



**COMMONWEALTH OF PENNSYLVANIA**  
**Department of State**

**Testimony of Basil L. Merenda**  
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**Professional and Occupational Affairs**

**House Insurance Committee**  
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Good morning Chairman DeLuca, Chairman Micozzie and distinguished members of the House Insurance Committee. Thank you for inviting the Department of State to provide testimony on the role of the Bureau of Professional and Occupational Affairs (BPOA) has in disciplining licensees who commit insurance fraud.

For the record, my name is Basil Merenda and I serve as the Department of State's Deputy Secretary of Regulatory Programs and Commissioner of the Bureau of Professional and Occupational Affairs, known as BPOA. As Commissioner, I administer the Commonwealth's 29 licensing boards and sit as a voting member on 27 of those boards. Those Boards include the State Board of Medicine, the State Board of Nursing, the State Board of Pharmacy, the Real Estate Commission and the State Board of Funeral Directors, among others.

BPOA and its Boards have a two fold mission. The first is to maintain the integrity of the professions we license and regulate, and second is to protect the health, safety and welfare of every consumer in the Commonwealth. BPOA, indeed, touches every aspect of life from the cradle to the grave-----from the physicians and nurses who help to bring us into this world to the funeral director who takes us to our final resting place.

What the Boards do can boil down to three basic functions and duties: the administrative function, the regulatory function and the disciplinary function. There is no doubt about the disciplinary function being our most important duty. Nothing is more important than bringing dishonest, incompetent and unethical licensees and unlicensed operators to the bar of justice pursuant to due process as swiftly and fairly as possible.

With regard to our disciplinary duty, I would like to highlight for the committee the steps that the Department has taken to institute a more efficient and much fairer way to evaluate and review the numerous disciplinary cases filed by consumers against our licensees. These efforts have already paid immediate dividends to consumers in the discipline of professional licensees including those engaged in various forms of insurance fraud which, today, is the focus of the Committee's hearing.

Most significantly, I have established what we call a "Charging Unit" to review and evaluate consumer complaints that come into BPOA. The Unit consists of four attorneys headed by Cal Shields who is the Director of Bureau of Enforcement and Investigation (BEI) which is the investigative arm of BPOA. The Charging Unit has a

triage approach that brings experienced attorneys into the evaluation of a consumer, or in some cases an insurance company, complaint filed with BPOA. In fact, most if not all of the District Attorneys in the Commonwealth have a similar unit to evaluate criminal complaints and cases.

In the past, a consumer complaint against a licensee would come into the Professional Compliance Office and be reviewed by a paralegal. That review would get to a point where it had to be transferred to a lawyer who would receive the file and place it at the bottom of a pile. In the meantime, a complaint could sit for a year or two with no benefit to the consumer or the licensee.

Now, with the Charging Unit, we have brought attorneys into the review and complaint process as soon as possible to render four legally defensible decisions that are made on a case by case basis: 1) settle it with a consent agreement; 2) close it for a lack of merit; 3) issue a non disciplinary warning letter; or 4) forward the more complex case to a prosecutor who will bring the case to a hearing. It is all done on an expedited basis.

What perhaps highlights the work of the Charging Unit is the number of cases that it has closed. It has reviewed and resolved 18,791 investigations and legal cases since it was established in August of 2006. As a result, the caseload of a BPOA prosecutor has been reduced by 49% from 281 to 143 despite the continued rise in the number of complaints filed by consumers. This reduced case load frees up the prosecutor to focus

on more complex matters. Finally, the Charging Unit is directly responsible for reducing the average time for reviewing a BPOA complaint. Today the average age of a legal case is 237 days, down from the 355 days average prior to the Charging Unit and a decrease of over four months. This has been accomplished despite being down five prosecutor positions.

As the Committee can see, BPOA has an outstanding method and procedure for aggressively and quickly evaluating and prosecuting all types of licensee misconduct ranging from unprofessional conduct and unethical behavior to egregious clinical deficiencies as well as insurance fraud allegations.

Now, I would like to focus on BPOA's authority to prosecute licensees for insurance fraud and what can be done to improve BPOA's solid record of prosecuting these cases. For the record, all of our 29 licensing boards have authority to discipline licensees who commit insurance fraud pursuant to various statutory provisions. The first, and perhaps the best-recognized, is when a licensee has been criminally prosecuted for insurance fraud. Pennsylvania licensure boards can and do impose disciplinary action on licensees for felony convictions and also misdemeanors related to the practice of their profession and occupation.

In addition, most, if not all of our licensing boards have separate statutory authority to reach insurance fraud allegations and prosecute licensees for engaging in

unprofessional conduct and general fraud in the practice of that profession. Also, licensees can be disciplined for insurance fraud pursuant to provisions in the professional practice act that prohibit "unethical conduct". For the record, our health-related boards routinely discipline individuals for committing insurance fraud. Those Boards view conduct by licensees that amount to insurance fraud as a serious violation of their professional oath and obligations.

Interestingly enough, I can report to the Committee that the Chiropractic Practice Act actually does have provisions that provide the Board with direct authority to specifically discipline a licensed chiropractor for insurance fraud. For instance, section 506(a) (14) of the Chiropractic Act allows the Board to discipline a licensee for "intentionally submitting to any third party payer a claim for a service or treatment which was not actually provided to a patient". In fact, the Chiropractic Board's regulations define unprofessional conduct and consequently permit the Board to impose discipline if the licensee "orders excessive tests, treatments or use of treatments and diagnostic facilities not reasonably warranted by the condition of the patient"

Therefore, I would submit that BPOA and our 29 licensure boards already have more than enough statutory authority to prosecute licensees who are responsible for committing any form of insurance fraud. And while it would add some measure of additional consumer protection, I would note for the record that it may not be worth the effort--- it will be a "heavy lift"----- to open each and every practice act to include specific insurance fraud provisions modeled after the Chiropractic Act because we

already have the necessary statutory authority to bring licensees to the bar of justice for committing insurance fraud.

However, most notably, I would submit that the key to improving the already effective prosecution by BPOA of licensees who engage in various forms of insurance fraud is to improve law enforcement's timely notice to BPOA of allegations of insurance fraud committed by licensees. Quite frankly, the one big obstacle standing in the way of more timely and effective disciplinary prosecutions of BPOA licensees who engage in various forms of insurance fraud is the Criminal History Records Information Act (CHRIA). I would submit that a so-called "legislative fix" may be in order.

For the record, CHRIA precludes the Attorney General, the County District Attorney and any other state law enforcement agency from sharing with BPOA any criminal investigative materials and evidence that they may have gathered in an investigation of a BPOA licensee. This includes criminal investigations of insurance fraud. Interestingly enough, law enforcement is not permitted to share investigative files with BPOA because BPOA is not considered a law enforcement agency despite BPOA's mission to protect the health, safety and welfare of every consumer in the Commonwealth. Unfortunately, this prohibition may mean that an applicant for a license can begin practicing or a licensee is permitted to continue practicing for a period of a time beyond what is legally required by due process, thus potentially placing the public at unnecessary risk until some type of public action is taken or court filing is made like an arrest or execution of a search warrant.

Short of amending CHRIA to recognize and designate BPOA as a law enforcement agency, I would submit that one of the only ways that BPOA can bring a disciplinary action which is part of a criminal insurance fraud prosecution is if an outside party like an insurance company investigator provides BPOA with information about the alleged insurance fraud at the same time that information is provided to law enforcement. This will of course mean that the insurance company investigator will have to do "double duty". Also, keep in mind that BPOA is still not permitted to receive any follow up evidence and information that may be developed and gathered by law enforcement after the initial referral by the insurance company investigator.

All is not lost. Despite the CHRIA restrictions, under my watch, we have taken a number of steps to develop an effective working relationship with the Attorney General's Office and other law enforcement agencies across the Commonwealth including the U.S. Attorney's Office (which is not restricted by CHRIA). Part of that success can be attributed to Cal Shields who as Director of BEI and as a former four time elected District Attorney of Schuylkill County has personal contacts with the Attorney General's Office and other law enforcement agencies throughout the Commonwealth. This has proven to be invaluable for BPOA disciplinary prosecutions.

However, I would note that it would be very beneficial to actually formalize and cement the good working relationship between BPOA and state law enforcement agencies which was established under our watch. Simply put, I would submit that the best way to formalize that relationship would be to amend CHRIA to designate BPOA as a

law enforcement agency. I would point out to the Committee that the Gaming Commission already has this CHRIA designation as well as the Department of Welfare in limited cases relating to juvenile delinquents.

To that end, I would recommend that perhaps this committee collaborate with the House Professional Licensure Committee, which, as you know, has legislative oversight of BPOA, to hold a joint hearing on CHRIA and its impact on licensure discipline. BPOA would enthusiastically participate in that proceeding.

Thank you for the opportunity to appear before you and I welcome any questions you may have.