

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING
HELD AT 9:00 A.M., JULY 23, 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 Mark Smith, Secretary
Honorable Doris Washington
Honorable Albert Black
Honorable Charles Crenshaw
Honorable Brian England

BOARD MEMBERS NOT PRESENT:

Honorable Howard Johnsen, Vice-Chairman

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, Supervisor, Licensing and Registration Service;
Jay Alexander, Major, Regulatory Crimes Bureau;
Phillip Fuller, Capt., Regulatory Crimes Bureau;
Kelley Turner, Capt., Regulatory Crimes Bureau;
Sherry Kelley, Operation Manager –Operations Bureau, Operations and Shared Services;
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 9:04 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. He also stated that Vice-chairman Johnsen would not be attending the meeting due to illness. Also, Board member Washington would be late in attending due to a delay in her flight.

Agenda Item I: Approval of Minutes for Board Meeting held April 19, 2012.

Chairman Chism introduced this agenda item. On a motion made by Secretary Smith and seconded by Board member Crenshaw, the Board voted unanimously to approve the minutes for the board meeting of April 19, 2012 as written.

Agenda Item II: Reports from Regulatory Services Division.

Reggie Andrews presented the licensing totals for the third quarter, 3/1/12 to 5/31/12. He stated, for this time period, the Division received 331 original company applications, 1,342 company renewals, 11,393 original individual applications, and 9,134 individual renewals not including online applications. He went on to say, for the same time period the Division processed the following licenses/registrations: 181 original company licenses (89 online, 92 manual), 1,322 company renewals (889 online, 433 manual), 10,865 individual registrations (3,112 online, 7,753 manual), 8,479 individual renewals (3,999 online, 4,480 manual), and 5,690 employee information updates (1,464 online, 4,226 manual). He also stated this time period showed 5,645 active company licenses, 281 active school licenses, and 131,344 active individual registrants. Mr. Andrews also informed the members of the audience that there was a change in the renewal postcards being sent out. He stated company renewals have been blue, employee renewals have been green, insurance renewals have been yellow. However the department is moving to all postcards being white.

Major Alexander introduced Captain Phillip Fuller to the Board. He stated Captain Fuller is the new Captain hired in the Dallas/Garland area. He stated he came to RSD from the Motor Vehicle theft service and brings with him a wealth of knowledge. Captain Fuller stated that he looked forward to working with the board and various industry members. He went on to say if there was anything he could do to assist, please contact him. Captain Turner presented the investigation statistics for Districts A, B and C to the Board. She stated there were 609 violations investigated for the third quarter, 3/1/12 to 5/31/12; 162 in District A, 137 in District B and 310 in District C. She further stated there were 6 cases of operating with an expired license, 13 cases of operating with a suspended license, 38 cases of operating without a license, and 16 cases of failure to register employees. Captain Turner went on to say there were 33 cases presented to prosecutors during this time period. She stated 496 cases were closed with no action, 1 case received administrative citation, 0 were closed with an administrative warning, and 113 cases were closed with other actions.

Board member Washington arrived at 9:10am.

Agenda Item III: Reports from Board Committees.

Secretary Smith read the Advisory Committee report to the Board:

A special meeting of the Advisory Committee was held on Wednesday June 20, 2012, at the offices of the Department of Public Safety, 5806 Guadalupe, Austin, Texas. In attendance were Howard Johnsen, Mark Smith, George Craig, Keith Oakley, Alan Trevino, Chad Wadsworth, Angie Kindle, Skylor Hearne, RenEarl Bowie, and Rosemary

Guerrero. The meeting was chaired by Howard Johnsen who began by asking Alan Trevino to report on the results of his efforts to solve the problems of lack of access to electronic fingerprinting for the security industry.

Alan Trevino presented his report which included discussion of his earlier work with DPS and L-1 and which resulted in Chad Wadsworth's offer of 20 L-1 electronic fingerprint machines to be placed at "Partner Sites" throughout the State. Mr. Trevino described his plan for how and where those Partner Sites would be located based on number of security industry applicants, proximity to other sites, ability of the site to meet required guidelines, etc. Establishment of these sites would be part of the solution to the current problems of limited access to equipment and delays in submission of digital fingerprints that particularly affect entry level non-commissioned security officers. Mr. Trevino also noted that by the time of the next meeting of the Private Security Board he would have determined the locations of all the Partner Sites and would report this information to the Board.

Howard Johnsen then presented his report, "Processing Guard (Non Commissioned) Applicants." Mr. Johnsen's report presented in detail a procedure for fingerprinting entry-level non-commissioned security guards that essentially solves the problem of applicants who do not complete the fingerprint portion of the application process, thereby causing DPS to spend time on application paperwork and employers to forfeit application fees because an applicant does not submit fingerprints. Mr. Johnsen's report recommends a pre-application information form so that the employer can determine eligibility for hire prior to sending an applicant for fingerprints. Additionally, the 5-working day period to complete the application process would not start until the fingerprints are taken. A receipt along with a Control Number would be issued when the fingerprints are taken and be listed on the application for registration as well, to allow DPS to match the prints with the application. The report also describes procedures for establishing payment options for fingerprinting and application fees.

Alan Trevino stated that at this time he is already using a similar procedure. His applicants' prints are done and submitted to DPS along with a control number prior to submitting the application, and DPS has been matching the prints to the applications as they process them. Mr. Trevino will write up this information for the Board so that other licensees can utilize his methods.

Finally, Skylor Hearn stated that in a few years all the offices that process Drivers Licenses will have digital fingerprint scanners in their offices and everyone could get their fingerprints done there.

After reading his report to the Board, Secretary Smith asked Alan Trevino to further clarify the locations of the 20 partner sites for L-1 fingerprinting. Mr. Trevino stated he was asked to locate 20 sites for the L-1 fingerprinting machines to be installed. He stated these locations were chosen based on the size of the companies and their location to metro areas. The following is a list of locations: North Texas- ALOA headquarters in Dallas, Texas Industry Industrial Security in Fort Worth, Investigation Technologies in Flower Mound, Ameritex Guard Services in Garland, and A.S. and I in Dallas; Gulf coast- Smith Protective Services in Houston, Security Professionals of Texas in Houston, Top Gun Security in Houston, Bolt Colter Security Services in Magnolia and Professional Guard and Patrol in Houston; South Texas- Smith Protective Services in San Antonio, Linder Protective Services of San Antonio; Central Texas- AmeriTex

Guard Services in Austin, and Pro Security Group outside of Waco; Rio Grande Valley- Valley Wide Security in Brownsville, and Sun City Security in El Paso. There are also a few pending companies who have yet to confirm their participation: Alpha Security in Lubbock, Secureco in Corpus Christi, and R and R in Laredo.

Mr. Trevino stated that they were all given brief stipulations on working the machines, but not the full instructions. He stated the hope is that by the next Private Security Board meeting the machines will be in place and the companies can advise every one of any issues being experienced. In addition, he stated, the team hopes that during the trial basis they will be able to provide as accurate of a report as possible. He went on to explain that his company selected four in house employees to do the criminal history check after which they will do the fingerprinting and within 5 days submit the application with the fast track receipt. He stated that to his knowledge they have never had a problem with this process.

Chairman Chism asked if after the original 20 are set up, would the machines then be available to other companies. Mr. Trevino stated they would be available for the entire industry's use. Board member Washington asked about the rural areas having machines as this was a concern brought up at previous meetings. Mr. Trevino stated he was instructed to focus on the metro areas as a starting point at this time. Although there will not be machines in the rural areas at this time, the point is to provide same day service to walk-ups also. He stated the information would be on the PSB and L-1 websites, and if the industry only comes to those locations, this will help the rural areas as well. Board member Washington asked if the fee went to L-1, to which Mr. Trevino stated his understanding was that the bulk of the fee would go to L-1 while the companies would retain a small fee. Board member Washington then asked if the people doing the fingerprinting were properly trained. Mr. Trevino stated the companies would identify persons responsible for undergoing the proper training and carrying out the fingerprinting. He went on to say that in doing some research, the committee found that smaller companies were not interested in having one of the machines because it meant they would have to be open from 8am to 5 pm Monday through Friday and have their location readily available plus the personnel designated to do nothing but fingerprinting. Secretary Smith added that some of the company locations are open 24 hours a day and would be available for fingerprinting at 2am if there was a need. He went on to say there are stages to this process. Step 1- identify the 20 places for the machines to be set up. Step 2- machines will be in place and ready for their first report by the next meeting of the board. Step 3- make a board rule that states fingerprints are to be done digitally. And Step 4- meet again at the April meeting to work out the final points of the project.

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

Chairman Chism introduced these rule changes to the board, stating it was held over from the previous meeting of the board because neither member of the rules committee was able to attend that meeting. Board member Crenshaw stated the committee sought out guidance from the guard industry regarding these rule changes. They stated there was no need for changes to these rules at this time and that was also the recommendation of the rules committee.

Chairman Chism asked if the audience wished to give any input on this matter. This agenda item was closed with no action being taken.

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

Board member Crenshaw introduced this agenda item to the board. He stated this issue looked like it would have an easy fix on the surface, but once it was really looked at it is not as easy to fix as first thought. He stated statute clearly states there is only one manager per company, although statute also stated that a company can be operated for 60 days while trying to obtain a new manager, or 90 days if the manager passes away. He further stated any additional changes to these rules needed to be done by statute. Board member England stated that in reviewing statute and rules nothing prohibits an employee from taking the exam; however he wanted to hear from the department regarding possible administrative issues in allowing a person to take the exam without becoming a manager.

Regulatory Services Licensing manager, Reggie Andrews addressed the board stating the database system used for private security licensing is antiquated. If a person comes in to take the manager's exam, there is no way to differentiate them as having taken the manager's exam without listing them as a manager. This causes problems because there would be no way to tell which person listed as manager is the actual qualified manager. Board member England asked if there was anything that could be used as a placeholder for that person, to which Mr. Andrews stated there is not in the current system. Board member England asked about an Employee of license holder. Mr. Andrews explained the problem with using this registration as a placeholder is that that registration is usually reserved for secretarial staff and the like. Board member England asked if the system had the capability for notes in which a reference could be made noting the difference. Mr. Andrews explained that although there is a remarks capability in the database, it is highly populated by customer service. Each time contact is made with a license holder and/or changes are made to a registration or license it is noted. This would make it difficult to search page after page to see what the actual position the person might hold. Mr. Andrews stated it would be easier to call these people a supervisor instead. As an example, he stated if a company wanted to expand to do locksmith work but the manager was not familiar with that aspect of the company, they could hire someone to be the supervisor over that area. This could work in the same manner, only the supervisor could take the manager exam and move into the position of manager if that need arises. Board member England asked what other obstacles there may be with this issue. He stated the only other issue he could foresee would be with the 60 day rule. It would need to be made very clear to companies that they need to notify the department as soon as a manager was terminating and being replaced with the supervisor "in waiting". Board member Crenshaw asked if the two year exam requirement would also be needed. Mr. Andrews stated it would as so many things come into play in the course of two years, not the least of which is legislative changes. Board member Crenshaw asked if this could

be accomplished administratively instead of making a rule. Mr. Andrews stated that for the staff, it is easier to enforce if there is a rule in place to point them to.

Board member England moved for a resolution to ask staff to set up a sub-committee to explore the administrative options which are compatible with the current database that would allow qualified persons to take the managers examination and become certified to become a manager without actually performing the duties of a manager. Board member Washington seconded this motion and the board voted unanimously to adopt the resolution.

Agenda Item VI: Discussion and possible action regarding proposed amendment to Rule 35.47, “Residential Solicitation”.

Chairman Chism stated this issue was held over from the last meeting in order to get the opinion of the rules committee. Board member Crenshaw stated this rule was previously passed by the board and even gone through publishing in the Texas Register before it was pulled back down for further discussion. He asked that Mike Samulin address the board to discuss additional issues with the approved amendments to this rule.

Mr. Samulin began by stating the board added this rule to remind those doing door to door solicitations that they should comply with all applicable door to door solicitation ordinances consistent with state and federal law. TML (Texas Municipal League) reads this rule differently. He stated Mr. Moninger has had discussions with TML’s general counsel, and he himself has spoken to Philip Adkins, DPS counsel, about this issue. He stated that based on their interpretation of (5) of this rule, TML thinks cities can now apply ordinances to alarm companies, charge fees and decide what those companies can and can’t do. He went on to say that while legal staff says that TML is wrong in their interpretation, they have published several opinions so far saying they believe they have the right to regulate the alarm industry that are doing door to door solicitation. He stated it might be easier to eliminate (5), so neither the Board nor DPS has to get involved. Board member England stated there was no issue with subsection (5) because the specific language added that shows state law is clear and local government does not have authority to regulate. Mr. Samulin stated they may end up having to get an Attorney General opinion on the matter and therefore should consider the possibility of taking out that portion of the rule to avoid misinterpretations. He added that the Texas Municipal League had an extremely strong lobby. Secretary Smith asked if the board could leave it in, fight the battle and if the battle is lost then take that subsection out. Mr. Samulin stated that DPS Public Safety Commission Ada Brown is of the same opinion. Secretary Smith stated that if police officers in Dallas don’t like his guard’s uniform or vehicle signage, they have to file a complaint with the State or DPS. State precedes local municipalities, since it is a state issue, they have no say. Mr. Samulin stated there was another lobbyist attending the meeting and asked if he may come up and address the board.

Royce Poinsett, a lawyer with Baker Botts addressed the board. He stated he wished to discuss a couple points. As TML presentations go out they are definitely latching on and suggesting to cities that they have to go ahead and put in their own licensing requirements. During one of their presentations during a summer conference they said this new rule “changes the landscape of local municipal regulation”. He went on to say this gives Mr. Moninger and staff a lot more

work in the future. While this section was well intentioned, it now tells cities that if they find someone violating their ordinances it is also a violation of PSB rules. He felt this would cause an influx of complaints. Sometimes cities enact rules that are not constitutional. Because of this subsection (5) it will bring that fight to the Board who will have to decide if that curfew is constitutional or not. §35.47 is supported by the entire industry and is a big step forward. From what he understood there were a lot less issues with unlicensed solicitations, however subsection 5 seems to be the fly in the ointment.

Board member Crenshaw stated this issue was thoroughly vetted by the board. It went to the Public Safety Commission. He stated the board would have to go back though all of those steps for something that could be a problem, but isn't yet. Board member England stated he agreed with Board member Crenshaw. He stated he is familiar with TML and their lobbying position is very strong. He also stated that if the board went ahead with removing this portion of the rule it would give TML a chance to carve out an exception and the Board would lose some of the strength in their argument in the board's position that local government has no authority over the industry at all. Local government considers this a very serious issue because of the toll it has been taking on its elderly population. Mr. Poinsett stating that TML needed no prompting to file a bill on this issue as they already had in the previous session. He stated it was his opinion that having (5) in the rule would only serve to take away the board's authority if and when they filed another bill this session. He stated (5) would be something they would point to and say that the board already signaled its willingness to yield this authority down to the municipal level.

Chairman Chism asked if there were any other members of the audience that wished to address this issue. As there were no others who wished to speak to this issue, Board member England made a motion to not make any changes to Rule 35.47. Board member Washington seconded the motion and the board voted unanimously to take no action.

Agenda Item VII: Discussion and possible action regarding Private Security Licensees that advertise and or install devices that may be regulated by other state agencies such as air condition and heating thermostats that integrate into a security system.

Board member Crenshaw presented this issue to the board stating the Texas Department of Licensing and Regulation oversees A/C controls. He stated new internet security systems can control thermostat control through an iPhone application. Thermostats are regulated devices in the air conditioning industry and TDLR have fined a few of our licensees for advertising to install thermostats. They had an advisory meeting recently that was a fact finding meeting and asked Mr. Rodney Hooker to address the board on his findings. Rodney Hooker addressed the board stating back in February an alarm licensee was fined \$1200 for advertising on his website the integration of thermostat control with an alarm key pad. He stated they met with the executive director and enforcement officers but got nowhere on the issue. He stated that TDLR's rules are very clear regarding offering services. He stated they were invited to attend an advisory council meeting and asked for a suspension of this rule in order to give the private security industry the chance to resolve this issue through legislation. He went on to say that licensees of this industry are not protected under TDLR, and installing without a license is a \$5,000 fine. Board member Crenshaw stated there was no action to be taken by the board at this time as this is an emerging issue. Mr. Hooker stated this is an issue that he would be monitoring and keeping the board informed of any changes. He also stated he was surprised when he was introduced to

TDLR's new legislative officer, Michael Kelley. He stated Mr. Kelley was formerly DPS's legislative liaison and seemed willing to assist with getting this issue resolved.

Agenda Item VIII: Discussion and possible action regarding proposed amendments to Rule 35.77, "Termination of Incomplete Applications".

Board member Crenshaw stated Mr. Craig brought up last meeting regarding application time limit. Mr. Craig addressed the board stating 9 months ago he found out he had a person working for him whose application was abandoned. He stated he would like to see two things happen: 1- staff to inform licensees when there are problems with applications and 2- that it will be abandoned if further action is not taken. Secretary Smith stated this should be able to be handled with one notification stating that there is a problem with the application and it will be abandoned after 90 days. Board member Washington asked if staff currently sent out these types of notifications to which Mr. Andrews stated they do. Mr. Craig stated he wanted to see the board pass a rule. Board member Washington asked if he wanted to see one notification that there was a problem and will be abandoned and then a second notification once it is abandoned. Mr. Craig stated either one or two notifications will be fine, but at least letting them know that there is a problem gives them a chance to take care of the issue. Mr. Andrews stated the department notifies all companies about problems with applications in their incomplete letters. He went on to explain that at the bottom of the letter it states if the department is not provided with the following requested information or action within 90 days from the date of the letter, the application would be abandoned. Board member England asked if these letters are sent out by certified mail to which Mr. Andrews stated they are not. Mr. Craig stated he wished to see a rule adopted to reinforce this practice.

Mr. Moninger stated that in proposal A, it states "and the licensee under whom application was made". He stated the problem he sees with this is it implies that the agency would tell the licensing company everything that it tells the licensee. He went on to say that the agency is prohibited from disclosing a person's criminal background. He also stated that in proposal B it states "Before the application is terminated, the licensee under whom application was made must be notified of the termination". He stated this is already done. Once an application is abandoned it is put on the website and listed as abandoned.

Board member England stated he saw a potential problem with employee saying they never saw the letter. He also stated he did not like the language because it gives instructions to the agency on what they must do, but does not give clear instructions of what it means to be notified. If already on website and we are already doing this, he stated he saw no reason to create a rule. Secretary Smith stated if an employee does not receive their pocket card within 180 days of application, then the company should know there is a problem with the application. Mr. Craig stated that perhaps the language needed to be modified to "licensee be notified". Board member England asked how long the department had been providing this notification, to which Mr. Andrews stated for as long as he has been with the department, at least 7 years. Board member Crenshaw asked if Mr. Craig wanted a notification saying it had been abandoned. Board member Washington stated that if she had hired someone and hadn't received a license in 180 days she would be calling the department to find out why. She concluded by stating she saw no

reason to enact a rule in order to ensure that the department continue making these notifications, since they are already.

On a motion made by Board member Washington and seconded by Board member England, the board voted to abandon this proposed rule, with members Smith and Crenshaw voting against the motion. The motion passed 4-2.

Agenda Item IX: Discussion and possible action regarding a reduction in FBI fees.

Assistant Director Bowie addressed the board, stating he had limited background on this issue. He stated he was informed there was a reduction in fees but did not have enough information, as this is handled through the agency's crime records division. He asked the board for time to gather more information before addressing the issue. Secretary Smith stated that 10 years ago the FBI fingerprint fee was \$24 with another \$1 for a handling fee that went directly to the department. He asked what the fee structure is at this time, to which Mr. Bowie stated he was no longer up to date on that information. He also stated that if there was a substantial reduction in fees by the FBI, then it would be decided if that reduction could be passed along to the industry. Board member Washington asked if that is a decision that would be made by the board or by the department. Mr. Bowie stated that it would first be looked at by the department to see if its possible, then they would bring it to the board for final determination. Chairman Chism asked for this information to be investigated further and reported back to the board.

Agenda Item X: Public Comment

Bonnie Brown Morse-, Locksmith Association of San Antonio, addressed the Board. She stated that for the last 6 to 9 months she had been asking for clarification on employer-employee relationships. She stated she was able to find the answers she was looking for through the Texas Workforce Commission. She went on to say that these issue she has been raising with the board were really issues overseen by the TWC and she would further direct her inquiries to their department.

Chairman Chism called for a 15 minute break at 10:40am.

Meeting was called back into session at 11:04am

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

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

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

Jean O'Shaw presented the following cases to the Board:

Dedric Grimes- Docket No. 003562011

Mr. Grimes was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. O'Shaw stated Mr. Grimes' license as a non-commissioned security officer was suspended based on his pending Class B misdemeanor charge of Terroristic Threat.

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

Blake Guerra- Docket No. 003092011

Mr. Guerra was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. O'Shaw stated Mr. Guerra's registration as an Alarm Installer, Locksmith, and Electronic Access Control Device Installer was suspended based on an order of Deferred Adjudication Probation for the Class A misdemeanor offense of Assault Family Violence.

Secretary Smith made a motion to uphold SOAH's decision to suspend Mr. Guerra's registration as an Alarm Installer, Locksmith, and Electronic Access Control Device Installer. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of the motion.

Theodore Berry- Docket No. 001882012

Mr. Berry was present to address the Board on this case; however he did not have counsel present on his behalf. Ms. O'Shaw stated Mr. Berry's application for registration as a non-commissioned security officer was denied based on his Class B misdemeanor conviction for Theft Property \$20-\$500 Check.

Mr. Berry addressed the Board. Chairman Chism asked him to explain this conviction. Mr. Berry stated he wrote small checks at the grocery store that were not any good. He stated he lost his job and wrote those checks on the thought of having direct deposit for the job he lost. He further stated he is being allowed to pay them out with the store. Chairman Chism asked if he was confined for 6 days, to which he stated yes. He also asked if he was placed on probation, to which Mr. Berry stated no. Ms. O'Shaw stated he was given 6 days of confinement and was made to pay restitution. Board member England asked when he was charged, to which he stated 2010. Board member Black asked is he was working now, and he replied he is recently employed. Mr. Berry further stated his restitution amount is now under \$300.

The Board elected to go into Executive Session at this time, 11:15am.

The Board resumed the Administrative Hearings at 11:18am.

Board member England asked why it took so long to pay all of the restitution. Mr. Berry stated he was in and out of town and in and out of work over the last few years. When asked by Board member England what his current job is, Mr. Berry stated he does maintenance work. Mr. Berry was able to provide letters of recommendation when asked by Board member England if he had any to show the board. Board member England stated for the record that Mr. Berry included several letters of recommendation from the Fort Worth Police Department.

Board member Washington made a motion to deny SOAH's decision and grant Mr. Berry's license provided restitution is made in full within 10 days of this board meeting. If restitution is not paid in the allotted time, no license will be granted. Board member Black seconded the motion. The motion passed with Secretary Smith and Board member Crenshaw voting against the motion.

Roberto Esparza - Docket No. 003002011

Mr. Esparza was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. O'Shaw stated Mr. Esparza's registration as an Alarm Salesperson was summarily suspended based on his Felony charge of Possession of Controlled Substance and Class B misdemeanor charge of Driving While Intoxicated.

Secretary Smith made a motion to uphold SOAH's decision to suspend Mr. Esparza's registration as an Alarm Salesperson. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of the motion.

Steven Shuffer presented the following cases to the Board:

Lewis Bell - Docket No. 002682012

Mr. Bell was not present to address the Board on this case, nor did he have counsel present on his behalf. Mr. Shuffer stated Mr. Bell's denial of his application for licensure as a non-commissioned security officer was based on his Class A Misdemeanor conviction of Driving Under the Influence Second Offense Within 10 years.

Secretary Smith made a motion to uphold SOAH's decision and deny Mr. Bell's application for licensure as a non-commissioned security officer. Board member Black seconded the motion, and the Board voted unanimously in favor of the motion.

Luz Mendivil - Docket No. 001852012

Ms. Mendivil was not present to address the Board on this case, nor did she have counsel present on her behalf. Mr. Shuffer stated Ms. Mendivil's license as a non-commissioned security officer was suspended based on a pending Class A Misdemeanor charge for Assault Causing Bodily Injury against a Family Member.

Secretary Smith made a motion to uphold SOAH's decision to suspend Ms. Mendivil's license as a non-commissioned security officer. Board member Washington seconded the motion, and the Board voted unanimously in favor of the motion.

Jeremiah Ogden - Docket No. 001872012

Mr. Ogden was present to address the Board on this case, however he did not have counsel present on his behalf. Mr. Shuffer stated Mr. Ogden's applications for licensure as a non-commissioned security officer and as a commissioned security officer was denied based on his Class B Misdemeanor conviction for Disorderly Conduct- Displaying a Weapon. Mr. Shuffer

went on to say that this conviction is disqualifying under rule 35.42, he would be eligible after 5 years from the date of conviction which would be in 2013.

Mr. Ogden addressed the board stating when this occurred he was going through a divorce from an unfaithful wife. He stated they had a fight and he was told that her brother and sister told the police that he hit her and had weapons. This arrest resulted in 1 felony charge and 3 misdemeanor charges which were dismissed in exchange for pleading guilty to having a weapon. He explained he only pled guilty to end a long situation and move to Texas to get away. He stated the original charges were dropped

Board member England asked who claimed they saw him with a weapon to which he replied that no one said they saw a weapon, that was just the charge they chose. Mr. Ogden was asked what he did for a living now, and he stated he was a server at Chili's until he could gain his licenses. He went on to show the board all of his letters of recommendation. Board member England stated that after reading the letters he had no trouble believing that he was a good employee, but he did have trouble believing that the court came up with a random charge as that is not the way the justice system works. Mr. Ogden stated he had the original arrest sheet and conviction sheet and they are different. He stated his mother had possession of his weapons and she turned them into the police upon request, but he got all of them back after the conclusion of the trial. Board member Crenshaw asked if he were eligible to apply in April of next year and he stated that is the correct date of eligibility.

Board member Crenshaw made a motion to uphold SOAH's decision and deny Mr. Ogden's applications for licensure as a non-commissioned security officer and commissioned security officer. Board member England seconded the motion, and the Board voted in favor of the motion, with Board member Black against the motion.

Richard West - Docket No. 001502012

Mr. Shuffer stated Mr. West became eligible for registration as an alarm systems installer before the meeting of the board. Therefore, no action would need to be taken by the board at this time.

Scott Merchant presented the following cases to the board:

Austin Duncan - Docket No. 003562011

Mr. Duncan was present to address the Board on this case; however he did not have counsel present on his behalf. Mr. Merchant stated Mr. Duncan's application for registration as an Alarm Installer was denied based on his Class A Misdemeanor conviction of Driving While Intoxicated- Second Offense.

Mr. Duncan addressed the Board stating the DWI happened in April of 2010. He stated he met the terms of his probation and finished in May of 2011. Mr. Merchant stated it was also noteworthy to mention Mr. Duncan did not disclose this arrest record on his application. Chairman Chism asked how long it was between convictions for this offense, to which he replied 8 year in between. Board member Crenshaw asked if he had continued to work in the industry. Mr. Merchant said he was never issued a license. Chairman Chism asked why he did not

disclose this information on his application. He stated it was poor judgment on his part, in allowing the companies employee to check off "no" for him. Board member England asked what he did for a living at this time. Mr. Duncan stated he worked for a temp agency. Board member Crenshaw made a motion to uphold SOAH's decision and deny Mr. Duncan's application for registration as an alarm installer. Secretary Smith seconded the motion, and the Board voted unanimously in favor of the motion.

William Walker - Docket No. 00012212

Mr. Walker was present to address the Board on this case, however he did not have counsel present on his behalf. Mr. Merchant stated Mr. Walker's registration as a locksmith was revoked based on his Class A Misdemeanor conviction of Driving While Intoxicated- 2nd offense.

Mr. Walker addressed the Board. Secretary Smith asked when his first conviction occurred, to which Mr. Walker stated 1995. Chairman Chism asked if he had any documentation with him relating to this case. Mr. Walker did produce documentation which included proof of his completion of 32 weeks of the state DWI class. He also stated he attends AA twice a month, has completed all community service, and is up to date on all fines and court costs. Secretary Smith asked when he would be eligible for licensure, to which Mr. Merchant stated he would be eligible in 2016.

The Board elected to go into Executive Session at this time, 12:04pm.

The Board resumed the Administrative Hearings at 12:13pm.

Board member England made a motion to uphold SOAH's decision to grant Mr. Walker's registration as a Locksmith. Board member Washington seconded the motion, and the Board voted unanimously in favor of the motion.

Wilson Wilson - Docket No. 001452012

Mr. Wilson was not present to address the Board on this case, nor did he have counsel present on his behalf. Mr. Merchant stated Mr. Wilson's registration as a non-commissioned security officer was revoked based on his Class A Misdemeanor conviction for Driving While Intoxicated, Blood Alcohol Content Greater Than or Equal to 0.15.

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

Justin Livingston - Docket No. 001482012

Mr. Livingston was not present to address the Board on this case, nor did he have counsel present on his behalf. Mr. Merchant stated Mr. Livingston's registration as a locksmith was suspended based on his Class A Misdemeanor deferred adjudication probation for Criminal Trespass of a Habitation. After a hearing on the merits, the Administrative Law Judge issued a proposal for decision overruling the Department's suspension of his registration on the grounds a person currently on deferred adjudication probation does not have a pending charge. The

department filed exceptions in the case, stating deferred adjudication is a pending charge as it has not yet been dismissed nor has there been a conviction.

Board member Washington made a motion to overturn SOAH's decision and suspend Mr. Livingston's registration as a Locksmith and grant his registration. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of the motion.

Joshua Proffitt - Docket No. 004102012

Mr. Proffitt was not present to address the Board on this case, nor did he have counsel present on his behalf. Mr. Merchant stated Mr. Proffitt's application as a non-commissioned security officer was denied bases on his duty to register as a sex offender.

Secretary Smith made a motion to deny his application. Board member Black seconded the motion, and the Board voted unanimously in favor of the motion.

Agenda Item XIII: Adjournment

Chairman Chism introduced this agenda item. Board member Black made a motion for adjournment. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of the motion. At 12:24 pm, the July 23, 2012 meeting of the Private Security Board was adjourned.