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Reply to Reno

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June 18, 2024

Via U.S. Mail and Email

State of Nevada Private Investigators Licensing Board
Attn: Chricy E. Harris, Esq. and Vincent Saladino
3110 S. Durango Dr., Suite 203
Las Vegas, NV 89117
ceharris@ag.nv.gov
vsaladino@pilb.nv.gov

Re: Forbes Travel Guide

Dear Ms. Harris and Director Saladino,

Thank you for taking the time to discuss our client Forbes Travel Guide's business in Nevada. As discussed, Forbes Travel Guide is an independent, global rating system for luxury hotels, restaurants, spas, and ocean cruises. Forbes Travel Guide has two lines of business—external reviews and internal reviews. As a part of Forbes Travel Guide's external review process, evaluators visit properties and experience them as a guest would. Based on that experience, the property is evaluated against an objective criteria. These reviews are not solicited. The resulting rating is then published on Forbes Travel Guide's website. Forbes Travel Guide also provides consulting services for internal reviews. Properties may engage Forbes Travel Guide to consult on the company's goals and standards and provide an internal review of the property.

As we understand it, the State of Nevada Private Investigator's Licensing Board's ("PILB") position is that Forbes Travel Guide is required to obtain licensure because its employees are acting as "private investigators." The PILB believes Forbes Travel Guide's evaluators are acting as private investigators because they obtain information in reference to "[t]he identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, act, reputation, or character" of its clients' employees under NRS 648.012(1)(a). The PILB equates Forbes Travel Guide's services to those of a "mystery shopper," which, in the PILB's belief, demonstrates the need for licensure.

We believe the PILB's position is incorrect for several reasons. First, we do not believe Forbes Travel Guide's conduct falls within the definition of NRS 648.012(1)(a). Under the PILB's expansive interpretation of NRS 648.012(1)(a), it is hard to imagine any online review, third-party

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analysis, or business consulting service in connection with which consideration is exchanged that would not require licensure. Indeed, even certain online postings to blogs or social media pages may implicate NRS 648.012(1)(a) and licensure requirements. Rather than falling under the purview of NRS 648.012(1)(a), Forbes Travel Guide accesses publicly available information obtained through visiting properties when writing its reviews. Such activity is exempted from licensure under NRS 648.012(2)(a) (excluding persons relying solely on public information).

Second, when interpreting the PILB's authority under NRS Chapter 648, the Nevada Supreme Court previously stated that NRS Chapter 648 "regulates those who solicit and accept employment for the purpose of providing the professional services named, *not just anyone who incidentally undertakes activities also commonly performed by those professionals en route to providing a different service.*" *State v. Tatalovich*, 129 Nev. 588, 591, 309 P.3d 43, 45 (2013) (emphasis added). Here, just as in *Tatalovich*, even if Forbes Travel Guide is "incidentally undertak[ing] activities" that are commonly performed by private investigators, Forbes Travel Guide is undertaking those activities "en route to performing a different service."

The principal benefit of Forbes Travel Guide service is enhancing the subject properties as travel destinations. Thus, Forbes Travel Guide's ratings are used to market Las Vegas and certain of its properties as luxury destinations worthy of, among other things, national and international travel. Unlike a typical private investigator's report, the ratings are not used to support legal action or identify wrongdoing or illicit activity. Nor are they used to inform the sponsor of specific activities unknown to them. Instead, the subject properties are subject to a qualitative evaluation against a criteria for purposes of demonstrating the luxuriousness of the experience. As such, the application of NRS 648.012 to Forbes Travel Guide is overbroad and inappropriate. Indeed, it would be unfortunate if the PILB's licensure decision has the effect of negatively impacting Las Vegas's reputation as a luxury destination. Application of NRS 648's licensure requirements to Forbes Travel Guide does nothing to advance the policy interest in favor of licensing private investigators. Instead, it would eliminate one of the tools used by Las Vegas resort destinations (and the region more broadly) to promote their properties.

Third, and relatedly, Forbes Travel Guide evaluators are definitively not like "mystery shoppers." While we understand the Office of the Attorney General previously issued a non-binding advisory opinion in 1993 on whether a mystery shopper requires licensure from the PILB, the circumstances here differ.

As defined in the advisory opinion, mystery shopping involves posing as a customer of a business, which is typically a "retail establishment." As detailed in this letter, however, Forbes Travel Guide rates luxury hotels, restaurants, spas, and ocean cruises. What's more, mystery shoppers are typically engaged as an enforcement tool to identify wrongdoing or inappropriate conduct amongst the staff of a retail establishment. Thus, a mystery shopper's work-product is often used to support disciplinary action and, in some cases, legal claims. As detailed above, Forbes Travel Guide ratings serve an entirely different purpose. They are used to identify superior quality; they are not used to enforce company rules or policies.

We also note that during our call you represented that the PILB specifically represented to the Legislature that mystery shoppers fell under the purview of NRS Chapter 648. However, the legislative minutes reflect that the reference to mystery shoppers was a passing reference in the context of out of state licensure—not an affirmative representation to the Legislature that mystery shoppers are included in the statutory definition of a private investigator. Furthermore, the term “mystery shopper” does not appear in NRS 648, and you have provided no detail as to what elements of “mystery shopping” trigger the definition of NRS 648.012. As such, this makes the application of this purported analogous designation to the statute difficult.

As Forbes Travel Guide’s business activity does not fall within NRS Chapter 648, it is our position that Forbes Travel Guide does not require licensure from the PILB. If you maintain your disagreement, it would be appreciated if you would provide a more detailed explanation as to why. Again, the simple reference to “mystery shopping” does little to elucidate the issue. Please feel free to contact me with any questions.

Sincerely,

McDONALD CARANO LLP

Lucas Foletta, Esq.
Katrina Weil, Esq.

cc: Craig Newby: cnewby@ag.nv.gov

Dr. Kristopher Sanchez: kristopher.sanchez@business.nv.gov

Sonia Joya: sjoya@gov.nv.gov

Client



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

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Carson City, Nevada 89710
Telephone (702) 687-4170
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FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

May 11, 1993

Ms. Carol Hanna
Executive Director
Private Investigator's Licensing Board
Heroes Memorial Building
Capitol Complex
Carson City, Nevada 89710

Dear Ms. Hanna:

In an opinion rendered to the Private Investigator's Licensing Board ("PILB") on September 26, 1989, we concluded that "mystery shopping" did not constitute private investigation activity and consequently was not required to be licensed. We understand, however, that in the past few years the board office apparently has received input from the industry which has largely been critical of the 1989 opinion. In general, it appears the criticism has been based on the view that the 1989 opinion is inconsistent with the historical understanding that mystery shopping is a form of private investigation. In fact, many licensed private investigators of long standing devote all or at least a substantial portion of their businesses to mystery shopping.

Based on the above circumstances, the PILB has asked the Attorney General to reconsider the 1989 opinion.

QUESTION

Does "mystery shopping" constitute private investigation activity and need to be licensed by the PILB?

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ANALYSIS

Mystery shopping involves employment of individuals to pose as customers for client businesses, which typically operate retail establishments. These individuals evaluate the customer service they receive from the employees of the client business. This evaluation includes, among other things, observation of the occupation, conduct, honesty, integrity, knowledge, trustworthiness, efficiency, loyalty, activity, movement, and transactions or acts of the client's employees. The results of the evaluation are ultimately reported to the client business, which typically uses the information to improve its customer service.

The definition of private investigator is set forth in NRS 648.012, which provides in pertinent part:

"Private investigator" means any person who for any consideration engages in business or accepts employment to furnish, or agrees to make or makes any investigation for the purpose of obtaining, information with reference to:

1. The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation or character of any person

At first glance, the statutory definition would appear to include mystery shopping as one form of private investigations. However, we have reviewed the laws of other states in order to shed further light on the issue.

As in our statute, the statutes elsewhere generally do not explicitly mention mystery shopping as a form of private investigation; however, there are a couple of exceptions. California law provides that private investigation activity includes mystery shopping. Cal. Bus. & Prof. Code § 7521(a) (West 1992). On the other hand, under Virginia law, mystery shopping is specifically exempted from the definition of private investigator activity. Va. Code Ann. ch. 19, § 52.1-1901(9) (1992).

The fact that Nevada law does not specifically exempt mystery shopping from the licensing requirement while exempting certain other activities suggests mystery shopping is not exempt from licensing. See NRS 648.018; *State Dep't of Motor Vehicles & Pub. Safety v. Brown*, 104 Nev. 524, 526, 762 P.2d 882 (1988) (where legislature could easily have inserted exception language into statute but chose not to, court would not judicially create exception).

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Based on the above, we conclude that mystery shopping falls within the definition of private investigator activity. Additionally, in our view, since mystery shopping is an activity which is done in a surreptitious manner and potentially affects the livelihood of individuals, it is the type of activity where the integrity and competence of the individuals engaged in it are critical. Consequently, it is logical to conclude that it is an activity subject to the licensure requirements of NRS chapter 648. *See generally, Schulman v. Kelly, 255 A.2d 250, 254 (N.J. 1969)* (private detective business has inherent potential for abuse).


It should be kept in mind that the requirement of obtaining a private investigator's license to conduct mystery shopping applies only to independent contractors. Under NRS 648.018(4), a person engaged in such activity would not be required to obtain a license if the activity were part of the person's bona fide employment relationship with an employer.

CONCLUSION

In light of the above, we conclude that our 1989 opinion should be overruled, and that mystery shopping is private investigator activity under Nevada law which requires a license.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: 
ROBERT A. KIRKMAN
Deputy Attorney General
Government Affairs
(702) 687-4174

RK:sl



WELCOME

Quality Assessments

Our certified, anonymous inspectors can visit your location any time to evaluate service and performance against Forbes Travel Guide's standards—or your brand's own standards.

Select the timing and frequency of our visits and receive timely inspection reports with detailed findings and photos to help you understand your organization's strengths and opportunities for improvement.

We also offer phone-based checks for reservation and customer service centers.

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Independent Contractor Evaluator Americas (Las Vegas)

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Job Details

Description

Forbes Travel Guide's professional team of incognito evaluators travel the world to assess hotels, restaurants, spas and cruise ships based on hundreds of exacting standards that determine our coveted annual Star Ratings and provide valuable insight to hospitality industry clients.

The Independent Contractor Evaluator will be responsible for gathering all information required to conduct and complete reports for assigned evaluations. The independent contractor is compensated per evaluation executed.

Though the ideal candidate will be based in Las Vegas, the position involves extensive travel throughout the Americas and, on occasion, globally.

Candidates cannot maintain a concurrent role in the hospitality industry or one with a direct conflict of interest while working with Forbes Travel Guide.

DEPARTMENT Evaluation Operations

LOCATION Based in Las Vegas; remote work

TYPE Independent contractor

EXPERIENCE LEVEL 5-7 years

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- Execute unannounced incognito evaluations applying intimate understanding of Forbes Travel Guide standards and required application in accordance with official interpretations at all times

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- Maintain a professional and appropriate demeanor on behalf of Forbes Travel Guide.

Qualifications

- Hospitality experience (luxury hospitality experience preferred)
- Strong writing skills required; experience or familiarity with luxury travel and writing about travel, spa, food, wine, style or design preferred.
- Low profile; preferred candidates do not have prominent social media personalities or an online presence connecting them to the industry, including bylines. Chosen candidates will be required to maintain a low profile and possibly reduce their online footprint.
- Ability to multitask and handle significant daily deadlines.
- Extremely organized, mature, self-motivated and independent worker.
- Detail-orientated with a strong ability to keep meticulous records and prepare accurate reports both manually and through electronic channels.
- Well-traveled globally, experience traveling independently.
- Strong communication skills
- Exceptional English-speaking and -writing abilities; knowledge of additional language a plus
- Technologically proficient
- Experience with Forbes Travel Guide standards and reports a plus
- Must be located near a major airport for cost-conscious, flexible travel.
- Flexible availability, able to travel a minimum of 10 days per month. Weekend/weekday and international/domestic travel required.

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SEP 06 2024

**PRIVATE INVESTIGATORS
LICENSING BOARD**

Global Intelligence Network
NV PILB License #883

September 5, 2024

Private Investigators Licensing Board
Nevada Legislature Office Building, Room 165
7230 Amigo Street Las Vegas, NV 89119

Dear Madam Chairwoman.

I respectfully submit this letter for the Private Investigators Licensing Board's consideration.

I am in receipt of the agenda for the quarterly board meeting on Wednesday, September 18, 2024, through Thursday, September 19, 2024. I have reviewed the agenda and noted concern with respect to agenda item 97, "Licensing for companies and individuals that review travel and hospitality, including hotels, restaurants, and spas. "For possible action"."

Global Intelligence Network holding a Corporate Private Investigators License (#883) derives a material portion of its revenue through professional mystery shopping services. We provide our clients with a strategic market research tool to measure and enhance service quality and customer satisfaction. Our investigative services result in a written quantitative and qualitative analysis of the subject business or business unit. The primary reason we have been successful in this market segment is due to the regulation provided by the State of Nevada under Nevada Revised Statute (NRS) 648 and its interpretation by Nevada Administrative Code (NAC) 648.

In accordance with NAC 648.017¹, a private investigator's license is required in Nevada to protect the public safety and general welfare of the people of this State. NRS 648² provides the PILB authority to regulate the standards of conduct for all licensed private investigators into ensure each licensee acts in accordance with protection provide.d by NAC 648.017. Without the standards and regulation provided by the PILB and NRS/NAC 648, there is no accountability creating a probability of failure in our duty to protect the public safety and general welfare of the people of Nevada.

NRS 648.012 and 648.012(a)³ defines a private investigator as "any person who for any consideration engages in business or accepts employment to furnish, or agrees to make or makes any investigation for the purpose of obtaining information with reference to: (a) The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts,

¹ <https://www.leg.state.nv.us/NRS/NRS-648.html#NRS648Sec017>

² <https://www.leg.state.nv.us/NRS/NRS-648.html>

³ <https://www.leg.state.nv.us/nrs/nrs-648.html#NRS648Sec012>

reputation or character of any person. In furtherance, NRS 0.039⁴ defines a person, “except as otherwise expressly provided in a particular statute or required by the context, “person” means a natural person, any form of business or social organization and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization.”

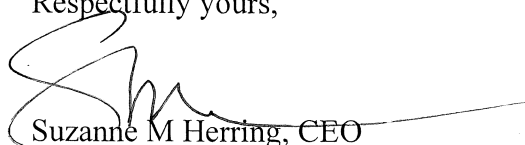
The command of NRS 648.012 is further interpreted by NAC 648.115 for the exclusion of a gaming license holder who maintains an **employer-employee** relationship. Moreover, an employee of a gaming establishment pursuant to NAC 648.115(b)(1)(2)(3)⁵ may, “as a natural person, act as a customer or client of the gaming licensee to evaluate: The operational procedures of the gaming licensee; (2) The cleanliness of the property of the gaming licensee; or (3) The quality, availability and prices of the goods and services of the gaming licensee; or (c) A business entity, licensed pursuant to chapter 648 of NRS, to evaluate the operational procedures and methods of prevention and study used by the gaming licensee relating to the problems of gambling and the consumption of alcoholic beverages by minors.”

Through the interpretation provided by NAC 648.115, licensure is required by Nevada law to perform said services as a non-employee when performed for compensation. By virtue of the Statue, performance of these services by a non-licensed person would be in violation of Nevada law as issued by our state legislative branch.

Our contractual obligations to our hospitality clients which include hotels, restaurants, pools/spas, gaming, and restaurants, require us to evaluate hotel standards based upon predefined criteria that include direct interactions to evaluate each internal standard qualitatively and quantitatively from reservation to departure. Our process is designed to provide our clients with measurable data to ensure all internal standards follow stakeholder expectations; guest experience meets the client’s satisfaction goals; and to ensure compliance with certain regulations. We perform these services as a licensed private investigation firm, in compliance with Nevada law and the interpretations provided by Nevada administrative code.

Through the oversight and mandates of the Nevada Private Investigators Licensing Board, we can ensure our employees do not present a risk to public safety or the general welfare of the people and businesses of Nevada. Additionally, Nevada statute, code and the structure of oversight ensure accountability and standards of due care for the private investigative industry.

Respectfully yours,



Suzanne M Herring, CEO

Global Intelligence Network
NV PILB #883

⁴ eg.state.nv.us/nrs/NRS-000.html

⁵ <https://www.leg.state.nv.us/nac/nac-648.html#NAC648Sec115>

PREFERRED INVESTIGATION, LLC



Preferred Investigation,
LLC

September 9, 2024

Private Investigation Licensing Board
3110 S. Durango Drive # 203
Las Vegas, NV 89117

Subject: Maintaining PILB Oversight of Mystery Shopping in the Hospitality Industry

Dear Members of the Board,

This letter aims to address recent attempts by out-of-state entities to influence Nevada's regulation of the mystery shopping industry, and to underscore the necessity of maintaining the Private Investigator's Licensing Board's oversight of covert collection of data in the hospitality sector. This oversight is vital to the fulfillment of your mandate to protect the public safety and general welfare of Nevadans.

The activities of mystery shoppers directly align with the statutory definition of private investigation. Mystery shopping, especially within the hospitality sector, inherently involves the core functions of private investigation as defined in NRS 648.

Also stated in NAC 648.115 defines to exclude a gaming licensee who maintains an employer-employee relationship with: A natural person to act as a customer or client of the gaming licensee to evaluate:

- (1) The operational procedures of the gaming licensee;
- (2) The cleanliness of the property of the gaming licensee; or licensee.
- (3) The quality, availability and prices of the goods and services of the gaming

Mystery shoppers are engaged in the business of obtaining information through covert surveillance and undercover operations. A mystery shopper will be ordinary patrons to observe and evaluate staff conduct, service quality, and operational procedures. This practice, while valuable for quality assurance and third-party business rankings, unequivocally constitutes a form of private investigation and carries potential for deception and misuse.

Mystery shopping involves deliberate, pre-planned surveillance conducted by individuals compensated to evaluate specific aspects of a business. To avoid any confusion, this is fundamentally different from uncompensated customer reviews based on authentic experiences.

Your Board's oversight ensures that mystery shopping remains a tool for improvement and ethical information gathering, not a vehicle for fraud or unethical behavior. By requiring work cards and conducting FBI background checks, you are safeguarding businesses and consumers alike.

Removing PILB oversight of the mystery shopping industry would open the door for out-of-state entities to exploit Nevada businesses by hiring unvetted independent contractors. This would

not only expose businesses to potential fraud and unethical practices but also undercut Nevada's own mystery shopping companies who have operated within the parameters outlined by your board for decades. Faced with unfair competition from unregulated, out-of-state entities, local businesses would struggle to survive, leading to job losses, a decline in tax revenue, and an exodus of skilled professionals from the state. In essence, deregulation would not only harm individual businesses but also cripple the entire mystery shopping industry within Nevada, transferring economic opportunities and generated income out of state.

The work of the PILB helps protect Nevada from illicit activities like gathering evidence under false pretenses, unauthorized surveillance, and exposing businesses to would be investigators with criminal backgrounds. In states where mystery shoppers operate as independent contractors without background checks, instances of fraud are commonplace. On the national scene, fraud prevention in the mystery shopping world is a significant problem. Maintaining PILB's oversight prevents such abuses in Nevada.

Finally, PILB's oversight protects businesses from unregulated, anonymous assessments that could be biased or inaccurate. Your regulatory framework fosters transparency and accountability within the mystery shopping industry, promoting fair practices that benefit both businesses and consumers.

In conclusion, I urge the Board to maintain its crucial role in overseeing mystery shopping in Nevada. Your efforts are vital in preventing fraud, protecting workers, and ensuring the integrity of business assessments. By upholding these standards, meeting your statutory obligations, and fulfilling your mission to promote the safety and well-being of all Nevadans.

Thank you for your dedication and service.

Sincerely,

Theresa Jones
Owner of Preferred Investigation, LLC

Nevada PI License. #2266

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Nevada PI License #226