

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
OCTOBER 16, 2015**

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

BOARD MEMBERS PRESENT:

Honorable Howard Johnsen, Vice-Chairman
Honorable Mark Smith, Secretary
Honorable Wade Hayden
Honorable Albert Black

BOARD MEMBERS NOT PRESENT:

Honorable Patti James, Chairwoman
Honorable Charles Crenshaw
Honorable C.D. Siems

STAFF PRESENT:

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 8:57 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: Approval of Minutes for Board Meeting held July 21, 2015

Vice-Chairman Johnsen introduced this agenda item. Upon review, Board member Hayden made a motion to accept the minutes as submitted. Secretary Smith seconded the motion and the board voted unanimously in favor of the motion.

Agenda Item III: Reports from Board Committees

There were no reports from these committees

Agenda Item II: Quarterly Licensing Report from Regulatory Services Division

Assistant Manager Ryan Garcia presented the licensing totals for the fourth quarter, 6/1/15 to 8/31/15. He stated, for this time period, the Division received 297 original company applications, 1,557 company renewals, 14,119 original individual applications, and 10,934 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 (181 online, 39 manual),
- 1,521 company renewals (1,165 online, 356 manual),
- 10,036 individual registrations (8,917 online, 1,119 manual),
- 9,453 individual renewals (7,336 online, 2,117 manual),
- 7,050 employee information updates (3,121 online, 3,929 manual).

He also stated this time period showed 5,793 active company licenses, 307 active school licenses, and 157,039 active individual registrants.

Agenda Item IV: Public Comment

Jeremy Brewster – representing Security Officers Union of Houston, addressed the board. He stated that he was before the board to bring three requests to their attention:

1. With the conflicts between the public and anyone wearing a badge, they were requesting that the board adopt a new rule regarding schools. He stated half of the people getting through the schools are hardly taking any classes before being licensed. It seemed as though as long as they were able to pass a background check they were getting licensed and it is putting the rest of the security officers in danger. They would like to see stricter training in order to receive a license.
2. He stated that the next thing they wanted to request was that the board do away with licensing through schools all together and consider requiring education of security officers at the college level.
3. He stated that the final thing they wished to bring to the board is to eliminate the number of officers used to investigate crimes by officers and companies and pass back investigative services to municipalities where they are located, so it would be more efficient in catching the people doing the crimes and prosecuting them.

Vice-chairman Johnsen asked if he was a police officer to which Mr. Brewster stated he was not but his group was in close contact with the police and these were requests that they actually had brought up to the union. Mr. Johnsen then asked if he and his group were affiliated with any of the industry groups represented at this meeting, to which Mr. Brewster stated that he was not and that they were forming a brand new organization.

Bonnie Brown Morse – representing Locksmiths of San Antonio, addressed the board. She stated that she wanted to thank the board for all of their hard work and their commitment to being at the meeting.

Assistant Director RenEarl Bowie – representing the Regulatory Services Division of DPS, addressed the board. He stated he was addressing the Board during Public Comment because everything he wished to address was advisement and didn't rise to the level of creating separate agenda items.

1. He first stated the Regulatory Services Division recently hired a new Senior Manager of the Licensing and Registration Service. He stated that after a lengthy interview process Mr. Chris Sims was selected for the position. Mr. Sims joined the Department coming from the Texas Department of Agriculture. Mr. Sims also came with experience in local and state government as well as experience with the Arlington Police Department.
2. He stated that the previous day the Public Safety Commission met and that one of their items for consideration was passing of the Private Security Board rule regarding assumed names, discussed at the previous Private Security Board meeting. He stated that after discussion the Commission received the recommendation to remand the rule back to the Private Security Board for further review.

Board member Hayden stated that some of the issue with the rule was the use of "assumed names or names" in the language and whether statute permitted the use of more than one assumed name. He stated that the Rules Committee would continue to look at this rule and work on the proper language.

3. Assistant Director Bowie stated the Department is continuing to progress on the new database called TOPS. He went on to say that it had been brought to his attention that some people hold several pocket cards and endorsements. It was originally thought that one pocket card should be able to have all of the endorsements listed and people should not need to carry multiple cards, however due to the dates that each expires it has become necessary. He stated that one possible solution would be to have an expiration date for the card itself and all endorsements are valid until the expiration date of that card, which would be a 2 year period. He also stated that there would be a drawback to this solution in that if your card is due to expire in 3 months and you add an endorsement to that card, then that endorsement would expire in 3 months also. He finished by saying that this issue would be formally brought before the board once more information was available, but he wanted to give everyone an idea of where this was heading in a public forum.

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

The board elected to take executive session at this time. The Board broke at 9:20am.

The board reconvened at 9:42am.

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

Board member Hayden called roll to determine which individuals, with cases before them, were present. Brackeen, Berry, Iracheta, Minica and Caravantes were present.

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

- Sean Alan Jones - Docket No. 405-15-3574 (summarily revoke registration)
- Anthony M. Gant - Docket No. 405-15-4617 (summarily deny application for registration)
- Pedro Antonio Melendez - Docket No. 405-15-4319 (summarily deny application for registration)
- Kenyon Dupree Saddler - Docket No. 405-15-4318 (summarily deny renewal application for registration)
- Steven Andrew Weeks - Docket No. 405-15-5130 (summarily deny application for registration)
- Rashika Pruitt - Docket No. 405-15-5128 (summarily deny application for registration)
- Jesse Chavez Jr. - Docket No. 405-15-4042 (summarily deny application for registration)
- Shirley M. Guy - Docket No. 405-15-4162 (summarily deny application for registration)
- Gerald Wayne Williams - Docket No. 405-15-4049 (summarily deny application for registration)
- Rives Miller Grogan - Docket No. 405-15-4043 (summarily deny application for registration)
- Davron Karimov - Docket No. 405-15-5127 (overturn summarily suspended registration)

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

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

Travis Alan Brackeen - Docket No. 405-15-3642

Mr. Brackeen was present to address the Board on this case, but did not have counsel present on his behalf. Mr. Heath stated Mr. Brackeen's application for registration as an electronic access control device installer was summarily denied based on his 2011 Class A misdemeanor conviction for Resisting Arrest, Search, or Transportation and his 2015 Class B misdemeanor conviction for Obstructing Highway or Other Passageway.

Mr. Brackeen addressed the board stating he has been doing this type work for the last 3 years. He also stated he is a single father of a 3 year old daughter. He told the board that he is really good at what he does and made a couple bad decisions. He stated that one of those mistakes was in not finishing his probation.

Board member Hayden then asked Mr. Brackeen a series of questions:

- Who do you work for? -High Speed Concepts
- How long have you worked for them? -almost a year
- Do you have letters of recommendations - I gave three of them to SOAH judge
- Who were your letters from? - my father, a friend & operations manager of that company.
- What type of work do you currently do? -I'm a helper with fire alarm installations
- What were your arrests for? -DWI, but it was dropped down to Obstruction of a Highway. I left a bar after having a drink and my motorcycle wouldn't start so I sat down on the curb. The police came and arrested me.

Board member Hayden stated that he found that the Findings of Fact in this case were contrary to the evidence. He stated that the SOAH judge stated that Mr. Brackeen lacked the fitness to perform his job, but he provided letters of recommendation from his employer that he can uphold and carry out his duties.

Board member Hayden made a motion to overturn SOAH's decision and grant Mr. Brackeen's application for registration as an electronic access control device 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 Black seconded the motion. The motion passed with Hayden, Black, and Johnsen voting in favor, while Smith voted against.

Theodore Bernard Berry - Docket No. 405-15-4293

Mr. Berry was present to address the Board on this case, but did not have counsel present on his behalf. Mr. Heath stated that Mr. Berry's application for registration as a commissioned security officer was summarily denied based on his 1990 felony conviction for Burglary of a Building as well as his federal disqualification from possessing a firearm.

Mr. Berry addressed the board stating he had been a noncommissioned security guard for 4 years. He stated that he came before the board 3 years ago and was told dedication to his job was needed. Since that time he has gotten certified in handcuffing and the use of an ASP baton. He went on to say that he has done work for the Fort Worth Police Department and moved up to Sergeant.

Secretary Smith stated that there was nothing that the board could do to grant him a commissioned license because he is federally disqualified from possessing a firearm. Board member Hayden told Mr. Berry that he commended him for his dedication to his profession and for his self-improvement, but he is disqualified from possessing a gun on a federal level, not just this state. He went on to explain that the board did not have the authority to change federal law and they cannot go against that law. Mr. Berry asked if there was anyone higher that he could go to to appeal the decision and he was told only the United States Federal Court could change that law.

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

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

Nestor Alonzo Iracheta- Docket No. 405-15-5129

Mr. Iracheta was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Burkhalter stated that Mr. Iracheta's application for registration as an alarm

salesperson was summarily denied based on his Class B misdemeanor conviction for obstructing a highway.

Mr. Iracheta addressed the board through a series of questions posed to him:

- When are you eligible? – 1/8/2018
- Who is your employer? – Time Warner Cable
- What type of work? – retail sales
- Do you go into people's homes? – No
- You are seeking an Alarm Salesperson license? – Yes. But I will continue to work in retail. People come into the store and sign up for services.
- What was "Obstruction of Highway" charge? – I was arrested for a DWI, but the charge was lessened to Obstruction as long as I successfully finished probation, which I did.

Board member Smith made a motion to Affirm SOAH's decision to overturn the denial and grant Mr. Iracheta's application for registration as an Alarm Salesperson. Board member Hayden seconded the motion, and the board voted unanimously in favor of the motion

Johnie Anthony Minica- Docket No. 405-15-4210

Mr. Minica was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Burkhalter stated that Mr. Minica's applications for registration as an alarm systems installer and alarm salesperson was summarily denied based on his state jail felony conviction for theft between \$1500 and \$20,000. Mr. Minica was originally granted deferred adjudication for the offense, but terms and conditions were violated and he was convicted and sentenced to two years of state jail, probated for five years. The sentence was completed in August 2008.

Mr. Minica addressed the board stating that the theft charge was for the theft of logs. He explained that when he was 19 years old his uncle asked him to move the logs from one location to another. He stated that he didn't realize he was doing anything wrong and this occurred 12 years ago.

Board member Hayden asked if the current company he wished to work for was his family's business, to which he stated it was his father-in law's company.

Secretary Smith made a motion to affirm SOAH's decision to overturn the denial and grant Mr. Minica's application for registration as an alarm systems installer and alarm salesperson. Board member Black seconded the motion, and the board voted unanimously in favor of the motion. The motion passed with Black, Johnsen and Smith voting in favor, while Hayden voted against.

Ivan Francisco Caravantes - Docket No. 405-15-4276

Mr. Caravantes was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Burkhalter stated that Mr. Caravantes' application for noncommissioned security officer registration was summarily denied based on his Class A misdemeanor conviction

for assault causing bodily injury on a family member and for the material misstatement he made in his application.

Mr. Caravantes addressed the board stating that he applied for a security guard position and once hired was told that he was ineligible. Board member Hayden asked if there was a question on his application asking if he was ever convicted of a crime, to which he stated there was. Mr. Hayden then asked what he answered on that application, to which he stated that he said no. When questioned as to why he gave that answer, Mr. Caravantes stated that he was only arrested the one time and didn't know about the conviction. He went on to say that he has never been in trouble since this one time.

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

Thevie Kirk Roy, Sr - Docket No. 405-15-3721

Mr. Roy was not present to address the Board on this case, nor did he have counsel present on his behalf. Board member Hayden stated that while the Department originally denied Mr. Roy's application, in May, the SOAH judge decided that that denial should be overturned and he should be granted a license despite his felony conviction of Burglary of a Habitation.

Secretary Smith stated there was reference in the case regarding a letter of recommendation and asked if that had been presented to the SOAH's judge. He also asked what the judge's rationale was for granting him licensure? Ms. Burkhalter stated that if the board would look at Findings of Fact numbers 10-15 detail why the SOAH judge found that as well as the conclusion and recommendation on page 6. Board member Hayden stated that he didn't see how the judge looked at this case and properly applied the law. He went on to say that Mr. Roy was 27 at the time of this conviction and the judge stated "that was a youthful indiscretion". He stated that he did not consider that youth, but an age when he should have known better.

Board member Hayden made a motion to overturn SOAH's decision and summarily deny Mr. Roy's application for registration as a noncommissioned security officer 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 Black seconded the motion, and the board voted unanimously in favor of the motion

Donald Ray May - Docket No. 405-15-3153

Mr. May was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Burkhalter stated Mr. May's application for registration as a commissioned security officer was summarily denied due to this Class A misdemeanor conviction for assault on a family member. She further stated that Mr. May's conviction left him federally disqualified from owning or using firearms. In Mr. May's case the SOAH judge considered his fitness to perform when making their decision so the Department filed exceptions asking them to remove those considerations of fitness from two sections of the Proposal of Decision as well as

removing 2 Conclusions of Law- 8 and 9. She stated that fitness should not be considered when federally disqualified from carrying a firearm according to 1702.163(g). She further stated that the SOAH judge rejected her exceptions and she was asking the board to uphold them.

Secretary Smith stated that he was ultimately denied license and asked why it was important to strike these? Board member Hayden stated the right decision was made for the wrong reasons. Ms. Burkhalter stated that if Mr. May were to take this case further these conclusions of law and the analysis would be very important in making a decision whether or not to grant licensure. Board member Hayden stated that Mr. May also lied on his application and that was another reason to deny his licensure.

Board member Hayden made a motion stating that based on SOAH judge not properly applying and interpreting applicable law and/or agency rules, by applying the analysis that was not necessary, as he is federally disqualified from possessing a firearm, Findings of Fact numbers 8 and 9 should be struck from the record as well as the conclusions of law #8 and #9. Secretary Smith seconded the motion, and the board voted unanimously in favor of the motion.

Agenda Item VII: Adjournment

Vice-chairman Johnsen introduced this agenda item. Board member Black made a motion for adjournment. Board member Hayden seconded the motion, and the Board voted unanimously in favor of the motion. At 10:50 am, the October 16, 2015 meeting of the Private Security Board was adjourned.