

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
JANUARY 15, 2016**

**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 Albert Black
Honorable Wade Hayden
Honorable C.D. Siems
Honorable Debbra Ulmer

STAFF PRESENT:

RenEarl Bowie, Assistant Director, Regulatory Services Division;
Valerina Walters, Managing Attorney, Office of Regulatory Counsel;
Chris Sims, Senior Manager, Licensing and Registration Service;
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 9:02 a.m.

Chairwoman James 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, Board Member

Chairwoman James administered the Oath of Office to Ms. Debbra Ulmer:

"I, Debbra Ulmer, do solemnly swear or affirm that I will faithfully execute the duties of the office of Texas 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."

Agenda Item II: Approval of Minutes for Board Meeting held October 16, 2015

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

Agenda Item III: Quarterly Licensing Report from Regulatory Services Division

Assistant Manager Ryan Garcia presented the licensing totals for the first quarter, 9/1/15 to 11/30/15. He stated, for this time period, the Division received 270 original company applications, 1,377 company renewals, 14,733 original individual applications, and 10,473 individual renewals not including online registrations. He went on to say, for the same time period the Division processed the following licenses/registrations:

- 206 original company licenses (161 online, 45 manual),
- 1,365 company renewals (1,068 online, 297 manual),
- 9,167 individual registrations (7,950 online, 1,217 manual),
- 9,248 individual renewals (7,174 online, 2,074 manual),
- 7,324 employee information updates (3,733 online, 3,591 manual).

He also stated this time period showed 5,821 active company licenses, 310 active school licenses, and 157,454 active individual registrants.

Agenda Item IV: Reports from Board Committees

There were no reports from these committees

Agenda Item V: Discussion and possible action regarding changes to §35.3- Registration Applicant Pre-employment Check

Steve Moninger presented this item to the board, stating that in response to House Bill 4030 this rule was reviewed. He stated the current rule became unnecessary in light of the statute change. He explained the change states that if someone wants to work prior to receipt of their license, they must submit an application, including fingerprints, and wait 48 hours. Upon the 48th hour if the department has not indicated on the website that the application is complete or if the applicant has not received a denial letter, then the company can do a more substantial background check then put the person to work. He went on to explain that the current rule applies to everyone, while this modified rule applies only to those who want to work before receiving their license. He also stated that statutorily the background check must include a criminal history check as well as a check of the Sex Offender database through DPS. He stated changes to this rule is mirroring the statutory changes and makes it a bit easier to follow.

Vice-chairman Johnsen asked if the results of the background check done by the business needed to be turned over to DPS as part of the applicant's application. Mr. Moninger stated that the background check should be retained in the employee file for field inspection by DPS, as DPS would be performing their own background check before licensure. Board member Ulmer asked if the 48 hours were clock hours or business hours, to which Mr. Moninger replied that it was not specified and that may be a point of discussion before a final vote was made.

Secretary Smith suggested that this rule be turned over to the Rules committee, with the assistance of the Advisory committee, for discussion and consideration.

Chairwoman James tabled this rule for review by the Rules and Advisory committees, with input from the industry.

Agenda Item VI: Discussion and possible action regarding changes to §35.21- Registration Applications

Steve Moninger introduced this rule to the board. He stated that this rule change was also in light of statutory changes. He explained that this rule talks about requirements to register a substantially complete application and work in a regulated capacity and he was concerned that this may be confusing. Also, he wanted to point out deletion of B(3) and (4). These are requirements, in part, of the federal firearms law, not to work. Chairwoman James asked for verification that these changes were taking out the alien registration language along with work authorization for noncommissioned.

Secretary Smith suggested that this rule be turned over to the Rules committee, with the assistance of the Advisory committee, for discussion and consideration.

Chairwoman James tabled this rule for review by the Rules and Advisory committees, with input from the industry.

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

Steve Moninger introduced this rule to the board. He stated that this had been bounced around quite a bit and was originally proposed to clean up the Assumed Name rule. What has been done with this rule was to basically track that statute.

Board member Hayden stated this has been in the Rules committee for a lengthy time and is near completion. He stated that since the committee would now be discussing two additional rules as well he would like to hold this over for discussion and presentation to the board at one time.

Board member Smith stated that if anyone from the industry wanted to send the Advisory committee any input they should send them to him at msmith@smithprotective.com . Also if they have any ideas, input, or sources send them along so that he might fact check.

Board member Hayden stated that if anyone from the industry wanted to send any input/comments/etc or even set up a meeting with the Advisory committee they should send them directly to him at whayden@7750law.com .

Chairwoman James tabled this rule for review by the Rules and Advisory committees, with input from the industry.

Agenda Item VIII: Public Comment

No public comments

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 9:29 am.

The board reconvened at 9:55 am.

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

Chairwoman James called roll to determine which individuals, with cases before them, were present. Chavez, Campos, Munoz, Domm and Hill were present.

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

- Harold J. McCleskey - Docket No. 405-16-0308 (approve application for registration)
- Roberto Cervantes, Jr.- Docket No. 405-16-0309 (approve renewal application for registration)
- Alma Ventura- Docket No. 405-15-5187 (summarily deny application for registration)
- Jacklynn Q. Johnson- Docket No. 405-15-4302 (summarily deny application for registration)
- Ulysses Thomas- Docket No. 405-15-5085 (summarily deny application for registration)
- Travis Richardson- Docket No. 405-15-4749 (summarily deny application for registration)
- Joe Martinez- Docket No. 405-15-5089 (summarily deny application for 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:

Jesse Chavez, Jr - Docket No. 405-15-4042

Mr. Chavez was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Burkhalter stated Mr. Chavez's case had previously been heard by the board and voted on, but Mr. Chavez had asked for a rehearing. Mr. Chavez stated that he had been struggling to obtain his license and there was currently a company in Abilene who would put him to work. He further stated that he had paid all fees, associated with his case, back in September, and had completed a Character education program.

Board member Ulmer made a motion to rehear Mr. Chavez's case. Board member Black seconded the motion. The motion passed with James, Black, Johnsen, Siems, and Ulmer voting in favor, while Hayden and Smith voted against.

Ms. Burkhalter stated that Mr. Chavez's application for registration as an alarm installer was summarily denied based on 2 misdemeanor convictions for resisting a public officer and contempt of municipal court.

Mr. Chavez stated he was pulled over in 2010 with a friend who was driving. When his friend exited the vehicle he was tased and then Mr. Chavez was advised to exit the vehicle. He stated that he was also tased, beaten up, and charged with resisting arrest. Chairwoman James asked why he was told that he was pulled over, to which he replied because the driver missed a turn and made a U-turn. She then asked if he pled guilty to resisting arrest, to which he answered that he pled no contest. He further stated he didn't know he could have gone to internal affairs at the time regarding this case. Chairwoman James then asked if this was the only time he has been in trouble with the law, to which he answered yes. She next asked how he currently supported himself. Mr. Chavez answered that he did tape and floating of drywall. Board member Hayden asked if he had paid all fees associated with this case. Mr. Chavez stated that he had.

Ms. Burkhalter reminded the board that evidence had already been taken in at SOAH and the board was only to vote regarding the information presented to them in the Proposal For Decision.

Board member Ulmer made a motion to deny SOAH's decision and grant Mr. Chavez's application for registration as an alarm installer. Board member Black seconded the motion. The motion passed with James, Black, Johnsen, Siems, and Ulmer voting in favor, while Hayden and Smith voted against.

Edmond C. Munoz - Docket No. 405-16-0313

Mr. Munoz was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Burkhalter stated that Mr. Munoz's commissioned security registration was summarily revoked based on his Class A misdemeanor conviction of driving while intoxicated and based on his status as a chemically dependent person under the Private Security Act. Mr. Munoz's renewal of his registration as a security salesperson was also summarily denied based on the DWI conviction as well as a pending Class B misdemeanor offense of harassment. She further explained that Mr. Munoz's 2 DWI convictions within 10 year is disqualifying from him holding a commission. She stated the SOAH judge agreed, but did feel that he should be granted his security salesperson license.

Vice-chairman Johnsen asked if he were seeking a commissioned security officer license, to which Mr. Munoz stated that all he wanted was his security salesperson license. He went on to explain that he currently works in the office because he can't perform any of the operations due to being ineligible, but he wants to get back to that type of work.

Board member Hayden asked what the status of the Harassment charges were presently. Mr. Munoz stated he sent in all documents back to the DA's office and went to court on the 12th of January. He further explained that the hearing was reset for 4 months from the current date. Board member Hayden then asked, and Mr. Munoz answered, the following series of questions:

- These charges were from 2013? – yes
- Did you have an attorney? – yes
- Did the attorney file a speedy trial motion? – yes

- You had 2 DWI charges? – yes. One charge was because I had been drinking and while backing out of the garage, someone hit me.
- You have completed all programs required of you? – yes

Board member Smith made a motion to uphold both of SOAH’s decisions and summarily revoke Mr. Munoz’s commissioned security officer registration, while granting his renewal application for registration as a security salesperson. Board member Siems seconded the motion, and the board voted unanimously in favor of the motion.

Board member Black left the meeting at this time.

Attorney for the Department, Mia Settle-Vincent, presented the following case to the Board:

Champion Home Security: Jeff Taylor (owner) - Docket No.405-16-0201

Mr. Taylor, owner of Champion Home Security, was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Settle-Vincent stated that on or about February 13, 2015, an administrative investigation of Champion was conducted to determine its compliance with the Act and department rules and regulations for licensed alarm system companies. As a result of the investigation, the Department determined Champion failed to submit substantially complete applications for twenty-two employees who were providing alarm system company activities, namely installations, sales, or servicing as required under the Act. Additionally, Champion operated without a qualified manager, in violation of the Act. The Department assessed an administrative fine of \$4,900 against Champion for unregistered employees and for operating without a qualified manager. After a hearing was held before SOAH, the ALJ determined the evidence did not support a fine for unregistered employees but recommended that an administrative fine in the amount of \$250 should be assessed for failing to timely designate a qualified manager.

Board member Hayden addressed the board stating that he had a problem with the Administrative Law Judge’s Findings of Fact. He stated that Mr. Taylor testified that he interpreted the Department’s rules as authorizing him to use his discretion in determining if a person was fit to work, and because the person’s conviction was 25 years old, “discretion was used in deciding to allow him to begin working for Champion”. Board member Hayden went on to say a Registered Sex Offender was allowed to go into homes of Texas citizens. He stated Mr. Taylor first ignored the rules and then sent him into homes to work, and this violated the trust of the people of Texas. He further stated that he found some of the Findings of Fact to be inaccurate and that under 2001.058 of the Texas Administrative Code, the ALJ did not properly apply the law in FOF:

- #14, stating there was no evidence of Champion’s lack of a manager caused any harm, when having the RSO going into homes was indeed doing potential harm
- #13, stating that Justin Porter was acting as the *de facto* qualified manager is false, as there is no such thing as a *de facto* manager

- #12, stating there was no evidence to the seriousness of operating without a manager, when allowing an RSO into homes was found out because that employee was the source of a murder investigation.

He further addressed the inaccuracies of the Conclusions of Law:

- #7- “For violating 37 TAC 35.43, the maximum penalty is \$500.00”, this is incorrect as the penalty is \$500.00 per every 14 days.
- #9- “Champion was not responsible for all of the delay in establishing a new qualified manager”. This should be struck as there is no excuse in statute that allows a delay in establishing a new qualified manager when one is removed.
- #10- “Champion should be assessed an administrative penalty of \$250.00”. Under statute they must follow the board rules and they failed to do so.

Board member Hayden further stated that he would like to impose more penalties on this company, but since the department didn’t ask for anything but the minimum \$500.00 he could not.

Board member Hayden made a motion that subject to amendments to Findings of Fact #12 and #14, and striking #13 in its entirety, the Board imposed the following fine on Champion Home Security: \$500.00 for having no qualified manager and \$200.00 for having a Registered Sex Offender in its employ. Board member Siems 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:

Antonio Campos - Docket No. 405-16-0491

Mr. Campos was present to address the Board on this case, but did not have counsel present on his behalf. He did, however, have an interpreter present to assist him: Agent Sandra Barrette.

Ms. Burkhalter stated that Mr. Campos’ registration as a commissioned security officer was summarily revoked based on his Class B misdemeanor conviction for interference with public duties.

Chairwoman James asked the following questions and Mr. Campos answered through the interpretation of Agent Barrette:

- How long were you a commissioned officer? – 10 years
- What circumstances interfered with you keeping your license? – I was accused of something not true. I used to work at a location in Houston that did gambling. I was accused of being part. The officer took my keys and arrested me, but the place was already closed.

Vice-chairman Johnsen asked:

- You were a guard at a gambling place? – I was only there a couple times. I always was sent to different locations

Board member Hayden asked:

- How long were you with that company? – 2 years
- What type of business was that establishment? – game room

- Who instructed you to lock up? – the workers from there. They had order that the owner had to close by 10pm every day.

Board member Smith stated that in Findings of Fact #13, the judge stated Mr. Campos did not act with, nor was he charged with, criminal intent. Secretary Smith made a motion to Affirm SOAH's decision and grant Mr. Campos' registration as a commissioned security officer. Board member Ulmer seconded the motion. The motion passed with James, Siems, Smith, and Ulmer voting in favor, while Hayden and Johnsen voted against the motion.

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

Cotie Domm - Docket No. 405-15-5084

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

Board member Ulmer asked Mr. Domm what he had done to rehabilitate himself after this conviction. He replied that he was in Army's substance abuse program, attended AA, paid his fines, and had not had a drink of alcohol since.

Board member Hayden stated that he was troubled with the judge's analysis of this case. He went on to explain that there were 8 factors that should be considered in this case, and among those were his past criminal offenses, his age at the time, the amount of time since the incident occurred and what was happening before and after the criminal activity. He went on to say that in the Findings of Fact he didn't see where these factors were addressed.

Chairwoman James asked Mr. Domm if he had any other history of criminal activity to which he stated he had an assault charge when he was 17 and deployed. He also stated he did have an issue with alcohol at that time.

Board member Siems asked Mr. Domm if he was currently going to classes to help with the PTSD that he is currently suffering with, to which he replied that he was attending classes through the VA and had been since September 2013.

Vice-chairman Johnsen asked how many DWIs he had had, to which Mr. Domm replied he only has had this one.

Secretary Smith made a motion to uphold SOAH's decision and grant Mr. Domm's application for registration as a private investigator. Board member Ulmer seconded the motion, and the board voted unanimously in favor of the motion.

Delores Hill - Docket No. 405-15-5087

Ms. Hill was present to address the Board on this case, but did not have counsel present on her behalf. Mr. Heath stated that Ms. Hill's application for registration as a noncommissioned security officer was summarily denied based on her Class B misdemeanor conviction for Interference with Public Duties.

Vice-chairman Johnsen asked Ms. Hill why the board should overturn the SOAH judge's decision and allow her to have a license. Ms. Hill responded that the incident that occurred was a mistake and the job where she used to work would take her back if she obtains her license.

Board member Ulmer asked Ms. Hill if she had ever been in trouble with the law before this incident to which she stated she had. When asked what the charges were and how long ago it occurred, she responded that she couldn't remember. Attorney Heath informed the Board that from 1979 until present, Ms. Hill has had multiple convictions estimated between 5 and 10.

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

Carlin Alexander - Docket No. 405-15-5188

Mr. Alexander was not present to address the Board on this case, nor did he have counsel present on his behalf. Mr. Heath stated that Mr. Alexander's application for registration as an alarm systems installer was summarily denied based on his felony conviction for Blue Light Cause Stop/Yield and his Class 1 misdemeanor conviction for Impersonating Law Enforcement. He stated that these charges occurred at the same time.

Board member Smith stated that in reviewing this case he had several reasons why he felt Mr. Alexander should be granted licensure:

- Mr. Alexander continued to work at an alarm installer in North Carolina after this incident occurred
- There was sufficient evidence of Mr. Alexander's strong work ethic
- Mr. Alexander was Honorably Discharged from the U.S. Marines
- Mr. Alexander suffered from PTSD as a result of combat at the time of this incident
- The mistake on his application was immaterial and he didn't think it was done on purpose; he didn't think that a Class 1 misdemeanor was the same thing as a Class A
- Mr. Alexander poses no risk to the public

Vice-chairman Johnsen pointed out that he impersonated an officer. Chairwoman James asked Mr. Heath if he knew the circumstances regarding this incident. Mr. Heath stated Mr. Alexander described the incident as one of road rage. He was driving a base vehicle that had a light on the car and when someone cut him off, he turned on the light and pulled them over and showed them something that resembled a badge.

Board member Hayden stated that he felt the SOAH judge did a really good job in documenting their decision in this case. He also stated that the judge made a good point that Mr. Alexander did disclose the felony conviction, but transferring one state's misdemeanor class to another's can be tricky and it probably wasn't done with intent to withhold information.

Secretary Smith made a motion to affirm SOAH's decision and grant Mr. Alexander's application for registration as an alarm systems installer. Board member Hayden seconded the motion, and the board voted unanimously in favor of the motion.

Christopher D. Pardue - Docket No. 405-15-5086

Mr. Pardue was not present to address the Board on this case, nor did he have counsel present on his behalf. Mr. Heath stated that Mr. Pardue's applications for registrations as a commissioned and a noncommissioned security guard were summarily denied based on his misdemeanor conviction for Petty Theft.

Mr. Heath asked the board to deny SOAH's decision as far as the Petty Theft offense being substantially similar to the Texas Class B misdemeanor for theft. He further stated that the judge relied on the actual events that occurred, specifically the value of the pants, while the analysis is looking at the elements of the misdemeanor and not consider the events that actually occurred. Board member Hayden asked what the difference is in California law between an misdemeanor or infraction. Mr. Heath stated it is up to prosecutors on how they want to charge it. An infraction is monetary penalty only and is similar to a Class C misdemeanor in Texas. Secretary Smith stated that the judge found there was insufficient evidence that California misdemeanor petty theft was substantially similar to Texas Class B for theft. Board member Hayden stated it could have been \$50 to \$950 and still be a misdemeanor in California. Mr. Heath stated that this charge ranges from a Class B to Class C misdemeanor. Board member Ulmer asked if Mr. Pardue had been in any other trouble, to which Mr. Heath stated he had not.

Secretary Smith made a motion to uphold SOAH's decision and grant Mr. Pardue his applications for registration as a noncommissioned and commissioned security officer. Board member Siems seconded the motion and the board voted in favor of the motion, with Chairwoman James voting against.

Agenda Item VII: Adjournment

Chairwoman James introduced this agenda item.

Board member Hayden asked if he was to be the only member of the Rules Committee. Chairwoman James stated that she was appointing Board member Debbra Ulmer to join him on the Rules Committee.

Secretary Smith made a motion for adjournment. Board member Ulmer seconded the motion, and the Board voted unanimously in favor of the motion. At 11:27 am, the January 15, 2016 meeting of the Private Security Board was adjourned.