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
OCTOBER 26, 2017
CROWNE PLAZA HOTEL ASHEVILLE
ONE HOTEL DRIVE
ASHEVILLE, NC 28806

BOARD MEMBERS PRESENT
Eric Weaver Sr.
Brian Lowman
Ed Cobbler
Clyde Cook
William Fletcher, Jr.
William MacRae
Steve Johnson
Bud Cesena
Larry Proctor
Richard Epley

BOARD MEMBERS ABSENT
Marcus Benson
Nada Lawrimore
David Arndt

STAFF PRESENT

Brian Jones - Director
Phillip Stephenson – Deputy Director
Jeff Gray - Attorney
Scott Triplett - Investigator
Melvin Turner – Training Officer/Investigator
Ronald Broadwell - Investigator
Garcia Graham – PPS Board Secretary

GUESTS PRESENT

Stan Keel
Lyn Plemmons
Hansel Bumgarner
Jerry Pitman
David W Leonard
Ruth Reynolds
Kevin Bray
Pam Mayfield
Paul Lattorre
Elaina Califano
Beatrice L Powers
Audra Coleman
Pamela Heasley
Keith Hollen
Kathy Broom
Dorian Dehnel
Cheryl Thomas

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CALL TO ORDER

Chairman Eric Weaver called the October 26, 2017 Private Protective Services Board meeting to order at 9:30 a.m. Brian Lowman led the group in the reciting of the Pledge of Allegiance followed by Chairman Weaver welcoming all guests.

GOOD OF THE ORDER:

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.

Mr. Jeffrey Kiker, NCAPI, greeted the Board and all guests. He stated that the Fall Conference will be held November 5-7 at the Cherokee Casino, Cherokee, NC. The conference has been approved for 12 hours of continuing education credit hours. Mr. Kiker also stated that a lot of great speakers were scheduled and they expect about 200 attendees. He invited everyone to sign up and join him at the conference.

Eric Weaver congratulated Phillip Stephenson on becoming the new Deputy Director for Private Protective Services and thanked him for his services to the industry and the Board in his prior role as Field Services Supervisor.

Mr. MacRae read a Proclamation from Governor Roy Cooper marking the third week of September 2017 as "Private Security Officer Memorial Week" in North Carolina. The proclamation recognizes the vital service to governmental, commercial and residential property owners that Private Security Officers provide.

Mr. MacRae reported that a new association, recently formed for the security industry named "Association of Professional Security Providers of North Carolina, Inc.," and the interim Board of Directors has been formed and by-laws have been approved. Mr. MacRae stated that they will be sending out notification to all licensees. The organization has four different membership classifications, it is open to individual members, companies who provide the service, vendors and anyone who has interest in the private security industry. Mr. MacRae also stated that at the first Association meeting he was elected as President, Mr. Fletcher was elected as First Vice President and Mr. Arndt was elected as Second Vice President. Anybody who is interested in joining should contact him or Mr. Fletcher for an application packet.

MINUTES:

APPROVAL OF THE AUGUST 24, 2017 BOARD MEETING MINUTES

MOTION BY MR. LOWMAN TO ACCEPT THE MINUTES; SECONDED BY MR. MACRAE; MOTION CARRIED.

SCREENING COMMITTEE REPORT:

Mr. MacRae stated that the Screening Committee met on Wednesday, October 25, 2017, from 1:30 p.m. to 4:00 p.m. to review a total of 47 applications. (See report attached). The Committee members included Mr. MacRae, Mr. Cesena, Mr. Fletcher, Mr. Proctor, Mr. Lowman and Mr. Cobbler. Mr. MacRae read the report for the record. (See attachment)

Mr. Cesena recused himself from #10, #35 and #45 of the Screening report.
Mr. Fletcher recused himself from #10, #25 and #45 of the Screening report.

MOTION BY MR. JOHNSON TO ACCEPT THE SCREENING REPORT; SECONDED BY MR. LOWMAN; MOTION CARRIED.

REGISTRATION REPORT:

Mr. MacRae presented the following registration report for the period of August 17, 2017 to October 23, 2017. Total registrations 3459; armed totals were 621 of which 295 were new and 276 were renewals, 1 duplicate, and 49 reissue/dual. There was a total of 125 Armed Armored Car, 56 of which were new, 68 renewals and 1 duplicate. There was a total of 13 Armed Private Investigators, 1 of which was new and 12 renewals. There were a total of 9 Armed Private Investigator Associates, 6 of which were new, 2 renewal and 1 reissue/dual. Unarmed totals were 2664 which included 1047 new, 1381 renewals, 233 transfers and 3 duplicates. There were a total of 27 unarmed armored cars, 7 of which were new and 20 renewals. Total denials were 1063 of which 158 were for cause and 374 for correctable reasons. There were 531 applications approved which were previously denied for a total of 1063 denials reviewed.

MOTION BY MR. CESENA TO ACCEPT THE REGISTRATION REPORT; SECONDED BY MR. LOWMAN; MOTION CARRIED.

GRIEVANCE COMMITTEE REPORT:

Mr. Cesena reported that the Grievance Committee met on Wednesday, October 25, 2017 from 9:00 a.m. to 11:00 a.m., and heard a total of five cases. The Committee members included

Mr. Cesena, Mr. Cook, Mr. Johnson, Mr. Fletcher, and Mr. Epley. Mr. Cesena read the report for the record. (See report attached)

MOTION BY MR. JOHNSON TO ACCEPT THE GRIEVANCE COMMITTEE REPORT; SECONDED BY MR. COBBLER; MOTION CARRIED.

TRAINING & EDUCATION COMMITTEE:

Mr. MacRae reported that the Training & Education Committee met on Thursday, October 26, 2017 from 8:10 a.m. until 9:27 a.m. The Committee members included Mr. MacRae, Mr. Johnson, Mr. Cook, Mr. Cesena, Mr. Epley and Mr. Cobbler. Mr. MacRae stated there were a few training courses left through the end of the year:

November 13, 2017 (1000-2300) FT Re-Certification & Pre-Qualification Course at NCJA
November 26-November 28, 2017 FT Long Gun Training Course at Camp Butner
November 27-December 1, 2017 (0800-1700) UGT Course & Workshop at WTCC
November 29-December 1, 2017 FT Long Gun Training Course at Camp Butner

Mr. MacRae also reported that currently there are 389 PPS certified unarmed guard trainers and 129 certified armed guard trainers. Mr. MacRae also noted there is one training course remaining for Continuing Education Credits, which will follow the December 21, 2017 Board meeting which will be held in Raleigh, from 1:00 to 5:00 p.m.

Mr. MacRae then called upon Mr. Melvin Turner to give his report on weapons discharges.

Weapon discharge:

Mr. Turner reported that on August 24, 2017 he received information from an anonymous source that an armed guard shot and killed an armed robbery suspect in Charlotte, NC on August 23, 2017. Upon investigation of this incident, it was discovered that according to the Charlotte–Mecklenburg Police Department (CMPD), a man was shot and killed during an attempted robbery at an East Charlotte sweepstakes business in the 5600 block of Albermarle Road in Charlotte, NC, at around 12:07 a.m. on August 23, 2017. According to police, the armed suspect that was fatally wounded had entered the sweepstakes business with another suspect in an attempted robbery. One of the suspects was armed with a handgun and pointed it in the direction of the office staff. The armed suspect then leveled his firearm and the armed security guard on duty observed the threat and pulled his duty weapon firing one round, striking one of the suspects. Both suspects fled the business. The armed suspect that was shot was later found in the woods by CMPD behind a business. The security guard was interviewed by police and released. Police advised they were investigating this case as a justifiable homicide. Mr. Turner reported he spoke with Det. A. Rooks regarding information about this case and stated she could

not provide any information at that time due to the case being a pending homicide investigation, and requested his credentials which were submitted of same date. A follow-up phone conversation with the Detective assigned to the matter revealed the case had been referred to the District Attorney's office and charges against the security guard have not been filed at this time and no further information was currently available. The Detective did advise that the second suspect was apprehended and was charged with attempted robbery and conspiracy to commit robbery with a dangerous weapon. No security guard and patrol company has come forward with information pertaining to this incident as of the date of this report.

Mr. MacRae noted there is a concern that the PPS regulations, jurisdiction, and authority is not well known. Further, members of the Training and Education Committee, acknowledging that business owners may not be aware of registration requirements, and discussed the possibility of Director Jones working with the Department of Public Safety's public information officer to disseminate information to the public. Mr. MacRae noted Mr. Turner and Mr. Stephenson advised the Committee of steps they were taking to obtain more information about this issue, but he would also work with Director Jones to explore options to inform the public about the requirements under Chapter 74C.

Mr. Weaver commented and agreed that licensees would be wise to understand what those requirements are. Mr. MacRae replied that he does not believe it is the licensees in this particular case, but believes it to be the general public who does not understand the process.

Mr. Turner continued with his report noting a second incident was relayed by Field Service Supervisor Phillip Stephenson on October 9, 2017, who received notification with reference to an armed security guard who was killed while working an armed post in the Mooresville, NC area for Jeff Kiker of P&G Security. According to the Mooresville Police Department (MPD), on Friday, October 6, 2017 at 10:08 p.m. at a night club in Mooresville, NC, an altercation occurred between the armed security guard, William G. Bracken, Jr. of King, NC (Active Armed Guard-exp. date 12/31/17), and a patron of the establishment. The altercation resulted in Mr. Bracken's death due to his injuries from being struck with a bottle by the patron. Local police were dispatched and arrived shortly thereafter and found Mr. Bracken unconscious and not breathing. EMS also arrived on the scene and attempted CPR on Mr. Bracken; however, Mr. Bracken succumbed to his injuries and was pronounced dead on the scene. Mr. Bracken was armed on this post but had never drawn his duty firearm during the altercation. As of October 23, 2017, according to Cpt. D. Call with the Investigations Division of MPD, this case is still pending investigation.

Training Update:

Mr. MacRae reported that the updates to both the Unarmed Guard and Armed Guard Training Manuals and their respective PowerPoint programs have been completed and that the Committee would be reviewing them over the next two months. He noted it is the Committee's hope to make a recommendation to the Board in December to approve them as PPSB's official training manuals.

Mr. MacRae stated that several unannounced audits were conducted by Mr. Turner, who reported there were no problems except for one location where the firearms training was held earlier in the day than when it was scheduled according to the information provided to Mr. Turner. There was a discussion regarding assuring that firearms trainers understand the need to provide accurate information. This seems not to be an attempt to evade since the trainer did not know there was an audit to be conducted; it occurred because the owner asked the trainer to conduct the training earlier when the trainer arrived at the range.

Mr. MacRae noted that a request was made by Ms. Cheryl Thomas, CEO and lead investigator with Mobile Forensic Investigations to share with the Board her concerns about the area of digital forensic examiners. Ms. Thomas addressed the Board. Specifically, she expressed concern about persons not licensed as private investigators conducting digital forensics examinations. Ms. Thomas informed the Board that South Carolina has already passed regulations that only licensed private investigators can conduct digital forensics examinations. Mr. MacRae reported that Mr. Johnson has agreed to work with Ms. Thomas and will make further reports on this matter. Mr. MacRae turned the floor over to Mr. Cesena.

Mr. Cesena began by reiterating how important it is to keep track of firearms qualifications, registrations, and the firearms trainers that are doing the job of training armed guards. Moreover, Mr. Cesena expressed the need to ensure that guards are receiving the training that is mandated by the State. He stated that Mr. Turner has been the sole employee monitoring firearms training throughout the State of North Carolina. Mr. Cesena and the Training & Education Committee recommend to the full Board that a temporary person in the Piedmont area of North Carolina be hired to assist Mr. Turner in monitoring firearms training. Mr. Cesena recommended that the Board request Director Jones to look into the cost of hiring a temporary through the State's temporary agency. Mr. Cesena's hope is that he and Mr. Johnson will have some input into the selection process and expressed a desire that the employee visit firearms instructors and attend the qualification sessions to make sure that everyone is following the procedures that have been established by the Board. Mr. Cesena stated that his hope was that the Director would present a cost estimate at the December meeting.

Mr. MacRae announced that the Training & Education Committee reviewed several applications for continuing education credits:

Untying the Knot: A Guide to Investigating Troubled Relationships [online] (6 hours)
Open Source Intelligence 101: Sleuthing, Managing and Using Online Information More Effectively [online] (6 hours)
Understanding Homeland Security and Terrorism [online] (2 hours)
Investigation Preparation (1 hour)
Divorce/Adultery Cases (2 hours)
Child Custody Cases (3 hours)
In Search of Truth (4 hours)
Forensic Science: The Application of Science to Law (8 hours)
Organized Fraud and Transient Groups (6 hours)
Insurance Fraud Methodology, Defense and Approach (6 hours)
Vehicular Theft & Fraud (6 hours)
Surveillance "The Good, The Bad, and the Ugly" (6 hours)
Mortgage Fraud "A Financial Nightmare" (6 hours)
Tradecraft for Asset Handlers (6 hours)

MOTION BY MR. FLETCHER TO ACCEPT THE COURSES SUBMITTED FOR CONTINUING EDUCATION TRAINING APPROVAL; SECONDED BY MR. COBBLER; MOTION CARRIED.

Mr. MacRae called attention to the fact that Mr. Cook offered a reminder that the Board needed to provide feedback to Dr. Roche related to the June 2017 EyeDetect presentation. While the presentation was informative, the Committee felt there was a lack of use of this technology and were uncomfortable with having the State of North Carolina be one of the first governmental entities to approve it for regulation under Chapter 74C. Mr. MacRae stated that they would notify Dr. Roche and let him know that should he obtain additional independent verification of its validity, the Committee may be willing to consider it at that time.

MOTION BY MR. COBBLER TO ACCEPT THE TRAINING AND EDUCATION COMMITTEE REPORT; SECONDED BY MR. LOWMAN; MOTION CARRIED.

BREAK: 10:32 a.m.
RECONVENE: 10:53

GRIEVANCE COMMITTEE:

NONE

SCREENING COMMITTEE:

NONE

LAW AND RULES COMMITTEE

Mr. MacRae reported that the Law and Rules Committee met on Wednesday, October 25, 2017 from 8:00 a.m. to 8:43 a.m. The committee members were Mr. MacRae, Mr. Fletcher, Mr. Arndt, Mr. Cook, Mr. Greene, Mr. Cesena and Mr. Proctor.

Mr. MacRae reported that without Ms. Lawrimore in attendance the discussion was minimal and stated that everything that was discussed is covered under the Director's Report.

FINANCE REPORT:

Mr. Fletcher reported that the Finance Committee met on Wednesday, October 25, 2017 at 4:15 p.m. to 4:41 p.m. The committee members were Mr. Fletcher, Mr. MacRae and Mr. Lowman. Mr. Fletcher reported the Education Fund balance is approximately $87,631.93 and stated that there were no great expenditures since the last committee meeting and compared to the previous year.

MOTION BY MR. CESENA TO ACCEPT THE FINANCE COMMITTEE'S REPORT; SECONDED BY MR. LOWMAN; MOTION CARRIED.

ETHICS COMMITTEE

Mr. Weaver reported that ethics liason, Mark Benson, could not make the meeting but did send word, (stating this is an unofficial report) that all members are in good standing and that the only issue coming up is that Mr. MacRae must complete his continuing education by November 18th.

OLD BUSINESS:

None.

NEW BUSINESS:

None.

FINAL AGENCY DECISION

Orrin Anthony Bynes - 17 DOJ 00913. Mr. Bynes was not present. This case was heard by Administrative Law Judge J. Randolph Ward on April 25, 2017. This case involved whether Petitioner should be denied a security guard and patrol license based on Petitioner's lack of verifiable experience.

Attorney Gray addressed the Board with regard to Mr. Bynes reminding them that at the August 24, 2017 meeting, Mr. Bynes was given the opportunity to submit additional information regarding his experience before denial on the FAD. Attorney Gray stated that he had spoken with Mr. Bynes and his impression was that Mr. Bynes was to be present at Screening and/or at this Board meeting, however, it is possible there was some miscommunication. Attorney Gray asked that the case be deferred to the December Board meeting.

MOTION BY MR. JOHNSON TO DEFER THE MATTER TO THE DECEMBER BOARD MEETING; SECONDED BY MR. COOK; MOTION CARRIED.

Kevin Robert Bray – 17 DOJ 02976. Mr. Bray was present. This case was heard by Administrative Law Judge Selina Malherbe on September 6, 2017. This case involved whether Petitioner should be denied a private investigator license and a security guard and patrol license based on Petitioner's lack of good moral character as evidenced by various disciplinary actions contained in his State Highway Patrol personnel file.

MOTION BY MR. JOHNSON TO UPHOLD THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDATION AND GRANT MR. BRAY'S PRIVATE INVESTIGATOR AND SECURITY GUARD AND PATROL LICENSES; SECONDED BY MR. FLETCHER; MOTION CARRED. *(Recused: Bud Cesena, Mr. Cobbler, Mr. MacRae, Mr. Proctor and Mr. Arndt [absent])*

Mr. Cesena suggested that in the future the Investigator be invited to appear at the Board meeting when a FAD on a license denial matter is being presented.

Angela May Bush – 17 DOJ 02127. Ms. Bush was not present. This case finally was heard by Administrative Law Judge Stacey Bice Bawtinhimer and involved the denial of Petitioner's application for an Unarmed Guard Trainer certification. Petitioner failed to appear on numerous occasions and many attempts to contact Petitioner had been futile. It was recommended this case be dismissed without prejudice due to Petitioner's failure to prosecute.

MOTION BY MR. MACRAE TO UPHOLD THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDATION AND DISMISS WITHOUT PREJUDICE DUE TO FAILURE TO PROSECUTE; SECONDED BY MR. PROCTOR; MOTION CARRIED

DIRECTOR'S REPORT:

Director Jones read the report for the record. The current PPS Board budget as of September 30, 2017, has a balance of $1,275,537.01; the Education Fund balance is $87,631.93. As of September 30, 2017, the total registrations for PPS are 21,487: 1,777 licensees and 594 certifications. Since the last Board meeting there have been 3998 registration applications, 214 licensure, and 94 certification applications. Active registrations currently are 18,587, active licenses are 1,826 and active certifications are 602 with a total of 21,016 active registrations, licenses and certifications.

Director Jones reported that a total of 4,655 registration cards have been printed and a total of 3,731 applications received since the last Board meeting.

Director Jones followed up to Chairman Weaver's announcement with regard to the promotion of Phil Stephenson from Field Services Supervisor to Deputy Director. Director Jones indicated that his confidence in Mr. Stephenson's experience and exceptional ability will serve both the industry and Board well in this new role. Director Jones stated that the now vacant Field Services Supervisor position will be posted within the coming days, and will be open to both internal and external applicants.

As it relates to other personnel updates, Director Jones reported that a Processing Assistant position, which was left vacant by the promotion of Malquis Oakley to Lead Processor, had been posted. Director Jones also discussed hiring four temporary employees to help with the backlog, and discussed the possibility of providing overtime compensation to existing employees, which may reduce the demand for temporary help and promote greater efficiency.

Director Jones gave an update on various fiscal matters which had been mentioned to the Finance Committee during its meeting on October 25th noting that one expense that had been canceled was cable TV. Mr. Jones reminded the Board that Mr. Woodard had previously made the Board aware of the $109,000 charge for document archiving from last year's expenditures, which had been officially recorded on the Board's financial statements. Director Jones also made the Board aware of an upcoming expense of approximately$23,000 to continue the document archive project.

Director Jones reported that the reimbursement backlog of approximately $6,100.00 was being processed and hopefully will be completed by year-end.

Director Jones reported that the initial phase of the online registration was scheduled for implementation on November 1st pursuant to the Board's decision to transfer data from the server that housed PPS2000, which was currently underway. He stated that newsletters detailing the initial process were mailed out to the industry stakeholders on October 12th and the notice was also posted on the website. Director Jones explained that as with any technology solution, Permitium continues to resolve issues and has been responsive to requests and inquiries. He also reports that Permitium is working on the licensing phase of the project, but a rollout date is yet to be determined.

Mr. MacRae inquired as to the number of licensees who had attended the four virtual training session offered by Permitium. Director Jones replied that he understood it to be around 70 but had hoped it would have been more. Director Jones stated, however, that Permitium has created a YouTube channel for ongoing video training.

Mr. MacRae asked about the cutoff for paper applications and Director Jones replied it is scheduled for May 2018. Mr. MacRae remarked that one of his concerns is that he is afraid a majority of the licensees are not aware of the upcoming change in how they are going to have to do business in the future. Director Jones reiterated that the notification letter went out, and there will be ongoing training. Director Jones asked for the Board and industry's patience as they address issues that they will face as this new Permitium systems goes live November 1st.

Director Jones mentioned the update to the Unarmed Guard Training Manual. Also, Director Jones stated that the Educational Grant policy has been adopted and passed. Posting of the policy will take place shortly so applications for that grant period can be accepted.

Director Jones also mentioned that Michelle Moore requested that Board members please alert her in advance regarding travel reimbursement outside of Board meetings (i.e., attend meeting at legislature). Mr. Cesena stated he felt such extraordinary requests should go through Chairman Weaver.

MOTION WAS MADE BY MR. JOHNSON TO GO THROUGH CHAIRMAN WEAVER BEFORE SUBMITTING A REQUEST TO MICHELLE MOORE FOR REIMBURSEMENT OF TRAVEL; SECONDED BY MR. CESENA; MOTION CARRIED.

Mr. MacRae asked when the in-state criminal record check will be phased out with the switch to PPSBcheck.com and if CRC was experiencing any challenges due to areas hit by the hurricanes this year. Dorian Dehnel of CRC.com stated that there are still some delay in certain areas such as the Virgin Islands.

MOTION BY MR. LOWMAN TO ACCEPT THE DIRECTOR'S REPORT; SECONDED BY MR. FLETCHER; MOTION CARRIED.

ATTORNEY'S REPORT:

Attorney Gray discussed the following:

1. On December 15, 2016 Brian Trent Woodell and Eagle Protective Services, Inc., entered into a consent agreement with the Board in the amount of $3,182.40 for registration violations. The Return Receipt was signed by (cannot read signature) on December 24, 2016. Payment has not been received.

2. On February 23, 2017 Dennis Pridgen and A-1 Services, LLC entered into a consent agreement with the Board in the amount of $9,486.00 in three monthly installments for registration violations. The Return Receipt was signed by Joseph Pylypiw on (no date given). Payment had not been received so this matter was rescheduled for August Grievance Committee meeting. On August 24, 2017 the full Board voted to suspend the license until payment of $9,486.00 is received.

3. On April 20, 2017 Wilbert Carter and On Guard Security entered into a consent agreement with the Board in the amount of $5,936.40 to be paid in three monthly installments for registration violations. The agreement was signed by the QA, Wilbert Carter, on September 12, 2017. Received final payment on August 14, 2017. Paid in full.

4. On June 22, 2017 Felicia Myers and Absolute Contracting Services, Inc., entered into a Consent Agreement with the Board in the amount of $3,182.40 to be paid in three monthly installments for registration violations. Board findings letter and consent was mailed on June 30, 2017 and returned on August 8, 2017 as "Unclaimed". Staff e-mailed the letter and consent agreement to Ms. Myers on August 15, 2017. The agreement was signed by the QA, Felicia Myers, on September 22, 2017. Received first payment on September 25, 2017.

5. On August 23, 2017 Gregory Frye Brooks and Weiser Security Services, Inc., entered into a consent agreement with the Board in the amount of $4,798.08 for registration violations. The agreement was signed by the QA, Gregory Brooks, on September 20, 2017. Paid in full.

II. OFFICE OF ADMINISTRATIVE HEARINGS

See, Hearings List (attachment 1).

III. RULES

a. The proposed rule changes to effectuate the use of the Board's approved provider (CRC.com) for in-state criminal records checks were adopted by the Board at its April 19th meeting. The Notice of Text was filed May 9, 2017 for publication in the June 1st version of the North Carolina Register. The rule amendments were also posted on the Board's website. The Public Hearing was held on Friday, June 16th at 2:00 p.m. at the Board's office. No one from the public attended and no oral or written comments were received. The public comment period closed July 31, 2017. The Board voted at its August meeting to approve these rules. The Rules Review Commission considered them at its October 19th meeting and they were approved. These rule amendments will be effective November 1, 2017. (Copies are attached as Attachment 2.)

b. At its meeting on June 22, 2017 the Board adopted proposed rule changes to allow the payment of application and renewal fees by electronic check or similar methods. The Notice of Text was filed July 11, 2017 for publication in the August 1st version of the North Carolina Register. The rule amendments were also posted on the Board's website. The Public Hearing was noticed for September 7, 2017 at 2:00 p.m. at the Board's office in Raleigh; no one from the public attended and no oral or written comments were received. The public comment period closed October 2, 2017. The Board needs to vote today to approve these rules. (Copies are attached as Attachment 3.) If approved they will be filed with the Rules Review Commission to be heard at its December meeting. If approved by the Commission at that meeting these amendments will be effective January 1, 2018.

IV. LEGISLATION

a. Identical House and Senate bills making various changes to Chapter 74C have been introduced in the General Assembly. They are House Bill 566 and Senate Bill 634, both entitled, "Private Protective Services Changes." The House version was referred to the House Committee on Judiciary I with a serial referral to Finance and the Senate Bill was referred to the Senate Committee on Rules and Operations of the Senate. House Bill 566 was heard in committee on Wednesday, June 14th and received a favorable report following an amendment to replace a reference to "C.F.R." with "federal regulation." Chair Eric Weaver, Interim Director Wayne Woodard, and members Bud Cesena and Bill MacRae were in attendance. It has been sent to the House Finance Committee.

b. Just as a reminder to the industry, numerous provisions were inserted in the State Budget Act making changes to the substantive criminal law. One of these (Sec. 16B.3) amends G.S. 14-34.6 to add "hospital security personnel" to the category of firefighters and medical

personnel where an assault or affray is a Class F felony. (Use of a deadly weapon on any of the persons in these categories is a Class H felony.) The change is effective for offenses committed on or after December 1, 2017.

V. PENDING CASES

a. Although no longer a "pending" case, since the last Board meeting Attorney Gray filed a Complaint for Preliminary Injunction and Permanent Injunction and a Motion for Temporary Restraining Order against Garda CL East, Inc., an armored car business licensee that had allowed its license to expire and also had dozens of unregistered armed guards working for it, on September 14, 2017 in Wake County Superior Court. With the help of Board staff we obtained the Temporary Restraining Order on September 18, 2017. As reported to you by Director Jones, Garda retained North Carolina attorneys - - one from Charlotte and one from Raleigh - - who expressed a desire by Garda to resolve the licensing issue. Following a meeting with Garda's executives and its attorney with Director Jones, Field Services Supervisor Stephens and me, and several conversations with Chair Weaver, the parties entered into a Consent Agreement which was signed by the Judge who entered the TRO.

As set forth in Director Jones' October 5, 2017 e-mail to all Board members, the terms of the Consent Agreement are:

- Garda will employ a new individual to serve as its licensee/ Qualifying Agent.
- Garda is prohibited from operating with guards who have not been registered. (*Note: Under federal law, Garda may temporarily utilize registered guards from other states to perform services in North Carolina.)*
- Garda will properly register its North Carolina guards.
- Garda will pay a $25,000.00 civil penalty as recommended by the Chairman.
- Garda acknowledged that the ongoing audit will likely result in payment of unpaid registration fees and associated costs which are not included in the civil penalty. (*Note: This audit is scheduled for the December 2017 Grievance Committee meeting.)*

b. In a rare occurrence for this Board, a disciplined licensee has filed a Petition for Judicial Review in Superior Court. Private Investigator Jeffrey Scott Moore's license was suspended for a period of six (6) months for failing to make or offer a client a written report within 30 days after the completion of the investigation. The matter was heard in the Office of Administrative Hearings and the Board voted to adopt the Administrative Law Judge's Proposal for Decision at its August meeting.

The Petition was filed in Johnston County. Over the next couple of weeks Attorney Gray will be preparing and filing the Official Record and filing a Response to the Petition.

c. For the past 42 months Attorney 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 Attorney Gray shared the Appellees' allotted time. Member Justin Greene attended the arguments as the Board's representative.

Attorney 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 <u>partial</u> 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. 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 28th 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. Attorney 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.

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.

VI. BOARD MEMBER CLASSIFICATION ISSUE

At the request of Board Chair Weaver (and Alarm Systems Licensing Board Chair Ralph Gregory), Attorney Gray wrote Dr. Linda Combs, State Controller, regarding the issue of the recent change in classification of Board members to "employees" for purposes of their *per diem*. A copy of my letter is attached as Attachment 4.

Attorney Gray received a very quick response and had a lengthy telephone conference with Jennifer Pacheco of the State Controller's Office. She first explained that although it is still on the statute books, a footnote in an IRS Publication (#963, Federal and State Reference Guide) overruled North Carolina's (and other states') Section 218 Agreement. The FICA tax withholding exemption for boards, commissions, councils and committees appointed by the Governor or General Assembly was taken away and the State of North Carolina's failure to comply with Publication 963's note was picked up in a "classification audit" (and not a "payment audit"). Dr. Combs also acknowledged his letter by letter dated October 13th. A copy of her letter is also included with Attachment 4.

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

PUBLIC COMMENT:

NONE

MOTION BY MR. COBBLER TO ADJOURN; SECONDED BY MR. MACRAE; MOTION CARRIED.

12:27 P.M. Adjourned

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Brian R. Jones, Director

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Garcia Graham, Board Secretary