

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
OCTOBER 30, 2013**

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

BOARD MEMBERS PRESENT:

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

BOARD MEMBERS NOT PRESENT:

Honorable Albert Black

STAFF PRESENT:

RenEarl Bowie, Assistant Director, Regulatory Services Division;
Steve Moninger, Senior Staff Attorney, Office of Regulatory Counsel, Legal Operations;
Jay Alexander, Major, Regulatory Crimes Bureau;
Reggie Andrews, Assistant Manager, Licensing and Registration Service;
Ryan Garcia, Supervisor, Licensing and Registration Service;

MINUTES

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

The board meeting was called to order at 9:07 a.m.

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

Agenda Item I: Approval of Minutes for Board Meetings held July 17, 2013 and October 8, 2013

Chairman Chism introduced this agenda item. On a motion made by Vice-Chairman Johnsen and seconded by Board member Crenshaw, the Board voted unanimously to approve the minutes for the board meeting of July 17, 2013 as written.

Chairman Chism introduced this agenda item. On a motion made by Board member Crenshaw and seconded by Board member Hayden, the Board voted unanimously to approve the minutes for the board meeting of October 8, 2013 as written.

Agenda Item II: Reports from Regulatory Services Division

Supervisor Ryan Garcia presented the licensing totals for the fourth quarter, 6/1/13 to 8/31/13. He stated, for this time period, the Division received 292 original company applications, 1,319 company renewals, 12,315 original individual applications, and 8,958 individual renewals not including online applications. He went on to say, for the same time period the Division processed the following licenses/registrations: 172 original company licenses (105 online, 67 manual), 1,273 company renewals (975 online, 298 manual), 10,241 individual registrations (3,667 online, 6,574 manual), 8,394 individual renewals (4,295 online, 4,099 manual), and 5,539 employee information updates (1,348 online, 4,191 manual). He also stated this time period showed 5,589 active company licenses, 294 active school licenses, and 150,778 active individual registrants.

Vice-chairman Johnsen stated he was concerned with the manual applications. He stated the numbers didn't look like they were decreasing. It seemed as though large companies are still sending in manual applications and he was wondering why they are not doing electronic applications instead.

Major Jay Alexander addressed the board stating that he would not be able to provide them with investigation statistics. He went on to explain that the Regulatory Services were in the middle of transferring all of their commissioned investigative personnel to the Criminal Investigations Division and until this settled down he would not be able to provide that information. However, he pointed out that if any of the Board members had any specific inquiries they should contact him directly and he would do his best to get the information.

Chairman Chism stated it was his understanding that the Division would soon be implementing a new system to track complaints and the follow up investigations. Major Alexander stated this was correct and that the new system would allow personnel to track these more efficiently through electronic means.

Agenda Item III: Reports from Board Committees

The Advisory Committee had nothing to report at this time.

The Rules Committee stated they would go over each of the Rules discussed as they come up during the remainder of the meeting.

Agenda Item IV: Discussion and possible action regarding DPS' proposed repeal of Private Security Board Administrative Rules, 37 TAC 1, Chapter 35, and the approval for publication of the proposed new Chapter 35

Board member Crenshaw stated the Rules Committee met the previous day to go over the proposed changes to the Private Security Board Administrative Rules. He stated there were several that garnered discussion and would present them individually to the board for discussion and vote.

§35.1 Definitions: no further discussion needed. On a motion made by Board member England and seconded by Board member Crenshaw, the board voted unanimously to approve this rule as written.

§35.2 Employment Requirements: Board member Crenshaw stated there was some discussion and two versions were presented. He asked Mark Gillespie, President of TLA to explain as he was the one to present these versions to the Rules Committee. Mr. Gillespie stated that there should be no change to the original proposed rule. On a motion made by Board member Crenshaw and seconded by Board member England, the board voted unanimously to strike the added sentence of (a) and accept the rule as written.

§35.3 Registrant Registration Applicant Pre-employment: the rules committee proposed the addition of the word "applicant" to the title as well as in (a), and also striking the word "may" from (b). On a motion made by Board member Hayden and seconded by Board member England, the board voted unanimously to accept these changes.

§35.4 Guidelines for Disqualifying Criminal Offenses: the rules committee proposed striking "department and the" from (b), (c), and (l). Also changing "may" to "shall" in (l). The committee also discussed making this rule subject to Chapter 53 of the Texas Occupations Code. Therefore the phrase "subject to the requirements of Chapter 53 of the Texas Occupations Code" was added to (g). On a motion made by Board member Hayden and seconded by Board member England, the board voted unanimously to accept these changes.

§35.6 Contract and Notification Requirements: the rules committee proposed adding "the required notice" to (e)(2) of the rule. On a motion made by Board member Hayden and seconded by Board member England, the board voted unanimously to accept these changes.

§35.9 Advertisements: the rules committee proposed changing "agency" to "department" in (c) of the rule. On a motion made by Board member Hayden and seconded by Board member England, the board voted unanimously to accept these changes.

§35.13 Drug-Free Workplace Policy: Board member England stated that while the rules committee wished to discuss strengthening this policy, they felt it was an issue to be discussed in a future meeting. No action was taken.

§35.21 Registration Applications: the rules committee wished to discuss changing the wording of (b) to language more descriptive than "in the manner prescribed by the department". Board member Hayden stated he felt it needed to be more specific and spelled out. Board member

England stated that the other option would be to give the department flexibility that fits with their Administrative process and make it so that they are not tied to the specifics of the rule. This would allow them to make administrative changes quicker. Vice-Chairman Johnsen stated that as long as the Board was notified prior to any rule changes that should be good enough. Mr. England stated that the fear in allowing this is that the changes would be done arbitrarily by the department. He went on to say that maybe language could be drawn up to state “as long as 10 days notice is given”. Mr. Michael Samulin asked to address the board on this stating that not all industries were represented. Mr. Chism stated that the discussion of this rule was not open for discussion at this time. Mr. Samulin stated he wished to go on record as saying that he protested this rule stating that the locksmith association had not been represented in the rules committee drafting of these rules. Board member Crenshaw answered his protest by stating that the locksmith association was notified of the meeting and asked to have a representative present.

On a motion made by Board member Crenshaw and seconded by Board member England the rule was accepted as written with 5 votes in favor (Chism, Johnsen, Smith, Crenshaw, England) and 1 vote against (Hayden).

§35.22 Renewal Applications for Registrations and Licenses: the rules committee wished to discuss the specificity of (a) of this rule; the same as §35.21. Stating that discussion of changes to the rule followed the same line as the previous rule, Board member England made a motion to accept the rule as written. This was seconded by Board member Crenshaw and passed with 5 votes in favor (Chism, Johnsen, Smith, Crenshaw, England) and 1 vote against (Hayden).

§35.26 Reclassification and Assignment: the rules committee proposed adding “Affidavit with two signatures” to (b)(2) of the rule. Board member Hayden stated this change would serve as sufficient documentation as to the conveyance of inheritance. He stated it is common practice with the Texas Department of Motor Vehicles, and title companies. He further stated it would save small business owners cost. He suggested the change state “Affidavit of Heirship with two affiants’ signatures”. On a motion made by Board member Crenshaw and seconded by Board member Hayden, the board voted unanimously to accept the changes.

§35.28 Registrant Name Change: during the rules committee meeting it was noted that the Subchapter was listed incorrectly as SUBCHAPTER A, GENERAL PROVISIONS instead of SUBCHAPTER B, REGISTRATION AND LICENSING. On a motion made by Board member Crenshaw and seconded by Board member Hayden, the board voted unanimously to accept these corrections.

§35.29 Registrant Termination: during the rules committee meeting it was noted that the Subchapter was listed incorrectly as SUBCHAPTER A, GENERAL PROVISIONS instead of SUBCHAPTER B, REGISTRATION AND LICENSING. On a motion made by Board member Crenshaw and seconded by Board member Hayden, the board voted unanimously to accept these corrections.

§35.32 Manager Examination: the rules committee wished to discuss making the passing grade on the exam a minimum of 70% and reflecting that change in (b) of the rule. Board member Crenshaw stated the department wanted leeway on the tests. Chairman Chism stated that some

people don't test well but would operate a business well. Assistant Director Bowie stated that the committee wanting the minimum grade to passing to be 70% would not make much of a change. He stated that currently there is a 50% failure rate on this test. He also stated that it was discussed years ago to change the exam in order to improve professional standards. He stated it was his opinion that making the minimum standard of passing 70% would keep the higher professional standards that the board was looking to impose.

Brian Ingram with TALI also addressed the board stating the problem with changing the language, is that the industry needs a minimum standard. There is a mechanism built into the Americans with Disabilities Act that will allow alternative methods of testing for those with disabilities. However, he stated, he didn't want people in the industry that can't pass the exam even with alternative testing methods.

Michael Samulin with TBFAA addressed the board stating the passing grade should be fixed at 70%, otherwise tomorrow the department could decide to make the passing grade 90%. He stated it should be put into the rule to avoid unilateral rule-making by the department.

On a motion made by Board member England and seconded by Board member Crenshaw, the board voted unanimously to add "All applicants must pass the examination with a minimum score of 70%" to (a), strike the language of (b) and re-order (c) (d) (e) as (b) (c) (d).

§35.41 Complaints: the rules committee proposed adding "or mail to DPS Regulatory Services" to the rule. On a motion made by Board member England and seconded by Board member Crenshaw, the board voted unanimously to accept this change.

§35.42 Administrative Penalties: the rules committee proposed changing "have" to "display" in the violation descriptions for UNI- Uniform Violation of individuals and companies. It was also noted by the rules committee that the violation "RSOL- Residential Solicitation Violation, \$500" was inadvertently left off. The committee proposed putting this violation back into the rule. On a motion made by Board member Hayden and seconded by Board member England, the board voted unanimously to accept these changes.

§35.43 Stay of Summary Suspension: the rules committee wished to discuss this rule in depth. Steve Moninger addressed the board stating this rule was originally to be repealed. He stated there were administrative problems with the rule that created an extra level of arbitrariness. It also tasked staff with reviewing the merits of the underlying criminal offense that led to the suspension, their economic hardship, and sometimes even the attention the case got also played a role. Looking over the statute there was concern on whether it was even authorized. He stated the rule was added back in in regards to the Hartman case, which would be heard later in this meeting. In review, there is still concern if statutorily authorized. He asked the board to reconsider taking this rule out completely.

On a motion made by Board member England and seconded by Board member Crenshaw, the board voted unanimously to strike this rule in its entirety.

§35.72 Employer Requirements: the rules committee wished to discuss adding language pertaining to subpoenas back into this rule. Mr. Moninger addressed the board stating the existing rule requires a subpoena in order to obtain client records from a PPO. The concern was that this requirement limits the department's access to records. Board member England stated if it is subject to the Open Records Act it is still going to be subject to the Open Records Act regardless of how they obtain the information. All this does it makes it more difficult for the department to obtain access to the information.

On a motion made by Board member Crenshaw and seconded by Board member England, the board voted unanimously to accept the rule as written with no additions in reference to subpoenas.

§35.81 Private Business Letter of Authority: the rules committee wished to discuss the deletion of licensed manager from this rule. Vice chairman Johnsen stated anyone with a letter of authority ought to have a manager to go to when problems arise. Mr. Moninger stated the statute does not require them to have a manager.

Susan Griswold addressed the board stating they wanted qualified manager because some Letters of Authority have armed security officers and they want someone to manage those armed security officers.

On a motion made by Secretary Smith and seconded by Board member England, the board voted unanimously to strike the word "designate" in (d) and replace with "qualify a manager who meets the requirements of the Act as they pertain to the manager of a security services contractor".

§35.103 Locksmith Company License: the rules committee proposed changing "passage" to "completion" in (B) of the rule. On a motion made by Board member Crenshaw and seconded by Board member England, the board voted unanimously to accept the change.

§35.111 Licensing and Examination Fees: the rules committee proposed changing "authorization" to "endorsement" in the Personal protection officer fee. They also proposed adding the word "company" to the reinstatement of suspended license fee. On a motion made by Board member Crenshaw and seconded by Board member Hayden, the board voted unanimously to accept the changes.

§35.121 Training Requirements: the rules committee wished to discuss adding the "old managers" language back into these rules in part (a)(1) of the rule. Susan Griswold addressed the board stating that the original rule allowed the Level II course to be taught by the manager or a designee of the manager inside the business. She stated that she has an in-house instructor that teaches a 4-6 hour course. If that person is not available, she sends them down to the academy

and the applicant returns within 2 hours. She stated she wanted to maintain the level of training for her company.

On a motion made by Board member England and seconded by Hayden, the board voted unanimously to change the last sentence of (a)(1) to read: Level II training may be taught by the licensee's manager, the manager's designee, or a board approved school and board approved instructor using the most current version of the respective Board Level II training course manuals.

§35.101 Investigations Company License: Mark Gillespie asked to address the board regarding this rule. He asked the board to consider going back to the old language where the experience requirements were concerned. The previous version stated 12 months of investigation related experience was required if the applicant held a bachelor's degree and 24 months of investigation related experience was required for someone who held an associate degree in criminal justice. These requirements were changed to 6 and 12 months. Vice-chairman Johnsen stated that he would not want to see this change happen if the reason behind it was to limit competition in the industry. Mr. Gillespie stated the sole reason for the change was to increase the competence level and experience level within the industry.

Chairman Chism stated the rule was set up not to establish whether a person is a good investigator but if they are capable of running a company. He also stated that with a 50% failure rate they are trying to overcome. The question is does it increase their knowledge to do this job.

Catherine Torres with TALI was next to address the board stating in order to manage private investigators it would be necessary to have these requirements. She went on to say that in that field they want competent managers not slipping around the rules and requirements and doing work legitimately.

Board member Hayden asked if the requirements were to be changed how many people would be affected by that change. Mr. Gillespie explained that it would not be a new change but rather going back to the previous language.

On a motion made by Chairman Chism and seconded by Board member Hayden, the board voted unanimously to change the experience requirements from "six (6) months" to "twelve (12) months" in (a)(3) and from "twelve (12) months" to "twenty-four (24) months" in (a)(4).

§35.63 Commissioned Security Officer Standards

§35.64 Renewal of Security Officer Commission: Mr. Moninger noted these rules were mis-numbered as they should have been §35.62 and §35.63. On a motion made by Board member England and seconded by Board member Hayden, the board voted unanimously to accept these numbering changes.

CHAPTER 35 PRIVATE SECURITY: On a motion made by Board member England and seconded by Board member Crenshaw, the board voted unanimously to repeal the current

version of Chapter 35 and adopt the proposed new version subject to a review by the Board within 10 days of the meeting.

Board member Crenshaw also stated he wanted to thank everyone who helped on this large project: all of the industry associations, staff, Steve Moninger, RenEarl Bowie, and the committee members.

Agenda Item V: Public Comment

Jesse Ruelas-, president of ASSIST, addressed the board. He introduced himself to the Board as the new state president of ASSIST. He stated he retired from the military with 24 years of service and had 6 years of experience in the industry.

Walt Roberts-, vice-president of ASSIST, addressed the Board. He stated that although it is not in the Board's control, recent electronic fingerprinting changes is putting a hurt on the industry. He stated it would put criminals to work. He explained a colleague of his has contracted to put 40 people to work by November 5th and can't get an appointment for fingerprinting in that short amount of time. He stated, on October 8th the board passed a rule stating the industry had 72 hours to get people fingerprinted, and wanted to know where does this now stands. Chairman Chism stated that would be a question for DPS. Vice-chairman Johnsen stated that if anyone is having difficulty getting their people fingerprinted they should contact RenEarl Bowie for assistance.

Mike Samulin-, with TBFAA, addressed the Board. He stated there was still some frustration from the industry that the rules re-write was done 2 weeks ago. He stated the industry hasn't had time to look at the rules. He stated he felt this violated the negotiated rule-making policy. He went on to say that the Board was becoming no better than the Public Safety commission, who only allow certain select people speak on specific rules. He stated that the Board has been picking and choosing who speaks and who doesn't. He continued by saying that DPS has won and the Board has lost. He concluded by asking the board how it felt to be emasculated.

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

Executive Session not taken.

Chairman Chism called for break at 10:46am.

The Board reconvened at 11:17am.

Agenda Item VII: Consideration and possible action on Stay of Suspension granted to Stephen Hartman, pursuant to Administrative Rule §35.51

Stephen Hartman- Administrative Case No. 201312809

Mr. Moninger presented this item to the board stating Mr. Hartman was granted a stay of suspension and that it was in the Board's hands whether to continue the stay or not. He stated that if it is rescinded his suspension will be in effect.

Mr. Hartman was present to address the Board on this case and began by stating he was just doing his job and was arrested for serving a state district court judge with lawsuit papers. He stated he was charged with 2 class B misdemeanors that was later reduced to 1. He further stated there is a case pending as well as a civil rights case. Chairman Chism asked if the venue had been changed from Jefferson County to Orange County. Mr. Hartman stated that it had and that he had been offered a plea deal of a class C misdemeanor and a \$100 fine, but he did not accept it because he was not guilty of doing anything wrong. Chairman Chism asked if the arresting officers were under any charges, to which Mr. Hartman answered that they were not yet charged.

Philip Klein, with Klein investigations and..., was next to address the board. He stated that he employs Mr. Hartman and Mr. Hartman was assigned to serve a federal summons to Judge Walker. He stated that 2 weeks earlier Mr. Hartman tried to serve the summons at his home and had a gun pulled on him. He stated that he advised Mr. Hartman to sit in the back of the courtroom and at break advise the bailiff of his intent to serve Judge Walker. He stated Mr. Hartman followed these instructions, but when the bailiff spoke to the judge the judge shook his head no. At that time Mr. Hartman was shoved in the back and told to leave. He stated he was handcuffed and when he asked what the charges were the bailiff answered it was whatever the judge wanted it to be. He stated Judge Walker has come after Mr. Hartman's licenses as well as his own. He asked the board to allow Mr. Hartman to work, stating he did nothing wrong and was only doing his job.

Mark Gillespie addressed the board stating they were aware of the circumstances surrounding the arrest and detention of Mr. Hartman. He stated Mr. Hartman was a registered P.I, PPO, Process Server, and husband and father. He went on to state this is a reminder to all private security professionals that they could find themselves in the same situation at any given moment. He asked the board to look favorably upon Mr. Hartman and stated they rely on the board to enact board rules and legislation that protects their due process and constitutional rights.

On a motion made by Board member Hayden and seconded by Board member England, the board voted unanimously to continue the stay of suspension until the case is heard in court.

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

Chairman Chism called roll of those to appear regarding their contested cases. Those not in attendance were:

William Marks – Docket No. 405-13-1285, SOAH's decision was to summarily suspend his non-commissioned security officer registration and owner/manager of a private investigations company registration

Dwyne Wickliffe – Docket No. 405-13-3916, SOAH's decision was to deny his application as an

alarm installer.

Earl Davis – Docket No. 405-13-4603, SOAH’s decision was to deny his application as a non-commissioned security officer.

Joseph Stelly – Docket No. 405-13-4777, SOAH’s decision was to deny his renewal application as a non-commissioned security officer.

Adam Black – Docket No. 405-13-4778, SOAH’s decision was to deny his application as an alarm installer.

Shanisha Noble – Docket No. 405-13-4790, SOAH’s decision was to deny her application as a non-commissioned security officer.

Charlie Pennywell – Docket No. 405-13-5231, SOAH’s decision was to summarily revoke his security officer commission.

On a motion made by Secretary Smith and seconded by Board member England, the board voted unanimously to uphold SOAH’s decision on all of these cases.

Attorney for the Department Ginger Hunter presented the following cases to the Board:

Ralph Chapa- Docket No. 405-13-4601

Mr. Chapa was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Hunter stated Mr. Chapa’s non-commissioned security officer registration was revoked based on his Class A Misdemeanor conviction for Assault- Family Member.

Mr. Chapa addressed the board stating that he was before them in hopes of getting his license back. He stated this type of thing would never happen again and he understood he instilled pain by pushing his wife. He again assured the board he had never been in trouble before or since.

Board member Hayden made a motion to uphold SOAH’s decision and grant Mr. Chapa’s non-commission security officer registration. Board member England seconded the motion, and the Board voted unanimously in favor of the motion.

Kerry Wanza- Docket No. 405-13-4789

Mr. Wanza was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Hunter stated Mr. Wanza’s alarm installer registration was summarily revoked based on his Class A misdemeanor conviction for Assault-Family Member.

Mr. Wanza addressed the board stating he had a situation with his wife that resulted in the charge of family violence. He stated that it was an accident and his wife fell. He also stated that his wife was by his side in court. However, he stated with the strict laws regarding family violence he took a plea.

Board member Hayden made a motion to uphold SOAH's decision and grant Mr. Wanza's registration as an alarm installer. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of the motion.

Carlos Bermudez- Docket No. 405-13-5109

Mr. Bermudez was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Hunter stated Mr. Bermudez's application as a non-commissioned security officer was denied based on his 3 felony convictions for Burglary of a Habitation.

Mr. Bermudez stated he originally applied for a security officer commission but was denied because he is federally disqualified from carrying a firearm. He said he was now trying to get a non-commissioned security officer license. He stated he has been rehabilitated, received his GED and has even learned welding. He stated one reason he wants to work security is because his wife is a commissioned officer and it is hard for her to get jobs because she is a female. He went on to say he currently did bouncer work but needs more. He explained that what he did when he was younger was wrong and would not happen again.

Vice-chairman Johnsen asked him if he had a job lined up if he were to receive his license, to which he responded that he did with Houston Patrol. Vice-chairman Johnsen asked if he would be using his license to work in homes or businesses. Mr. Bermudez answered that he would be working in night clubs to start but may move to apartment complexes. When asked by Vice-chairman Johnsen if the company was bigger than 2 or 3 employees he stated yes, but less than 25.

Vice-chairman Johnsen made a motion to uphold SOAH's decision and grant Mr. Bermudez's non-commission security officer registration. Board member England seconded the motion, and the Board voted resulting in a split decision: Chism, Johnsen, and England voting in favor and Smith, Crenshaw, and Hayden voting against. With no tie-breaking vote the Board was informed that the attorneys for the department would need to research what to do in the event of a tie vote and would inform Mr. Bermudez as well as the Board of the final outcome.

Agenda Item IX: Adjournment

Chairman Chism introduced this agenda item. Secretary Smith made a motion for adjournment. Board member Hayden seconded the motion, and the Board voted unanimously in favor of the motion. At 12:12 pm, the October 30, 2013 meeting of the Private Security Board was adjourned.