

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
APRIL 22, 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 Wade Hayden
Honorable C.D. Siems
Honorable Debra Ulmer

BOARD MEMBERS NOT PRESENT:

Honorable Albert Black

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;
Steve Moninger, Senior Policy Analyst, Regulatory Services Division

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: Approval of Minutes for Board Meeting held January 15, 2016

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

Agenda Item II: Quarterly Licensing Report from Regulatory Services Division

Assistant Manager Ryan Garcia presented the licensing totals for the second quarter, 12/1/15 to 2/29/16. He stated, for this time period, the Division received 278 original company applications, 1,426 company renewals, 13,239 original individual applications, and 9,830 individual renewals not including online registrations. He went on to say, for the same time period the Division processed the following licenses/registrations:

- 187 original company licenses (141 online, 46 manual),
- 1,373 company renewals (1,146 online, 227 manual),
- 9,222 individual registrations (8,093 online, 1,129 manual),
- 8,552 individual renewals (6,875 online, 1,677 manual),
- 7,072 employee information updates (4,276 online, 2,796 manual).

He also stated this time period showed 5,826 active company licenses, 313 active school licenses, and 158,347 active individual registrants.

Agenda Item III: Reports from Board Committees

Board committee members stated they have been working on several Rules and would discuss further during those agenda items further in the meeting.

Agenda Item IV: Private Security Database Update

Rosemary Guerrero, Operations Manager for TOPS, introduced this item to the board. She stated the new TOPS (Texas Online Private Security) system would replace the current system, CLIPS. It would allow applications to be submitted online only, which will reduce paper storage of documents. In addition, it will streamline processes and increase workflow allowing for a more efficient licensing process. She further stated that this system will provide timely updates, have the licensing rules built into it, and has the ability to be changed as needed.

Ms. Guerrero stated that some of the features of this system for the industry include:

- Customized wizard driven applications
- All applications, including updates and reassignments, will be submitted online
- Secure online access to real-time status updates for applications
- Email correspondence throughout the application process
- Helper text and user guides

She went on to say they began working on this program in August of 2014 by doing a deep dive into the current processes. As they have gone along they have completed cycles of development, testing, and correction. User Acceptance Testing will begin in April with DPS employees. Data migration is expected to begin in July. Phase I External user features include all license types online, the system will recognize existing licenses and will tailor those applications

appropriately. Applicants will be able to login, check their application status, submit new applications and submit payment. Employers will be able to verify employment, and submit payment for single or bulk applications. She continued by stating that the internal features include a “Google” type search, work queues, document processing, and identity and background checks.

She went on to say that around March 23rd and 24th of 2016 letters to all active and renewable businesses were sent asking them to go online and submit their email addresses. As of April 21st the department had received 1,232 business addresses and 5,105 individual. Email will be the main way of communication in this new system.

Chairman James stated that she was excited about this new system and that from what she understood about the system, she would be able to create a user name and password specific to her. Ms. Guerrero also stated that the new system would also allow for updates to personal information as well.

Agenda Item II: Quarterly Licensing Report from Regulatory Services Division

Assistant Director Bowie asked the board to re-visit agenda item II. He stated the division had updates regarding enforcement. Major Jay Alexander was next to address the board on this item. He stated that recently the industry had seen a substantial number of upticks to investigations, inspections and overall compliance issues in the last few months. This fiscal year the Regulatory Crimes Bureau has:

- Made 14 arrests
- Filed charges against 25 people
- Completed 1000 guard inspections
- Completed 64 company inspections
- Conducted 199 investigations
- Conducted 140 Critical Infrastructure checks

In addition to these, he stated that the department is monitoring and taking a larger role in assisting with guard involved shootings and shootings of guards.

He went on to introduce Lieutenant Chuck Palcer of the Regulatory Crimes Service. He stated that Lt Palcer had 26 years of experience with the department. He began as a trooper and worked his way up to the SWAT team and ended up in the Education, Training and Research Division. He is certified to testify on the State’s behalf as an expert on use of force issues. He went on to say that Lt Palcer would be supervising a group of Special Agents.

Assistant Director Bowie next addressed the board giving them an update on a few of the investigations. He stated that he was recently contacted by members of the industry associations and board members asking about investigations being conducted. In response to that he decided to begin giving the board a quarterly report on investigation activity throughout the state. He also recognized staff member Liz Kisamore for her assistance in gathering and formatting this information.

Region 1 (Dallas area)

- a suspect was arrested for Operating a Guard Company without a Security Services Contractor License as well as Employing Unauthorized Employees. Charges were filed
- a case originated at HQ was referred to Criminal Investigations regarding an security officer involved shooting. During the investigation it was revealed that that person was not qualified as a commissioned officer.

Region 2 (Houston area)

- a suspect was arrested and had charges filed against them for Operating without a License who had been operating an alarm company without a license. Further investigation revealed that the suspect was wanted on other criminal charges
- a suspect had charges filed against them for Operating without a License for operating an unlicensed security company
- a case was referred from HQ involving an unlicensed locksmith company. Investigation revealed this business was offering to re-key locks without a license
- second degree felony charges were filed against an individual for Tampering with a Government Record who had been operating an unlicensed training school
- a case was referred from HQ involving an unlicensed locksmith company who was advertising services under the name of a company with no license.

Region 3 (McAllen area)

- uniformed security guards selling cocaine to undercover law enforcement officers. This investigation continues in a joint effort with DPS, Laredo PD and DEA

Region 4 (El Paso area)

- investigation resulted in a fine being leveled against a guard company in the amount of \$26,000.

Region 5 (Lubbock area)

- a suspect had charges filed against him for Impersonating a Security Officer in a church in Swisher County. He was approached by a DPS Trooper and was also found in possession of an ASP baton
- a case was referred from HQ involving an unlicensed locksmith.

Region 6 (Central Texas)

- 2 cases was referred from HQ involving an unlicensed alarm company.

He concluded by stating that this information is just a small amount of the investigative efforts ongoing by the division. He also stated that he would be providing this information to the board on a quarterly basis.

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

Steve Moninger, Policy Analyst, addressed the board on this item stating that HB 4030 states that the Department will notify applicants of whether or not their application is complete within 48 hours of receipt. However, for those applicants not notified in this timeframe they may begin work only if a more extensive background check is performed as set in statute. He stated that this left an assumption that everyone would need to perform these checks on their employees, so after discussion with the Rules committee, the rule was reworked to state that if an applicant is notified that their application is complete, in order to work, there must be a background check performed. And if they are not notified within 48 hours then a DPS background check must be performed by employer.

Board member Hayden stated that the difference in the new rule proposal from the old rule is: 1. in (d), the type of background check must be performed under HB 4030 and 2. in (c), the modification of the old background check without reference to a criminal clearance letter from a county clerk because that is only applicable in one county and not the whole state.

Secretary Smith made a motion to approve the rule changes as submitted. Board member Hayden seconded the motion and the board voted unanimously in favor. Motion and Rule amendments passed.

Agenda Item VI: Discussion and possible action regarding changes to §35.4- Guidelines for Disqualifying Criminal Offenses

Steve Moninger addressed the board on this item. He stated that the Texas Legislature repealed Article 42.12 (3g) of the Code of Criminal Procedure and added a new section. This rule change is referencing that change because without the amendment any convictions for the listed offenses occurring after January 1, 2017 would arguably not be subject to permanent disqualification under the rule.

Secretary Smith made a motion to approve the rule changes as submitted. Board member Hayden seconded the motion and the board voted unanimously in favor. Motion and Rule amendments passed.

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

Steve Moninger addressed the board on this item. He stated this rule had been before the board a few times and is a basic cleanup of the rule. Amendments to this rule remove alien registration or work authorization card. Those were added a few years ago, but in fact are not required.

Additionally, he stated the changes to Rules 35.21, 35.22, and 35.81 are similar in nature to the changes to this Rule so it would be permissible to vote on all of these rules at the same time if the board so chose to do so.

Board member Hayden made a motion to approve rule changes to 35.21, 35.22, and 35.81 as written. Secretary Smith seconded the motion and the board voted unanimously in favor. Motion and Rule amendments passed.

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

Board member Hayden addressed this rule with the Board and stated that issues with this rule had been resolved through back and forth discussions. He stated this rule garnered the most comments and input from the industry, but the version currently before the board accurately reflects the assumed name requirements under statute for both individuals and entities.

Board member Hayden made a motion to approve the rule changes as written. Secretary Smith seconded the motion and the board voted unanimously in favor. Motion and Rule amendments passed.

Agenda Item X: Discussion and possible action regarding changes to §35.52- Administrative Penalties

Steve Moninger addressed the board on this item. He stated he had to give credit to the Regulatory Crimes Service's Special Agents for bringing this to his attention. Through the cases they have brought to him, they pointed out the need for updated penalties for:

- Having no Drug-free policy, \$100.00 per quarter
- Not having employee signed copies of drug-free policy, \$25.00
- Failure to comply with registration application requirements prior to regulated employment, \$200.00 every fourteen (14) days
- Enhancement to above violation for employing ineligible individual, \$200.00
- Misrepresentation; deceptive or fraudulent advertisement, \$500.00

Secretary Smith asked what would happen if a person didn't pay these fines, to which Mr. Moninger stated that the department could and would suspend their license. He further stated that if they continued to work while their license was suspended they would be in violation of the law and it would be a criminal offense.

Board member Hayden made a motion to approve the rule changes as written. Secretary Smith seconded the motion and the board voted unanimously in favor. Motion and Rule amendments passed.

Agenda Item XII: Discussion and possible action regarding changes to §35.112- Business Records

Steve Moninger addressed the board on this item, stating that the language being amended was to comply with Occupations Code Section 1702.110(b), requiring the board to adopt rules to enable an out-of-state license holder to comply with the requirement that license holders maintain a physical address in this state.

Board member Hayden made a motion to approve the rule changes as written. Secretary Smith seconded the motion and the board voted unanimously in favor. Motion and Rule amendments passed.

Agenda Item XIII: Public Comment

David Bellow- representing himself- addressed the board. He stated that in 2015 he was involved in a custody battle and during that time he was approached by a Private Investigator, working for opposing counsel who offered to do forensic cell-phone investigation. The PI submitted a report that gave completely false information. He stated that his lawyer hired a reputable forensics person to do their own investigation, and the first thing he told them is that the original person wasn't even a licensed PI. They submitted to the judge, a letter stating that the person was unlicensed, and were told that he is an officer of the law and therefore exempt. Mr. Bellow stated that he then filed a complaint with the Regulatory Services Division against the unlicensed PI. He stated that he received a call back from Agent Oduwale. He stated that the DA investigator also called and asked Agent Oduwale to create a letter, which includes the following: (read into record) "I, Agent Jonathon Oduwale, Regulatory Services, conducted an administrative investigation into Cell Forensics. I determined that Mr. Mulfino(?) of Cell Forensics, does need proper licensure. But it is clearly evident that Mr. Mulfino(?) was and is continuing to complete the licensing process. While Operating Without a License is a Class A misdemeanor, the Regulatory Services Division attempts to achieve voluntary compliance; especially when an individual or entities are extremely compliant with certain requests." Mr. Bellow went on to say that the letter also stated there was no complaint on file with the Department, even though he had received a letter stating that his complaint had been received. Mr. Bellows also stated that Mr. Mulfino had been practicing without a license for over 2 years. He wasn't operating as an individual, but someone with employees. Also, he know of two other individuals have come forward and have filed complaints against this investigator. He further stated that he wanted the letter he received from Agent Oduwolde to be rescinded and he wanted this investigated further.

Chairwoman James stated that she was sorry this happened to him and that the board tries not to have these things happen. She asked for a copy of the information he had so that she could see this be investigated further. She also stated that if this person is a DA investigator, it still does not allow him to do these things.

Bonnie Brown Morse- representing Locksmith of San Antonio- addressed the board. She asked for clarification on 35.25. She asked if someone were an individual DBA and had more than one assumed name, were they required to list all of those names when they send to the Division under one company license. Mr. Moninger stated that a company can only operate under one name at a time, whether it is the DBA, or another name. She further asked if it were to change, would a new license need to be obtained, to which he stated it would. She went on to state that one concern arose at one of their recent meetings concerning TOPS. She stated she was asked what a small company, who does not use the internet, was supposed to do regarding this new system. She stated she told them they would likely need to go to the local library and use their

computers. She wanted to let the board know that this may be a very real problem for some of the smaller companies.

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

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

The Board took a break at 10:13 am.

The board reconvened at 10:34 am.

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

Chairwoman James called roll to determine which individuals, with cases before them, were present. Jose Romo, Chad Smith, Lauren Churchill, Zachary Oliver 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:

- Shundra Rutledge - Docket No. 405-16-0554 (summarily deny application)
- Ismael Perales.- Docket No. 405-16-1656 (summarily deny application)
- James A. Boyd- Docket No. 405-16-1722 (summarily deny application)
- Robert Abendroth- Docket No. 405-16-1599 (summarily deny)
- James A. Jones- Docket No. 405-16-1598 (summarily deny application)
- Juan T. Tristan, Jr- Docket No. 405-16-0925 (approve application)

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

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

*Mr. Jessie Aguilar, with Regulatory Services Division, was sworn in as a translator for Mr. Jose Romo at Mr. Romo's request.

Jose M. Romo - Docket No. 405-16-1209

Mr. Romo was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Burkhalter stated Mr. Romo's applications for registration as an owner and a manager were summarily denied based on his pending charges for the Class A misdemeanor of violations of the Private Security Act, filed May 5, 2015. The following questions were asked of Mr. Romo:

- Chairwoman James- do you have a locksmith company or are you a locksmith? - locksmith
- Secretary Smith- are you licensed in the industry? - no I was in the process of getting it when I was arrested.
- Board member Hayden- are the charges against you still pending? – yes

- Board member Siems- have you applied for registration as a locksmith? – yes, in October 2014; To which company did you apply?- my own; You've not been licensed by another company before?- no
- Chairwoman James- When did offense occur? Did it occur after October 2014?- I got a warning in October 2014
- Board member Ulmer- When were you charged?- 2015

Chairwoman James stated that since the charges are still pending the board cannot give a license to anyone with pending charges against them.

Board member Siems informed Mr. Romo that to have him join the locksmith industry would be a great thing, but he has to be a licensed locksmith and work for a licensed locksmith company for a minimum of 2 years before he can apply for his own company license. Mr. Romo responded that when he submitted his application it was accepted. He stated that he even took the test, but didn't pass.

Secretary Smith made a motion to affirm SOAH's decision and summarily deny Mr. Romo's application for registration as an owner and a manager. Board member Ulmer seconded the motion, and the board voted unanimously in favor.

Chad D. Smith - Docket No. 405-16-0926

Mr. Smith was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Burkhalter stated Mr. Smith's renewal application for registration as an alarm installer was summarily denied based on his conviction for the Class A misdemeanor offense of evading arrest or detention.

The following questions were asked of Mr. Smith:

- Board member Ulmer- did you have a public defender? – no, I had a paid lawyer;
The officer attempted to pull you over?- he didn't have his lights on. When I turned down a county road and sped up, he then put on his lights and pulled me over. It was going to be a felony and I was going to fight it but was told that I could keep my license if I pled down to a misdemeanor instead. If I had known I would have fought it all the way.
- Chairwoman James- What reason did he give for pulling you over? - there was an accident at my ex-wife's house. I left and she called the police
- Board member Ulmer- Was the officer's car marked? – yes, and he admitted that when he put his lights on I did pull over;
You weren't charged with anything else?- no

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

Lauren A. Churchill - Docket No. 405-16-1208

Ms. Churchill was present to address the Board on this case, but did not have counsel present on her behalf. Ms. Burkhalter stated that Ms. Churchill's application for registration as a private investigator was summarily denied based on her Class A misdemeanor conviction for driving while intoxicated.

The following questions were asked of Ms. Churchill:

- Chairwoman James- Is this the only charge you've had; no other criminal history?- I had a felony theft charge when I was 17, but I had that record sealed; How long ago?- I will be 30 next month; Is your probation satisfied?- yes, everything is done
- Board member Ulmer- Was this your first DUI?- yes
- Vice-chairman Johnsen- Did you pay all of your fines?- I am still paying DPS for surcharges, but all other fines, yes
- Board member Ulmer- Are you still in A.A.?- I go every now and then, but just have no interest in drinking at all anymore. I see what it has done in my life and at nearly 30 years old I can't afford to drink.

Secretary Smith made a motion to affirm SOAH's decision and grant Ms. Churchill's application for registration as a private investigator. Board member Hayden seconded the motion, and the board voted unanimously in favor.

Zachary L. Oliver - Docket No. 405-16-2646

Mr. Oliver was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Burkhalter stated Mr. Oliver's application for registration as an alarm salesperson was summarily denied based on his Virginia misdemeanor conviction for destruction of property. The Department compared this Virginia misdemeanor to the Texas misdemeanor offense of criminal mischief.

The following questions were asked of Mr. Oliver:

- Board member Ulmer- Have you ever been in trouble before?- no
- Chairwoman James- Are you applying to do alarm sales only?- Yes with Time Warner Cable
- Vice-chairman Johnsen- You had a problem with your girlfriend?- yes
- Board member Ulmer- You paid for her car repairs?- yes, before this even went to court; You paid all of your fines?- yes
- Board member Hayden- What was the value of the property damaged?- \$300. It was a windshield
- Board member Siems- You are eligible again in December?- yes
- Board member Ulmer- How long have you worked for this company?- 6 months

Secretary Smith made a motion to affirm SOAH's decision and grant Mr. Oliver's application for registration as an alarm salesperson. Board member Ulmer seconded the motion, and the board voted unanimously in favor.

Avelino Macias - Docket No. 405-16-0494

Mr. Macias was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Burkhalter stated that his application for registration as a noncommissioned security officer was summarily denied based on his federal felony conviction for bringing in and harboring aliens. The Department compared this federal felony to the Texas felony offense of smuggling of persons. She further stated that he did not admit any felony convictions on his application and would not be eligible again until 2023.

Board member Hayden stated that he thought the ALJ did not properly apply the factors of Chapter 53; especially in Findings of Fact #11: Applicant committed his only criminal offense nearly nine years ago, at a time when Applicant was a younger man. He explained that the factors of Chapter 53 specifically states that a person's youth be taken into consideration, not just that they were younger when they committed a crime.

Board member Hayden made a motion stating that due to a technical error in Findings of Fact #11, the ALJ did not properly apply and interpret the law, Agency Rules or written policy and the board should overturn SOAH's decision and summarily deny Mr. Macias' application for registration as a noncommissioned security officer. Board member Ulmer seconded the motion. The motion passed with James, Hayden, Siems, Johnsen and Ulmer voting in favor, while Smith voted against the motion. The motion passed.

Agenda Item VII: Adjournment

Chairwoman James introduced this agenda item.

Board member Hayden made a motion for adjournment. Secretary Smith seconded the motion, and the Board voted unanimously in favor of the motion. At 11:09 am, the April 22, 2016 meeting of the Private Security Board was adjourned.