

BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

**FIRE ALARM BURGLAR ALARM AND LOCKSMITH
ADVISORY COMMITTEE**

MINUTES OF SEPTEMBER 16, 2003

PUBLIC SESSION

The notice of this meeting was prepared in the Office of the Board and mailed to the Secretary of State, the Star Ledger, the Trenton Times and the Courier Post.

CALL TO ORDER

The meeting of the Fire Alarm, Burglar Alarm and Locksmith Advisory Committee was called to order by Chairman Robert Shoremount at 9:55 a.m. in the Monmouth Room, Seventh Floor, 124 Halsey Street, Newark, New Jersey. All parties were duly notified of the date, time and location of this meeting and pertinent material was provided to meeting participants.

Advisory Committee members recited the Pledge of Allegiance prior to the roll call of members.

ROLL CALL

Committee Members Present:

Richard T. Aicher

Martin Arnold

Edward Bagniewski

Robert Boyer, Vice Chairman

Keith Eaves

Arthur Fucetola

William Hartung

Charles Okun

Richard Rible

Robert Shoremount, Chairman

Jon Sprague

Barry Starer

Others Present:

Anthony Miragliotta, Deputy Director

Joseph Cantalupo, Board of Examiners of Electrical Contractors

Barbara A. Cook, Executive Director

Maryann Sheehan, Regulatory Analyst

George DeLuca, Administrative Analyst

Sally Barletta, Senior Clerk Transcriber

Joseph Donofrio, Deputy Attorney General

Committee member Leo Selb was unable to attend.

Members of the Public:

Charles D. Hamberger

Eugene R. George, Jr.

GENERAL ANNOUNCEMENTS

Committee members were informed of the website correspondence with regard to the March 1, 2004 DCA certification exemption for Fire Alarm Contractors. A notice was posted on the homepage of the Board of Examiners of Electrical Contractors and the New Jersey Division of Consumer Affairs public server.

APPROVAL OF MINUTES OF APRIL 15, 2003

Motion was made by Martin Arnold, seconded by Richard Aicher and passed unanimously to approve the Public Session minutes for April 15, 2003 meeting.

REVIEW OF PUBLIC COMMENTS FOR PROPOSED RULES, N.J.A.C.13:31A, FIRE ALARM, BURGLAR ALARM AND LOCKSMITH LICENSEES AND BUSINESSES

The Advisory Committee reviewed and discussed the following comments for the proposed rules, N.J.A.C.13:31A, Fire Alarm, Burglar Alarm, and Locksmith Licensees and Businesses.

The Committee received comments on the proposal from the following:

1. David E. Herbert, C.P.M., Fire Marshal, East Brunswick Fire District #1, Bureau of Fire Safety, East Brunswick, New Jersey;
2. Frederick H. Schmelz;
3. David Sullivan;
4. Gregg Giordano;
5. MaryAnn Bonello;
6. Thomas Sansone;
7. Stephen Barone;
8. Eugene R. George, Jr.,
9. Pooran Sookoo;
10. Richard Olive;
11. Louis Gildenberg;
12. Benjamin Borkowski;
13. James Daubert;
14. Charles Hoffman;
15. Jack Cool;
16. William Rhoads;
17. Daniel Snyder;
18. C. Matthews;
19. Charles W. Gibson, Jr., CAE, Executive Director, Associated Locksmiths of America, Inc., Dallas, Texas;
20. Paul Zimolong;
21. Nicholas Mazza;

22. Jacob P. Peter;
23. Edward Fitzgerald;
24. Edward J. Fitzgerald, CML, Corresponding Secretary, The Greater Philadelphia Locksmiths Association, Philadelphia, PA;
25. William R. Settles; Browns Mills, NJ;
26. Jerry Donofrio;
27. Keith Moran;
28. William Timmann;
29. Joseph Tudda;
30. Norman R. Coltri, PE, Medford, NJ;
31. Martin G. Ficke, Piscataway, NJ; and
32. Eric J. Pritchard, Esq., on behalf of the New Jersey Burglar and Fire Alarm Association.

COMMENT: Mr. Herbert expressed concern that the proposed new rules do not take into account existing laws and regulations of the Uniform Fire Code (UFC) under the jurisdiction of the Division of Fire Safety. In addition, the commenter objected to the failure of the new rules to require knowledge, training and experience in NFPA 72, the National Fire Alarm Code. NFPA 72 is referenced in both the Uniform Construction Code (UCC) and UFC as the standard which dictates how alarms are to be installed and maintained. Compliance with the standards set forth the UFC and in NFPA 72 are necessary for the proper, on-going maintenance of fire alarm systems.

RESPONSE: The new rules indirectly require knowledge and training in NFPA 72 through the requirement that licensees receive training in the UCC. The Committee notes that the UCC, at N.J.A.C. 5:23-3.17(a)1i(5), references and incorporates Chapter 9 of the BOCA Code, which in turn expressly incorporates NFPA 72, as the standard to be utilized for installation and on-going maintenance of fire alarm systems. The Committee has not expressly required licensees to obtain knowledge or training in the UFC at this time. The Committee believes, however, that licensees and employees will receive sufficient training in fire alarm systems under the UCC, through its incorporation of NFPA 72, to ensure the health, safety and welfare of the general public. The Committee, however, will revisit this issue in the future to determine whether express training in the UFC should be required of its licensees and their employees.

COMMENT: Mr. Herbert requested that N.J.A.C. 13:31A-1.12(c), which provides in part, that a licensee shall obtain one credit of continuing education per triennial registration period in the UCC, be amended to also require study of the UFC and NFPA 72.

RESPONSE: As noted above, the UCC incorporates NFPA 72 by reference. Therefore, the Committee believes that N.J.A.C. 13:31A-1.12(c), which requires licensees to obtain continuing education credit in the UCC, incorporates study of NFPA 72. Therefore, the Committee does not believe that an amendment to N.J.A.C. 13:31A-1.12(c) requiring study of NFPA 72 is required. In addition, the Committee notes that it intends to revisit the issue of required training in the UFC in the future. As part of that review, the Committee will determine whether continuing education in the UFC should be required of licensees. The Committee, however, believes that the continuing education currently required of licensees is sufficient to ensure

public safety in the provision of fire alarm services. Moreover, the Committee notes that N.J.A.C. 13:31A-1.12 does not prohibit licensees from taking continuing education courses in UFC at this time, if they so choose.

COMMENT: Mr. Herbert requested that N.J.A.C. 13:31A-1.14(a)4, which provides that a licensee must ensure that the installation, erection, repair or alteration of alarm or locksmithing equipment and systems he or she performs conforms to the standards of the UCC, be amended to require that the licensee also comply with the UFC and the relevant standards of NFPA 72, while doing repairs, inspections or maintenance of fire alarm systems. In addition, the commenter requested that N.J.A.C. 13:31A-1.14(a)7, which provides that a licensee may not disclose client information unless disclosure to a law enforcement agency is compelled by law or court order, to provide that a licensee must also provide appropriate information to the local agency responsible for enforcement under the UFC pursuant to N.J.A.C. 5:70-3.1(a)5, F-501.4.4 and 3.2(a)5, and F-504.1.

RESPONSE: As noted above, the UCC incorporates NFPA 72 by reference. The Committee, therefore, believes that N.J.A.C. 13:31A-1.14(a)4, which requires work to be performed in accordance with the standards of the UCC, will ensure that work is also performed in accordance with NFPA 72 standards. In addition, the Committee notes that subsection (a)1 requires a licensee to ensure that the work he or she performs complies with all applicable Federal, State and local laws and codes, which would include the UFC. The Committee, as noted above, will determine in the future whether express training in the UFC should be required of its licensees. If such a determination is made, the Committee will amend N.J.A.C. 13:31-1.14 accordingly.

As to the commenter's concerns regarding N.J.A.C. 13:31A-1.14(a)7, the Committee notes that the provisions cited by the commenter are enforced by other state agencies. Nothing contained in the new rules would prohibit those state agencies from enforcing relevant code provisions. In order to eliminate any confusion, however, the Committee has amended N.J.A.C. 13:31A-1.14(a)7 on adoption to clarify that a licensee must disclose any information required to be turned over pursuant to any statute or regulation.

COMMENT: Mr. Herbert requested that N.J.A.C. 13:31A-3.1(a)7i, which provides that applicants for licensure to engage in the burglar alarm or fire alarm business must possess four years of experience which must include training in the UCC, be amended to also require training in the UFC and in NFPA 72.

RESPONSE: As noted above, the Committee believes that training in NFPA 72 is incorporated within the training in the UCC currently required of licensees. The Committee will review the issue of whether training in the UFC should be required in the future.

COMMENT: Mr. Herbert requested that N.J.A.C. 13:31A-3.2, which sets forth the requirements for the burglar alarm or fire alarm examination, be amended to require applicants for fire alarm licensure to pass the NICET II certification examination, or in the alternative, that this examination be accepted by the Committee in lieu of the Committee's licensure examination. The commenter noted that passage of the NICET II examination is required under the Division of Fire Safety regulations.

RESPONSE: The Committee disagrees with the commenter's suggestion that applicants for licensure should be allowed to substitute passage of the NICET II certification examination in lieu of the Committee's fire alarm examination. The NICET II examination does not test an applicant's knowledge of electronic security systems. A license to engage in the fire alarm business issued by the Committee authorizes the holder to provide electronic security system services, in addition to fire alarm services. The NICET II examination, therefore, would be an incomplete examination for purposes of Committee licensure.

COMMENT: Mr. Herbert requested that N.J.A.C. 13:31A-3.3(a), which provides for the waiver of the burglar alarm or fire alarm examination for any person who has obtained specified training, including training in the UCC, be amended to also require training in the UFC and in NFPA 72. In addition, the commenter requested that subsection (c) of N.J.A.C. 13:31A-3.3, which provides that applicants for licensure do not have to pass the licensure examination or submit proof of having obtaining the specified training, if the applicants have been engaged in the burglar alarm or fire alarm business for at least one year prior to the effective date of the rule, be amended to require applicants to have five years of experience in the fire alarm business, as is currently required under the Division of Fire Safety regulations.

RESPONSE: As noted above, the standards of NFPA 72 are incorporated by reference in the UCC, and the Committee will review in the future whether training in the UFC should be required of its licensees. If a determination is made that such training should be required, the Committee will amend N.J.A.C. 13:31A-3.3(a) accordingly. The Committee notes that the commenter's suggestion that N.J.A.C. 13:31A-3.3 be amended to require applicants for licensure in the fire alarm business to have five years of experience in order to qualify for a waiver of the examination, would violate N.J.S.A. 45:5A-27, which authorizes the waiver based on one year of experience alone.

COMMENT: Mr. Herbert objected to the definition of "responds appropriately" in N.J.A.C. 13:31A-3.5(a)3, which provides that with 24 hours of calling a burglar alarm or fire alarm business's emergency service number, the person calling to request service will be provided with the date and time when the service will be rendered. The commenter believes that providing licensees with 24 hours within which to call back a consumer is unacceptable, as is the failure of the rules to impose a minimum response time in which service must be provided. Under the provisions of the UFC referenced standard NFPA 72-1993 edition, the code required response to a premises between one and four hours for an alarm or problems for central station systems. The current edition of NFPA 72 requires between two and four hours for response to the premises depending on the type of alarm.

RESPONSE: The Committee notes that new rule N.J.A.C. 13:31A-3.5(a)3 establishes a minimum standard for licensees to abide by in the handling of client emergency service calls. If other applicable laws or regulations establish specific response times, as suggested by the commenter, however, licensees would be bound to abide by such requirements under the provisions of N.J.A.C. 13:31A-1.14. N.J.A.C. 13:31A-1.14(a) (a)1 requires licensees to comply with all applicable Federal, State and local laws and codes.

COMMENT: Mr. Herbert requested that N.J.A.C. 13:31A-3.6(b)2, which provides that an employee who is retained to perform unsupervised installation, servicing or maintenance of burglar alarm or fire alarm systems must have delineated training, including training in the UCC, be amended to also require training in the UFC and in NFPA 72.

RESPONSE: As noted above, the UCC incorporates NFPA 72 by reference. Therefore, the Committee does not believe that N.J.A.C. 13:31A-3.6(b)2 should be amended to refer to NFPA 72. The Committee will review in the future the issue of mandatory training in the UFC for its licensees, and if such training is deemed necessary, the Committee will amend N.J.A.C. 13:31A-3.6(b)2 accordingly.

COMMENT: Mr. Herbert observed that only one State agency should be responsible for regulating fire alarm systems. The commenter believes that the existence of two laws and two sets of regulations will only add to the confusion in the fire alarm industry.

RESPONSE: The Committee does not disagree with the commenter's concerns, but notes that the Committee is required to promulgate regulations to effectuate the purposes of the Act pursuant to N.J.S.A. 45:A5-38. The Committee and the Department of Community Affairs are working together to eliminate any confusion that may exist in the industry following the promulgation of the new rules.

COMMENT: Mr. Schmelz believes that the new rules will have a negative impact upon small locksmithing business owners. The commenter noted that locksmiths compete not only against other locksmiths, but against local police who carry car opening tools in their police cars. The commenter estimated that the fees and license requirements imposed under the new rules will cost the average locksmith approximately one thousand dollars to start a business, exclusive of equipment costs.

RESPONSE: The intent of the Act and the new rules is to regulate the provision of burglar alarm, fire alarm and locksmithing services throughout the State, irrespective of the size of the business performing the services, in order to ensure the health, safety and welfare of New Jersey consumers. Although the Committee can not estimate the cost to be borne by individual business owners and licensees as a result of the new rules, the Committee has taken into account differences between large and small businesses and, as a result, has imposed lower fees upon small businesses pursuant to N.J.A.C. 13:31A-1.4.

COMMENT: Mr. Schmelz objected to the requirement set forth in N.J.A.C. 13:31A-2.1 that applicants for licensure as locksmiths possess a high school diploma. The commenter believes that this requirement has no bearing on the provision of locksmithing or alarm services. Mr. Timmann also objected to the high school diploma requirement, noting that having a high school diploma will not effect the quality of the work that will be performed by a licensee. Mr. Timmann noted that if a high school diploma is required of locksmith licensees, then all professions in the State should impose a similar requirement upon their licensees.

RESPONSE: The high school diploma requirement in N.J.A.C. 13:31A-2.1 will have no bearing on the majority of locksmiths currently engaged in the locksmithing business. Such persons will likely qualify for licensure under the grandfathering provisions of N.J.A.C. 13:31A-2.2. The

Committee believes that on a going forward basis, however, that requiring a high school diploma of new entrants into the field is a necessary step toward improving the level of professionalism associated with the provision of locksmithing services.

COMMENT: Mr. Schmelz objected to the continuing education requirements imposed under the new rules, believing recurring training for normal locksmithing procedures to be a waste of time, money and energy. Training in new products should only be required if a locksmith is going to be using the new products. In addition, the commenter noted that the cost to attend continuing education classes offered at local conventions has substantially increased since the passage of the Act. The commenter also observed that all continuing education credits earned by a licensee beyond those required for license renewal should be allowed to be carry over into the next renewal period.

RESPONSE: The Committee believes that the number of continuing education credits currently required of locksmithing licensees pursuant to N.J.A.C. 13:31A-1.12 is necessary to ensure that such licensees maintain proficiency in their profession. The Committee notes, however, that if it becomes aware in the future that new programs or courses are not being developed for locksmiths and that licensees are being forced to take repetitive courses, the Committee will consider decreasing the number of credits required for locksmith license renewal. The Committee disagrees with the commenter's assertion that all continuing education credits earned by a licensee should be allowed to be carried over into the succeeding triennial renewal period. The Committee believes that the requirement imposed pursuant to N.J.A.C. 13:31A-1.12(b), whereby a licensee may carry over no more than eight credits, is necessary to ensure that the continuing education a licensee receives in each renewal period is current.

COMMENT: Mr. Schmelz agreed with the requirement articulated in the new rules concerning training in life safety and the Uniform Construction Code, noting that such training will protect consumers.

RESPONSE: The Committee thanks the commenter for his support of the new rules.

COMMENT: Mr. Schmelz questioned whether N.J.A.C. 13:31A-1.14(a)5, which requires a licensee to secure applicable construction permits and inspections of completed work, requires a construction permit and inspection for the installation of a new lockset.

RESPONSE: To the Committee's knowledge, neither a construction permit nor an inspection are required for the installation of a new lockset under any code currently in effect. The Committee also notes that the Act at N.J.S.A. 45:5A-2(n) and new rule N.J.A.C. 13:31A-1.2 exclude prefabricated locksets from the definition of "locksmithing services" and, therefore, from the purview of the Act and the regulations.

COMMENT: Mr. Schmelz questioned whether N.J.A.C. 13:31A-1.15(a), which prohibits a licensee from accepting any remuneration other than his or her stated recompense for services rendered, prohibits a licensee from accepting a tip or gift from a satisfied customer.

RESPONSE: The Committee did not intend N.J.A.C. 13:31A-1.15(a)1 to preclude a licensee from accepting a tip from a customer. The Committee believes that accepting such remuneration should be within the licensee's discretion. The Committee intended N.J.A.C. 13:31A-1.15(a)1 to preclude a licensee from demanding any remuneration from a client other than that which was agreed upon prior to the commencement of the work. The Committee has, therefore, amended N.J.A.C. 13:31A-1.15(a)1 on adoption to clarify the intended meaning of the provision.

COMMENT: Mr. Schmelz questioned why a business license holder must maintain a surety bond payable to the State of New Jersey as provided in N.J.A.C. 13:31A-2.6(a)4.

RESPONSE: The surety bond requirement in N.J.A.C. 13:31A-2.6(a)4 is imposed pursuant to N.J.S.A. 45:5A-32(a)4, which requires a business owner to maintain a surety bond in favor of the State in the sum of \$10,000.

COMMENT: Mr. Schmelz questioned why a business license holder would retain an apprentice if he or she must be supervised as provided in N.J.A.C. 13:31A-2.8.

RESPONSE: The Committee notes that an apprentice is an individual who is learning a new trade and, therefore, supervision of his or her work is necessary to protect the public. The Committee also notes that N.J.A.C. 13:31A-2.8 allows for different levels of supervision of an employee depending on the type of work he or she will be performing. The Committee believes that the decision to retain an apprentice, and determinations as to the type of work that an apprentice will be allowed to perform, are business decisions best left to the discretion of individual business owners.

COMMENT: Mr. Sullivan noted that he has been employed for the State of New Jersey as an electrician since 1987, wherein he has been engaged in the installation, repair and replacement of fire alarm and burglar detection equipment. The commenter inquired whether he would still be allowed to work on the systems at his present facility and whether he would be entitled to use his past experience in order to qualify for a license.

RESPONSE: N.J.S.A. 45:5A-18(l) exempts from the provisions of the Electrical Contractors Licensing Act, the installation, repair or maintenance performed by regular employees of the State. Therefore, the commenter does not need to apply for a license to continue working on burglar alarm and fire alarm systems as part of his job with the State. The Committee notes, however, that this statutory exemption does not authorize the commenter to engage in any electrical or alarm work outside the context of his State position. Therefore, if the commenter intends to perform any alarm work outside of his State job, he would be required to obtain a licensee from the Committee. In order to qualify for licensure, the commenter must submit an application to the Committee and demonstrate satisfaction of the requirements set forth at N.J.A.C. 13:31A-3.1.

COMMENT: Mr. Giordano inquired as to the impact the new rules would have on his company of 10 employees who have varying degrees of experience.

RESPONSE: The Committee cannot answer the commenter's question because the commenter did not provide the Committee with any relevant information regarding his business. Specifically, the Committee is unclear whether the commenter is engaged in the alarm business or in the locksmithing business. The Committee, however, refers the commenter to the specific rules concerning individual licensure, set forth at N.J.A.C. 13:31A-2.1 and 3.1, business licensure, set forth at N.J.A.C. 13:31A-2.5 and 3.4, and employee requirements, set forth at N.J.A.C. 13:31A-2.6 and 3.5, in order to determine how the rules will impact his particular business.

COMMENT: Ms. Bonello expressed support for licensing burglar alarm and fire alarm businesses, believing that the new rules will help to end the practice of businesses working out of their trucks, with no insurance or tax identification numbers. The commenter inquired how the Committee will monitor larger firms in the State in terms of hiring unlicensed employees and subcontractors, and how such companies will be stopped from supplying equipment to unlicensed businesses.

RESPONSE: The Committee thanks the commenter for her support of the new rules, but notes that the Committee will not be monitoring any firms in the State, regardless of size. The purpose of the Committee is to license and regulate practitioners and businesses in the industry, and to discipline those that violate the rules and the Act. The Committee notes that if it receives a complaint regarding the conduct referred to by the commenter, the Committee would investigate such conduct to determine if any violations of the rules and Act have occurred.

COMMENT: Mr. Sansone inquired whether a new class or wage rate will be established, under the State Prevailing Wage Class Rate, for locksmiths and burglar alarm and fire alarm installers based on the new rules. If a new class is to be created, the commenter inquired whether the wage rates will be determined by a survey of alarm companies or whether they will be established by the electrical union as has been the case in the past.

RESPONSE: The issues raised by the commenter are not within the jurisdiction of the Committee. Such determinations would be made by the Department of Labor.

COMMENT: Mr. Sansone inquired whether the continuing education credits earned for an alarm license could be used toward satisfaction of the continuing education requirements for electrical contractors, or whether, alternatively, credits earned for an electrical contractors license could be used to satisfy the continuing education requirements imposed upon alarm business licensees.

RESPONSE: Continuing education credits earned for an alarm license could be used to satisfy the continuing education requirements for an electrical contractors license, or alternatively, credits earned for an electrical contractors license could be used to satisfy an alarm licensee's continuing education requirements, only if the continuing education course or program were approved by both the Committee, pursuant to N.J.A.C. 13:31A-1.12, and by the Board pursuant to N.J.A.C. 13:31-1.7.

COMMENT: Mr. Sansone inquired whether the exemption from licensure provided for public utilities pursuant to N.J.A.C. 13:31A-1.1(c)1 would still be applicable if a utility company offers security and

fire alarm services. If such conduct on the part of the utility does away with the exemption, the commenter questioned whether the utility company would be required to register each of its employees and pay the required employee listing fee.

RESPONSE: N.J.S.A. 45:5A-29(a) provides that telephone utilities and cable television companies regulated by the Board of Public Utilities pursuant to N.J.S.A. 48, and persons within their employment, are exempt from the requirements of the Act. If telephone utilities and cable companies, in the normal course of their business under N.J.S.A. 48, provide burglar alarm and fire alarm services, such work would be exempt and would not require licensure. If, however, these entities and their employees do not engage in such conduct in the normal course of their business, but rather begin to offer such services separate and apart from their normal services, then the N.J.S.A. 45:5A-29(a) exemption would no longer apply. If the exemption no longer applies, the telephone utility or cable television company would be required to comply with all applicable rules in N.J.S.A. 13:31A.

COMMENT: Mr. Sansone inquired whether the Committee will be issuing one license, or separate licenses for locksmithing, burglar alarm and fire alarm businesses. In addition, the commenter inquired whether, as a licensed electrical contractor, his company could install locks, burglar alarms and fire alarms without obtaining a license from the Committee, and whether his employees could engage in such activities without being required to obtain identification cards and undergo background checks, and whether the electrical contracting company will be required to pay the employee listing fee for each of its employees.

RESPONSE: The Committee will be issuing three licenses for practitioners. N.J.A.C. 13:31A-2.1 establishes the requirements necessary to obtain a locksmith license, and N.J.A.C. 13:31A-3.1 establishes the requirements necessary to obtain either a burglar alarm or fire alarm license. The Committee notes that electrical contractors and their employees, while performing the duties of their employment, are exempt from the provisions of the Act pursuant to N.J.S.A. 45:5A-29(b). In addition, the Committee notes that the installation and maintenance of burglar alarm and fire alarm systems fall within the category of work ordinarily performed by licensed electrical contractors and their employees, and that installation and maintenance of such systems is included on the electrical contractors licensing examination. Therefore, electrical contractors and their employees are authorized to install, service and maintain alarm systems. Electrical contractors could not, however, install locks as suggested by the commenter, as such work falls outside the scope of electrical contracting and would not be authorized under the exemption N.J.S.A. 45:5A-29(b).

COMMENT: Mr. Sansone inquired whether the State or another entity will be performing the required background check on the employees.

RESPONSE: The background checks will be performed by the New Jersey State Police.

COMMENT: Mr. Barone inquired whether the licensure examinations have been compiled and if so, whether study materials are available for the examinations.

RESPONSE: The licensure examinations have not been completed at this time.

COMMENT: Mr. Barone disagreed with the requirement that an applicant for licensure have a certain number of years experience in business. The commenter believes that training alone should be sufficient to qualify an applicant for licensure. The commenter noted that if a business owner lacks the experience to obtain a license the new rules will require that he or she hire a licensee which may result in a financial hardship.

RESPONSE: N.J.S.A. 45:5A-27(a) and (b) requires applicants for alarm and locksmith licensure to meet experience qualifications which are established by the Committee. The Act, therefore, makes training alone insufficient to qualify an applicant for licensure.

COMMENT: Mr. Gibson, on behalf of Associated Locksmiths of America, Inc., Mr. George, Mr. Olive, Mr. Gildenberg, Mr. Hoffman, Mr. Cool, Mr. Rhoads, Mr. Snyder, Mr. Fitzgerald, personally and on behalf of the Greater Philadelphia Locksmiths Association, Mr. Settles, Mr. Moran, and Mr. Timmann, expressed opposition to the requirement set forth at N.J.A.C. 13:31A-2.6(a)3, which provides that a locksmith business license holder engaged in the provision of electronic security system services must maintain an emergency service number that is attended to on a 24-hour basis. Several commenters noted that the Act does not expressly require locksmiths to maintain such a number. Rather, they believe the Act to impose the requirement upon alarm businesses only. In addition, several commenters noted that locksmithing companies engaging in electronic security are generally providing only electronic physical security, or access control, which should not require 24-hour service. The maintenance of such a number in the locksmithing profession is not necessary and will place a financial and operational burden on locksmiths without any added protection to the public. The increased expense that will be imposed upon locksmiths will result in increased costs to consumers.

RESPONSE: The Committee believes that the issues raised by the commenters concerning the 24-hour monitoring requirement imposed upon locksmiths pursuant to N.J.A.C. 13:31A-2.6(a)3 require further review and consideration. The Committee, therefore, has determined to not adopt N.J.A.C. 13:31A-2.6(a)3 at this time.

COMMENT: Mr. Sookoo requested that the Committee provide a definition for the term "unsupervised work" and inquired as to how businesses can train new employees.

RESPONSE: The Committee does not believe that a definition for "unsupervised work" is necessary and directs the commenter to N.J.A.C. 13:31A-2.8 and 3.7, which establish standards for the supervision of locksmith and alarm business employees, respectively. The Committee notes that the rules establish the type of supervision required to be provided based on the type of work that is being performed. The rules provide that activities may be performed under the "indirect supervision" or "direct supervision" of the business qualifier, the licensee or a supervising employee who has satisfied the requirements of N.J.A.C. 13:31A-2.7(b) or 3.6(b). Only employees who have satisfied the experience and training requirements of N.J.A.C. 13:31A-2.7(b) or 3.6(b) may perform unsupervised work. The Committee believes that determinations regarding the type of training new employees should receive are best left to the

discretion of the business license holder. The standards established in the rules concerning supervision, however, should be used as a guide for such training.

COMMENT: Mr. Gildenberg expressed opposition to the provision in N.J.A.C. 13:31A-2.7(b)2, which provides that an employee may perform unsupervised work if he or she has completed specified training, or has passed a competency examination, or has obtained a Certified Registered Locksmith rating by the Associated Locksmiths of America (ALOA), noting that training and certification by entities other than ALOA should be recognized by the Committee for purposes of this rule. Mr. Fitzgerald, personally and on behalf of the Greater Philadelphia Locksmiths Association, also noted that other organizations should be recognized under N.J.A.C. 13:31A-2.7(b)2 in order to provide locksmiths with more options for certified testing and continuing education. Mr. Fitzgerald noted, for example, that the Institutional Locksmiths Association, the Master Locksmiths Association of New Jersey, the South Jersey Locksmiths Association, and the Greater Philadelphia Locksmiths Association, may want to develop training programs and proficiency examinations in the future.

RESPONSE: The Committee is not aware of any training and/or certification programs prepared by any entities other than ALOA which exist at the present time, but notes that it would review submissions in the future by any entity wishing to be having its training and certification programs approved for purposes of N.J.A.C. 13:31A-2.7(b)2.

COMMENT: Mr. Borkowski inquired whether the new rules will allow for the grandfathering of alarm installers. The commenter also inquired how and where the licensure examination will be administered and how many times it may be taken if failed. The commenter also inquired whether the Committee will be issuing separate licenses for locksmiths, burglar alarm installers and fire alarm installers. The commenter questioned what would happen to jobs that he is in the process of performing that may not be completed before licensing begins.

RESPONSE: The Act does not authorize the grandfathering into licensure of alarm installers and, therefore, no provision on alarm grandfathering is provided in the new rules. The Committee will be issuing separate licenses for locksmiths and for burglar alarm and fire alarm installers, and directs the commenter to N.J.A.C. 13:31A-2.1, which establishes the requirements necessary to obtain a locksmith license, and N.J.A.C. 13:31A-3.1, which establishes the requirements necessary to obtain either a burglar alarm or fire alarm license. The Committee notes that the specifics concerning how and where the licensure examination will be administered have yet to be determined, but directs the commenter to N.J.A.C. 13:31A-2.3 and 3.2, which provide direction as to the number of times the locksmith, burglar alarm and fire alarm examination may be taken.

As to the commenter's concern regarding work which may be in process prior to the beginning of licensure by the Committee, the Committee notes that industry standards dictate that work that has already begun be completed by the alarm installer. A person should not, however, begin new jobs once licensure commences unless he or she has obtained a license from the Committee.

COMMENT: Mr. Daubert questioned how two state agencies can both regulate fire alarm installers. The commenter is unclear as to what fees need to be paid and to whom, and whether the new rules

allow for grandfathering. The commenter inquired as to the cost of obtaining a license to practice in New Jersey if he resides in Pennsylvania. The commenter also noted that he does not believe that the differing fees that are provided in the new rules for a business with fewer than 100 employees will adequately protect the much smaller businesses in the State.

RESPONSE: As noted above in response to the comment submitted by Mr. Herbert, the Committee and the Department of Community Affairs are working together to eliminate any confusion that may result from the promulgation of the new rules. As to the fees which must be remitted to the Committee, the Committee directs the commenter to the provisions of N.J.A.C. 13:31A-3.4 which set forth the requirements for individuals and businesses seeking licensure in the alarm business. Specifically, N.J.A.C. 13:31A-3.4(a)8 and (c)4 require an individual and a business owner, respectively, to submit a check or money order payable to the Committee in the amount established in the fee schedule at N.J.A.C. 13:31A-1.4. All the fees which will be charged by the Committee are set forth at N.J.A.C. 13:31A-1.4.

The cost of obtaining a license to practice in New Jersey does not differ for applicants who reside outside of the State. In addition, the Committee notes that the differing fees provided for businesses with less than 100 employees are intended to afford some measure of protection to small businesses. The Regulatory Flexibility Act, set forth at N.J.S.A. 52:14B-16 et seq., which authorizes the imposition of differing fees, defines small businesses to mean those businesses with fewer than 100 employees. The Committee also notes that the new rules authorize the grandfathering into licensure of locksmiths pursuant to N.J.S.A. 45:5A-30 at N.J.A.C. 13:31A-2.2, but no similar rule is provided for alarm installers because the Act does not authorize grandfathering in the alarm business. **October 14, 2003**

COMMENT: Mr. Matthews believes that the new rules should not go into effect until training classes are established in community colleges where students can learn a specific segment of the trade. For example, the commenter noted that burglar alarms with a maximum of 12 smoke detectors could be categorized as one segment, and larger fire alarms which would require advanced training could be categorized as another segment. Moreover, the commenter noted that ensuring the integrity and honesty of the alarm installer should be the first priority of the new rules by requiring mandatory fingerprinting and criminal background checks.

RESPONSE: The locksmithing and alarm programs are already in existence at vocational schools throughout the State and at some community colleges. Whether such courses of study will be made available at all community colleges, however, is not an issue which can be addressed by the Committee because it cannot dictate the curriculum at such institutions. The Committee shares the commenter's concern regarding the integrity and honesty of its licensee, and notes that N.J.A.C. 13:31A-2.5, 2.6, 3.4 and 3.5 require locksmith and alarm installer licensees and their employees to be fingerprinting and to undergo a criminal history background check.

COMMENT: Mr. Zimolong noted that obtaining a license under the new rules will only add to the financial burden he is currently experiencing as a sole proprietor of a locksmithing business, which includes the costs associated with advertising, health insurance and equipment. Mr. Donofrio objected to the increased expenses he will be required to incur as a result of the new rules, including the costs

associated with studying for and taking the examination, getting licensed and obtaining continuing education.

RESPONSE: The intent of the Legislature in passing the Act and of the Committee in promulgating the new rules is to ensure the health, safety and welfare of New Jersey consumers in the provision of locksmithing and alarm services. The determination has been made by the Legislature that the protection of the public is of paramount importance and that the benefits to consumers of such protection outweighs the costs that will be borne by locksmiths and alarm installers. The Committee notes, however, that it has attempted to lessen the financial burden that will be borne by small businesses under the new rules by imposing differing fees for such businesses pursuant to N.J.A.C. 13:31A-1.4.

COMMENT: Mr. Mazza objected to the inclusion of the definitions of "access control system" and "CCTV" in new rule in N.J.A.C. 13:31A-1.2 because the terms are not referenced in the Act. The commenter also objected to the requirements in N.J.A.C. 13:31A-2.8, which mandates supervision of locksmith employees, and N.J.A.C. 13:31A-2.9, which provides for identification cards for locksmiths and locksmith employees, because the provisions are not contained in the Act. The commenter noted that the supervision provision in the Act pertains only to burglar alarm businesses. In addition, the commenter objected to the provisions of N.J.A.C. 13:31A-2.2(c) as they are not referenced in the Act.

RESPONSE: The Committee has proposed definitions for the terms "access control system" and "CCTV" as part of N.J.A.C. 13:31A-1.2 in order to help clarify the meaning of the term "electronic security system" which is defined in the Act at N.J.S.A. 45:5A-2, and in the rules at N.J.A.C. 13:31A-1.2. In addition, the Committee notes that the requirements imposed upon locksmith licensees pursuant to N.J.A.C. 13:31A-2.8 and 2.9, regarding supervision and the use of identification cards, have been proposed by the Committee in order to further the intent of the Act to protect the public in the provision of both locksmithing and alarm services. N.J.S.A. 45:5A-33 and 34, which require provide for identification cards and mandatory supervision, impose such requirements upon licensees and employees engaged in the provision of burglar alarm, fire alarm and electronic security system services. By definition, "locksmithing services" includes the provision of electronic security system services, pursuant to N.J.S.A. 45:5A-2. Therefore, the Committee believes that the requirements imposed pursuant to those sections were intended to apply to all locksmiths.

The Committee notes that it cannot respond to the commenter's objection to N.J.A.C. 13:31A-2.2(c), as no such reference exists in the new rules.

COMMENT: Mr. Mazza believes that the new rules should provide for different levels of locksmith licensure, such as apprentice, journeyman and master. The commenter noted that the Associated Locksmiths of America uses such classifications and that they should be carried forward into the new rules.

RESPONSE: The Act does not allow for different levels of licensure, but rather authorizes the Committee to issue a single locksmith license. The locksmith license issued pursuant to N.J.A.C. 13:31A-2.1 authorizes the holder to engage in any of the services included with the definition of

“locksmithing services” set forth at N.J.S.A. 45:5A-2 in the Act and in the new rules at N.J.A.C. 13:31A-1.2.

COMMENT: Mr. Peter requested that the new rules be amended to require all new employees to pass a drug test or a criminal background check for security reasons.

RESPONSE: All employees of a locksmithing or alarm business will be required to undergo a criminal history background check, pursuant to N.J.A.C. 13:31A-2.6 and 3.5. The authority to require a criminal history background check is vested in the Committee by the Act pursuant to N.J.S.A. 45:5A-35(b). The Committee has no statutory authority, however, to require employees to pass a drug test.

COMMENT: Mr. Timmann objected to the requirement set forth at N.J.A.C. 13:31A-1.14, which provides that a licensee must correct any code violation generated by the work he or she performed or supervised, noting that requiring locksmiths to correct defective work performed by others without getting paid would severely disadvantage many locksmiths. The commenter noted that sometimes such problems are caused by the client or their personnel.

RESPONSE: N.J.A.C. 13:31A-1.14(a)6 requires a licensee to correct any code violation generated by the work performed or supervised by the licensee. The rule does not require, as suggested by the commenter, that the licensee correct defective work he or she has not performed or supervised, such as work performed by the client or the client’s personnel.

COMMENT: Mr. Timmann objected to the grandfathering provision in N.J.A.C. 13:31A-2.2, noting that the Act requires only one year in the industry in order to be grandfathered into licensure. In addition, the commenter noted that no apprenticeship programs currently exist so the apprenticeship requirement in N.J.A.C. 13:31A-2.2 is unfair. The commenter inquired whether any two-year apprenticeship programs will be in place by the time the new rules become effective.

RESPONSE: The requirements set forth in N.J.A.C. 13:31A-2.2 are based on the statutory requirements for grandfathering in the Act at N.J.S.A. 45:5A-30. The Act provides that a locksmith license may be issued to any person who has successfully completed any locksmith apprenticeship program which has been approved by the Bureau of Apprenticeship and Training of the United States Department of Labor, or has been engaged full-time in the practice of locksmithing services for at least three years immediately prior to the date of his or her application for a locksmith license. Currently, no locksmith apprenticeship programs exist, but the Committee has been advised by a representative of the Department of Labor that once the new rules are adopted, the Department will begin development of such programs.

COMMENT: Mr. Timmann inquired where an applicant would obtain the information required to be submitted for licensure pursuant to N.J.A.C. 13:31A-2.5(a). The commenter also noted that the Act does not require locksmith business owners to have a second license and, therefore, he questions the requirements imposed upon locksmith business license holders set forth at N.J.A.C. 13:31A-2.5(c). The commenter believes that one license should be required of a locksmith business owner and that the owner should have a copy of employee licenses on file or hanging at the business location.

RESPONSE: The information which must be submitted with an application for licensure pursuant to N.J.A.C. 13:31A-2.5(a) is information which should be readily accessible to the applicant. The new rule does not require the applicant to submit anything that he or she would not ordinarily have available, such as a copy of his or her high school diploma. As to the commenter's objection to the business license, the Committee has determined that in order to properly effectuate the purposes of the Act, an individual license and a business license will be authorized under the new rules. A person seeking to be licensed as a locksmith need not obtain both licenses. The business license qualifies the holder to engage in the locksmithing business, whereas the individual license will authorize the holder to actually perform the services. The Committee disagrees with the commenter's suggestion that the business owner should be required to have a copy of his or her employee licenses on file or hanging in the business office, believing that such matters are best left to the discretion of the individual business owner.

COMMENT: Mr. Timmann inquired what agency will be issuing the identification cards required pursuant to N.J.A.C. 13:31A-2.9 and whether such cards will be issued in a timely manner.

RESPONSE: The Division of Consumer Affairs will be issuing the identification cards and the Committee believes that the cards will be issued in a timely fashion.

COMMENT: Mr. Timmann objected to the requirement that the business owner be responsible for paying for the employee listing fee and the fee for the criminal history check as is required pursuant to N.J.A.C. 13:31A-2.6. In addition, the commenter inquired why a licensee must retain a copy of his or her advertising on file for three years as is required pursuant to N.J.A.C. 13:31A-1.13.

RESPONSE: N.J.S.A. 45:5A-35(b) of the Act requires a business owner to submit the fingerprints of any employee hired in connection with the provision of alarm or locksmithing services. N.J.S.A. 45:5A-35(d) provides that the employer shall bear the cost of the criminal history background check required pursuant to subsection (b). N.J.A.C. 13:31A-2.6(c)5 requires the employer to bear the cost of the employee's records check. The new rule does not require the employer to pay for the employee listing fee. The Committee believes that a determination as to whether the employer or the employee should pay the listing fee is a business decision that is best left to the discretion of individual business owners.

As to the commenter's concern regarding the requirement in N.J.A.C. 13:31A-1.13 that licensees retain a copy of their advertising for three years, the Committee notes that retention of such records is not overly burdensome for licensees and that they are often useful in investigating and resolving consumer complaints.

COMMENT: Mr. Timmann objected to the employee supervision requirements imposed pursuant to N.J.A.C. 13:31A-2.8, noting that subsections which specify the level of supervision required of employees depending on the type of tasks being performed, would require two people at every location in the shop or in the field where the work is being performed.

RESPONSE: The Committee disagrees with the commenter's interpretation of N.J.A.C. 13:31A-2.8, and notes that the new rule authorizes employees who are performing the functions set forth in subsection (d)1 to work at a job site independently if they are being indirectly supervised by a

licensee. "Indirect supervision" is defined in the rule to mean that the supervisor is reachable either in person or by electronic means. The supervisor does not, therefore, have to be physically present where the work is being performed. For all functions other than those enumerated in (d)1, an employee must receive constant on-site supervision.

COMMENT: Mr. Timmann inquired what impact the new rules will have on specialists in the locksmithing industry such as safe men and automotive technical forensic locksmiths.

RESPONSE: If such individuals are performing services included with the definition of "locksmithing services" set forth at N.J.A.C. 13:31A-1.2, then they would be required to obtain a locksmithing license from the Committee.

COMMENT: Mr. Timmann objected to the requirement that locksmith and alarm business license holders maintain a 24-hour emergency service number pursuant to N.J.A.C. 13:31A-2.6 and 3.5, noting that this requirement should only be imposed upon those business owners who offer 24 hour service.

RESPONSE: As noted above in response to the comments submitted by Mr. Gibson, the Committee has determined to not adopt the 24-hour requirement for locksmiths proposed at N.J.A.C. 13:31A-2.6(c)3 at this time. The Committee has determined that further review and consideration of the statutory issues raised by the commenters are necessary. The Committee notes, however, that the same issues cannot be advanced with regard to the 24-hour requirement for alarm companies as the requirement is expressly imposed upon such businesses in the Act pursuant to N.J.S.A. 45:5A-32(a)3.

COMMENT: Mr. Tudda requested clarification concerning whether an individual owner, the business and/or an employee of the business must all obtain licenses under the new rules. The commenter noted that he has 15 years hands-on experience and is currently employed as a burglar alarm and fire alarm technician. He does not intend to open his own business but would like to obtain a dual burglar alarm/fire alarm license. He inquired whether he would be required to obtain a surety bond and liability insurance, and whether he could perform "side" work without opening a business.

RESPONSE: Pursuant to N.J.A.C. 13:31A-2.1 and 3.1, the Committee will be issuing three individual licenses: a locksmith license, a burglar alarm license and/or a fire alarm license. In addition, pursuant to N.J.A.C. 13:31A-2.5 and 3.4, the Committee will license locksmithing businesses, burglar alarm businesses, and fire alarm businesses. The issuance of a business license does not require that the owner of the business actually be a licensee. Rather, the business owner who does not have an individual license may obtain a business license by retaining a licensee to act as the business qualifier. A "business qualifier," pursuant to N.J.A.C. 13:31A-1.2 is a licensee who authorizes the holder of a business license to provide burglar alarm, fire alarm or locksmithing services. Employees of locksmithing or alarm businesses need not be licensed under the new rules. The commenter can obtain a burglar alarm or a fire alarm license, or both, by satisfying the requirements established in N.J.A.C. 13:31A-2.1 and/or 3.1, without obtaining a business permit.

The surety bond and liability insurance requirements, in addition to the other

requirements set forth at N.J.A.C. 13:31A-2.6 and 3.5, are imposed upon business licensee holders alone, and not the individual licensees. The Committee notes, however, that if the commenter intends to perform any work on his own he would be required to obtain an individual license and a business license.

ADOPTION OF PROPOSED NEW RULES, N.J.A.C. 13:31A, FIRE ALARM, BURGLAR ALARM AND LOCKSMITH LICENSEES AND BUSINESSES

The Advisory Committee tabled adoption of the proposed new rules, N.J.A.C. 13:31A, Fire Alarm, Burglar Alarm and Locksmith Licensees and Businesses, pending further review of comments received from interested parties during the public comment period. Chairman Shoremount announced that a Special meeting will be held on October 7, 2003 to continue the review of comments.

FOR THE ADVISORY COMMITTEE'S INFORMATION

The Advisory Committee tabled the following discussions of the Website Correspondence on DCA Certification Exemption for Fire Alarm Contractors, Review of Advisory Committee Meeting Dates for CY 2004, Division of Law Billing Report for the Third Quarter, FY 2003, and Division of Law Billing for the Fourth Quarter, FY 2003, until the October 7, 2003 special meeting.

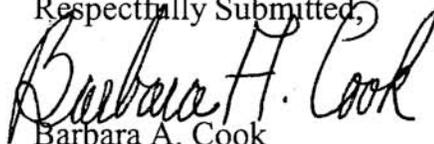
PUBLIC COMMENTS

Eugene R. George, Jr., a member of the ~~Greater Philadelphia Locksmiths Association~~, questioned whether the requirement set forth at N.J.A.C. 13:31A-2.6(a)3, which provides that a locksmith business license holder engaged in the provision of electronic security system services must maintain an emergency service number that is attended to on a 24-hour basis. Chairman Shoremount advised Mr. George that the issue concerning the 24-hour monitoring requirement imposed upon locksmiths pursuant to N.J.A.C. 13:31A-2.6(a)3 requires further review and consideration. The Committee, therefore, has determined to not adopt N.J.A.C. 13:31A-2.6(a)3 at this time.

ADJOURNMENT

Having no further business, motion was made by Martin Arnold, seconded by Richard Rible and passed unanimously to adjourn the Public Session at 4:05 p.m.

Respectfully Submitted,



Barbara A. Cook
Executive Director