

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
July 11, 2017**

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

BOARD MEMBERS PRESENT:

Honorable Patti James, Chairwoman
Honorable Wade Hayden
Honorable C.D. Siems
Honorable Debbra Ulmer

STAFF PRESENT:

RenEarl Bowie, Assistant Director, Regulatory Services Division;
Valerina Walters, 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 DVD recording on file at the Board's office.

The board meeting was called to order at 9:04 a.m.

Agenda Item I: Approval of Minutes for Board Meeting held April 25, 2017

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

Agenda Item II: Quarterly Licensing Report from Regulatory Services Division

Captain Aaron Grigsby addressed the Board regarding investigations. He went on to read the following activity report for the 3rd quarter, April – June 2017:

Region 1 (Dallas area)

- On 4/28/17 Dallas Special Agents were referred a case by RSD HQ involving an unlicensed locksmith conducting business out of an unmarked white van (photo below). The complaint also alleges the individual involved is a convicted felon. Investigation is on-going.
- On 6/6/17 Dallas Special Agents were referred a case by RSD HQ involving an unlicensed company installing security cameras. Investigation is on-going.
- On 5/22/17 RSD HQ received a complaint alleging a private investigator had entered a woman's apartment without her knowledge or consent. Investigation revealed no law violations, that the woman's apartment was entered as part of an investigation with the fire marshal's office. Case closed.

Region 2 (Houston area)

- On 5/23/17 RSD HQ received a complaint concerning an investigations company operating without a license in the Houston area. Initial investigation is on-going, and will be forwarded to Houston Special Agents for further investigation.
- On 5/24/17 Houston Special Agents were referred a case from RSD HQ regarding a bar in the Houston area directly employing security guards without a license. Investigation is on-going.
- On 6/8/17 Houston Special Agents were referred a case from RSD HQ involving a guard dog company operating without a license. Investigation is on-going.

Region 3 (Valley area)

- On 4/20/17 RSD HQ received information from Corpus Christi Special Agents regarding an unlicensed security officer. This suspect was arrested for theft after three government agencies reported missing funds after the suspect had picked up funds from their facilities to be deposited into the bank. Charges of theft and impersonating a security officer filed on suspect, court proceedings are currently pending.
- On 6/5/17 Corpus Christi Special Agents were referred a case involving an alarm installer operating with an expired license. Investigation resulted in the arrest of suspect for Operating an Alarm Company without a license.

Region 5 (Lubbock area)

- On 4/14/17 Lubbock Special Agents were referred a case from RSD HQ involving an unlicensed locksmith. Investigation revealed that the suspect believed a license to perform these services was not necessary, and was very argumentative. On 5/9/17 the suspect was arrested for Operating a Locksmith Company without a license.

Region 6 (Central Texas area)

- On 5/17/17 RSD HQ received information concerning an individual operating a personal vehicle with blue and white alternating flash lights, purporting to be a security guard. Information received alleged this individual has not had a security license in more than seven years. Initial investigation is on-going, will be forwarded to San Antonio Special Agents for additional investigation.
- On 5/30/17 RSD HQ received information concerning a security guard who had illegally detained an individual in the San Antonio area. The complainant is the supervisor who had hired the security company, and claims he was detained and not allowed to enter his company's property. Initial investigation is on-going.

RCS HQ

- On 4/3/17 RSD HQ received information concerning the discharge of a firearm by an armed security guard during a robbery in the Houston area. Firearms discharge was not reported to DPS within 24 hours of the incident. Case is pending administrative action.
- On 4/5/17 RSD HQ received a complaint alleging the former qualified manager of a security guard company had stolen business and employee pocket cards in the San Antonio area. Complaint also alleges this suspect contacted the company's clients and told them they name of the business had changed and provided them the name of his new company that he started using stolen information. Investigation is on-going.
- On 4/13/17 RSD HQ received a complaint alleging an individual offering several regulated services without a license in the Central Texas area, in particular alarm installation. Investigation by RSD HQ personnel revealed that this individual does not own or work for a company, but "subcontracts" with several. Charges of deceptive trade practices, security services contractor license required, and registration and endorsement required were declined by the District Attorney's Office, in lieu of an advisory letter.
- On 4/13/17 RSD HQ initiated investigation into a security guard company advertising online with no displayed license number or registered company address. Case is pending administrative action.
- On 4/25/17 RSD HQ staff and local law enforcement executed a search warrant at the headquarters of a security company in Waco. This was the result of a lengthy investigation by RSD HQ staff involving solicitation of security related services by an unlicensed company. An individual had taken over a company that had been closed for several months, and continued to solicit business and accept payment for services on the non-existent company's behalf. More than \$37,000 was found to have been defrauded from unsuspecting entities, resulting in the filing of state jail felony charges. Multiple charges of operating without a license and deceptive business practices have also been filed. Arrest is currently pending.
- On 6/8/17 RSD HQ initiated an investigation into a complaint received regarding an unlicensed company rekeying locks without a license in the Athens area. Investigation by RSD HQ staff revealed no violations, case closed with no further action.

- On 6/15/17 RSD HQ initiated an investigation into a former university police chief working off duty security at a church in the Houston area. Investigation by RSD HQ personnel revealed that the church had removed this individual from a security role after he was placed on suspension with the university police department. Case closed with no further action.

Assistant Manager Ryan Garcia presented the licensing totals for the third quarter, 3/1/17 to 5/31/17. He stated, for this time period, the Division received 370 original company applications, 1,555 company renewals, 13,198 original individual applications, and 8,364 individual renewals not including online registrations. He went on to say, for the same time period the Division processed the following licenses/registrations:

- 366 original company licenses (250 online, 116 manual),
- 1,576 company renewals (1,509 online, 67 manual),
- 13,647 individual registrations (12,063 online, 1,584 manual),
- 11,871 individual renewals (11,157 online, 714 manual),
- 5,232 employee information updates (4,720 online, 512 manual).

He also stated this time period showed 5,892 active company licenses, 386 active school licenses, and 137,374 active individual registrants.

Agenda Item III: Reports from Board Committees

Board member Hayden addressed the board stating the rules on the agenda would not be discussed at this time due to recent last minute changes. He further requested that if any member of the industry had suggested changes or concerns regarding these rules they should contact him directly. Chairwoman James stated that everyone should go onto the website to view the proposed rule changes and give their input so that the Rules committee could move these rules forward.

Mr. Moninger next addressed the board discussing new legislation:

- SB 2065- provides an exemption from §1702 for church private security services who volunteer. He stated this won't affect any of the Board's licensees, but is good information to know.
- HB 2812- amends the Transportation Code which requires the lighting of security patrol vehicles be equipped with green, amber or white lights only, as of September 1, 2018.
- HB 1508- amends Chapter 53 and requires any training school which offers an Occupational license, must notify applicants, prior to classes, of the chance of them being ineligible for licensure. They are to direct them to the Occupation code, and board Rules so they are able to view and consider these factors before taking the course.

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

No action taken at this time.

Agenda Item V: Discussion and possible action regarding changes to §35.161- Continuing Education Requirements

No action taken at this time.

Agenda Item VI: Discussion and possible action regarding changes to §35.101- Private Business Letter of Authority and §35.102- Governmental Letter of Authority

No action taken at this time.

Agenda Item VII: Discussion and possible action regarding amendments to Rule §35.141- Training Requirements

No action taken at this time.

Agenda Item VIII: Public Comment

Calvin Stewart- representing Stewart Enterprises- addressed the board. He stated it was his first time to attend a Private Security Board meeting. He wanted to thank the board members for all that they do for the industry. He also extended his thanks to Assistant Director Bowie for all of his assistance in keeping the industry informed.

Michael Jewel- representing AT&T- addressed the board. He stated he had been working with Mr. Hayden and Mr. Moninger regarding the proposed rule amendments. He stated that Mr. Moninger and Mr. Hayden had gotten the rule amendments to the point where they are workable. He went on to say in regards to the proposed assignment language, there was one clause he wished to discuss. This clause allowing “an individual previously designated by the entity as authorized to assign the license” would be helpful to have back in the rule. However, he stated, he did understand that this caused problems for the Board in knowing whether or not someone is truly designated by the entity or not. Chairwoman James addressed this by stating that this was done for the staff’s benefit so that they didn’t have to make a judgement call regarding this issue.

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

The board went into executive session at 9:24am.

The board came back to order at 9:35am

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

Chairwoman James called roll to determine which individuals, with cases before them, were present.

- Robert Barisonek- Docket No. 405-17-3753
- Lloyd Roberts- Docket No. 405-17-1355
- Jesus Flores-Nieto- Docket No. 405-17-1784

Board member Ulmer stated that she wanted to discuss each case in turn.

Attorney for the Department, Rebecca Burkhalter, presented the following case to the board.

Robert Barisonek- Docket No. 405-17-3753

Mr. Barisonek was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Burkhalter stated Mr Barisonek's renewal application for registration as a noncommissioned security officer was summarily denied based on his conviction for the Class A misdemeanor offense of driving while intoxicated with blood alcohol concentration over 0.15. Also, Mr. Barisonek made a material misstatement in his renewal application.

Board member Ulmer made a motion to uphold SOAH's decision and summarily deny Mr. Barisonek's renewal registration as a non-commissioned security officer. Board member Siems seconded the motion. The motion passed with a unanimous vote.

Attorney for the Department, Aaron Heath, presented the following case to the board.

Lloyd Roberts- Docket No. 405-17-1355

Mr. Roberts was not present to address the Board on this case, nor did he have counsel present on his behalf. Mr. Heath stated Mr. Roberts' registration as a noncommissioned security officer was summarily suspended based on his Class A misdemeanor charge for Driving While Intoxicated with BAC ≥ 0.15 . This criminal charge is still pending.

Board member Ulmer made a motion to uphold SOAH's decision and summarily suspend Mr. Roberts' registration as a noncommissioned security officer. Board member Hayden seconded the motion. The motion passed with a unanimous vote.

Attorney for the Department, Rick Nemer, presented the following case to the board.

Jesus Flores-Nieto- Docket No. 405-17-1784

Mr. Flores-Nieto was not present to address the Board on this case, nor did he have counsel present on his behalf. Mr. Nemer stated Mr. Flores-Nieto's applications for registration as a commissioned security officer and noncommissioned security officer were denied based on his Class A charge by information for Driving While Intoxicated BAC ≥ 0.15 . On December 20, 2016 the original matter was refiled as a part of a plea agreement and Mr. Flores-Nieto was charged with the Class B misdemeanor offense of Obstructing Highway or Other Passageway. On January 26, 2017 Mr. Flores-Nieto received deferred adjudication for the Class B misdemeanor offense and was placed on community supervision for fifteen months, which he is still serving until the estimated end date of April 26, 2018.

He went on to say the Department filed exceptions to the Proposal For Decision (PFD) asking the Administrative Law Judge (ALJ) to vacate Conclusions of Law 6-10, and replace them with Conclusions of Law that accurately reflect Mr. Flores-Nieto's still pending charge. The Department also asked the ALJ to recognize Mr. Flores-Nieto was ineligible for registration under The Act due to that pending charge. Finally, he stated, the Department asked that the ALJ affirm the Department's summary denial.

Mr. Nemer went on to say the ALJ sent a response letter to the Department's filed exceptions. The ALJ agreed with the Department that the Class B misdemeanor offense should be deemed as

pending and should be considered disqualifying until Mr. Flores-Nieto's community supervision is complete. Never the less the ALJ concluded that the application should be granted despite the pending charge, and did not amend any of the Findings of Fact nor Conclusions of Law to reflect his opinions in the letter. Mr. Nemer, therefor, asked the board to amend a number of Conclusions of Law to accurately reflect what the ALJ stated in his letter to the Department.

Board member Hayden asked if the department was in favor of approval or denial of licenses, to which Mr. Nemer stated based on disqualifying factors they wished to deny.

Chairwoman James asked if Mr. Flores-Nieto was still on probation to which Mr. Nemer stated that he was until April of 2018.

Board member Hayden stated it was a very procedurally focused case in that the ALJ did not properly follow some procedures. Mr. Nemer stated that the judge based his original PFD on an erroneous analysis of the Occupations Code as opposed to the analysis he should have applied under the Private Security Act.

Board member Hayden stated that the record should reflect the following:

- ALJ Hunter Burkhalter should also not be able to "have his cake and eat it too", based on his comments in his original Proposal for Decision, stating "these factors are generally neutral or weigh lightly in Mr. Flores-Nieto's favor" yet in his letter he states the factors weigh favorably in his favor. Is it favorable or is it neutral?

Board member Hayden made a motion stating that because of the erroneous analysis of Occupation Code §53.02 1(b), which is applied to consider whether deferred adjudication could be a conviction or not and thus a disqualification for licensure, and based upon the conflict between §53.02 1(b) and §1702.371, which states clearly that deferred adjudication is a conviction further moved that:

- Conclusions of Law #5 should be changed to read "The Department is required to summarily deny an application for a registration as a noncommissioned security officer if that person has been charged with or convicted of a disqualifying crime." Tex. Occ. Code §1702.364(a)(1)
- Conclusions of Law #6 should be changed to read "The crime is identified by Department rule as one for which a conviction disqualifies a person from working as a security guard." Tex. Admin. Code § 35.4(c)(6)
- Conclusions of Law #7 should be changed to read "Mr. Flores-Nieto's offense generally disqualifies him from working as a security officer until he completes the term of community supervision and the charge by information is dismissed." Tex. Occ Code §1702.364(f)
- Conclusions of Law #8 should be changed to read "A person such as Mr. Floes-Nieto who has been charged by information of a disqualifying crime might still qualify for registration or a commission if there is sufficient officer in spite of his criminal history, based upon the consideration of a number of specified factors." 37 Tex. Admin. Code §35.4(l)-(m)
- Board member Siems seconded the motion. The motion passed on a unanimous vote.

Board member Hayden made a second motion to change Conclusions of Law #9 and #10 in a manner of which would support the ALJ's conclusion that he should be granted a license and that:

- Conclusions of Law #9 should be changed to read "The evidence is sufficient to prove that Mr. Flores-Nieto possesses the fitness to perform the duties of a non-commissioned security officer and a commissioned security officer despite his pending criminal charge by information."
- Conclusions of Law #10 should be changed to read "The Department's summary denials of Mr. Flores-Nieto's applications should be overturned and his applications should be granted."

Board member Ulmer seconded the motion. The motion passed on a unanimous vote.

Board member Hayden made a third motion to affirm SOAH's decision and grant Mr Flores-Nieto's applications for registration as a non-commissioned security officer and commissioned security officer.

Board member Ulmer asked if this were his only time in trouble, to which Mr. Nemer stated that it was. He went on to say that while Mr. Flores-Nieto is currently serving his deferred adjudication, but what causes his disqualification is his Charge by Information still pending and his deferred adjudication could still be revoked. Ms Valerina Walters explained that the court placed on community supervision and if he completes it and does all that is required he will be good to go. Chairwoman James asked if he still has a pending charge, shouldn't that suspend his license? Ms. Walters responded stating Chapter 53 allows the ALJ to consider mitigating factors while someone is on probation. Chairwoman James stated that she was having a hard time giving him a license while he still had pending charges

Board member Hayden's motion was tabled for lack of a second.

Board member Ulmer made a motion to deny SOAH's decision and summarily deny Mr. Flores-Nieto's applications for registration as a non-commissioned security officer and commissioned security officer, based on the fact that his deferred adjudication is still considered a pending charge and will not be completed until April of 2018. Board member Siems seconded the motion. The motion passed with James, Ulmer, and Siems voting for, while Hayden voted against.

Agenda Item XI: Adjournment

Chairwoman James introduced this agenda item. Board member Siems made a motion for adjournment. Board member Hayden seconded the motion, and the Board voted unanimously in favor of the motion. At 10:04 am, the July 11, 2017 meeting of the Private Security Board was adjourned.