

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
JANUARY 5, 2011**

**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 Charles Crenshaw
Honorable Doris Washington

BOARD MEMBERS NOT PRESENT:

Honorable Stella Caldera

STAFF PRESENT:

RenEarl Bowie, Assistant Director, Regulatory Services Division,
Texas Department of Public Safety;
Steve Moninger, Senior Staff Attorney, Regulatory Services Division,
Texas Department of Public Safety;
Sherrie Zgabay, Manager, Licensing and Registration Service,
Regulatory Services Division;
Reggie Andrews, Program Supervisor II – Licensing and Registration Service,
Regulatory Services Division;
Adam Park, Lieutenant – Compliance and Enforcement Service, Regulatory Services
Division;
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 work session meeting. This 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.

Chairman Chism also recognized the attendance of Trent Marshall from the Governor Appointments office.

Agenda Item I: Approval of Minutes for Board Meeting from October 29, 2010.

Chairman Chism introduced this agenda item. On a motion made by Vice-Chairman Johnsen and seconded by Secretary Smith, the Board voted unanimously to approve the Minutes for the Board meeting of October 29, 2010 as written.

Agenda Item III: Report from Private Security Board's Advisory Committee.

Secretary Mark Smith addressed the rest of the Board regarding topics the Committee was charged with discussing and developing. He stated the Committee would address the board on each topic as it appeared in the Agenda; items IV, VII, and VIII.

Agenda Item II: Report from Private Security Bureau.

Reggie Andrews presented the Licensing totals for the first quarter, 9/1/10-11/30/10. He stated, for this time period, the Bureau received 285 original company applications, 1,258 company renewals, 11,371 original individual applications, and 8,299 individual renewals not including online applications. He went on to say, for the same time period the Bureau processed the following licenses/registrations: 210 original company licenses (112 online, 98 manual), 1,198 company renewals (777 online, 421 manual), 8,813 individual registrations (2,106 online, 6,707 manual), 7,766 individual renewals (3,252 online, 4,514 manual), and 5,915 employee information updates (2,015 online, 3,900 manual). He also stated this time period showed 5,323 active company licenses, 248 active school licenses, and 126,181 active individual registrants.

Lieutenant Park presented the Investigation statistics for Districts A and B to the Board. He stated there were 1050 violations investigated for the first quarter, 9/1/10-11/30/10; 430 in District A and 620 in District B. He further stated there were 3 cases of operating with an expired license, 0 cases of operating with a suspended license, 42 cases of operating without a license, and 22 cases of failure to register employees. He went on to say there were 23 cases presented to prosecutors during this time period. He stated 908 cases were closed with no action, 18 cases were closed with administrative citation, 43 were closed with administrative warnings, and 81 cases were closed with other actions. Chairman Chism asked why there were no OPSL cases to report for the quarter. Lieutenant Park stated the primary reasons for this were due to the transition with reporting operation codes and personnel changes. He stated the data was not lost, but more time would be needed to obtain the information.

Steve Moninger was the next person to address the Board. He stated all of the pending rules were published in the December issue of Texas Register and the comment period was set to expire on January 31st. He also stated all of the pending rules are posted on the PSB website under pending rules and anyone wishing to comment on them should submit the comments in writing to him by the expiration date of January 31st.

Agenda Item IV: Discussion and possible action relating to proposed amendments to Rule §35.35, “Standards of Service”, amending notice requirements for alarm system company and monitoring services pursuant to §1702.288 (Occ. Code).

Chairman Chism introduced this agenda item and asked Rodney Hooker, with TBFAA, to address the board regarding their request to get information from Representative Dianne Delisi. Mr. Hooker stated he had been in contact with Bureau staff regarding amendments to the rule, and after speaking with Mr. Moninger the only other suggestion to the proposed rule is to strike reference to subsection (e) (2). Mr. Moninger addressed the board and agreed with the proposed amendment.

On a motion made by Board member Crenshaw and seconded by Secretary Smith, the Board voted unanimously to accept the amendments to this rule as written with the addition of striking reference to (e)(2).

Agenda Item V: Discussion and possible action relating to proposed amendment to Rule §35.70, “Fees”, addressing the fees for continuing education training schools and instructors.

Vice Chairman Johnsen stated this item was regarding the fees section only and there was no need to vote on it as there were no changes being made. Mr. Moninger stated that the only reason it was brought for discussion was because it was suggested at the last meeting of the board that the fees for instructors and schools should be revisited. Vice Chairman Johnsen stated it had already gotten all of the discussion it should and the board should move on from this item. Chairman Chism asked if anyone in the audience wished to discuss it further; to which no one responded with comments.

Agenda Item VI: Discussion and possible action relating to proposed amendments to Rule §35.187, “Renewal Applications”, adding the safe harbor provision of Rule §35.185.

Mr. Moninger introduced this item to the Board, stating this rule had been discussed and approved at the last meeting, but based on public comment from members of the industry, it was suggested that changes be made regarding the 5 day, or Safe Harbor, rule. He stated he made the change as “unless a completed renewal application that complies with this rule is submitted within five working days following the employment of the individual in a regulated capacity.”

Mike Samulin, with TBFAA, also wished to address the board regarding this rule change. He commented that the rule states the application must include a state or government issued identification card and that means that the person would have to turn it over with their application. He suggested that “a copy” should be added to the language in order to make it clear.

On a motion made by Secretary Smith and seconded by Board member Crenshaw, the Board voted unanimously to accept the amendments to this rule as written with the additional amendment to read “copy of”.

Agenda Item VII: Discussion and possible action relating to proposed Rule §35.222, “Qualifications for Locksmith Company License”, providing for alternatives to the two year experience requirement for licensure, pursuant to §1702.115 (Occ. Code).

Steve Moninger presented this rule to the board for discussion stating the rule before them was essentially in the same format as was given to him by the Advisory committee for experience requirements for locksmiths. Vice-Chairman Johnsen stated this item had also been discussed over several meetings and was drawn up by the Locksmith associations as acceptable substitutions. He further stated the committee could find no reason not to accept it as written. Chairman Chism stated the rule reads “successful completion of a 2000 hour internship”, which is 50 40 hour weeks. He asked if the board could really justify that much time needed. Vice-chairman Johnsen stated the locksmith industry as a whole felt it was not unreasonable. He suggested the Board let it become part of the rule and see where it goes, stating modification could always be made to the rule at a later date, if necessary. He further stated that other members of the advisory committee had the same concerns, but if the industry was comfortable with it they should go ahead. Chairman Chism asked if there were any others who wished to comment before the Board’s ruling.

Rodney Hooker, with TBFAA, addressed the board. He stated it was an industry-wide concern that this is a Department approved course with no vetting process. He stated that part of the qualifications before being able to take this course should be background checks, whether they are applying to be licensed or not. Vice-chairman Johnsen stated that if an individual is concerned about their criminal history, they would want to consider that before spending out that kind of money to take the course. He stated it is not different than if they went to work for a company for two years then applied for their license to find out they weren’t eligible. Mr. Hooker pointed out that even entry level employees of locksmith companies are licensed and at some point have a background check performed, but with this course, in lieu of being hired and working for a company, that check is not happening. Board member Crenshaw asked Mr. Moninger if prospective applicants would be vetted anyway before receiving a manager’s license. Mr. Moninger stated that would come at the time of application, but this course would be taken before application is made. Mr. Moninger asked Mr. Hooker if his concern was someone would take the course without applying for a locksmith license; to which he replied that someone could take the course without any vetting taking place. Mr. Moninger responded that the Board has no jurisdiction over what courses a person is allowed to take. As an example Chairman Chism stated that a person being released from the State penitentiary in August could enroll in September at the School for Criminal Justice at Sam Houston State University and no vetting will occur.

John Arnold, a locksmith from Corinth Texas, stated that when the rule was drawn and discussed with their input, background checks were not referred to because one is administered before someone is allowed to take the course.

On a motion made by Vice-chairman Johnsen and seconded by Secretary Smith, the board voted unanimously to accept this rule as written.

Agenda Item VIII: Discussion and possible action relating to proposed amendments to Rule §35.292, “Requirements for Continuing Education Courses”, providing for the offering of classes taught by “outside-school experts”.

Secretary Smith stated the advisory committee met to discuss this issue and approve the changes made to this rule as written. He also stated that Vice-Chairman Johnsen did much of the work in meeting and discussing the issue with the industry and asked him to address the rest of the board and audience. Vice-chairman Johnsen stated the first thing they did was look at what was happening in the industry as a whole. He stated the fact was everyone cares about having competent people licensed and that their competencies, through continuing education, remain high. He went on to explain that some areas find it more difficult to have formal schools doing continuing education classes, but there are classes available that are taught by industry experts and manufacturers of products to be used. He stated it was discovered that these types of ongoing classes are being held, people are evaluating the instructors, and records are being kept of classes. Therefore, he stated, the advisory committee decided to formalize what is already being done by amending the rule, thus ensuring others are following the same rules as the schools, with the exception of the instructor fees. In adding (7) the committee felt this would give the directors of schools the responsibility of ensuring things are done correctly as well as the responsibility for keeping proper records. It will also give the investigators an opportunity to know what to look for when doing investigations.

Board member Washington asked if there were a required curriculum for these classes. Chairman Chism explained that within the Board rules there are 5 areas that must be covered in continuing education, and each area is industry specific. Mike Samulin approached the Board and stated that the industry specific requirement constantly changes as new techniques become available or new products are developed and that it is up to the school directors to be sure they are keeping up to date with new technology. Board member Washington asked if she were a vendor with a new product on the market, could she come to Mr. Samulin’s office and train his people on how to use the product and he have that count as continuing education for his staff. He stated yes, and the instructor of that product would never be in contact with the citizens of Texas directly only with the licensees, who are then in contact with the public. Board member Washington then asked if there were other things specifically required in continuing education. Vice-chairman Johnsen stated there is a requirement for ethics training as well.

Mr. Samulin stated, as a representative of TBFAA, the organization had no problem with the rule but wished to gain some clarification. He asked if his understanding was correct that Continuing Education schools were to pay \$350, but industry experts would not pay anything. He also wanted to know if his understanding was correct that CE schools, whose only function was education, would not have to carry insurance and there was no fingerprint requirement for industry experts. Both Secretary Smith and Vice-chairman Johnsen stated these were correct.

Bonnie Brown Morse, with LASA, also addressed the board. She stated her understanding of this rule was that her CE school is not required to have an instructor nor curriculum registered with the state, but only needs a director who will evaluate CEUs to locksmiths only. Secretary Smith stated that the industry expert will have to submit curriculum to the director. Vice-chairman Johnsen stated that (7) of the rule addresses this issue. He stated that it reads that the director of the school is required to keep information on instructors and curriculum of courses

taught as well as the number of hours. He went on to say if the school decides to present programs and have one industry expert teach certain areas, they may substitute with another. He finished by stating that if they find a school is abusing this the Board will send out investigators to investigate. Chairman Chism added that the director must set curriculum to meet the categories set out in §35.292. Board member Washington asked for clarification on whether an industry expert can be brought in to teach an industry specific class and have that count toward the ethics part of continuing education requirements. Vice-chairman Johnsen stated that ethics is something that he has never seen a specific state approved curriculum. He stated that training is ongoing and constantly being updated and therefore easier for industry experts to have training going on nationally than 50 different experts. Ms. Morse stated that as the rule is currently written, there is a provision stating the CE instructor can use other people to assist in teaching a course, but the instructor would be present in the room. Vice-chairman Johnsen stated that one particular school or director cannot say what is good for the industry as a whole. He stated there are a lot of companies in guard and alarm industries that are nationwide who have people who go around the country training and it is not feasible to certify one person in each state. He again stated that if the board were to find abuse of this rule happening they would have to act very quickly. Ms. Morse asked that the board table discussion of this rule for further discussion to which Secretary Smith stated the board would not.

Board member Washington asked if she had an alarm company, could a company come in on a continuing basis and train her employees on the use of technology they are selling, and have it qualify in place of continuing education. Mike Samulin stated that is exactly what CE is. He stated that likely the alarm system she may have in her home is a national company such as Honeywell or DMP who hire trainers to go out across the country to companies and train on the use and installation of equipment. Board member Washington stated that if they are training across the state, why was there not a need to provide their curriculum for approval by the state. Mr. Samulin explained that they do have to provide the curriculum to the director of the school, but because the technology is constantly evolving, the state does not have a hand in approving the course, but rather leaves it to the different industries to determine what is the most current information. He continued by saying that installers and locksmiths are not required to have an ethics course, because they are under the direction of a licensed manager. He stated that the licensed managers are the only ones required to have the ethics training and that that must be taught by a state certified instructor. He stated that when a technician is hired they do have to take a two day course encompassing ethics, but are not required to update yearly. He stated that ethics deals mainly with the way a manager is running a company and not in how an installer goes in and pulls wire, etc.

Mr. Samulin again stated that the one concern on this rule is the following clarification: \$350 fee for schools, \$0 fee for industry experts, no insurance requirement for schools, and no fingerprint requirement for industry experts. He stated Mr. Moninger had concerns regarding the language not being specific to this clarification. Vice-chairman Johnsen asked Mr. Moninger if there was more language that needed to be added without turning the rule into several pages long. Mr. Moninger stated that everything in the CE rule requires instructors to be licensed and schools to be registered. The rule has no language to suggest any exceptions. He stated that he realized the board's intent but the expression of the intent on record is not enough and he would prefer to make it explicit in the language of the rule. Mr. Samulin asked if an addition could be made to

the proposed rule that states industry experts are not required to pay any fees nor are fingerprints required, and that CE schools are not required to carry insurance. Mr. Moninger pointed out to the Board that no changes can be made to this rule at this time, as it is currently being published in *Texas Register* for other proposed changes. He stated he cannot submit additional changes anytime soon and in light of the new board policy on negotiated rule-making, with this being the first time the public has seen it, this item should be tabled until the next meeting. Mr. Samulin asked if the criteria discussed could be followed as policy until the rule changes can be made. Secretary Smith stated that if the rule doesn't say something is required, then it isn't required. Mr. Moninger stated that there is no reason why investigators would look at the CE school that Mr. Samulin is describing, any differently from any other CE school based on the current changes proposed. He stated the problem lies with how to distinguish this type of CE school from any other CE school.

Vice-chairman Johnsen stated the board's intent is to draft the rule as shown in (7). He asked what the advisory committee needed to do in order to come back in April with the final version of this rule. Mr. Samulin stated that if the other revisions to §35.292 are currently in the Texas Register awaiting voting by the Public Safety Commission, these additional amendments could be put in Texas Register and brought to the PSC directly afterward. Mr. Moninger stated that once the other revisions are voted on by the PSC, it will go back to *Texas Register* for publication. He stated this would put additional revisions to §35.292 going to the PSC in April; there would be no saving of time in passing the rule at this time. Chairman Chism stated the board would table further discussion until the next meeting in order to work out these final details. He also stated he has been involved in discussions of continuing education since 2004 and at no time was it ever discussed that C.E. schools would be required to have insurance nor the instructors need fingerprinting. He stated that doing these rules a piece at the time is causing too much confusion. Mr. Samulin again asked the board if they would instruct staff in the meantime to operate under the original intent of this rule and with the changes discussed during this meeting so that those companies in limbo who have not registered themselves as schools and have not registered employees can go ahead and begin the process. Vice-chairman Johnsen stated he wanted to see the board move forward with this rule and asked Mr. Moninger to give the committee guidelines to follow so they can get this completed. He also stated that the board will give the bureau instructions to follow this rule as it is at this time in assumption of the rule passing.

Further discussion of this agenda item was tabled and referred back to the advisory committee, where it will be re-discussed and ready for action at the next meeting of the board.

Agenda Item IX: Discussion and possible action relating to proposed amendments to Rule §35.311, "Exemptions", clarifying the scope of the repossession agent exemption provided in §1702.324 (b)(3) (Occ. Code) with respect to locksmith services.

Steve Moninger presented this item to the Board. He stated the Attorney General was asked to provide an opinion as to whether the repossession agent exemption applied to locksmith services, to which they referred it back to the board for final decision. The only guidance they provided was that there needed to be a relationship between repossession services and locksmith services. He went on to say that in the proposed language, making keys and installing and/or repairing

locks is related to repossession services following the argument in Attorney General Opinion 0275, which discusses attorneys and their paralegals being exempt. Following that theory, a repossession agent who has employees who work only for that agent providing locksmith services in carrying out repossession services would be exempt. However, independent contractors hired for similar work would not be exempt. Secretary Smith asked for clarification by stating if a repo company has to make keys in order to repo car, and has one of its full time employees as the key maker, that person would be exempt. Mr. Moninger stated yes that was correct.

Billy Garrett with the Texas Locksmith Association addressed the Board regarding this item. He stated that the Attorney General opinion states, "When section §1702.324(c) is read together with the subsection §1702.324(b)(3) exemption, we see that the exemption applies to a repossession agent only when he or she is "performing services directly related to and dependent on the provision of [repossession]" and also states, "It merely allows such person to continue to perform ordinary repossession services". He stated that repossession by its very definition is to take back possession of, as an example, cars. In the repossession of cars this rule is stating it is ok to make a key in order to gain possession of the car, but that is not what is happening. He stated the cars are being repossessed by using a tow truck and that keys are then being made for the vehicle after it is the company's possession. He also stated that in the case of repossessing a home, he has not been asked to, as statute states, "decode or make a key", but rather he is asked to take all locks and rekey. He further stated that the argument is that the key is not being sold, but it is being sold to the end user of that home or vehicle is sold to another individual. Mr. Moninger stated that the situation described would be for an investigator to determine if the manufacturing of the key related to the business of repossession or not, and the rule is simply stating that if it is then it is exempt.

Bonnie Brown Morse addressed the Board stating that if section (c) did not say decode, or make or repair then statute already provides an exemption for changing locks. But in saying decode, make or repair that is problematic.

On a motion made by Vice-chairman Johnsen and seconded by Secretary Smith, the Board voted unanimously to accept these amendments as written.

Agenda Item X: Discussion and possible action relating to a proposed Board policy on negotiated rule-making.

Chairman Chism presented this item to the Board stating that a copy was provided of the administrative policy for the agency to use to meet statutory requirement set out as a set procedure for all new rules and rule changes to come before the board. He then asked Mr. Moninger if he wished to make any comments regarding this policy. Mr. Moninger stated the policy looked good, but may require some fine tuning down the line. In the meantime, he stated, the policy could be adopted by the board and placed on the private security website to provide the industry and public with some guidance and idea on how the board is planning to proceed. Mr. Chism stated this new policy states how new rules and rule changes will be handled. He stated an interested party with suggestions to a new rule or changes to an existing rule should provide a written proposal of the changes to be made and present it to the chair or board member,

who in turn would give it to the chair to be placed on the agenda. The submission should be made at least 30 days prior to the next scheduled meeting and would then be discussed at the meeting with the input of the person suggesting the change as well as the regulated industries. The proposal will then be referred to the advisory committee and the PSB attorney for further review while seeking input from the regulated industries with at least one face to face meeting taking place. Upon completion of their review, the advisory committee shall place their findings and any suggested new rule or rule change on the agenda for the next meeting for final discussion and acceptance. He finished by stating this is already being done by the board but is making things less confusing and §1702 requires this policy to be in writing.

Agenda Item XI: Public Comment

Bonnie Brown Morse-, president of Locksmith Association of San Antonio, addressed the Board. She began by asking the board a question regarding continuing education credits, wanting to know how many hours were required by locksmiths. Chairman Chism stated that 16 hours are required, even if a person holds additional licenses.

RenEarl Bowie-, Assistant Director of Regulatory Services Division of Tx. Department of Public Safety. Mr. Bowie stated he wanted to give the Board more information regarding the investigation numbers presented earlier in the meeting. He stated that the area of Operating with a Suspended License is usually insurance suspension cases. He went on to explain that in the past an insurance suspension resulting from information not sent on time, lapsed insurance policy, or even staff error in entering the information would result in an OPSL case being generated and sent to the field for investigation. With the changes to the bureau, these instances now are handled administratively by a staff member calling the companies directly and handling the information in that manner. He explained that it is the same with Operating with an Expired License cases as well; staff contacts the companies directly to inquire about the company renewals. He finished by stating the section that is handling these cases are keeping separate statistics regarding these type cases, but due to time constraints they were not available for the present meeting. Vice-chairman Johnsen asked if there were any word regarding the pocket cards have been in the works. Mr. Bowie stated that he would prefer to answer the question at a later time, possibly during Executive Session.

At 10:30 am, Chairman Chism called for a 30 minute break.

Meeting was called back to order at 11:02 am. Assistant Director Bowie again addressed the Board regarding a question asked by Vice-chairman Johnsen during public comment. Mr. Bowie stated the division was currently working with IT for a viable solution to expedite the situation and that he would have more information and possibly a timeline for the Board at the next meeting in April.

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

Scott Merchant presented the following Hearing case to the Board:

Wilburt Smith- Docket No. 005852010

Mr. Smith was present to address the Board on this case, but did not have counsel present on his behalf. Mr. Merchant stated Mr. Smith's license as a commissioned security guard was revoked due to his two disqualifying convictions: a 1985 Class A misdemeanor conviction for Assault, and a 1978 felony conviction for Arson. He also stated that under Federal Law, both of these convictions disqualify Mr. Smith from possessing a firearm.

Mr. Smith addressed the Board on his own behalf. He stated that when these incidents occurred, he was a much younger man. When he first applied for a license, he stated, he was told that he would have to wait 3 years before he was qualified. He stated he waited the allotted time, and during that time received his rights to carry a firearm by ATF (Bureau of Alcohol, Tobacco, and Firearms), but no longer has the paperwork showing it. Board member Washington asked if he had been licensed for 10 years, why was his license being revoked now. Mr. Merchant stated due to the age of the convictions they may not have been put into the criminal history database. He also stated that over time as the database becomes more complete, there will be more of these cases being brought to light. Mr. Merchant stated that until the Bureau received evidence of Mr. Smith's restoration of rights, he is not qualified to possess a firearm under State and Federal Law. Board member Crenshaw asked what Mr. Smith's legal pathways were to re-obtain his rights to possess a firearm. Mr. Merchant stated Mr. Smith would need to obtain a pardon from the Governor or a judicial pardon from the original convicting court.

Secretary Smith made a motion to uphold SOAH's decision to revoke Mr. Smith's commission as a security guard. Board member Washington seconded the motion, and the Board voted unanimously in favor of the motion.

Sarah Carnes-Lemp presented the following Hearing case to the Board:

Steve Rowland- Docket No. 004342010

Mr. Rowland was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Carnes-Lemp stated Mr. Rowland's registration as a non-commissioned security officer was revoked based on his felony conviction of Intoxication Assault. Ms. Carnes-Lemp reminded the Board that there are currently pending rules that change assaults to all assaults being occupationally related, but that intoxication assault is not listed among them. However upon the adoption of the new rule, all assaults would be considered related to the occupation.

Vice-chairman Johnsen made a motion to uphold SOAH's decision and revoke Mr. Rowland's registration as a non-commissioned security officer. Secretary Smith seconded the motion, and the Board voted unanimously in favor of the motion.

Scott Merchant presented the following Hearing case to the Board:

Luis Gonzalez- Docket No. 008452010

Mr. Gonzalez was not present to address the Board on this case, nor did he have counsel present on his behalf. Mr. Merchant stated Mr. Gonzalez's application for registration as an alarm system installer was denied based on his misdemeanor conviction for Driving While Intoxicated.

Board member Crenshaw made a motion to deny SOAH's decision and deny Mr. Gonzalez's application for registration as an alarm system installer. Secretary Smith seconded the motion, and the Board voted unanimously in favor of the motion.

Sarah Carnes-Lemp presented the following Hearing cases to the Board:

Anthony Garcia- Docket No. 008462010

Mr. Garcia was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Carnes-Lemp stated Mr. Garcia's application for licensure as a non-commissioned security officer was denied based on his Class A misdemeanor conviction of Assault Causing Bodily Injury. Mr. Garcia received deferred adjudication probation, but it was revoked due to several violations of the probation and Mr. Garcia was sentenced to 350 days in jail. Based on Texas Administrative code he would not be eligible for licensure until December 16, 2011.

Vice-Chairman Johnsen made a motion to deny SOAH's decision and deny Mr. Garcia's application for licensure as a non-commissioned security officer. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of the motion.

Herman Jack- Docket No. 008972010

Mr. Jack was present to address the board on this case, but did not have counsel present. Ms. Carnes-Lemp stated Mr. Jack's application for licensure as a commissioned security officer was denied based on his felony conviction of Burglary of a Vehicle. She went on to say Mr. Jack is federally disqualified to possess a firearm.

Mr. Jack stated that since May he has been fighting to obtain his commissioned license. He stated that he did not burglarize any vehicle, but was running with the wrong crowd and was guilty by association. Mr. Johnsen stated that the Board was not able to grant him a commissioned license when it is against federal law for him to possess a firearm. Secretary Smith asked if he was able to be a non-commissioned officer, to which Ms. Carnes-Lemp stated he was eligible to be a non-commissioned officer. Board member Crenshaw stated that Mr. Jack was sentenced to four years confinement, and in lieu of confinement, he served four years probation. He went on to say that it is unlawful for a person to possess a firearm "who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year". He asked if probation in lieu of confinement was equal to confinement. Ms. Carnes-Lemp stated that the law reads "convicted of a crime punishable by imprisonment for a term exceeding one

year” and does not state that the person has to serve that amount of time; it is based upon the conviction.

Secretary Smith made a motion to uphold SOAH’s decision and deny Mr. Jack’s application for licensure as a commissioned security officer. Vice-chairman Johnsen seconded the motion, and the Board voted unanimously in favor of the motion.

Christopher McElveen- Docket No. 009812010

Mr. McElveen was present to address the Board on this case and he was represented by Attorney Kyle Varret. Ms. Carnes-Lemp stated a recent review of the Department’s database revealed that Mr. McElveen is required to register as a sex offender and under Texas Occupation Code 1702.361 he was notified that his licensure as an alarm installer and locksmith would be revoked.

Mr. Varret addressed the Board on Mr. McElveen’s behalf. Mr. Varret stated the Texas Occupation Code provided for one exception in 1702.3615 that allows the board to consider registration under 35.45 by considering the age of the applicant at the time of the offense, the classification of the offense, the evidence of rehabilitation, the amount of time that has passed since the offense, and the relationship between the offense and the occupation. He went on to state that Mr. McElveen should be allowed to keep his license based on each of the mentioned factors. He went on to say that at the time of the offense Mr. McElveen was 18 years old (age at time of offense) and 15 years have passed with no new criminal offenses (amount of time). He also pointed out that Mr. McElveen was convicted of a 2nd degree felony, which is not the most serious degree in the State of Texas (class of offense) and there is no evidence that he has, would, or could use his license to commit a similar offense (relationship to occupation). He further stated that in evidence of rehabilitation, Mr. McElveen completed his deferred adjudication probation and has committed no new criminal offenses. Furthermore, in preparation for this hearing, Mr. McElveen submitted to a polygraph exam as well as risk assessment which revealed he is at low risk for both general and sexual recidivism. He stated Mr. McElveen is prepared to discuss this with the Board but wished to add that this was not a forced sex crime, but the victim was under the age of consent. He stated the girl was not a stranger, but a neighbor who was staying with the family for a period of time. He went on to say that Mr. McElveen worked for his father whose business services numerous law enforcement forces, as well as DPS and Department of Corrections.

Mr. Varret asked Mr. McElveen a series of questions: How long have you been doing lock smithing? – a little over 10 years. Have you done anything else? – construction work, supermarket. What have you done to develop your skills as a locksmith? – continuing education as well as learning from my dad. Did you make DPS aware of your need to register as a sex offender? – yes, by checking the box on the application and the offense that occurred. Do you feel that this work puts you at risk for reoffending? – no. If you are no longer able to be licensed, what would be the consequences to yourself and your father’s business? – it would be devastating to the business. You took a polygraph examination and it showed you stated you have not committed any criminal offenses? – no I have not. Is there anything else you would like the Board to know? – I can’t change the past. I can only look to the future and provide for my 7 year old daughter that I care for. This has been my profession for 10 years.

Board member Crenshaw asked if he currently installs alarms in people's homes or businesses. Mr. McElveen stated that he does. Vice-Chairman Johnsen stated that his offense occurred in 1994 and when licensing started, he asked, if he disclosed the information on the application. Mr. McElveen stated that he did disclose the information that he was on deferred adjudication at that time. Board member Crenshaw asked if his license was revoked because he failed to register as a sex offender, to which Ms. Carnes-Lemp stated it was revoked because he is registered as a sex offender. When asked why he was granted a license if being a registered sex offender is disqualifying, Ms. Carnes-Lemp replied that the rule regarding sex offenders was not adopted until January 1, 2008. Board member Crenshaw asked when he would be eligible if his request is denied at this time. Ms. Carnes-Lemp stated that he would be eligible when his registration expires, to which Mr. Varret stated is never, as Mr. McElveen is required to register for life.

Patrick Hollis next addressed the Board on his sons' behalf. He stated their business began with having a bicycle repair shop as part of the business. He stated that after the offense occurred, he immediately closed that part of the business because it didn't seem right to have it remain open in light of the circumstances. He went on to explain the business does service a few daycares, but he does that work himself, his sons do not. He also stated that Chris remains in the shop doing rekeying, etc. while William does auto and commercial locksmithing. Mr. Hollis went on to say that the license they are most interested in retaining is the lock smith license as they have very little knowledge of how to do alarm installs. He stated he is the one who does the alarm installs and his sons would be willing to surrender their alarm installer licenses. Vice-chairman Johnsen stated the problem with his sons being licensed is when Mr. Hollis retires, his business could not be passed to his sons.

Board member Washington made a motion to grant Mr. McElveen a provisional license, based on the criteria of 35.45, with the following conditions:

- He must not commit any criminal violations in the future
- He may not perform locksmith duties at schools, daycares, or family residences
- He must stay up to date on his sex offender registration
- His license is only valid while he works for his present company, and cannot change to another company
- Violation of any of these conditions will revoke his license

Vice-chairman Johnsen seconded the motion and the Board passed the motion with Chism, Crenshaw, Johnsen, and Washington voting for, while Smith voted against.

William McElveen- Docket No. 009822010

Mr. McElveen was present to address the Board on this case and he was represented by Attorney Kyle Varret. Mr. Varret asked the Board to consider the facts of the case previously discussed during Christopher's hearing as well as his father's testimony and apply them to William's case.

Mr. Varret asked Mr. McElveen a series of questions: What was your age at the time of the offense? – 22. How long ago did the offense occur? – 15 years ago. Did you successfully complete deferred adjudication? – yes. Did you receive a risk assessment? – yes. Were you found to be at a low risk of reoccurring? – yes. Have you committed any other criminal offenses? – no. In your work as a locksmith, are there occasions you would come into contact with

children? – no. Did you make DPS aware of your offense? – yes. If you are granted a provisional license, will you follow all of the provisions? – yes. Ms. Carnes-Lemp asked Mr. McElveen if he has worked for any other company to which he responded no. He stated he has worked for his father through high school and college and this is the only job he has ever known.

Board member Crenshaw made a motion to grant Mr. McElveen a provisional license, based on the criteria of 35.45, with the following conditions:

- He must not commit any criminal violations in the future
- He may not perform locksmith duties at schools, daycares, or family residences
- He must stay up to date on his sex offender registration
- His license is only valid while he works for his present company, and cannot change to another company
- He must surrender his alarm installer license
- Violation of any of these conditions will revoke his license

Board member Washington seconded the motion and the Board passed the motion with Chism, Crenshaw, Johnsen, and Washington voting for, while Smith voted against.

Agenda Item XI: Executive Session (consultation with attorney) as authorized under §551.071, if necessary.

The Board did not take Executive Session at this time.

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 12:43 pm, the January 5, 2011 meeting of the Private Security Board was adjourned.