

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
JANUARY 28, 2014**

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

BOARD MEMBERS PRESENT:

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

BOARD MEMBERS NOT PRESENT:

Honorable Albert Black
Honorable Brian England

STAFF PRESENT:

RenEarl Bowie, Assistant Director, Regulatory Services Division;
Steve Moninger, Senior Staff Attorney, Office of Regulatory Counsel, Legal Operations;
Jay Alexander, Major, Regulatory Crimes Service

MINUTES

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

The board meeting was called to order at 9:20 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 October 30, 2013

Chairman Chism introduced this agenda item. Secretary Smith noted part of the language used in Agenda Item IV, section discussing Rule §35.72 was not easily understood: "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."

The Board Assistant was directed to review the video record of the meeting for clarification. On a motion made by Board member Hayden and seconded by Secretary Smith, the Board voted unanimously to approve the minutes for the board meeting of October 30, 2013 with changes to the language of Agenda Item IV, section discussing Rule §35.72.

Agenda Item II: Reports from Regulatory Services Division

Assistant Director RenEarl Bowie presented the licensing totals for the first quarter, 9/1/13 to 11/30/13. He stated, for this time period, the Division received 270 original company applications, 1,434 company renewals, 12,840 original individual applications, and 8,741 individual renewals not including online applications. He went on to say, for the same time period the Division processed the following licenses/registrations: 202 original company licenses (120 online, 82 manual), 1,398 company renewals (1,030 online, 368 manual), 10,190 individual registrations (3,699 online, 6,491 manual), 7,901 individual renewals (4,316 online, 3,585 manual), and 5,775 employee information updates (1,495 online, 4,280 manual). He also stated this time period showed 5,571 active company licenses, 293 active school licenses, and 151,775 active individual registrants.

Agenda Item III: Reports from Board Committees

The Advisory Committee had nothing to report at this time.
The Rules Committee had nothing to report at this time.

Agenda Item IV: Discussion regarding waiting periods when contacting the Regulatory Services Division Call Center

Assistant Director Bowie addressed this issue with the board. He stated he had been contacted by some of the Association Presidents concerning the difficulty in getting through to the call center. He stated indicated to them that he would find a way to help reduce the wait times of 20-30 minutes that were being reported. In looking further into this matter he stated he found that the division received an influx of Concealed Handgun Licensing calls that were causing these longer waits. He went on to say that the division moved 3 employees to the Private Security lines to help answer these calls. He also stated he emailed all of the Association Presidents and asked them to forward any emails of complaint, that they may receive, directly to him for assistance in getting issues handled. He stated that currently customers were being called back within 24 hours.

Agenda Item V: Discussion regarding Rule 35.186(4) and failure to provide copy of government issued identification with registration application

Chairman Chism addressed the rest of the board on this issue. He stated he received several calls indicating that individuals were sending in registration paperwork for pocket cards and not hearing anything for 2 months. He explained that the reason for this was later found to be that they were not sending in a copy of their Driver's License, nor were they being notified by Private Security Licensing to do so. It was his suggestion that something be added to the website that

would indicate that a registrant was required to send a copy of their Driver's License even when doing the rest of the application online.

Vice-chairman Johnsen asked how registrants were to submit a copy of their Driver's License if they were doing an on-line application, to which Chairman Chism stated they would have to use the US Mail to submit the copy. Assistant Director Bowie explained that the registrants could also fax the copy in or even email it as an attachment. Vice-Chairman Johnsen stated that they still wanted as many people using the online application process as possible to ensure that all questions are answered and all information is provided and completed, as the system will not allow an applicant to submit the application if not complete.

Michael Samulin stated that on-line processing of applications is a misnomer, as an applicant still has to print some of the documents and send them in along with a copy of their Driver's License. He further stated that TexasOnline currently does not state that the applicant has to send in a copy of their Driver's License.

Chairman Chism again stated that he would like the division to look into having these reminders added to the website.

Agenda Item VI: Discussion regarding online renewal of pocket card with multiple endorsements

Assistant Director Bowie addressed the board stating that the Private Security Licensing staff had a presentation for the board on this issue, but due to the inclement weather they were not present at this meeting. Chairman Chism directed that this item be held over for discussion at the next meeting of the board.

Agenda Item VII: Discussion regarding assignment of CCR code number for electronic fingerprinting in paper application process

Chairman Chism addressed the board stating he had 2 individuals contact him with similar situations. One person did their application on-line, the other did theirs as a paper application and sent it in. After 3 months neither applicant had received anything and wanted to get their employees fingerprinted. They contacted Regulatory Services and were told that they would need the Central Cash Receiving number and would find the CCR number on the back of the check they sent.

Assistant Director Bowie asked if it was the request of the board to have the Regulatory Services staff look at finding an easier way for applicants to obtain the CCR number. Chairman Chism stated that is was their request as it pertains to paper applications.

Chairman Chism stated that the second person who contacted him had only waited 30 days and was able to get a copy of the check in order to read the number on the back of it. Vice-chairman Johnsen stated that in this day and time people rarely even get printed copies of their checks back any longer. Chairman Chism stated that if a person sends in a completed paper application, staff needed to develop a way to notify the applicant of the CCR number. Vice-chairman Johnsen

asked if staff could pull up the application electronically to find the number there. Assistant Director Bowie stated that was not possible, staff would have to go into the accounting database in order to retrieve it. Alan Trevino with Sentry Security stated that this could also be a problem with on-line applications as well as paper applications. He stated he had an applicant earlier in the week who had registered with a different company but had not been fingerprinted. When Mr. Trevino tried to send the individual over to be fingerprinted they were required to have the CCR number which they were unable to obtain from DPS. He stated they ended up having to contact the previous company and have them give them the CCR number from the original check.

Agenda Item VIII: Public Comment

George Craig-, with Secureco Inc., addressed the board. He asked why the industry was no longer receiving the investigation information formerly provided by the Department. Vice-Chairman Johnsen stated that this issue was addressed at the last board meeting and asked Major Alexander if he would please re-address the issue. Major Alexander stated that due to the change of Regulatory Services Division agents going over to the Criminal Investigations Division, there was difficulty in working out a process in which to obtain that information, and providing those statistics had to be suspended.

Jean O'Shaw-, Office of Regulatory Counsel staff, addressed the board. She stated her late arrival was due to the inclement weather and she wished to update the board regarding Agenda Item II(b). She stated that the new amendments to the rules voted on by the board at the last meeting had been sent to the Texas Register for publication. She stated they were due to be published February 7, 2014 and would go before the Public Safety Commission for review on April 10th.

Susan Griswold, with ASSIST, addressed the board. She stated she wanted to give an update on the walk in fingerprint process in Houston. She stated that since November they do about 10-15 per week. One issue she noted, was that once the applicants come in and are fingerprinted, their appointment still stays on the books with L-1. They do not release those appointments after the person has been fingerprinted and are still showing a full load of fingerprinting to be done. She informed the board that the electronic process was working well, both in Houston and Dallas. Vice-Chairman Johnsen stated what he would like to see done is, if an office wants to open an appointment area they would have to contact L-1 and let them know it has been handled and then that appointment can be reopened for someone else. Susan stated that she would get with Skylor Hearn regarding that happening.

She also stated she gets a lot of emails regarding applications and the CCR numbers are a problem. She said things would be easier if they can get that CCR number quicker or if it can be the same as the license number plus last 6 of the Social Security Number. Vice-Chairman Johnsen asked if DPS concurs that they needed to look at the process and streamline by putting procedures in place. Ms Griswold stated that other comments she receives are that some of the industry does not know that electronic fingerprinting is the only way to do them. She said that some people are still sending in paper cards but not receiving notification from the division that they are no longer accepted. Board member Hayden asked what the process was for new or renewal applications. He asked if a person sits down and gives feedback such as "we have

received your application and will process accordingly” or “your application is incomplete”. Assistant Director Bowie stated that a check is done to be sure all information is provided, but was unsure if letters were still being used to indicate a lack of information needed. He also stated that currently it is up to the company to check an individual’s status online and call in to find out what the issue is if not ready. Vice-Chairman Johnsen stated this process needs to be completed in days not months and if everyone understands and follows the procedures it will go smoother. He stated there was no need to change the entire bridge just because one of the cables holding it is loose. Chairman Chism asked that Susan Griswold work with the Regulatory Services Division to find solutions to these issues. Board member Hayden stated that it seemed that the Department’s attitude seemed to be that “we will process it, but you have to check back and see if it completes”. Assistant Director Bowie asked if Mr. Hayden felt that an incomplete letter back to the company was warranted. Vice-chairman Johnsen stated that it should be handled as if dealing with customers. Mr. Samulin stated he was concerned with the companies having to call in to the department and it seemed incumbent on the department to send letters informing the individuals and companies of any issues. He stated that the previous week he had an employee try to get fingerprinting done and had a 7 day wait. Vice-Chairman asked how many people he has had this happen with. Mr. Samulin stated that it was only one other person, but did have a person with an appointment that had to wait 45 minutes. He stated some of the L-1 places will take walk-ins and some won’t; they are all over the place.

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

Executive Session not taken.

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

Attorney for the Department Jean O’Shaw presented the following cases to the Board:

George Aguilar- Docket No. 405-13-5580

Mr. Aguilar was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. O’Shaw addressed the Board stating that Mr. Aguilar, through his attorney, had the day before filed for a continuance. She continued stating the Proposal For Decision was based on testimony heard at the hearing and he has been granted a motion for a new trial.

Continuance was granted and this case is to be heard at a later date.

Katherine Batay- Docket No. 405-14-0650

Ms. Batay was not present to address the Board on this case, nor did she have counsel present on her behalf. Ms. O’Shaw stated the Department summarily denied her application for a non-commissioned security officer registration based on a 2010 misdemeanor Assault and Battery-Domestic Violence conviction in the state of Michigan. She further stated the department alleges that the conviction was substantially similar to Texas Penal Code 22.01(a)(1). She stated the Administrative Law Judge determined Ms. Batay’s conviction did not correspond to any particular class of misdemeanor assault defined by Texas law. The ALJ also applied the factors

found in Chapter 53 of the Occupations Code and determined Ms. Batay is currently fit to be registered as a non-commissioned security officer, notwithstanding her conviction. She stated that the ALJ recommended Ms Batay's application for registration as a non-commissioned security officer license be granted.

Board member Hayden asked what the Department's analysis of the ALJ's proposal with respect to the judge's conclusion that there is no similar statute in Texas. Ms. O'Shaw stated that Michigan law statute is based on a common law definition of assault and battery, which is a broader spectrum than the Class A misdemeanor assault in the state of Texas. Mr. Hayden stated that Michigan doesn't have the same classes of misdemeanors, and in that state it was much lower than here, so how can this compare with Texas law. Ms. O'Shaw stated that it was a misdemeanor, above an infraction but below a gross misdemeanor. She went on to explain that just because it is not a one to one comparison, they still had to go back to case law to develop all of the elements of the case. In Texas it is based on knowingly causing bodily injury, not causing serious bodily injury.

Board member Crenshaw stated that she would be eligible in another year. Ms. O'Shaw stated yes, she would be eligible in a year or year and a half. She also stated that one portion of her punishment was that she had to attend anger management classes and she did fulfill these terms and conditions. She went on to say that in person she did make a credible witness, working to support her child, and had completed all terms of her probation.

The Board elected to take an executive session for a few minutes to confer with the department's attorney at 10:24am.

The Board returned from executive session at 10:27am.

Senior Staff attorney stated that the department wished to withdraw their objection to Ms. Batay's application in light of the PFD and would go forward with issuing her license.

Board member Hayden made a motion to approve the department's request to withdraw their objection to Ms. Batay's application, which would also result in the issuance of her non-commissioned security license. Vice-chairman Johnsen seconded the motion and the board voted unanimously in favor of the motion.

Chairman Chism chose to call roll to determine who was present for their hearing. Senior Staff Attorney Moninger stated that he received an email from the RSD customer support stating that one of the two remaining people was on his way to attend the meeting, but had an auto accident due to the inclement weather and would not be able to make it. It was his suggestion that the hearing be reset for Mr. Cadena, who it was determined called with this issue. He also pointed out that Mr. Bermudez had had his case heard at the previous meeting which resulted in a tie vote, and the board may wish to go ahead with the re-hearing in the interest of lessening the inconvenience to Mr. Bermudez. The board elected to go ahead with the hearing of this case.

Carlos Bermudez- Docket No. 405-13-5109

Mr. Bermudez was not present to address the Board on this case, and did not have counsel present on his behalf. Ms. O'Shaw stated Mr. Bermudez's application as a non-commissioned security officer was denied based on his 3 felony convictions for Burglary of a Habitation. She reminded the board that this case was heard at the October 30, 2013 meeting at which Mr. Bermudez was present and did give testimony. The case was being reheard due to the board's final vote resulting in a tie with no clear decision made.

Secretary Smith made a motion to deny SOAH's decision and deny Mr. Bermudez's application for a non-commissioned security officer license. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of the motion.

Ricardo Cadena Jr- Docket No. 405-13-5337

The Board elected to re-set Mr. Cadena's hearing until the next meeting when he could attend.

Agenda Item XI: Adjournment

Chairman Chism introduced this agenda item. Secretary Smith made a motion for adjournment. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of the motion. At 10:45am, the January 28, 2014 meeting of the Private Security Board was adjourned.