

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
JANUARY 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 Albert Black
Honorable Charles Crenshaw
Honorable Brian England
Honorable Doris Washington (arrived at 9:13 am)

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;
Reggie Andrews, Program Supervisor II – Licensing and Registration Service,
Regulatory Services Division;
Jay Alexander, Captain – Compliance and Enforcement Service, Regulatory Services
Division;
Sherry Johnson, Operation Manager – Operations Bureau, 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 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 9:02 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 October 19, 2011.

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 19, 2011 as written.

Agenda Item II: Report from Regulatory Services Division.

Reggie Andrews presented the licensing totals for the first quarter, 9/1/11 to 11/30/11. He stated, for this time period, the Division received 258 original company applications, 1,318 company renewals, 10,969 original individual applications, and 8,679 individual renewals not including online applications. He went on to say, for the same time period the Division processed the following licenses/registrations: 152 original company licenses (88 online, 64 manual), 1,280 company renewals (856 online, 424 manual), 7,935 individual registrations (2,348 online, 5,587 manual), 7,658 individual renewals (3,461 online, 4,197 manual), and 5,047 employee information updates (1,166 online, 3,881 manual). He also stated this time period showed 5,567 active company licenses, 269 active school licenses, and 129,322 active individual registrants.

Mr. Andrews also stated there was a new form on the private security website, the PSB-03A. He stated that the use of this form by individuals would help in the front-end scanning process, therefore speeding up the application process. Chairman Chism stated that a few individuals had contacted him recently asking why the PSB is now requesting a copy of everyone's driver license or identification card. Mr. Andrews stated that it is part of the new rule requirement of §35.186 to provide a copy of this as part of the application process.

Captain Alexander presented the investigation statistics for Districts A, B and C to the Board. He stated there were 1104 violations investigated for the fourth quarter, 9/1/11 to 11/30/11; 415 in District A, 217 in District B and 472 in District C. He further stated there was 1 case of operating with an expired license, 1 case of operating with a suspended license, 33 cases of operating without a license, and 18 cases of failure to register employees. He went on to say there were 32 cases presented to prosecutors during this time period. He stated 963 cases were closed with no action, 0 cases received administrative citation, 1 was closed with an administrative warning, and 140 cases were closed with other actions.

Assistant Director Bowie stated that the division had been undergoing changes. He stated that recently the division had been able to put a captain in charge of the regulatory crimes bureau in Houston. He stated that Kellye Turner had been appointed to that position. He went on to say that she had extensive knowledge of DPS, specifically the Driver License and Criminal Investigation Divisions. Captain Turner stated that she was excited to be in her new position. She stated she came from a 16 year career in the Driver License Division to the Criminal Investigation Division. She stated she was eager to put her knowledge to work for the Regulatory Crimes Bureau. She concluded by stating that if there was anything she could do for the members of the industry in Houston, they should contact her.

Board member Doris Washington arrived at 9:13am.

Agenda Item III: Reports from Board Committees

Secretary Smith gave a report regarding pocket cards. He stated that the department wanted fingerprints coming in by way of scanner. Currently, he said, the state approved vendor, L-1, does not have a large enough presence and does not take walk-ins, thus not serving the needs of the private security industry. He continued by saying he wrote an article in the September issue of *Managing Security Today*. In the article he wrote that there is a 300% turnover rate in non-commissioned security officers. With such a high turnover rate, he stated the industry cannot have a situation that makes it so difficult to have prints taken. He stated that he called L-1 and got a recording saying no one was available to take the call and that the caller should go to their website to make an appointment to have prints taken. He stated this process takes too long. He further stated that on October 19, 2011 he sought permission to use one of his branches as a test site. He asked his V.P.s who might like to participate in this test. He received one response from his San Antonio branch manager, Pete LaBonte. At this time he called Mr. LaBonte to come forward and speak to the Board on what he found.

Mr. Pete LaBonte, employed by Smith Protective Services, stated that he looked into doing electronic fingerprinting at their location. He stated he spoke with Sherry Johnson in the Regulatory Services Division who suggesting he contact L-1, the sole provider of fingerprinting for Texas, and see about leasing one of their scanners. He stated he contacted the Department of Information Resources and spoke with Skip Bartek who stated that in order to be an approved vendor he would need to win a bid with DPS as a vendor and that is a very long process. He stated that he then spoke with Chad at L-1 about the possibilities of partnering with Smith Protective Services. On 12/13/11 he met with several members of the PSB and vendors and found it interesting that there was no reason why, from a software standpoint that they are not able to send in their own fingerprint scans. Mark and he then attended a meeting at DIR and were under impression that the only way for Smith Protective Services to become an approved vendor is to go through them. After meeting with DIR they learned that DIR had nothing to do with approving them to be a vendor. He concluded by saying their goal was to find the most efficient way of getting fingerprints to the agency for application processing.

Secretary Smith stated it has been an ongoing issue with companies to register people using L-1, sending in all necessary applications and fees, and then the registrant is a no show and the company is still out the fee. He asked Georg Craig to come forward to also speak on this matter.

George Craig stated a work around to this problem had been thought up, and was bulk processing. He stated that originally bulk processing was set up for larger companies who may be registering 15 or more employees at a time. However, they felt that this process could be used as an opportunity to set up appointments with L-1 and then paying only for those employees who show up to have their fingerprints done. Reggie Andrews stated if submitting multiple transactions, you have 14 days to process those applications. Mr. Craig stated it could be done where a company hires a person on Monday, fingerprints are taken Tuesday, and the company pays for it on Thursday or Friday and still comply with all rules.

Chairman Chism stated that if he were to hire an employee and set up an appointment with L-1 for his prints to be taken Monday. If he prepared a packet for the State with all necessary money, but the employee didn't show up for his prints, what would happen to the money? Mr.

Craig stated that they would register the employee online, if he didn't show up the company would have 14 days pay that fee. He then stated that in this scenario the company would register an employee but wouldn't have to pay the fee until after they are printed. He stated on the invoice you would check the ones that you want to pay and the others would drop out of the system. Mr. Andrews confirmed this by saying that companies who have outstanding balances would be contacted by Texas OnLine notifying them of the charges still not paid. At that point if they are not paid, then the registrant drops out of the system after 30 days.

Board member Washington asked if this discussion was because they wanted to change the company who is currently doing the fingerprinting. Secretary Smith stated that the problem was not with the company doing the fingerprinting, but the employees are sometimes flaky and the companies are out that fee. Mr. Craig stated it was not uncommon that the potential employees do not show up to get their prints taken. This causes a problem because the companies usually have to pay ahead of time; therefore they are out that money. However, he stated, he and others had come up with a system of bulk processing where the company would pay only for those who get their prints done and not pay for those who fail to appear.

Vice-chairman Johnsen stated L-1 responded to an RFP bidding to be a singular provider. DPS is the one who decided to use single provider instead of RFP. Mr. Craig responded that DPS put an RFP and received various responses, and then L-1 was chosen to be that provider.

Secretary Smith asked if the bulk processing system has already been put in place, to which Mr. Craig said it had. Vice-chairman Johnsen asked when the money would transfer. Mr. Craig answered that the company initiated the payment. Vice-chairman Johnsen stated it sounded like an easy process.

Secretary Smith stated that during recent meetings he asked if there was a technical, or software reason why L-1 is the only provider for obtaining electronic fingerprints, and was told there were only contractual reasons. He also stated he was informed that there was no reason why a company could not purchase the machine and submit the finger prints to DPS. DIR said it was willing to help DPS. He continued by saying that he didn't think guard companies were in a hurry to purchase this \$12,500 machine. Small guard companies, private investigators, and locksmiths will want to use L-1, but larger guard companies, like his, have got to have a vehicle to get it done on the spot, he stated.

Chairman Chism stated that the Board would continue this study and be sure the industry has access to their findings before they make this mandatory. He stated that even then outlying areas will have problem with that. He continued by saying that maybe by the end of the year the Board would have this resolved.

Secretary Smith stated he wanted to emphasize that he would continue to gather information on this subject and submit his findings in his next report.

Board member Washington stated that if continuing to use L-1's process was better for DPS and assisted them in doing a better job, then the industry should continue with the process. She

stated that everyone had to continue to move forward with technology and not wanting to go electronic because it is inconvenient is not a good enough reason.

It was concluded that Secretary Smith would submit his findings report to Mr. Moninger who would then make the determination of whether the reports could be sent on to the other Board members.

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.

Steve Moninger presented this item to the Board. He stated the amendments to these rules were prompted by questions regarding whether or not non-commissioned officers could provide personal protection services, and if they could provide these services out of uniform. He stated that the uniform requirements rule clearly states that uniforms must be worn. He did however add a provision on commissioned PPO exempting them from that requirement while operating in plain clothes. The authority for this comes from subsection §1702.108 (4) “protect an individual from bodily harm including through the use of a personal protection officer”. He went on to say that there has been some suggestion that non-commissioned personnel doing personal protection should have special training above and beyond that which they would normally receive.

Chairman Chism offered some background information as to why these amendments were being considered. He stated Mr. Moninger received an email from an individual wanting to provide these services. Since then, he stated he had spoken with three different people who provide these services and asked if they ever receive requests for personal protection services with weapons. They stated that they did for varying reasons such as in home with young child when parents are out of town or when accompanying teens to an activity.

Secretary Smith asked that if a Personal Protection Officer wants to provide body guard services without carrying a weapon would these amendments prohibit that from occurring. Mr. Moninger stated no, these amendments are in regards to unarmed guards.

Chairman Chism stated he was referring these amendments to the Rules Committee to work with Mr. Moninger to come to a conclusion.

Agenda Item V: Discussion and possible action regarding proposal of the need for a second qualified manager of companies.

Board member Crenshaw presented this item to the Board. He stated that he would combine the Rules Committee report with this agenda item. He began by stating that a couple meeting ago the Board had a licensee request the possibility of having a 2nd qualified manager for companies,

just in case something unexpected happened with the 1st manager. He stated the Rules Committee began looking into this scenario and the first stumbling block they encountered was that it is written in statute that there be only one qualified manager per company. To overcome this obstacle the committee began looking at the possibility of having a second licensee take the test, pass it, and wait as a backup to the qualified manager. He asked one of the committee members, Rodney Hooker, to address the Board on this matter further.

Mr. Hooker stated that one question the committee asked was if anything precludes a company from having several people taking the qualified managers exam. The answer is no. There can be as many people as a company would like to take the exam, but only one person can be licensed as the qualified manager. Another question the committee had to answer was why retests are required every two years. The answer to this, he stated, is because the rules and statute is being modified and as the laws change, it makes sense to have managers test over those new laws. He continued by saying the committee didn't mind testing every four years if the Board agreed to that term instead. Board member Crenshaw stated he wanted to hear from Mr. Andrews regarding any bureau management concerns. Mr. Andrews stated he had no concerns at this time.

Mr. Moninger stated this rule doesn't do a lot, it is just saying that if the Board did this, then they would retest every two years. He went on to ask that the Board not pass this rule at this time, but rather hold it until the summer meeting when there would be several rule changes to submit for publication.

Vice-chairman Johnsen asked if a company wanted to have someone take the exam and have a manager in waiting, could they? Mr. Moninger stated that the problem with doing this is that the software that the agency uses does not allow for this as a category in licensing.

Board member England asked if the rule was in place that would allow for more than one person to take the qualified managers exam. Mr. Moninger replied there was not. Mr. Hooker stated that when a licensee takes the managers exam they get a response back that is either pass or fail. He explained that it should be the personal responsibility of the licensee and company to keep the paperwork showing they passed the exam. This would not put any additional burden on the agency, but rather make companies more responsible for ensure this documentation is retained. He went on to say that if this could be accomplished through policy rather than through rule changes, he would not be opposed to that.

Vice-chairman Johnsen asked if the Regulatory Services Division kept a list of all licensees who take the qualified managers exam. Mr. Andrews stated that they do keep that information and would be able to look that person up for verification.

Board member England suggested that while the Board is considering rule §35.61 (g) it should also consider adding language on who can take the exam or how many from one company.

Susan Griswold, president of the gulf coast region of ASSIST, addressed the Board, stating that on the department application there is a box that says licensed supervisor. She asked Mr. Andrews if this could not be used as an option. Mr. Andrews stated that companies have the

option of registering a licensed supervisor who may take over if a qualified manager is unable to perform their duties. This person could take the managers exam, register as a licensed supervisor, and be able to step up in case they are needed.

Chairman Chism referred this item back to the Rules Committee for reexamination at the next Board meeting in April.

Agenda Item VI: Discussion and possible action regarding Identification Cards.

Chairman Chism presented this item to the Board stating that it was his understanding that the new pocket cards were being delayed. He asked Sherry Johnson, with the Regulatory Services Division to address this issue. Ms. Johnson stated that the Operations Bureau did not hit the projected January timeframe. However, she continued, her department had discussions the day before with L-1 and Digimarc on bringing together the back end security as well as the front end card production. Also, IT currently has the technical specs and are identifying the quickest mean to get the technology in place to being facilitating this project. Chairman Chism asked what the new timeframe was on obtaining these cards. He stated he had been on the Board for the last nine years and the Board has been promised this updated pocket card all of this time. She stated Mark Doggett, the department's CIO, and RenEarl Bowie, RSD's Assistant Director, have been in continuous meetings over the last few months and recognize that this is a top priority. There were some critical projects that forced her team to push the timeline out but they never dropped below the line on this project. She concluded by stating Digimarc has the technological concept and it is now in their hands.

Assistant Director Bowie addressed the Board stating that he shared the board's exasperation with this pocket card issue. He stated that this issue has been going on way too long and therefore he came up with a plan B. He has tasked his Senior Managers with pursuing other options, and he has also reached out to various industry members as well. He went on to say that if the agency's IT department can resolve the current issues within the next three months, they will beat his team to the conclusion, but otherwise other options will be ready within that timeframe.

Vice-chairman Johnsen asked if the agency will continue to send the same old cards to licensees until the new pocket cards are made available, to which Mr. Bowie stated yes. Chairman Chism concluded the discussion by stating that by the next meeting the Board should see some resolution to this issue.

Keith Oakley, representing ASSIST, TALI, and TLA, addressed the Board stating that another option they would like to offer is allowing the associations to produce the pocket cards to the Board's specifications and approval.

Agenda Item VII: Public Comment

Alan Trevino-, president of ASSIST, addressed the Board. He stated that as the new president of ASSIST he would like to be involved in the discussion of the non-commissioned Personal Protection Officer issue. He stated that his organization had a discussion regarding this issue the day before and they felt strongly that they should be involved in the discussion of this issue with the Board, or at the least be allowed to see the language before the Board made a decision. He

stated that being asked not to be armed was a very rare request and being a personal protection officer does come with unique training requirements.

Bonnie Brown Morse-, with LASA, addressed the Board. She provided the Board with a handout and read it into record, stating:

There are a number of security companies ‘employing by contract’ registered people; not licensed companies. TxDPS/RSD/PSB is currently allowing a licensed security company to register and employ a person to do work on behalf of the security company on a ‘contractual basis’. The person sets his own hours, receives payment by the job, and may work for several different companies. He provides his own tools and vehicle (paying his own vehicle insurance) and pays his own expenses, such as fuel. How can TxDPS define this as an employee/employer relationship rather than an independent contractor (subcontractor) relationship?

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

Valerina Walters presented the following cases to the Board:

John Ruth- Docket No. 002852011

Mr. Ruth was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Walters stated Mr. Ruth’s license as a non-commissioned security officer was summarily suspended based on his pending felony charges for Fraud Use/Possession of Identifying Info and Theft of Property \$1,500.

Board member Crenshaw made a motion to uphold SOAH’s decision to summarily suspend Mr. Ruth’s license as a non-commissioned security officer. Secretary Smith seconded the motion, and the Board voted unanimously in favor of the motion.

Wallace Everett- Docket No. 002862011

Mr. Everett was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Walters stated Mr. Everett’s license as a commissioned security officer was revoked based on his Class A Misdemeanor conviction for Unlawful Carrying Weapon.

Secretary Smith made a motion to uphold SOAH’s decision to revoke Mr. Everett’s license as a commissioned security officer. Board member Washington seconded the motion, and the Board voted unanimously in favor of the motion.

Scott Merchant presented the following cases to the Board:

Daniel Castro- Docket No. 000792011

Mr. Castro was not present to address the Board on this case, nor did he have counsel present on his behalf. Mr. Merchant stated Mr. Castro's license as a non-commissioned security officer was suspended based on his Misdemeanor A charge of Unlawful Carrying a Handgun.

Board member Washington made a motion to uphold SOAH's decision and suspend Mr. Castro's license 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 Direct Appeal to the Board:

Ricky Rhea- Docket No. 002882012

Mr. Rhea was present to address the Board on this case, but was not represented by counsel. Mr. Merchant stated Mr. Rhea was denied application as an electronic Access Control Device Installer based on his duty to register as a sex offender based on multiple convictions for Indecency with a Child by contact.

Mr. Rhea addressed the Board stating that his last offense was in 1992 and had to do with indecency with a child. Because of that, he stated, he had to register as a sex offender for the rest of his life. He also stated that he had been out of prison since 1996 and off of parole since 2001 and in that time he had done a lot with his life. He stated that while he was incarcerated he complete a Detour course. He stated he has also completed and Associates degree in 2010 and was currently working to complete his Bachelors degree.

Chairman Chism asked what his age was at the time of the last offense as well as the age of the child. Mr. Rhea stated that he was 32 and the child was 10. Board member England asked how he was related to the child, and Mr. Rhea stated it was his fiancée's daughter. Board member England then asked if he had any prior offenses to the 1992 offense. Mr. Rhea stated that he also had an incident in 1988 with his daughter, who was 8 and his niece who was 7. Chairman Chism asked if he completed any programs of rehabilitation for this, to which he answered that he had. He stated he completed one in prison and also out of prison he completed a 12 step program and has 19 years of cleanliness. Board member Black asked if he felt free of his addictions. Mr. Rhea stated that he did feel free of this problem. He went on to say that although he would never be cured of it he would not participate in it. He also stated that the daughter he molested is now in contact with him and they are working on a relationship. He stated he has not re-offended and has worked hard to improve his life. Vice-chairman Johnson asked who he currently worked for. He stated Dallas Door. Board member England asked if in the course of his employment he ever worked in schools, day cares, etc. Mr. Rhea stated that he did not. Vice-chairman Johnsen asked how long he had been doing access control work, to which he answered 10 years. Board member Black asked how he felt the community viewed him doing this type of work. Mr. Rhea stated that he has done work for the Tarrant County Jail and is allowed access to areas unsupervised. Vice-chairman Johnsen stated that to do integration and computer work a license is not required, he could still work. Mr. Rhea stated that not having a license would limit him in his job with this company. Board member England asked if his employer was present on his behalf, to which he stated yes they were.

Cary McElroy and Mike Stefani addressed the Board. Mr. McElroy stated that Mr. Rhea had been working with the company for the last 2 ½ years. Mr. Stefani stated that he was the qualified manager for Dallas Door. Board member England asked how granting Mr. Rhea a license would affect him and the company. Mr. Stefani stated that most qualified for access control, but it is a new thing for their company. He stated Mr. Rhea came to the company 2 ½ years ago with a wealth of knowledge that no one else has. He stated that for him to become what he would like, which is manager of the division, he needs a license. He further stated that Mr. Rhea had a great work ethic and he knows that he regrets what he has done and if he could go back and change it he would. Vice-chairman Johnsen asked Mr. Stefani if he was aware that Mr. Rhea could do this work within their building without a license. Mr. Stefani responded that they would like him in the field to train others. Vice-chairman Johnsen stated that he could never do any of this training on a school campus, daycare, etc. Mr. Stefani stated that they would not ever put him in that position. Vice-chairman Johnsen stated that if he is not doing the actual installs he is not required to be licensed. Board member Washington asked Mr. Rhea if he was required to register for life, to which he answered yes. Chairman Chism asked if he had provided copies of all his rehabilitation to the Department, to which he answered yes. Secretary Smith asked if his first two offenses were felonies, to which he answered yes. Secretary Smith went on to ask if his denial wasn't automatic because of having two felonies. Mr. Merchant stated that the first two offenses were disposed as deferred adjudication. Board member Washington addressed Mr. Rhea stating that she commended him on turning his life around, however going on the Occupations Code and his age at the time as well as those of his victims she didn't feel she could grant him a license. Vice-chairman Johnsen stated that he thought he was very valuable to his company and would be an asset to them without having to have this license.

Board member Crenshaw made a motion to deny Mr. Rhea's application for licensure as an Electronic Access Control Device Installer. Board member Washington seconded the motion, and the Board voted unanimously in favor of the motion.

Agenda Item X: Adjournment

Chairman Chism introduced this agenda item. Secretary Smith made a motion for adjournment. Board member Black seconded the motion, and the Board voted unanimously in favor of the motion. At 11:27 am, the January 19, 2012 meeting of the Private Security Board was adjourned.