

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF PUBLIC SAFETY
PRIVATE DETECTIVE AND PROTECTIVE AGENT SERVICES BOARD

In the Matter of the License Application
of Lawrence S. Plack

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

A hearing was held on March 24 and 25, 2009, at the Office of Administrative Hearings, before Beverly Jones Heydinger, Administrative Law Judge, pursuant to a Notice and Order for Prehearing Conference and Hearing issued on January 2, 2009.

Appearances: Joan M. Eichhorst, Assistant Attorney General, for the Private Detective and Protective Agent Services Board (Board); Lawrence S. Plack (Applicant), on his own behalf.

The hearing record closed upon the receipt of the Board's Memorandum of Law on April 13, 2009.

STATEMENT OF THE ISSUES

The Applicant was denied a private detective's license by the Board. There are two issues:

1. Did Applicant fail to demonstrate that he is a person of good character, honesty, and integrity?
2. Did Applicant indicate that he was available to supply the services of private detective when he was not licensed as a private detective?

The Administrative Law Judge recommends that the Board's decision to deny the Applicant a private detective's license be affirmed.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Applicant submitted an application for a private detective's license that was received by the Board on or about June 12, 2008.¹ He had previously held a license as a private detective from 1989 until the license lapsed in March 2006.²

2. Marie Ohman, the Board's Executive Director, reviewed the application and conducted an investigation to check and verify information in it.³ By letter dated August 6, 2008, Ms. Ohman requested that the Applicant submit additional information to complete the application.⁴

3. Applicant stated on his application that he had been convicted of a crime, Tampering With a Motor Vehicle. As part of her investigation, Ms. Ohman checked information about that conviction, which occurred in 2006.

4. In the course of her investigation, Ms. Ohman learned some details about the Applicant gaining access to the scene of a fatal house fire in Lakefield, Minnesota in 2007.⁵

5. Ms. Ohman advised Applicant by letter dated September 24, 2008, that the Board would consider his application at its September meeting.⁶ Ms. Ohman also spoke to the Applicant by telephone prior to the meeting and advised him that the Board would ask him specifically about his presence at the Lakefield fire scene and the circumstances surrounding his guilty plea to the charge of Tampering With a Motor Vehicle.⁷

6. In preparation for the Board meeting, Ms. Ohman prepared an Applicant Analysis.⁸ In her analysis, Ms. Ohman provided information about the Applicant's prior license history, and three concerns for the Board's consideration. One of those, a civil lawsuit against the Applicant and others, was not considered by the Board because the Applicant prevailed on appeal.⁹ Two other issues were raised: the circumstances surrounding Applicant's appearance at the Lakefield fire scene, and his guilty plea to Tampering With a Motor Vehicle. In addition to her summary, Ms. Ohman provided the Board with documents from the Maple Grove Police Department about its investigation of the Applicant's criminal charge.¹⁰

¹ Exhibit (Ex.) E.

² Testimony (Test.) of Marie Ohman.

³ Test. of M. Ohman; Minn. R. 7506.0110, subp. 1 (duties of the executive director). Citations to Minnesota Rules are to the 2007 Edition.

⁴ Respondent's (Resp.) Ex. 38.

⁵ Test. of M. Ohman; Resp. Ex. 21.

⁶ Resp. Ex. 36.

⁷ Test. of M. Ohman.

⁸ Ex. F.

⁹ Ex. I at 2.

¹⁰ Exs. F and G.

7. The police report summarized the investigation and criminal charge. A criminal complaint was filed in October 2005, alleging that Applicant had placed a tracking device on a car belonging to Deborah George. Discovery of the tracking device was initially reported to the Corcoran police. A few days later, the Applicant called the Hennepin County Sheriff's Department to report that he had installed the device. He told the Hennepin County investigator that he was a private investigator, that Ms. George was his employee, and that he was concerned about Ms. George's activities and the possible effects on his business. He believed that he was not doing anything wrong since Ms. George was his employee.¹¹

8. Ms. George told the investigator that she had not worked for the Applicant since May 2005, that the Applicant was a family friend, and that, because she and her husband were going through a divorce and her husband was a friend of the Applicant's, she did not think it was a good idea for her to continue working for the Applicant. Typically, she took the summers off, but she had told the Applicant in May that she would not return to work, and she had not done so. On October 20, 2005, Hennepin County referred the case to the Maple Grove Police Department to avoid any conflict since the Applicant was the Mayor of Greenfield, the arrest was in Corcoran, and both communities had the same city attorney.¹²

9. A Maple Grove police officer interviewed Ms. George. Ms. George explained how she and a mechanic discovered the tracking device in her car, that both of them had reported the discovery to the police, and that she had not given anyone permission to install the device.

10. The officer also interviewed the Applicant. The Applicant told the police officer that he was a private detective and that Ms. George was his employee. He acknowledged that she had not been at work since May or June but had not submitted her letter of resignation. He admitted that he had installed the tracking device, but would not state when or where he had done so. The Applicant stated that he had not been hired to install the device, and specifically, he stated that Ms. George's husband, Lowell George, had nothing to do with putting the device in Ms. George's car. The Applicant stated that he was concerned that Ms. George was leading a secret life, and that he had told her several times that the tracking device was on her car. He acknowledged tracking Ms. George, and because of his concerns about the people she was seeing, he had reported possible terrorist connections to the Department of Homeland Security. The Applicant asserted that he had tracked Ms. George to protect her.¹³

11. The police officer confirmed Ms. George's report of the discovery of the tracking device with the mechanics. He also spoke with Mr. George who told the police

¹¹ Ex. G. Although not disclosed on the employment portion of his application, apparently Applicant owned Vehicle and Fire Forensics, Inc., Ms. George's employer.

¹² Ex. G.

¹³ *Id.*

officer that he was separated from Ms. George, that he had nothing to do with the installation of the tracking device, and that he had not hired the Applicant to do it.¹⁴

12. The police officer called the Bureau of Criminal Apprehension and spoke with Ms. Ohman who verified that the Applicant held a private detective's license at that time.¹⁵

13. The Applicant included seven letters of reference with his application.¹⁶ Since each of the letters offered support for the Applicant's character, honesty and integrity, Ms. Ohman followed her customary practice and did not forward the letters of reference to the Board members.¹⁷ Ms. Ohman also verified by electronic mail that the Applicant held a license in Wisconsin.¹⁸

14. The Applicant met with the Board on September 29, 2008, for approximately one hour.¹⁹ The Applicant was questioned by board members about the Lakefield fire and, specifically, whether the Applicant had been employed by an attorney, Fred Pritzker, to engage in an investigation of the fire scene. Applicant stated that he was on the scene on behalf of Mr. Pritzker to determine if there was a case. He acknowledged that he was not employed by Mr. Pritzker, had not submitted an invoice for his work, and was not paid. The Applicant acknowledged that Mr. Pritzker and the officials at the fire scene may have believed that the Applicant held a private detective's license.²⁰

15. While in Lakefield, the Applicant met with the Deputy State Fire Marshal, the parents of a child who died in the fire, insurance representatives, took photos, and obtained insurance information. At the point that he could no longer access people or the fire scene, he referred the case to a licensed investigator, and briefed that person on the work that he had done.²¹

16. At the Board meeting, the Applicant acknowledged that he conducted investigative actions without a license or employment by an attorney. Board members questioned the Applicant's judgment.²²

17. Board members also asked the Applicant about the circumstances surrounding his guilty plea to Tampering With a Motor Vehicle. Applicant told the Board (and the police during the investigation) that he had the right to install the device on the victim's vehicle because Ms. George was his employee and he wanted to protect his business. He claimed that he had told Ms. George that he was going to install the

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Ex. E.

¹⁷ Test. of M. Ohman.

¹⁸ Test. of M. Ohman; Resp. Ex. 35.

¹⁹ Test. of M. Ohman; Test. of Timothy O'Malley.

²⁰ Ex. I, Minutes of the September 29, 2008, Board meeting, at 2. Mr. Plack did not testify at the hearing or challenge the accuracy of the meeting notes.

²¹ Ex. I at 3.

²² *Id.*

tracking device.²³ After being charged with the offense, Applicant provided an affidavit to the prosecutor from the Mr. George, in which Mr. George stated that he had given the Applicant permission to install the device. The Applicant stated that the prosecutor would not accept the affidavit.²⁴

18. The Applicant told the Board that he had pled guilty in exchange for the prosecutor dropping other charges, that the charges were “political payback,” and that his role had been blown out of proportion because he was the Mayor of Greenfield at the time. Applicant told the Board that, if he had it to do over again, he would not plead guilty because he had done nothing wrong. It was not disputed that the Applicant had an attorney, pled guilty, and admitted each element of the crime to the judge.²⁵

19. Members of the Board were concerned that the Applicant had given them information that was inconsistent with the information given to the Maple Grove Police and admitted in court as part of his guilty plea.²⁶

20. At the September 29th meeting, the Board deferred a decision to its October meeting so that the Executive Director could gather some additional information from the Lakefield police and the State Fire Marshal about the Lakefield fire investigation, and about the Maple Grove investigation of the criminal charge. Applicant was advised that he could collect additional information and bring witnesses to the October meeting.²⁷

21. In preparation for the October meeting, Ms. Ohman collected additional information about the Applicant’s presence at the Lakefield fire scene. Included in the information was a letter to the Lakefield Police Department from Steve Kellen, Deputy State Fire Marshal-Investigator, stating that he had received a telephone call from the Applicant on March 10, 2007, requesting access to the fire scene.²⁸ Mr. Kellen had told the Applicant that he could not give permission and that the Applicant would have to obtain permission from the insurance representatives. Mr. Kellen gave those names to the Applicant. The Applicant told Mr. Kellen that he would make arrangements for permission and asked Mr. Kellen to meet him at the fire scene on March 12. Mr. Kellen agreed.

22. Mr. Kellen met the Applicant at the fire scene on March 12, 2007, and the Applicant followed Mr. Kellen in to the building. The Applicant took photos, examined items, and asked Mr. Kellen to place locks on the doors. Mr. Kellen told the Applicant that he lacked that authority. After leaving the fire scene, Mr. Kellen went to the American Family Insurance Agency. While he was there, the Applicant entered and identified himself as a fire investigator working for one of the victim’s families. Because of Applicant’s other statements to the insurance representative, Mr. Kellen became

²³ Ex. I at 3; Ex. O at 4,

²⁴ Ex. I at 3-5.

²⁵ Ex. I at 4-5.

²⁶ Ex. I at 4-6.

²⁷ Ex. I at 4-5; Test. of M. Ohman; Test. of T. O’Malley.

²⁸ Ex. K.

concerned that the Applicant may not have had permission to enter the fire scene. Mr. Kellen called Mark Bishop, the person he had told the Applicant to contact, and Mr. Bishop told Mr. Kellen that he had not given permission and could not because American Family insured the renter and not the property owner. Subsequent telephone calls confirmed for Mr. Kellen that no authorized person had given the Applicant consent to enter the fire scene.²⁹ On March 13, 2008, Mr. Kellen called the Lakefield Police Department with his concern about the Applicant, and followed up the telephone call with a letter.³⁰

23. Lakefield Police Officer Praska contacted the Applicant on March 14, 2008. The Applicant told Officer Praska that he was a fire investigator working for a Twin Cities law firm representing a child killed in the fire, and was attempting to get information about the lighter that may have been used to start the fire. The Applicant told Officer Praska that Mr. Kellen had given him permission to enter the house, and that after the Applicant had been at the house, he had also requested permission from the property owner, Jerry Kraft. He acknowledged to Officer Praska that he had already been at the house when he called Mr. Kraft, and that Mr. Kraft had not given consent.³¹

24. Ms. Ohman spoke with Mr. Kraft, the owner of the property where the fire occurred and the manager of one of the property insurers' agencies. Mr. Kraft recalled that the Applicant had told him that he had been retained by an attorney in the Twin Cities and had requested permission to enter the structure. Mr. Kraft gave consent, and then spoke with Mr. Kellen who told him that the Applicant had already been at the fire site. Mr. Kraft called back the Applicant, withdrew consent, and then filed a report with Lakefield Police for trespass by the Applicant.³² Ms. Ohman spoke with Gary Metz, North Star Mutual Insurance, the property owner's insurer, and confirmed that the Applicant contacted Mr. Metz on March 14, 2007, to obtain access to the property. Mr. Metz would not give the Applicant consent to enter the structure unless Mark Bishop, the investigator for American Family Insurance, the renter's insurance company, and defense counsel were present.³³ Ms. Ohman confirmed with Mr. Bishop that the Applicant had contacted him, that Mr. Bishop had not given consent, and that he referred the Applicant to Mr. Kellen. In a later contact with Mr. Kellen, Mr. Bishop learned that the Applicant had already been at the fire scene.³⁴

25. Ms. Ohman interviewed Fred Pritzker about the Applicant's role at the fire scene. Mr. Pritzker told Ms. Ohman that the Applicant had assisted him with fire cases in the past. He had sent the Applicant to the Lakefield fire scene to investigate the cause of the fire and gather information. He confirmed that the Applicant was not Mr. Pritzker's employee, and their arrangement was on a case-by-case basis. Mr. Pritzker was not aware at that time that the Applicant was not licensed. He could not recall that he had paid the Applicant for his work at the Lakefield fire scene. He had

²⁹ Ex. K.

³⁰ Ex. K; Ex. L.

³¹ Ex. L, Lakefield Police Department Statement.

³² Test. of M. Ohman; Resp. Ex. 25; Resp. Ex. 34.

³³ Test. of M. Ohman; Resp. Ex. 26.

³⁴ Test. of M. Ohman; Resp. Ex. 25; see also Resp. Ex. 32.

not received any reports or records from the Applicant, and had hired another investigator for the case.³⁵

26. Ms. Ohman also collected additional information about the basis for the charge of Tampering With a Motor Vehicle. This included the police statement in support of the criminal complaint, which stated that the Applicant had claimed that he placed the tracking device to address his concerns about Ms. George's activities, and his statements to the Maple Grove Police that Mr. George had nothing to do with it, which was confirmed by Mr. George.³⁶ In addition, Ms. Ohman provided a copy of the transcript of Maple Grove Detective Thiesen's interview with the Applicant in which the Applicant stated that Mr. George had nothing to do with the placement of the device. During the interview, the Applicant provided additional information about Ms. George's activities, his knowledge through the tracking device that she was spending nights with Middle Eastern men, which the Applicant had reported to Homeland Security, and his efforts to keep the men away from Ms. George.³⁷

27. The Board met with the Applicant for approximately an hour on October 27, 2008. Members of the Board and the Applicant were given a revised Applicant Analysis prepared by the Executive Director, which incorporated the additional information that she had obtained.³⁸ It included information that the Applicant had also been charged with Tampering With a Witness, but the charge had been dropped when Applicant agreed to write a letter to the victim and plead guilty to the charge of Tampering With a Motor Vehicle.³⁹

28. The Applicant did not bring additional information or witnesses to the October board meeting, except for an unsigned affidavit from Mr. George that stated that Mr. George had consented to installation of the tracking device on the car of his estranged wife. The Applicant was concerned that if he submitted the affidavit to the Board, the affidavit would become public. The Board Chair, Mr. O'Malley, told the Applicant that the Board was most interested in the Applicant's statements about the incident and that the Applicant did not need to submit the affidavit if he so chose. The Applicant did not submit the affidavit.⁴⁰ The Applicant continued to give confusing and inconsistent information about whether he had acted on his own behalf or on behalf of Mr. George when he placed the tracking device on Ms. George's car. The Applicant denied that he had given one version of the events to the police and another version to the Board.⁴¹

29. At the meeting, the Board Chair asked the Applicant several questions about the Lakefield fire because a number of persons had told the Executive Director that Applicant had gained access to the fire site without permission. There was

³⁵ Test. of Ohman; Ex. Y.

³⁶ Ex. N.

³⁷ Ex. O.

³⁸ Ex. H.

³⁹ Ex. J at 1-2.

⁴⁰ Ex. J at 1, Test. of T. O'Malley.

⁴¹ Ex. J at 4-6.

additional discussion that the Applicant had previously worked for Mr. Pritzker as an independent contractor to conduct investigations, but was not Mr. Pritzker's employee while at the Lakefield fire scene.

30. At the close of the discussion, a motion was made to approve the Applicant's license. It was defeated on a 0 to 4 vote.⁴² A letter confirming the Board's decision, dated October 29, 2008, was mailed to the Applicant. The letter contained information about the right to appeal the Board's decision.⁴³

31. By letter dated November 2, 2009, the Applicant appealed the Board's decision.⁴⁴

32. At the contested case hearing, the Applicant cross-examined the Board's witnesses, Ms. Ohman and Mr. O'Malley, supplemented the record with documents, and called Mr. George and Leonard Jankowski to testify to his good character and honesty. The Applicant chose not to testify on his own behalf.

33. Mr. George acknowledged that he had prepared an affidavit stating that he had given the Applicant permission to place the tracking device on Ms. George's car, but he could not recall if he had given the affidavit to the Applicant or Applicant's defense lawyer.⁴⁵

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Board and the Administrative Law Judge have jurisdiction to consider an appeal from the denial of an application for a private detective or protective agent license pursuant to Minn. Stat. § 326.3387.⁴⁶

2. The Board has complied with all relevant procedural requirements and has given proper notice of the hearing.

3. The Applicant bears the burden of demonstrating by a preponderance of the evidence that he meets the requirements for a private detective agent license.⁴⁷

4. A license may be denied if the Applicant violates a provision of Minn. Stat. §§ 326.32 to 326.339, or a rule adopted under those sections.⁴⁸

⁴² Ex. J at 7.

⁴³ Ex. W.

⁴⁴ Ex. X.

⁴⁵ Test. of Lowell George.

⁴⁶ Unless otherwise noted, the Minnesota Statutes are cited to the 2008 edition.

⁴⁷ Minn. R. 1400.7300, subp. 5.

⁴⁸ Minn. Stat. § 326.3387, subd. 1 (a).

5. No person is qualified to hold a license who has failed to demonstrate to the Board good character, honesty, and integrity.⁴⁹

6. No person shall engage in the business of private detective, or advertise or indicate in any verbal statement that the person is so engaged or available to supply those services, without having first obtained a private detective's license.⁵⁰

7. A person who for a fee, reward, or other consideration undertakes the investigation of the origin of and responsibility for losses, accidents, or damage or injuries to persons or property is engaged in the business of a private detective.⁵¹

8. In March 2007, by undertaking an investigation into the origin of and responsibility for a fire in Lakefield, Minnesota, with losses, damage and injury to persons and property, and by indicating to an attorney, the Deputy State Fire Marshal, and insurance representatives that he was available to provide the services of an investigator, the Applicant acted as a private detective without a license.

9. By entering the Lakefield fire scene with the Deputy State Fire Marshal without obtaining permission from the property owner, and by seeking permission after entering the property without disclosing that he had already entered, the Applicant failed to demonstrate that he is of good character, honesty, and integrity.

10. By providing misleading information to an attorney, the Deputy State Fire Marshal, and insurance representatives about his status to provide service as a "fire investigator," the Applicant failed to demonstrate that he is of good character, honesty and integrity.

11. By providing conflicting information to police investigators and the Board about placement of a tracking device on a car and the reasons for doing so, the Applicant failed to demonstrate that he is of good character, honesty and integrity.

12. The Applicant has failed to show by a preponderance of the evidence that he is entitled to a license as a private detective.

13. Any of the Findings of Fact more properly designated Conclusions are adopted as such.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the Board's decision to deny the Applicant a private detective's license be **AFFIRMED**.

⁴⁹ Minn. Stat. § 326.3381, subd. 3 (3).

⁵⁰ Minn. Stat. § 326.3381, subd. 1.

⁵¹ Minn. Stat. § 326.338, subd. 1 (5).

Dated: May 5, 2009

s/Beverly Jones Heydinger

Beverly Jones Heydinger
Administrative Law Judge

Reported: Digitally Recorded

A-bjh-032409

A-bjh-032509

NOTICE

This report is a recommendation, not a final decision. The Private Detective and Protective Agent Services Board will make the final decision after a review of the record. The Board may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this report to file Exceptions to the report. At the end of the exceptions period, the record will close. The Commissioner then has 10 working days to issue his final decision. Parties should contact Marie Ohman, Executive Director, 1430 Maryland Avenue East, Satin Paul, MN 55106, (651) 793-2668 to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

In challenging the Board's denial of his application for a private detective's license, the Applicant raised several issues. His chief objection is that the Board can not go beyond the four corners of his application in determining whether to issue the license. He bases this argument on Minn. Stat. § 326.3311, setting forth the Board's authority, and directing the Board "to receive and review all applications." His view is that such language does not give the Board authority to conduct any investigation into the application or his qualifications for the license, and, specifically, that he made no reference to the Lakefield fire investigation which occurred while he was unlicensed, and that he had disclosed to the Board that he had pled guilty to a misdemeanor charge in Hennepin County in September 2006. Thus, he argues, the Board's inquiry into both events exceeded its authority.

This argument has no basis in the law or logic. It overlooks the language of Minn. Stat. § 326.3381, subd. 2, which states specifically: "Upon receipt of an application for private detective ... license, the board shall: ... (2) conduct an

investigation as it considers necessary to determine the qualifications of the applicant....” Consistent with her authority to conduct background investigations and report to the board on new applications,⁵² the Executive Director reviewed information about the Applicant’s conduct, and presented the information to the Board. It is also illogical to argue that the Board should rely solely on the statements made by an applicant without checking their veracity and without following up on information that it may receive about the Applicant.

The Applicant also contends that the Board could not investigate his behavior at the Lakefield fire scene because he did not hold a private detective license at that time. Thus, he contends, his behavior was beyond its jurisdiction. This argument is also illogical. No person may hold himself out as authorized to provide private detective services if he fails to hold the appropriate license.⁵³ As a person who once held such a license, the Applicant clearly knew and understood that a license was required, yet he misled a number of individuals when he offered to check the fire scene on behalf of an attorney who had previously retained him, and then introduced himself to the Deputy State Fire Marshal and insurance representatives as a “fire investigator.” His entry on to the fire scene to take photographs and his efforts to collect insurance information and forestall demolition of the property, were all consistent with the duties of a private detective. Among the specific acts that require a license is “investigating the origin of and responsibility for libels, losses, accidents, or damage or injuries to persons or property.”⁵⁴

The Applicant’s behavior at the fire scene led the Deputy State Fire Marshal to send a letter to the Lakefield Police describing Applicant’s misleading actions and statements and led the building owner to file a trespass complaint. Such behavior clearly reflects on the Applicant’s “good character, honesty, and integrity.” As the Applicant acknowledged in various statements, the attorney could have believed that the Applicant still had a private detective license when he sent the Applicant to the fire scene. The Applicant also acknowledged that he entered the fire scene before he had obtained permission from the property owner and, when he called to get permission, he did not state that he had already entered the property. These misrepresentations about his status, directly related to the license that he was seeking, would have been reason enough for the Board to question his good character, honesty and integrity.

The Applicant also claims that he was “employed” by the attorney, and had no other clients. There is an exemption to the private detective license requirement for “an investigator employed exclusively by an attorney or a law firm engaged in investigating legal matters.”⁵⁵ Although the Applicant had been retained by the attorney on a case-by-case basis, there was no evidence that the Applicant was employed exclusively by the attorney, and no such a relationship was disclosed on the employment section of his application.

⁵² Minn. R. 7506.0110, subp. 1 E.

⁵³ Minn. Stat. § 326.3381, subd. 1.

⁵⁴ Minn. Stat. § 326.338, subd. 1 (5).

⁵⁵ Minn. Stat. § 326.3341 (4).

The circumstances surrounding the Applicant's plea to Tampering With a Motor Vehicle further supported the Board's decision. Although Applicant claims that a misdemeanor offense is insufficient to deny a license, it is not the offense itself but the Applicant's inconsistent statements to law enforcement and to the Board about the event that put his good character, honesty and integrity in doubt.

Throughout the police investigation, the Applicant repeatedly stated that he placed the tracking device on the car because he believed that Ms. George, who had not worked for the Applicant for several months, was engaged in behavior that might place his business in jeopardy. Throughout the interview, he focused on her association with people he believed were suspicious, her problems with her estranged husband, and her social life. He stated several times that Mr. George played no role in the placement of the tracking device.

Only after being charged with a crime did the Applicant obtain a statement from Mr. George that Mr. George had directed him to place the device on the car. Apparently the Applicant believed that this would excuse his behavior because he had the car owner's consent. Both the crime as charged and the crime to which he pled guilty include an exception if the owner has given consent.⁵⁶ The statement was inconsistent with both the Applicant's and Mr. George's prior statements during the police investigation. The transcript of the police interview with the Applicant further demonstrates his obfuscation about whether he "tracked" Ms. George. He both denied it, and admitted that he went to locations where he knew the car was located. He also refused to disclose to the police when he placed the tracking device.

To justify his actions to the Board, the Applicant states that he called the police and admitted that the tracking device belonged to him and that he had placed it. He also states that he was authorized to place the device because he held a private detective license at the time and had been retained by Mr. George to investigate Ms. George's activities, citing Minn. Stat. § 326.338, subd. 1 (2), which allows a private detective to investigate the habits, conduct, movements and whereabouts of any person. Although the Applicant was authorized to investigate the habits, conduct, movement and whereabouts of any person, it is a misdemeanor to tamper with a motor vehicle without the owner's permission,⁵⁷ and a gross misdemeanor to install a tracking device without the owner's consent.⁵⁸ Although the Applicant claimed that Ms. George was well aware of the tracking device, the statements were not credible.

The Applicant also maintains that if the Board was going to take action against him for the criminal misdemeanor, it should have done so before his license lapsed in March, 2006. He claims that the Board "lost its powers" to investigate the matter when it failed to do so at the time his case was "cleared" in November 2005. Apparently Applicant is relying on the wording of the Maple Grove Police report, completed at that time, clearing the case.⁵⁹ From the context, it is apparent that the police had completed

⁵⁶ See Minn. Stat. §§ 609.546 (2), 626A.35, subd. 2a.

⁵⁷ Minn. Stat. § 609.546 (2).

⁵⁸ Minn. Stat § 626A.35 (crime initially charged).

⁵⁹ Ex. G.

their investigation. Thereafter, the Maple Grove Police filed a formal complaint, signed by the prosecutor on December 19, 2005.⁶⁰ The disposition of the charge did not occur until the Applicant pled guilty and was sentenced on September 18, 2006, months after his license had lapsed.⁶¹ The guilty plea, related to activities that Applicant claimed were within the scope of his license, was unquestionably relevant to a determination of the Applicant's good character, honesty and integrity.

The Applicant denies that his statements to the Board were inconsistent with those that he provided to law enforcement. Although he acknowledges that he pled to the elements of the misdemeanor with the advice of legal counsel, and under oath to the district court judge, he told the Board that he did so to avoid further embarrassment. Moreover, in his view, the criminal action was politically motivated. Because he had the consent of Mr. George, he claims that he should not have pled guilty to the offense, and he is not guilty of it. A review of the transcript of the police interview shows the obvious contradictions between the Applicant's prior statements and his statements to the Board. Moreover, the transcript shows that the Applicant's attempts to explain his actions to the police investigator were internally inconsistent.

Applicant contends that the terms "good character," "honesty" and "integrity" are not defined. Thus, he claims, any effort to deny his license on one of these bases relies upon language that is vague. However, the dictionary definitions of the terms are sufficiently clear to cover the facts presented here. "Honesty" includes truthfulness and sincerity, not deceptive or false, sincere or frank. "Integrity" is defined as steadfast adherence to a strict ethical code, synonymous with "honesty."⁶² The Board relied upon the commonly understood meaning of these terms in reaching its conclusion.

Statutory terms are not impermissibly vague if a person of common intelligence need not guess at their meaning.⁶³ The letter of the Deputy State Fire Marshal and the transcript of the Applicant's interview with the Maple Grove Police alone provide an ample basis for the Board's conclusion that the Applicant was not truthful, sincere, or frank. The Applicant's statements to the Board further supported its decision.

The Applicant claims that his rights were violated because the Notice and Order for Hearing stated that "the Board's denial of Respondent's application was based in part on the following," and listed the Applicant's failure to demonstrate good character, honesty and integrity, and Applicant holding himself out as available to supply the services of a private detective without first having obtained a license.⁶⁴ Applicant claimed that, by stating that these were the bases "in part," it implied that there were other bases, and that he was not given notice of them. However, the notice sent to him by the Board, informing him of the application denial, stated these two bases and, in addition, "your responses to Board member questions during the application review

⁶⁰ Ex. N.

⁶¹ Ex. U.

⁶² American College Dictionary, Third Edition.

⁶³ *St. Cloud Newspapers, Inc. v. Dist. 742 Community Schools*, 332 N.W.2d 1, 7 (Minn. 1983); *Proetz v. Board of Chiropractors*, 382 N.W.2d 527, 533 (Minn. App. 1986).

⁶⁴ Notice and Order for Prehearing Conference and Hearing at 2.

process on September 29, 2008, and October 27, 2008.”⁶⁵ It was clear that the two bases, and the Applicant’s confusing and inconsistent responses about them, were the bases relied upon by the Board. The Board minutes show that the identified issues were the topics that the Board discussed with the Applicant, served as the base for denying the license, and served as the bases for the Notice and Order for hearing. The evidence at hearing was limited to those bases. The Applicant was fully informed of the reasons that the Board denied his license and had the opportunity to respond to each of them.

The Applicant’s other arguments are also without merit. He claims that his reference letters, attesting to his character, were not shared with the Board. The Executive Director credibly testified that it was the Board’s practice not to provide copies of supporting letters, but only to share letters that raised concerns about an applicant. Thus, the Board would assume that the persons writing letters had spoken well of the Applicant. Mr. O’Malley concurred. The Applicant may have benefitted from the Board’s practice since a review of the letters shows that five of the seven persons providing references were unaware that the Applicant had a criminal conviction and one was unsure.⁶⁶

The Applicant claims that the Board violated the Minnesota Government Data Practices Act by posting its minutes on its website, citing Minn. Stat. § 13.65 as authority. Alleged violations of the Data Practices Act are beyond the scope of this hearing. However, Minn. Stat. § 13.65 governs data created, collected and maintained by the Office of the Attorney General. The Applicant has failed to explain what application the provision would have to the Board.

At hearing, the Applicant offered documents in to the record and cross-examined the Board’s witnesses, but he declined to testify. Thus, the statements of the Applicant and others reflected in the police reports, transcripts of the Maple Grove police interviews, Ms. Ohman’s interviews and the Board minutes were unrefuted.

The evidence taken as a whole fully supported the Board’s decision to deny the Applicant a private detective’s license. Good character, honesty and integrity are key attributes for a person who holds such a license, and the Applicant failed to show that he has such attributes.

B. J. H.

⁶⁵ Ex. W.

⁶⁶ Ex. E.