

**TEXAS PRIVATE SECURITY BOARD**

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,  
October 25, 2016**

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

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**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

**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;  
Aaron Grigsby, Captain, Regulatory Crimes Service;  
Steve Moninger, 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 9:00 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. She also stated that she wanted to take a moment to talk about the TOPS training that recently took place. She stated she wanted to let the DPS staff know what a great job they did at the training. She went on to say that she thought it was going to be a great system. Chairwoman James also wanted to let staff know that all of their work has been appreciated. She said she had received a lot of calls regarding how professional and helpful the staff had been while assisting individuals on the phone with their questions and concerns regarding this new system.

### **Agenda Item I: Approval of Minutes for Board Meeting held July 8, 2016**

Chairwoman James introduced this agenda item. Upon review, Board member Ulmer made a motion to accept the minutes as submitted. Board member Hayden 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 fourth quarter, 6/1/16 to 8/31/16. He stated, for this time period, the Division received 253 original company applications, 1,342 company renewals, 10,362 original individual applications, and 10,383 individual renewals not including online registrations. He went on to say, for the same time period the Division processed the following licenses/registrations:

- 196 original company licenses (154 online, 42 manual),
- 1,344 company renewals (1,108 online, 236 manual),
- 9,448 individual registrations (8,430 online, 1,018 manual),
- 9,894 individual renewals (7,812 online, 2,082 manual),
- 5,790 employee information updates (3,025 online, 2,765 manual).

He also stated this time period showed 5,724 active company licenses, 321 active school licenses, and 159,264 active individual registrants.

Captain Aaron Grigsby was next to address the Board regarding investigations. For the time period between July and September investigation staff processed 374 investigations, made 1 felony arrest, 8 misdemeanor arrests, 418 guard inspections, 33 criminal inspections and 69 critical infrastructure checks. He went on to read the following activity report:

#### Region 1 (Dallas area)

- On 6/30/16 Dallas Special Agents conducted an operation targeting unlicensed security guards in Dallas County. Four (4) security guards were arrested for multiple charges including Impersonating a Security Officer, Unlawful Carrying of a Weapon, and Prohibited Weapon.
- On 8/12/16 Dallas Special Agents were contacted to assist with an investigation involving a police chief who is coordinating his officers to work an off-duty security job and then taking 30% of the pay. Investigation is on-going.
- On 9/8/16 Dallas Special Agents were contacted to assist the Dallas Police Department with an initial homicide investigation involving a commissioned security guard.
- On 9/16/16 Dallas Special Agents assisted DEA with a search warrant. DEA requested a locksmith to open a safe at the location the warrant was being served. The locksmith that arrived to assist was unable to display a locksmith license upon request. Individual was arrested for Operating Without a License.

- On 9/29/16 Dallas Special Agents arrested suspect for four (4) felony and one (1) misdemeanor warrants. Suspect was found to be operating an unlicensed security company and was also employing convicted felons as security guards.
- On 9/30/16 Dallas Special Agents were referred a case by RSD HQ involving a private security company marking their company vehicles to mislead the public into believing they are law enforcement. Possible Impersonating a Police Officer as well as Misrepresentation of Property charges to be filed. Investigation is on-going.

#### Region 2 (Houston area)

- On 8/4/16 Houston Special Agents arrested an alarm installer for Operating Without a License. This arrest was the result of a sting operation.
- On 8/9/16 Houston Special Agents arrested and charged one (1) individual with Operating Without a License for providing locksmith services without a license. This arrest was the result of a sting operation.
- On 8/22/16 Houston Special Agents were referred a case by RCS HQ concerning a security guard working at an apartment complex potentially involved in a theft from a resident. Video recordings at the location of the theft matched the physical description of the guard. Investigation is on-going.

#### Region 3 (Valley area)

- On 7/12/16 Corpus Christi Special Agents were referred a case by RCS HQ involving an unlicensed individual working security at a racetrack. The complaint received alleged that this unlicensed individual was using the name and logo of a licensed company. Investigation is on-going.

#### Region 5 (Lubbock area)

- On 6/21/16 Amarillo Special Agents received information concerning a company installing alarms and security systems without a license. Upon investigation, it was discovered that the company installed approximately ten alarms in residences over a three (3) month period. One (1) individual was arrested for Operating Without a License.

#### Region 6 (Central Texas)

- On 8/30/16 San Antonio Special Agents were referred a case by RCS HQ involving an alleged forged document submitted by an employee of a security company in an attempt to register as an instructor. The CEO's signature was allegedly forged by an employee. Investigation is on-going.
- On 9/28/16 San Antonio Special Agents were referred a case by RCS HQ involving an unlicensed locksmith. Investigation is on-going.

## RCS HQ

- On 7/1/16 RCS HQ received information concerning an alarm company in the San Antonio area potentially engaging in deceptive business practices. Case was closed by RCS HQ with no further action.
- On 7/7/16 RCS HQ received information concerning a security guard involved in a shooting in the Port Arthur area. Upon investigation in conjunction with the local police department, it was determined that although the guard was not on duty at the time of the shooting, he was not registered. This individual was indicted on the higher charge of criminally negligent homicide.
- On 8/26/16 RCS HQ received information concerning a potentially unlicensed security guard involved in a shooting at a nightclub in the San Antonio area. Investigation is on-going.
- On 8/26/16 RCS HQ received information concerning a security guard involved in a shooting at a bingo hall in Waco earlier in August. Investigation is on-going.
- On 9/6/16 RCS HQ received information concerning an alarm company committing advertising violations in Travis County. RCS HQ sent advisory letter to company concerning violations.
- On 9/7/16 RCS HQ received information concerning a commissioned security guard employed by an armored courier company who was killed in an ambush in Houston. Investigation is on-going.
- On 9/9/16 RCS HQ received information concerning an alarm company not currently licensed in Texas that is monitoring 7000+ subscribers across the state. Case referred to non-commissioned enforcement staff for audit. Audit is on-going.
- On 9/12/16 RCS HQ received information concerning potentially fraudulent activities by an alarm company. The complainant dismantled and destroyed her home alarm without contacting the company. Sometime later, the alarm company called in a burglary report to the police despite the alarm not being in service. Case was closed by RCS HQ with no further action.
- On 9/13/16 RCS HQ investigated a complaint alleging a private investigator and company that have been stalking her and her children both on-line and physically. RCS HQ referred the case to the local sheriff's department for immediate action.
- On 09/30/16 RCS HQ received information from a central Texas police department concerning an individual that may be teaching license to carry handgun courses without a license. Upon further investigation, this individual is also associated with a private security company that is operating without a license. Employees of this company claim to

have served in the Special Forces, and may potentially be defrauding family members of fallen Armed Forces members. Investigation is on-going.

Assistant Director Bowie addressed the board telling them that at several of the Association meetings he has been pulled aside and hears comments regarding investigations and industry complaints. He wanted the board and the industry to know that these complaints do not fall into a black hole but that with the limited resources the Regulatory Services Division has the staff does get to them one at a time. He asked Captain Grigsby to give a detailed report evidencing the enforcement activity.

### **Agenda Item III: Reports from Board Committees**

No reports at this time

### **Agenda Item IV: Discussion and possible action regarding amendments to Rule §35.26-Reclassification and Assignment**

Steve Moninger addressed the board regarding this item. He stated that the changes to the rule were adding a section concerning the termination of license by adding (e). He stated this was being done so that one owner of a company could not terminate the license without the consent of other owners. He went on to say that he was presenting this, along with other rules, as a starting point for discussion and that the board may wish to refer the rules up for discussion at the meeting, over to the Rules committee for further evaluation.

Board member Hayden stated he had had time to review the rules and wanted to ask how the department would address the controlling interest of a publicly traded company. Secretary Smith responded saying that he thought that the majority officer would be the CEO and would have the authority to terminate a license. Mr. Hayden replied that that was not the case according to the proposed rule changes.

Mr. Moninger pointed out that the changes were not speaking to who could decide to terminate a license, but rather when it could be done, such as in (c): Other assignments will be permitted only where the owners holding a controlling interest in the original licensee maintain a controlling interest. He also suggested to the board that the Rules committee may wish to take these rules into discussion in order to tweak the language.

Board member Hayden stated a limited liability company can be run by a manager without owning even 1% of the company. Both parties can agree to hire a manager but this rule would usurp the manager's authority. Mr. Moninger stated the rule stated it in such a way as to say that those holding a controlling interest are the only ones who can terminate a license. He stated that Mr. Hayden was correct in that it needed to track the existing language and Mr. Hayden's point is applicable to the existing language. He went on to say that a company could still have someone make that decision but the department would not be able to process it if the majority ownership is changing. He gave the example that if a company were being bought by another

company they would need to obtain a new license, as the new company would not be able to buy the existing company license.

Secretary Smith stated his opinion, stating that the shareholders elect the board of directors and board of directors have been given authority to hire the president, vice president, secretary and treasurer. The president may or may not want to be the manager as well and may delegate that to someone else. If that manager cancels their license, it is the shareholders' fault for hiring the board who hired the manager. Mr. Moninger stated that the proposed language of (e) would prevent that from happening.

Board member Hayden stated that he would like to see some scenarios that the Department has seen that illustrates what it is that this rule change is meant to prevent.

Board member Hayden made a motion to table this item for further discussion. Secretary Smith seconded the motion and the board voted unanimously in favor. Mr. Moninger asked for clarification on if this vote meant that the Rules committee would be taking this rule for consideration, to which Chairwoman James said that they would.

#### **Agenda Item V: Discussion and possible action regarding changes to §35.132- Subscription Fees**

Steve Moninger addressed this item with the board. He stated that this rule was amended to reduce the fee for subscription. Secretary Smith asked why these changes were made to which Mr. Moninger explained that upon consultation with the Department of Information, the current fees being charged were not in line, so the fees were being lowered to be brought back into line.

Secretary Smith made a motion to accept the rule as amended. Board member Ulmer seconded the motion and the board voted unanimously in favor.

#### **Agenda Item VI: Discussion and possible action regarding changes to §35.161- Continuing Education**

Steve Moninger addressed the board on this item. He stated one thing that has come up is a scenario in which a regular owner performs regulated services. He stated that the current rule did not have any requirements as to what CEUs were required. Changes to this rule were made to address CEU requirements for participating owners and owners who perform independent regulated services. Secretary Smith asked if this rule amendment is defining what a participating owner is to which Mr. Moninger stated that it is not defining it at this time, but if it did need to be defined his suggestion would be to define it as: involvement in decisions governing operation of a business.

Chairwoman James pointed out that if there were a shareholder or owner that was not registered then they would not fall under this rule. Secretary Smith stated that if they were installing locks or installing alarms, they would fall under this rule. He also stated that he wished to ensure that a shareholder or director who goes to the office a few hours a day just to review reports isn't

considered a participating owner/shareholder. Steve Moninger added that shareholders who own more than 25% of the company should be registered.

Board member Hayden made a motion to table this rule for further discussion. Secretary Smith seconded the motion and the board voted unanimously in favor.

### **Agenda Item VII: Public Comment**

RenEarl Bowie- Assistant Director, DPS- addressed the board regarding TOPS. He stated when TOPS was first released the division received a lot of feedback on the system. This prompted DPS to provide some training to better assist. He stated he wanted to thank Claude Bookout, Bonnie Brown-Morse, and Walt Roberts for assisting with getting word out regarding the training, which went well. He went on to say that two days prior, OSS did an update to TOPS. One of the biggest complaints that the department received was from companies stating that they were unable to see their employees. With this new update, companies could now get a roster downloaded into a spreadsheet. Finally he stated the goal of this new system was to get away from using paper.

Michael Jewel- representing AT&T- addressed the board. He began by stating that he wished to address the board regarding amendments to Rule §35.161 and that the board's discussion today was helpful. He stated their company takes compliance with the rules and regulations very seriously and that their company would love to work with the board on what is a participating and non-participating member. Board member Hayden asked that he forward all comments on this rule change to him directly.

Demitri Economo- representing Mr. Ward- addressed the board. He stated that his client, Mr. Ward, had gone through the process to regain his license. He stated the ALJ determined Mr. Ward was qualified and that he should have licensure. Mr. Economo stated he asked the department for an agreed extension but it was denied. He went on to say that the clock ran out on day 10 and it was overruled by Operation of Law. Chairwoman James explained to Mr. Economo that he was addressing the board during public comments and that the board would be unable to address this with him or his client and that he may be better served by speaking to DPS regarding a new hearing. Board member Hayden asked Mr. Economo what authority he felt the board had to consider Mr. Ward's request for a rehearing. Mr. Economo stated that 146(e) allows for an emergency meeting if more than two members live outside of Travis County and they do not meet within 10 days of the decision being made at the previous meeting. He went on to say that if they couldn't get an agreed extension, which has no expiration, then the board could choose to set it on their agenda.

John Helwig- representing the Houston Gulf Coast Alarm Association - addressed the board. He stated that he wanted to introduce himself to the board as the Association's newly elected president and offered to assist the board in any way they may need in the future.

Susan Griswold- representing ASSIST- addressed the board. She stated that she wanted to express what a wonderful job DPS staff did at the recent ASSIST convention. She stated her

thanks to Marcia Smith, Shermain Parks, Regina Gonzalez, Ryan Garcia, Huel Haynes and RenEarl Bowie for their time and assistance.

Bonnie Brown-Morse- representing - addressed the board. She began by expressing praises for the DPS staff in regards to their hard work with TOPS. She went on to ask for the email address to use for making comments to the Rules committee. Board member Hayden stated that the address was [whayden@7750law.com](mailto:whayden@7750law.com). Finally she stated that there were exceptions for ethics, by substituting rules and regulations in CE credits and wanted the board to keep that in mind regarding the last rule discussed.

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

The board elected to take an executive session at 10:04am.

The board resumed the meeting at 10:31am.

**Agenda Item IX: Administrative Hearings on Licensing and Disciplinary Contested Cases**

Chairwoman James called roll to determine which individuals, with cases before them, 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:

- Michael Lee Phifer - Docket No. 405-16-4481 (summarily deny application)
- George Alex Griffin- Docket No. 405-16-3104 (summarily deny application)
- Brian Edward Honeycutt- Docket No. 405-16-3097 (summarily deny application)
- Arnoldo Luna- Docket No. 405-16-4045 (summarily deny application)

Board member Ulmer 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.

Javier Cazares- Docket No. 405-16-4483

Mr. Cazares was not present to address the Board on this case, nor did he have counsel present on his behalf. Mr. Heath stated Mr. Cazares' application for registration as an alarm salesperson was summarily denied based on his Class A misdemeanor conviction for Driving While Intoxicated with BAC $\geq$ 0.15. The Private Security Board has determined that a conviction for a felony or Class A misdemeanor that does not relate to the private security profession is disqualifying for five years from the date of commission of the offense which would make him eligible again on August 13, 2018.

Board member Ulmer asked if this was Mr. Cazares' only conviction, to which Mr. Heath replied that it was. She also asked what the circumstances were surrounding the event. Mr. Heath replied that he could not recall the circumstances as testified to by Mr. Cazares.



Secretary Smith made a motion to uphold the ALJ's decision, and grant Mr. Cazares' registration as an alarm salesperson. Board member Hayden seconded the motion. The motion passed with Johnsen, Ulmer, Smith, Hayden and Siems voting for while James voted against.

Rafael Alvarado- Docket No. 405-16-5807

Mr. Alvarado was not present to address the Board on this case, nor did he have counsel present on his behalf. Mr. Alvarado's application for registration as a commissioned security guard was administratively revoked based on subsequent ineligibility. The Medical Advisory Board determined Mr. Alvarado is incapable of exercising sound judgment in the proper use and storage of a handgun.

Board member Hayden made a motion to overturn the ALJ's decision, and revoke Mr. Alvarado's registration as a commissioned security guard, so that he may reapply once his medical condition changes. Board member Ulmer seconded the motion. The motion passed with a unanimous vote.

James Luster- Docket No. 405-16-2645

Mr. Luster was not present to address the Board on this case, but he did have counsel present on his behalf, Mr. Danowsky. Mr. Heath stated Mr. Luster's application for registration as an alarm salesperson was summarily revoked based on his Class A misdemeanor for resisting arrest in 2014. The ALJ determined that he should retain his registration. After determination at the previous Private Security board meeting, the board voted to revoke his registration. Mr. Luster filed for an extension for rehearing.

Board member Hayden made a motion to grant the extension of time for a rehearing of the case. Secretary Smith seconded the motion and it passed with a unanimous vote.

Attorney Danowsky, representing Mr. Luster, addressed the board stating he did not have anything to add to the motion of rehearing except to draw the board's attention to statute which requires that if an Agency changes a Proposal for Decision made by an Administrative Law Judge, each change must be articulated with specific reasons. He stated that while the law was recited the specific reasons were not stated.

The following questions were asked of Mr. Danowsky:

- Board member Hayden – Were you here at the last meeting?  
Yes.
- Board member Hayden – What do you want the board to do for Mr. Luster?  
We would like you to approve the rehearing, or waive it and grant his license.
- Board member Ulmer- Where is your client today?  
He is in Minnesota for work
- Board member Ulmer- What type of work?  
He is in the same industry, but in a supervisory position

- Board member Hayden- At the last meeting there were questions regarding the ALJ's Conclusions of Law #3, #4 & #6. Have there been any changes that the board needs to consider?

No. With regards to Conclusions of Law it is addressed under point of error #2. In open meeting, though not in the final order, the Texas Transportation code was cited in the conclusions of law #3 and #4. The actual analysis by the Judge cited proper rules and not the Transportation Code. #6 Conclusion of Law stated 5 years from the date of conviction not the date of completion but in analysis he stated completion of sentence. Although the Conclusions of Law were in error, the judge's Analysis was correct.

- Board member Hayden- What changes would you want to make?  
Change #3 & #4 to conform with the proper rules as used in the judge's analysis or adopt the PFD without changes or acknowledgment of the errors.
- Board member Ulmer- Was his conviction date in 2015?  
Yes.
- Board member Ulmer- What was his arrest date?  
April 3, 2015
- Board member Hayden- When the ALJ gives specific reference to the Transportation Code, how do we know what was actually supposed to be cited?  
Under the judges analysis in pages 2-5 of his proposal for decision we can see he analyzes the case under the department rules and we can see what his process was in making his conclusions.

Board member Hayden made a motion to deny the request and affirm the board's prior decision to deny registration as an alarm salesperson based on Conclusion of Law errors not properly applied under the board's authority in §2001.58 (e) specifically Conclusions of Law #3, #4, #6, #8, and #9 not being supported by the record. Board member Ulmer seconded the motion. The motion passed with a unanimous vote.

### **Agenda Item X: Adjournment**

Chairwoman James introduced this agenda item. Board member Hayden made a motion for adjournment. Board member Ulmer seconded the motion, and the Board voted unanimously in favor of the motion. At 10:58am, the October 25, 2016 meeting of the Private Security Board was adjourned.