

BEFORE THE
THE BUREAU OF SECURITY AND INVESTIGATIVE SERVICES
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

HERRINGTON GROUP & ASSOC.
GREGORY B. HERRINGTON, SR & ANA
BRIANCHRSCO, PARTNERSHIP OWNER

Respondent.

Case No. A1 2015 1105

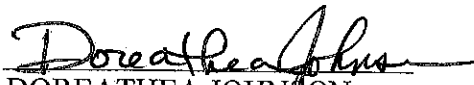
OAH No.2015110107

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the
Director, Department of Consumer Affairs, as the Decision in the above-entitled matter.

The Decision shall become effective on January 9, 2017.

DATED: Dec 2, 2016


DOREATHEA JOHNSON
Deputy Director
Division of Legal Affairs
Department of Consumer Affairs

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GREGORY B. HERRINGTON, SR., and
ANA BRIANCHESCO, Partnership Owners,

Respondents.

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PROPOSED DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 24, 2016, in San Diego, California.

Stephen A. Aronis, Deputy Attorney General, Department of Justice, represented complainant, Clarisa Serrato-Chavez, Deputy Chief, Bureau of Security and Investigative Services, Department Of Consumer Affairs, State of California.

David D. Queen, Attorney at Law, represented respondent, Gregory Herrington, Sr.

David Horton, Attorney at Law, represented respondent, Ana Brianchesco.

The matter was submitted on October 24, 2016. On October 26, 2016, Mr. Herrington filed a motion to submit an additional exhibit into evidence. Complainant did not oppose the motion. The record was reopened and the exhibit was received and marked as Exhibit B.

SUMMARY

Respondents sought the issuance of a private investigator license. To support their application, respondents submitted to the bureau several signed forms to verify the experience of Gregory Herrington, Sr., respondents' qualifying manager. The bureau issued a private investigator license to respondents.

Before the license was issued, Mr. Herrington did not contact his prior employers and have them complete and sign the qualifying forms as directed. Instead, he circumvented the

application process by completing the qualifying forms himself and forging the signatures of Allen Eley and Steve Hobb, individuals with whom he had worked previously in law enforcement. Neither Mr. Eley nor Mr. Hobb knew Mr. Herrington forged their signatures.

The bureau conducted an investigation and Mr. Herrington's forgeries came to light. Mr. Herrington's misconduct involved dishonesty, fraud, and deceit. In a letter written by Mr. Herrington in response to the bureau's letter of inquiry, respondents continued the initial deception by representing that Mr. Eley and Mr. Hobb had signed the forms when, in fact, Mr. Herrington had forged their signatures. When the fact of Mr. Herrington's forgery of the signatures of others was proven, respondents argued the misconduct was minor because Mr. Herrington possessed the law enforcement experience required to hold a private investigator license.

While Mr. Herrington expressed minimal contrition for his behavior, admitting that he should have done things differently, he expressed no real remorse. He blamed others, minimized his wrongdoing, and failed to appreciate the gravity of his misconduct. His notion that there was no fraud because he possessed required qualifying experience evidenced a profound failure to comprehend the seriousness of his misconduct and an arrogant disregard of the bureau's licensing process.

Licensed private investigators must be honest and must act ethically in their interactions with clients, witnesses, the general public, regulatory agencies, and the judicial system. Mr. Herrington's conduct in this matter is wholly inconsistent with the honesty and ethical behavior expected of a licensed private investigator. Public protection requires that respondents' private investigator's license be revoked.

FACTUAL FINDINGS

Background

1. On January 22, 2015, the bureau issued Private Investigator License Number PI 28903 to respondents Mr. Herrington and Ms. Brianchesco, a partnership doing business as Herrington Group & Associates. Mr. Herrington is the qualified manager.
2. On October 6, 2015, complainant signed the accusation in case number A1 2015 1105. Complainant alleged that respondents provided attachments with forged signatures to support the issuance of the private investigator license. Complainant requested revocation of the license and cost recovery.¹

¹ On June 22, 2016, complainant signed the statement of issues in case number 1A 2015 20827 in connection with Mr. Herrington's and Ms. Brianchesco's application for a Private Patrol Operator License. As cause for denying the application for that license, complainant alleged the same factual grounds. The cases were consolidated for hearing.

The Bureau's Investigation

3. On January 23, 2015, the bureau received a complaint against Mr. Herrington made by Allen Eley, a licensed private investigator. The complaint alleged that Mr. Herrington, before he was licensed, used Mr. Eley's private investigator license number on his own business cards. The bureau assigned the complaint to Laura Jestes, a bureau enforcement analyst, who testified at the hearing. Ms. Jestes noted that the complaint was filed one day after respondents became licensed as a private investigator. Based on the recent licensure of respondents, Ms. Jestes reviewed respondents' license application.

RESPONDENTS' PRIVATE INVESTIGATOR APPLICATION

4. On November 10, 2014, the bureau received respondents' application for a private investigator license. Mr. Herrington and Ms. Brianchesco each signed the application, certifying under the penalty of perjury that all "information contained on the Application for License and any accompanying documents is true and correct"

5. An applicant for a private investigator license, or its qualified manager, must have had at least three years' experience in investigation work. (Bus. & Prof. Code, § 7541.) An applicant must substantiate the claimed years of qualifying experience and the exact details as to the character and nature thereof by written certifications from the employer. (*Ibid.*) Only an employer, or his or her designated agent, may certify experience for purposes of this section. (*Ibid.*)

6. As part of the application for a private investigator license, an applicant must submit bureau Form 31B-8 titled "Private Investigator Qualified Manager Qualifying Experience." The form contains the following statement printed immediately below the title:

The information on this form is used to determine experience qualifications of applicants for licensure and is requested pursuant to California Business and Professions Code section 7541 and 7541.1. One form must be completed by each person (declarant) who is certifying the applicant's experience. **The declarant section of the form must be completed by someone other than the applicant who has knowledge of the work experience claimed by the applicant. Use a separate form for each employer.** (Emphasis in original)

The form contained two sections, the first to be completed by the applicant and the second to be completed by the declarant. The declarant section contained a bold and underlined statement that the section was to be completed by the declarant. These

Complainant requested separate decisions be issued in the matters. (Cal. Code Regs., tit. 1, § 1016, subd. (d).)

instructions were also contained in a separate instruction sheet attached to the private investigator application.

7. Respondents submitted two forms listing the experience of the qualifying manager, Mr. Herrington. Each form was a Form 31B-8. The first listed Mr. Herrington's employment as Chief of Police at the McFarland Police Department (McFarland PD) from November 2009 to July 2014. The city manager was listed as Mr. Herrington's supervisor. Allen Eley was the declarant who certified the experience. Mr. Eley's employer was listed as Research Protection Group, with a bureau license number. A checkbox on the form indicated Mr. Eley was Mr. Herrington's former supervisor.² The form requested the declarant list the applicant's duties. The following description was provided:

Executive management of the McFarland Police Department. I was responsible for the management of the day to day operations of all divisions of the department. I was responsible for the coordination of of [sic] law enforcement activities and services with the community of McFarland. I was responsible for all investigative activities of the department. All investigations were forwarded through administration for investigative approval.

Immediately above the declarant's signature line the form stated, "Only an employer or his or her designated agent may certify the investigative experience by the applicant. The undersigned hereby declares under penalty of perjury, under the laws of the State of California, that all statements contained herein are true and correct." The certification contained a signature that purported to be Mr. Eley's signature. The certification was dated August 5, 2014.

8. The second Form 31B-8 that accompanied respondents' application listed Mr. Herrington's employment as a Detective Sergeant with the Banning Police Department (Banning PD) from February 2004 to October 2009. Lt. Phil Holder was listed as Mr. Herrington's supervisor. Steve Hobb was the declarant who certified Mr. Herrington's experience. Banning PD was listed as his employer. A checkbox on the form indicated Mr. Hobb was Mr. Herrington's former supervisor. Like the other Form 31B-8, the description of duties was written in the first person of the applicant, rather than the declarant, and described the duties of a supervisor in the detective bureau. The certification contained a signature that purported to be Mr. Hobb's signature and listed his title as a police corporal. The form was also dated August 5, 2014.

9. Ms. Jestes noted that Mr. Eley, who had filed the complaint against Mr. Herrington, had been one of the declarants certifying Mr. Herrington's experience. Because Mr. Eley was a licensed private investigator, she compared Mr. Eley's signature in his

² The checkbox options were: present employer, former employer, present supervisor, former supervisor, and other (requesting an explanation in the comments section).

license application to the signature contained on the Herrington Form 31B-8. The two signatures did not match. Ms. Jestes contacted Mr. Eley to discuss the matter. Mr. Eley informed Ms. Jestes that he never signed a certification for Mr. Herrington. After being shown a copy of the certification, Mr. Eley confirmed that the signature on the form submitted by respondents was not his signature. Ms. Jestes prepared a declaration that Mr. Eley signed stating that he had never seen the form and had not signed the document.

10. On February 26, 2015, Ms. Jestes called Mr. Hobb, who was at the time a police officer with Banning PD. Mr. Hobb confirmed that while he worked with Mr. Herrington at Banning Police, he was not Mr. Herrington's supervisor. When Ms. Jestes asked him if he signed a certification for Mr. Herrington, Mr. Hobb responded that he had not signed a document verifying Mr. Herrington's experience. Ms. Jestes prepared and sent Mr. Hobb a declaration stating that Mr. Hobb had not signed the Form 31B-8. She requested Mr. Hobb sign and return that document. Mr. Hobb did not immediately return the declaration or respond to Ms. Jestes's phone calls. Ms. Jestes believed that Mr. Hobb was reluctant to return the declaration because he was Mr. Herrington's friend and did not want him to get into trouble. However, on April 1, 2015, Ms. Jestes received Mr. Hobb's signed declaration. Ms. Jestes testified that at no time did Mr. Hobb inform her that he had ever authorized Mr. Herrington to sign or submit the form on his behalf.

11. On February 26, 2015, Ms. Jestes sent respondents a letter notifying them of the bureau's investigation. On March 10, 2015, Mr. Herrington and Ms. Brianchesco submitted a signed letter in response to the bureau's letter.³ The letter stated that it was Mr. Herrington's understanding that anyone other than the applicant could certify his experience. He wrote that he did not intend to deceive the bureau, but misunderstood who was authorized to complete the certification. Mr. Herrington noted that based on his numerous years in law enforcement that clearly provided the required hours of experience, he had no reason to deceive the bureau in the application process. The letter further stated, "As observed in my application, I submitted two **31B-8 (Rev. 03/2013)**," forms, one signed by **Allen Eley** and the other signed by **Steven Hobb**. I used the two declarants because they were knowledgeable as to my time in the given investigative positions and my experiences." (emphasis in original.) The letter further stated that Mr. Herrington did not misrepresent their positions as supervisors or employers, and asserted he correctly listed his supervisor at each department.

Mr. Herrington represented that he used Mr. Eley as a declarant because the two worked together at Banning and McFarland Police Departments. Mr. Herrington claimed that as Chief of Police, his supervisor was the city manager.

I personally knew City Manager, John Wooner (Supervisor) is a civilian and has no real ideas [sic] or understanding in determining my level of investigative experience. He would not

³ Although the letter was signed by both Mr. Herrington and Ms. Brianchesco, Mr. Herrington was the author.

be capable of sufficiently expressing the needed verbiage for certification on [the] application. It was my respectful intention to assist the application process with information I knew BSIS could easily verify. Allen Eley, being a short tenured detective for the MPD, did observe my experiences first-hand, but did not know all my qualifications. It was my respectful intention to only assist the process by writing "first-hand," in case Mr. Wooner was ever contacted, as expressed in my application to BSIS for certification.

Likewise, Mr. Herrington wrote that he used Mr. Hobb to certify his experience because Mr. Hobb was "the only other person truly capable of certifying my positional experiences at the BPD, at the time of my application." The past chief of police was no longer employed at Banning PD and the former supervisor over investigations was deceased. Mr. Herrington noted that the patrol supervisor, Lt. Holder, could not properly "express the needed verbiage for certification."

The letter also addressed the bureau's assertion that it received a declaration from Mr. Eley stating he had never seen nor signed the form. In response, Mr. Herrington wrote, "in response to that, I do feel I understand Mr. Eley's intentions and I forgive him for that." Mr. Herrington then went on to explain that he felt that the bureau would not have issued a license without verifying the contents of the certification with the declarant. He wrote, "If Mr. Eley had not indeed verified this form as declared (attached to my application), I'm very sure the state would have requested more information *before* issuance." (emphasis in original.) Mr. Herrington wrote that he and Mr. Eley entered into a partnership to form Research Protection Group on September 8, 2014; however, the partnership dissolved on October 1, 2014, due to "administrative matters." The letter suggested that Mr. Eley became infuriated with Mr. Herrington when Mr. Herrington began to solicit business from former Research Protection Group customers. In this regard, he wrote, "I believe this may be the issue which led him to sign a declaration omitting he ever had knowledge or signed my '31B-8 (Rev. 03/2013)' form for certification"

Application for Private Patrol Operator License

12. On January 12, 2015, the bureau received respondents' application for a private patrol operator (PPO) license. Both Mr. Herrington and Ms. Brianchesco signed the application.⁴ Like the private investigator license, the PPO license required the qualified manager, Mr. Herrington, have 2,000 hours of relevant experience. The qualifying experience was to be set forth on a Form 31A-8, titled "Private Patrol Operator Qualified Manager Qualifying Experience." Respondents submitted two of these forms with their application. One was purportedly signed by Mr. Hobb, certifying Mr. Herrington's

⁴ The application was dated January 5, 2014. As the application was received by the bureau on January 12, 2015, it appears that the application was signed in 2015.

experience with Banning PD. Respondents also submitted a form purporting to be completed by Sgt. Michael Weber, an employee of the McFarland PD. This form was also dated January 5, 2014, and it bore a signature purporting to be that of Sgt. Weber. However, unlike the forms submitted in conjunction with the private investigator application, the description of Mr. Harrington's duties was set forth in the third person.

13. George Paddeck is a bureau enforcement manager who was assigned to review the PPO application. Mr. Paddeck contacted Mr. Hobb on March 15, 2016, and verified that Mr. Hobb did not sign either the PPO or the private investigator forms. Mr. Hobb did not say anything to Mr. Paddeck that indicated he had authorized Mr. Herrington to sign or submit either form on his behalf.

Testimony of Allen Eley

14. Allen Eley has been a bureau-licensed private investigator since 2014 and owns his own company, Research Protection Group. Prior to becoming licensed, he worked under another private investigator's license from 2012 to 2014. From 2011 to 2012, he was a detective with McFarland PD, where Mr. Herrington was the chief. Mr. Eley testified he resigned from McFarland PD for medical reasons. He was also a police officer with Banning PD for approximately six years, from 2005 to 2010. He worked with Mr. Herrington when he was employed by Banning PD, but never under Mr. Herrington's supervision. He said he voluntarily resigned from Banning PD.

15. In October 2014, Mr. Eley and Mr. Herrington entered into a partnership agreement to operate Research Protection Group.⁵ Mr. Eley was the president and managing partner, Mr. Herrington was vice-president. Mr. Eley understood at the time that Mr. Herrington would be applying to obtain his own private investigator license. The business and personal relationship between the two quickly broke down when Mr. Eley discovered business cards bearing the name Herrington Group & Associates listing Mr. Eley's private investigator license number. Mr. Eley was not clear on when this happened, but it was soon after the partnership formed. The working relationship quickly dissolved, and Mr. Eley terminated the partnership.

16. As soon as Herrington Group received its private investigator license, Mr. Eley filed a complaint with the bureau alleging that Mr. Herrington had used Mr. Eley's private investigator number without Mr. Eley's permission. Mr. Eley first became aware that Mr. Herrington had submitted a form he allegedly signed that attested to Mr. Herrington's investigative experience when he was contacted by Ms. Jestes. Mr. Herrington confirmed to Ms. Jestes that he never completed or signed the form, and it was not his signature. Mr. Eley testified that he had discussed with Mr. Herrington the possibility of his certifying Mr. Herrington's experience, but Mr. Eley said he only agreed to certify the experience for the time that Mr. Herrington worked at Research Protection Group, and not Mr. Herrington's time at the police department. Mr. Eley explained that because he went through the private

⁵ A partnership agreement received as evidence was dated October 1, 2014.

investigator application process himself, he knew that only an employer could certify the experience. Mr. Eley explained that he was not Mr. Herrington's supervisor, and thus could not complete the certification of his police experience.

Testimony of Steve Hobb

17. Steve Hobb has been licensed as a private investigator for six months. He has known Mr. Herrington since 2005, when the two worked at Banning PD together. Mr. Hobb served in a number of positions with Banning PD, but he never supervised Mr. Herrington. Mr. Hobb said he became aware Mr. Herrington was applying for a private investigator license sometime in 2015. Mr. Herrington asked him to verify Mr. Herrington's qualifying experience. Mr. Hobb agreed. Mr. Hobb testified it was his understanding that Mr. Herrington would put Mr. Hobb's name down and "possibly" sign his name as verifying the experience. Mr. Hobb said he never saw or signed the form that was filed with the bureau. He then explained that he and Mr. Herrington were friends and he had no problem with Mr. Herrington signing his name and submitting the form to the bureau. Mr. Hobb also testified that he did not sign the Private Patrol Operator qualifying experience form that was filed with the bureau in January 2015. He said he did not recall whether he had a specific conversation with Mr. Herrington about the PPO form. However, he reiterated that he had no problem with Mr. Herrington signing and submitting the form on his behalf.

18. Mr. Hobb never told Ms. Jestes that he had authorized Mr. Herrington to sign and submit the form because "she never asked." He said Ms. Jestes called him at work and came at him "sideways" with her questions without any "professional courtesy." Thus, Mr. Hobb did not know the nature of the bureau's inquiry and only told Ms. Jestes that he had not signed the form. He said he later told Ms. Jestes that he gave Mr. Herrington permission to use his name. However, despite this, Mr. Hobb signed the sworn declaration prepared by Ms. Jestes without ever indicating he had given Mr. Herrington authorization. Likewise, Mr. Hobb testified that he did not recall whether he told Mr. Paddeck that he authorized Mr. Herrington to sign and submit the PPO form on his behalf.

Testimony of Gregory Herrington

19. Mr. Herrington served in the Marine Corps from 1984 to 1988. Following his honorable discharge, he worked at a police department in Georgia for six years. He then moved to California and joined the San Jacinto Police Department. He worked there until 2004, when the department was taken over by the sheriff's department. He then transferred to Banning PD, where he held a variety of supervisory and investigative positions. In 2009, he was hired by McFarland PD to assist in transitioning law enforcement duties from the sheriff's department to the new municipal police department. He was later selected as the chief of police. Mr. Herrington worked with Mr. Eley at Banning PD. Mr. Herrington was responsible for hiring Mr. Eley at McFarland PD. However, he asked Mr. Eley to resign after learning that Mr. Eley had been convicted for fraudulently obtaining insurance coverage while he was working at Banning PD. He disputed Mr. Eley's testimony that he resigned for medical reasons.

20. Mr. Herrington denied using Mr. Eley's private investigator license number without consent. He explained that Mr. Eley approached Mr. Herrington about working together because of Mr. Herrington's experience. Mr. Herrington said Mr. Eley had recently obtained his private investigator license, but the business was a "mess." Mr. Herrington said he helped straighten out the mess and they began soliciting clients. Although Mr. Herrington entered into a partnership with Mr. Eley with the private investigator business, Mr. Herrington also owned the Herrington Group, a process serving company in which Mr. Eley had no involvement. Mr. Herrington wanted to have business cards made for both Herrington Group and Research Protection Group. The printing company made a mistake and printed Research Protection Group's (Mr. Eley's) private investigator license number on the Herrington Group business cards. Mr. Herrington said he told Mr. Eley about the mistake. The printers fixed the mistake and it was never an issue. Mr. Herrington said Mr. Eley was not carrying his weight in the partnership. Mr. Eley became infuriated at Mr. Herrington when Mr. Herrington told him he was applying for his own license and was leaving the partnership.

21. Mr. Herrington testified that Mr. Eley was aware of his intention to apply for private investigator and PPO licenses. He discussed having Mr. Eley complete the experience verification forms. Mr. Herrington disputed Mr. Eley's testimony to the effect that Mr. Eley only agreed to complete the certification for the time Mr. Herrington was working at Research Protection Group. Mr. Herrington explained that such a limitation would be of no benefit to him since his police experience more than qualified him for the license. He said he was very clear that Mr. Eley was being asked to verify Mr. Herrington's experience at McFarland PD. Mr. Herrington completed the declaration sections of the forms himself, but wrote them in the first person so it was clear he was completing the information. Mr. Herrington testified that Mr. Eley and Mr. Hobb authorized him to sign their names on the forms. When asked why he did not have Mr. Eley and Mr. Hobb sign the forms themselves, Mr. Herrington said that they lived four hours away and it was therefore difficult to get them to sign. He said he had no intent to defraud the bureau because all the information in the declarations was factually correct. He noted that he filled out the declaration in first-person, which indicated he was not attempting to deceive the bureau. He said he did not request any person at either agency to complete the declarations because there was no longer anyone at either department who could certify his experience. His former supervisor at Banning PD was dead. The city manager of McFarland was a civilian and would not understand Mr. Herrington's law enforcement duties. Likewise, he believed the human resources personnel could not verify his experience. Mr. Herrington said that if he had it to do over again, he would attempt to have the departments' custodian or records verify his experience.

22. Mr. Herrington initially testified that the Herrington Group is now incorporated, but he later retracted that statement and said the entity has not yet been incorporated because it is missing some paperwork. Mr. Herrington said Herrington Group has done "thousands" of investigations and performed work for state and local government agencies. Mr. Herrington reiterated that he affixed the signatures of the others because they lived four hours away and he was "dealing with outside personal issues." He also affixed

Sgt. Weber's name on the PPO certification form. He said he has been upfront with the bureau and signed the forms with the signatures of others with Mr. Eley's and Mr. Hobb's authority. He believed the bureau should have contacted them directly to verify what was contained in the declaration before it issued the license. Mr. Herrington said he did not read the entire instructions for completing the declaration and did not know the declarant had to be authorized by the employer to certify the experience. He said it was a "mistake" to have listed both Mr. Eley and Mr. Hobbs as his former supervisors, when neither Mr. Eley nor Mr. Hobbs had ever served in that capacity.

23. Despite his contention that nobody at either Banning PD or McFarland PD could verify his experience, he admitted he did not contact the bureau to request assistance. Mr. Herrington denied that he was forced to resign from McFarland PD and said he left the department on "good terms." He also denied that he was fired from Banning PD.

24. Mr. Herrington acknowledged that he was responsible for completing both the PI and PPO applications. He said Ms. Brianchesco was not involved in the conversations with Mr. Eley and Mr. Hobbs about them completing the forms.

Testimony of Ana Brianchesco

25. Ana Brianchesco testified that she met Mr. Herrington in 2014 through a mutual friend. She began working with Mr. Herrington and Mr. Eley at Research Protection Group. She did not like some of the things she observed involving Mr. Eley and suggested to Mr. Herrington that he apply for his own license. She signed the private investigator license application because she thought it was accurate.

26. Ms. Brianchesco said Mr. Herrington told her he was going to try and meet with Mr. Eley and Mr. Hobb to have them sign the experience verification forms. She believed they had signed the forms when they submitted the application. She first became aware that they had not signed the forms when she received the letter from the bureau in February 2015. Mr. Herrington responded to the letter. Ms. Brianchesco trusted Mr. Herrington and only briefly read the letter he prepared in response before she signed it. She said because she trusted Mr. Herrington she did not ask for any additional information or details. She said he handled everything with both the private investigator and the PPO applications.

27. Ms. Brianchesco has applied for a private investigator license for herself. She said she went to the Los Angeles Police Department human resources to attempt to get someone to complete the experience verification form. She said they refused to sign the form.

*Evaluation of the Testimony*⁶

28. Mr. Herrington completed the experience verification forms and signed the names of Mr. Eley, Mr. Hobb, and Sgt. Webber in conjunction with respondent's private investigator and PPO applications. In his defense and in mitigation, respondent contended that Mr. Herrington did not forge the signatures or commit fraud because he completed and submitted the forms with their permission and the information was accurate.

Mr. Eley proved to be a cagey witness who was non-responsive during cross-examination. His answers to many questions concerning his employment and criminal history were evasive and reflected negatively on his credibility. His dislike of Mr. Herrington was evident, and it was clear he believed Mr. Herrington should be punished for what he believed was a betrayal of friendship. Although he was not a disinterested witness, and had a clear bias against Mr. Herrington, Mr. Eley's testimony that he did not sign the Form 31B-8 was credible and was not contested by respondent. His testimony that he did not authorize Mr. Herrington to submit a form to the bureau certifying Mr. Herrington's experience at McFarland PD was also credible. Although the two may have had discussions at some point about the possibility of Mr. Eley completing the certification, Mr. Eley never authorized Mr. Herrington to complete and sign the form on his behalf. Had Mr. Eley known that Mr. Herrington signed his name on the form submitted to the bureau, he surely would have reported the forgery to the bureau as a part of his complaint. However, he did not, and it was Ms. Jestes who informed him that respondent had submitted a form containing Mr. Eley's signature.

Mr. Hobb initially testified that Mr. Herrington spoke to him about certifying his experience and he "possibly" authorized Mr. Herrington to sign his name. He then said he would have no problem with Mr. Herrington signing and submitting the form on his behalf because they were friends. However, it was clear that Mr. Hobb was attempting to cover for Mr. Herrington the best he could. Had he actually authorized Mr. Herrington to sign and submit the form on his behalf, as claimed by Mr. Herrington, he surely would have informed Ms. Jestes or Mr. Paddeck of that matter when they contacted him. What Mr. Hobbs referred to as a lack of "professional courtesy" on the part of Ms. Jestes involved her asking him a straightforward question about whether he signed the form. Ms. Jestes called Mr. Hobb a month after the PPO form was submitted and three months after the private investigator form was submitted. Had Mr. Hobb really authorized Mr. Herrington to complete the forms and sign on his behalf, Mr. Hobb would have undoubtedly disclosed this to Ms. Jestes. His

⁶ The credibility of the witnesses has been evaluated pursuant to the factors set forth in Evidence Code section 780: the demeanor and manner of the witness while testifying; the character of the testimony; the capacity to perceive at the time the events occurred; the character of the witness for honesty; the existence of bias or other motive; other statements of the witness which are consistent or inconsistent with the testimony; the existence or absence of any fact to which the witness testified; and the attitude of the witness toward the proceeding in which the testimony has been given.

testimony that he did not mention this because she did not directly ask about it was not credible. Moreover, he proceeded to sign a declaration that made no reference to the fact that he supposedly gave Mr. Herrington permission to submit the form. Instead, it was clear he had no idea that Mr. Herrington had submitted the forms with Mr. Hobb's signature. Mr. Hobb's attempts to suggest he had given Mr. Herrington permission to complete and sign the forms on his behalf were not credible.

Finally, Mr. Herrington's claim that he obtained express authorization to complete the declarations and sign them on Mr. Eley's and Mr. Hobb's behalf was not credible. Although he may have spoken to them about verifying his experience in general terms, neither of them had knowledge he had signed their names and submitted the declarations, despite Mr. Hobb's unconvincing claim to the contrary. Mr. Herrington's claim that the two lived too far away for him to get their signatures was belied by the fact that he purportedly signed the forms in August 2014, but did not submit the application to the bureau until November 2014. In the age of e-mail, fax machines, and the post office, such a claim is patently absurd. Furthermore, since Mr. Eley and Mr. Herrington were business partners up until the time he filed the application, it is nonsensical that he could not have obtained Mr. Eley's signature.

Accordingly, clear and convincing evidence established that respondents submitted forged certification forms in conjunction with its private investigator and PPO applications.

Enforcement and Prosecution Costs

29. Complainant submitted a declaration of costs and requested cost recovery under Business and Professions Code section 125.3. Ms. Jestes certified that the bureau incurred \$1,667.68 in total costs related to the bureau's investigation into the allegations in the accusation against respondents. The investigative costs were reasonable. Another certification contained information related to services provided by the Office of the Attorney General and included costs of prosecution in the amount of \$13,577.50. The evidence established those costs were reasonably incurred and appropriate for the scope of the investigation and prosecution. The certifications complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b).

LEGAL CONCLUSIONS

1. The main purpose of disciplinary licensing schemes is protection of the public through the prevention of future harm and the improvement and rehabilitation of the licensee. (*Griffiths v. Sup. Court* (2002) 96 Cal.App.4th 757, 772.)

2. Complainant bears the burden of proving that the charges in the accusation are true. (Evid. Code § 115.) The standard of proof in an administrative action seeking to suspend or revoke a professional license is "clear and convincing evidence." (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial

doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Sup. Ct.* (2005) 130 Cal.App.4th 586, 594.)

Applicable Law

3. Business and Professions Code section 7561.1, provides:

The director may deny, suspend, or revoke a license issued under this chapter if he or she determines that the licensee or his or her manager, if an individual, or if the licensee is a person other than an individual, that any of its officers, directors, partners, or its manager, has:

(a) Made any false statement or given any false information in connection with an application for a license or a renewal or reinstatement of a license.

(b) Violated any provisions of this chapter.

[¶] . . . [¶]

(1) Committed any act which is a ground for denial of an application for a license under this chapter. . . .

4. Under Business and Professions Code section 7564.1, subdivision (b), the director may deny a license to an applicant on any grounds specified in Section 480.

5. Business and Professions Code section 480 provides:

(a) A board⁷ may deny a license regulated by this code on the grounds that the applicant has one of the following:

[¶] . . . [¶]

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

⁷ The bureau is included under the term "board." (Bus. & Prof. Code, § 477.)

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. . . .

Evaluation

6. With its application for a private investigator license, respondents were required to submit a form verifying the qualifying manager, Mr. Herrington's, experience. The instructions on the form were clear, the form was to be completed by someone other than the applicant who had knowledge of the applicant's work experience. The form further provided that only an employer or his designated agent may certify the investigative experience obtained by the applicant. There is no question that Mr. Herrington had accrued the required experience by virtue of his law enforcement background. However, for whatever reason, Mr. Herrington decided he would not contact his prior agencies to have them complete the certification. Rather, he decided to circumvent the process by completing the forms himself and signing the names, under the penalty of perjury, of two individuals he had worked with and could verify his experience if contacted by the bureau. Clear and convincing evidence established that neither individual knew that Mr. Herrington had completed the forms and signed their names. This constitutes forgery of a public record and an act of dishonesty, fraud, and deceit. Even if the two had expressly given Mr. Herrington permission to sign their names and submit the forms, respondents still provided false information in the application when Mr. Herrington signed their names under the penalty of perjury, and then himself falsely signed that the application material was true and correct.

Cause Exists to Discipline Respondent's License

7. Cause exists to discipline respondents' private investigator license under Business and Professions Code sections 7561.1, subdivisions (a) and (b). Respondents made a false statement and provided false information in connection with an application for a license when they submitted two forms containing forged signatures that had not been completed by the purported signatory.

8. Cause exists to discipline respondents' private investigator license pursuant to Business and Professions Code section 7561.1, subdivisions (b) and (l). Respondents committed acts involving dishonesty, fraud, or deceit under Code section 480, subdivision (a)(2), and knowingly made a false statement of fact that would have warranted denial of a license under Code section 7564.1, subdivision (b).

Rehabilitation Criteria

9. California Code of Regulations, title 16, section 602.1, states that in considering the revocation of a license, the director shall consider the following: nature and severity of the act; evidence of any act committed subsequent to the act or crime under consideration as grounds for denial which also could be considered as grounds for denial .

under Section 480 of the Business and Professions Code; time that has elapsed since commission of the act or crime that serves as the basis for denial; extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant; evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4; and evidence of rehabilitation submitted by the applicant.

10. In reaching a decision on a disciplinary action, the bureau shall consider the disciplinary guidelines entitled *A Manual of Disciplinary Guidelines for Private Investigators* [January 1993 1st Edition] (Guidelines). (Cal. Code Regs., tit. 16, § 611.) Under the Guidelines, major violations include dishonesty and fraud. For dishonesty and fraud, the Guidelines provide a minimum penalty of stayed revocation with three years' probation; the maximum penalty is revocation.

11. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if a petitioner can demonstrate by sustained conduct over an extended period of time that he is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.) The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

Respondents argued that the misconduct in this case was minor because Mr. Herrington possessed the required experience necessary to become a private investigator and Mr. Eley and Mr. Hobb authorized him to submit and sign bureau certification forms. Mr. Herrington expressed nominal contrition for his actions, admitting that he should have done things differently, but showing no real remorse. Respondents continued their deception in its response to the bureau's letter notifying respondents of the bureau's investigation. In that letter, Mr. Herrington twice wrote that Mr. Eley and Mr. Hobb signed the forms. Indeed, the letter attempted to impugn Mr. Eley's motives as a reason he denied having signed the form. Thus, respondents continued to perpetuate its fraud against the bureau by claiming that the forms had been signed by individuals when Mr. Herrington had in fact signed their names. An additional aggravating factor is that respondents submitted forms bearing forged signatures in connection with their PPO application. Even though respondents were made aware of the bureau's investigation shortly after they submitted the PPO application, respondents made no attempt to notify the bureau that Mr. Herrington had signed the names of the PPO certifiers as well.

Respondents did not call any character witnesses or submit any evidence of rehabilitation. Mr. Herrington did not demonstrate an understanding of the gravity of his misconduct and minimized his actions. His defense that there was no fraud because he in fact had the qualifying experience indicated his failure to appreciate the seriousness of his misconduct and evidenced an arrogant disregard of the bureau's licensing process

requirements. His testimony that he did not have Mr. Eley or Mr. Hobb sign the forms because he lived four hours away was not credible. Although Ms. Brianchesco claimed no knowledge of the fraud, she took no steps to remedy the issue when notified by the bureau.

She signed a response letter to the bureau that falsely stated Mr. Eley and Mr. Hobb had signed the forms.

Licensed private investigators must be honest and must act ethically in their interactions with clients, witnesses, the general public, regulatory agencies, and the judicial system. Respondents' conduct in this matter is wholly inconsistent with the honesty and ethical behavior expected of a licensed private investigator. Public protection requires that respondents' private investigator's license be revoked.

Costs of Investigation and Enforcement

12. Complainant is seeking recovery of the reasonable costs of prosecution in the amount of \$15,245.18. The California Supreme Court in *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5, which is similar to Business and Professions Code section 125.3, did not violate due process. The court further held in *Zuckerman* that it was incumbent on the board to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not "deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing."

The Supreme Court set forth five factors to consider in deciding whether to reduce or eliminate costs: Whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; whether the licensee had a "subjective" good faith belief in the merits of his or her position; whether the licensee raised a "colorable challenge" to the proposed discipline; whether the licensee had the financial ability to make payments; and whether the scope of the investigation was appropriate in light of the alleged misconduct. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the language in the cost recovery regulation at issue in *Zuckerman* and section 125.3 are substantially the same.

The scope of the investigation was appropriate in light of the alleged misconduct. Although respondents raised a colorable challenge to the proposed discipline, they did not obtain a reduction in the severity of discipline imposed. There was no evidence of their inability to pay costs. Complainant is entitled to \$15,245.18 in costs.

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
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ORDER

Private Investigator License Number PI 28903 issued to Gregory Herrington, Sr., and Ana Brianchesco, doing business as Herrington Group & Associates, is revoked.

Herrington Group & Associates, Gregory Harrington, and Ana Brianchesco, jointly and severally, are ordered to pay the bureau \$15,245.18 in costs.

DATED: November 22, 2016

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ADAM L. BERG
Administrative Law Judge
Office of Administrative Hearings