

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
JANUARY 22, 2015**

**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;
Louis Beaty, Staff Attorney, Office of Regulatory Counsel, Legal Operations;
Huel Haynes, Manager, Licensing and Registration Service;
Ryan Garcia, 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 9:10 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 Meeting held October 17, 2014

Chairman Chism introduced this agenda item. Upon review, Vice-chairman Johnsen made a motion to accept the minutes as written. Board member Crenshaw seconded the motion and the board voted unanimously in favor of the motion.

Agenda Item II: Quarterly Licensing Report from Regulatory Services Division

Assistant Manager Ryan Garcia presented the licensing totals for the first quarter, 9/1/14 to 11/30/14. He stated, for this time period, the Division received 286 original company applications, 1,288 company renewals, 13,997 original individual applications, and 10,207 individual renewals not including online registrations. He went on to say, for the same time period the Division processed the following licenses/registrations:

- 177 original company licenses (128 online, 49 manual),
- 1,300 company renewals (985 online, 315 manual),
- 8,853 individual registrations (7,666 online, 1,187 manual),
- 9,044 individual renewals (6,718 online, 2,326 manual),
- and 6,084 employee information updates (2,714 online, 3,370 manual).

He also stated this time period showed 5,683 active company licenses, 292 active school licenses, and 153,206 active individual registrants.

Assistant Director Bowie addressed the board with an update regarding Board member Brian England. He stated Mr. England had been involved in a traffic accident while traveling to the meeting. Mr. England conveyed to Mr. Bowie that his car was at a repair shop in Waco and that he was uninjured.

Assistant Director Bowie next addressed the board stating, 10 years prior the Private Security Board joined the Texas Department of Public Safety. At that time one attorney was assigned to assist with the transition. He continued by stating that this attorney had a wealth of knowledge regarding the statute and rules for the Private Security profession. He went on to say that as of January 1, 2015 this attorney, Steve Moninger, had taken a position of Policy Analyst with the Regulatory Services Division and was no longer under the Office of General Counsel. Assistant Director Bowie thanked Mr. Moninger for his years of service to the Private Security Board and industry by presenting him with a plaque of appreciation.

Finally, Assistant Director Bowie addressed the board on the issue of company license certificates. He stated that it was brought to the Division's attention that the company license certificates were in need of an update in order to look more professional when mounted in places of business. He presented a sample copy of the new certificate to each board member as well as having a sample available to the audience for viewing. He stated that the new certificates would go into production the first week of February 2015.

Agenda Item III: Report by Regulatory Services Division regarding the replacement of the CLIPS database

Assistant Director Bowie addressed this issue stating that as a Board, Division staff and Agency everyone has anguished over the database known as CLIPS. He stated it is outdated, cannot be adequately updated, and no longer serves the needs of the Division, the Board, nor the profession. With the assistance of DIR (Department of Information Resources) and their vendor NIC, he stated that the Division undertook the laborious process of creating a new database. This new database will be known as TOPS, Texas Online Private Security.

Assistant Director Bowie explained the process of creating this database thus far:

- September 2014- the current state assessment was completed
- December 2014- the future state assessment was completed. Also staff held a contest on what the name the new system, and the winner was TOPS.
- January 2015- the same people who have been working on VIC will be transitioning into working on TOPS. The same people who have been working on HB2305, which will transition state of Texas drivers from having both a registration sticker and inspection sticker to having only one registrations sticker, will now be working on the TOPS project.

He went on to say that beginning February 1, 2015 the project will be kicked off and that the Division expects full completion of this project in 2017, with the first interaction taking place in the summer of 2016. Chairman Chism asked if the new TOPS system would allow for companies to go into the system and terminate their employees, to which Assistant Director Bowie stated yes, this was one of the things that would be implemented.

Agenda Item IV: Reports from Board Committees

The Advisory Committee member Mark Smith reported that during the last Board meeting there was discussion regarding what constituted a Branch office. He stated that Branch office is defined in the Texas Private Security Act §1702.002(2) as:

- (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 the board records

He stated that this means wherever a security company conducts, solicits, or advertises business that isn't the principal place of business as shown inboard records is considered a "branch office". He went on to say that the only problem he sees with this is that some companies go in rural or remote areas and advertise that they are taking applications for employment in a place other than their principal place of business. In an effort to make the definition of branch office more meaningful he suggested the following change:

- (A) identified to the public as a place from which business is conducted, solicited, or advertised;
- (B) where a record containing information related to employees is maintained; and
- (C) at a place other than the principal place of business as shown in board records.

He stated that the use of the word maintain, because that would give a clear definition regarding where employee records are permanently kept. Board member Crenshaw asked if a company had a branch office and didn't have any employee to maintain the records, would they be exempt from being a branch office. Mr. Smith stated that they would be and as an example he stated that his company has a satellite office that is used to give out employee paychecks, do scheduling, etc but no employee records are kept there and it is not advertised as the principal place of business. Mr. Crenshaw stated that there could be other companies that see this new definition and could pull all of their records out of an office and not have to pay fees to be a branch office. He stated that there are some very small companies that have branch offices and don't maintain any records at all. A branch office by definition is where business is conducted.

Chairman Chism stated that the key to the definition of branch office is whether or not they advertise that they are doing business at that location to the general public. Board member

Hayden stated that in the proposed rule change it states a branch office is a place that is identified to the public as a place in which business is conducted, solicited or advertised and must also be a place other than the principal place of business and does not maintain any employee files. He asked if that wouldn't allow an office to advertise, yet not keep employee files there and still be exempt from being considered a branch office. He went on to say that it seems that with today's technology the public should be able to go online and know that an office is a branch office of the main company. Mr. Smith stated that he was trying to help avoid having satellite offices being marked as branch offices when no business is being conducted there. He stated that some large companies will advertise that they are hiring and use a hotel or satellite office for this purpose and they should not have to obtain a branch office license just for that. Mr. Hayden stated that the concern is not so much about advertising in hiring, but rather in the day to day operations of that location. He went on to say that the definition could be tightened up to state that it is a place where business is conducted, solicited and advertised. The purpose is so that the consumer, who has received an advertisement, can go online and see that a particular office is affiliated with the main office and where that office is also located.

Chairman Chism referred this to the Rules Committee to work with staff and improve upon this definition for the safety of the general public without overburdening companies.

The Rules Committee member Wade Hayden reported that the Rules Committee was tasked with looking at the definitions of §35.9 – Advertisements and §35.25- Assumed Names; Corporations. He stated that the committee's proposed changes were as follows:

§35.9 (a)(1) The company name and address, including all assumed names, as it appears in the records of the department; and

§35.25(a) all individual applicants doing business under an assumed name or names shall submit a certificate of assumed name from the county clerk of the county of the applicant's residence showing the registration of each assumed name used. ~~compliance with the assumed name statute~~

§35.25(b) corporations and other entities permitted and governed by the Texas Business Organizations Code using an assumed name or names shall submit a certificate of assumed name from the Texas Secretary of State and the county clerk of the county of the applicant's residence showing the registration of the assumed name for each assumed name used. ~~compliance with the assumed name statute.~~

He said these changes would prevent an individual or company who is not properly licensed from doing business under an assumed name and the public not being able to determine the identity of that company or individual.

Chairman Chism referred these rule changes to be reviewed by the Rules Committee, DPS staff and legal department.

Agenda Item V: Discussion and possible action regarding uniform requirements for Non-Commissioned Security Officers

Assistant Director Bowie addressed the board stating that several meeting ago amendments were made to the Administrative Rules as a whole. In doing so, the rule effecting non-commissioned guard uniform requirements to display the word “security”, the officer’s last name, and the name of their company was removed, but remained for commissioned guards. He stated it was brought to the attention of staff by several members of the industry and after discussion it is recommended that the rule be amended to reflect that non-commissioned uniformed guards adhere to the same standards of commissioned guards.

§35.14 Security Officer Uniforms

- (a) All commissioned and non-commissioned private security officers shall, at a minimum, display on their outermost garment the name of the company by which the security officer is employed, the word “Security”, and the last name of the security officer. These items shall each be of a size, style, shape, design, and type that are clearly visible by a reasonable person under normal conditions.
- (b) Subsection (a) does not apply to a personal protection officer while performing personal protection services in plain clothes.

~~§35.82 (c) Commissioned private security officers shall, at a minimum, display on their outermost garment the name of the company by which the commissioned security officer is employed, the word “Security”, and the last name of the security officer. These items shall each be of a size, style, shape, design, and type that are clearly visible by a reasonable person under normal conditions comply with Section 35.14 of this chapter.~~

Secretary Smith stated some security officers wear suits and having a name tag sewn on is not feasible; nor are those who work concerts or special events who wear t-shirts stating “security”. He stated that what the rules state now works for companies who want their people in suits rather than in a uniform. While maybe having a name tag might work, the word “security” and the company name doesn’t seem applicable. Vice-chairman Johnsen asked if these officers wear badges, to which Mr. Smith stated that many companies are going to cloth badges and sewing one of those on a suit will not work. Board member Crenshaw stated that these Rule changes seemed pretty broad in definition and asked if a guard were to use even a temporary badge, like a sticker, would they be in compliance. Mr. Bowie stated that they would be in compliance. He also pointed out that there are some very professional badges, or pocket protectors out there. Board member Hayden asked if a lanyard with an ID also fit these requirements, to which Mr. Bowie stated yes.

Chairman Chism asked if there were any public comments on this issue. George Craig, with Secureco., Inc, stated that the way this was dealt with was that it had to be approved by the board and delegated the authority to the staff, which gave staff a lot of latitude rather than having to deal with tags, etc.

On a motion made by Board member Crenshaw and seconded by Board member Hayden the board voted unanimously to approve new rule §35.14 and amendments to rule §35.82 as submitted.

Agenda Item VI: Public Comment

Bonnie Brown Morse – with Locksmith Association of San Antonio, addressed the board. She stated that she was at a loss regarding the assumed name issue discussed by the board. She asked if she were correct in understanding that companies with multiple DBAs (Doing Business As) were now to register each with the Department.

Chairman Chism advised her to speak with Department staff directly in order to have her questions answered as the board was not permitted to answer questions during this portion of the meeting.

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

The board elected not to take executive session at this time.

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

The board reconvened at 10:40am.

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

Attorney for the Department, Jean O’Shaw, addressed the board concerning the first case to be heard. She stated that Mr. Aguilar had again asked for a continuance in having his case heard by the board. Board member Hayden stated that in the motion for continuance it states that the disciplinary action by the department is over a matter that is scheduled for trial March 26, 2015. He asked if Mr. Aguilar admitted to a conviction in 2013. Ms O’Shaw stated that the new trial he is awaiting is on the same matter. She further stated that there was no objection by Mr. Aguilar’s attorney at the SOAH hearing regarding the amendment filed by the Department.

Vice-Chairman Johnsen asked if she knew why he was requesting another continuance in this matter, to which Ms. O’Shaw stated she thought Mr. Aguilar was hoping he will be acquitted in his new criminal trial. Board member Hayden stated that if his understanding were correct Mr. Aguilar has been convicted of this crime, had a new trial date set and has had that continued. He stated this was the fourth continuance he has asked for the board to consider.

Board member Hayden made a motion to deny Mr. Aguilar’s motion for continuance. Vice-Chairman Johnsen seconded the motion and the board voted unanimously in favor of the motion.

Ms. O’Shaw presented Mr. Aguilar’s case 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 stated Mr. Aguilar’s renewal application for registration as an owner/manager/private investigator was summarily denied based upon the pending Class A misdemeanor offense of Tampering with a Government Record. At the time of his hearing, Mr.

Aguilar testified he was convicted on November 7, 2013, of a Class A misdemeanor, Tampering with a Government Record.

Vice-chairman Johnsen made a motion to uphold SOAH's decision and summarily deny Mr. Aguilar's application for registration as an owner/manager/private investigator. 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. Ayala, Sanford, McDonald, and Harvey were not present, while Justice, Guerrero, Padilla, and Mercer were present.

Secretary Smith made a motion to uphold SOAH's decision and summarily deny or suspend their applications or registrations:

- Jose D Ayala- Docket No. 405-14-4768 (deny application)
- David R Sanford- Docket No. 405-14-4962 (suspend registrations)
- Joseph J McDonald IV- Docket No. 405-14-5102 (deny registration)
- Eric B. Harvey- Docket No. 405-15-0622 (deny application)

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

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

Steven Justice- Docket No. 405-14-3826

Mr. Justice was present to address the Board on this case, and also had counsel present on his behalf: Jennifer Riggs with Riggs and Ray. Mr. Heath stated that Mr. Justice's application for registration as a commissioned security officer was summarily denied based on his felony conviction for Rape of a Child. Mr. Justice also failed to include this felony on his application. Having been made aware of the aforementioned felony, the department informed Mr. Justice that his current registrations as a non-commissioned security officer and private investigator were summarily revoked. Mr. Justice also failed to include this felony on these applications.

Ms. Riggs addressed the board on Mr. Justice's behalf stating that the facts of the case are not in dispute except that Mr. Justice's probation that was initially imposed for 5 years was overturned only 2 years after conviction. She stated that in 1985 the Judge set aside the conviction, it discharged Mr. Justice from probation, dismissed the indictment and expressly released Mr. Justice from all disabilities of the conviction. The situation here is that Mr. Justice, being 17 years old at the time, was having trouble at home and had permission to stay at a friend's house. The allegation is, from another teenager living in the house, that he assaulted her. There is evidence in the record that there was an effort later to extract money from Mr. Justice's family and that there was a recanting of the allegations after this occurred. Mr. Justice did not disclose his conviction on his applications because he received advice from his previous counsel that the effect of the order was as if he didn't have a conviction and he did not need to disclose this

information. Ms. Riggs urged the board to consider the factors of Chapter 53; consider Mr. Justice's age at the time, the length of time since the offense occurred, etc.

Board member Hayden asked if Mr. Justice's opinion from his attorney that his conviction was not a felony in writing and in evidence. Ms. Riggs stated that it is in evidence but not in writing; it is in testimony only. Mr. Hayden then asked why Judge Grey's order is so unique with what we have today. Ms. Riggs stated that they are close, but in 1985 the case law was such that it would be an acquittal. A court might look at subsequent changes to the code of criminal procedure and find different result may be obtained today. Mr. Hayden asked if Mr. Justice's trial was before the bench or jury or a guilty plea, to which Ms. Riggs stated it was a guilty plea.

Vice-chairman Johnsen stated that this is the only industry in which someone comes before the board to obtain a license for what we give licenses for. He asked why Mr. Justice didn't change professions. He stated that he wouldn't be able to become a doctor or lawyer with this type of conviction either. Ms. Riggs stated that Mr. Justice has tried other jobs and has not been able to make a living at them. She also stated that Mr. Justice didn't just apply for these licenses, he was licensed and employed under this profession. She stated that this is what he had been doing as a chosen profession and his employer wants him back.

Secretary Smith asked if his alleged victim stated the event did not happen. Ms. Riggs stated that the victim said it didn't happen to Mr. Owens, but did not say it on the record.

Board member Crenshaw asked if he was on the sexual offender registry, to which Ms. Riggs stated he was not. Mr. Crenshaw then asked how long he had been licensed, to which Mr. Heath answered that it was less than a year. He further stated that this did not show up on the first background check that was performed.

Board member Smith made a motion to uphold SOAH's decision and grant Mr. Justice's registrations as a non-commissioned security officer and private investigator. This motion failed for lack of a second.

Chris Owens, with Nortex security, was next to address the board. He stated that he was testifying on behalf of Mr. Justice because he wanted to be sure justice was served. He stated that when he hired Mr. Justice he did his due diligence and ran a background check, to which nothing came back. He stated Mr. Justice worked for this company for 6 months and had been a great asset to the company. He went on to say that when this came up he did some investigating of his own and spoke with the girl who was involved in the incident. He stated that she told him that this did not happen and that Mr. Justice did not do this to her. Attorney Aaron Heath stated he objected to this statement as it is hearsay.

Chairman Chism asked what the age of the victim was, to which Mr. Heath answered 13 years old.

Board member Crenshaw made a motion to deny SOAH's decision and summarily revoke Mr. Justice's registrations as a non-commissioned security officer and private investigator. This motion failed for lack of a second.

Jan Adams, Mr. Justice's ex-wife, was next to address the board. She asked the board to give Mr. Justice his license. She stated that this conviction was expunged and was not supposed to be brought up again. She stated that Mr. Justice wants to continue doing what he loves. She went on to say that he has done nothing wrong or against the law in the last 30 years.

Vice-chairman Johnsen asked if it was possible to tie a person to one specific company where they would lose their license if they leave that company's employ. Mr. Heath stated that it was unenforceable to do that.

The board went into Executive Session at 11:44.

The board returned from Executive Session at 11:48.

Vice-chairman Johnsen made a motion to uphold SOAH's decision and grant Mr. Justice's registrations as a non-commissioned security officer and private investigator, contingent on his continued employment with Nortex Security, license #C16882. Secretary Smith seconded the motion. The motion passed with Chism, Johnsen, and Smith voting in favor, while Crenshaw and Hayden voted against.

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

Gary Guerrero - Docket No.405-15-0256

Mr. Guerrero was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Burkhalter stated that Mr. Guerrero's application for registration as an alarm systems installer was summarily denied based on his conviction for the state jail felony level offense of Unauthorized use of a Vehicle. Mr. Guerrero was originally granted deferred adjudication for the offense, but terms and conditions were violated and he was convicted and sentenced to 10 months imprisonment. The sentence was completed in March 2010. Pursuant to the Board's rules, this state jail felony level offense is disqualifying for a private security license for 10 years from the date of completion of the sentence, or until March 2020.

Mr. Guerrero stated that he wanted his license as an alarm installer. He stated Mr. Moore brought him information regarding obtaining his license and was trying to recruit him for employment with his company. He stated that he doesn't advertise his conviction because it is not something that he is proud of.

Mr. Moore, of Security Systems, addressed the board stating that he solicited Mr. Guerrero to work for his company. He stated that he watched him and saw that he had a good work ethic and the potential to do well in this profession. He stated it took a long time to get Mr. Guerrero to agree and to speak to him about his conviction. He stated he is a young man that made a poor decision, but he is not a bad person. He stated that Mr. Guerrero was a young man, living on his own when he had a friend show up with a stolen car. Instead of calling the police, Mr. Guerrero took it upon himself to abandon the car in a parking lot on the other side of town. While doing so, he was stopped and arrested. He went on to say that Mr. Guerrero received deferred

adjudication for this, but again made mistakes with his probation officer and ended up in jail. Mr. Moore stated that he is a fine man who made poor decisions.

Nora Castillo Dominguez, Mr. Guerrero's mother, next addressed the board. She stated that her son deserves a second chance. She stated that as a single mother she has 11 children, 6 of which are adopted. She went on to say that her son has grown and learned to make better decisions. She stated that Mr. Guerrero has learned from his mistakes and wants a better life.

Board member Crenshaw asked if the board had discretion through the use of Chapter 53 to grant Mr. Guerrero a license. Ms. Burkhalter stated that the board had the authority to overturn SOAH's decision.

Board member Crenshaw made a motion to deny SOAH's decision and summarily deny Mr. Guerrero's application for registration as an alarm system installer. Board member Hayden seconded the motion, and the board voted unanimously in favor of the motion.

Michael Padilla - Docket No. 405-15-0395

Mr. Padilla was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Burkhalter stated that Mr. Padilla's application for registration as a security salesperson was summarily denied based on his felony conviction for Burglary of a Habitation. Mr. Padilla was sentenced to seven years of confinement which was suspended and Mr. Padilla was placed on community supervision. Mr. Padilla had his community supervision revoked on two separate occasions and was sentenced to 4 years of confinement.

Mr. Padilla addressed the board on his own behalf stating that 12 years ago he associated with the wrong people. He stated that he is now a full time single dad, who goes to church and is living God's way. He stated that he is a leader and he helps with the Boys and Girls Club. He went on to say that he has a couple of companies looking to employ him. He stated that it is hard to be a single dad and not have a regular job with regular hours. He stated that he is able to travel and work in New Mexico because he doesn't have to be licensed, but it takes a lot of his time.

Vice-chairman Johnsen asked if he knew that Burglary of a Habitation is a permanently disqualifying offense, to which Mr. Padilla stated that he did not.

Vice-chairman Johnsen made a motion to deny SOAH's decision and summarily deny Mr. Guerrero's application for registration as a security salesperson. Board member Crenshaw seconded the motion, and the board voted unanimously in favor of the motion.

John Paul Mercer - Docket No. 405-15-0237

Mr. Mercer was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Burkhalter stated that Mr. Mercer's application for registration as a non-commissioned security officer was summarily denied based on his conviction for sexual assault

of a child as well as his duty to register as a sex offender. Mr. Mercer was convicted of the felony offense and sentenced to ten years of confinement, all of which was suspended.

Board member Hayden asked what the department's basis was for denial, to which Ms. Burkhalter stated it was based on Sexual Assault of a Child, which is a "3g offense" and considered permanently disqualifying.

Vice-chairman Johnsen asked if Mr. Mercer was required to register as a sex offender, to which Mr. Mercer stated that he was. He addressed the board stating that the incident occurred in 1991 and was with a 16 year old girl. He stated that in 1993 a law was passed that required him to begin registering as a sex offender. He went on to explain that this occurred when he was 24 years old and it was 24 years ago. He stated he has had no other trouble with the law since then. He stated that he made one stupid mistake of cheating on his wife of now, 32 years. He stated he has an attorney who is working on getting him removed from the sex offender registry. He continued by saying he works in the oil field with his wife and is never around the public, let alone children.

Vice-chairman Johnsen told Mr. Mercer that he was not basing his decision on anything that Mr. Mercer said or didn't say, but simply is basing it on what the law says. Board member Hayden also addressed Mr. Mercer and stated that he empathized with his situation and agrees he is not abusive; however he didn't have the capability to overturn the law.

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

Agenda Item IX: Adjournment

Chairman Chism introduced this agenda item. Vice-chairman Johnsen made a motion for adjournment. Secretary Smith seconded the motion, and the Board voted unanimously in favor of the motion. At 12:33pm, the January 22, 2015 meeting of the Private Security Board was adjourned.