

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
JULY 10, 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 Brian England
Honorable Wade Hayden

BOARD MEMBERS NOT PRESENT:

Honorable Albert Black

STAFF PRESENT:

RenEarl Bowie, Assistant Director, Regulatory Services Division;
Oscar Ybarra, Deputy Assistant Director, Regulatory Services Division;
Steve Moninger, Senior Staff Attorney, Office of Regulatory Counsel, Legal Operations;
Dennis Dobias, Senior Manager, Compliance and Enforcement Service;
JoJo Heselmeyer, Senior Manager, Licensing and Registration Service;
Jere Ferguson, Senior Manager, Operations and Shared Services;
Ryan Garcia, Supervisor, Licensing and Registration Service;
Reggie Andrews, Assistant Manager, Licensing and Registration Service;
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 9:04 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.

Chairman Chism asked if anyone had any information on the condition of Mr. Kimbrough, former director of TBPIPSA (Texas Board of Private Investigators and Private Security Agencies), after his accident. Assistant Director Bowie stated that Mr. Kimbrough had been

involved in a motorcycle accident near the Houston area. He stated that the Texas Highway Patrol investigated the accident and the last report he received was that Mr. Kimbrough was still in the hospital. Mr. Chism stated that he runs a Marine Corp blog and had put the information out regarding Mr. Kimbrough's accident in Navasota. He was aware that he sustained serious injuries and was hospitalized, but was unaware if he had yet been released.

Agenda Item I: Approval of Minutes for Board Meetings held April 14, 2014

Chairman Chism introduced this agenda item. Upon review, Board member Crenshaw made a motion to accept the changes to these minutes as written. Secretary Smith seconded the motion and the board voted unanimously in favor of the motion.

Agenda Item II: Reports from Regulatory Services Division

Supervisor Ryan Garcia presented the licensing totals for the third quarter, 3/1/14 to 5/31/14. He stated, for this time period, the Division received 339 original company applications, 1,561 company renewals, 13,502 original individual applications, and 11,419 individual renewals not including online registrations. He went on to say, for the same time period the Division processed the following licenses/registrations: 198 original company licenses (142 online, 56 manual), 1,511 company renewals (1,133 online, 378 manual), 9,360 individual registrations (7,325 online, 2,035 manual), 10,442 individual renewals (6,810 online, 3,632 manual), and 6,772 employee information updates (2,338 online, 4,434 manual). He also stated this time period showed 5,583 active company licenses, 281 active school licenses, and 151,368 active individual registrants.

Major Alexander was next to address the board. He informed them that a 1-800 number had been established to answer questions regarding the dispositions of complaints made to the agency. He explained that this number would ring to the Regulatory Services Division Call Center, where the caller would give their name, call back number, and complaint information. This information would then be forwarded to a technician for investigation and call back within three (3) business days. He also stated this information would also be available on the Private Security website under Regulatory Crimes. The number to call is: 1-800-224-5744.

Agenda Item III: Reports from Board Committees

The Advisory Committee had nothing to report at this time.

Board member Crenshaw of the Rules Committee reported to the Board. He stated a request had come in from a licensee to consider a rule change to allow the carrying of Assault Rifles while on duty. He went on to explain that the Rules Committee met with Division Counsel and it was determined there is a statutory problem for Personal Protection Officers in carrying such a weapon and the board does not have the authority to make a rule change for these license holders. He stated that while it was possible to make the rule change for commissioned officers, the committee felt this subject should first be considered by the Advisory Committee as well.

Secretary Smith asked if the subject that has been in recent news reports regarding Target and Walmart customers carrying assault weapons in the stores, had come up in discussion. Board member Crenshaw stated that it was discussed and the determination was that in those cases it is a constitutional matter, and not within the board's purview. He also stated that counsel also brought up the fact that the board had recently done a complete re-write of the board rules and perhaps this could be tabled for the time being.

Chairman Chism asked if there were any comments from the audience on this subject. There were none. Chairman Chism directed that this subject be tabled and sent to the Advisory Committee for discussion and later report.

Agenda Item IV: Discussion regarding an update on the new Managers exam

Assistant Director Bowie addressed the Board on this item, stating that the revised Private Security Board Rules became effective May 6th. This put the Division in a transition period where the Managers exam was concerned. To deal with this the test proctor has allowed managers to take the test under the old rules. He reported to the Board that they are now using the new test regarding the new rules. He also stated he was happy to report that the pass rate of individuals taking the new test had increased. Also, the feedback received from those currently testing was more positive.

Agenda Item V: Public Comment

Mark Gillespie- with Texas Association of Licensed Investigators (TALI), addressed the board. He stated this was his last meeting as the president of TALI, and wanted the board to know it has been a privilege to watch them work and an honor working with them. He introduced Carol Tharp as the new president of TALI for the term of two (2) years, who stated she looked forward to working with the board.

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

The board elected to take executive session at 9:22 am. The board reconvened at 9:42am.

Agenda Item VII: Administrative Hearings on Licensing and Disciplinary Contested Cases Attorney for the Department, Jean O'Shaw, presented the following case to the Board:

Alfredo Diaz- Docket No. 405-14-2197

Mr. Diaz was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. O'Shaw stated Mr. Diaz's application for registration as a non-commissioned security officer was summarily denied based on his felony conviction for aggravated kidnapping. She stated the offense is directly related to the licensed occupation and is a permanent disqualifier. Additionally, Mr. Diaz provided a material misstatement in his application which is a supporting factor in the Department's summary denial.

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

Chairman Chism called roll to determine which individuals, with cases before them, were present. Bosire, Rollie, Villavueva, Tauriac, Ramos, Caldwell, Snyder, Owens, and Rahner were not present, while Moore, Cadena, McRee, Miller, and Mercer were either present or had a representative present on their behalf. Those who were present or represented were called first.

Attorney for the Department, Rebecca Burkhalter, presented the following case to the Board:

Joel Moore - Docket No. 405-14-3015

Mr. Moore was not present to address the Board on this case, but he did have counsel present on his behalf: Sara Hammond. Ms. Burkhalter stated Mr. Moore's renewal application for registration as a private security company officer/shareholder was summarily denied based on his Class A misdemeanor for driving while intoxicated (DWI- 2nd offense). She stated the offense is not related to the duties and responsibilities of the private security profession, and that Mr. Moore would be eligible for registration November 17, 2017.

Ms. Hammond, with Foster Law, addressed the board on Mr. Moore's behalf. She asked the board to affirm SOAH's decision and grant Mr. Moore his renewal application for registration.

Secretary Smith made a motion to uphold SOAH's decision and approve Mr. Moore's renewal application for registration as a private security company officer/shareholder. Board member England seconded the motion, and the board voted unanimously in favor of the motion.

Attorney for the Department, Aaron Heath, presented the following case to the Board:

Ricardo Cadena- Docket No. 405-13-5337

Mr. Cadena was present to address the Board on this case, but did not have counsel present on his behalf. Mr. Heath stated Mr. Cadena's application for registration as a locksmith was summarily denied based on his 2nd degree Felony of Aggravated Assault. While the court suspended the sentence and imposed a five (5) year term of community supervision, Mr. Cadena later violated several of the conditions of his probation. The court issued an order amending the condition of probation and extended the term. He further stated the offense would remain disqualifying until January 13, 2016.

Mr. Cadena addressed the board stating he was trying to provide for his family and better his life and felt having his registration as a locksmith would further these goals. Board member Hayden asked if he was presently employed, to which he stated no. Vice-chairman Johnsen asked if this was his only incident with breaking the law, to which he stated yes. Mr. Cadena further explained he was 16 years old almost 17 at the time of the incident and was 32 years old now. Board member Hayden stated he had violated the conditions of his probation and asked how he did that, to which he answered he did not pay on time and was in possession of marijuana. He further stated he has since completed sobriety classes.

Secretary Smith stated that if the board voted in favor of licensure they could do a provisional license that would be good until January 13, 2016 and as long as he didn't have any problems with breaking the law he could then be granted a "regular" license. Board member Crenshaw pointed out that licenses are only good for 1 year, so they would have to issue a provisional license then renew that provisional after one year.

Board member Hayden asked if Mr. Cadena had a job waiting for him as a locksmith upon licensure, to which he stated that he did.

Secretary Smith made a motion to uphold SOAH's decision and issue a provisional license to expire in 2016, at which time he can gain a "regular" license provided he has no trouble with the law during provisional license period. Board member England seconded the motion, with the board voting unanimously in favor of the motion.

Attorney for the Department, Valerina Walters, presented the following cases to the Board:

Keith McRee- Docket No. 405-14-0994

Mr. McRee was present to address the Board on this case, as well as having counsel present on his behalf: Matt Waddell. Ms. Walters stated Mr. McRee's application for registration as a locksmith was summarily denied based on his 2nd degree Felony conviction for Burglary of a Habitation. She stated that on April 4, 2012 the court issued an Order to Set Aside Conviction and Dismissal. She further stated that Burglary of a Habitation is an offense that is directly related to the duties and responsibilities of a locksmith and is permanently disqualifying.

Vice-Chairman Johnsen stated that he had to recuse himself from voting on this case as he personally knows the owner of the company from which Mr. McRee is seeking employment.

Mr. Waddell addressed the board requesting that the board to uphold SOAH's decision to issue a license to Mr. McRee as this case occurred over 20 years ago. Board member Crenshaw asked for further details on the 2012 order of dismissal. Mr. McRee stated the case was filed to have it set aside and taken back to the original court before the original judge. He explained that part of probation was about rehabilitation in an alcohol and drug treatment facility, where he was for one year. He stated that since then it has been sobriety and working with the court's probation officers. Board member Hayden asked how old he was at the time of the occurrence, to which he answered he was 31 or 32 years old. Board member Hayden then asked if the 2012 order was an expunction, to which he stated he thought it was as he was given back his gun rights as well as his right to vote. Mr. McRee further explained that he is cleared on all background checks except for law enforcement and courts; they are the only entities who see this conviction.

Mr. Waddell explained to the board that in order for Mr. McRee to get into the alcohol treatment program, it was necessary to charge him with a Felony offense. Ms. Walters stated that although Mr. McRee had a "set aside" in 2012, it is not relevant to Private Security, and the ALJ did not base the decision on this.

Chairman Chism stated Mr. McRee was convicted in 1993, went into rehab for a year and in 1994 began his 8 years of probation, concluding in 2002, yet did not receive his set aside until 10 years after that. He asked what transpired in those 10 years and why did he not seek a dismissal/set aside soon after completing probation. Mr. McRee stated 1995, began working at Action Locksmith and at the time was not required to hold a license. He only began seeking the set aside once it became an important issue in regards to obtaining a license.

Board member England stated that he had hesitation with this case as it is dealing with the burglary of a habitation, and giving a license to a locksmith with this type of conviction gave him great pause. However, he was unsure the board had any choice but to grant the license. He made a motion to uphold SOAH's decision and grant Mr. McRee his locksmith license. The motion failed as there was no second to the motion.

Secretary Smith stated in 2005 they started requiring licensure, and if employed prior to that, he would be "at site only" as employee of license holder. If that is the case, Mr. McRee would not be required to have a license until leaving the premises. Board member Crenshaw stated that he didn't understand the set aside/dismissal. He stated the entire reason the board was here was to regulate and keep folks out of the industry who have committed this type of offense. Mr. Waddell stated Mr. McRee had to plead to a felony conviction in order to get into the program he desperately needed. He stated he never actually entered the habitation, but was there to pick up someone who did. Secretary Smith asked if he was a locksmith prior to 1993, to which Mr. McRee stated he was not, but became one 2 years after that when he was still not required to have a license.

Board member England made a motion to uphold SOAH's decision and grant Mr. McRee's application for registration as a locksmith. Secretary Smith seconded the motion. The motion passed with Chism, Smith, and England voting for the motion while Crenshaw voted against. Board member Hayden abstained from the vote.

Norman Miller- Docket No. 405-14-2107

Mr. Miller was present to address the Board on this case. He also had counsel present on his behalf: David Gonzales. Ms. Walters stated Mr. Miller's application for registration as a Private Investigator was summarily denied based on his Felony conviction for Wire Fraud. She stated the offense of fraud directly relates to the duties and responsibilities of a person licensed under the Private Security Act and is disqualifying for 10 years from the completion of the sentence. While his probationary sentence was completed on or about October 2008, Mr. Miller still owed restitution.

Mr. Gonzales addressed the Board stating that this was an unusual case and Mr. Miller had lead an unremarkable life growing up and in his 40s he switched careers. Mr. Miller began raising money and was "taken" in a scheme that took all of the collected money. He stated Mr. Miller had a decision to make: either own up to the loss of money or hide it and try to make up the investments. Mr. Miller chose to hide the loss and try to make up the lost investments. The unusual thing about this case, he said, is that Mr. Miller confessed to the FBI once he was found out. He went on to say that the U.S. Attorney and Special Agent in charge of the case decided

that Mr. Miller would be a good candidate to help capture other criminals. He has letters of reference stating that he has been a valuable asset to the FBI and is the longest serving informant with the FBI with the exception of those investigating the Mafia and organized crime. He concluded by stating that these things should count toward his 10 years.

Board member England asked Mr. Miller why the Federal government was reluctant to give him an endorsement to which he answered that the agents were told they could give letters of endorsement, but it could not be on FBI letterhead, because they do not want to get into the business of writing these types of letters. Board member England asked if he was privy to personal or sensitive information during these “sting operations”, to which he replied yes. He then asked if the FBI supplies him with the information, perhaps excluding certain information, to which Mr. Miller answered yes. Board member England stated he disagreed with point 5 of Mr. Gonzales’ argument: **There is no extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved.** He stated his disagreement came from the fact that Mr. Miller is being exposed to sensitive information that is currently being limited by the FBI. However, if he were licensed he would not have a filter to limit information and the potential to engage in criminal activity would be available.

Vice-chairman Johnsen stated that the documents indicated he must make restitution of over 17 million dollars. He asked if this was a Ponzi scheme, to which Mr. Miller stated it was and that he Ponzi-ed most of the money back and actually only now owes about 1 million dollars. Vice-chairman Johnsen asked if he is federally qualified to own any weapons or firearms, to which he stated he is not. Vice-chairman Johnsen stated he would think that in his type of business it would be necessary for him to carry a firearm and yet is disqualified. Mr. Miller answered that his business would be fraud investigation and would not require him to carry a weapon.

Chairman Chism asked if he was familiar with a corporation that is partially owned and/or managed by the federal government. He explained that this corporation does investigations including background checks on federal employees and DOJ backgrounds. He stated it is an organization that handles 90% of background investigations and would be a possible route to go that would not require licensure by the state, as it falls under federal jurisdiction. He also asked that if Mr. Miller was so important to the FBI for investigation purposes, why did they not find a way to employ him full time? Chairman Chism concluded by stating that he had a problem in granting a license to someone who owes 17 million dollars in restitution.

Board member Hayden asked Mr. Miller if he had his sentence reduced in 2005, to which he stated he did. Board member Hayden pointed out that Mr. Miller delayed his sentencing by 2 years for personal benefit, yet he wanted the board to consider the 2003 date as start of his sentence.

Chairman Chism stated that it was his understanding that as a Board and licensing agent of the state of Texas they have no authority to license Mr. Miller as long as he is under Federal contract. Board member Hayden wanted to clarify that Mr. Miller has only made cash payments of restitution of \$60,000. Board member England stated he was having difficulty with licensing Mr. Miller because to do so would be putting their stamp of approval on his license in the

public's eyes. He further stated that the positive factors of his case do not outweigh the other factors.

Board member England made a motion that on conclusions of law with the addition of Chapter 53 analysis, he moved to uphold SOAH's decision and deny Mr. Miller's application for registration as a Private Investigator. Board member Hayden seconded the motion, with the board voting unanimously in favor of the motion.

John Mercer- Docket No. 002822014

Mr. Mercer was present to address the Board on this case, but he did not have counsel present on his behalf. Mr. Moninger stated to the Board that Regulatory Counsel was withdrawing its petition concerning Mr. Mercer at this time, and the case would not be heard at this meeting.

Board member England made a motion stating that after applying the factors outlined in Chapter 53, the following cases were upholding SOAH's decision and denying their applications for registration:

- Ronald Bosier- Docket No. 405-14-2143
- Charles Rahner- Docket No. 405-14-2193

Secretary Smith seconded the motion, with the board voting unanimously in favor of the motion.

Secretary Smith made a motion stating that the following cases were upholding SOAH's decision and summarily revoking, denying, suspending or granting their applications for registration:

- Shameika Roille- Docket No. 405-14-3014 (revoke)
- Luis Villanueva- Docket No. 405-14-3003 (suspend)
- Jacob Tauriac- Docket No. 405-14-2141 (deny)
- Reymundo Ramos- Docket No. 405-14-2767 (deny)
- Cash Caldwell- Docket No. 405-14-3124 (deny)
- Hubert Snyder- Docket No. 405-14-2623 (grant)
- Detritues Owens- Docket No. 405-14-2241 (suspend)

Board member England seconded the motion, with the board voting unanimously in favor of the motion.

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 11:05am, the July 10, 2014 meeting of the Private Security Board was adjourned.