



# North Carolina Department of Public Safety

## Private Protective Services Board

Roy Cooper, Governor  
Erik Hooks, Secretary

Pamela Cashwell, Chief Deputy Secretary  
Brian Jones, Director

**MINUTES OF THE  
PRIVATE PROTECTIVE SERVICES BOARD MEETING  
AUGUST 22, 2019  
HAMPTON INN & SUITES  
3920 ARROW DRIVE  
RALEIGH, NC 27612**

### **BOARD MEMBERS PRESENT**

David Arndt  
Ron Burris  
John Aldridge  
Nada Lawrimore  
David Stephens  
Gerry Stickl  
Samuel Russell  
Debra Duncan  
Steve Johnson  
Tamara Rabenold  
Jerry Pitman  
Stacy Buff  
Bud Cesena  
Kim Heffney

### **BOARD MEMBERS ABSENT**

### **STAFF PRESENT**

Brian Jones - Director  
Phillip Stephenson – Deputy Director  
Jeff Gray – Attorney  
Kim Odom – Field Services Supervisor  
Ray Bullard – Training Officer/Investigator  
Scott Moller- Investigator  
Nick Ezell - Investigator  
Garcia Graham – PPS Board Secretary

**MAILING ADDRESS:**  
3101 Industrial Drive, Suite 104  
Raleigh, NC 27609



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**OFFICE LOCATION:**  
3101 Industrial Drive, Suite 104  
Raleigh, NC 27609  
Telephone: (919) 788-5320  
Fax: (919) 715-0371

## **GUESTS PRESENT**

Brenda McMillon  
William Wilke  
Sheryl Jacoppo  
Matthew Tallarino  
D Barnes  
Shaun Marso  
Kevin Tibbits  
Dan Boyd  
John Shoenfelt  
Laura Lee  
Roger Carpenter  
Sandra Epley  
David Burris  
Alex Thompson  
Jerry Winstead  
Mark Edmonds

Lucius McMillon  
Ray Berndt  
Dan Miller  
Keith Hollen  
Audra Coleman  
Matthew Snyder  
Robert Dunn  
Bert Croom  
Donna Campbell  
Gregory Bentley  
Pamela Mayfield  
Dakota Covil  
Joseph Bruno  
Chris Corcione  
Gary Pastor

Gregory Hatten  
Otis Scott  
David Roebuck  
Daniel Massey  
Ruth Reynolds  
Timothy Snyder  
Kathy Broom  
Paul Welch  
Jeff Kiker  
Randall Rabenold  
Randy Powers  
Sarah Burrs  
Linda Rarey  
Danny Blowe  
Zach Conner

## **CALL TO ORDER**

Mr. Arndt called the August 22, 2019, Private Protective Services Board meeting to order at 8:00 a.m. Mr. Cesena led the group in the Pledge of Allegiance followed by Chairman Arndt welcoming all guests.

## **STATE ETHICS LAW**

Attorney Jeff Gray explained the State Ethics Act, which addresses the ethics of public officials. This Act states specifically that if any Board member has any conflict of interest, potential conflict of interest, or the appearance of a conflict, he or she should remove themselves from deliberation and vote on that matter and so state on the record.

## **ELECTION OF OFFICERS**

The Board is required to elect officers at the first meeting after July 1 of each year. Mr. Gray conducted the elections.

**MR. CESENA MADE A MOTION TO NOMINATE DAVID ARNDT AS CHAIR;  
SECONDED BY MR. STICKL; MOTION CARRIED.**

**MR. ARNDT MADE A MOTION TO NOMINATE BUD CESENA AS VICE- CHAIR;  
SECONDED BY MR. STICKL; MOTION CARRIED.**

**MR. STICKL MADE A MOTION TO NOMINATE MR. CESENA AS CHAIR OF THE TRAINING & EDUCATION COMMITTEE; SECONDED BY MR. JOHNSON; MOTION CARRIED.**

**MR. JOHNSON MADE A MOTION TO NOMINATE RON BURRIS AS CHAIR OF THE GRIEVANCE COMMITTEE; SECONDED BY MR. CESENA; MOTION CARRIED.**

**MS. LAWRIMORE MADE A MOTION TO NOMINATE MR. BUFF AS CHAIR OF THE SCREENING COMMITTEE; SECONDED BY MR. CESENA; MOTION CARRIED.**

**MR. BURRIS MADE A MOTION TO NOMINATE STEVE JOHNSON AS CHAIR OF LAW AND RULES COMMITTEE; SECONDED BY MR. ARNDT. MR. PITMAN MADE A MOTION TO NOMINATE NADA LAWRIMORE AS CHAIR; SECONDED BY MR. BUFF. BY VOICE VOTE WITH NO CHALLENGE, MR. JOHNSON WAS ELECTED TO THE POSITION OF CHAIR OF THE LAWS AND RULES COMMITTEE.**

**MR. ARNDT MADE A MOTION TO NOMINATE GERRY STICKL AS CHAIR OF THE FINANCE COMMITTEE; SECONDED BY MR. JOHNSON; MOTION CARRIED.**

**MR. CESENA MADE A MOTION TO NOMINATE JOHN ALDRIDGE AS THE CHAIR OF THE EMERGING TECHNOLOGIES COMMITTEE; SECONDED BY MR. JOHNSON; MOTION CARRIED.**

**MR. CESENA MADE A MOTION TO NOMINATE DEBORAH DUNCAN AS THE BOARD'S ETHICS LIASION; SECONDED BY MR. ARNDT; MOTION CARRIED.**

The following members were thereby elected as chair of the specified committee:

David Arndt - Chair  
Bud Cesena - Vice Chair  
Bud Cesena - Training & Education Committee Chair  
Ron Burris - Grievance Committee Chair  
Stacy Buff - Screening Committee Chair  
Steve Johnson – Law and Rules Committee Chair  
Gerry Stickl - Finance Committee Chair  
John Aldridge – Emerging Technologies Committee Chair  
Deborah Duncan - Ethics Liaison

Mr. Arndt recognized new Board members Kim Heffney, Samuel Russell, John Aldridge, David Stephens and Tamara Rabenold.

## **MINUTES**

### **APPROVAL OF THE JUNE 20, 2019 BOARD MEETING MINUTES.**

**MOTION BY MR. CESENA TO ACCEPT THE JUNE 20, 2019 MINUTES; SECONDED BY MS. DUNCAN; MOTION CARRIED.**

**SCREENING COMMITTEE REPORT**

Mr. Cesena stated that the Screening Committee met on Wednesday, August 21, 2019 from 1:30 p.m. to 3:11 p.m. to review a total of forty-one (41) applications. The Committee members included Mr. Cesena, Mr. Buff, Mr. Stephens, Ms. Lawrimore, Mr. Heffney, Mr. Russell and Ms. Duncan. Mr. Cesena read the report for the record.

**MOTION BY MS. DUNCAN TO ACCEPT THE SCREENING REPORT; SECONDED BY MR. BUFF; MOTION CARRIED.**

**GRIEVANCE COMMITTEE REPORT**

Mr. Burris reported that the Grievance Committee met on Wednesday, August 21, 2019 from 9:00 a.m. to 12:32 p.m. and heard a total of 9 cases. The Committee members included Mr. Burris, Mr. Aldridge, Mr. Johnson, Ms. Rabenold, Mr. Stickl and Mr. Pitman. Mr. Burris read the report for the record.

**MOTION BY MR. JOHNSON TO ACCEPT THE GRIEVANCE COMMITTEE REPORT WITH THE EXCEPTION OF CASE NUMBERS 2019-PPS-035 DAVID GRIMES AND CASE NUMBER 2019-PPS-044 ROBERT SANTIAGO; SECONDED BY MR. RUSSELL; MOTION CARRIED.**

**MOTION BY MR. JOHNSON TO ACCEPT THE GRIEVANCE COMMITTEE RECOMMENDATION REGARDING ROBERT SANTIAGO'S CASE #2019-PPS-044; SECONDED BY MR. CESENA; MOTION CARRIED.**

Ms. Rabenold recused herself from voting on Robert Santiago's case #2019-PPS-044.

**MOTION BY MR. CESENA TO ACCEPT THE GRIEVANCE COMMITTEE RECOMMENDATION REGARDING DAVID GRIMES' CASE #2019-PPS-044; SECONDED BY MS. DUNCAN; MOTION CARRIED.**

Mr. Johnson recused himself from voting on David Grimes's case #2019-PPS-035.

**TRAINING & EDUCATION COMMITTEE**

Mr. Cesena reported that the Training & Education Committee met on Thursday, August 22, 2019 from 8:00 a.m. until 8:47 a.m. The Committee members included, Mr. Cesena, Mr. Johnson, Mr. Buff, Mr. Stickl and Mr. Arndt.

**Unarmed Guard Trainer Course and Workshop at Wake Technical Community College:**

September 23-27, 2019  
December 2-6, 2019  
February 10-14, 2020  
May 11-15, 2020  
August 17-21, 2020  
September 14-18, 2020  
November 16-20, 2020

**Firearms Trainer Recertification/Prequalification at N.C. Justice Academy, Salemburg:**

September 4, 2019  
November 7, 2019  
March 23, 2020  
May 18, 2020

**Firearms Instructor Course at N.C. Justice Academy, Salemburg:**

September 9-12, 2019  
March 30-April 2, 2020

**Long Gun Instructor Course at Camp Butner:**

November 12-14, 2019

**Long Gun Instructor Recertification Course at Camp Butner:**

November 14, 2019

**The following PPS Trainer courses have been completed:**

June 23-28, 2019 Unarmed Guard Instructor Course at Wake Tech  
July 8, 2019 Firearms Recertification/Prequalification Course at NCJA

**The following PPSB Training Courses for CEU Credit are scheduled:**

August 22, 2019	1-5 p.m.	Raleigh, NC
December 19, 2019	1-5 p.m.	Raleigh, NC

Mr. Cesena stated that the Committee discussed several topics such as close personal protection, independent trainers, and the unarmed guard trainer manual. He stated that Mr. Bullard has almost completed the manual and hoped that it would be ready for review at the October 2019 Board meeting.

Mr. Cesena also stated that the Board previously voted on allowing certified firearms trainers to train independent of a licensed company, but the Committee desired that independent firearms trainers be required demonstrate that they have liability insurance. The Committee instructed

Mr. Gray to draft administrative rules revisions to require unaffiliated/independent trainers to submit proof of general liability insurance and present the proposed rule changes to the Board at its October meeting.

Lastly, Mr. Cesena suggested that Board representatives attend the Close Protection Conference to be held in Las Vegas, Nevada from December 12-14, 2019 given potential changes to the Private Protective Services Act. The Committee expressed a desire to allow Director Jones along with three other Board members to attend the Close Protection Conference.

**MOTION BY MR. CESENA TO ALLOW DIRECTOR JONES AND THREE OTHER BOARD MEMBERS TO ATTEND THE CLOSE PROTECTION CONFERENCE AND FOR THE EDUCATION FUND TO COVER ALL EXPENSES FOR THIS TRIP.**

**Weapon Discharge/Incident Reports:**

On June 14, 2019 Michael Matthews, Qualifying Agent for Capitol Special Patrol, telephoned Investigator Bullard and advised that a security guard employed with Capitol Special Patrol had discharged his weapon while working in Charlotte, North Carolina. Matthews advised that he would provide a report in writing and that Charlotte Mecklenburg Police Department was investigating the incident.

On June 17, 2019 Matthews came to the offices of Private Protective Services. Matthews provided Investigator Bullard with a copy of a written statement about the events. Below is a summation of that document.

On June 14, 2019 at approximately 10:32 a.m. Security Officer Luis Javier Rodriguez-Hernandez was working at Anson at the Lakes, a gated apartment complex located at 8000 Waterford Lakes Drive, Charlotte, North Carolina. Hernandez observed a white in color passenger vehicle drive in an open "exit only" gate. Hernandez located the vehicle parked in front of building #25 of the apartment complex. The vehicle was not occupied. Hernandez exited his patrol vehicle and approached the white passenger vehicle to determine if the vehicle had a community parking sticker. Hernandez began filling out a violation notice for the vehicle entering the exit gate and improper parking. A Hispanic male, later identified as Herwin Alvarado, came out of building #25 and headed toward the white vehicle. Alvarado was very belligerent, yelling profanity at Hernandez. Hernandez observed a handgun in the front waistband of Alvarado's pants. Hernandez questioned Alvarado about residing at the apartment complex. Alvarado ignored Hernandez and entered the driver's side of the white vehicle. Hernandez was standing in front of the white vehicle. Alvarado started the vehicle and caused the vehicle to lunge forward toward Hernandez. Hernandez stepped back from the vehicle. The vehicle again lunged toward Hernandez slightly striking him. Hernandez stepped back again. The vehicle again lunged forward striking Hernandez. This time hard enough to knock the clipboard out of Hernandez' hands causing Hernandez to extend his arm to maintain his balance using the hood of the vehicle. Hernandez then drew his sidearm and fired three shots at the vehicle. One shot struck the "A" post of the vehicle. The other two struck and penetrated the driver's side window. Alvarado then exited the vehicle and fell to the ground. Hernandez radioed for help. Lt. Caverly and Sgt. Hayslip responded to the scene and administered first aid to Alvarado until the EMS unit arrived. Alvarado was transported to the hospital suffering from a gunshot wound to the abdomen and right upper arm.

Hernandez was interviewed by Detective Nabb and released. Hernandez was wearing a body camera that was seized by CMPD. Hernandez was carrying a Sig Sauer P250, .40 caliber handgun that was also seized by CMPD. Matthews provided Investigator Bullard a copy of the Registration Application and Training Certificate for Hernandez. Matthews pointed out to Investigator Bullard that Hernandez was not carrying the same weapon that he qualified with on his Firearms Training Certificate. Matthews advised that Hernandez had requested a Weapon's Changeover from the Walther PPX 9mm that he was qualified with and that Capitol Special Patrol was leasing from him the Sig Sauer P250 that he was carrying that day. Matthews advised that the range qualification had not been completed to allow Hernandez to carry the Sig Sauer.

Investigator Bullard queried PPSM (Permitium) and verified that the documents turned over by Matthews were correct. Hernandez was a properly registered Armed Guard with Capitol Special Patrol. Hernandez was also qualified to carry a Walther PPX and not a Sig Sauer.

On July 1, 2019 Matthews telephoned Investigator Bullard. Matthews advised that Hernandez had been served a Criminal Summons for Misdemeanor Assault with a Deadly Weapon. Matthews also advised that Hernandez was no longer employed by Capitol Special Patrol.

On July 17, 2019 Private Protective Services received a two-page typed letter from Luis Hernandez. Hernandez was responding to his termination from Capitol Special Patrol for carrying a firearm that he was not qualified to carry. Hernandez advised that in August 2018 he qualified daytime with his Sig Sauer P250 but was not able to complete the nighttime qualification course because of lack of available range time. Hernandez advised that he was told by Adam Trantum, supervisor for Capitol Special Patrol, that he could attend the range at a later date and time to complete the nighttime qualification. Hernandez advised that Trantum also told him he could carry the Sig Sauer. Hernandez advised that he open carried the Sig Sauer for approximately ten (10) months for Capitol Special Patrol. Hernandez advised that Adam Trantum, Sgt. Scott Hayslip and Supervisor White were all aware that he was carrying the Sig Sauer.

On June 16, 2019, Investigator Bullard received an email from Archie Bryant, the Qualifying Agent for Guard-One Protective Services. Bryant advised that a security officer employed by Guard-One had discharged firearm while working a post in Asheville, North Carolina. Bryant advised that Asheville Police Department was investigating the incident.

On June 18, 2019 Archie Bryant forwarded a copy of the statements from the two Security Officers involved in the incident, Justin Crow and Nicholas Webb. Those statements are included in this case file. The following is a summation of those statements.

At approximately 3:30 a.m. on June 16, 2019 Security Officers Justin Crow and Nicholas Webb were working at the Waffle House located on Tunnel Road in Asheville, North Carolina. A group of three black males inside of the restaurant became loud and boisterous using profane language while seated in the "To-Go" seats. Officer Crow approached the group and instructed them to leave the premises. The group refused to leave. Officer Crow once again advised the group to leave and again the group refused. Officer Webb approached the group and advised the group that they needed to leave the business immediately. The group again refused. Three employees of the Waffle House came from the kitchen area to assist the security officers with the group. At that time the three males exited the business with Crow, Webb and the three employees following them. Simultaneously, Officer Crow was telephoning Asheville Police Department to report the incident. One of the black males turned and punched Officer Crow in

the face. Officer Webb then punched the same black male. The black male broke the grip of Officer Webb and started running across the parking lot. Officers Crow and Webb pursued the black male, catching him mid-way across the parking lot. The black male was tackled to the ground but quickly regained his footing and began pursuing Officer Crow. The black male began assaulting Officer Crow. While Officer Crow and the black male were in an altercation, the second black male jumped on Officer Crow's back and punched him in the head. Officer Crow fell to the ground. Both black males began assaulting Officer Crow. Officer Crow could feel someone attempting to remove his weapon from the holster. Officer Webb was able to temporarily remove the one black male that was on Officer Crow's back. The second black male broke free of Officer Webb and started back toward Officer Crow. At that time Officer Crow was able to remove his weapon from the holster and fire two rounds in the direction of the two black males. The two black males ran from the Waffle House toward a nearby motel. One black male returned to retrieve a vehicle from the parking lot. Officer Webb then assisted Officer Crow back to the Waffle House and awaited Asheville Police Department and EMS. The third black male of the group was not involved in the incident and was interviewed by Asheville Police Department Officers, then released. Crow was transported to a nearby hospital where he was treated and released for non-life-threatening injuries. At the hospital, Asheville Police Department seized Officer Crow's weapon and issued him a citation for violating a City Ordinance by Discharging his Weapon in the City Limits.

Investigator Bullard queried PPSM (Permitium) and discovered that both Justin Crow and Nicolas Webb are properly registered Armed Guards for Guard-One Protective Services. Investigator Bullard contacted Officer Griffin of the Asheville Police Department and confirmed that the weapon seized on June 16, 2019 from Officer Crow is the same make, model and serial number as the weapon that Officer Crow was qualified to carry. Officer Crow has a pending court date in Buncombe County District Court on August 1, 2019.

On June 17, 2019, Khiva Hines contacted PPSB and advised of a security officer employed by Jackson Protection Incorporated that had discharged his weapon at the Fish Kiss Arcade located at 4444 The Plaza, Charlotte, North Carolina. On June 17, 2019 Hines emailed PPSB with the details of the incident along with a public copy of the Charlotte Mecklenburg Police Department report. Hines advised that the security officer involved was Kevin Lotharp.

On June 21, 2019 Khiva Hines advised Investigator Bullard that Kevin Lotharp had resigned from Jackson Protection Incorporated and refused to give a written statement. Hines advised that she had spoken with Lotharp the night of the incident and had viewed the surveillance video from the business. Hines advised that the suspect, later identified as Travis Thompson, entered the sweepstakes business when the exit door was unlocked to allow a patron to leave. Thompson was armed with a handgun. Thompson immediately began assaulting Lotharp. During the physical confrontation, Thompson attempted to remove Lotharp's sidearm from its holster. Lotharp was able to separate enough distance between himself and Thompson to draw his weapon. Lotharp fired his weapon four times striking Thompson. Thompson fired his weapon once, striking the front glass of the business. Thompson fell to the floor at the front door of the business. Two other suspects came into the business and helped Thompson into an awaiting vehicle. The vehicle attempted to leave the premises with the three suspects inside but was apprehended by Charlotte Mecklenburg Police Department. Thompson was transported and admitted to the hospital for gunshot wounds. The other two suspects were taken into custody. Lotharp was questioned at the scene and released.



Investigator Bullard corroborated the information given by Khiva Hines with the Charlotte Mecklenburg Police Department and determined it to be correct. Investigator Bullard queried PPSM (Permitium) and discovered that Kevin Lotharp was a properly registered Armed Guard for Jackson Protection Incorporated. Lotharp was also carrying the firearm that he was qualified to carry, a Smith and Wesson, Model SD9VE, 9mm handgun.

Mr. Bullard provided a follow-up to the September 17, 2018 incident of an armed guard employed by NC Detective Agency who shot and killed a subject during a physical altercation and struggle over the guard's handgun in Durham, North Carolina. The investigation was completed and there were no violations of 74C and the guard was not charged criminally. Accordingly, no further action was warranted.

Mr. Cesena reported that there were two courses submitted to the T & E Committee:

Forensic Analysis: Fake Massage Business Engaged in Sex Trafficking (twelve hours)  
Ethics and Professional Development (four hours)

**MOTION BY MR. CESENA TO APPROVE THE COURSES SUBMITTED FOR CONTINUING EDUCATION TRAINING; SECONDED BY MR. JOHNSON; MOTION CARRIED.**

**MOTION BY MR. JOHNSON TO ACCEPT THE REPORT BY THE TRAINING AND EDUCATION COMMITTEE; SECONDED BY MR. STICKL; MOTION CARRIED.**

#### **LAW AND RULES COMMITTEE**

Ms. Lawrimore stated that the Law and Rules Committee met and the committee has decided that Mr. Johnson, Ms. Duncan and Ms. Lawrimore will be working on developing a set of By-Laws for the PPS Board.

**MOTION BY MS. DUNCAN TO ACCEPT THE LAW AND RULES COMMITTEE'S REPORT; SECONDED BY MR. CESENA; MOTION CARRIED.**

Ms. Duncan also thanked Ms. Lawrimore for her service on the Law and Rules committee.

#### **ETHICS COMMITTEE**

Ms. Duncan offered the following:

Pursuant to North Carolina General Statute 163A-159(c), when an actual or potential conflict of interest is cited by the Board under North Carolina General Statute 163A-189(e) with regard to a public servant sitting on a board, the conflict shall be recorded in the minutes of the applicable board.

The following members have potential conflicts of interest and should exercise caution in the performance of their duties should issues involving their license and affiliations intersect with the Board:

John Aldridge III

- There is no actual conflict, but the potential for a conflict of interest as an attorney with the law firm of Smith Rodgers Attorneys at Law, PLLC.

Debra Duncan

- There is no actual conflict, but the potential for a conflict of interest as an interim police chief and Title IX investigator for D. Stafford and Associates.

Sam Russell

- There is no actual conflict, but the potential for a conflict of interest as a licensed private investigator who owns Mangum Investigations, LLC.

Bud Cesena

- There is no actual conflict, but the potential for a conflict of interest as a licensee of the Board and CEO of Landmark Security, Inc.

Tamara Rabenold

- There is no actual conflict, but the potential for a conflict of interest as a licensee of the Board. Further, Ms. Rabenold and her spouse are chief executive officer and principal, respectively of Vaudra International, a private investigation firm. Moreover, Ms. Rabenold served in a leadership capacity with the North Carolina Association of Private Investigators, but disclosed she would resign from that position if appointed to the Board.

Dave Stephens

- There is no actual conflict, but the potential for a conflict of interest as a licensee of the Board and Director of Operations for the private investigations company, US ISS Agency, LLC.

David Arndt

- There is no actual conflict, but the potential for a conflict of interest as a licensee of the Board.

Gerry Stickl

- There is no actual conflict, but the potential for a conflict of interest as a licensee of the Board and Regional Manager for Sunstates Security LLC.

Jerry Pitman

- There is no actual conflict, but the potential for a conflict of interest as a licensee of the Board and owner of J.D. Pitman Detective Agency, LLC.

The following members have no actual conflict of interest or the likelihood for a conflict of interest:

Ron Burris

Kim Heffney

Stacy Buff

Nada Lawrimore

Steve Johnson

Ms. Duncan also reported that everyone is in compliance with training requirements.

**MOTION BY MS. LAWRIMORE TO ACCEPT THE ETHICS LIAISON'S REPORT;  
SECONDED BY MR. CESENA; MOTION CARRIED.**

**OLD BUSINESS:**

Mr. Arndt stated the Board's contract with the current Criminal Record Check vendor recently expired and requested the Board go into Closed Session.

**MOTION BY MS. LAWRIMORE TO GO INTO CLOSED SESSION TO DISCUSS A  
CONTRACT MATTER WITH LEGAL COUNSEL; SECONDED BY MR. PITMAN;  
MOTION CARRIED.**

CLOSED SESSION: 10:15 a.m.

RECONVENED: 10:40 a.m.

**MOTION BY MR. CESENA TO ENTER INTO A CONTRACT WITH  
CRIMINALRECORDCHECK.COM TO PROVIDE CRIMINAL RECORD CHECKS  
PURSUANT TO PROVISIONS CONTAINED IN THE PRIVATE PROTECTIVE  
SERVICES ACT ; SECONDED BY MR. BUFF; MOTION CARRIED.**

Break 10:40 a.m.

Reconvened 11:01 a.m.

Ms. Lawrimore expressed interest in working with the Department of Public Safety (DPS) to broadcast information related to licensing requirements. She believed that the public should be informed about various licensing requirements, particularly given the upcoming Republican National Convention (RNC).

Director Jones stated that he explored this issue with the DPS communication team. He stated that one of the challenges is determining an appropriate method to disseminate information. Director Jones stated that he made contact with individuals involved with RNC planning. In particular, he met with the DPS employee responsible for coordinating DPS resources, as he previously reported to the Board. Director Jones also stated that he recently made contact with the director of security for the RNC. Director Jones conveyed his willingness to assist and also told him that the agency can verify if a company is licensed.

**NEW BUSINESS:**

Director Jones informed the Board about the International Association of Security and Investigative Regulators (IASIR) annual conference to be held in Baltimore in October 2019. He stated that the Alarm Systems Licensing Board voted to allow him, Mr. Gray and the Chair to attend the conference. Director Jones requested that the Private Protective Services Board consider joining the Alarm Systems Licensing Board in sending representation to the conference.

**MOTION BY MR. BUFF TO ALLOW DIRECTOR JONES AND A REPRESENTATIVE OF THE BOARD TO ATTEND THE IASIR CONFERENCE; SECONDED BY MS. DUNCAN; MOTION CARRIED.**

Director Jones discussed the possibility of electronic fingerprint submission. He explained the statutory requirement that the agency collect prospective registrants' fingerprint cards and submit them to the State Bureau of Investigation (SBI). The manual submission of cards is cumbersome. Director Jones reported that he and Deputy Director Phil Stephenson met with representatives from the SBI on July 15th to explore the possibility of electronic fingerprint submissions. He stated that electronic submissions would reduce errors, significantly decrease processing time, and provide greater security. He stated that several boards in North Carolina already require electronic submissions. Director Jones believes that electronic submission would streamline the process for the agency and the industry. Accordingly, he recommended that the Board adopt administrative rules to allow electronic fingerprint submission.

After a lengthy discussion Mr. Cesena made a motion.

**MOTION BY MR. CESENA TO INSTRUCT MR. GRAY TO DRAFT ADMINISTRATIVE RULES TO ALLOW ELECTRONIC FINGERPRINT SUBMISSION ; SECONDED BY MS. DUNCAN; MOTION CARRIED.**

Ms. Lawrimore informed the Board that Department of Insurance Investigators carry weapons and have arrest ability. She suggested that the Board explore the possibility of its investigators carrying weapons and broadening investigators' authority.

Director Jones stated that he had been under the impression that DPS previously rejected the idea of investigators carrying weapons, but that he was happy to revisit the issue. He stated that the agency has a great relationship with law enforcement officers and proactively requests that law enforcement officers accompany PPS investigators when investigations present safety concerns. Mr. Buff suggested that Director Jones revisit this matter with DPS. Director Jones stated that he would address it with Chief Deputy Secretary Pamela Cashwell.

Mr. Pitman asked Director Jones for an update regarding a current list for active licensees. Director Jones stated that he has stressed the importance of this issue with Permitium. He stated that a representative from Permitium told him that this issue was a priority. Director Jones also noted that the agency's staff can verify licensee information in the meantime. He reminded the Board and industry stakeholders that the staff roster, which includes email addresses and phone numbers, is accessible on the PPS website.

Mr. Pitman also suggested that the eventual capability developed by Permitium should include the ability to search licensees by county.

**FINAL AGENCY DECISION**

Geoffrey Lawrence Jahn - 18 DOJ 06380. Mr. Jahn was not present. This case was heard by Administrative Law Judge Donald W. Overby on January 29, 2019. This case involved the

summary suspension order of Petitioner's Private Investigator License based on lack of good moral character and temperate habits as evidenced by charges of misdemeanor Carrying a Concealed Handgun and misdemeanor Resisting a Public Officer in Union County, North Carolina.

**MOTION BY MR. BURRIS TO AFFIRM THE DIRECTOR'S SUMMARY SUSPENSION OF MR. GEOFFREY JAHN'S PRIVATE INVESTIGATOR LICENSE; SECONDED BY MR. JOHNSON; MOTION CARRIED.**

**MOTION BY MR. BUFF TO ACCEPT THE ADMINISTRATIVE LAW JUDGE'S DECISION AND CONTINUE THE SUMMARY SUSPENSION OF MR. GEOFFREY JAHN'S PRIVATE INVESTIGATOR LICENSE; SECONDED BY MR. BURRIS; MOTION CARRIED.** (Recused: Ms. Rabenold).

Dakota Covil - 19 DOJ 01635. Mr. Covil was present. This case was heard by Administrative Law Judge Tenisha S. Jacobs on April 23, 2019. This case involved the summary suspension order of Respondent's Security Guard & Patrol business license based on Petitioner's failure to ensure that armed security guards and unarmed security guards employed by Petitioner are properly trained.

**MOTION BY MR. HEFFNEY TO ACCEPT THE ADMINISTRATIVE LAW JUDGE'S DECISION AND RESCIND THE SUMMARY SUSPENSION OF MR. COVIL'S SECURITY GUARD & PATROL LICENSE; SECONDED BY MR. BURRIS; MOTION CARRIED.** (Recused: Mr. Cesena).

Janet Davidson Barringer, - 19 DOJ 01471. Ms. Barringer was not present. This case was heard by Administrative Law Judge Tenisha S. Jacobs on April 23, 2019. This case involved the denial of the Petitioner's unarmed guard registration based on a lack of good moral character and temperate habits as evidenced by a conviction of one (1) count of a Class 1 misdemeanor Larceny in Mecklenburg County, NC.

**MOTION BY MR. JOHNSON TO ACCEPT THE ADMINISTRATIVE LAW JUDGE'S DECISION AND DENY MS. BARRINGER'S UNARMED GUARD REGISTRATION APPLICATION; SECONDED BY MR. BURRIS; MOTION CARRIED.**

#### **DIRECTOR'S REPORT:**

Director Jones read the report for the record. He reported the Board's revenue as of June 30, 2019 was \$1,346,744.54 with expenditures in the amount of \$1,408,308.34, reflecting a decrease to the fund balance of \$61,563.80. The total fund balance was \$1,138,291.20. He reported the Education Fund balance was \$106,880.22 with no disbursements. Director Jones reported that since the June Board meeting, PPS had received 5,593 registration applications, 91 applications for licensure and 87 certification, which brought the active numbers for registration to 22,031, license holders to 2241 and certification holders 719. Staff printed 5,924 cards since the last meeting.

Director Jones introduced Nick Ezell, the new investigator in Greensboro who began employment on July 15<sup>th</sup>. He stated that Mr. Ezell last served as a lead homicide detective for the Stockton, California Police Department. Nick's numerous assignments included field training officer, traffic officer, major collision investigator, community policing, problem oriented policing team, criminal intelligence, dignitary protection, commercial vehicle enforcement officer, robbery detective, and mobile command post operator. Prior to working for the Stockton Police Department, Nick served in the United States Navy.

Director Jones stated that staff members were reviewing applications for an administrative specialist vacancy and an anticipated administrative specialist vacancy.

Director Jones stated that as of August 20<sup>th</sup>, employees had processed armed guard applications submitted through August 2, 2019 and unarmed guard applications submitted through July 15, 2019.

Director Jones stated that Permittum intended to complete development in mid-September and would return to the PPS office during the week of September 23<sup>rd</sup> to discuss progress.

Director Jones reported that he participated in the Government Resource Expo at the 97<sup>th</sup> Annual Business Conference of the NC Sheriffs' Association on July 30<sup>th</sup> in Wilmington. The event provided government agencies the opportunity to highlight resources provided to sheriffs and their personnel. In particular, he spoke with sheriffs about our ability to address unlicensed security activity.

Director Jones announced that the Private Protective Services Board would accept grant applications from August 23, 2019 until 5:00 p.m. on October 25, 2019. The guidelines and application are located on the PPSB website.

**MOTION BY MR. CESENA TO ACCEPT THE DIRECTOR'S REPORT; SECONDED BY MR. BURRIS; MOTION CARRIED.**

#### **ATTORNEY'S REPORT**

Attorney Gray discussed the following:

#### **CONSENT AGREEMENT, SETTLEMENT AGREEMENTS & CIVIL PENALTIES**

1. On October 26, 2017 Daitwan Lamont Hardy and Security Contracting, Inc., entered into a consent agreement with the Board in the amount of \$7,466.40 for registration violations. The temporary agreement was not signed/ payment has not been received. On April 26, 2018 the full Board voted to suspend the license until payment of the \$7,466.40 consent is received.
2. On February 21, 2019 Clifton Lamont Tinnen/Integrity Protection Services enter into a Consent Agreement with the Board in the amount of \$19,461.60 for registration violations. The temporary agreement was signed by QA (Clifton L. Tinnen) on February

19, 2019. To be paid in three monthly installments. Payment has not been received. On June 20, 2019 the full Board voted to revoke Mr. Tinnen's license.

3. On June 20, 2019 Sione Atu Latu/Security On Call, LLC entered into a Consent Agreement with the Board in the amount of \$13,096.80 for registration violations. The temporary agreement was not signed. Signature on return receipt is illegible and signature date was omitted. Payment has not been received.

## **I. ADMINISTRATIVE RULES**

a. At its meeting on February 22, 2018, the Board began the process for its Periodic Review of Rules to occur in August 2018. The report for the Board's rules was filed and the Public Comment Period ended May 8, 2018. No public comments were received. The Board voted at its June 21, 2018 meeting to approve its rules.

The Board's rule readoptions were on the Rules Review Commission's August 16<sup>th</sup> agenda. The report containing the final classification of the entirety of the Board's rules as "Necessary with Substantive Public Interest" was approved. At its October 25, 2018 meeting, the Board voted to readopt these rules. On November 16<sup>th</sup> the Notice of Text was filed to commence what is essentially the rulemaking process (i.e. 60-day comment period, public hearing, technical change requests, etc.). The Board has until April 2020 to readopt its rules. A copy of the administrative rule readoptions, which included the rule amendments in b., below, were attached to Mr. Gay's December 20, 2018 Attorney's Report.

The Notice of Text for the readoptions was filed, the rules were published on the Board's website and in the North Carolina Register (Vol.33; Issue 5; Feb. 1, 2019), and a Public Hearing was conducted on February 20, 2019. No written or oral comments were received. The Public Comment Period ended on April 2, 2019. These administrative rule readoptions were an attachment to Mr. Gay's April 25, 2019 Attorney's Report and approved by the Board that day. These readoptions must now merely be refiled.

b. At its June 21<sup>st</sup> meeting, the Board authorized me to proceed with drafting proposed amendments to the Board's administrative rules governing unarmed and armed guard courses and trainers. These amendments were prepared and forwarded to Members Bud Cesena and Steve Johnson for review and comment. They had some questions or concerns about the practical application of two of the amendments which were discussed at the August 23<sup>rd</sup> Education and Training Committee meeting. It was decided to not pursue these two proposed amendments, but proceed with the remaining proposed amendments. The Board approved these rule amendments at its October 24, 2018 meeting. The Notice of Text for these rules was filed on November 16, 2018 as part of the rule readoptions in a., above.

c. As previously mentioned to the Board during its creation and implementation, the new Permittum on-line licensing and registration system will require changes to the corresponding sections of the Board's administrative rules. With the assistance of Registration Supervisor Shannon Thongkheuang and Licensing Supervisor, Garcia Graham, and former Board Legal Counsel Charles McDarris, Mr. Gray prepared draft rules for the necessary changes and amendments which were approved at the Board's April 25, 2019 meeting. The Notice of

Text was filed on July 22, 2019, and published on the PPSB's website on July 23, 2019 and in the North Carolina Register (Vol.34; Issue 4; August 15, 2019). The Public Hearing will be conducted on August 30, 2019 at the Board's Office.

## II. LEGISLATION

a. At the request of the Law & Rules Committee, Mr. Gray prepared a new proposed bill for introduction in the current 2019-2020 Legislative Session. The bulk of this new bill is identical to House Bill 566/Senate Bill 634 from the 2017-2018 Session but with the addition of one new provision voted on by the Board after introduction of these bills, as well as various technical changes you approved.

The Law & Rules Committee considered this new bill at its meeting on December 20, 2018. A copy was attached to Mr. Gay's December 21, 2018 Attorney's Report, and the proposed bill was discussed at the full Board meeting on December 21<sup>st</sup> where it was deferred to a special Board meeting. Another copy was e-mailed to all Board members and it was again discussed at a special Board meeting via telephone conference call on January 25, 2019. It was tabled for discussion until the Board's February 21<sup>st</sup> meeting and was approved with some minor modifications. It was introduced in the House as House Bill 630, "Private Protective Services Changes." A copy of the original version of House Bill 630 was attached to Mr. Gray's April 25, 2019 Attorney's Report.

House Bill 630 was heard in the House State & Local Government Committee on April 29<sup>th</sup> and following a minor technical amendment it received a unanimous vote for a Favorable Report and was referred to the House Finance Committee. It was heard in that Committee on May 29<sup>th</sup> where it was amended to include a rewrite of the law governing the Alarm Systems Licensing Board. With only two or three "nay" votes, it received a Favorable Report and was referred to the House Committee on Rules, Calendar, and Operations of the House on May 29, 2019, where it was amended to a Private Investigator to receive an endorsement on his or her existing license to perform Close Personal Protection (in lieu of a license) under certain circumstances. It received a Favorable Report. House Bill 630 passed the House on July 9<sup>th</sup> with minor floor amendment ("Chairman" to "Chair") and has been referred to the Committee on Rules and operations of the Senate.

A copy of House Bill 630 as it currently appears was attached as Attachment 2.

b. As a direct response to the three-judge panel's Order in *Cooper v. Berger, et al.*, 17 CVS 6465 – Wake County (*see*, October 25, 2018 Attorney's Report), three bills were introduced in the General Assembly last Fall effecting the Board and its appointments. Both Senate Bill 821, introduced by Senator Andy Wells, and House Bill 1117, introduced by Representative David Lewis, would have repealed N.C. Gen. Stat. § 74C-4, the Board's appointment provision, as well as similar appointment provisions in the other five boards and commissions that were the subject of *Cooper v. Berger*, effective June 30, 2019. The third bill, House Bill 1120, introduced by Representative Charles McGrady, would have amended N.C. Gen. Stat. § 74C-4 to reduce the Senate and House appointments from five each to three each and establish the terms of the appointments.



The only one of the three bills to see any action was Senate Bill 821; it passed the Senate on December 6, 2018. None of the three passed both houses before adjournment. Copies of each of these three bills were attached to Mr. Gray's December 20, 2018 Attorney's Report.

The legislature convened on January 30, 2019 for its 2019-2020 Session and Representative McGrady, now joined by four additional Primary Sponsors, introduced House Bill 14 the first day. It is identical to House Bill 1120 from the previous Session. A copy was attached to Mr. Gray's February 21, 2019 Attorney's Report. There has been no action on this bill.

However, Senate Bill 381, introduced by Senator Andy Wells, has seen action. Identical to House Bill 14, this bill gives the House and Senate three appointments each and the remainder to the Governor. It passed the Senate on April 18<sup>th</sup>, was sent to the House where it was amended in two separate committees (but not effecting the Board appointments), and passed the House on May 5<sup>th</sup>. It was returned to the Senate for concurrence, passed June 11, 2019, and was signed by the Governor on June 21st.

A copy of Senate Bill 381 as passed was attached to Mr. Gay's June 20, 2019 Attorney's Report.

The Governor's appointments pursuant to this bill have been made.

c. House Bill 760, "Expand Loss Prevention," was introduced on April 15, 2019. It would amend the exemptions section of Chapter 74C in an attempt to clarify that loss prevention investigators have the authority to conduct investigations beyond the businesses premises. A copy of the original version was attached to Mr. Gay's April 25, 2019 Attorney's Report and Mr. Gray explained this bill further in the meeting. The Board also responded to this issue by formally adopting a Statutory Interpretation of N.C. Gen. Stat. § 74C-3(b)(14).

This bill passed the House on May 3<sup>rd</sup>, passed the Senate on July 23<sup>rd</sup>, and was returned to the House for concurrence in an amendment made in the Senate which does not effect the Board. It passed the House on July 29<sup>th</sup> and was signed by the Governor on August 9, 2019.

A copy was attached as Attachment 3.

d. Senate Bill 305, "OLB Reform," was introduced on March 19, 2019. It modifies and adds to the Chapter's definitions set out in N.C. Gen. Stat. § 93B-1 by modifying the definition of "occupational licensing board" to include any board, committee, commission, or other state agency which is established for the purpose of regulating the entry of persons into, and the conduct within (was, "and/or the conduct within"), a particular profession or occupation, which is authorized to issue licenses.

It maintains the term "does not include State agencies, staffed by full-time State employees, which as a part of their regular functions can issue licenses", but adds the term "State agency licensing board," and defines the term to include any State agency, staffed by full-time State employees, which as part of their regular functions issue licenses. It then includes a nonexclusive list of ten State agency licensing boards and the profession or occupation for which the board, agency, or officer can issue license. **The Private Protective Services Board is included on this list of ten.**

Therefore, the Private Protective Services Board would no longer be considered an "occupational licensing board," but instead be designated a "State agency licensing board." (Interestingly, the Alarm Systems Licensing Board would remain an o.l.b.)

Additional reports would be required of o.l.b.s. Further, denial, suspension or revocation based upon “crimes involving moral turpitude” would be deleted from the enabling statute of 34 occupational licensing boards. (It also deletes the Dental Board’s “crime involving gross immorality” and the Optometry Board’s “immoral conduct.”) Chapter 74C does not make reference to crimes of moral turpitude. A copy was attached to Mr. Gay’s April 25<sup>th</sup> Attorney’s Report.

An identical bill, House Bill 910, was filed in the House on April 16<sup>th</sup>.

Neither bill has seen action, **however, much of SB 305 and HB 910 were an amendment to House Bill 770, below.**

e. Senate Bill 473, “Various OLB and Administrative Law Changes,” was introduced on April 2, 2019. This bill directs the Joint Legislative Administrative Procedure Oversight Committee (APO) to study whether the definition of “occupational licensing board” under N.C. Gen. Stat. § 93B-1 and the definition of “occupational licensing agency” under N.C. Gen. Stat. § 150B-2 should be specific lists of occupational licensing boards in order to clarify which state agencies should be considered occupational licensing boards for purposes of Chapters 93B and 150B, then directs the APO to recommend which state agencies should be included under each definition if that determination is made, and report the results of the study to the 2020 General Assembly.

It amends N.C. Gen. Stat. § 143B-426.39, requiring the State Controller to develop and prescribe a uniform format for financial statements of the annual financial audits required by each licensing board pursuant to N.C. Gen. Stat. § 93B-2(b), and requires consultation with the State Auditor and occupational licensing boards in doing so. The financial statement audit reporting format is to be used for reports submitted on or after July 1, 2020. (Note: The PPSB’s financial reporting is done through the Department of Public Safety.)

The bill also changes the title of N.C. Gen. Stat. § 150B-21.5 of the Administrative Procedure Act (APA) to “Circumstances when notice and rule-making hearing not required; circumstances when submission to the Rules Review Commission is not required.” It amends subsection (a) to provide that an agency is not required to publish a notice of text in the North Carolina Register, hold a public hearing, or submit the amended rule to the Rules Review Commission for review (previously, did not except submission of the amended rule to the Commission for review) when the agency proposes to amend a rule to do one of the specified purposes in subsection (a). Provides changes to a few of the specified purposes for which notice, a public hearing, and submission to the Commission for review are not required, which include (1) when the rule is amended to change information readily available to the public, such as an address, telephone number, or a web site (previously, did not include a web site) and (2) when the rule is amended to correct a typographical error (previously, correct a typographical error in the North Carolina Administrative Code). It further moves the sixth purpose excepted in subsection (a) to new subsection (a1) to provide that an agency is not required to publish a notice of text in the Register or hold a public hearing when it proposes to change the rule in response to a request or an objection by the Commission, unless the Commission determines that the change is substantial (note, not excepted from rule submission to the Commission in this circumstance). Creates new subsection (e) to require any agency that adopts or amends a rule under subsection (a) or (c) of N.C. Gen. Stat. § 150B-21.5 to notify the Codifier of Rules of its actions and directs the Codifier of Rules to make the appropriate changes to the North Carolina Administrative Code when notified of such agency action.

It changes the title of N.C. Gen. Stat. § 150B-21.20 to “Codifier’s authority to revise rules” and amends the Codifier of Rules authority to allow the Codifier, after consulting with the agency that adopted the rule, to revise a rule (previously, revise the form of a rule submitted for inclusion in the North Carolina Administrative Code) to do one or more of the specified objectives. It adds four objectives for which the Codifier may revise a rule: (1) to substitute one name for another when an organization or position is renamed; (2) to correct a citation in the rule to another rule or law when the citation has become inaccurate because of the repeal or renumbering of the cited rule or law; (3) to change information that is readily available to the public, such as an address, a telephone number, or a web site; or (4) to correct a typographical error.

It divides existing N.C. Gen. Stat. § 150B-22, “Settlement; contested case,” into two subsections and additionally, clarifies that a party or person aggrieved cannot be required to petition an agency for rule making or to seek or obtain a declaratory ruling before commencing a contested case under N.C. Gen. Stat. § 150B-23 (provisions for commencement of a contested case), then makes conforming changes to N.C. Gen. Stat. § 150B-43, “Right to judicial review”.

It also makes changes to the APA concerning the periodic review and expiration of existing rules. (Since the Board is completing this process now, and will not have to undergo it again for 10 years, Mr. Gray will not elaborate on this section.)

The remaining portion of House Bill 473 merges the Barber Board and Cosmetology Board and adds appointees to the Massage and Body Work Therapy Board. (Since these provisions make this bill rather lengthy, a copy is not attached.)

This bill has not seen action.

f. Senate Bill 478, “Modify Reporting Requirement,” as originally introduced would have allowed the Governor to remove individuals from boards and commissions for malfeasance and/or nonfeasance regardless of the individual’s appointment or authority, however, this provision was removed in the Senate and the title changed. Another original provision which amends the requirement for reporting of “gender-proportionate appointments” by more than just regulatory bodies as currently required, and now requires it for “public bodies,” including certain units of local government, remained. A copy of the original version was attached to Mr. Gay’s April 25<sup>th</sup> Attorney’s Report. Following a minor amendment on the floor, Senate Bill 478 passed the Senate on April 30<sup>th</sup>, passed the House on July 7<sup>th</sup>, was returned to the Senate for concurrence in House amendments (which included the above), passed the Senate, and was signed by the Governor on July 26, 2019.

A copy was attached as Attachment 4.

g. House Bill 484, “Verification of Immigration Status,” was introduced on March 28, 2019. It would require all State agencies and licensing boards to verify the immunization status of applicants using the federal Department of Homeland Security’s Systematic Alien Verification for Entitlements, or “SAVE” system. It would require that the Board enter an agreement with Homeland Security and it would require yet another report be submitted. This bill has seen no action. (Copy not attached.)

h. House Bill 590, “Amend Administrative Procedures Laws,” was introduced on April 4, 2019. It is best described as a condensed version of SB 305, above, and authorizes certain technical corrections by the Codifier of Rules, clarifies the provision in N.C. Gen. Stat. § 150B-2(b) regarding declaratory rulings, and amends the Periodic Review of Rules process.

Following an amendment in two successive committees it passed the House on May 2<sup>nd</sup>, passed the Senate on July 9<sup>th</sup>, and was signed by the Governor on July 19, 2019. (Copy not attached.)

i. House Bill 770, “Freedom to Work,” was introduced on “tax day,” April 15<sup>th</sup>. This bill amends N.C. Gen. Stat. § 15A-173.2(d) to require rather than permit an administrative agency, governmental official, or civil court to consider a certificate of relief (i.e. pardon, expungement, etc.) favorably in determining whether a conviction should result in disqualification.

It amends N.C. Gen. Stat. § 93B-8.1 to prohibit an occupational licensing board from automatically denying licensure on the basis of an applicant's criminal history unless federal law governing a particular occupation provides otherwise (was “unless the law governing a particular occupational licensing board”). If passed it will provide that if a board is authorized to deny a license on the basis of a verified conviction of any crime (was also for “commission of a crime involving moral turpitude”), the board is permitted to deny the license if it finds by clear and convincing evidence that the applicant's criminal history is directly related to the duties and responsibilities for the licensed occupation (previously, no burden of proof was specified nor was the board required to directly link the applicant's criminal history to the occupation for denial). It maintains the eight factors a licensing authority must consider in making its determination. Adds that a certificate of relief must be considered favorably by the board.

It also adds a new procedure for applicants to petition a board at any time for a determination of whether the individual's criminal history will disqualify the individual from obtaining a license. It requires the board to make a determination pursuant to the standard parameters it would in reviewing an application and notify the individual of the determination within 30 days of receipt of the petition and allows the board to charge of fee of no more than \$25.00 per petition. It mandates that the board notify an individual of a denied petition and include the grounds for the board's reasoning, that the individual has a right to contest the decision, the earliest date the individual can reapply for a license, and further evidence of rehabilitation that will be considered upon reapplication, and specifies that a determination of eligibility upon a petition is binding if an applicant fulfills all other requirements for the occupational license and the applicant's criminal history record is accurate and remains unchanged at the time of application for licensure.

Further, it enacts new N.C. Gen. Stat. § 93B-8.6 to require a licensing board to grant licensure to an applicant who has completed an apprenticeship approved by the State or federal Department of Labor or otherwise permitted by law, and who passed an examination, if necessary. (Since the Board does not have an “apprenticeship” -- and the PIA process does not meet this definition -- Mr. Gray will not elaborate on this section.)

This bill was amended in two successive committees and passed the House 112-0 on May 3<sup>rd</sup>, and after the major amendment (“Committee Substitute”), **including adding almost the entirety of Senate Bill 305 reported above**, passed the Senate on June 26<sup>th</sup>, and was returned to the House for concurrence where it passed on June 27<sup>th</sup>. It was signed by the Governor on July 8, 2019. The bill is effective October 1, 2019 and applies to certificates of relief granted or applications for licensure submitted on or after that date.

A copy was attached as Attachment 5.

j. House Bill 902, “Military-Trained/Spouse Licensure Practices,” was introduced on April 16, 2019. This bill would require the Program Evaluation Division of the General

Assembly to study the extent to which the provisions of Gen. Stat. § 93B-15.1 have improved the ability of military-trained applicants and military spouses to become licensed by occupational licensing boards. The PED's study is due to the Joint Legislative Oversight Committee on General Government and to the Department of Military and Veterans Affairs by February 1, 2020.

This bill passed the House 114-0 on May 2<sup>nd</sup> and has been referred to the Senate Rules Committee. (No copy attached.)

k. Senate Bill 553, "Regulatory Reform Act of 2019," is a broad-ranging bill addressing a myriad of laws from the limits on public employees benefitting from government contracts (raising the cap!), to amending the plumbing code, to amending the real estate licensing law, to repealing the ban on computer monitors and TVs being dumped in landfills. One provision, however, would effect the Board.

Section 4.(a) of this bill, if passed, would require all Gen. Stat. § 93B-1 boards to study and report to the Legislative Administrative Procedures Oversight Committee by December 31, 2019 any available options for on-line continuing education. This bill passed the Senate on June 11<sup>th</sup> after a single amendment ("Committee Substitute"), but was amended numerous times in House committees and on the floor before passing the House on July 8<sup>th</sup>. Since that time it has been tied up in a joint Conference Committee. (No copy attached.)

### **III. BOARD STATUTORY INTERPRETATION**

Unclaimed property, including monies from numerous sources - - closed checking and savings accounts, refunds, unused gift cards, estates, annuities, etc. - - escheat in the State of North Carolina to the State Treasurer's Office where it is held until its owner can be located. Any person who for a fee enters into an agreement to locate such monies for another, by agreement, must register each year with the State Treasurer and pay a \$100.00 registration fee. Individuals or companies so registered are referred to as "Property Finders."

The overlap of a Property Finder's function and that of a Private Investigator regulated by the Board is obvious.

In 2006, the Board passed a "policy" regarding Property Finders and a letter of understanding setting forth that policy was sent to the head of the Unclaimed Property Division of the State Treasurer's Office by then-Director Terry Wright. Since that time, the application for registration has requested the Private Investigator's license number of the applicant (but it appears evident to Board staff that the State Treasurer will register a person or company without this blank on the application being filled in.)

Issues or questions occasionally arise, and the ability to conduct on-line searches to determine the whereabouts of persons by out-of-state persons or companies who never physically enter North Carolina, has caused the Board's 2006 policy to become outdated.

Therefore, a new "Board Statutory Interpretation" is being recommended as Board staff and Mr. Gray work with the State Treasurer's Office to resolve some of these issues.

A copy of a proposed Interpretation of N.C. Gen. Stat. § 74C-3(a)(8) was attached to the Attorney's Report for the Board review and approval. This was attached as Attachment 6.

### **MOTION BY MR. BUFF TO INSTRUCT MR. GRAY TO REVISE THE PROPOSED BOARD STATUTORY INTERPRETATION OF UNCLAIMED PROPERTY AND**

**BRING BACK BEFORE THE BOARD; SECONDED BY MR. JOHNSON; MOTION CARRIED.**

**IV. PENDING CASES**

a. On January 9, 2018 Mr. Gray filed a Complaint for Injunctive Relief in Wake County Superior Court against Kendall L. Locklear for failure to register armed proprietary security guards. At the same time Mr. Gray filed a related Motion for Temporary Restraining Order (TRO). Mr. Locklear was served by Sheriff and appeared at the TRO hearing. The presiding Judge issued the TRO and set the hearing on the Preliminary Injunction for Monday, January 22<sup>nd</sup>. Mr. Locklear appeared at this hearing as well. The Court granted the Board's Motion and a Preliminary Injunction was entered on this date enjoining Mr. Locklear or his alter-ego "Tuscarora Nation," and his or its officers, agents and employees from providing armed private protective services without properly registering the armed guards.

In late October, 2017, a Special Agent of the Alcohol Law Enforcement Section (ALE) of the North Carolina State Bureau of Investigation contacted Investigator Cynthia Hepburn and informed her that Mr. Locklear appeared to be operating an unlicensed security guard and patrol service in a casino in Maxton, North Carolina. Investigator Ronald Broadwell was assigned to investigate the matter.

On November 2, 2017, Investigator Broadwell met with the reporting ALE agent and a Sergeant with the Robeson County Sheriff's Office and was shown an undercover video taken inside the "Tuscarora Nation Casino" located at 1345 Modest Road, Maxton, North Carolina. The video clearly showed a person identified as Mr. Locklear and other persons walking around in security guard-style uniforms armed with handguns. On November 7, 2017, Investigator Broadwell, along with Deputies from the Robeson County Sheriff's Office and agents of the ALE and federal ATF, went to the Tuscarora Nation Casino.

Upon arrival at the scene, Investigator Broadwell and the law enforcement officers encountered Kendall Locklear at his residence (which is adjacent to the casino), and Mr. Locklear informed Investigator Broadwell that he was the owner and operator of the casino and the casino is a "sovereign nation." He further advised that "they" (i.e. he and the Nation) did not abide by any county, state or federal laws and they were their own country; he further advised that they do not pay state or federal taxes. He also advised Investigator Broadwell that he was in charge of security and they provided their own armed guards.

Investigator Broadwell informed Mr. Locklear of the provisions of the Board's law and that even though his security was proprietary the armed guards were required to be registered with the Board. Mr. Locklear told Investigator Broadwell that his lawyer (located in Washington, D.C.) told him that as a sovereign nation they did not need "permission or permits to have armed security guards." He showed Investigator Broadwell a driver's license and a concealed weapon permit issued by the "Tuscarora Nation." He claimed no law enforcement agency could arrest him.

He then voluntarily gave Investigator Broadwell and the law enforcement officers a tour of the casino. With his permission, Investigator Broadwell took approximately ten (10) pictures of the exterior and interior of the casino and employees with uniforms, security insignia and badges armed with handguns. Investigator Broadwell personally observed at least four (4) guards visibly patrolling the interior armed with handguns. Some were in plain clothes and some in uniform.

Mr. Locklear confirmed with Investigator Broadwell that he paid the armed guards through the Tuscarora Nation and that the armed guards were not trained and had never qualified with the firearms they carry. (The “casino” is actually only a building with video poker machines, and is open 24 hours per day, seven (7) days per week, and has three (3) security guards per shift.)

Mr. Locklear was orally advised to cease all armed security guard activity.

Indian tribes recognized by the State of North Carolina can be found in Chapter 71A of the North Carolina General Statutes. The “Tuscarora Nation” is not a recognized tribe in this State. According to the Secretary of State’s website section for “Corporations” numerous legal entities contain the words “Tuscarora Nation” or “Tuscarora Indians.” A website for the “Tuscarora Nation” appears on-line, but does not state which corporate entity it represents.

To be a federally recognized Indian tribe requires an Act of the United States Congress. Only a single tribe - - the Eastern Band of Cherokee Indians residing in Cherokee, Graham, Jackson, Swain and adjoining mountain counties of North Carolina - - is recognized by Congressional act. No other tribe residing in North Carolina is federally recognized. N.C. G.S. § 71A-2 specifically bars any other tribe claiming rights through the Eastern Band of Cherokee’s federal recognition.

The Eastern Band of Cherokee Indians is also the only tribe in North Carolina with Trust land, and considered a “sovereign nation.” Further, the Eastern Band of Cherokee Indians has a compact with the State of North Carolina, approved by the federal Indian Gaming Commission, which allows for legal gambling upon its Trust land. No other tribe has a similar compact.

The “casino” is on land he has deeded to the Tuscarora Nation located in up-state New York but Mr. Gray could find no authority for his claim that his actions are not governed by the laws of the State of North Carolina.

Prior to filing the Complaint Director Jones had attempted to serve Mr. Locklear with a written notice to cease and desist but he refused to sign for the Certified Mail.

On July 23, 2018, agents of the North Carolina Alcohol Law Enforcement Division, along with agents and officers of the Robeson County Sheriff’s Office, U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives, and five other agencies served search warrants on three locations for illegal casinos operated by Defendant and charged Defendant and 25 others, including his employees, with gambling, manufacturing controlled substances, money laundering, and failing to register armed security guards. In the Maxton location (1345 Modest Road), 13 employees of Defendant were arrested and charged with violating N.C. Gen. Stat.

74C-13(a); in the Pembroke location, four employees were charged; and in the Red Springs location 13 were charged.

On August 13, 2018, Mr. Gray filed a Motion to Show Cause as to why Defendant Locklear should not be held in civil and/or criminal contempt for violating the Preliminary Injunction entered on January 22, 2018. An Affidavit from Deputy Director Phil Stephenson, who was personally involved with the execution of the search warrant at 134 Modest Drive and the two other locations on July 23, 2018, was attached to the Motion, which was mailed to the Defendant. The Motion was returned “unclaimed” along with a Notice of Hearing for October 29<sup>th</sup>, so it was necessary to serve Mr. Locklear by personal service through the Sheriff of Robeson County. At a hearing on the Motion on November 26, 2018 the presiding Judge issued an Order for Mr. Locklear to appear and show cause as to why he should be found in contempt of Court.

The contempt hearing was first calendared for January 7, 2019, but Defendant was not served until that day. His hearing was recalendared. He was served on January 25, 2019 for his contempt hearing on February 18, 2019.

b. For the past 52 months Mr. Gray has been reporting to the Board the status of a civil action filed against Board Investigator Sarah Conner, the Board, the City of Charlotte, the Charlotte-Mecklenburg Police Department and various officers of the Charlotte-Mecklenburg PD in *Kelly v. Conner, et al.*, No. 3:13-cv-636 - - WDNC. (Mr. Kelly was unlicensed as a security guard business and unregistered as a security guard, but performing armed security guard and patrol services. He was arrested by the Charlotte-Mecklenburg Police Department and charged with violating Chapter 74C.) The Court granted the Board’s Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6) and Motion for Summary Judgment, as well as similar motions filed by the other Defendants, on May 27, 2015 and this action was dismissed with prejudice. The Plaintiff gave notice of appeal on June 24, 2015, and the parties filed their respective Brief with the Fourth Circuit Court of Appeals on November 13, 2015.

Oral arguments in this matter were held on Tuesday, October 25, 2016 in Richmond, Virginia and Robert M. McDonnell, the attorney for the Charlotte-Mecklenburg Police Department, and Mr. Gray shared the Appellees’ allotted time. Member Justin Greene attended the arguments as the Board’s representative.

Mr. Gray received the opinion of the Court on November 11, 2016. In a very strange and sudden turn of events, the appeal was dismissed and the case remanded to the federal Magistrate Judge who heard the parties’ motions for summary judgment.

In its simplest terms, the Court found that the Judge had failed to rule on two counts in the Plaintiff’s Complaint and therefore only granted partial summary judgment; the granting of only partial summary judgment is “interlocutory in nature,” which means it cannot be appealed until the entire case is concluded.

The attorneys for all parties filed a Motion for Status Conference on December 8, 2016. On April 4, 2017 the Judge ruled on this Motion by way of an Order requiring the parties to



confer and file a status report. As a result of the status report filed by the attorneys the Judge ordered that the matter be re-mediated and that two issues -- the two of most importance to the Board -- be re-briefed.

Interestingly, the Plaintiff moved to dismiss four of the five Charlotte-Mecklenburg police officers as individual Defendants (leaving only Kerl) and the Judge granted the request on June 9, 2017. The City of Charlotte, the Board, (retired) Investigator Sarah Conner and CMPD officer Jason Kerl still remain as Defendants.

The second attempt at court-ordered mediation in this matter was to be held on August 16, 2017 in Charlotte, but was postponed due to the Plaintiff's attorney being unexpectedly in a criminal trial an extra day; it was held on August 28<sup>th</sup> and was impassed by the mediator since there could be no resolution. New motions for summary judgment and to dismiss and a response to the two counts in Plaintiff's Complaint as ordered by the Fourth Circuit Court, and a supporting Memorandum of Law, were filed by me on behalf of the Board on September 1, 2017. Mr. Gray then filed a Response to Plaintiff's Memorandum of Law in Opposition to the Board's Motion to Dismiss and Second Motion for Partial Summary Judgment on October 13, 2017.

The Judge entered a Supplemental Memorandum and Order addressing counts 11 and 12 in Plaintiff's original Complaint, then reaffirmed his May 27, 2015 Memorandum and Order denying Plaintiff's first Motion for Partial Summary Judgment, granting the Defendants' initial Motions for Summary Judgment and dismissing the Complaint with prejudice. This Order then granted Defendant North Carolina Private Protective Services Board's New Motion to Dismiss and Renew[ed] Motion for Summary Judgment, granted Defendants Kerl, Mickley, Murray, Ford, and Narvaez's Renew[ed] Motion for Summary Judgment, granted Defendant City of Charlotte's Second Motion for Summary Judgment, granted Defendant Sarah A.H. Conner's Renewed Motion to Dismiss and/or Summary Judgment, and denied Plaintiff's Motion for Partial Summary Judgment. The Judge then dismissed the Complaint with prejudice.

Plaintiff gave Notice of Appeal on January 13, 2018.

The parties received a Scheduling Order from the Fourth Circuit Court of Appeals, and following a Consent Motion to Extend Time to File, the Plaintiff-Appellant's Brief was filed on March 29, 2018 and the Defendants-Appellees' Brief was filed on May 17, 2018. Plaintiff-Appellant filed a Reply Brief on May 30, 2018.

The Court tentatively calendared this matter for oral argument for two different sets of dates but those tentative dates were canceled. It was then calendared for Tuesday, March 19, 2019 and heard on that date. Director Jones attended the oral argument in Richmond, VA with me.

As announced during the Board's April meeting the Court's opinion was received the day after the Attorney's Report was printed. The Court ruled in favor of all Defendants striking down the innumerable claims of Plaintiff.

Of central importance to the Board is that this opinion establishes that the Board's enabling statute is constitutional, and that no person can perform a function defined as a "private

protective service” armed unless licensed or registered with the Board with the proper training and endorsement.

The deadline to petition the United States Supreme Court for its Writ of Certiorar to hear this case expired on July 19, 2019 with no action by the Plaintiff.

Mr. Gray was very pleased to announce that after over four years of litigating this matter, it is over.

**MOTION BY MR. JOHNSON TO ACCEPT THE ATTORNEY'S REPORT; SECONDED BY MR. STICKL; MOTION CARRIED.**

### **PUBLIC COMMENT**

Sheryl Jacoppo addressed the Board that she agreed with the Board concerning moving forward with the electronic fingerprint submission. She stated that this will help their company to alleviate a lot issues that are associated with the manual submission of the fingerprint cards to PPS. Ms. Jacoppo also suggested that they should require new licensees to attend training on the Permitium system and they should receive continuing education credits.

Gary Pastor suggested that if someone files a complaint and the complaint is unfounded the Board should charge a fee. Also, he addressed the Board in regards to the lack of security protection the Board is providing for individuals who attend the Board meeting.

### **GOOD OF THE ORDER:**

Mr. Arndt introduced NCAPI President, Gregory Hatten.

Mr. Hatten announced that the NCAPI will be having their meeting following the PPS Board meeting.

**MOTION BY MR. CESENA TO ADJOURN; SECONDED BY MR. BUFF; MOTION CARRIED.**

1:29 P.M. Adjourned

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Brian R. Jones, Director

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Garcia Graham, Board Secretary