

**TEXAS PRIVATE SECURITY BOARD**

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,  
OCTOBER 17, 2014**

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

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**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  
Honorable Albert Black

**STAFF PRESENT:**

RenEarl Bowie, Assistant Director, Regulatory Services Division;  
Steve Moninger, Senior Staff Attorney, Office of Regulatory Counsel, Legal Operations;  
Huel Haynes, Manager, Licensing and Registration Service;  
Ryan Garcia, Supervisor, 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 9:01 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 10, 2014**

Chairman Chism introduced this agenda item. Upon review, Board member Crenshaw made a motion to accept the changes to these minutes as written. Board member England 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 fourth quarter, 6/1/14 to 8/31/14. He stated, for this time period, the Division received 299 original company applications, 1,534 company renewals, 14,024 original individual applications, and 10,676 individual renewals not including online registrations. He went on to say, for the same time period the Division processed the following licenses/registrations: 203 original company licenses (131 online, 72 manual), 1,529 company renewals (1,153 online, 376 manual), 10,347 individual registrations (8,860 online, 1,487 manual), 9,531 individual renewals (6,557 online, 2,974 manual), and 6,929 employee information updates (2,972 online, 3,957 manual). He also stated this time period showed 5,683 active company licenses, 292 active school licenses, and 153,206 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 Branch Office License as defined in §1702.002(3)**

Chairman Chism introduced this agenda item to the board. He began by reading the definition of a Branch Office and Branch Office License per §1702.002(2) and (3):

(2) "Branch office" means an office that is:

(A) identified to the public as a place from which business is conducted, solicited, or advertised; and

(B) at a place other than the principal place of business as shown in board records.

(3) "Branch office license" means a permit issued by the board that entitles a person to operate at a branch office as a security services contractor or investigations company.

He went on to say that it had been brought to his attention some companies were in violation of this Act by having one location registered with the Regulatory Services Division and advertising that they have other offices in other cities. If these companies do not have a Branch Office License, then they would be in violation.

Vice-chairman Johnsen asked if these companies were using a cell phone as an "office" to conduct business. Chairman Chism answered that there were physical locations being advertised. Secretary Smith asked if this was the same as a satellite office, as some companies use to hand out paychecks and perform other administrative work. Chairman Chism asked if these satellite offices advertised to the public as an office of the company. Secretary Smith stated that they did not, and Chairman Chism stated those were not considered Branch Offices. Vice-chairman Johnsen asked what the fee for a Branch Office License was and was informed it cost \$400. Chairman Chism explained that what he was being told from some of the companies he has contacted, they are under the impression that they don't have to have a Branch Office License because they don't have any permanent employees there and only meet clients at those locations. He wanted to make it clear that these companies are violating the Texas Occupations Code.

Assistant Director Bowie addressed this issue 1702 does provide the definition of Branch Office in 1702.002 (2)(A): “Branch office” means an office that is identified to the public as a place from which business is conducted, solicited, or advertised; and

And in 1702.002 (2) (B): at a place other than the principal place of business as shown in board records.

Also in 1702.002 (3): “Branch office license” means a permit issued by the board that entitles a person to operate at a branch office as a security services contractor or investigations company.

Secretary Smith stated that if a company is going to advertise that they have a branch office in San Antonio, then they better have a Branch Office License. Vice-chairman Johnsen asked how big of a problem this is and is it actually causing harm to the public. Assistant Director Bowie stated there has been an example of this in a gypsy locksmith company doing this same thing that has been a big problem for the last 4 years. He went on to say the intent of this law is to set guidelines to protect the public. Board member Crenshaw stated a concern with this is large corporate entities coming into the field with many branch offices. Everyone in this field would want to be sure that everyone stays on a level playing field.

Chairman Chism recommended having this problem handled administratively by the Division.

**Agenda Item V: Discussion regarding Licensed Corporation operating under both corporate name and DBA name with single license**

Chairman Chism introduced this item to the board, stating it was brought to his attention there are people forming corporations, getting a license under their company name, then filing a DBA and operating two companies with only one license. He wanted clarification as to whether these companies needed to obtain additional licensure.

Assistant Director Bowie addressed this issue stating that Texas Occupations Code §1702 provides the guidelines for application for licensure:

§1702.110(a) An application for a license under this chapter must be in the form prescribed by the board and include:

(2) the name under which the applicant intends to do business

§1702.112 The board shall prescribe the form of a license, including a branch office license. The license must include:

(1) The name of the license holder

§1702.124(b) The general liability insurance policy must be conditioned to pay on behalf of the license holder

§1702.129(a) A license holder shall notify the board not later than the 14<sup>th</sup> day after the date of:

(1) A change of address for the license holder’s principal place of business;

(2) A change of a name under which the license holder does business; or

§1702.131 An advertisement by a license holder soliciting or advertising business must contain the license holder’s company name and address as stated in board records

Also in the Administrative Rules:

§35.9(a) A licensee's advertisements must include:

(1) The company name and address as it appears in the records of the department; and

§35.25(a) All applicants doing business under an assumed name shall submit a certificate from the county clerk of the county of the applicant's residence showing compliance with the assumed name statute.

Secretary Smith suggested Agenda items IV and V be turned over to the Rules committee for study and interpretation. He asked if there have been reports of companies not reporting assumed names to the Department. Chairman Chism stated it was brought to his attention that there were a couple of companies that were allegedly in violation. He stated he discussed it with Mr. Bowie and if it were to be determined that there were companies in violation of this, the companies would be given an opportunity to correct the problem, as this is a confusing situation. Assistant Director Bowie stated another concern that had been raised is if there was a licensed company, advertising under a name that was not searchable in the PSB database, it wouldn't show up as a licensed company.

Board member Crenshaw asked if there was an ongoing problem with companies operating and advertising under different names. Assistant Director Bowie answered that there was not but this question was asked by the public for clarification. Chairman Chism stated that possibly the answer would be for the trade associations to bring it to the attention of their members to help bring them into compliance.

Board member Hayden asked if the Department serves to police the applicant's compliance with Chapter 71 of the Texas Business and Commerce Code. He asked if the Department looks online at the Secretary of State's Office to ensure that that entity, corporation, PLLC, or LLC has filed its assumed name certificate with that office. Assistant Director Bowie stated yes the Department does ask for a copy of the application documents, but does not investigate its filing. He went on to say that the examples given have been larger companies who just were not aware and this is usually handled by a simple phone call to the company informing them. He stated there has not been any instance of the companies refusing to get into compliance. Board member Hayden stated he has always felt it is important to protect the citizens of Texas, and if they are searching for a particular company, they need to be able to find that company under their proper name and not a company hiding behind an assumed name.

Board member Crenshaw added that most large companies, when acquiring a smaller one, will use that company's name for a period of time as a branding tool. That company would have to file DBA. He agreed that in a lot of the cases it probably is just a matter of making a phone call and asking them to get into compliance. Chairman Chism stated it was a matter of educating companies and licensees. One way of doing that would be to get the associations on board with it, and maybe put it on the PSB website.

### **Agenda Item VI: Public Comment**

Micah Hoevelman – with Global Security Solutions, addressed the Board. He stated he wanted to bring a few issues to the board's attention. First, Regulatory Services personnel that he felt had gone above and beyond: Ryan Garcia and Crystal Zepeda. He went on to explain he had some negative interactions with the Department, with which Ms. Zepeda was able to assist. He stated he had obtained a contract which required him to bring on 40 employees. One individual submitted their application for licensure in April and as of September, depending on who they spoke to or what day they call, they were missing information. One person called and was informed they were missing a training certificate. The next time they called, they were missing fingerprints, etc. When brought up to staff, they were told it would be dealt with. When they finally reached Ms. Zepeda she stated there were numerous copies of all information and she got them licensed within a week. He asked how can they keep getting different information each time they call. Another interaction occurred with an individual coming up for renewal was told by the Department that he had to go through the manager to get his license renewed, and when he, as the manager, called he was told it was his responsibility to take care of that employee's renewal. Yet another incident occurred when in April they hired a young lady and while she was in applicant status she broke company policy and attended a client company party. While at the party she became intoxicated and was arrested for DWI. From that time in April until September, when convicted, several calls were made as to what to do next. He was told that when her criminal record was updated in approximately 2 weeks, a red flag would go up and the compliance area would investigate and handle appropriately. Approximately 3 weeks later the applicant stated she was giving information from the Department that DWI and Obstruction of a Highway are not suspendable or revocable offenses. He called and spoke with someone in the compliance area who confirmed this information. He stated to the person with the Department that Board Rule 35.4(c)(6) states disorderly conduct is a disqualifying offense and that is defined by any offense under the Texas Penal Code, Chapter 42 and Obstruction of Highway is Penal Code 42.03. The person he was speaking to transferred him to a supervisor who also agreed. When questioned the supervisor stated "because that is how it's always been". He stated that putting this employee back to work puts his company at a huge liability. She told him that she would have to submit this for a legal interpretation. About an hour later she called him back and stated that he was correct and they would be issuing a revocation letter. He went on to ask the Board what other false information is being told to other companies? He stated that he understood that no organization is perfect and they make mistakes. However, without bringing these things to light to be addressed, these things cannot be addressed properly.

Greta Holzberlein- with Garbo's Locksmith Service, addressed the Board. She stated she was at the Private Security Board meeting back in the spring and talked about the Manager exam. She stated she was glad to see the new test had been implemented. She also stated she had questions regarding name change. She stated that it was difficult to see which form is the correct one to use. Also, she stated that on the licensing stats she would like to know if it could be broken down on how many of the licensees, etc. are specific to locksmiths. She went on to say that she put in an application May 21<sup>st</sup> and haven't heard a word on the person's license. She asked if the board could find a solution to speed up the processing of applications.

Chairman Chism asked that Department staff get with the two individuals who addressed the Board and assist them with any issues they were having.

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

The board elected to take executive session at 9:55 am. The board reconvened at 10:25am.

Chairman Chism stated that during the executive session the Board decided to revisit two of the previous agenda item V. Board member Hayden stated that upon review, Rule §35.9(a) requires companies to give their company name as it appears in the records of the department. He stated this seems to be inconsistent with some of the other rules, such as §35.10 and §35.11. He asked Chairman Chism if this might be something for the Rules committee to review. Chairman Chism agreed and asked the Rules Committee to work with Department staff to review these rules and present their findings.

**Agenda Item VII: Administrative Hearings on Licensing and Disciplinary Contested Cases**

Chairman Chism stated Aguilar had asked for and been granted a continuance. He then called roll to determine which individuals, with cases before them, were present. Guillory, Brackeen, Brannum, Colwell, Matthews, Scott, Hampton, Brown, Burns, and Healey were not present, while Wieters, Bryant, and Gunter were either present or had a representative present on their behalf.

Board member England made a motion stating that based on written material provided by staff the following cases were affirming SOAH's decision and summarily denying application, or suspending registration:

- GiGi Ann Guillory- Docket No. 405-14-3069 (deny application)
- Travis Brackeen- Docket No. 405-14-3322 (deny application)
- Ted Brannum- Docket No. 405-14-3339 (deny application)
- Patricia Colwell- Docket No. 405-14-3192 (deny application)
- Qantasia Matthews- Docket No. 405-14-3864 (suspend registration)
- Dominique Hampton- Docket No. 405-14-3698 (suspend registration)
- Paul Brown- Docket No. 405-14-3918 (deny application)

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

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

Terry Wieters- Docket No. 405-14-1477

Mr. Wieters was present to address the Board on this case, and also had counsel present on his behalf: Ruperto Garcia. Ms. Walters stated Mr. Wieters' private security license was administratively revoked because his duty to register as a sex offender makes him ineligible for licensure, registration, or security commission. After considering the evidence and applicable law, the Administrative Law Judge recommended his registration as a non-commissioned security office be suspended indefinitely, but that the suspension be fully probated. This recommendation was made on the basis that he provided sufficient evidence showing that he was

fit to be a non-commissioned security officer and he poses no danger to the public. She further stated the Department filed exceptions in response to the ALJ/s recommendation. It is the Department's contention that suspension, as recommended by the ALJ, is not the appropriate action because Mr. Wieters does not have a pending criminal charge. His requirement to register as a sex offender has been finally determined, making revocation the appropriate action.

Mr. Ruperto Garcia addressed the Board on Mr. Wieters' behalf. He stated the case originated from 24 years prior and was a case of him dating a girl under 17 years of age, with her parents' consent. Once they broke up is when their sexual relationship became an issue. This occurred in 1991 and at that time there was no sex offender registry. Once that came into being, he was never advised that he needed to register. He went on to say that SOAH's decision was a reprimand only. He stated the Board has discretion in this case to assess and consider the applicable factors:

- Age- he was 20 years old and is now 45
- Class of offense- sexual assault. The judge recognized that she was 17 under a dating situation and that Mr. Wieters poses no threat to the public
- Rehabilitation- he has committed no other offenses since this encounter
- Time that has passed- 25 years
- Relationship of the crime to the occupation- this was not someone off the street. This was an approved interaction, in a dating scenario

Mr. Garcia further stated Mr. Wieters has worked without offense since 1990, he completed counseling, he received deferred adjudication which was terminated early and the case was dismissed. He read the following letter from Mr. Wieters employer into record:

“To Whom it may concern:

Officer Terry Wieters is currently employed as a non-commissioned security officer with State Wide Patrol, beginning his employment in July 2012. During this period officer Wieters has worked a wide variety of jobs, from unarmed, low risk accounts to high risk accounts and is currently working in our patrol division as a supervisor. Please be advised that officer Wieters has been promoted several times during his employment and he is an outstanding officer, highly trained and motivated. Any consideration on his behalf would be much appreciated and certainly deserved.”

Mr. Garcia went on to say Mr. Wieters became a Lieutenant at Statewide and has received various awards. He stated Mr. Wieters is not taking this lightly, he knows what he did was wrong and asked the board to please consider all of the factors, and consider putting his license on probation so he can continue his life's work.

Board member England stated that he seemed to recall that the first time the board heard this case, Mr. Wieters was not forthcoming about it being a case of forcible sex, not just that she was underage. He stated that he still had an issue with that, as it speaks to his credibility.

Board member Hayden stated he had a question regarding exception III and asked that it be clarified. Ms. Walters stated that the ALJ did not amend the findings of facts. That issue was not fully addressed at the hearing. When Mr. Wieters applied for licensure, he did not indicate he was required to register as a sex offender. Board member Hayden asked if that application entered into evidence with the ALJ, to which she stated it was not.

Board member England stated Mr. Wieters attorney's description of what a Deferred Adjudication is not accurate. For the board's clarification he stated that you plead out as either No Contest or Guilty, with a Deferred Adjudication. He stated that if you meet certain terms, later down the road that case can be dropped. But to suggest that it is not a conviction is probably not accurate in most cases of the law.

Mr. Garcia clarified that the indictment was for aggravated sexual assault, but as there was no weapon used and it was pled down to sexual assault, which indicates that she was under age and had sexual contact. Board member England stated that that was Mr. Garcia's assumption, but that he did not make that assumption. He stated a conviction because the girl was underage is not the only reason why he was convicted. Board member Hayden stated that under statute for the purposes of expungement, the State of Texas does consider it a conviction. Mr. Garcia stated they could not get an expunction. Board member England stated he was asking those questions because of the credibility of the applicant.

Vice-chairman Johnsen stated that the first time Mr. Wieters was before the board, he stated he was working on getting himself off of the sex offender registry. Mr. Garcia stated that they looked into doing that but they are not able to get him removed. Vice-chairman Johnsen stated that was the only reason he was granted a probational license in the first place.

Board member Hayden stated he had a concern with the Department excepting to an amended finding of fact of the ALJ's proposal to show Mr. Wieters did not disclose that he was required to register as a sex offender, and yet there is no evidence of that. He stated that due to the Department's failure to meet their burden of proof, he was going to have to exclude this in his consideration of the case. Ms. Walters stated the Department attempted to amend it but Mr. Garcia objected so it was not allowed. She went on to say that the Department was not asking for revocation of the license because of his application but because of being a sex offender registrant.

Vice-chairman Johnsen made a motion to deny SOAH's decision and revoke Mr. Wieters' license as a non-commissioned security officer. Board member Crenshaw seconded the motion. The motion passed by a vote of 4 in favor (Chism, Johnsen, Smith, England) and 3 against (Black, Crenshaw, and Hayden).

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

Chad Scott- Docket No. 405-14-3186

Mr. Scott was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Burkhalter stated Mr. Scott's application for registration as an alarm salesperson was summarily denied based on his 2 misdemeanor convictions for Driving Under the Influence and Resisting or Obstructing a Peace Officer.



Secretary Smith stated he was convicted of resisting a peace officer and shouldn't be eligible to be licensed as a security officer until January 21, 2017. He went on to say Mr. Scott declined to be an alarm salesperson, which is not a public threat job, but after he receives this license he could be a security officer. He then asked if anyone could enlighten him as to why the SOAH judge was correct in ignoring the resisting the peace officer conviction and granting him a license?

Board member England asked if it were staff's position that the SOAH judge's conclusions of law are incorrect, to which Ms. Burkhalter stated no. She went on to say that he did complete his obligations to these convictions, as well as a year of AA after the court order was completed. She also stated that the SOAH judge considered that the resisting arrest was related to his DUI arrest and not related to his occupation.

Board member Hayden stated that he noted in the petition a reference was made to Mr. Scott's misstatement on his application and asked if his application was ever submitted into evidence? He went on to add that Mr. Scott could be above reproach but if he lied on his application, that would be reason enough to deny licensure. Ms. Burkhalter stated that she did not recall if that was submitted into evidence. Also, she stated that Mr. Scott was having difficulty with the translation between a misdemeanor under California law and under Texas law and that was a reason the ALJ did not consider it as part of her decision.

Board member England made a motion to affirm SOAH's decision and grant Mr. Scott's application for registration as an alarm salesperson. Board member Black seconded the motion, and the board voted unanimously in favor of the motion.

#### Christopher Burns- Docket No. 405-14-3985

Mr. Burns was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Burkhalter stated Mr. Burns' application for registration as an alarm salesperson was summarily denied due to his Class A misdemeanor conviction for Driving While Intoxicated.

Board member Hayden made a motion to affirm SOAH's decision and grant Mr. Burns' application for registration as an alarm salesperson on the condition of no driving while on the job until January 31, 2017. Board member Black seconded the motion, and the board voted unanimously in favor of the motion.

#### Leon Bryant- Docket No. 405-14-4399

Mr. Bryant was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Burkhalter stated Mr. Bryant's licenses as a commissioned security officer and personal protection officer were summarily revoked based on his Class A misdemeanor conviction for violation of a protective order.

Chairman Chism asked if this conviction fell under the federal statute making him ineligible to possess a firearm, to which Ms. Burkhalter stated that he is not federally disqualified. Board member Hayden asked if the department had any issue or objections with the findings of fact, to which Ms. Burkhalter stated no. Board member England asked if there were Findings of Fact that were used for Conclusions of Law in the amount of time since the offense occurred. He also asked if there were any letters of recommendation submitted. Ms. Burkhalter stated no, and directed the board to look at the Findings of Fact, numbers 8-11 and offered her opinion that the case turned on number 8 specifically. Board member England asked if it was staff's position that Chapter 53 was properly considered, to which Ms. Burkhalter stated that it was. Board member Crenshaw asked if he understood correctly that Mr. Bryant violated the protective order by making a phone call. Ms. Burkhalter stated that it was actually a text message that violated the protective order. Board member Hayden asked if the text message was inflammatory, to which Ms. Burkhalter stated it was not. Ms. Burkhalter directed the Board to Mr. Bryant regarding further questions from the Board surrounding the circumstances of the offense.

Mr. Bryant addressed the board stating that he wanted to make it clear that none of the texts he sent were in any way threatening, but rather an apology. He stated he was telling his son that he loved him on his birthday. He explained that he was already enrolled in the police academy, and someone assumed he made a threat by text. He went on to say that the judge at the time stated since there were no lawyers involved he gave judgment to the plaintiff. Mr. Bryant stated he wasn't aware that the protective order stated he had to go through the lawyers for all communications. He stated he thought he could still be in contact with his children.

Board member Crenshaw made a motion to uphold SOAH's decision and grant Mr. Bryant's licenses as a commissioned security officer and personal protection officer. Board member England seconded the motion and board voted unanimously in favor.

#### Davis Healey- Docket No. 405-14-4398

Mr. Healey was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Burkhalter stated Mr. Healey's application for registration as an alarm salesperson was summarily denied based on his misdemeanor conviction for criminal mischief. She also stated Mr. Healey was not present because he lives in Utah. She stated that according to testimony from Mr. Healey at SOAH, this was a domestic argument with his now ex-wife. The property damaged during the argument, which resulted in the criminal mischief conviction was his own.

Board member Crenshaw made a motion to affirm SOAH's decision and grant Mr. Healey's application for registration as an alarm salesperson. Board member Black seconded the motion and the board voted unanimously in favor.

Attorney for the Department, Jean O'Shaw, presented the following case to the Board:

#### Forrest Gunter- Docket No. 405-14-0912

Mr. Gunter was present to address the Board on this case, but did not have counsel present on his behalf. Ms. O'Shaw began by reminding the Board they had originally heard Mr. Gunter's case in April of 2014, affirming SOAH's decision and denying his application for licensure as a non-commissioned security officer. She went on to say that he contacted the Department 2 or 3 days before this present date asking for information regarding when his case would be going before the Board for decision, a full 6 months after having his case heard by the Board. Notice of the Board meeting was sent to his address that was on file with the Department as required by statute.

Board member England made a motion to not hear Mr. Gunter's case. Board member Crenshaw seconded the motion and the board voted unanimously in favor of not hearing the case.

**Agenda Item IX: Adjournment**

Chairman Chism introduced this agenda item. Vice-chairman Johnsen made a motion for adjournment. Board member Black seconded the motion, and the Board voted unanimously in favor of the motion. At 11:48am, the October 17, 2014 meeting of the Private Security Board was adjourned.