

Bulletin

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Licensing Board Calendar

July Board Meeting

July 14, 2004

Labor Day/Board Office Closed

September 6, 2004

October Board Meeting

October 13, 2004

Veteran's Day/Board Office Closed

November 11, 2004

Thanksgiving Day/Board Office Closed

November 25-26, 2004

Christmas/Board Office Closed

December 24-27, 2004

New Year's Day/Board Office Closed

December 31, 2004

General Contractors Licenses Expire

December 31, 2004

New Statute And Rule Affecting Public Contracting

By Jeffrey B. Parsons

Oftentimes, it seems to contractors and regulators alike that the law is not always clear or what it appears to be. One rule, however, has seemed clear to contractors over the years—a mechanical, electrical or plumbing contractor cannot act as a general contractor on a project unless it is properly licensed and classified as one.

That became apparent to one large mechanical contractor a few years ago when it bid a large chiller replacement job on a single prime, state contract. Because the general contracting portion of the job was miniscule, the mechanical contractor elected to bid the job itself and subcontract the general contracting

portion of the project to a licensed general contractor. On a complaint from a losing bidder, the Licensing Board for General Contractors, ("Board") intervened to halt award of the contract on the long standing grounds that only licensed general contractors can supervise other contractors and exercise control over a project. *Duke University v. American Arbitration Association*, 64 N.C. App. 75, 80, 306 S.E. 2d 584, 587 (1983), *cert. den.*, 309 N.C. 819, 310 S.E. 2d 349 (1983); *accord*, *Mill-Power Supply Company v. CBN Associates*, 87 N.C. App. 455, 461, 355 S.E. 2d 245, 249 (1987), *quoting*, *Helms v. Dawkins*, 32 N.C. App. 453, 456, 232, S.E. 2d 710, 712 (1977), (Citations omitted).

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Governor Easley Appoints Susan Monroe To Licensing Board, Reappoints J. Sam Pierce

Governor Michael F. Easley has appointed Susan Jones Monroe of Fayetteville to the Licensing Board. Ms. Monroe's term began March 17, 2004 and will expire December 31, 2008. Ms. Monroe was appointed to fill one of three public member positions with the Board, succeeding former member Dr. J. Ray Butler of Winston-Salem whose term expired December 31, 2003.

Ms. Monroe is President and Chief Executive Officer for Cumberland Regional Improvement Corporation of Fayetteville. She also currently serves as a member of the Board of Directors of Cumberland County Civic Center Commission. Ms. Monroe attended Fayetteville State University and holds a Masters in Public Administration and a Bachelors degree in

Finance, a Magna Cum Laude graduate with recognition in Who's Who Among Students in American Universities and Colleges. She is married to Dennis Monroe who is a School Administrator with Cumberland County Schools. Susan and Dennis are the parents of two children.

Governor Easley has reappointed current Board Chairman J. Sam Pierce to the Licensing Board. Mr. Pierce's second term began December 31, 2003 and the term expires December 31, 2008. Designated as a residential contractor member of the Board, Mr. Pierce is a native of Wilkes County. He attended North Carolina State University and has been a commercial and residential general contractor since 1971. Mr. Pierce and his wife Vickie live in Cramerton and have two sons, Jeff and Greg.

NCLBGC Bulletin

Published semi-annually as a service to general contractor licensees to promote a better understanding of the General Contractors Licensing law (N.C.G.S. §87-1 to 87-15.9) and to provide information of interest to construction professionals and the public.

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LICENSING BOARD for
GENERAL CONTRACTORS**

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Planning a Relocation or Move?

Please mail or fax your new address and telephone number to the Licensing Board (include your license number) at:

P.O. Box 17187
Raleigh, NC 27619
Fax: (919) 571-4703

INCREASED FINES, PENALTIES SET FOR ILLEGAL WASTE DISPOSAL

Division Of Waste Management Announces Increase In Fines For Illegal Dumping

The Division of Waste Management's Solid Waste Section, working in partnership with Attorney General staff, set a groundbreaking legal precedent this April in a Winston-Salem courtroom. The state requested and won over \$643,000 in profits made through illegal dumping.

The decision gives the state's Solid Waste Section an important new tool to address recent illegal dumping increases. Apparently, some dumpers view fines as "the cost of doing business." This decision should make them think again—then head to the nearest legally permitted landfill or recycling facility.

It's Just Litter, Right?

Well, yes and no. Waste management professionals tend to think of "litter" as drink cans, fast food wrappers and cigarette butts. It's not attractive, it's not good for the environment and it destroys North Carolina's abundant natural beauty.

"Illegal Dumping" generally refers to quantity. Construction and demolition waste—shingles, boards and old demolished buildings—make up the bulk of illegally dumped materials. Road banks, service roads and just about any dark spot will do for a dumper.

Fines Raised

Dumpers face increased fines that can climb as high as \$5,000 per event. They can also be charged with a felony. Despite the increased fines and a jump to felony status, illegal dumping continues. That's the power behind the en-

forcement tool—*forfeited gains* can far exceed the \$5,000 fine for illegal dumping. In the Winston-Salem case, the forfeiture was *one hundred twenty-eight times larger* than the fine.

Don't let this happen to you.

You don't have to dump it yourself to be cited. Directing subcontractors to dump illegally may also get you into trouble. What's more, if you send waste to an illegal facility, you may have to retrieve it at your own expense if facility records show that your waste contributed to the problem.

The state prefers compliance to enforcement, so they've developed a brochure (href 'brochure' to <http://www.wastenotnc.org/swhome/SWIllegalDumpBroch.doc>) that covers the basic facts about legal waste disposal. To locate the closest permitted facility to your job site, see the state's list of permitted waste facilities (href 'permitted waste facilities to <http://www.wastenotnc.org/swhome/SWIllegalDumpBroch.doc>). The list is grouped by county to make finding facilities quick and easy.

Alternatives to landfills are also an option. Habitat for Humanity has a number of locations across North Carolina that accept materials suitable for reuse. Depending on the materials, you could sell your waste to a material reclamation facility or swap (href 'swap' to <http://www.NCWasteTrader.org/home.aspx>) them for something else on the N.C. Waste Trader Web site.

New Statute And Rule Affecting Public Contracting

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Now, it appears that for state and local government funded projects, even this rule has exceptions. In June 2003, when contractors were still adjusting to the new world of public contracting brought about by the enactment of North Carolina Session Law 2001-496, better known as "Senate Bill 914," the General Assembly enacted G.S. 87-1.1 which sets out exceptions to the standard general contracting licensing requirements in G.S. 87-1. G.S. 87-1 requires a person, firm or corporation "who for a fixed price, commission, fee or wage, undertakes to bid upon or to construct, or who undertakes to superintend or manage . . . the construction of any building . . . where the cost of the undertaking is (\$30,000) or more . . ." to be licensed as a general contractor. G.S. 87-1.

G.S. 87-1.1, however, makes an exception to G.S. 87-1 for public building projects.

"G.S. 87-1 shall not apply to a licensee under Article 2 or 4 of this Chapter of the General Statutes when the licensee is bidding and contracting directly with the owner of a public building project if: (i) a licensed general contractor performs all work that falls within the classifications in G.S. 87-10(b) and the State Licensing Board of General Contractor's rules; and (ii) the total amount of the work classified does not exceed a percentage of the total bid price pursuant to rules established by the Board."

Articles 2 and 4 of Chapter 87 of the General Statutes apply to plumbing, mechanical, and electrical contractors. G.S. 87-1.1 allows

plumbing, mechanical or electrical contractors contracting directly with the owner on public building projects to *subcontract* all work classified as general contracting by G.S. 87-10(b) to a properly licensed general contractor. The total amount of such general contracting work, however, must not exceed "a percentage of the total bid price pursuant to rules established by the [licensing] Board [of general contractors]," (hereinafter "Board").

Effective April 1, 2004, the Board enacted 21 NCAC 12.0210 establishing that:

If a public building project is performed pursuant to G.S. 87-1.1, the total amount of work to be performed by all licensed general contractors shall not exceed 25% of the total bid price. A licensed general contractor shall hold the applicable classifications and limitation for the work undertaken by such licensed general contractor. For the purpose of this Rule, a public building project is a building project that is governed by G.S. 143, Article 8."

This new rule not only establishes the percentage of the total bid price at or below which a general contractor's work must not exceed for the exception to apply, it also defines a public building project as that governed by the standard public contracting rules found in Article 8, Chapter 143 of the General Statutes. Since all state funded and local government funded building projects are governed by the rules found in Article 8, Chapter 143 of the General Statutes, this new exception can potentially apply to a large scope of construction activities in North Carolina.

The impact of this new statute and rule on public contracting is that on single prime contracts on public building projects, a plumbing, mechanical or electrical contractor can bid a project as a single prime contractor provided it can price the general contracting portion at 25% or less of its total bid price. Then, the plumbing, mechanical, or electrical contractor can manage or supervise the entire project by subcontracting the general contracting work to a properly licensed general contractor. Rather than having the general contractor supervise the project as required by G.S. 87-1, G.S. 87-1.1 allows a party not licensed as a general contractor to supervise or manage the work on a public building project—even the work of the general contractor!

This change in law effectively carves out exceptions to long standing case law holding that "a general contractor is one with control over a construction project." *Duke University*, 64 N.C. App. at 80, 306 S.E. 2d at 587; *Helms*, 32 N.C. App. at 456, 232 S.E. 2d at 712. On public building projects governed by Article 8 Chapter 143 of the General Statutes, a plumbing, mechanical or electrical contractor can exercise "control" over the project provided the general contracting work on the project does not exceed 25% of the total bid price and a licensed general contractor will perform such work.

How many times will we see this new exception to G.S. 87-1 put into practice? As a practical matter, the very terms of G.S. 87-1.1 strictly limit its application. We will not see this exception on private projects and it only applies to those public building projects where the electrical

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New Statute And Rule Affecting Public Contracting

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cal, mechanical, or plumbing work predominates in scope.

Several unanswered questions remain from the application of this new Statute. First, how does G.S. 87-1.1 apply to multi-prime, public building projects? On multi-prime projects, the general, mechanical, plumbing, and electrical contractors each contract directly with the public owner. Article 14 of the State General Conditions requires the general contractor to serve as the project expediter in such projects. While this gives the general contractor some control over the project's schedule, it gives limited supervision over the project. On a local government, multi-prime

project, who supervises the contractors when the general contractor performs work, the value of which is 25% or less than the total project bid price?

Secondly, what happens when, during the project, the dollar value portion of the general contractor's work increases by change order, such that the total dollar value of the general contracting work exceeds 25% of the total bid price? At that time, can the general contractor claim it ought to gain supervisory authority over the entire project?

Finally, what happens when a public owner doesn't specify how it wants its project bid, and some bids are placed by plumbing, mechani-

cal, or electrical contractors with the general contractor performing 25% or less of the work as shown by the total bid price, but other bids are made by general contractors performing greater than 25% of the work as shown by the total bid price? Who is the lowest responsible responsive bidder in such a situation pursuant to G.S.143-128?

Anytime the law changes, old issues are resolved, but new questions arise. It makes an interesting world for lawyers and regulators, but a challenging one for contractors.

Jeffrey B. Parsons is an attorney with Raleigh law firm Conner Gwyn Schenck PLLC

License Renewal Reminders and Update

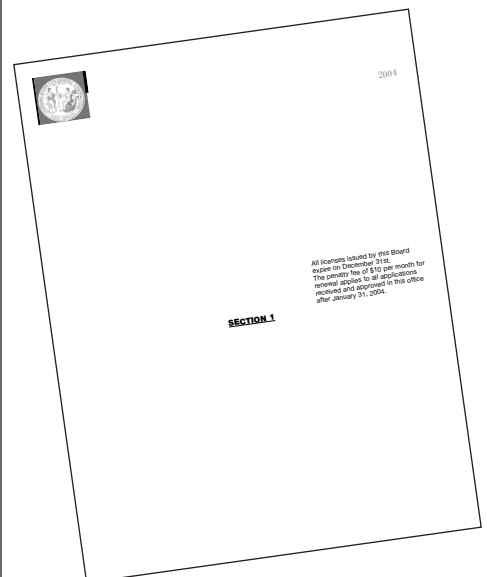
Each October the Board office mails renewal applications to all actively licensed general contractors. During the 2005 license renewal season, the Board will process over 30,000 license renewal applications for the calendar year. Due to the significant increases in numbers of new licenses granted in recent years, in 2004 we redesigned the renewal form. The new form is personalized for each general contractor and contains a simplified instruction sheet to assist licensees in completing the application. Our intent was to streamline the renewal form and its instructions to provide more assistance to licensees, making the renewal process easier and more efficient. Based on comments we've received following the last renewal year, the changes worked.

Here are a few important points to keep in mind when completing your renewal application form this year:

- All six questions in *Section 2* must be answered (leave none blank or unanswered).
- Qualifier Signatures (*Section 2* of Renewal Form); list the name(s) of your qualifier(s). Qualifiers must sign beside their printed name on the form.
- Financial Statements are usable for up to 12 months from the date of the financial information for the license holder. The Balance Sheet (*Section 3*) must be completed and dated.

Check the Board's website (www.nclbge.org) to verify that we have your correct address. You may update your address with the Board by mail or fax; mail current address

information to the Board office at P.O. Box 17187, Raleigh, NC 27619, or fax to (919) 571-4703. Be sure to include the license number on all correspondence.



DEFINITIONS

Consent Order: An order of the Board resulting from an agreement between the Board and a licensee regarding the revocation or suspension of the license to practice general contracting, or the conditions, limitations or restrictions placed on that license. This is a method of resolving or settling disciplinary or contested cases in lieu of a disciplinary hearing.

Revocation: A Board action, which permanently terminates a license by effectively withdrawing that license to practice general contracting.

Suspension: A Board action, which inactivates a license to practice general contracting for a set period of time.

Dismissal/Voluntary

Dismissal: A Board action dismissing a contested case, resulting in no disciplinary action against the licensee or Respondent.

Voluntary Surrender:

A licensee's relinquishing or tendering of the license to practice general contracting, pending an investigation or other action by the Board.

Admission of Violation: A document signed by a licensee who admits to the stated violations, agrees not to repeat them, but acknowledges that the Board will use the document against the licensee prospectively should such action become necessary.

Injunction: A Superior Court order entered against an unlicensed contractor who is illegally practicing general contracting. Such an order stops the illegal practice and can be obtained by consent of a cooperating contractor or by default judgment; violation of the injunction is contempt of court.

Code: Provisions of the North Carolina State Building Code (Residential/Vol. VII and previous editions; General Construction/Vol. I).

Disciplinary Action

(The following Board Orders and other Board disciplinary actions reported here are not a complete summary of all activity or a full representation of each case. Every effort is made for accuracy, but such is not guaranteed. Questions or requests for additional information about specific cases should be referred to the Board's Legal Section.)

Final Decisions

Richard Clyde Allen and Richard Clyde Allen as Qualifier (Caldwell County; 02C362) License No. 11345. A disciplinary hearing was conducted on December 10, 2003 and the Final Decision entered December 23, 2003. At hearing, evidence was presented showing that Mr. Allen entered into a \$360,000 contract to construct a commercial building in Hickory, NC at a time when he was only licensed to enter contracts for projects valued up to \$350,000; prior to completion, Mr. Allen abandoned the project. The Board found the actions of Mr. Allen constituted misconduct in the practice of general contracting and a willful violation of Article 1, Chapter 87 of the NC General Statutes. License No. 11345 was revoked, as was Mr. Allen's ability to act as a qualifying party for another license.

Perry J. Washington, Jr. and Perry J. Washington, Jr. as Qualifier (Davidson County; 02C184) License No. 41637. A disciplinary hearing was conducted on December 10, 2003 and the Final Decision was entered on December 23, 2003. Testimony and evidence showed that Mr. Washington entered into a contract to remodel a single-family dwelling while his license was expired. He also failed to obtain a building permit prior to beginning the project; on his 2001 Renewal, not signed until November 16, 2001, he did not report five liens filed against him totaling nearly \$44,945. The Board determined that the actions of Mr. Washington constituted gross negligence, incompetence and misconduct in the practice of general con-

tracting as well as fraud or deceit in the course of obtaining a license, all of which the Board found to be a willful violation of Article 1 of Chapter 87 of the NC General Statutes. License No. 41637 was revoked, as was Mr. Washington's ability to act as a qualifying party for another license.

Myers Andrew Colvin, Sr. and Myers Andrew Colvin, Sr., Qualifier (Cumberland County; 03C150) License No. 34732. A disciplinary hearing was conducted on May 12, 2004 and the Final Decision entered May 19, 2004. Testimony and evidence at hearing showed that Mr. Colvin applied for and obtained building permits for four Sampson County houses owned by an unlicensed contractor, but he did not directly supervise the construction. The four construction projects were supervised by the unlicensed contractor-homeowner, or persons employed by him. The Board determined that Mr. Colvin did not act as the general contractor of the four houses in that he abandoned supervision to an unlicensed person, which constituted misconduct and willful violation of Article 1, Chapter 87 of the NC General Statutes. License No. 34732 and Mr. Colvin's ability to act as a qualifying party were suspended for one year. The Board permanently enjoined the unlicensed contractor on September 4, 2003.

Revocations or Surrenders of License

Ralph W. Woodard (Dare County; 03C101) License No.

14113. On January 27, 2004 Ralph W. Woodard voluntarily surrendered his general contractors license to the Board. The Board considers surrender of license as permanent revocation.

TCC Vanderbuilt West, LLC (Iredell County; 04C19) License No. 50680. On May 18, 2004 Larry K. Allen surrendered the corporate license to the Board. The Board considers surrender of license as permanent revocation.

Christopher William MacDonald t/a Chris MacDonald Builders (Edgecombe County; 03C53, 03C226, 03C319, 03C321 & 04C81) License No. 47503. On May 13, 2004 Christopher William MacDonald surrendered his general contractors license to the Board. The Board considers surrender of license as permanent revocation.

Preston Enterprises, Inc. (Wayne County; 02C221) License No. 19989. On February 6, 2004 Thomas Preston, Jr., President of Preston Enterprises, Inc., surrendered the corporate license to the Board. The Board considers surrender of license as permanent revocation.

Consent Order (Licensees)

Oscar H. Carroll, Jr. and Oscar H. Carroll, Jr. as Qualifier (Pender County; 01C406) License No. 39330. On December 18, 2003 the Board entered into a Consent Order in which Oscar H. Carroll, Jr. and Oscar H. Carroll, Jr. as Qualifier agreed to a 24-month suspension of

license and exam credentials, conditionally restored for six months, then actively suspended for one year, followed by again being conditionally restored for six months, provided that Mr. Carroll will have already completed a Law and Administration course offered by the NC Code Officials Qualification Board. A Consent Order violation would require a surrender of license and exam credentials to the Board for the balance of the 24-month period of suspension remaining. In signing the Consent Order, Mr. Carroll agreed to allegations of failing to report information to the Board on his 2002 renewal application concerning liens, lawsuits, judgments, or lis pendens filed against him not previously disclosed to the Board; applying and signing for two building permits to erect a duplex at a cost in excess of \$95,000 per unit/per permit when he was not the general contractor for the construction project; applying for six building permits to erect three duplex dwellings at a cost in excess of \$95,000 per unit/per permit using the name and license number of another general contractor; and between April 1995 and February 1997 signing for 30 building permits to construct dwelling units ranging in cost from \$60,000 to \$95,260 using the name and license number without authorization of the licensed general contractor. The above violations constitute fraud or deceit in obtaining a license and/or misconduct in the practice of general contracting and a willful violation of G.S. § 87-11(a).

Robert E. Coggins, Jr. and Robert Edward Coggins, Jr. as Qualifier (Wayne County; 01C376 & 02C15) License No. 37361. The Board entered into a Consent Order on December 18, 2003 in which

Mr. Coggins agreed to an 18-month suspension of license and exam credentials, immediately and conditionally restored for 15 months, but restricted to submitting a list with supporting documentation of current unfinished projects and undertaking no new projects costing \$30,000 or more or qualifying no new projects for 18 months. A Consent Order violation would require a 12-month surrender of license and exam credentials to the Board. Additionally Mr. Coggins agreed to complete successfully a Level I Building Code course as well as a Law and Administration course. By signing the Consent Order, Mr. Coggins agreed to allegations of failing to report on his 2002 renewal application that he was under investigation by the Board; failing to fully disclose certain information to the Board on his 2002 renewal application concerning an unsatisfied judgment; constructing a single-family dwelling found to have eight violations of the NC State Building Code, Volume VII, 1993 Edition with 1995 revisions; contracting for a single-family dwelling in the amount of \$521,400 while holding a limited building license which at that time allowed him to construct projects valued at up to \$250,000, by falsely listing the cost of the construction project as \$249,900 on the building permit application; in the construction of the project, violating 24 sections of the NC State Building Code, Volume VII, 1997 Edition with 1998 revisions; and entering into a contract in the name of an unlicensed corporation for the construction of a single-family dwelling for the amount of \$239,500. The above violations constitute fraud or deceit in obtaining a license, misconduct in the practice of general contracting and a willful violation of

G.S. § 87-11(a). The Board obtained a permanent injunction against the unlicensed corporation in April of 2003.

North State, Inc. and Tony Lynn Barnwell, Qualifier (Wake County; 02C336) License No. 33478. On December 18, 2003 a Consent Order was filed in which Mr. Barnwell, on behalf of the corporation and himself as Qualifier, agreed to a 12-month suspension of license and exam credentials, immediately and conditionally restored for 15 months, but restricted to submitting a list with supporting documentation of current unfinished projects and undertaking no new projects costing \$30,000 or more or qualifying no new projects for nine months. A Consent Order violation would require a 12-month surrender of license and exam credentials to the Board. Mr. Barnwell further agreed to allegations of obtaining a building permit to erect a commercial building using the name and license number of the corporation, when all general contracting on the building was actually performed by or on behalf of an unlicensed entity. The Board obtained a permanent injunction against the unlicensed contractor in February of 2003.

Freeman & Associates Contracting Corporation (Wake County; 02C434) License No. 50040. The Board entered into a Consent Order on February 23, 2004 in which Freeman & Associates Contracting Corporation (Freeman) agreed to a 6-month suspension of license, conditionally restored for 15 months, but restricted to submitting a list with supporting documentation of current unfinished projects and undertaking no new projects costing \$30,000 or more for 60 days. A Consent Order vio-

lation would require a 6-month surrender of license to the Board. By signing the Consent Order, Freeman agreed to allegations that prior to receiving a license from the Board, the Board received an "Examination Transfer Authorization" dated December 7, 2001 from Freeman which requested examination credentials of a licensee (not Freeman's present qualifier, but one who held an individual limited residential license) be transferred to Freeman. In November of 2002, that person informed the Board he was unaware that Freeman had obtained a separate license by listing him as their qualifier.

Thomas J. Sullivan and Qualifier, Thomas J. Sullivan (Cherokee County; 03C171) License No. 50801. On March 2, 2004 a Consent Order was entered in which Thomas J. Sullivan and Qualifier, Thomas J. Sullivan, agreed to a 12-month suspension of license and exam credentials, immediately and conditionally restored for 15 months, but restricted to submitting a list with supporting documentation of current unfinished projects and undertaking no new projects costing \$30,000 or more for nine months. A violation of the Consent Order would require a six-month surrender of license and exam credentials to the Board. Mr. Sullivan further agreed to allegations of obtaining a building permit for the construction of a 6,000 square foot single-family dwelling for which an unlicensed individual entered into a contract which identified the unlicensed contractor as "Contractor." The unlicensed contractor did act as the general contractor for the construction project. The above violations constitute misconduct in the practice of general con-

tracting and a willful violation of G.S. § 87-11(a). The Board obtained a permanent injunction against the unlicensed contractor by means of a Default Judgment in December of 2003.

Matthew McKnight t/a McKnight Builders and Qualifier, Matthew L. McKnight (Davie County; 03C39) License No. 37304. A Consent Order was entered on March 4, 2004 in which Matthew McKnight t/a McKnight Builders and Matthew L. McKnight, Qualifier, agreed to a 12-month suspension of license and examination credentials, conditionally restored for 15 months, but restricted to submitting a list with supporting documentation of current unfinished projects and undertaking no new projects costing \$30,000 or more for nine months. A violation of the Consent Order would require a six-month surrender of license and exam credentials to the Board. Mr. McKnight further agreed to allegations that in 2002 an unlicensed entity entered into a contract to erect a modular home for a contract amount of \$84,250. The contract stated that the unlicensed entity would erect the modular home, perform all excavation services, install a foundation and septic system; however, the permit for the construction of the project listed Mr. McKnight as the general contractor. The unlicensed entity did in fact act as the general contractor for the project. The above violations constitute misconduct in the practice of general contracting and a willful violation of G.S. § 87-11(a). The Board obtained a permanent injunction against the unlicensed contractor by means of a Default Judgment in March of 2004.

William Knoerzer, Individually and as Qualifier

(Pender County; 03C102) License No. 41679. On March 17, 2004 the Board entered into a Consent Order in which Mr. Knoerzer agreed to discipline of his individual license and exam credentials of being placed on probation for six months and having to take a Law and Administration course, followed by submitting written proof of satisfactory completion to the Board. A violation of the Consent Order would require a 60-day surrender of license to the Board. Mr. Knoerzer further agreed to allegations that he applied for and obtained a building permit to construct an addition to a residence at a time when the customer was under contract for the construction project with an unlicensed entity. Subsequent to obtaining the permit, Mr. Knoerzer entered into a contract with the customer for the construction of the addition, but improperly and inadequately performed his responsibilities during the project's construction. The above violations constitute misconduct in the practice of general contracting and a willful violation of G.S. § 87-11(a). The Board obtained a permanent injunction against the unlicensed entity in December of 2003.

Triangle General Contractors, Inc. and Qualifier, Eli Zablud (Wake County; 02C350) License No. 47338. On April 6, 2004 a Consent Order was filed in which Triangle General Contractors, Inc. (Triangle) and Eli Zablud as Qualifier agreed to a six-month suspension of license and exam credentials, immediately and conditionally restored for 12 months, but restricted to submitting a list with supporting documentation of current unfinished projects and undertaking no new projects costing \$30,000 or more or qualifying no new

projects for 60 days. A Consent Order violation would require a 6-month surrender of license and exam credentials to the Board. Triangle and Mr. Zablud further agreed to allegations of entering into a contract with a heating and air conditioning company in which the heating and air conditioning company agreed to provide labor and materials for the furnishing and installation of all heating and air conditioning work in a commercial building. Mr. Zablud as President of Triangle signed a lien waiver on behalf of Triangle falsely certifying that all subcontractors had been paid for all work completed when there were actually 13 subcontractors who had not been paid a total of approximately \$440,000 for work and materials at the project. The above violations constitute misconduct in the practice of general contracting and a willful violation of G.S. § 87-11(a).

Discount Builders & Supply Co., Inc. and Former Qualifier, Ronald F. Moorefield (Surry County; 02C156) License No. 35114. The Board entered into a Consent Order on April 15, 2004 in which Discount Builders & Supply Co., Inc. (Discount) agreed to a 12-month suspension of license, immediately and conditionally restored for 24 months. The terms of the Consent Order specified that [a representative from] Discount Builders & Supply would speak on eight separate occasions at community colleges in Northwest North Carolina having extension programs or courses concerning the unauthorized use of a general contractor's license. The terms also required submitting written verification of presentations from instructors giving dates and length of presentations.

William Bryant Johnson t/a Johnson Construction Company and Qualifier, William Bryant Johnson (Rowan County; 02C399) License No. 34668. The Board entered into a Consent Order on May 7, 2004 in which Mr. Johnson agreed to a 12-month suspension of license and exam credentials, immediately and conditionally restored for 15 months, but restricted to submitting a list with supporting documentation of current unfinished projects and undertaking no new projects costing \$30,000 or more or qualifying no new projects for nine months. A Consent Order violation would necessitate a 12-month surrender of license and exam credentials to the Board. Mr. Johnson further agreed to allegations of obtaining building permits for construction of two single-family dwellings each at an estimated cost of between \$40,000 to \$46,000. Mr. Johnson did not act as the general contractor for either construction project. The above violations constitute misconduct in the practice of general contracting and a violation of G.S. § 87-11(a).

Bennett Builders, Inc. and Michael Leland Bennett as Qualifier (Burke County; 03C111) License No. 36848. On May 25, 2004 a Consent Order was entered in which Bennett Builders, Inc. (Bennett) and Michael Leland Bennett as Qualifier agreed to a six-month suspension of license and exam qualifications, immediately and conditionally restored for 15 months, but restricted to submitting a list with supporting documentation of current unfinished projects, undertaking no new projects costing \$30,000 or more or qualifying no new projects for 30 days, and taking and passing a Level I building code course and submitting to the Board

written proof of satisfactory completion of the course. A Consent Order violation would require a six-month surrender of license and exam credentials to the Board. Bennett Builders, Inc. and Michael Bennett further agreed to allegations of contracting for the construction of a residence, obtaining a permit, constructing and obtaining a certificate of occupancy during a period when Bennett's license had not been renewed and was therefore invalid. Respondents also agreed to allegations of violating four sections of the NC State Building Code, Volume VII, Residential, 1997 Edition, as amended through 1998-99. The above violations constitute incompetency and misconduct in the practice of general contracting and a willful violation of G.S. § 87-11(a).

HomeCo Builders, Inc. (Pender County; 01C471) License No. 43967. A Consent Order was entered on May 27, 2004 in which HomeCo Builders Inc. (HomeCo) agreed to a 12-month license suspension, immediately and conditionally restored for 15 months, but restricted to submitting a list with supporting documentation of current unfinished projects and undertaking no new projects costing \$30,000 or more for nine months. A violation of the Consent Order would require a 12-month license surrender to the Board. HomeCo further agreed to allegations of falsely listing the names of its officers and falsely answering a question on its 1999 license renewal application concerning a criminal conviction of one of its officers. The above violations constitute misconduct in the practice of general contracting and a willful violation of G.S. § 87-11(a).

Admissions of Violation (Licensees)

Bill Lee Enterprises, Inc. (Pitt County; 02C396) License No. 10812. On December 30, 2003 an Admission of Violation was entered in which Bill Lee Enterprises, Inc. admitted entering into a contract in 2000 to construct a single-family dwelling; the Certificate of Occupancy for the project was issued in March 2001. Meanwhile, Bill Lee Enterprises, Inc. had failed to renew its general contractors license for calendar year 2000 through October of 2001. During that time, it was an unlicensed entity and only entitled to act as a general contractor for single projects valued at less than \$30,000.

Alvin Wayne Oldham t/a Wayne Oldham Construction, Co. (Lee County; 03C43) License No. 29293. An Admission of Violation was entered on January 13, 2004 in which Mr. Oldham admitted failing to disclose certain information to the Board on his 2001 and 2002 license renewals in that he denied having any judgments against him which previously had not been disclosed to the Board; in 2000, a \$15,460 Judgment had been imposed against Mr. Oldham in Lee County Superior Court.

Mark Howard (Iredell County; 03C64) License No. 46454. On February 11, 2004 an Admission of Violation was entered in which Mr. Howard admitted entering into a contract in 2000 to construct a single-family dwelling, the Certificate of Occupancy being issued in March 2001. Meanwhile, Bill Lee Enterprises, Inc. had failed to renew its general contractors license for calendar year 2000

through October of 2001. During that time, it was an unlicensed entity and only entitled to act as a general contractor for single projects valued at less than \$30,000.

Jim Walter Homes, Inc. (Florida; 02C108) License No. 10840. An Admission of Violation was entered on April 6, 2004 in which Jim Walter Homes, Inc. admitted failing to adequately supervise the construction of a single-family dwelling in Rowan County, NC. It further admitted that its employees performed work on the house in an unacceptable manner, failed to make repairs in a workmanlike manner and failed to make Jim Walter Homes, Inc. aware of construction problems. All responsible employees and subcontractors for the Respondent corporation were subsequently terminated.

Douglas Wayne Ricks (Johnston County; 02C327) License No. 11007. On May 18, 2004 an Admission of Violation was entered in which Mr. Ricks admitted violating two sections of the NC Residential Building Code, Vol. VII, 1997 with 1998/1999 Revisions in the construction of a single-family dwelling; he admitted that he failed to install approved flashing at the top and sides of all exterior window and door openings and that he failed to use non-hardening sealant to caulk around all window and door frames. Additionally, Mr. Ricks admitted failing to report information to the Board on his 2001, 2002 and 2003 license renewals concerning liens, lawsuits, judgments or lis pendens filed against him which had not previously been reported to the Board. Further, on his 2003 renewal, Mr. Ricks failed to disclose that in 2002 a Complaint had been filed against him with the Board.

Deschamps Building Corp. (New Hanover County; 03C293) License No. 37881. An Admission of Violation was entered on April 27, 2004 in which Deschamps Building Corp. admitted failing to timely disclose to the Board that it had filed for Chapter 11 bankruptcy.

Robert S. Hallyburton (Durham County; 02C149 and 02C206) License No. 22879. On April 19, 2004 an Admission of Violation was entered in which Mr. Hallyburton admitted entering into a verbal contract and obtaining a building permit to construct a single-family dwelling, listing the cost as \$450,000. As of the date of the verbal contract and at times during construction, Mr. Hallyburton's general contractors license had expired, causing him to be unlicensed and only entitled to act as general contractor for projects valued at less than \$30,000.

True American Construction Co., Inc. (Columbus County; 03C21) License No. 28473. An Admission of Violation was entered on April 19, 2004 in which True American Construction Co., Inc. admitted obtaining a building permit to construct a \$235,520 commercial building while holding an intermediate residential license entitling it to build single residential projects valued at up to \$700,000. True American Construction Co., Inc. was not licensed to perform commercial construction projects with a value of \$30,000 or more.

Probuil Construction & Development, Inc. (Pitt County; 02C423) License No. 48787. On April 6, 2004 the Qualifier of Probuil Construction & Development, Inc. signed an Admission of Violation on behalf of the corporation admitting that an unlicensed entity had entered into

a contract and obtained a building permit in 2000 to erect a modular single-family dwelling for a price of \$160,787. Since the Qualifier of Probuilt Construction & Development, Inc. was also an employee of the unlicensed entity, the situation was viewed as a licensee allowing its license to be used by an unlicensed contractor.

Unlicensed Contractor Cases—Injunctions

Default Judgment: Permanent Injunctions were obtained by entry of a Default Judgment in Wake County Superior Court against each of the unlicensed contractors listed below for practicing general contracting in an amount of \$30,000 or more, in violation of N.C.G.S. § 87-13. In some instances, the Sheriff was unable to locate the contractors and/or Certified Mail was not delivered, but the Board effected service either by newspaper publication or through the Secretary of State; nevertheless, the contractors were enjoined from further practice of general contracting (including bidding) in an amount of \$30,000 or more until such time as the person or firm becomes licensed by the Board.

John Burbank d/b/a Create A Dream Remodeling and Mr. Fix It Remodeling (Johnston County; 02C337). John Burbank d/b/a Create A Dream Remodeling and Mr. Fix It Remodeling contracted to construct a two-car garage, shed and roof over a patio for a cost of \$34,489. Default Judgment was entered October 20, 2003.

Steve Myers (Richmond County; 02C76). Mr. Myers obtained a building permit to construct a single-family dwelling for an estimated cost of \$175,000 and then undertook construction. A Certificate of Occupancy was issued on May 31, 2001, but less than one year later by

February 25, 2002 the property was listed for sale. Default Judgment was entered October 20, 2003.

EBS Design Build, Inc. (Durham County; 03C124). EBS Design Build, Inc. contracted to upfit a restaurant for a cost of \$150,000 and misrepresented itself as a licensed general contractor in obtaining a building permit. On another project in another town, EBS Design Build, Inc. submitted a proposal to upfit a restaurant for a cost of \$105,000. Default judgment was entered February 3, 2004.

Michael N. Kindley (Cabarrus County; 03C162). Mr. Kindley contracted to renovate and construct an addition onto an existing home for a price of \$97,000. Default Judgment was entered February 3, 2004.

Richco Construction, Inc. (Mecklenburg County; 03C145). Richco Construction, Inc. contracted to construct a room addition, garage and deck onto home for a cost of \$39,000. Default Judgment was entered February 3, 2004.

Chatham Builders, Inc. (Chatham County; 03C275). Chatham Builders, Inc. contracted to construct a sun-room onto an existing home for a cost of \$41,600, but misrepresented the cost as \$21,000 on the building permit application. Default Judgment was entered March 18, 2004.

Chris Gresham d/b/a CJG Construction (Gaston County; 03C235). Chris Gresham d/b/a CJG Construction contracted for repairs and renovations on an existing home for a cost of \$72,807.59. Default Judgment was entered March 18, 2004.

Donnie Holt d/b/a Holt & Son Builders (Person County;

03C290). Donnie Holt d/b/a Holt & Son Builders contracted to supply and erect a modular home and perform construction for a cost of \$140,000 while misrepresenting himself as a licensed general contractor by using a licensee's number on documents submitted to a bank. Default Judgment was entered March 18, 2004.

Modern Housing Concepts, Inc. (Forsyth County; 03C40). Modern Housing Concepts, Inc. contracted to erect a modular dwelling for a price of \$84,250. Default Judgment was entered March 18, 2004.

James C. Riggs, Jr. (Onslow County; 03C268). Mr. Riggs obtained a building permit to construct a personal residence in August of 2002 and undertook construction; as of March of 2003 Riggs had listed the home for sale with an agency. Default Judgment was entered March 18, 2004.

Vintage Homes, Inc. (Wake County; 03C32). Vintage Homes, Inc. contracted to construct a home for a price of \$742,000, which later was reduced to \$723,450. Default Judgment was entered March 18, 2004.

Bill W. Perry, Jr. d/b/a Perry Contracting and Genesis Custom Homes (Wake County; 03C27). Bill W. Perry, Jr. d/b/a Perry Contracting and Genesis Custom Homes contracted to renovate an existing home for a cost of \$45,000, undertook construction and was ultimately paid \$48,160. Default Judgment was entered March 18, 2004.

Adam Smith d/b/a Smith Construction (Forsyth County; 02C197). Adam Smith d/b/a Smith Construction contracted to remodel and construct an addition onto an existing house for a cost of \$31,112, but subsequent change orders

increased the total contract price to \$36,577. Default Judgment was entered March 19, 2004.

Consent Orders of Unlicensed Contractors: Permanent Injunctions were obtained by entry of a Consent Order in Wake County Superior Court concerning each of the following unlicensed contractors who practiced general contracting in an amount of \$30,000 or more, in violation of N.C.G.S. § 87-13, but who admitted to their wrongdoing, paid court costs and service fees and cooperated with the Board in the matter.

Eddie Roseman and Randy Sweatt d/b/a Alektra Enterprises (Cabarrus County; 03C83). Eddie Roseman and Randy Sweatt d/b/a Alektra Enterprises undertook construction of five homes where the cost of each project exceeded \$30,000. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on December 22, 2003.

Kent Redman and Jamie Redman d/b/a Redman Construction (Cumberland County; 02C292). Kent Redman and Jamie Redman d/b/a Redman Construction contracted to construct a covered deck and patio for a price of \$31,000. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on December 22, 2003.

Eagle Home Improvements, Inc. (Wake County; 03C133). Eagle Home Improvements, Inc. contracted to construct an attached garage onto an existing house for a cost in excess of \$30,000. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on December 23, 2003.

Ronnie R. Carlson (Virginia; 03C241). Mr. Carlson obtained a building permit to construct a personal residence and undertook construction; a certificate of occupancy was issued in May 2003. Less than two weeks later Mr. Carlson transferred the property to a construction company, which in turn sold the property on the same day for \$187,000. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on January 12, 2004.

George Cherry (Bertie County; 03C348). Mr. Cherry submitted a bid in the amount of \$32,475 to rehabilitate a home. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on January 12, 2004.

Lynne Debeneditis (Brunswick County; 03C206). Ms. Debeneditis obtained a building permit to construct a personal residence and undertook construction. In December 2002 the certificate of occupancy was issued; prior to residing in the house for one year, however, she listed the house for sale. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on January 12, 2004.

J.E. Eatmon (Nash County; 03C272). The Board contends that in May of 2001, J.E. Eatmon verbally contracted to superintend and manage construction of a house where the cost exceeded \$30,000. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on January 12, 2004.

J. Andrews Builders, Inc. (New Hanover County; 03C57). J. Andrews Builders, Inc. contracted to construct a

home for a price of \$272,500. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on January 16, 2004.

South Eastern Construction, Inc. (Franklin County; 03C147). In December of 2002, South Eastern Construction, Inc. contracted to construct a garage and office for a price of \$63,740. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on January 16, 2004.

William Owens d/b/a The Woodcrafters (Cumberland County; 03C227). The Board contends that in November of 2002, William Owens d/b/a The Woodcrafters undertook to superintend and manage construction of a house where the cost exceeded \$30,000. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on January 16, 2004.

Diamond Construction of Gaston County, Inc. (Gaston County; 03C210). Diamond Construction of Gaston County, Inc. contracted to construct an addition onto a home for a price of \$35,000. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on February 3, 2004.

Homeco Construction, Inc. (Pender County; 02C74). From April 1995 through February 1997, Homeco Construction, Inc. obtained building permits to construct dwellings ranging in cost from \$60,000 to \$95,260 and undertook construction of the projects. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on February 3, 2004.

Airlie, Inc. (Burke County; 03C330). Airlie, Inc. undertook renovations to a commercial building for an estimated cost of \$300,000. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on February 11, 2004.

Flying B and Associates, LLC (Pender County; 03C247). Flying B and Associates, LLC contracted to construct a detached garage and was paid more than \$30,000 for the work performed, but was unaware that its actions violated North Carolina law. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order filed on February 11, 2004.

Gary E. Moore Construction Company (Watauga County; 03C288). Gary E. Moore Construction Company contracted to construct a home for a price of \$125,000; the corporation's president was unaware that its actions violated North Carolina law. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on February 11, 2004.

Jim Johnson d/b/a We Do It (Pamlico County; 03C105). Jim Johnson d/b/a We Do It undertook construction of a two-story garage for a price in excess of \$30,000. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on February 11, 2004.

Willie Snead and H.O.P.E. Empowerment, Inc. (Harnett County; 03C207). Willie Snead and H.O.P.E. Empowerment, Inc. submitted an estimate to renovate a home for a price of \$35,000. A permanent injunction was obtained in Wake County Superior Court by the entry of a Consent Order on February 19, 2004.

Bernard Young (Harnett County; 03C234). The Board alleges that in March of 2003, Mr. Young paid a licensee for the use of its license to obtain building permits for the construction of two homes and then undertook construction of the homes. Mr. Young denies the allegations but agreed to execute a consent order as long as it would not be construed as his admission of violation of any law. A permanent injunction was obtained in Wake County Superior Court by entry of that Consent Order on February 19, 2004.

Elmer Cox (New Hanover County; 03C220). Mr. Cox undertook to superintend or manage the construction of a home for owners believing they were acting as the general contractor for the project and unaware that Cox's actions violated North Carolina law. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on February 26, 2004.

Lucas Justin Anderson and Tycote, Inc. (Buncombe County; 03C197). Tycote, Inc. applied for three building permits to construct three single-family dwellings each in excess of \$30,000, and Lucas Justin Anderson used the contractors license number of his licensee father-in-law on the building permit applications. Both Mr. Anderson and Tycote, Inc. were unaware that their actions violated North Carolina law. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on March 11, 2004.

Neil Church d/b/a Neil Church Construction (Watauga County; 02C355). The Board alleges that Neil Church d/b/a Neil Church Construction undertook a

clearing, grading and road building project costing in excess of \$30,000. Mr. Church believed that the work consisted of two separate projects, was not a licensing violation and further that the person who hired him was acting as the general contractor for the project. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on March 24, 2004.

Henry Allred d/b/a Allred Construction (Carteret County; 03C119). The Board alleges that Henry Allred d/b/a Allred Construction undertook to superintend or manage the construction of a home for a couple believing that they were acting as the general contractor for the project. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on March 31, 2004.

Keith Troxler, Jr. (Cabarrus County; 03C174). In September of 2000 Mr. Troxler obtained a building permit to construct a personal residence and undertook construction of the home. Prior to residing in the house for one year, he sold the house unaware that his actions violated North Carolina law. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on April 22, 2004.

Joseph E. Leforge (Iredell County; 03C413). Mr. Leforge provided an estimate to repair a home for an estimated cost of \$60,464, undertook work on the project and invoiced the homeowner \$65,759 all while unaware that his actions violated North Carolina law. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on May 18, 2004.

Michael Conger (Pitt County; 03C382). Mr. Conger undertook two commercial upfit projects where the cost of upfitting each space exceeded \$30,000; Conger was unaware that his actions violated North Carolina law. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on June 10, 2004.

Medallion Athletic Products, Inc. (Wake County; 03C411). Medallion Athletic Products, Inc. submitted two bids in the amounts of \$1,263,000 and \$279,300 to install artificial athletic surfaces. A permanent injunction was ob-

tained in Wake County Superior Court by entry of a Consent Order on June 10, 2004.

Melvin Edgar Pfel (Carteret County; 03C468). Prior to passing the Building contractor examination, which has now been accomplished, Mr. Pfel undertook to superintend or manage the construction of a home for another individual. A permanent injunction was obtained in Wake County Superior Court by entry of a Consent Order on June 10, 2004.

Other: The unlicensed contractor cases below were resolved with the Board by other means:

G & C, Inc. (Rowan County; 03C474). Glen A. Julian, President of G & C, Inc. signed a sworn Affidavit of Admission, which was filed in the Board office on May 14, 2004. Mr. Julian admitted entering into a contract with a licensed gener-

al contractor who agreed to build a house in Kannapolis for \$17,000 above the actual cost of construction. G & C, Inc., however, purchased all materials and paid all subcontractors. Everyone involved, including the local inspections department, believed the arrangement was in compliance with North Carolina law. In signing the Affidavit of Admission, Jr. Julian assured the Board that G & C, Inc. will not engage in the practice of general contracting again in North Carolina for work costing \$30,000 or more until such time, if ever, that it is properly licensed.

UNLICENSED CONTRACTOR SUBJECT TO CIVIL CONTEMPT SANCTIONS

Christopher Plummer (Buncombe County; 03C301). In February 2002 the Board filed a lawsuit against Christopher Plummer for contracting without a license. In August 2002 the Board obtained a Default Judgment against Mr. Plummer that prohibited him from the further practice of general contracting. In August of 2002 Mr. Plummer contracted with homeowners in Buncombe County to construct a custom log home for a total cost in excess of \$200,000. On March 31, 2004, a Wake County Superior Court Judge found Mr. Plummer in civil contempt of court and ordered him to make a significant charitable contribution to purge himself of the contempt.

Licensing Examinations Now Administered Through PSI Examination Services

The Licensing Board has contracted with PSI Examination Services to administer its computer-based licensing tests effective March 1, 2004. The Board's licensing examinations are now delivered by PSI at seven North Carolina test centers and over 72 centers in other states. PSI utilizes a web-based interface allowing its clients to quickly download score reports providing access to candidate test information in a secure environment. Candidates eligible for contractor licensing exams may schedule tests either by telephone or the internet. PSI offers touch-tone phone registration service without operator assistance and online scheduling 24/7 (Candidates requesting examination accommodations outside North Carolina must make their request by telephone). Headquartered in Glendale, California, PSI provides test development, test administration and other services for licensing examinations in the U.S. and Canada.



North Carolina Licensing Board for General Contractors

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