



North Carolina Department of Public Safety

Private Protective Services Board

Roy Cooper, Governor
Erik Hooks, Secretary

Pamela Cashwell, Chief Deputy Secretary
Brian Jones, Director

**MINUTES OF THE
PRIVATE PROTECTIVE SERVICES BOARD MEETING
OCTOBER 24, 2019
HAMPTON INN & SUITES
3920 ARROW DRIVE
RALEIGH, NC 27612**

BOARD MEMBERS PRESENT

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

BOARD MEMBERS ABSENT

Bud Cesena

STAFF PRESENT

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

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GUESTS PRESENT

Gary Pastor
Marcus Benson
Don Miller
Denise Martin
Harry House

Bill Sconiers
Julie Turner
Gregory Hatten
Erika Martin
Shelly Morales

Bill MacRae
Jeff Kiker
Robert Dunn
Beatrice Powers
Michael Walker

CALL TO ORDER

Mr. Arndt called the October 24, 2019, Private Protective Services Board meeting to order at 9:00 a.m. Mr. Buff led the group in the Pledge of Allegiance followed by Chairman Arndt welcoming all guests.

STATE ETHICS LAW

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

PUBLIC COMMENT

Gary Pastor thanked the Board for listening to his concerns and providing police presence for the Private Protective Services Board meeting.

Mr. Arndt introduced NCAPI President, Gregory Hatten.

Mr. Hatten announced that the NCAPI conference is scheduled for November 8-9, 2019 at Great Wolf Lodge in Concord, NC and there are 142 people already registered to attend.

MINUTES

APPROVAL OF THE AUGUST 22, 2019 BOARD MEETING MINUTES.

**MOTION BY MR. PITMAN TO ACCEPT THE AUGUST 22, 2019 MINUTES;
SECONDED BY MR. RUSSELL; MOTION CARRIED.**

SCREENING COMMITTEE REPORT

Mr. Buff stated that the Screening Committee met on Wednesday, October 23, 2019 from 1:35 p.m. to 5:30 p.m. to review a total of 68 applications and two addendum items. The Committee members included Mr. Buff, Mr. Stephens, Ms. Lawrimore, Mr. Heffney, Mr. Russell and Ms. Duncan. Mr. Buff read the report for the record.

MOTION BY MR. JOHNSON TO ACCEPT THE SCREENING REPORT WITH THE EXCEPTION OF #9, #20, #26 AND TWO ADDENDUM ITEMS, DEXTER TROGDON AND COREY SIMMONS; SECONDED BY MR. JOHNSON; MOTION CARRIED.

MOTION BY MR. BURRIS TO ACCEPT DEXTER TROGDON AND COREY SIMMONS ON THE ADDENDUM; SECONDED BY MR. ALDRIDGE; MOTION CARRIED.

Ms. Duncan recused herself from Dexter Trogdon and Corey Simmons of the addendum report.

MOTION BY MR. BUFF TO ACCEPT #9 OF THE SCREENING REPORT; SECONDED BY MR. JOHNSON; MOTION CARRIED.

Mr. Russell recused himself from #9 of the screening report.

MOTION BY MS. DUNCAN TO ACCEPT #20 OF THE SCREENING REPORT; SECONDED BY MR. RUSSELL; MOTION CARRIED.

Mr. Buff recused himself from #20 of the Screening Committee's report.

MOTION BY MR. BUFF TO ACCEPT #26 OF THE SCREENING REPORT; SECONDED BY MS. DUNCAN; MOTION CARRIED.

Ms. Lawrimore recused herself from #26 of the Screening Committee's report.

GRIEVANCE COMMITTEE REPORT

Mr. Burris reported that the Grievance Committee met on Wednesday, October 23, 2019 from 9:15 a.m. to 11:45 a.m. and heard a total of nine cases. The Committee members included Mr. Burris, Mr. Aldridge, Mr. Johnson, Ms. Rabenold, Mr. Stickl and Mr. Pitman. Mr. Burris read the report for the record.

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

TRAINING & EDUCATION COMMITTEE

Mr. Johnson reported that the Training & Education Committee met on Thursday, October 24, 2019 from 8:00 a.m. until 8:22 a.m. The Committee members included, Mr. Johnson, Mr. Buff, Mr. Stickl, Mr. Stephens, Mr. Russell and Mr. Arndt.

Unarmed Guard Trainer Course and Workshop at Wake Tech. Community College

December 2-6, 2019
February 10-14, 2020

May 11-15, 2020
August 17-21, 2020
September 14-18, 2020
November 16-20, 2020

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

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

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

March 30-April 2, 2020

Long Gun Instructor Course at Camp Butner

November 12-14, 2019

Long Gun Instructor Recertification Course at Camp Butner

November 14, 2019

The following PPS Trainer courses have been completed:

September 4, 2019	Firearms Trainer Recertification Course at NCJA
September 9-12, 2019	Firearms Trainer Course at NCJA
September 23-27, 2019	Unarmed Guard Instructor Course at Wake Tech

The following PPSB Training Courses for CEU Credit are scheduled:

December 19, 2019	1-5 p.m.	Raleigh, NC
February 13, 2020	1-5 p.m.	Raleigh, NC
April 23, 2020	1-5 p.m.	Raleigh, NC
June 18, 2020	1-5 p.m.	Raleigh, NC
August 20, 2020	1-5 p.m.	Raleigh, NC
October 15, 2020	1-5 p.m.	Raleigh, NC
December 17, 2020	1-5 p.m.	Raleigh, NC

Weapon Discharge/Incident Reports:

On Thursday, August 22, 2019, Roy Friedman, Program Manager for AmeriGuard Security Services, Inc., emailed Private Protective Services in reference to a weapons discharge by one of their security guards. Security Guard Phillip Cochran was working a post at the Research Triangle Park. Lieutenant Buckley and Security Guard Cochran were inside the security control

room so that Lieutenant Buckley could inspect Security Guard Cochran's weapon, a Glock Model 17, serial # FVV791. Security Guard Cochran placed his sidearm in the clearing barrel, unloaded his weapon and handed the weapon to Lieutenant Buckley. Lieutenant Buckley inspected the weapon and magazines. Lieutenant Buckley turned the weapon and magazines back over to Security Guard Cochran. Security Guard Cochran placed his weapon back into the clearing barrel, inserted a magazine and pressed the slide release. When the slide closed Officer Cochran's weapon discharged into the Clearing Barrel.

AmeriGuard Security Services took the handgun out of operation. Investigator Bullard queried PPSM (Permitium) and discovered that Phillip Cochran was a properly registered armed guard for AmeriGuard Security and qualified to carry the Glock Model 17. Friedman advised that the handgun would be tested by an armorer before being put back into operation.

On August 31, 2019, Roy Friedman emailed Investigator Bullard and advised that a full function test had been performed on the handgun. Friedman advised that no malfunctions were discovered and that 100 test rounds had been fired through the handgun without incident. A copy of the emails is included in this case file.

Mr. Bullard gave an update on the Unarmed Guard Trainer Manual. He stated that he will be sending a copy to the T & E Committee for review and hopefully by December 2019 he will have a finished product.

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

Introduction to Domestic Violence (two hours)
Using Drones for Physical Security (three hours)

MOTION BY MS. DUNCAN TO APPROVE THE COURSES SUBMITTED FOR CONTINUING EDUCATION TRAINING; SECONDED BY MR. ALDRIDGE; MOTION CARRIED.

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

LAW AND RULES COMMITTEE

Mr. Johnson stated that the Law and Rules Committee met and provided draft copies of Board By-laws to the Committee for their review. He also stated that subsequent review would take place at the December 2019 Board meeting once all of the comments and suggestions were submitted for consideration.

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

ETHICS COMMITTEE

Ms. Duncan offered several reminders related to ethics requirements. First, she reminded members to file the Statement of Economic Interest annually by April 15. Second, members must complete the ethics training within six months of appointment and every two years thereafter. Finally, members must complete North Carolina General Statute 93B training administered by the Board's attorney within six months of appointment.

Ms. Duncan also reported that Ms. Lawrimore's ethics training is past due. Mr. Burris, Mr. Johnson, Mr. Aldridge, Mr. Heffney, and Ms. Rabenold are due by January 3, 2020.

**MOTION BY MR. STICKL TO ACCEPT THE ETHICS LIAISON'S REPORT;
SECONDED BY MR. RUSSELL; MOTION CARRIED.**

EMERGING TECHNOLOGY COMMITTEE

Mr. Aldridge reported that the Emerging Technology Committee met. The Committee discussed unmanned aerial vehicles, artificial intelligence, and use of robots in private security. Mr. Aldridge stated that the use of unmanned aerial vehicles, which is regulated by both state and federal law, was discussed in detail. He stated that he had previously assembled materials related to state and federal regulations and would present a condensed version relevant for Private Protective Service's industry, which could be published on the PPS website.

**MOTION BY MS. DUNCAN TO ACCEPT THE EMERGING TECHNOLOGY
COMMITTEE'S REPORT; SECONDED BY MR. PITMAN; MOTION CARRIED.**

OLD BUSINESS:

Director Jones explained the registration application process related to how staff members use criminal histories. He reminded the Board that it had adopted a policy that utilizes thresholds, which considers timing and severity of convictions to determine registration eligibility. Based in large part on concerns related to collateral consequences of criminal convictions, he suggested that the Board consider increasing the thresholds for Class 1 and Class 2 misdemeanors. The proposed changes are attached to the Minutes for reference.

**MOTION BY MR. BUFF TO ACCEPT PROPOSED CHANGES TO THE CRIMES
POLICY; SECONDED BY MS. DUNCAN; MOTION CARRIED.**

Mr. Gray explained that the Memorandum he distributed regarding the passage of House Bill 770 (S.L. 2019-91). He recommended that the Board re-adopt the Crimes Manual to formally acknowledge that the crimes therein, and the length of time for which that crime will result in a denial or disciplinary action are pursuant to N.C. G. S. 74C-8(d) and 12(a)(25).

**MOTION BY MR. JOHNSON THAT THE CRIMES MANUAL PREVIOUSLY
ADOPTED BY THE BOARD BE RE-ADOPTED AS THE BASIS OF DENIAL OR
DISCIPLINARY ACTION PURSUANT TO N.C. STATUE 74C-8(d) AND 12(a)(25);
SECONDED BY MR. STICKL; MOTION CARRIED.**

Break 10:10 a.m.
Reconvened 10:30 a.m.

NEW BUSINESS:

None

FINAL AGENCY DECISION

Matthew Scott Tucker, - 19 DOJ 02307. Mr. Tucker was present. This case was heard by Administrative Law Judge Donald W. Overby on June 25, 2019. This case involved the denial of the Petitioner's unarmed guard registration based on a lack of good moral character and temperate habits as evidenced by a conviction of misdemeanor Larceny on July 8, 2014.

MOTION BY MR. JOHNSON TO ACCEPT THE ADMINISTRATIVE LAW JUDGE'S DECISION AND GRANT MR. TUCKER'S UNARMED GUARD REGISTRATION APPLICATION; SECONDED BY MR. BURRIS; MOTION CARRIED.

Shelly Lashawn Morales, - 19 DOJ 03749. Ms. Morales was present. This case was heard by Administrative Law Judge Stacey Bice Bawthinimer on September 24, 2019. This case involved the denial of the Petitioner's unarmed guard registration based on a lack of good moral character and temperate habits as evidenced by a conviction of misdemeanor Death by Motor Vehicle on September 29, 2011.

MOTION BY MR. BUFF TO ACCEPT THE ADMINISTRATIVE LAW JUDGE'S DECISION AND GRANT MS. MORALES'S UNARMED GUARD REGISTRATION APPLICATION; SECONDED BY MS. DUNCAN; MOTION CARRIED.

Ennis Brendon Covington, - 19 DOJ 01472. Mr. Covington was not present. This case was heard by Administrative Law Judge Melissa Owens Lassiter on May 28, 2019. This case involved the denial of the Petitioner's unarmed guard registration based on a lack of good moral character and temperate habits as evidenced by a conviction of one count of a Class 1 misdemeanor Larceny in Wake County, NC. During the hearing it was revealed that Mr. Covington was no longer employed as a guard.

MOTION BY MR. JOHNSON TO ACCEPT THE ADMINISTRATIVE LAW JUDGE'S DECISION TO DISMISS; SECONDED BY MR. BUFF; MOTION CARRIED.

DIRECTOR'S REPORT:

Director Jones read the report for the record. He reported the Board's revenue as of September 30, 2019 was \$350,121.26 with expenditures in the amount of \$358,257.77, reflecting a decrease to the fund balance of \$61,563.80. The total fund balance was \$1,156,814.14. He reported the Education Fund balance was \$110,307.81 with no disbursements. Director Jones reported that since the last Board meeting, PPS had received 5,609 registration applications, 112 applications for licensure and 76 certifications, which brought the active numbers for registration to 23,403,

license holders to 2,273 and certification holders 525. Staff printed 4,265 cards since the last meeting.

Director Jones announced that after more than 40 years of public service, Deputy Director Phil Stephenson would be retiring effective December 1, 2019. A search for the new deputy director was underway.

Director Jones stated that staff members were reviewing applications for an administrative specialist vacancy in Private Protective Services Board's licensing section.

Director Jones reported that Sheila Stokes began employment as administrative specialist in the registration section on October 21, 2019.

Director Jones stated that as of August 20th, employees had processed armed guard applications submitted through September 30, 2019 and unarmed guard applications submitted through August 20, 2019.

Director Jones stated that Permittium had completed complaint development. Accordingly, the capability to submit online complaints related to conduct governed by the Board had been posted on the Board's website. Also, Permittium intended to release the licensee search tool during the week of October 21, 2019.

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

MOTION BY MR. ALDRIDGE TO ACCEPT THE DIRECTOR'S REPORT; SECONDED BY MR. BUFF; MOTION CARRIED.

ATTORNEY'S REPORT

Attorney Gray discussed the following:

CONSENT AGREEMENT, SETTLEMENT AGREEMENTS & CIVIL PENALTIES

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

The Board requested staff to re-notice Sione Atu Latu/Security On Call, LLC to appear before the December 18, 2019 Grievance Committee.

2. On August 22, 2019 Bradford Montague/United American Security, LLC entered into a Consent Agreement with the Board in the amount of \$612.00 for registration violations.

The temporary agreement was signed by QA Bradford Montague on August 21, 2019. Paid in full

3. On August 22, 2019 Gregory Stephen Smith/Deps Safety & Security Services, Inc., entered into a Consent Agreement with the Board in the amount of \$7,099.20 for registration violations. The temporary agreement was signed by QA Gregory Smith on August 21, 2019. To be paid in three monthly installments. Received first payment on September 24, 2019.
4. On August 22, 2019 Lance Adrian Jones, Sr. /Safe & Secure Worldwide Protection entered into a Consent Agreement with the Board in the amount of \$183.60 for registration violations. The temporary agreement was signed by QA Lance Jones, Sr. on August 21, 2019. Payment has not been received.

I. ADMINISTRATIVE RULES

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

The Board's rule readoptions were on the Rules Review Commission's August 16, 2018 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 an attachment to Mr. Gray's April 25, 2019 Attorney's Report and approved by the Board that day. These readoptions must now be refiled for review by the Rules Review Commission, which is being done in segments.

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, and the 11 amended rules were the first segment of the periodic Review of Rules to be filed with the Rules Review Commission.

These 11 were originally scheduled to be considered by the Commission at its September 2019 meeting but the period of review was extended due to numerous Staff Objections. All but one objection was resolved, and the remaining 10 rules were considered at the Commission's October 17, 2019 meeting and approved. They will be effective November 1st.

That one rule, 14B NCAC 16 .0804 (*see*, attachment 2), received an objection because it does not set forth the criteria to be used by the Director to determine when an additional investigation is necessary. After discussing this rule with Director Jones, we agree it is unnecessary and recommend to the Board it be repealed in lieu of addressing the objection.

c. As previously mentioned to the Board during its creation and implementation, the new Permittum on-line licensing and registration system requires changes to the corresponding sections of the Board's administrative rules. With the assistance of Registration Supervisor Shannon Thongkheuang and Licensing Supervisor, Garcia Graham, and former Board Legal Counsel Charles McDarris, Mr. Gray prepared draft rules for the necessary changes and amendments which were approved at the Board's April 25, 2019 meeting. The Notice of Text was filed on July 22, 2019 and published on the PPSB's website on July 23, 2019 and in the North Carolina Register (Vol. 34; Issue 4; August 15, 2019). The Public Hearing was held on August 30, 2019 at the Board's office, and there was one from the public in attendance. The public comment period ended on October 14th with no public comment, oral or written. A copy of these rules as amended were attached to the Attorney's report and a motion to adopt is in order. *See*, attachment 3.

MOTION BY MR. BURRIS TO ADOPT THE RULES; SECONDED BY MR. STICKL; MOTION CARRIED.

d. At the August 22nd meeting, staff requested, and the Board approved allowing applicants for licensure and registration to submit fingerprints through approved systems -- known by the most common vendor name as "Live Scan" -- in addition to a traditional fingerprint card. Mr. Gray was instructed to prepare amendments to the corresponding administrative rules for applications. A copy of these rule amendments was attached to the Attorney's report as attachment 4. A motion to approve, which will start the rule-making process, is in order.

MOTION BY MR. BURRIS TO ACCEPT THE RULE AMENDMENTS; SECONDED BY MR. BUFF; MOTION CARRIED.

e. Also, at its August 22nd meeting the Board discussed allowing firearms trainers to train independent of a licensed company. Concern was expressed that if allowed, these trainers would not be covered by the company's insurance. Mr. Gray was instructed to prepare a rule amendment that would require an "independent" firearms trainer to have the liability insurance required by N.C. Gen Stat. § 74C-10(e). That rule amendment is found in 14B NCAC 16 .0902 in Attachment 4 (along with the above.)

II. LEGISLATION

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

The Law & Rules Committee considered this new bill at its meeting on December 20, 2018. A copy was attached to Mr. 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 was introduced in the House as House Bill 630, "Private Protective Services Changes." A copy of the original version of House Bill 630 was attached to Mr. Gray's April 25, 2019 Attorney's Report.

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

A copy of House Bill 630 as it currently appears was attached to Mr. Gray's August 22, 2019 Attorney's Report.

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

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

A copy was attached to Mr. Gray's August 22, 2019 Attorney's Report.

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

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

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

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

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

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

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

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

The bill also changes the title of N.C. Gen. Stat. § 150B-21.5 of the Administrative Procedure Act (APA) to “Circumstances when notice and rule-making hearing not required; circumstances when submission to the Rules Review Commission is not required.” It amends subsection (a) to provide that an agency is not required to publish a notice of text in the North Carolina Register, hold a public hearing, or submit the amended rule to the Rules Review Commission for review (previously, did not except submission of the amended rule to the Commission for review) when the agency proposes to amend a rule to do one of the specified purposes in subsection (a). Provides changes to a few of the specified purposes for which notice, a public hearing, and submission to the Commission for review are not required, which include (1) when the rule is amended to change information readily available to the public, such as an address, telephone number, or a web site (previously, did not include a web site) and (2) when

the rule is amended to correct a typographical error (previously, correct a typographical error in the North Carolina Administrative Code). It further moves the sixth purpose excepted in subsection (a) to new subsection (a1) to provide that an agency is not required to publish a notice of text in the Register or hold a public hearing when it proposes to change the rule in response to a request or an objection by the Commission, unless the Commission determines that the change is substantial (note, not excepted from rule submission to the Commission in this circumstance). Creates new subsection (e) to require any agency that adopts or amends a rule under subsection (a) or (c) of N.C. Gen. Stat. § 150B-21.5 to notify the Codifier of Rules of its actions and directs the Codifier of Rules to make the appropriate changes to the North Carolina Administrative Code when notified of such agency action.

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

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

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

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

This bill has not seen action.

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

A copy was attached to Mr. Gray’s August 22, 2019 Attorney’s Report.

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

g. House Bill 590, “Amend Administrative Procedures Laws,” was introduced on April 4, 2019. It is best described as a condensed version of SB 305, above, and authorizes certain technical corrections by the Codifier of Rules, clarifies the provision in N.C. Gen. Stat. § 150B-2(b) regarding declaratory rulings, and amends the Periodic Review of Rules process. Following an amendment in two successive committees it passed the House on May 2nd, passed the Senate on July 9th, and was signed by the Governor on July 19, 2019. (Copy not attached.)

h. 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.)

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

A copy was attached to Mr. Gray’s August 22, 2019 Attorney’s Report.

As follow-up to instructions from the Board at its last meeting, Director Jones and Mr. Gray met with members Steve Johnson and John Aldridge, along with the Alarm Systems Licensing Board’s Chair, Wayne Woodard, to address the requirements of this bill. A suggested motion is set out in a separate memorandum addressing this bill.

i. House Bill 902, “Military-Trained/Spouse Licensure Practices,” was introduced on April 16, 2019. This bill would require the Program Evaluation Division of the General Assembly to study the extent to which the provisions of Gen. Stat. § 93B-15.1 have improved the ability of military-trained applicants and military spouses to become licensed by occupational licensing boards. The PED’s study is due to the Joint Legislative Oversight Committee on General Government and to the Department of Military and Veterans Affairs by February 1, 2020.

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

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

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

III. BOARD STATUTORY INTERPRETATION

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

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

In 2006, the Board passed a “policy” regarding Property Finders and a letter of understanding setting forth that policy was sent to the head of the Unclaimed Property Division

of the State Treasurer's Office by then-Director Terry Wright. Since that time, the application for registration has requested the Private Investigator's license number of the applicant (but it appears evident to Board staff that the State Treasurer will register a person or company without this blank on the application being filled in.)

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

Therefore, a new "Board Statutory Interpretation" was recommended to the Board, at its August 22, 2019 meeting but was not adopted; Mr. Gray was instructed to revise it in keeping with the discussion.

A copy of a revised proposed Interpretation of N.C. Gen. Stat. § 74C-3(a)(8) is attached as Attachment 5. A discussion and vote today would be in order.

MOTION BY MR. BURRIS TO ADOPT ACCEPT THE PROPOSED BOARD STATUTORY INTERPRETATION AS PRESENTED BY MR. GRAY; SECONDED BY MR. STICKL; MOTION CARRIED.

MOTION BY MR. PITMAN TO ACCEPT THE ATTORNEY'S REPORT; SECONDED BY MR. RUSSELL; MOTION CARRIED.

MOTION BY MR. JOHNSON TO ADJOURN; SECONDED BY MR. STEPHENS; MOTION CARRIED.

11:24 A.M. Adjourned

Brian R. Jones, Director

Garcia Graham, Board Secretary