIVE WANSACZ:

14 --- that you can use that information to
15 say this is the reason why we're taking to the
16 Attorney General, because he isn't paying attention.

17 COMMISSIONER MERENDA:

18 Sure. Let me look into that.

19 REPRESENTATIVE WANSACZ:

20 And maybe give the power to you guys to
21 be able to do that.

22 COMMISSIONER MERENDA:

23 Sure. Let me look into that.

24 CHAIRMAN MCGEEHAN:

25 Commissioner, thank you very much. I

1 appreciate you answering the questions of the
2 Committee and making your presentation. I think we've
3 hit on something that we can all work together to give
4 more authority and power to the Departments to make
5 sure that the laws and regulations in the Commonwealth
6 for licensees are adhered to.

7 COMMISSIONER MERENDA:

8 Sure.

9 CHAIRMAN MCGEEHAN:

10 I appreciate you coming today.

11 COMMISSIONER MERENDA:

12 It's a pleasure working with the
13 Committee.

14 CHAIRMAN MCGEEHAN:

15 Thank you very much.

16 SHORT BREAK TAKEN

17 CHAIRMAN MCGEEHAN:

18 Our next testifier is Chris Stewart. He
19 is with the American Resort Development Association.
20 We appreciate you coming out on such a miserable day
21 to give your testimony on the merits or non-merits of
22 House Bill 299 sponsored by Representative Goodman.
23 You may begin your testimony when you feel comfortable
24 and are ready.

25 MR. STEWART:

1 Thank you, Mr. Chairman and the
2 Committee. I appreciate the opportunity to be here
3 today to present testimony on House Bill 299. I'm not
4 too thrown off by the weather today. Even though I
5 live in Florida now, I grew up in Pennsylvania and I'm
6 very much used to it. And though if I don't have to
7 shovel snow again any time soon, that would be okay.

8 CHAIRMAN MCGEEHAN:

9 Amen.

10 MR. STEWART:

11 I am the Director of Legislative and
12 Business Affairs for the American Resort Development
13 Association, the national trade association
14 representing the timeshare industry, as well as ---
15 with more than a thousand corporate members ranging
16 from small independent resorts, all the way to large
17 multi-national publicly traded corporations and hotel
18 brands. We also represent nearly a million individual
19 timeshare owners through our resort owners coalition,
20 which makes us somewhat unique among trade
21 association, and professional associations, in that we
22 represent both the corporate community as well as
23 owners. In our dual role, it's very important for
24 ARDA to support meaningful and strong regulations to
25 protect consumers as well as find an even playing

1 field in a certain business environment for our
2 members.

3 When we faced --- or when we learned of
4 House Bill 1188 last year, and it's now House Bill 299
5 this year, we did --- some of our members, as well as
6 ARDA had some concerns about the language. A tenfold
7 increase fines and what exactly that meant. The
8 language doesn't specifically lay out how that ---
9 those fines are assessed. The possibility at least
10 looms that that's an infinite number of \$10,000 fines,
11 which certainly prevents --- provides a very uncertain
12 business environment for our members.

13 We really appreciate the work of the
14 previous Chairman of this Committee, as well as the
15 Senate Chairman, Commissioner, to work with us to
16 clarify the way that BPOA looks at these and the way
17 they assess these fines. As a result, we have no
18 opposition to --- we do not oppose 1188 then, and we
19 do not oppose House Bill 299 now.

20 I want to just make a few notes in
21 addition to the enforcement by BPOA, there are other
22 protections in Pennsylvania law for timeshare
23 consumers. Most important of which is likely the five
24 day right of rescission. And the right of rescission
25 is something that ARDA, as an organization, supports

1 in every jurisdiction. It gives timeshare buyers the
2 right to change their mind, essentially, within five
3 days for any reason and get their money back. We
4 understand that that's one of the great concerns a lot
5 of folks have, and that's something that we as an
6 industry believe is very important.

7 I don't want to take up too much of your
8 time today, but I do want to just let you know I'm
9 here to answer any questions you might have, tell you
10 a little bit about the industry in general and in
11 Pennsylvania.

12 There are more than 1600 resorts
13 nationally. There are more than 25 here in
14 Pennsylvania, primarily located in ski areas of
15 Pennsylvania. There is a cluster in the Hershey area
16 as well. And a few years ago, it was a ten billion
17 plus annual business in the United States. While we
18 don't expect that in 2009 that will be the case ---
19 unfortunately, we're seeing some of the same effects
20 of the economy that everyone else has, particularly in
21 the credit area. And that's another point with
22 respect to some of the enforcement issues that the
23 Commissioner was talking about. In our business, one
24 of the things that's very important to a lot of the
25 operators is the ability to get credit, commercial

1 credit. And if you have outstanding judgments against
2 you, that's something that's not very easy to do,
3 especially in the current business environment. So
4 it's certainly within --- it behooves members with
5 timeshare licenses and the time timeshare industry, to
6 take care of any fines that exist in that respect.

7 With that, I simply open myself up to
8 questions you might have, either about our position on
9 this bill, or about the timeshare industry in general.

10 CHAIRMAN MCGEEHAN:

11 Well, thank you for making the trip up
12 from Florida. Most satisfying, you commenting on
13 snowy day in Pennsylvania coming from Florida. I'm
14 sure ---.

15 MR. STEWART:

16 Well, you know, this is about as much
17 snow as I like to see in a year. So that's --- that
18 would be good.

19 CHAIRMAN MCGEEHAN:

20 Thank you. Representative Wansacz?

21 REPRESENTATIVE WANSACZ:

22 Thank you, Mr. Chairman. I'll apologize
23 for asking so many questions. I'm getting a little
24 confused with --- and I believe, and Representative
25 Petrarca can correct me if I'm wrong, but we had a

1 hearing, I believe, last year in Latrobe, in your
2 district, concerning the timeshare industry. Is that
3 something that we were talking about, changing it from
4 five business days, to longer, to give people more
5 time, and was it --- I'm sorry, it was this five days
6 that you talked about for people to change their mind.
7 Was that five days or five business days?

8 MR. STEWART:

9 I'm not positive. I believe in
10 Pennsylvania it's five calendar days.

11 REPRESENTATIVE WANSACZ:

12 Five calendar days.

13 MR. STEWART:

14 The right of rescission, depending on
15 jurisdiction, ranges anywhere from three to ten days,
16 and either business or calendar days. It varies
17 greatly from jurisdiction to jurisdiction.

18 REPRESENTATIVE WANSACZ:

19 So other states have a longer time
20 period?

21 MR. STEWART:

22 There are states with longer time
23 periods, and there are states with shorter ones.

24 REPRESENTATIVE WANSACZ:

25 Thank you.

1 CHAIRMAN MCGEEHAN:

2 Are there any other questions from the
3 members? Thank you very much for giving us your
4 perspective and adding your expertise to this debate.

5 MR. STEWART:

6 If you have any questions, feel free to
7 contact me.

8 CHAIRMAN MCGEEHAN:

9 Thank for being here today. Just some
10 housekeeping business, the Committee is reminded that
11 we are meeting in Philadelphia in conjunction with the
12 Philadelphia weekend. We're going to be meeting March
13 the 5th and the 6th. The agenda for March the 5th
14 will be the Navigation Commission, and there will be a
15 tour of that facility. And on the 6th, we'll be
16 dealing with a hearing on the Funeral Directors; is
17 that correct? And an ancillary topic will be the body
18 parts controversy in Pennsylvania. We hope to hear
19 from the Commissioner, as well, in Philadelphia. So
20 I'd ask the Members to make every effort to be in
21 Philadelphia for those two days for those two separate
22 hearings.

23 Seeing no other business and knowing the
24 conditions of the roads and the weather out there,
25 we'll adjourn this meeting of the House Professional

1 Licensure Committee. I'd like to thank all the
2 members and the testifiers for their attendance today.
3 Thank you.

4 * * * * *

5 HEARING CONCLUDED AT 10:37 A.M.

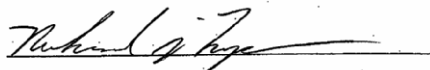
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CERTIFICATE

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