

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
JULY 21, 2015**

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

BOARD MEMBERS PRESENT:

Honorable Patti James, Chairwoman
Honorable Howard Johnsen, Vice-Chairman
Honorable Mark Smith, Secretary
Honorable Charles Crenshaw
Honorable Wade Hayden
Honorable C.D. Siems

BOARD MEMBERS NOT PRESENT:

Honorable Albert Black

STAFF PRESENT:

Steven McCraw, Director, Texas Department of Public Safety
RenEarl Bowie, Assistant Director, Regulatory Services Division;
Louis Beaty, Deputy Chief, Legal Operations, Office of General Counsel;
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 9:01 a.m.

Vice-Chairman Johnsen 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: Oath of Office, Chairwoman and Board Member

Assistant Director Bowie introduced this agenda item as well as Department of Public Safety Director Steven McCraw to welcome the new members. Director McCraw thanked the board for

the honor of being there. He stated that he wanted to thank them all for what they do, and for their leadership in the community. He further stated that all of their work is appreciated in helping better secure the state of Texas.

Patti James and Claude Siems each took the oath of office as follows:

“I (Patti James and Claude Siems) do solemnly swear, that I will faithfully execute the duties of the office of (Private Security Board Chairwoman and Private Security Board Member) of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.”

At this time both Ms. James and Mr. Siems were acknowledged as being in attendance on the Board and took their places on the stage.

Agenda Item II: Election of Officers, pursuant to Texas Occupation Code §1702.026

Chairwoman James introduced this agenda item. She stated that in accordance to Texas Occupation Code §1702.026, the board needed to elect someone to the positions of Vice-chairman and Secretary.

She asked if there were any nominations for Vice-chairman. Secretary Smith made a motion to elect the Honorable Howard Johnsen to the position of Vice-chairman. Board member Hayden seconded the motion and the board voted unanimously in favor of the motion. Chairwoman James asked if there were any other nominations. As there were no other nominations, Mr. Howard Johnsen was elected to the position for the term of 2 years.

Chairwoman James asked if there were any nominations for Secretary. Vice-chairman Johnsen made a motion to elect the Honorable Mark Smith to the position of Secretary. Board member Hayden seconded the motion and the board voted unanimously in favor of the motion. Chairwoman James asked if there were any other nominations. As there were no other nominations, Mr. Mark Smith was elected to the position for the term of 2 years.

Agenda Item III: Approval of Minutes for Board Meeting held April 2, 2015

Chairwoman James introduced this agenda item. Upon review, Board member Hayden made a motion to accept the minutes as written. Secretary Smith seconded the motion and the board voted unanimously in favor of the motion.

Agenda Item IV: Quarterly Licensing Report from Regulatory Services Division

Assistant Manager Ryan Garcia presented the licensing totals for the third quarter, 3/1/15 to 5/31/15. He stated, for this time period, the Division received 304 original company applications, 1,487 company renewals, 13,614 original individual applications, and 11,103 individual renewals not including online registrations. He went on to say, for the same time period the Division processed the following licenses/registrations:

- 220 original company licenses (167 online, 53 manual),
- 1,434 company renewals (1,107 online, 327 manual),

- 10,387 individual registrations (9,201 online, 1,186 manual),
- 9,767 individual renewals (7,063 online, 1,856 manual),
- 6,843 employee information updates (3,045 online, 3,798 manual).

He also stated this time period showed 5,743 active company licenses, 304 active school licenses, and 156,429 active individual registrants.

Agenda Item V: Reports from Board Committees

Secretary Smith addressed the Board stating there was no report from the Advisory Committee.

Board member Crenshaw addressed the Board stating discussion would take place during Agenda items VI and VII.

Agenda Item VI: Discussion and possible action regarding changes to §35.9-Advertisements

Board member Hayden addressed the Board stating the proposed changes to this rule were for companies to include all assumed names of their company when advertising. Secretary Smith made a motion to accept the changes to this rule as written. Board member Hayden seconded the motion. Before a vote could be taken, Board member Crenshaw asked for clarification regarding the motion. Chairwoman James stated that the rule changes would mean that if a company were to have 3 assumed named, they would need to list all four names in their advertisements. Assistant Director Bowie confirmed that this was correct, and Board member Hayden further stated there seemed to be an issue with companies not including their assumed names in advertisements.

Chairwoman James also asked if changes to these rules related to all means of advertisement-radio, print, billboards, etc. Assistant Director Bowie confirmed that she was correct.

Vice-chairman Johnsen stated this rule change had the potential to cost a company a lot of time and money. Assistant Director Bowie stated that he did realize this and that these changes were brought to the Board by members of the industry. He stated that the Department's stance on the changes is such that if the Board adopts them, the department will enforce them.

Board member Crenshaw stated that the rules committee did not see a version of this rule that they were completely comfortable with and stated that if a vote were to be taken on the current version he would vote no.

Board member Hayden asked Assistant Director Bowie if changes to this rule were brought to the board because there were companies advertising by their assumed names and the department was not able to trace it back to the original company to determine who they were. A.D. Bowie stated that was the case. Board member Hayden went on to say this rule was designed to prevent people from advertising under a name that the department didn't recognize.

Board member Crenshaw stated that at this time he did not see any language that the committee was comfortable with and if the board decided to table this for further discussion, he would encourage the industry associations to help draft language for this rule.

Chairwoman James tabled this rule for further discussion and clarification.

Agenda Item VII: Discussion and possible action regarding changes to §35.25- Assumed Names; Corporations

This item was opened for discussion. Vice-Chairman Johnsen asked if companies were currently sending in all assumed names when they register their company. Assistant Director Bowie stated that companies were sending in all of their assumed names when registering. Vice-Chairman Johnsen then stated that he should then be able to look up a company and determine all names that they are also operating under. A.D. Bowie stated that this was not completely accurate in that only the primary company names will show up on a web search.

Board member Hayden stated changes to this rule was getting in line with the Texas Occupations Code and does not change anything, but rather removes confusion.

Chairwoman James opened the floor to discussion.

Susan Griswold, with ASSIST, addressed the board. She stated that she would like to see a change in language from “residence” to “where business resides”. The reason, she stated, is that if someone lives in one county but their business is registered in another county, it makes more sense to have it in the county of business. She further stated that another member suggested “primary place of business” rather than “residence”.

Board member Hayden stated that an individual can file assumed names in any county or all 254 counties. An entity can do the same but must also file with the Secretary of State. He stated that he was not aware of any requirement that it would be in the applicant’s resident county because they could file in all. He suggested another possible change to “from county clerk of each residence”.

Bonnie Brown Morse, with LASA, stated that a large number of locksmiths are mobile and cover multiple counties. When registering these companies they register where company records are kept rather than all counties they work in.

Catherine Torres, licensed private investigator, stated that the board should consider using “and/or” when referring to business location. She went on to explain that when she started her business she lived in Johnson County but her business was located in Tarrant County. She concluded by saying the use of “and/or” would cover both sides of this issue. Specific language that she presented was “County clerk of the county in which the assumed names is filed and/or from each county in which the assumed name is filed”.

Board member Crenshaw asked if changes made to this rule was sent back to Agency staff for review, to which AD Bowie stated that these changes were done jointly between the rules committee and staff. He added that if there was this much confusion regarding the rule changes

it may be prudent to table this discussion and reconsider them. He further stated that the rule changes had been posted online and that his office had not received any comments from the public regarding these changes.

Board member Crenshaw made a motion to approve the rule changes as written. Secretary Smith seconded the motion and the board voted unanimously in favor.

Agenda Item VIII: Discussion and possible action regarding changes to Subchapter O- Active Military and Spouses- Special Conditions

Steve Moninger addressed the board regarding this item. He stated that the proposed amendment to Subchapter O in regards to active Military and their spouses came about as a result of SB1307 during the last legislative session. He stated that the changes proposed would make the language simpler as well as bring it in line with statute changes.

Board member Hayden made a motion to accept all changes to Subchapter O as written. Board member Crenshaw seconded the motion and the board voted unanimously in favor of the motion.

Agenda Item IX: Update and possible action regarding Digital Forensics and Investigations (Eastfield College)

AD Bowie addressed the board on this item. He stated that Mr. Patterson, with Eastfield College, addressed the board at the last meeting. He stated Mr. Patterson was seeking guidance from the board regarding the private investigation curriculum that they were developing. Since then the department has approved Eastfield College's curriculum for continuing education credits. He went on to say that the 24 hour course is designed to give individuals instruction on being private investigators. Department staff is still reviewing this program but are inclined to recognize it as the equivalent of 3 years of experience as is required for licensure. He concluded by stating that it seemed to be a good program and will benefit those who wish to get into the private investigation field.

Agenda Item X: Public Comment

George Aguilar – on his own behalf, addressed the board. He stated he wanted the board to consider reinstating his license after he was charged with a Class C misdemeanor and the charges were dropped. Chairwoman James stated that while the board would take this under advisement this really wasn't the forum to discuss this issue. Mr. Aguilar stated that he had exhausted all avenues of appeal process. Assistant Director Bowie stated that if the board were agreeable, Mr. Aguilar should be directed back to his office so that he and staff could go over the procedures necessary to get his license reinstated if statute allows.

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

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

Chairwoman James called for a break at 9:59 am.

The board reconvened at 10:20am.

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

Chairwoman James called roll to determine which individuals, with cases before them, were present. Lewis, Jenkins, Etse, R. Washington, Haney, K. Washington, Franz and Guerrero were not present, while Lunsford, Couch, Holiday, Houston, Owens, and Weatherspoon were present.

Board member Hayden made a motion to affirm SOAH's decisions and summarily deny or suspend the applications or registrations for:

- Star N. Lewis- Docket No. 405-15-1848 (deny application for registration)
- Donald R. Jenkins- Docket No. 405-15-2140 (deny application for registration)
- Gustave K. Etse- Docket No. 405-15-1849 (deny application for registration)
- Rondie L. Washington- Docket No. 405-15-3152 (deny application for registration)
- Jasmine N. Haney- Docket No. 405-15-2488 (suspend registration)
- Kymberlei T. Washington- Docket No. 405-15-2489 (suspend registration)
- John W. Franz- Docket No. 405-15-3573 (suspend registration)

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

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

Jason A. Lunsford- Docket No. 405-15-2138

Mr. Lunsford was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Burkhalter stated that Mr. Lunsford's application for registration as a noncommissioned security officer was summarily denied based on his felony conviction for Credit Card Abuse and his second degree felony conviction for Robbery.

Mr. Lunsford addressed the board stating that since his convictions he was working to change his life direction by furthering his education and correcting wrongs that he has done. He asked to present letters of recommendation to the board.

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

Teddy T. Couch - Docket No.405-15-1993

Mr. Couch was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Burkhalter stated that Mr. Couch's application for registration as a private investigator was summarily denied based on his Class A misdemeanor conviction for Driving While Intoxicated.

Mr. Couch addressed the board stating he was there to ask the board to uphold the SOAH judge's decision and grant him his private investigator license. Secretary Smith asked him if he presented evidence of fitness relating to the factors set forth in Chapter 53 at his hearing, to which Mr. Couch stated he did in the form of a letter of recommendation from the director of his department.

Secretary Smith made a motion to uphold SOAH's decision and approve Mr. Couch's application for registration as a private investigator. Board member Hayden seconded the motion. The motion passed with James, Hayden, Johnsen and Smith voting in favor, while Crenshaw and Siems voted against.

John W. Holiday - Docket No. 405-15-1222

Mr. Holiday was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Burkhalter stated that Mr. Holiday's application for registration as a noncommissioned security officer was summarily denied based on his federal felony conviction for False Claims against the federal government. She further stated that Mr. Holiday made a material misstatement on his application, stating that he had never been convicted in any jurisdiction of a felony level offense.

Mr. Holiday addressed the board stating that in 2007 he received a federal conviction regarding a house that he owned. He stated he misread the FEMA application and thought he was authorized to receive benefits, but actually was not. He stated that he paid a fine and received 1 year probation. He also pointed out that he has not been convicted of any other offenses since.

Secretary Smith made a motion to uphold SOAH's decision and summarily deny Mr. Holiday's application for registration as a noncommissioned security officer. Board member Siems seconded the motion, and the board voted unanimously in favor.

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

Sharon M. Houston - Docket No. 405-15-2483

Ms. Houston was present to address the Board on this case, but did not have counsel present on her behalf. Mr. Heath stated Ms. Houston's registration as a noncommissioned security officer had been summarily revoked based on her Class A misdemeanor conviction for Bail Jumping and Failure to Appear.

Secretary Smith asked if he understood the facts correctly in that Ms. Houston received a traffic ticket a few months after her husband died and she forgot to show up for the court date. Mr. Heath stated that was correct, she received a Class B misdemeanor for Driving While License Suspended. Secretary Smith asked if there was any other criminal history, to which Mr. Heath stated it was not clear, as the SOAH judge stated there wasn't any other evidence of such provided but there also wasn't any testimony that there wasn't.

Ms. Houston addressed the board asking that they reinstate her license. She stated she did acknowledge not paying the ticket. She further stated she was having a lot of issues in her life at the time, though that did not excuse anything. She stated that she made a mistake and did go to jail for it. Secretary Smith stated Ms. Houston did show a long employment record as well as good conduct. He also pointed out that she supports her niece and her two children as well. He asked if she satisfied all requirements of her conviction, to which she stated yes.

Secretary Smith made a motion to uphold SOAH's decision and reinstate Ms. Houston's registration as a non-commissioned security officer. Vice-chairman Johnsen seconded the motion. The motion passed with James, Hayden, Johnsen, Siems, and Smith voting in favor, while Crenshaw voted against.

Branden D. Owens - Docket No. 405-15-2496

Mr. Owens was present to address the Board on this case, but did not have counsel present on his behalf. Mr. Heath stated Mr. Owens' registration as a commissioned security officer had been summarily revoked based on his Class A misdemeanor conviction for Possession of a Dangerous Drug.

Mr. Owens addressed the board stating he was charged with possession of a dangerous drug that was Ibuprofen. He explained it was his aunt's prescription and she left it in his car. He stated that he got further into trouble by driving on a suspended license in order to meet his probation officer. He later furthered his troubles by continuing to work and carry a weapon, which he stated he was unaware of not being allowed to do.

Secretary Smith asked if was correct in understanding that Mr. Owens was convicted only 2 months earlier, to which he stated that was correct.

Board member Crenshaw made a motion to uphold SOAH's decision and summarily revoke his registration as a commissioned security officer. Board member Hayden seconded the motion, and the board voted unanimously in favor.

Derrick Weatherspoon - Docket No. 405-15-1527

Mr. Weatherspoon was present to address the board in this case, but did not have counsel present on his behalf. Mr. Heath stated that Mr. Weatherspoon's application for registration as a noncommissioned security officer was summarily denied based on his Class B misdemeanor conviction for Theft.

Mr. Weatherspoon addressed the board stating that he was 20 years old when the incident occurred. He explained that he was a struggling college student at the time who was going to school and also taking care of his ill grandmother. He stated that if he had it to do over again he would not have stolen a video game in order to return it for cash. He went on to say that he had been working for Securitas for about 4 or 5 months before finding out that he was ineligible for working security. He also is working a second job as an accounts manager.

Chairwoman James asked if he was still on probation, to which he stated that he got off probation in 2012. Board member Hayden stated that the record indicated he received deferred adjudication in 2010, then had that revoked in May 2012. He asked Mr. Weatherspoon what condition of community supervision he failed to meet. Mr. Weatherspoon stated he was to complete 40 hours of community service, take a theft prevention class and pay \$900 in costs. However, he stated he only paid \$600 and did not take the theft classes due to the location and length of time it took to get there interfering with take care of his grandmother.

Board member Hayden made a motion to uphold SOAH's decision and summarily deny his registration as a noncommissioned security officer. Vice-chairman Johnsen seconded the motion, and the board voted unanimously in favor.

Andrew Guerrero - Docket No. 405-15-1497

Mr. Guerrero was not present to address the board in this case, nor did he have counsel present on his behalf. Mr. Guerrero's application for registration as an alarm systems installer was summarily denied based on his felony conviction for Burglary of a Habitation.

Chairwoman James asked if Mr. Guerrero had a parole violation in 1995, to which Mr. Heath stated that he did. Board member Hayden asked if Mr. Guerrero's FBI clearances were admitted into evidence at the SOAH hearing, to which Mr. Heath stated that they were not; only Mr. Guerrero's testimony. Board member Hayden further stated that the ALJ stated "Nevertheless, the facts asserted in the motion flatly contradict Applicant's testimony. Although this contradiction gives the ALJ some concern, the evidence is inconclusive as to whether Applicant's memory failed him- the motion was filed 20 years ago, whether he lied about the grounds for the motion or whether the motion itself was inaccurate, and as a result, never granted." He then asked again if there was ever any evidence presented regarding his security clearances, to which he was told it was only Mr. Guerrero's word. Board member Hayden went on to state that it concerned him that Mr. Guerrero is already working in a similar field that is not regulated by the Texas Private Security Board or any other Department.

Vice-chairman Johnsen stated he was under the thought that once someone was convicted of burglary of a habitat they were no longer eligible to obtain a license through the board. Secretary Smith stated that under §1702 the board retains authority to consider Chapter 53 when determining someone's fitness to hold a license. He further stated that the ALJ had to have taken these factors into consideration and that was why they granted him licensure. Board member Hayden stated that the ALJ did so with reservation: "were it not for this contradiction, the ALJ would, without any reservations, recommend the Applicant's application be granted". He further stated that even after applying Chapter 53 the ALJ had reservations.

Board member Hayden made a motion to overturn SOAH's decision and summarily deny Mr. Guerrero's application for registration as an alarm systems installer based on the fact that the ALJ did not properly apply or interpret applicable law, agency rules, written policies provided under Subsection (c), or prior administrative decisions. Board member Crenshaw seconded the motion. The motion passed with James, Hayden, Johnsen, Siems, and Crenshaw voting in favor, while Smith voted against.

Agenda Item XIII: Adjournment

Chairwoman James introduced this agenda item. Board member Crenshaw made a motion for adjournment. Board member Hayden seconded the motion, and the Board voted unanimously in favor of the motion. At 10:59 am, the July 21, 2015 meeting of the Private Security Board was adjourned.