

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
APRIL 2, 2015**

**TEXAS DEPARTMENT OF PUBLIC SAFETY
6100 GUADALUPE ST, BLDG E
CRIMINAL INVESTIGATIONS BUILDING
AUSTIN, TX 78752**

BOARD MEMBERS PRESENT:

Honorable John Chism, Chairman
Honorable Howard Johnsen, Vice-Chairman
Honorable Mark Smith, Secretary
Honorable Charles Crenshaw
Honorable Wade Hayden

BOARD MEMBERS NOT PRESENT:

Honorable Albert Black
Honorable Brian England

STAFF PRESENT:

RenEarl Bowie, Assistant Director, Regulatory Services Division;
Louis Beaty, Deputy Chief, Legal Operations, Office of General Counsel;
Huel Haynes, Manager, Licensing and Registration Service;
Ryan Garcia, Assistant Manager, Licensing and Registration Service;
Jay Alexander, Major, Regulatory Crimes Service

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 9:00 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 Meeting held January 22, 2014

Chairman Chism introduced this agenda item. Upon review, Board member Hayden made a motion to accept the minutes as written. Secretary Smith seconded the motion and the board voted unanimously in favor of the motion.

Agenda Item II: Quarterly Licensing Report from Regulatory Services Division

Assistant Manager Ryan Garcia presented the licensing totals for the second quarter, 12/1/14 to 2/28/15. He stated, for this time period, the Division received 263 original company applications, 1,464 company renewals, 12,633 original individual applications, and 10,475 individual renewals not including online registrations. He went on to say, for the same time period the Division processed the following licenses/registrations:

- 174 original company licenses (136 online, 38 manual),
- 1,414 company renewals (1,142 online, 272 manual),
- 9,889 individual registrations (8,674 online, 1,215 manual),
- 8,961 individual renewals (7,105 online, 1,856 manual),
- and 5,338 employee information updates (2,482 online, 2,856 manual).

He also stated this time period showed 5,688 active company licenses, 301 active school licenses, and 155,335 active individual registrants.

Assistant Director Bowie addressed the board with a presentation. He began by stating 13 years ago, the private security board underwent a change. At that time a new private investigator was added as a new member of the board. That person was John Chism. He continued by stating that Mr. Chism had risen to the level of Chairman with the board. He further stated that on behalf of the Department of Public Safety, various staff members, and the private security industry he had everyone's sincere appreciation for all of the work he has put in as a member of the Board. He then introduced Deputy Director Duke Bodisch who presented Chairman Chism with a plaque of appreciation from the Department of Public Safety.

Assistant Director Bowie also recognized the work of the industry presidents of TALI, ASSIST, TBFAA, and TLA as well as past Private Security Board Chairman George Craig and Vice-Chairman Mike Samulin.

Agenda Item III: Reports from Board Committees

Secretary Smith addressed the Board stating there was no report from the Advisory Committee.

Board member Crenshaw addressed the Board regarding the upcoming Agenda Items IV and V. He stated that the definition of a Branch Office is determined in statute and the Board cannot make a rule changing that definition. He stated that it was the recommendation of the Committee to table possible changes to both §35.9- Advertisements and §35.25- Assumed Names; Corporations until after the conclusion of the current Texas Legislative Session.

Agenda Item IV: Discussion and possible action regarding changes to §35.9- Advertisements

Tabled until after the current Texas Legislative Session is complete.

Agenda Item V: Discussion and possible action regarding changes to §35.25- Assumed Names; Corporations

Tabled until after the current Texas Legislative Session is complete.

Agenda Item VI: Discussion regarding alternate means of receiving Continuing Education other than through Texas Licensed Schools

Assistant Director Bowie presented this item to the board stating it was brought to the attention of the Division that the industry wanted clarification regarding receiving Continuing Education credits outside of the state. He stated the Division would deal with these requests operationally rather than asking the board to make an administrative rule, as it would help streamline the process. He suggested that requests should be sent to the Private Security section of the Division prior to attending the class, conference etc. He informed the board that the Division was considering creating a form to make this process easier. Chairman Chism asked if there were time factors regarding review time prior to approval, to which Mr. Bowie stated that 30 days prior seemed reasonable. Vice-chairman Johnsen asked if this would be used by individuals or schools. Mr. Bowie stated this would be for individual Continuing Education credits. Board member Hayden asked whose responsibility it was to ensure approval for the course was obtained, to which Mr. Bowie stated that is was the burden of the individual. He stated the department would review to ensure the courses meet the necessary standards for continuing education credit. Board member Hayden asked if these classes were sponsored by private schools or if they were state sponsored events, to which Mr. Bowie stated both. He went on to explain that private entities, states, local colleges, government entities, even other Private Security companies.

Agenda Item VII: Digital Forensics and Investigations presentation by Pat Patterson of Eastfield College

Patrick Patterson, with Eastfield College presented this item to the board. Mr. Patterson began his presentation stating that the Private Investigation industry can benefit from Digital Forensics in many ways. He stated that times have changed and most information can be obtained through electronic devices such as cell phones, iPads, iPods, and televisions. Examples he gave of cases that benefit from digital forensics are adultery cases, fraud cases, harassment cases and surveillance. He stated that they were seeking recognition from the board as an approved program of study, for those individuals seeking additional training, as well as for those looking to become private investigators.

He explained that the courses offered for this certification, totaling 288 contact hours, were:

- Private Investigation (with 48 contact hours)
- Criminal Investigation (with 48 contact hours)
- Intro to Homeland Security (with 48 contact hours)
- Intro to Digital Forensics (with 48 contact hours)
- Intro to Cyber Crime (with 48 contact hours)
- Digital Data Storage Forensic (with 48 contact hours)

Chairman Chism asked if Mr. Patterson was asking the Board to set up a category in Private Security for this type of work. Mr. Patterson stated that was a viable option, and that a criminal justice degree does not currently have technology included. He went on to say that technology needed to be included and people needed to be taught the correct way to use it. It is a long road to complete a 2 year degree and they were asking 18hr certification be recognized by the state in this new era.

Vice-chairman Johnsen stated that he was uncertain that the board members had the expertise to verify this was a credible course of study. He asked Assistant Director Bowie to help shed some light on this topic and perhaps give an opinion.

Assistant Director Bowie stated this college was seeking recognition of the curriculum that would be used to enhance a degree and give individuals credits that surmount to college credits. They also wanted the board to recognize those credits as meeting the requirements towards getting a private investigator registration. Mr. Patterson stated that while that was correct they also felt that this course could be a study taken by those already registered as private investigators to enhance their profession. Mr. Bowie stated that historically this has been done by the board before with Cothoron's and North Texas University. Chairman Chism stated that the "NTU rule" also included the study of the Board rules. Mr. Bowie stated that if the board were agreeable, he would ask staff to work with this college to firm up the approved curriculum for approval by the board.

Agenda Item VIII: Public Comment

No Public Comments

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

The board elected not to take executive session at this time.

Chairman Chism called for a break at 9:34am.

The board reconvened at 9:50am.

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

Chairman Chism called roll to determine which individuals, with cases before them, were present. Holiday, Scott, Boncamper, Porter and Patrick were not present, while Guerrero, Nunez, Savoy, and Villela were present.

Board member Hayden made a motion to affirm SOAH's decisions and summarily deny or suspend their applications or registrations:

- Raydiant Boncamper- Docket No. 405-15-1598 (suspend registration)
- John Porter- Docket No. 405-15-0978 (deny application for registration)
- Shenandoah Patrick- Docket No. 405-15-1469 (suspend registrations)

Vice-chairman Johnsen seconded the motion, with the board voting unanimously in favor of the motion.

Attorney for the Department, Rebecca Burkhalter, presented the following cases to the Board:

Gary Guerrero- Docket No. 405-15-0256

Mr. Guerrero was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Burkhalter stated that Mr. Guerrero's application for registration as an alarm systems installer was summarily denied based on his felony conviction for Unauthorized Use of a Motor Vehicle. Mr. Guerrero's case was heard by the board on January 22, 2015 where it was determined, by a unanimous vote, that his application for registration be denied. On February 12, 2015 the Board's Final Orders were mailed to Mr. Guerrero by certified mail, return receipt requested. The Order was delivered on February 18, 2015. On February 19, 2015 the Department received Mr. Guerrero's Request for Rehearing asking the Board to reconsider the Proposal for Decision. On March 9, 2015 the Department sent by certified mail, return receipt requested, the Department's Reply to Respondent's Motion for Rehearing, asking the Board to deny the Motion for Rehearing. Mr. Guerrero was also served with a Notice of Board Meeting, letting him know the request for rehearing would be heard at this meeting.

Board member Hayden stated that he wanted to outline the reasons for the Board's denial of rehearing because of the procedural vagueness. He stated he would go over all of the factors that lead the board to their decision at the previous meeting. Chapter 53 allows the licensing authority to consider the following factors in determining whether a person who is disqualified is nevertheless fit to be licensed or registered:

- (1) The extent and nature of the person's past criminal activity.
*The judge overlooked the possession of Controlled Substance charge.
- (2) The age of the person when the crime was committed.
*Mr. Guerrero was 20 years old. Youth was a factor.
- (3) The amount of time that has elapsed since the person's last criminal activity.
*While 6 years have passed, Mr. Guerrero did not comply with supervisory restrictions.
- (4) The conduct and work activity of the person before and after the criminal activity.
*Mr. Guerrero has done well in this aspect.
- (5) Evidence of the person's rehabilitative effort while incarcerated or after release.
*Mr. Guerrero has done well to improve himself.
- (6) The date the person will be eligible.
*Mr. Guerrero will be eligible in March 2020; that is 5 years away from now.
- (7) Any other evidence of the person's fitness, including letters of recommendation.
*Mr. Guerrero did have letters of recommendation and his employer, Mr. Moore with him to speak on his behalf.

Board member Hayden concluded by saying that once Mr. Guerrero was denied, it was on him to provide evidence of having paid all fines and he has not done so. He went on to say that a number of these factors are positive for him, but others were not.

Based upon these factors he made a motion to deny Mr. Guerrero's Request for Rehearing. Board member Crenshaw seconded the motion. The motion passed with Chism, Johnsen, Crenshaw, and Hayden voting in favor, while Smith voted against.

Miguel Nunez - Docket No.405-15-1223

Mr. Nunez was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Burkhalter stated that Mr. Nunez's renewal application for renewal for commissioned security officer registration was summarily denied based on his 2nd degree felony conviction for possession of a controlled substance, which renders him ineligible for commission, as he is federally disqualified from owning or possession a firearm.

Mr. Nunez addressed the board stating that he needed his commission back. He stated he was granted a commission and was only denied when he was up for renewal. He stated he cannot find other work, and that jobs as a non-commissioned security officer do not pay as much. He went on to say that this occurred 15 years ago.

Chairman Chism asked Mr. Nunez if he was aware that he cannot own or possess a gun, to which he stated he was aware of this but has been allowed to do it all of these years. Chairman Chism stated that as a commissioned security officer he is not allowed to carry a gun, as it is against Federal law.

Secretary Smith made a motion to affirm SOAH's decision and summarily deny Mr. Nunez's renewal application for registration as a commissioned security officer. Board member Hayden seconded the motion, and the board voted unanimously in favor of the motion.

John Holiday - Docket No. 405-15-1222

Mr. Holiday was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Burkhalter stated that Mr. Holiday had been in contact with her office and requested a continuance due to his wife having recently had surgery that required him to be there to assist her.

Board member Hayden made a motion to grant Mr. Holiday's request for continuance. Secretary Smith seconded the motion, and the board voted unanimously in favor.

Arletta Scott - Docket No. 405-15-1273

Ms. Scott was not present to address the Board on this case, nor did she have counsel present on her behalf. Ms. Burkhalter stated that Ms. Scott's renewal application for registration as a noncommissioned security officer was summarily denied based on her 2012 Class A misdemeanor conviction for failure to identify while a fugitive with intent to give false information. The Private Security Board has determined the offense of failure to identify is related to the duties and responsibilities of the profession. Pursuant to the Board's rules, a 'related' Class A misdemeanor level offense is disqualifying for a private security license for 5 years from the date of completion of the sentence.

Chairman Chism asked if she disclosed this arrest to DPS when she was arrested in 2012, because it appears that she continued to work, to which Ms. Burkhalter stated she was unable to answer that question. Secretary Smith stated that the charges claim that she was a fugitive, but asked what she was a fugitive from. Ms. Burkhalter stated that information was not clear.

Board member Hayden stated that the fact she pleaded guilty and was convicted of a crime and then lied about it to the department was enough information for him to deny her licensure.

Board member Hayden made a motion to overturn SOAH's decision and summarily deny Ms. Scott's renewal application for registration as a non-commissioned security officer. Board member Crenshaw seconded the motion. The motion passed with Chism, Johnsen, Crenshaw, and Hayden voting in favor, while Smith voted against.

Attorney for the Department, Aaron Heath, presented the following cases to the Board:

Devondrea Savoy - Docket No. 405-15-0979

Ms. Savoy was present to address the Board on this case, but did not have counsel present on her behalf. Mr. Heath stated that Ms. Savoy's application for registration as a non-commissioned security officer was summarily denied based on her 2010 Class B misdemeanor conviction for Theft. Ms. Savoy also made a material misstatement on her application by failing to include this conviction on her application. The Private Security Board has determined the offense of Theft is related to the duties and responsibilities of the profession. Pursuant to the Board's rules, a 'related' Class B misdemeanor level offense is disqualifying for a private security license for 5 years from the date of conviction. Ms. Savoy will become eligible on July 15, 2015.

Ms. Savoy addressed the board stating that several years ago she allowed herself to be influenced by some friends into making some bad decisions. Attempting to solve her financial hardships she did something that she deeply regrets and ended up being incarcerated for Theft. She stated that while she was incarcerated she realized she must make some life changing decisions, and decided to further her education through a local college. She stated that she was remorseful for her past actions, but would not allow it to hinder her future.

Board member Hayden asked if she remembered affixing her signature to the application and reading that by doing so she was being honest and forthright regarding all information on the application. Ms. Savoy stated that she did remember that, and explained her situation to the lady at the desk when she was applying at U. S. Securities. She stated that she was advised at that time to apply anyway. She also stated that she did not know if was disqualifying for 5 years from the completion of her sentence, but thought it was from the time in which she did the crime.

Board member Crenshaw stated that she would soon be eligible for reinstatement in July.

Board member Crenshaw made a motion to uphold SOAH's decision and grant Ms. Savoy's registration as a non-commissioned security officer. Secretary Smith seconded the motion, and the board voted unanimously in favor.

Richard Villela - Docket No. 405-15-0967

Mr. Villela was present to address the board in this case, but did not have counsel present on his behalf. Mr. Heath stated that Mr. Villela's registration as a locksmith was summarily suspended based on his pending felony charge for Delivery of a Controlled Substance.

Mr. Villela addressed the board stating that he understood that his registration would remain suspended as long as he still had pending changes, but in March he received deferred adjudication in this case. He went on to say that he made a bad decision last year, and just wants to be reinstated and get back to work. He stated he is a single father of 3 and this poor decision is one that he deeply regrets.

Board member Crenshaw asked how long his deferred adjudication was for, to which Mr. Villela replied 2 years. He then asked if he was required to perform any community service. Mr. Villela answered no, he was not. He also stated that if he violates any part of the deferred adjudication it will be revoked and would become a conviction instead.

Board member Hayden asked if he was employed by a company before his suspension, to which Mr. Villela answered that he was employed by Houston Locksmith. He was then asked when he left their employment, and answered he left in November 2014. When asked why he left them he stated he left for a different job.

Board member Hayden then asked the Department's attorneys what statute said about licensure and deferred adjudication. Mr. Heath stated that it doesn't specify in statute, but in the past it has been considered as a pending charge due to the possibility that it could be considered a conviction at any time. Mr. Beaty stated that a deferred adjudication is still a pending charge and should be considered the same as if he were still awaiting trial. Board member Hayden then asked what the final charges against Mr. Villela were. Mr. Heath stated that according to the information in the database he was charged with delivery of a controlled substance, categorized as a felony punishable by over 1 year.

Vice-chairman Johnsen made a motion to grant Mr. Villela a 2 year probationary license. Mr. Smith seconded the motion. The motion failed to carry the majority of the vote with Crenshaw, Hayden and Chism voting against, while Johnsen and Smith voted in favor.

Board member Crenshaw made a motion to uphold SOAH's decision and summarily suspend Mr. Villela's registration as a locksmith. Board member Hayden seconded the motion. The motion passed with Chism, Johnsen, Crenshaw, and Hayden voting in favor, while Smith voted against.

Agenda Item XI: Adjournment

Chairman Chism introduced this agenda item. Secretary Smith made a motion for adjournment. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of the motion. At 10:47 am, the April 2, 2015 meeting of the Private Security Board was adjourned.