

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 DOJ 00909

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| Franklin Jones Jr Petitioner, v. NC Private Protective Services Board Respondent. | PROPOSAL FOR DECISION |
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THIS CONTESTED CASE came on for hearing before the Honorable Melissa Owens Lassiter, Administrative Law Judge, on May 24, 2022, at the NC Office of Administrative Hearings in Raleigh, Wake County, North Carolina after Respondent requested, pursuant to N.C.G.S §150B-40(e), designation of an Administrative Law Judge to preside at a contested case hearing under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

For Petitioner: George V. Laughrun, II
Goodman, Carr, Laughrun, Levine & Greene, PLLC
Attorney for Petitioner

For Respondent: Jeffrey P. Gray
Bailey & Dixon, LLP
Attorney for Respondent

ISSUE

Whether Respondent's Order of Summary Suspension of Petitioner's Armed Proprietary Security Guard Registration should be upheld on the grounds that (1) Petitioner had been charged with misdemeanor Assault Inflicting Serious Injury under N.C.G.S. §14-33(c)(1), (2) Petitioner lacked good moral character, and (3) Petitioner is or will be a threat to the public's health, safety, and welfare?

OFFICE NOTICE OF APPLICABLE STATUTES AND RULES

N.C. Gen Stat. § 150B-3(c)
N.C. Gen. Stat. §§ 74C-6 and 74C-12(a)(9) & (25)
14B NCAC 16 .0100 *et seq.*

WITNESSES

For Petitioner: Petitioner Franklin Jones
 Phillip Holliday

For Respondent: Paul Sherwin, Director of Respondent Board (“PPSB”).

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner:

1. Novant Health Use of Force Policy (NH-EC-SE-120)
2. Novant Health Use of Force Policy (NH-EC-SE-500)
3. Timeline of Events
4. Calls for Service at 200 Hawthorne Lane (2/7/2022 – 2/9/2022)
5. Original Incident Report
6. Photo from 2/8/2022 at 23:00:20
7. Photo from 2/8/2022 at 23:10:55
8. Photo from 2/8/2022
9. Photo from 2/8/2022 at 23:11:26
10. Photo from 2/8/2022 at 23:11:33
11. Novant Health Incident Report
12. Video of Incident
13. Paul Register Statement (Novant Employee)
14. Sgt. William Hartung Statement (CMPD)
15. Barbara Colon Statement (Novant Employee)
16. Photo of blonde patient trashing steel rod from floor
17. Photo of unidentified (due to masks) CMPD Officers on scene
18. Sam Colston Statement with photos (Public Safety Officer)
19. Jonathan Peguese Statement with photos (Public Safety Officer)
20. Shayla Bennett Statement (Novant Phlebotomist)
21. Medina Sylver Statement (Novant CAN)
22. Revyn Raymind Criminal Record
23. DVPO against Revyn Raymind
24. Franklin Jones, Jr. letters and awards
25. Phillip Holliday Statement and letters

Petitioner’s Exhibits 13-15 are admitted not for the truth of the matter asserted but to corroborate witness testimony at hearing and to support witness credibility.

For Respondent:

1. Warrant for Arrest, Incident/Investigators Report and Arrest Report.
 (Admitted without objection)

2. Respondent's March 10, 2022 letter to Petitioner regarding Administrative Hearing, Notice of Hearing and Order for Summary Suspension of Armed Security Guard Registration. (Admitted without objection)

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, the video evidence received and admitted into evidence, and the entire record in this proceeding, the Undersigned finds as follows:

Background Facts

1. Respondent Board (Respondent or the Board), an agency of the State of North Carolina, was created by N.C. Gen. Stat. § 74C-1, *et. seq.*, and is charged with the duty of licensing and registering individuals engaged in the armed and unarmed security guard and patrol business or as a proprietary security organization employing armed security guards.

2. Pursuant to N.C. Gen. Stat § 74C-12, "The Board may, after compliance with Chapter 150B of the General Statutes, deny, suspend, or revoke a license or registration issued under the Chapter if it is determined that the...registrant...has...:

Demonstrated intemperate habits or a lack of good moral character. The acts that are prima facie evidence of intemperate habits or lack of good moral character under G.S. 74C-8(d)(2) are prima facie evidence of the same under this subdivision.

N.C. Gen. Stat. § 74C-12(a)(25).

3. Respondent Board may also "[c]onduct investigations regarding alleged violations" of Chapter 74C or the Board's rules by its licensees, registrants, and certificate holders and punish misconduct by suspending or revoking the violator's license. N.C. Gen. Stat. §§ 74C-5(3) and (6).

4. In addition, N.C. Gen. Stat. § 74C-6 establishes the position of the Board's Director and provides that the Director shall administer the directives contained in the Private Protective Services Act and the rules promulgated by the Board to actively police the industry.

5. Petitioner holds an armed proprietary security guard registration with Respondent with an expiration date of May 31, 2022. Petitioner is employed by Novant Health located at 200 Hawthorne Lane in Charlotte, NC, a proprietary organization pursuant to N.C. Gen. Stat. § 74C-3(b)(13), N.C. Gen. Stat. § 74C-13(a1)(3) and 14B NCAC 16 .0103(13). Petitioner Jones has no prior disciplinary history imposed by

Respondent Board or by any of his former employers. He had never been charged with a crime before March 2, 2022.

6. On March 2, 2022, Petitioner was arrested by the Charlotte Mecklenburg Police Department and charged with Assault Inflict Serious Injury on February 8, 2022, in violation of N.C.G.S. § 14-33(c)(1), which provides “Inflicts serious injury upon another person or uses a deadly weapon.” Resp. Ex. 1, Warrant for Arrest, p.1.

7. Petitioner’s Warrant for Arrest and Conditions of Release and Release Order found there was probable cause to believe that Petitioner unlawfully and willfully assaulted and struck Revyn Tremaine Raymind about the face and body with a closed fist, inflicting serious injury of extensive swelling and bruising to Raymind’s face, neck, and head, lacerations to the mouth, bleeding from the nose and mouth, and loss of consciousness on February 8, 2022. Resp. Ex. 1.

8. Respondent’s Director Paul Sherwin received information that Petitioner had been criminally charged with the misdemeanor Assault Inflict Serious Injury. Director Sherwin received a copy of the Warrant for Arrest.

9. By Order issued March 10, 2022, Director Sherwin, on the Board’s behalf, summarily suspended Petitioner’s Armed Proprietary Security Guard Registration, pursuant to N.C.G.S. 150B-3(c) based “upon the Findings of Fact showing that the public health, safety, and welfare will be jeopardized if Mr. Jones is allowed to continue in his role as an Armed Security Guard for Novant Health.” Resp Ex. 2, p. 2, Order of Summary Suspension. In the Order of Summary Suspension, Director Sherwin found that:

6. . . . Mr. Jones was criminally charged with the misdemeanor Assault Inflicting Serious Injury in Mecklenburg County, North Carolina.

7. This charge arises out of an on-duty use-of-force incident at Novant Health Presbyterian Medical Center on February 9, 2022 [sic].

8. The facts underlying the charge indicates a lack of good moral character.

9. Mr. Jones’ charge has not been adjudicated in criminal courts in Mecklenburg County.

Resp. Ex. 2, p. 2. In issuing the Order of Summary Suspension, Director Sherwin relied solely on the Warrant for Arrest documents and opined at hearing that the Warrant for Arrest alone was sufficient to issue the Order of Summary Suspension. Director Sherwin did not recall if he received a copy of the Charlotte-Mecklenburg Police Incident Report, and he didn’t talk to any staff from Novant Health about whether there was a question of public safety during the February 8, 2022 incident.

10. Respondent served on the Petitioner, via certified mail, the March 10, 2022 Order of Summary Suspension, and a Notice of Hearing that this contested case was to be heard on May 24, 2022 in the Office of Administrative Hearings, Raleigh, Wake County, North Carolina.

11. With consent of all parties, the evidence in response to the agency's showing was offered jointly for this matter and a companion case, *N.C. Private Protective Services Board v. Phillip David Holliday*, 22 DOJ 00908. See N.C. Gen. Stat. § 150B-38(g).

Adjudicated Facts at Contested Case Hearing

12. Novant Health is one of the largest hospitals in Charlotte, Mecklenburg County, North Carolina.

13. During February 2022, COVID cases in the emergency room and the involuntary commitment section of Novant Health were at an all-time high. Numerous patients did not have bed spaces or rooms and were forced to be housed in the hallway until medical treatment could be provided.

14. Petitioner worked as an armed proprietary security guard at Novant Health at 200 Hawthorne Lane, Charlotte, North Carolina during the third shift from 6:00 pm on February 8, 2022 until 6:00 am on February 9, 2022. Several other Public Safety Officers employed by Novant Health also worked third shift.

15. Around 7:35 pm on February 8, 2022, patient, Revyn Tremaine Raymind (the Patient) was brought into the involuntary commitment section of Novant Health for a psychiatric evaluation. During the hospital staff's attempted triage of the Patient, the Patient refused to answer questions, have his vital signs taken, or give up his personal belongings. Thereafter, the Patient was placed in a waiting area of a hallway for several hours awaiting designation to a treatment room.

16. While the subject Patient sat in the hallway area, hospital staff members complained on numerous occasions not only to the Petitioner, but to other Public Safety Officers about the Patient's vulgar language, threats, allegations of violence toward staff and other patients.

17. The Tribunal viewed the security camera video footage from Novant Health of the February 8, 2022 incident in question (Petitioners' Exhibit 12), and still photographs taken from the video which had handwritten labels identifying the Novant Health Public Safety Department officers who were present during the February 8, 2022 incident. Pet Exs 6 through 10. The undersigned also considered a timeline for the video, including incidental notes for the following day (Petitioners' Exhibit 3), Charlotte Mecklenburg Police Department's (CMPD) call-for-service log (Petitioners' Exhibit 4), the CMPD Incident Report (Petitioner's Exhibit 5) and the Novant Health Incident Report and Supplements

(Petitioners' Exhibits 11 through 15), all admitted into evidence. The Tribunal also reviewed Petitioners' Exhibits 1 and 2, showing Novant Health's Use of Force Policy.

18. Around 22:31:58 (10:31 pm), the video showed the Patient sitting in the hallway waiting area of the Emergency Room, awaiting his psychiatric evaluation for the involuntary commitment. He is interacting with a blonde-hair lady to his left who is also waiting to be involuntarily committed. The Patient becomes visibly more agitated over time, standing up, fidgeting, and making comments to passersby.

19. Petitioner as well as five other armed proprietary security guards present were dressed in Class B uniforms that had identification showing they were Novant Health Public Safety Officers.

20. At 10:58 pm, the Novant Health Public Safety Officers were alerted to a disturbance in the Emergency Room's hallway and began assembling near the Patient in the hallway. One or two Public Safety Officers begin interacting with the Patient. The blonde-hair lady seated to the Patient's right appears to be encouraging his disruptive behavior.

21. Around 10:59 pm, the Patient becomes more disruptive, aggressive, and threatening. At 11:08 pm, the Patient takes off a knee brace and removes a long, slender black metal object from the knee brace. One officer observes the metal object and unholsters his O.C. pepper spray, extends his arm and hand, but does not deploy or use his O.C. spray. At 11:10 pm, the Patient conceals the metal object behind his leg and becomes more combative. The Novant security officers move in to secure the Patient's wrist and arms to physically assist and escort the Patient to a seclusion room. Petitioner gestured toward his waist, sprang from his chair, and struck Petitioner Jones with a closed fist on Petitioner's left side of his face. Other officers secured the Patient and escorted him to a seclusion room.

22. On February 9, 2022, Novant Health Public Safety Officer Barbara Colon located a black knee brace and a black metal piece in the belongings of the blond-hair patient who sat next to the Patient during the subject incident on February 8, 2022. Resp Ex 11; Pet Exs 20-21.

23. Petitioner Jones testified at the contested case hearing. Petitioner has worked for Novant Health for three years. He served in the U.S. Army beginning in 1998, then worked for the South Carolina Department of Corrections as a correctional officer, the North Carolina Department of Correction as a correctional officer and the Mecklenburg County, North Carolina Sheriff's Office as a detention officer. As an officer, Petitioner has handled violent inmates housed in the N.C. Department of Corrections facilities.

24. The undersigned finds Petitioner Jones' testimony credible, honest, and trustworthy.

25. Up until a recent policy change, Charlotte-Mecklenburg Police Department left involuntary commitment patients in the custody of the hospital security once the patient's paperwork was verified.

26. Typically, there are 11 Public Safety Officers on duty at Novant Health's hospital on each 12-hour shift. Petitioner's testimony established that on the night in question, February 8, 2002, Novant Health was very busy. A call went out on the radio that "officer needs assistance; patient disruptive." Petitioner Jones arrived on the scene where the Patient, other patients awaiting involuntary commitment admissions, and other officers were already present. He observed the Patient then left the scene for a short period to deal with another disruptive patient.

27. In describing the scene in the security camera video, Petitioner explained how other security officers attempted to deescalate the situation and described the situation as "up and down." The Patient was in the hallway and appeared to have a knee brace on his left knee. Officers tried to speak with the Patient to deescalate the situation and obtain his voluntary compliance. At least six (6) officers attempted to obtain the Patient's voluntary compliance.

28. While speaking with the Patient, another security officer drew his pepper spray but did not fire the spray due to the location of other patients in close proximity and because many of those patients in the emergency room had breathing or lung issues due to COVID.

29. During the encounter, the Patient cursed and threatened to harm everyone he saw including law enforcement.

30. When Petitioner returned to the scene, he noticed the Patient was "layering up," a prison guard term for inmates who begin putting on layers of clothing for protection in anticipation of a fight. The public was present in the hallway in addition to doctors, nurses, and other staff.

31. The officers explained to the Patient that they wanted him to walk with them to a seclusion room, but the Patient refused. The Patient removed his knee brace, took a black metal object from the brace, and held it in a manner to potentially assault or harm the officers. The Patient became violent and attempted to use a weapon on several security officers and threatened the officers with physical harm. As Petitioner Jones attempted to gain control of the Patient's right arm, the Patient hit Petitioner Jones in the face with a closed fist. The Public Safety Officers finally controlled the Patient and took the Patient to a seclusion room for further evaluation by medical staff. On the way to the seclusion room, the Patient dropped the black metal object on the floor.

32. There was some evidence that the Patient suffered lacerations to the face and upper lip with active bleeding, there was no evidence the Patient suffered severe injuries and/or lost consciousness as a result of the February 8, 2022 incident. Petitioner's Exhibit 3.

33. Petitioner Jones' hand was cut during the altercation, began bleeding, and required medical attention.

34. Further evidence at hearing showed that there was a Charlotte-Mecklenburg Police Officer in the vicinity of the February 8, 2022 incident but that Officer did not feel the need to get involved or file any type of incident report.

35. The Patient has extensive criminal history with numerous acts of violence against not long law enforcement, but civilians as well. See Pet Ex 22.

36. When the Patient was being released from Novant Health hospital, he left through the same emergency room exit. The Patient recognized one of the hospital staff who was present in the hallway during the incident and threatened to come back and kill the staff member. A few hours later, the Patient filed a police report against Petitioner Jones with the Charlotte-Mecklenburg Police Department.

37. Petitioner presented character letters on his behalf from the Chief of Novant Health Public Safety, its Director of Operations, the Assistant Nurse Manager and three other healthcare workers who commended him personally and as a Public Safety Officer and who stated Petitioner was not a danger to the public health, safety, or welfare. See Petitioner's Exhibit 24. Included in Petitioner's Exhibit 24 were also a Certificate of Completion for Crisis Intervention Training and numerous commendations by Petitioner's previous employers.

38. Officer Phillip Holliday holds an armed proprietary security guard registration with Respondent, is employed with Novant Health, and assisted other security guards on February 8, 2022 during the incident involving the Patient. Officer Holliday was also criminally charged with the misdemeanor Assault Inflict Serious Injury of the Patient from the February 8, 2022 incident. Respondent also issued an Order of Summary Suspension of Holliday's armed proprietary security guard registration for the same reasons Respondent summarily suspended Petitioner Jones. Officer Holliday filed a contested case petition, 22 DOJ 0908, appealing such Order of Summary Suspension.

39. At the time of the Order of Summary Suspension, and at the time of this hearing, the criminal charges against Petitioner Jones and Officer Holliday had not been adjudicated in criminal court.

40. Officer Holliday's testimony during this contested case hearing was credible, honest, and trustworthy. Such testimony corroborated Petitioner Jones' testimony of the events involving the Patient at Novant Health on February 8, 2022.

41. Officer Jones did not know why he, Officer Holliday, and a third officer, Officer Santiago, were the only three Public Safety Officers charged based on the February 8, 2022 incident. After Petitioners Holliday and Jones learned they were charged criminally, they called their supervisor and turned themselves in to local law enforcement.

42. There was no credible evidence presented at hearing that Petitioner willfully assaulted and struck the Patient about the face and body with a closed fist. There was no evidence that the Patient suffered serious injury of extensive swelling and bruising to the face, neck, and head, or suffered a loss of consciousness.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings, and the Office of Administrative Hearings has subject matter and personal jurisdiction over this case and the parties.

2. Under N.C. Gen. Stat. § 74C-6, the Board's Director shall carry out all duties necessary to actively police the private protective services industry and has been authorized by the Board to summarily suspend any license, registration, permit or certificate if warranted pursuant to N.C. Gen. Stat. § 150B-3(c).

3. Pursuant to N.C. Gen. Stat. § 150B-3, Respondent Board has the authority to summarily suspend an armed guard registration if it finds that the public health, safety, or welfare requires emergency action. The Board must find that the public health, safety, or welfare requires emergency action and incorporate such finding in its Order of Summary Suspension.

4. Under N.C. Gen. Stat. § 74C-12(a)(9), Respondent Board may suspend or revoke a registration if it determined that the licensee, registrant or permit holder has committed an assault.

5. Under N.C. Gen. Stat. §74C-12(a)(25), Respondent Board may suspend or revoke a registration if it determined that the licensee, registrant, or permit holder has demonstrated intemperate habits or lacks good moral character. "The acts that are prima facie evidence of intemperate habits or lack of good moral character under G.S. 74C-8(d)(2) are prima facie evidence of the same under this subdivision."

6. N.C. Gen. Stat. § 74C-9(d)(2) states in pertinent part that convictions involving firearms, controlled substances, felonious assault or act of violence, unlawful breaking or entering, burglary, larceny, or any offense involving moral turpitude, or a history of addiction to alcohol or a narcotic drug is prima facie evidence that an applicant, or licensee, registrant, or permit holder does not have good moral character; provided that, for purposes of this subsection, "conviction" means and includes the entry of a plea of guilty or no contest or a verdict rendered in open court by a judge or jury. N.C. Gen. Stat. § 74C-9(d)(2) and 74C-12(a)(25).

7. Respondent has the burden of proving that Petitioner being charged with misdemeanor Assault Inflicting Serious Injury justified the Board taking emergency action and summarily suspending Petitioner's armed proprietary security guard registration to protect the public health, safety, or welfare.

8. The evidence presented at hearing established that on February 8, 2002, Petitioner held an armed proprietary security guard registration with Respondent, and was employed by Novant Health in Charlotte, NC, a proprietary organization pursuant to N.C. Gen. Stat. § 74C-3(b)(13), N.C. Gen. Stat. § 74C-13(a1)(3) and 14B NCAC 16 .0103(13). Petitioner Jones had no prior disciplinary history by Respondent Board or by his former employers and had never been criminally charged before this matter.

9. On March 2, 2022, Petitioner was arrested by the Charlotte Mecklenburg Police Department and charged with Assault Inflict Serious Injury on the subject Patient for “unlawfully and willfully assaulted and struck Revyn Tremaine Raymind about the face and body with a closed fist, inflicting serious injury of extensive swelling and bruising to Raymind’s face, neck, and head, lacerations to the mouth, bleeding from the nose and mouth, and loss of consciousness” on February 8, 2022 in violation of N.C.G.S. § 14-33(c)(1). Resp. Ex. 1, Warrant for Arrest, p.1.

10. The Board’s Director, Paul Sherwin, found that by Petitioner being charged with an Assault Inflict Serious Injury, Petitioner lacked good moral character and based on those grounds, the Board was entitled to summarily suspend Petitioner’s armed proprietary security guard registration pursuant to N.C.G.S. §§ 74C-12(a)(5).

11. The video footage in Petitioner’s Exhibit 12 shows that around 22:31:21 (10:31 pm) on February 8, 2022, Petitioner, along with five other Public Safety Officers, attempted to de-escalate the Patient who was extremely agitated and violent, was pacing the hospital halls in an aggressive manner, and threatening not only Novant Health staff but other patients, who like the Patient, were waiting to be involuntary committed to Novant Health on February 8, 2022. After the Patient became more agitated, he removed his knee brace and pulled out a black metal object from the knee brace. One officer saw the Patient with a metal object, and aims, but does not use his pepper spray toward the Patient. Petitioner and the other safety officers attempt to control the Patient’s extremities. The Patient strikes violently at several officers, including Petitioner, until the Patient is placed in a physical hold by the officers who then escort the Patient to a seclusion room.

12. Under North Carolina Law, an officer or any individual is entitled to use self-defense if they have a reasonable belief of harm about to be inflicted upon them by an individual. The Tribunal also concludes that officers have a duty to not only defend themselves, but other patients who are in the care, custody and control of the hospital seeking medical attention in the emergency room setting.

13. The substantial evidence at hearing proved that Petitioner was acting in self- defense under North Carolina Law during the February 8, 2022 incident involving the Patient and did not commit an Assault Inflicting Serious Injury on the Patient as described in the Warrant for Arrest cited above.

14. Furthermore, the substantial evidence at hearing demonstrated that Petitioner is not a threat to the public health, safety, or welfare and this isolated incident that does not reflect poorly on Petitioner’s character. The Board has not taken any prior

disciplinary action against Petitioner's armed proprietary security guard registration. The character letters in support of Petitioner demonstrate that Petitioner possesses the good moral character required to retain his armed proprietary security guard registration.

15. Respondent Board failed to present sufficient, much less substantial evidence, to supports its Order of Summary Suspension of Petitioner's Armed Proprietary Security Guard Registration.

PROPOSAL FOR DECISION

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the Undersigned hereby recommends that the Board **RESCIND** its Summary Suspension of Petitioner's Armed Security Guard Registration and grant Petitioner's reinstatement thereof.

NOTICE AND ORDER

The **North Carolina Private Protective Services Board** will make the Final Decision in this contested case. As the Final Decision marker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C.G.S. § 150b-40(e).

IT IS ORDERED that the agency shall serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina 27699-6700. Moreover, the agency shall also serve a copy of its Final Decision upon each party by one of the methods for service of process under N.C.G.S. § 1A-1, Rule 5(b). A copy shall also be furnished to each party's attorney of record. N.C.G.S. § 150B-42(a).

This the 14th day of June, 2022.



Melissa Owens Lassiter
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service.

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This the 14th day of June, 2022.



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