



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
APRIL 25, 2019
HOLIDAY INN NORTH
2805 HIGHWOOD BOULEVARD
RALEIGH, NC 27604**

BOARD MEMBERS PRESENT

David Arndt
Ed Cobbler
Ron Burris
Gerry Stickl
Clyde Cook
Debra Duncan
Steve Johnson
William MacRae
Tammy Owens
Jerry Pitman

BOARD MEMBERS ABSENT

Eric Weaver, Sr.
Stacy Buff
Nada Lawrimore
Bud Cesena

STAFF PRESENT

Brian Jones - Director
Phillip Stephenson – Deputy Director
Jeff Gray - Attorney
Ray Bullard – Training Officer/Investigator
Scott Moller- Investigator
Garcia Graham – PPS Board Secretary

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Raleigh, NC 27609
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GUESTS PRESENT

Jeff Kiker
Walter Cox
Sandra Epley
Tom Williams
Andy Renfrow
Robert Dunn
Danny Blowe
Paul Latorre
Donald Williams
Dorian Dehnel

Otis Scott
Allen Brooks
Maurice Tubaya
D-Wan Barnes
Don Miller
Russ Conner
Paul Spence
Suzanne Creech
Elvalorie Matthews

Robert Santiago
Hubert Montague
Charles Cobb Jr.
Paul Sam
Greg Hatten
William Wilke
Chris Mayhue
Creo M. McIver Jr.
Timothy Joel Floyd

CALL TO ORDER

Mr. Arndt called the April 25, 2019, Private Protective Services Board meeting to order at 9:20 a.m. Mr. Cook led the group in the Pledge of Allegiance followed by Chairman Arndt welcoming all guests.

Mr. Jones acknowledged Ms. Pamela Cashwell, Chief Deputy Secretary, in attendance at the Board meeting.

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.

MINUTES

APPROVAL OF THE FEBRUARY 21, 2019 BOARD MEETING MINUTES.

**MOTION BY MR. COBBLER TO ACCEPT THE FEBRUARY 21, 2019 MINUTES;
SECONDED BY MR. PITMAN; MOTION CARRIED.**

SCREENING COMMITTEE REPORT

Mr. Cobbler stated that the Screening Committee met on Wednesday, April 24, 2019 from 1:35 p.m. to 4:35 p.m. to review a total of sixty (60) applications and two (2) items on addendum. The Committee members included Mr. Cobbler, Mr. MacRae, Ms. Lawrimore, Ms. Owens, and Ms. Duncan. Mr. Cobbler read the report for the record.

MOTION BY MR. MACRAE TO ACCEPT THE SCREENING REPORT WITH THE EXCEPTION OF #4, #16 AND #49; SECONDED BY MR. PITMAN; MOTION CARRIED.

MOTION BY MR. MACRAE TO ACCEPT #4 AND #16 OF THE SCREENING REPORT; SECONDED BY MR. COOK; MOTION CARRIED.

MOTION BY MS. DUNCAN TO ACCEPT #49 OF THE SCREENING REPORT; SECONDED BY MR. COOK; MOTION CARRIED

Mr. Stickl recused himself from #4 and #16 of the screening report.
Mr. MacRae recused himself from #49 of the screening report.

GRIEVANCE COMMITTEE REPORT

Mr. Burris reported that the Grievance Committee met on Wednesday, April 24, 2019 from 9:00 a.m. to 12:38 p.m. and heard a total of 13 cases. The Committee members included Mr. Burris, Mr. Cook, Mr. Johnson, Mr. Stickl and Mr. Pitman. Mr. Burris read the report for the record.

MOTION BY MR. COBBLER TO ACCEPT THE GRIEVANCE COMMITTEE REPORT WITH THE EXCEPTION OF CASE NUMBER 2019-PPS-002 WILLIAM ALLISON BLACKMAN AND CASE NUMBER 2019-PPS-022 PAUL LATORRE; SECONDED BY MR. MACRAE; MOTION CARRIED.

MOTION BY MS. DUNCAN TO ACCEPT THE GRIEVANCE COMMITTEE RECOMMENDATION REGARDING CASE # 2019-PPS-002 WILLIAM BLACKMAN; SECONDED BY MR. COBBLER; MOTION CARRIED.

Mr. Cook recused himself from voting on case #2019-PPS-002 regarding William Blackman.

MOTION BY MS. DUNCAN TO ACCEPT THE GRIVANCE COMMITTEE RECOMMENDATION REGARDING CASE #2019-PPS-022 PAUL LATORRE; SECONDED BY MR. COOK; MOTION CARRIED.

Mr. MacRae recused himself from voting on case #2019-PPS-022 regarding Paul Latorre.

TRAINING & EDUCATION COMMITTEE

Mr. Johnson reported that the Training & Education Committee met on Wednesday, April 24, 2019 from 7:39 a.m. until 8:35 a.m. The Committee members included, Mr. Johnson, Mr. Cobbler, Mr. Cook, Mr. Stickl, and Mr. MacRae.

The following PPS Trainer courses are scheduled:

- May 20, 2019 Firearms Trainer Recertification/Prequalification Course at NCJA
- June 24-28, 2019 Unarmed Guard Trainer Course & Workshop at WTCC
- July 8, 2019 Firearms Trainer Recertification/Prequalification at NCJA
- September 4, 2019 Firearms Trainer Recertification/Prequalification at NCJA
- September 9-12, 2019 Firearms Instructor Trainer Course at NCJA
- September 23-27, 2019 Unarmed Guard Trainer Course & Workshop at WTCC
- November 6, 2019 Firearms Trainer Recertification/Prequalification at NCJA
- December 2-6, 2019 Unarmed Guard Trainer Course & Workshop at WTCC

The following PPS Trainer courses have been completed:

- March 6, 2019 Firearms Prequalification Only at NCJA
- March 25-29, 2019 Unarmed Guard Trainer Course & Workshop at WTCC
- March 25, 2019 Firearms Trainer Recertification/Prequalification Course at NCJA
- April 1-4, 2019 Basic Firearms Trainer Course at NCJA

The following PPSB Training Courses for CEU Credit are scheduled:

- April 25, 2019 1-5 p.m. Raleigh, NC
- June 20, 2019 1-5 p.m. Raleigh, NC
- August 22, 2019 1-5 p.m. Raleigh, NC
- December 19, 2019 1-5 p.m. Raleigh, NC

Weapon Discharge/Incident Reports:

On Thursday, February 14, 2019, Melissa Richardson of North State Security Group contacted Investigator Bullard by telephone and advised of a weapon's discharge. The incident occurred in the training room at North State Security, 450 W. Hanes Mill Road, Winston-Salem, North Carolina. Richardson advised that North State Company Police would be investigating the incident. Richardson is a Firearms Training Officer and has been so since 2015. Richardson was conducting a Firearms Training Course in the classroom of the North State Security Offices. Richardson had removed her own duty weapon from the holster and placed it on a table to use

her holster with a training gun for a demonstration. Later, Richardson mistakenly picked up her loaded handgun to demonstrate failure drills to the students. Richardson pointed the handgun at the wall of the classroom and pulled the trigger. The weapon discharged once. The projectile traveled through the wall, across the hall and lodged in a metal door frame. There were no injuries. Richardson forwarded a copy of her statement and the police report to Investigator Bullard. These reports are included in this file.

Richardson was present at the meeting.

Mr. Johnson stated that the T & E committee recommended that Ms. Melissa Richardson go back through the instructor program again prior to teaching another class and Ms. Richardson agreed.

On Monday, March 11, 2019, Angella King, an employee of Calloway Custom Security, emailed Private Protective Services inquiring about the protocol for reporting a weapons discharge. Investigator Bullard responded to King via email to forward the location of the incident, the name of the guard involved and the law enforcement agency investigating the incident. King responded that the incident occurred at the State Employee's Credit Union, 8605 University City Blvd., Charlotte, NC 28213. King was unsure of exactly what time the incident had occurred only that it was in the morning on March 11, 2019. King advised that an Armed Guard Supervisor would be preparing a written report that would be forwarded to Investigator Bullard. On March 14, 2019 at approximately 11:58 a.m. Investigator Bullard emailed King and asked for the name and employment history of the guard involved.

King did not respond. At approximately 3:00 p.m. Field Services Supervisor Kim Odom sent Investigator Lee Kelly to Calloway Custom Security to follow up on the incident. Investigator Kelly will included the details of the visit in a report to the Grievance Committee.

On Friday, March 15, 2019 Angella King emailed Investigator Bullard a typed statement about the incident. The statement advises that on Monday, March 11, 2019 at approximately 10:35 a.m. Paul Harper, an Armed Security Guard, employed by Calloway Custom Security was working at the State Employee's Credit Union located at 8605 University City Blvd., Charlotte, North Carolina. The suspect entered the bank wearing a ski mask covering his face and a hood over his head. Harper motioned for the suspect to remove the mask and hood. Harper then noticed that the suspect had a weapon in his right hand. The weapon appeared to be a semi-automatic handgun with an extended magazine.

The suspect pointed the weapon in the direction of Harper. Harper drew his service weapon and fired three (3) shots at the suspect inside the bank. The suspect ran out of the bank toward a wooded area. Harper exited the bank and shot thirteen (13) more rounds at the suspect. Harper shot sixteen (16) rounds in all. Officer Harper went back inside the bank and locked the front door. Charlotte Mecklenburg Police Department responded. Officer Harper surrendered his

weapon to the responding officer. A copy of Harper's statement is included in this file. Investigator Bullard queried both PPSM (Permitium) and PPS2000, and discovered Paul Harper was not a registered guard for Calloway Custom Security. The suspect in this case has not been located. According to the Charlotte Mecklenburg Police Department, no charges will be filed at the time of this report. A cease and desist order has been sent to Harper. A registration audit has been ordered and scheduled for Calloway Custom Security.

Mr. Bullard also reported that since this incident occurred the company has surrendered all of its licenses.

Training Topics for Discussion:

Mr. Johnson stated that the committee discussed whether Firearms Trainers who are registered as armed guards should attend the armed Security Guard training. The Committee decided that PPS will only need to provide them the legal block every renewal period.

Mr. Johnson stated that Mr. Bullard will be having several meetings in regards to updating the Unarmed Guard training manual. Mr. Johnson announced that if there are any industry members who would like to be involved, they will need to contact Mr. Bullard.

Mr. Johnson also stated that there was a previous discussion regarding forming a subcommittee for an individual who has requested to be exempt from the firearm training course due to his disability. After further review the committee decided not to move forward with the subcommittee as the Board lacks the authority to grant the exemption.

Mr. Johnson then reported there were five courses submitted to the T&E Committee:

Elements of Effective Communication – (6.0 hrs.)
Private Security and Investigations – (6.0 hrs.)
Active Survival Instructor Course – (12.0 hrs.)
Executive Protection Agent Training Course – (12.0 hrs.)
Security Consulting Training Course – (12.0 hrs.)

Mr. Johnson stated that the Committee recommended approval for all the courses except Private Security and Investigations. Mr. Johnson suggested that staff reach out to the individual to resubmit the course for approval.

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

Mr. Macrae stated the Law and Rules Committee met and had engaged in open discussions with

members of the NCAPI concerning the current proposed legislative changes pending before the legislature. Mr. MacRae also stated that Mr. Jones had made himself available for anyone who had additional questions and concerns.

Mr. MacRae stated that Mr. Gray had brought to the Committee's attention a bill that was introduced by the Retail Merchants Association that may impact Chapter 74C. This is related to the authority of loss prevention officers having the ability to conduct an investigation outside the physical premises of the business they work for. Mr. Gray had been in contact with that particular group and advised them to allow him to come before the Committee to discuss the situation and request a statutory interpretation from the Board. Mr. MacRae stated that the Committee recommended the following interpretation:

"An employee of a security department of a private business or other employee whose primary duties involve loss prevention or that conducts investigation on matters exclusive to internal business affairs of the business or relate to the location, disposition or recovery of lost or stolen property reasonably believed to be owned by the business".

Mr. Gray stated that he had a copy of the draft language for the Board to consider.

The Full Board discussed the language of the interpretation.

MOTION BY MR. MACRAE TO ACCEPT THE DRAFT BOARD STATUTORY INTERPRETATION AS PRESENTED BY MR. GRAY AND TO INCLUDE THE WORDS "ASSET PROTECTION"; SECONDED BY MS. DUNCAN; MOTION CARRIED.

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

FINANCE REPORT

Mr. MacRae stated that the Finance Committee briefly met and reviewed financial data and no issue(s) were raised.

ETHICS COMMITTEE

Ms. Duncan expressed hope that Board members had completed their Statement of Economic Interest for 2019.

OLD BUSINESS:

Mr. Cobbler asked the status of proposed changes to the Private Protective Services Act and whether or not the Board had identified a sponsor. Mr. Jones replied that a bill had been filed

but there had not yet been movement. The Director of Legislative Affairs for DPS had been diligently working to ensure its passage.

NEW BUSINESS:

Mr. Arndt recommended that the Board hold a three day meeting in June due to the large volume of cases before the Grievance Committee. The proposed schedule is as follows:

The Grievance Committee will meet on Tuesday, June 18, 2019 at 9:00 a.m. **This meeting will be held at the PPS office: 3101 Industrial Drive, Suite 104, Raleigh.**

The Law and Rules Committee will meet on Wednesday, June 19, 2019 at 8:00 a.m.

The Training and Education Committee will meet on Wednesday, June 19, 2019 at 9:00 a.m.

The Emerging Technologies Committee will meet on Wednesday, June 19, 2019 at 10:00 a.m.

The Finance Committee will meet on will meet on Wednesday, June 19, 2019 at 11:00 a.m.

The Screening Committee will meet on Wednesday, June 19, 2019 at 1:30 p.m.

The full Board will meet on Thursday, June 20, 2019 at 8:00 a.m.

Break 10:00 a.m.
Reconvened 10:18 p.m.

FINAL AGENCY DECISION

Mr. Gray stated that there are nine cases for today. However, due to issues with the timing of the service of the notice for today only two could to be heard and he asked the Board to defer the other seven cases until the June 2019 Board Meeting.

Charles Johnson Gray - 18 DOJ 06015. Mr. Gray was present. This case was heard by Administrative Law Judge Donald W. Overby on January 29, 2019. This case involved whether Petitioner should be denied a Private Investigator license based on Petitioner's unfavorable employment history.

MOTION BY MR. BURRIS TO ADOPT THE DECISION AND RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE AND GRANT MR. GRAY'S PRIVATE INVESTIGATOR LICENSE; SECONDED BY MR. COOK; MOTION CARRIED. ONE OPPOSED (*Recused: Mr. Arndt, Ms. Owens, Mr. MacRae, Mr. Stickl and Mr. Cobbler*)

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. MACRAE TO DEFER THIS MATTER UNTIL THE JUNE 2019 BOARD MEETING AND CONTINUE WITH THE SUMMARY SUSPENSION OF MR. JAHN'S PRIVATE INVESTIGATOR LICENSE UNTIL HE APPEARS BEFORE THE BOARD; SECONDED BY MR. COBBLER; MOTION CARRIED.

DIRECTOR'S REPORT:

Director Jones read the report for the record. He reported the Board's revenue to date was \$1,023,640.19 with expenditures in the amount of \$1,089,918.41, reflecting a decrease to the fund balance of \$66,278.22. The total fund balance was \$1,133,576.78. He reported the Education Fund balance was \$103,671.02 with no disbursements. Director Jones reported that since the last meeting, PPS had received 6,195 registration applications, 79 applications for licensure, and 85 for certification, which brought the active numbers to date for registration to 30,366, license holders to 2,002 and certification holders 612. Staff had printed 7,629 cards since the last meeting.

Mr. Jones reported that staff members were in the process of reviewing applications for the open investigator position in Greensboro and he had reduced the number of temporary employees to one.

He informed the Board that the Registration Unit had made tremendous progress addressing the backlog. As of April 22nd, employees had processed armed guard applications submitted through February 11, 2019 and unarmed guard applications submitted through March 23, 2019.

Mr. Jones stated that Permitium completed the document archive project at a cost of \$25,628.16. There may be additional documents to archive in the future, but he anticipated that the volume would be low. Permitium recently completed development for certifications and appeals and is currently working on the complaint and audit phases of the on-line licensing and registration system. Permitium representatives intended to return in May to discuss progress.

Mr. Jones announced that the Private Protective Services Board would accept grant applications until 5:00 p.m. on April 26, 2019. The guidelines and application can be located on the PPS website. DPS advertised the grant program on Facebook and Twitter.

MOTION BY MR. COBBLER TO ACCEPT THE DIRECTOR'S REPORT; SECONDED BY MR. COOK; MOTION CARRIED.

ATTORNEY'S REPORT

Attorney Gray discussed the following:

CONSENT AGREEMENT, SETTLEMENT AGREEMENTS & CIVIL PENALTIES

1. On August 23, 2018 Mark Butler Howell/Securitas Critical Infrastructure Services, Inc., agreed to a civil penalty in the amount of \$2000.00 for failing to own or lease firearms carried by armed guards. Paid in Full
2. On October 25, 2018 David Bailey/Tailormade Protective Service LLC entered into a Consent Agreement with the Board in the amount of \$550.80 for registration violations. The temporary agreement was signed by the QA David Bailey on October 24, 2018. Paid in full
3. On October 25, 2018 Scott Austin Merino/Champion National Security, Inc., entered into a Consent Agreement with the Board in the amount of \$5752.80 for registration violations. The temporary agreement was signed by QA Scott Merino on October 24, 2018. Paid in full
4. On December 20, 2018 Jocelyn Dyvonne Smallwood/Black Ops Protection Agency, LLC entered into a Consent Agreement with the Board in the amount of \$2,203.20 for registration violations. The temporary agreement was signed by QA Jocelyn Smallwood on December 19, 2018. Paid in Full
5. On February 21, 2019 Clifton Lamont Tinnen/Integrity Protection Services entered 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.
6. On February 21, 2019 Beverly Gurkin/Martin Edward & Associates, Inc., entered into a Consent Agreement with the Board in the amount of \$6,976.80 for registration violations. The temporary agreement was not signed. Paid in Full
7. On February 21, 2019 Dakota Jermaine Covil/Semper Fidelis Security Services, LLC entered into a Consent Agreement with the Board in the amount of \$2,080.80 for registration violations. The temporary agreement was signed by QA Dakota J. Covil on

February 19, 2019. Payment has not been received.

I. OFFICE OF ADMINISTRATIVE HEARINGS

See, Hearings List (Attachment 1).

II. 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 16th 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 16th 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. Gray'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 attached to the Attorney's Report for the Board review and approval. They were attached as attachment 2.

MOTION BY MR. BURRIS TO READOPT THE ADMINISTRATIVE RULES IN EXHIBIT TWO OF THE ATTORNEY'S REPORT; SECONDED BY MR. MACRAE; MOTION CARRIED.

b. At its June 21st 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 23rd 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. The Public Hearing was held yesterday, February 20, 2019, at the Board's office. The Public Comment Period ended on April 2, 2019. (*See*, 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 has prepared draft rules for the necessary changes and amendments for your review and approval. They were attached as Attachment 3.

MOTION BY MR. JOHNSON TO APPROVE THE ADMISTRATIVE RULES IN EXHIBIT THREE OF THE ATTORNEY'S REPORT; SECONDED BY MR. BURRIS; MOTION CARRIED.

III.LEGISLATION

a. At the request of the Law & Rules Committee, Mr. Gray prepared a new proposed bill for introduction in the upcoming 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. Gray's December 21, 2018 Attorney's Report, and the proposed bill was discussed at the full Board meeting on December 21st 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 21st meeting and was approved with some minor modifications. It has now been introduced in the House as House Bill 630, "Private Protective Services Changes." A copy of House Bill 630 was attached as Attachment 4.

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.

c. House Bill 760, "Expand Loss Prevention," was introduced on April 15, 2019. It would amend the exemptions section Chapter 74C in an attempt to clarify that loss prevention investigators have the authority to conduct investigations beyond the businesses premises. A copy is attached as Attachment 5. (Mr. Gray has been in contact with the Retail Merchants Association and will explain this bill further in the meeting.)

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 as Attachment 6.

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

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 did 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 was not attached.

f. Senate Bill 478, “Removal Power Modifying Reporting,” would allow the Governor to remove individuals from boards and commissions for malfeasance and/or nonfeasance regardless of the individual’s appointment or authority. It would also require reporting of “gender-proportionate appointments” to more than just regulatory bodies as currently required, and require it for “public bodies” including certain units of local government. A copy was attached as Attachment 7.

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. (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. A copy was attached as Attachment 8.

i. House Bill 770, “Freedom to Work,” was introduced on “tax day,” April 15th. 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.)

If passed, the bill would apply to certificates of relief granted or applications for licensure submitted on or after October 1, 2019. A copy was attached as Attachment 9.

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 ways in which to improve 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. (No copy attached.)

(Note: This bill should state “further study.” The Board has numerous legislatively mandated administrative rules to accomplish this goal.)

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 22nd. 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 29th, 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 50 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 28th and was impassioned 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.

We are now awaiting the Court's opinion.

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

PUBLIC COMMENT

None

GOOD OF THE ORDER:

Mr. Arndt introduced NCAPI President, Gregory Hatten.

Mr. Hatten, turned the floor over to Mr. Donald Miller who greeted the Board and all of the guests. Mr. Miller stated that the Association's Fall Conference is November 7-9, 2019 and it will be held at the Great Wolf Lodge in Concord, NC. The conference has been approved for 12.0 credit hours. He stated that there will be eight guest speakers, Brian Jones, Director of North Carolina Private Protective Services, Dorian Dehnel, President CriminalRecordCheck.com, Jeff Gray, Legal Issues for Private Investigators, Joe Kennedy, Cold Case Investigations, Michael Yergey, PI Insurance and Risk Management, Hal Humphreys, Criminal Defense Investigations, David Posten, Using Polygraph as an Investigative Tool, and Mary Davis, Forensic Anthropology. He is looking forward to the conference and registration is currently open.

Mr. Johnson addressed the audience regarding the questions and concerns from individuals of the NCAPI. He stated that there has been a lot of false and misleading information about the Board's bill currently pending in the General Assembly that has been circulating and he would like to make sure everyone receives the correct information. He made a motion for Mr. Jones and Mr. Gray to prepare a letter or memorandum to inform industry members about the bill.

MOTION BY MR. JOHNSON TO REQUEST MR. JONES AND MR. GRAY TO PREPARE A MEMORANDUM TO SEND OUT TO ALL INDUSTRY MEMBERS ADDRESSING THE ISSUES AND CONCERNS THAT WERE BROUGHT UP AT THE LAW AND RULES COMMITTEE MEETING REGARDING THE BILL; SECONDED BY MR. COBBLER; MOTION CARRIED.

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

11:37 A.M. Adjourned

Brian R. Jones, Director

Garcia Graham, Board Secretary

