

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 1:00 P.M.,
APRIL 19, 2012**

**TEXAS DEPARTMENT OF PUBLIC SAFETY
6100 GUADALUPE ST. BUILDING E
CRIMINAL LAW ENFORCEMENT BUILDING
AUSTIN, TX 78752**

BOARD MEMBERS PRESENT:

Honorable John Chism, Chairman
Honorable Howard Johnsen, Vice-Chairman
Honorable Mark Smith, Secretary
Honorable Doris Washington

BOARD MEMBERS NOT PRESENT:

Honorable Albert Black
Honorable Charles Crenshaw
Honorable Brian England

STAFF PRESENT:

RenEarl Bowie, Assistant Director, Regulatory Services Division,
Texas Department of Public Safety;
Steve Moninger, Senior Staff Attorney, Office of Regulatory Counsel, Legal Operations;
Sherrie Zgabay, Manager, Licensing and Registration Service;
Reggie Andrews, Supervisor, Licensing and Registration Service;
Jay Alexander, Captain, Regulatory Crimes Bureau;
Sherry Johnson, Operation Manager –Operations Bureau, Operations and Shared Service;
Other members of the staff;
Members of the industry;
Members of the general public.

MINUTES

These minutes are a summary record of the Board's public meeting. The meeting was audio-recorded and video-taped. For a detailed record of discussions and statements made by persons speaking at this meeting, please consult the video DVD on file at the Board's office.

The board meeting was called to order at 9:10 a.m.

Chairman Chism welcomed everyone to the meeting and asked that all cell phones and pagers be turned off or set to vibrate for the duration of the meeting.

Agenda Item I: Approval of Minutes for Board Meetings held January 19, 2012 and March 20, 2012.

Chairman Chism introduced this agenda item. On a motion made by Secretary Smith and seconded by Vice-chairman Johnsen, the Board voted unanimously to approve the minutes for the board meetings of January 19, 2012 and March 20, 2012 as written.

Agenda Item II: Reports from Regulatory Services Division.

Reggie Andrews presented the licensing totals for the second quarter, 12/1/11 to 2/29/12. He stated, for this time period, the Division received 268 original company applications, 1,445 company renewals, 9,981 original individual applications, and 7,815 individual renewals not including online applications. He went on to say, for the same time period the Division processed the following licenses/registrations: 177 original company licenses (90 online, 87 manual), 1,438 company renewals (960 online, 478 manual), 8,945 individual registrations (2,557 online, 6,388 manual), 7,762 individual renewals (3,409 online, 4,353 manual), and 4,708 employee information updates (1,200 online, 3,508 manual). He also stated this time period showed 5,646 active company licenses, 273 active school licenses, and 130,862 active individual registrants.

Captain Alexander presented the investigation statistics for Districts A, B and C to the Board. He stated there were 794 violations investigated for the second quarter, 12/1/11 to 2/29/12; 220 in District A, 240 in District B and 334 in District C. He further stated there were 0 cases of operating with an expired license, 2 cases of operating with a suspended license, 82 cases of operating without a license, and 10 cases of failure to register employees. He went on to say there were 28 cases presented to prosecutors during this time period. He stated 637 cases were closed with no action, 0 cases received administrative citation, 0 were closed with an administrative warning, and 157 cases were closed with other actions.

Secretary Smith stated that for a long time the board has received arrest reports from the division. He wanted to know why they receive so many from the Houston area and not other areas. He stated that the investigators in Dallas say that they do just as many as Houston does, but they don't get reported. He asked if there were a way for the board to receive more arrest reports from all over the state. Captain Alexander stated that he would begin sending these reports to the board on a monthly basis.

Captain Alexander then introduced Lieutenant Anthony Bennett. He stated that Lieutenant Bennett was newly promoted to that rank and is in charge of the Regulatory Crimes Bureau in the Midland area. Lieutenant Bennett came to RSD from the Criminal Investigations Division, narcotics service and brings with him a wealth of knowledge.

Assistant Director Bowie was the next person to address the Board. He stated that at the last meeting he was tasked with finding a solution for the pocket card issue. He stated he committed to come back to the board with something in hand and a progress report. To that end he approached the original vendor, Digimarc/L-1, for possible solutions. They stated that additional changes needed to be made to the original contract in order to accept the job. This change would cost an additional \$12,000. A.D. Bowie explained that this issue would be going before the

Public Safety Commission the following day to request the approval of the additional money. He then showed examples of the new pocket cards. These examples were made using the same technology and information as the Texas Driver license or ID cards. He stated these cards were in line with the change in statute allowing the department to put the person's height on the card. Another difference in the card was the removal of the person's address line. He went on to say that he hoped to begin the test process with certain companies in the next two or three months.

Secretary Smith asked if the previously discussed color structure was the same, to which Mr. Andrews stated it was. Chairman Chism asked if there had been any feedback from the PSC. A.D. Bowie stated that he had not heard from the PSC personally on this matter. He explained the information was sent to Commissioners Barth and Leon, but would require further discussion at the meeting. Vice-Chairman Johnsen asked if there were a timeline to actually using the pocket cards. A.D. Bowie responded that there was no timeline at this point. He explained that he has given dates before and not been able to deliver on them. He stated that he would only commit to having a report on progress of the pocket cards for the next meeting.

Steve Moninger gave a report on the rules, stating that the rules from the last meeting had been posted in the Texas Register for comment. He went on to say that the division is in the early stages of revising the entire set of Rules. He stated that they would ask all of the industry and public for input into any problems, changes or new rules that should be considered.

Agenda Item III: Reports from Board Committees.

Secretary Smith presented this item to the Board. He stated he met with Chairman Chism, Mr. Bowie, and Mike Lesko the day before the January Board meeting, and he was directed to work with Mr. Lesko to find solutions to the fingerprint issues. He went on to say that he had been working on this issue since July of 2011 which involved travel to Austin and back numerous times and concluded that a fresh set of eyes would be a benefit in finding a solution. With that in mind, he stated, he asked the president of ASSIST, Alan Trevino, to step in, take his place and work with Mike Lesko to find a solution. He stated he felt this was the best way to handle this since they both are already in Austin. He also explained that he had turned over all of his research to the ASSIST executive board. He stated he was sure that if they were able to come up with a solution, it would be good.

Chairman Chism asked if it was necessary to make electronic fingerprinting mandatory or if manual fingerprints could be utilized and how would they get entered into the system. Secretary Smith stated the biggest problem was with large companies who hire and fire on a daily basis needing access to the fingerprinting machine. The second problem is with those in the rural areas and how to get them fingerprinted without causing a burden of a long drive.

At this time he asked Alan Trevino to address the board. Mr. Trevino stated he was asked to take the fingerprint issue and try to move forward. He stated he has been in contact with Mr. Lesko and explained the problems that the industry was having, but has not yet had further contact.

Board member Washington stated that it seemed this was all in the cost of doing business. She added that if having the fingerprints done electronically was what DPS needed in order to move forward and make things easier to do their jobs, then the board and industry should also move forward by having everyone submit their prints electronically. Secretary Smith stated that the companies directly affected by this issue have a fiduciary and contractual responsibility to their clients and by requiring electronic fingerprinting it is putting an undue burden on those companies. He went on to say there must be another vehicle offered because these companies cannot wait for appointments to get in to get the prints done, but rather needed them processed the same day.

Vice-Chairman Johnsen stated that he understood this to be a very big problem for the guard companies especially. He stated it also involves the Division and this could not be hammered out in just one meeting, because all players need to be present.

Mr. Trevino stated that the problem with not being able to meet the demand in rural areas is that L-1 requires a person to be within a 50 mile radius of their facility. Secretary Smith stated L-1 will only agree to bring a mobile unit once a week, so right away that causes a problem. Vice-chairman Johnsen stated that the biggest problem seems to be that the industry is not going to want to wait a week to get fingerprints done before they can put a person to work or drive 50-150 miles to get this done.

Board member Washington asked if employees were aware at the time they apply that there is the fingerprint requirement and the length of time it could take. Mr. Trevino stated that was not necessarily the case. Secretary Smith stated that the guard companies have a 300% turnover rate. Mr. Trevino added that if they were to listen to the members of ASSIST, they would hear story after story of it taking a week or more to get a set of fingerprints done. Board member Washington pointed out that regardless of the time it takes to achieve the printing, it is a requirement and is in place to speed up the process and help the department be more efficient.

Secretary Smith stated that he would support this but not if it meant being dependant on the whimsy of one private business. He stated he did additional research regarding what is done in other states. In Illinois they also require electronic fingerprinting but they don't care which company you use or if you do it yourself. He stated that in New York it is different; they have the security training schools do the fingerprinting. He stated some states require no fingerprints to be sent in, but for the employers to keep them on file. He went on to say that he has all of this research that he has turned over to ASSIST. He said he has been beating himself over the head with a hammer since last July. He stated that he was going to take a break for awhile and is giving everything over to ASSIST to handle, if they are able.

Vice-chairman Johnsen stated that all of the people who would be working on this issue were not present at this meeting. He suggested the Board wait to hear of possible solutions that may be created.

Agenda Item IV: Discussion and possible action regarding the provision of unarmed personal protection services: proposed amendment to Rule §35.39, Uniform Requirements, relating to the uniform requirements for non-commissioned security officers while providing personal protection services; proposed amendment to Rule §35.186, Registration Applications, relating to the training requirements for non-commissioned security officers; and proposed amendment to Rule §35.163, Violations of the Act by Personal Protection Officers, relating to those Personal Protection Officers acting with a firearm, and proposed Rule §35.164, Endorsement for non-commissioned Personal Protection Officers, relating to the provision of personal protection services by non-commissioned security officers.

Chairman Chism presented this item to the board. He stated this is a set of rules where the Department received an email from a company regarding unarmed P.P.Os and questioning if they were able to legally work without weapons. He further stated that he had been contacted by a company in Dallas and in Houston. They stated that they did indicate that from time to time they do get requests to not have a weapon while in the course of their assignment. They stated this is especially true if it involves protection of a child, where it would not be proper to wear a weapon. He stated that he asked Mr. Moninger to go over this set of rules so that it may be easier for the industry to understand.

Mr. Moninger stated that these were preliminary changes. He stated that the changes to Rule 35.39 (a) and (c) were made because they both stated essentially the same thing, and by striking (c) it was cleaning up the rule. Rule 35.186(3) added reference to a new rule involving non-commissioned PPOs. Changes to Rule 35.163 (5) were clarifying what is understood regarding a concealed weapon. Rule 35.164 is a new rule. He stated it is a preliminary proposal regarding non-commissioned PPOs and states that they should have to fulfill same requirements as commissioned PPOs except firearms proficiency.

Secretary Smith stated the board has given people the right to be non-commissioned security officer, because they were federally disqualified from being commissioned. He asked if this was a problem about that. Mr. Moninger stated it was not the same thing. He stated this was about guard companies providing personal protection services with non commissioned guards. Chairman Chism stated that there are even some Private Investigators that want to work as bodyguards without a weapon.

He went on to say that he wanted to table further discussion of this set of rules until the next meeting when members of the Rules committee could be present for the discussion.

Agenda Item V: Discussion and possible action regarding the examination and pre-approval of multiple prospective qualified managers of companies.

Mr. Moninger presented this item to the board stating that statute does not authorize more than one qualified manager of a company at a time; however it also does not preclude a “manager-in-waiting” position either. He went on to say that the issue is with processing and the CLIPS program. Currently this program does not have the capability to assign such a position and it may also be difficult to gain a seat to the manager’s exam.

Secretary Smith asked if he went down and took the test, received his letter saying he passed, could he step into the Manager's position if something were to happen to the company manager. Mr. Samulin addressed Secretary Smith's question by stating that he also did not see a reason why this could not be done as long as the person stayed current and took the exam every two years as is required, in order to ensure the person stays current on statute and rule changes. He stated this would be especially helpful for family businesses where the manager may be in poor health, etc. He went on to say, that if the agency didn't mind putting on more exam classes, that would be an easy fix to the potential problem of not being able to get into a class for the exam every two years. He also stated that he thought this was already made policy at the last regular meeting of the board. Mr. Moninger stated that the minutes of the January meeting that Mr. Samulin referred to showed that this item was referred back to the Rules Committee for reexamination at the April meeting.

Chairman Chism tabled discussion of this item until the next meeting until the members of the Rules Committee could be present for the discussion.

Agenda Item VI: Public input on the topics of public safety, training, and insurance concerns relating to the carrying of concealed handguns by PSB licensees.

Chairman Chism presented this item to the board, stating that a situation had arisen as a result of training courses being offered in the Houston area. He stated that he wanted to let the industry understand what the problem is with holding a CHL and a P.I. license. The primary concern, he stated, was with insurance policies which every P.I. is required to carry and whether or not that policy allows a person to carry a weapon. He stated that his own liability policy states that he cannot be armed. He also stated that if someone did hold a CHL whose insurance policy stated they could not be armed, and they did carry a weapon, they would be in violation of their insurance and would not be covered.

Kelly Riddle, representing TALI, was next to address the board. He stated that part of the problem is that private investigators are feeling like a 2nd class citizens. If a P.I. holds a CHL as a private citizen, but become involved in an incident during the course of a case, the concern would be that they would not be covered by their insurance company. Secretary Smith asked if the insurance requirements were the same for a P.I. as they are for a guard company. Mr. Riddle explained that if a person holds a PPO and P.I. then they carry more liability and therefore it is similar. He stated that he contacted three different insurance companies and asked this question of endorsements. The answers he received were yes, no, and I don't know. This is causing confusion in the industry especially in the Houston area. He stated a DPS employee, holding a class stated that P.I.s were not allowed to carry a weapon as a private citizen if they were on the job. Mr. Riddle went on to say that the problem with that is that a plumber, etc has a right to carry a weapon if they are licensed for a CHL, but a PI is not afforded the same courtesy.

Chairman Chism pointed out that an additional part of the problem was with the insurance companies. He stated that they were required by statute to carry liability insurance. If the person were to be involved in an altercation and get sued, the insurance company can come back and say they were in violation of their contract and therefore not covered. If the person is not covered by their insurance company, then the person would be in violation of 1702.

Vice-chairman Johnsen stated that Mr. Riddle said there was at least one insurance company contacted that would cover a person with a policy to cover carrying a weapon. Mr. Riddle stated that the statute only requires carrying the minimum liability coverage and that is what most may carry. Vice-chairman Johnsen stated that in his business of selling products he is offered insurance either with or without product liability. Obviously, he stated, he goes with the full coverage. Mr. Riddle stated that P.I.s are not insurance salesmen and may not be aware to ask about the additional coverage. Vice-chairman Johnsen stated that the main thing to be done is letting people know that they must have proper insurance coverage. Mr. Riddle stated that the problem is the PSB person said that it is not an insurance issue, but rather that if a pi were to go out with a weapon; they would be in violation of the Act. Secretary Smith asked if it wouldn't just be easier to create a rule stating that if a PI has a CHL they need to have the proper insurance coverage.

John Helweg, with TLA, stated that if you do such a rule with P.I.s you would have to apply it to all areas. He stated that he also holds a CHL and may have a weapon when doing alarm and locksmith work. In the course of his work, he is not out protecting anyone except maybe their doors. He stated this is an issue between the person and their insurance carrier. If insurance company decided, on a whim, that the person would not be covered 5 minutes after an incident, that shouldn't affect their standing as far as the statute is concerned. 1702 states that they must carry insurance, and as long as they do, whether or not it is enough to cover a person in this situation, is not an issue with anyone except the insurance company.

Jason McLendon, with National Protective Services Institute, was next to address the board. He stated that his company provides a lot of the training on such issues. He stated that the problem is in the scope of duties not being clearly defined. He explained that as a private investigator there may or may not be a time when it is part of your duties to carry a weapon. As a locksmith it is not part of your duty, but as a private citizen you would have a right to carry and defend yourself. If it is not in the scope of your duty then you are carrying to protect yourself, and therefore it should have nothing to do with violation of insurance or 1702.

Charles Decker, with Sentry Security Investigations, also addressed the board on this issue. He told the board that he was in agreement with the board's dissemination of information regarding the insurance. He also stated that part of the confusion is that as a P.I., there is no scope of his job that requires him to carry a weapon, so there are not exclusions in on his policy. Vice-chairman Johnsen stated that this seemed to be a business decision and not a board decision on what type and how much of insurance to carry. Chairman Chism stated that he hoped to gain some clarification down the line in order to clear up the confusion between investigators and the division personnel.

Agenda Item VII: Public Comment

Bonnie Brown Morse-, Locksmith Association of San Antonio, addressed the Board. She stated that she was coming before the board to again discuss rules 1702.123 and 1702.124 as well as Texas Administrative Rules 35.180 and 35.181. She stated that the state allows security companies to regularly employ, a person to do work on behalf of the company on a contractual

basis. Their person sets his own hours, receives payment, and may work for several different companies. He provides his own tools and vehicle, pays his own vehicle insurance, pays his own expenses, and pays his own fuel. She further stated she was told this was a labor department issue, however this leaves things open for unlicensed activity, which is clearly a Regulatory Services Division issue.

George Craig-, representing himself, addressed the Board. He stated that in one of the last meetings he attended as Chairman of the Private Security Board, the board passed rule 35.77. He went on to say that at the time he commented that the board may have issues arise from this rule. He stated he has had two different situations where an employee whose applications were terminated without our knowledge resulting in a violation. He stated he would like to see this rule amended so that employers are notified when an employee is no longer eligible for licensure. He asked it be placed on the agenda of the next meeting of the board.

John Helwig-, TLA, addressed the Board. He stated that he wished to introduce himself to the board as the newly elected president of TLA. He stated that if any lock issues arise or if there is anything TLA can do for the board, to please let him know. He further stated that he appreciated all of the work the Board and division staff have done.

Alan Trevino-, ASSIST, addressed the Board. He stated ASSIST would like to see continued discussion of the non-commissioned PPO issue. He stated they wished to see nothing changed on this rule. Simply stated, if the contract asks for no weapon to be carried for the job, then a weapon should not be carried.

Jason McLendon-, National Protective Services Institute, addressed the board. He stated there was an issue with the Level III instruction recently instituted in January. He stated that many instructors have been grandfathered in, teaching use of defensive tactics and have never gone through this class before nor been certified to teach this. He also stated that another potential problem may arise in 2013 when one requirement will be that anyone teaching a Level IV be certified as having taken defensive tactics classes in the last two years. By default we have grandfathered in instructors who may not have had these classes in the last two years. Also, he stated, training schools are not required to have insurance, even though they are teaching some of the most dangerous aspects of the job. He stated that this should be looked at again and consider requiring these schools to carry insurance.

Agenda Item VIII: Executive Session as authorized under §551.071, if necessary.

The Board did not take an executive session at this time.

Agenda Item IX: Administrative Hearings on Licensing and Disciplinary Contested Cases

No administrative hearing or disciplinary contested cases were heard by the board at this time.

Agenda Item VII: Adjournment

Chairman Chism introduced this agenda item. Secretary Smith made a motion for adjournment. Board member Washington seconded the motion, and the Board voted unanimously in favor of the motion. At 10:51am, the April 19, 2012 meeting of the Private Security Board was adjourned.