



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
FEBRUARY 21, 2019
HILTON GARDEN INN HOTEL
3912 ARROW DRIVE
RALEIGH, NC 27612**

BOARD MEMBERS PRESENT

David Arndt
Stacy Buff
Ron Burris
Bud Cesena
Ed Cobbler
Clyde Cook
Debra Duncan
Steve Johnson
William MacRae
Nada Lawrimore
Tammy Owens
Jerry Pitman
Gerry Stickl

BOARD MEMBERS ABSENT

Eric Weaver, Sr.

STAFF PRESENT

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

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GUESTS PRESENT

Chris Lewis	Brenda McMillon	Dwan L Barnes
Barbara Green	Zack Conner	Andre Cunningham
Michael Curts	Billy Crawford	Morris Moye
Terry Walser	Allen Brooks	Randy Johnson
Ruth Reynolds	Paul Schroll	Tim Stewart
Gregory Hatten	Melissa Richardson	Elvalorie Matthews
Creo McIver	Jeff Kiker	Don Miller
Tamara Rabenold	Randy Rabenold	Dorian Dehnel
Laura Lee	Linda Rarey	John Taylor
David Wall	Joshua Lawter	Anny Trica
Christopher Rodemond	Raymond Berndt	Vernon Jerry
Alana Erevia	Ordie McFarland	Forrest Galyean
Brett Hickman	David Bailey	Ruth Cruz-Nichols
Donald Williams		

CALL TO ORDER

Mr. Arndt called the February 21, 2019, Private Protective Services Board meeting to order at 9:35 a.m. Mr. Cobbler led the group in the Pledge of Allegiance followed by Chairman Arndt 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. COBBLER MADE A MOTION TO GO INTO CLOSED SESSION TO DISCUSS A PERSONNEL MATTER; SECONDED BY MR. COOK; MOTION CARRIED.

CLOSED SESSION: 9:10 a.m.
RECONVENED: 10:14 a.m.

Break 10:15 a.m.

Reconvened 10:36 a.m.

PUBLIC COMMENT

Patrick Mitchell addressed the Board about the proposed statutory changes regarding close personal protection (executive protection). Mr. Mitchell stated that he has substantial experience in that field, but he is unable to apply for a private investigator's license under the current law. He stated that he is glad the Board is looking into this and would like to be involved in discussions regarding requirements and training.

MINUTES

APPROVAL OF THE DECEMBER 20, 2018 BOARD MEETING MINUTES AND JANUARY 25, 2019 SPECIAL MEETING MINUTES.

MOTION BY MR. JOHNSON TO ACCEPT THE DECEMBER 20, 2018 MINUTES; SECONDED BY MR. MACRAE; MOTION CARRIED.

MOTION BY MR. COBBLER TO ACCEPT THE JANUARY 25, 2019 SPECIAL MEETING MINUTES; SECONDED BY MR. BUFF; MOTION CARRIED.

SCREENING COMMITTEE REPORT

Mr. Cobbler stated that the Screening Committee met on Wednesday, February 20, 2019 from 1:30 p.m. to 3:46 p.m. to review a total of 43 applications. The Committee members included Mr. Cobbler, Mr. MacRae, Ms. Owens, Ms. Duncan, Mr. Buff, and Mr. Stickl. Mr. Cobbler read the report for the record.

MOTION BY MR. CESENA TO ACCEPT THE SCREENING REPORT WITH THE EXCEPTION OF #30 AND #31; SECONDED BY MR. STICKL; MOTION CARRIED.

MOTION BY MR. JOHNSON TO ACCEPT #30 OF THE SCREENING REPORT; SECONDED BY MR. STICKL; MOTION CARRIED.

MOTION BY MR. JOHNSON TO ACCEPT #31 OF THE SCREENING REPORT; SECONDED BY MR. PITMAN; MOTION CARRIED

Mr. Arndt recused himself from #30 of the screening report.

Mr. Stickl recused himself from #31 of the screening report.

GRIEVANCE COMMITTEE REPORT

Mr. Burris reported that the Grievance Committee met on Tuesday, February 19, 2019 from 9:10 a.m. to 4:22 p.m. and heard a total of 16 cases. The Committee members included Mr. Burris, Mr. Cook, Mr. Johnson, and Mr. Pitman. Mr. Burris read the report for the record. (See report attached).

**MOTION BY MS. DUNCAN TO ACCEPT THE GRIEVANCE COMMITTEE REPORT;
SECONDED BY MR. COBBLER; MOTION CARRIED.**

TRAINING & EDUCATION COMMITTEE

Mr. Cesena reported that the Training & Education Committee met on Wednesday, February 20, 2019 from 10:00 a.m. until 11:08 a.m. The Committee members included, Mr. Cesena, Mr. Johnson, Mr. Cobbler, Mr. Cook, Mr. Buff, and Mr. MacRae.

The following upcoming courses scheduled for 2019:

- 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
- 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:

- February 4-8, 2019 Unarmed Guard Trainer Course & Workshop at WTCC

The following PPSB Training Courses for CEU Credit are scheduled:

February 21, 2019	1-5 p.m.	Raleigh, NC
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

Trainer Investigation and Audit

Over the past three months an investigation regarding a PPSB trainer for not providing the mandated number of training hours for guards has been conducted. The trainer had provided training for approximately fourteen licensees. Complaints have been filed and are scheduled to be heard before the Grievance Committee.

Weapon Discharge/Incident Reports

It was previously reported that Wyoming Gilliam, a security guard who is employed by Standing Guard Protective Services, discharged his firearm on November 24, 2018 at the 158 Sweepstakes located at 831 West Main Street, Murphreesboro, North Carolina during an armed robbery. Since that report to the Board, the Murphreesboro Police Department has charged Mr. Gilliam with Conspiracy to Commit Robbery with a Dangerous Weapon, Aid and Abet Robbery with a Dangerous Weapon and Discharging a Firearm within the City Limits.

On January 12, 2019 Brian White, Qualifying Agent for Eagle Eye Security telephoned Investigator Bullard and advised that Alyse Tharpe of Eagle Eye Security discharged her firearm while working at the Sweepstakes located at 240 Newton Square, Raleigh, North Carolina. The discharge caused some damage to a nearby business. The Raleigh Police Department contacted Alyse Tharpe and obtained a statement about the incident. The Raleigh Police Department issued Ms. Tharpe a citation for Discharging a Firearm within the City Limits.

On January 25, 2019 Investigator Bullard was provided a WRAL news article about a robbery suspect being shot and killed by a security guard on January 24, 2019 in Lumberton, North Carolina. Mr. Bullard had not received a weapon discharge report about the incident. James Franklin Locklear and Quinton Washington, who work at Lucky Clover Arcade, exchanged gunfire with Gerald Lamar Cooper. Investigator Sampson with the Robeson County Sheriff's Office advised that no criminal charges had been filed. Neither Mr. Locklear, Mr. Washington, nor the manager, Stephanie Hunt are registered or licensed with the Private Protective Services Board. Complaints will be filed and a cease & desist order will be issued.

On January 28, 2019 Melissa Richardson, qualifying agent for North State Security, contacted Investigator Bullard and advised him of an unintentional weapon discharge. Ms. Richardson advised that on January 27, 2019, Reginald Javon Fuller discharged his weapon in the security office at the Greensboro bus depot. Richardson advised that a detailed report would be forwarded to Private Protective Services and that the North State Company Police would be investigating the incident. Mr. Fuller is properly registered as an armed guard for North State Security. The North State Company Police has suggested that no criminal charges be filed against Mr. Fuller, but that he should attend remedial firearms training instead.

Mr. Cesena then reported there were thirty-seven courses submitted to the T&E Committee:

Working Criminal Cases From Start to Finish - 6.0 hrs.
Players In The Game; Knowing Your Role As A Private Investigator - 6.0 hrs.
Executive Protection – 12.0 hrs.
The Surveillance Sequence - 6.0 hrs.
Surveillance Team Communications And Protocol - 3.0 hrs.
Auto Theft 101 – 2.0 hrs.
Premium Fraud for Work Comp and Auto - 2.0 hrs.
Recorded Statements – 2.0 hrs.
Pretext and Privacy- 1.0 hr.
The Neighborhood Investigation - 1.0 hr.
Mold: A Growing Concer - 2.0 hrs.
Life and Disability Insurance & Fraud - 2.0 hrs.
Insurance Overview - 1.0 hr.
Introduction to Insurance Fraud - 3.0 hrs.
Healthcare Fraud - 2.0 hrs.
Ethics for Private Investigators - 2.0 hrs.
Catasrophes and Fraud - 1.0 hr.
Auto Body and Repair Shop Fraud - 2.0 hrs.
Concepts of Product Liability - 3.0 hrs.
Homeland Security and Terrorism - 2.0 hrs.
Ethics Class - 6.0 hrs.
Litigation Support & Process Service – 6.0 hrs.
Courtroom Testimony - 6.0 hrs.
Business Operation, Interviewing Clients - 6.0 hrs.
Civil Cases / Workers Comp - 6.0 hrs.
Domestic Cases: Divorce; Child Custody; Infidelity - 6.0 hrs.
Criminal Investigation - 6.0 hrs.
Surveillance: Moving / Stationary / Static / GPS - 6.0 hrs.
Interviews: Suspects & Interrogations - 6.0 hrs.
Interviews: Witnesses & Victims - 6.0 hrs.
Video Techniques: 35mm and Digital Technology - 6.0 hrs.
Report Writing / Field Notetaking - 6.0 hrs.
Undercover Operations - 6.0 hrs.
Arson Investigation - 6.0 hrs.
Risk Assessment for Investigators - 6.0 hrs.
Ethics Class - 6.0 hrs.
Litigation Support / Process Service - 6.0 hrs.

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

Mr. Cesena noted that the current executive protection courses that were approved by the Board for continuing education credits cannot be used to qualify an individual for close personal protection certification, which may become part of the Board's statutory framework. He stated that if the proposed legislation becomes law, there will be a collaborative effort between the PPS Board and industry members to discuss the requirements and training programs that will allow an individual to receive the close personal protection certification.

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

LAW AND RULES COMMITTEE

Deferred until the April 2019 Board meeting.

FINANCE REPORT

Mr. Cesena stated that the Finance Committee briefly met and reviewed financial data, which will be covered further in the Director's Report.

MOTION BY MS. DUNCAN TO ACCEPT THE FINANCE COMMITTEE'S REPORT; SECONDED BY MR. STICKL; MOTION CARRIED.

ETHICS COMMITTEE

Ms. Duncan reminded all Board members that their Statement of Economic Interest form for 2019 is due in April. Ms. Duncan also stated that there are new electronic filing forms and the Board members can access the link through the Ethics Commission's website. Also, she intends to email the link to Board members.

EMERGING TECHNOLOGY COMMITTEE

Ms. Owens reported that the Emerging Technology Committee met on February 21st. Some of the topics discussed were digital forensics and a technology demonstration pertaining to the recent state bulk purchase contract. Ms. Owens stated that she is looking forward to the next Committee meeting.

OLD BUSINESS:

Chairman Arndt stated that all Board members have been provided a copy of the proposed revisions to the Private Protective Services Act and opened the floor up for discussion.

Mr. Cook addressed the Board regarding provisions related to close personal protection (executive protection). He suggested language that provided for grandfathering private investigators to provide close personal protection be added to the bill. He further asserted that any close personal protection component include provisions related to investigation duties that arise during the scope of protective details. He also suggested that close personal protection be removed from the proposed legislation until the Board can further explore this issue and then reintroduce close personal protection in a separate bill. He recommended that the Board should focus more on unlicensed activity.

Mr. Cobbler asked if the grandfather clause was currently written in the proposed bill. If not, he urged that it be added. He agreed with Mr. Cook regarding the need to address unlicensed activity and suggested that the Board consider making statutory changes to address unlicensed activity.

Mr. MacRae attempted to clarify misunderstanding that may exist regarding the proposed changes. He stressed that this did not establish specific requirements for close personal protection, but merely would allow the Board the authority to thoughtfully craft requirements. He stated that once the proposed legislation became law, it would allow the Board and the industry members to create policies and procedures to govern close personal protection. Mr. Johnson concurred with Mr. MacRae and stated that it was time to move forward with the proposed legislation.

Mr. Cesena also agreed to move forward with the proposed legislative proposal along with adding the grandfather clause for private investigators and to not include the private investigator associates.

After the Board discussed the proposed legislative changes, Ms. Duncan offered a motion.

MOTION BY MS. DUNCAN TO ADOPT THE PROPOSED LEGISLATIVE CHANGES AND INCLUDE THE GRANDFATHER CLAUSE. SPECIFICALLY, IF YOU HELD A PRIVATE INVESTIGATOR LICENSE AND COULD DEMONSTRATE EXPERIENCE IN CLOSE PERSONAL PROTECTION TO THE BOARD'S SATISFACTION, THE LICENSED PRIVATE INVESTIGATOR MAY CONTINUE PROVIDING CLOSE PERSONAL PROTECTION SERVICES IN THE EVENT THIS FUNCTION MAY BE SUBJECT TO REVISED REQUIREMENTS. UPON RENEWAL OF THE PRIVATE INVESTIGATOR LICENSE, REVISED ADMINISTRATIVE RULES WILL ESTABLISH THE MINIMUM STANDARDS TO CONTINUE PROVIDING CLOSE PERSONAL PROTECTION SERVICES, WHICH SHALL INCLUDE A REQUIREMENT THAT THE PERSON DESIRING TO PROVIDE CLOSE PERSONAL

PROTECTION SERVICES SUCCESSFULLY COMPLETE A BOARD APPROVED CLOSE PERSONAL PROTECTION COURSE. MS. DUNCAN FURTHER MOVED TO ALLOW MR. GRAY TO UPDATE PROPOSED LEGISLATION WITH THESE CHANGES; SECONDED BY MR. CESENA; MOTION CARRIED. Mr. Cook opposed.

Break 11:52 a.m.
Reconvened 12:04 p.m.

Mr. Arndt provided an update on identification cards and business cards for Board members. He stated that DPS cannot issue identification cards to Board members, but Mr. Jones is still looking into the possibility of obtaining business cards.

NEW BUSINESS:

None

FINAL AGENCY DECISIONS:

Christopher Lee Lewis - 18 DOJ 07252. Mr. Lewis was present along with his attorney Robert Crawford. This case was heard by Administrative Law Judge Melissa Owens Lassiter on December 18, 2018. This case involved the summary suspension order of Petitioner's unarmed and armed guard trainer certifications based on lack of good moral character and Petitioner's failure to maintain a roster of students, failure to instruct for the minimum required hours, failure to adequately conduct range qualifications, failure to submit a post-pre delivery report, and failure to maintain records. N.C. General Statute 74C-12(a)(1) and (25) and 14B NCAC 16 .0707, .0807, .0906, .0907, .0908 and .0912.

MOTION BY MR. CESENA TO UPHOLD THE SUMMARY SUSPENSION OF MR. CHRISTOPHER LEWIS UNARMED AND ARMED GUARD TRAINER CERTIFICATIONS AND RECOMMENDED THAT THE BOARD REMOVE 74C-12(a)(1) and (25) AS NOTED ABOVE AND FROM CASE #2018-PPS-050 OF THE GRIEVANCE REPORT. HOWEVER, IF CRIMINAL CHARGES ARE FILED AGAINST MR. LEWIS THIS MATTER MAY BE REVISTED. ALSO, TO ACCEPT THE EXCEPTION OF THE PROPOSAL; SECONDED BY MR. COBBLER; MOTION CARRIED. *Recused: Mr. Burris, Mr. Cook, Mr. Stickl, Mr. Johnson, and Ms. Lawrimore*

Richard Brian Kidd - 18 DOJ 07251. Mr. Kidd was not present. This case was heard by Administrative Law Judge Melissa Owens Lassiter on December 18, 2018. This case involved the summary suspension order of Petitioner's Private Investigator License unarmed guard trainer certification based on lack of good moral character and temperate habits as evidenced by a charge of one count of misdemeanor Breaking and Entering offense, and one count of felonious Misappropriation of Partnership Funds.

MOTION BY MR. CESENA TO REVERSE THE JUDGE'S DECISION AND CONTINUE WITH THE SUMMARY SUSPENSION OF MR. KIDD'S PRIVATE INVESTIGATOR LICENSE; SECONDED BY MS. DUNCAN; MOTION CARRIED.

DIRECTOR'S REPORT:

Director Jones read the report for the record. He reported the Board's revenue to date was \$807,899.68 with expenditures in the amount of \$836,402.91, reflecting a decrease to the fund balance of \$31,767.14. The total fund balance was \$1,171,351.77. He reported the Education Fund balance was \$101,996.19 with no disbursements. Director Jones reported that since the December meeting, PPS had received 4,749 registration applications, 84 applications for licensure, and 35 for certification, which brought the active numbers to date for registration to 28,930, license holders to 1,966 and certification holders 565. Staff had printed 5,016 cards since the last meeting, only 27 of which were temporary paper cards.

Director Jones introduced Scott Moller as the new investigator assigned to Fayetteville effective January 28th. Mr. Moller last served as a special agent in the U.S. Air Force, where he oversaw investigative efforts of numerous personnel. Mr. Moller had also been responsible for counterintelligence, cybercrime, and fraud investigations.

He also stated that Syconda Marrow, who began serving as a temporary employee in May 2018, accepted a permanent position as a processing assistant.

Director Jones reported that he reduced the number of temporary employees from four to two due to the significant reduction in the backlog. He expressed appreciation for the Registration Unit, Shannon Thongkheuang, and her staff for making tremendous progress addressing the backlog. As of February 18th, the employees had processed armed guard applications submitted through November 13, 2018 and unarmed guard applications submitted through December 20, 2018.

Pursuant to NCGS 74C-4(h) and in accordance with the MOU between the Department of Public Safety (DPS) and the Board, DPS transferred the annual administrative services fee of \$37,500 in January 2019.

As Director Jones reported at the Board's August 2018 meeting, the PPS computers have reached the end of their life cycle, so they were no longer under warranty and should be replaced. Due to the Permitium transition, investigators would benefit from tablets with cellular service which would allow them to complete reports in the field without having to return to the office. Tablets were deployed during the week of February 14th. Based on the financial division between the Boards, the PPSB was responsible for \$9,285 of the total cost for tablet acquisition. Mr. Jones stated that he would continue to work with DPS staff to replace the remaining computers.

Director Jones reported that Permitium representatives met with staff members on February 4th to discuss development progress and issue resolution. Mr. Jones thanked Chairman Arndt for attending the meeting.

Permitium recently completed development for certifications and appeals and was working on the complaint phase. Permitium representatives planned to return on March 4th to discuss progress and issue resolution. Mr. Jones extended an invitation to Board members who would like to attend.

On February 15th, Permitium picked up an additional 36 boxes containing paper applications to scan and archive. As of January 31st, they had scanned 295,404 pages at a cost of \$16,985.74.

Director Jones informed the Board that Phil Stephenson participated in a multiagency initiative with Raleigh Police Department and North Carolina Alcohol Law Enforcement on January 14th. Specifically, the agencies hosted an information session for club and sweepstakes owners, security guards, and employees aimed at increasing safety at these businesses. This afforded Mr. Stephenson the opportunity to review relevant portions of the Private Protective Services Act with establishment owners and employees.

Kim Odom provided an overview of Private Protective Services at the 2nd Annual Church Security Breakfast held at Mt. Zion Baptist Church of Greensboro on January 19th.

Director Jones stated that on December 21st, he met with Chief Deputy Secretary Pam Cashwell and Secretary Erik Hooks to discuss the Republican National Convention (RNC). He shared the Board's concerns related to the availability of adequate security workforce resources and the potential for unlicensed activity. Subsequently, he met with William Ray, Chief of Planning and Homeland Security with the Department of Public Safety's Division of Emergency Management. Mr. Ray's division is spearheading RNC support efforts on behalf of the Department of Public Safety. Mr. Jones discussed the Board's concerns with Mr. Ray, who expressed a commitment to involve Private Protective Services during RNC planning.

Director Jones stated that the Private Protective Services Board would accept grant applications from February 22, 2019 until 5:00 p.m. on April 26, 2019. The guidelines and application can be located on the PPS website.

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 Otis Cleon Scott/Duke Energy Corp., 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 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**
3. 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. Payment has not been received.
4. 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 the QA (Scott Merino) on October 24, 2018. Payment has not been received.
5. On December 20, 2018 Jocelyn Dyvonne Smallwood/Black Ops Protection Agency, LLC enter into a Consent Agreement with the Board in the amount of \$2,203.20 for registration violations. The temporary agreement was signed by the QA (Jocelyn Smallwood) on December 19, 2018. Payment has not been received. (Please note: Ms. Graham spoke to Ms. Smallwood on February 11, 2019 and e-mailed her a copy of the Consent Agreement. The original Board Findings letter and Consent Agreement were mailed to an old address on file; the address has been updated.

After brief discussion, Mr. Cesena made a motion.

MOTION BY MR. CESENA TO ISSUE A CEASE AND DESIST TO SCOTT AUSTIN MERINO AND CHAMPION NATIONAL SECURITY, INC., UNTIL THE CONSENT PAYMENT HAS BEEN RECEIVED. STAFF IS REQUESTED TO BRING THIS CASE BACK BEFORE THE GRIEVANCE COMMITTEE; SECONDED BY MS. DUNCAN; MOTION CARRIED.

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 my December 20, 2018 Attorney's Report.

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 ends on April 2, 2019.

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 PPS Board Secretary Garcia Graham, Mr. Gray has prepared draft rules for the necessary changes and amendments for your review and approval. They are attached as Attachment 2.

**MOTION BY MS. DUNCAN TO ACCEPT THE ADMINISTRATIVE RULES;
SECONDED BY MR. STICKL; 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 two new provisions 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 my 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 at today's meeting. Another copy is attached as Attachment 3.

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 my 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 is attached as Attachment 4.

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 impasse 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 30th.

The Court tentatively calendared this matter for oral argument for two different sets of dates but those tentative dates were canceled. It is now calendared for Tuesday, March 19, 2019.

Mr. Gray brought to the Board attention a newsletter that was posted on the PPS website regarding independent contractors vs. Employees. He stated that there are twenty factors that IRS considered to determine if someone is 1099 or W-2 employee and that the number has now been reduced to three. The Board is not governed by Federal law to decide who is an independent contractor or employee of a company. However, everyone does follow the IRS policy and would like to ask for guidance from the Board and whether or not staff should follow the IRS policy. This will help the staff in determining if a registrant/licensee is a 1099 or W-2 employee.

MOTION BY MR. BURRIS TO ADOPT AND FOLLOW THE CURRENT IRS GUIDELINES; SECONDED BY MR. STICKL; MOTION CARRIED.

Mr. Gray stated that he would draft a memo for staff and remove the old newsletter from the website.

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

GOOD OF THE ORDER:

Mr. Arndt introduced NCAPI President, Gregory Hatten.

Mr. Gregory Hatten, president of the NCAPI greeted the Board and all of the guests. Mr. Hatten stated that the association held their annual meeting on January 12, 2019 in Huntersville, NC. He stated that they are currently working on the fall conference for continuing education credits and will be working with the state and federal legislature on any issues of concern.

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

1:16 P.M. Adjourned

Brian R. Jones, Director

Garcia Graham, Board Secretary