

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
October 4, 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, Division 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, 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 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 July 11, 2017

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.

Agenda Item II: Quarterly Licensing Report from Regulatory Services Division

Assistant Manager Ryan Garcia presented the licensing totals for the fourth quarter, 6/1/17 to 8/31/17. He stated, for this time period, the Division received 363 original company applications, 1,631 company renewals, 14,724 original individual applications, and 9,438

individual renewals not including online registrations. He went on to say, for the same time period the Division processed the following licenses/registrations:

- 325 original company licenses (261 online, 64 manual),
- 1,659 company renewals (1,537 online, 122 manual),
- 13,283 individual registrations (12,480 online, 803 manual),
- 10,259 individual renewals (9,991 online, 268 manual),
- 6,903 employee information updates (6,556 online, 347 manual).

He also stated this time period showed 5,912 active company licenses, 396 active school licenses, and 141,526 active individual registrants.

Special Agent Eric Wiley was next to address the Board regarding investigations. He went on to read the following activity report for the 3rd quarter CY17, July - September 2017:

Region 1 (Dallas area)

- On 7/4/17 RSD HQ initiated an investigation into a complaint involving unlicensed armed guards working security at a hotel in Dallas. This investigation was referred to Dallas Special Agents on 8/1/17. Investigation is on-going.
- On 7/25/17 RSD HQ received notice from Dallas Special Agents of an investigation involving an individual suspected of Impersonating a Public Servant. The individual was observed operating a motorcycle with the word "Sheriff" displayed on the gas tank, along with red and blue lights and an activated siren. The individual was also observed in a police style uniform, carrying a handgun in a waist holster. The individual has previously been arrested for similar charges. Investigation is on-going, in conjunction with the district attorney's office.
- On 8/3/17 Dallas Special Agents were referred a case by RSD HQ involving an individual possibly Impersonating a Public Servant. This individual has been observed in a police style uniform, carrying a handgun. Penal code violations are currently being investigated by Dallas Special Agents.
- On 8/8/17 Dallas Special Agents were referred a case by RSD HQ involving a business advertising security surveillance sales and installation without a license at two different locations. Investigation is on-going.
- On 8/11/17 Dallas Special Agents were referred a case by RSD HQ involving an unlicensed individual operating an alarm company out of his home in Texarkana. Investigation is on-going.
- On 8/17/17 Dallas Special Agents were referred a case by RSD HQ involving an individual offering to sell level three training certificates for a fee without attending the required training. Investigation is on-going.

Region 2 (Houston area)

- On 8/7/17 Houston Special Agents were referred a case from RSD HQ involving two individuals operating a locksmith company without a license in the Port Neches area. Investigation is on-going.
- On 8/8/17 Houston Special Agents were referred a case from RSD HQ involving a company advertising the installation and monitoring of security cameras, CCTV systems, video surveillance, and access control without a license. Investigation is on-going.

Region 3 (Valley area)

- On 8/3/17 Corpus Christi Special Agents were referred a case involving an alarm company operating without a license. Photos of company vehicle with no license number displayed were provided. Investigation is on-going.

Region 4 (West Texas area)

- On 8/25/17 El Paso Special Agents were referred a case involving a commissioned security guard who failed to properly register with his employer for more than a year. This individual was allegedly working as commissioned security in the Odessa area and soliciting business for his employer without following registration requirements. Investigation is on-going.

Region 5 (Panhandle area)

- On 8/11/2017 Lubbock Special Agents were referred a case involving an unlicensed locksmith operating in the Amarillo area. Investigation is on-going.

Region 6 (Central Texas area)

- On 7/10/17 San Antonio Specials were referred a case by RSD HQ involving a commissioned security guard who had unlawfully detained an individual while on duty. The complainant stated that he entered the property with the necessary code to enter the gate, and was handcuffed by the suspect and detained until police arrived. Investigation revealed the suspects commissioned security license was expired at the time of the incident. Criminal charges forthcoming.
- On 8/1/17 San Antonio Special Agents were referred a case involving an unlicensed company providing electronic access control services in Boerne. RSD HQ attempted to gain compliance from the suspected business, but was unable to do so. Investigation is being finalized by San Antonio Special Agents, criminal charges forthcoming.

RCS HQ

- On 8/25/17 RSD HQ completed investigation into a guard company for multiple violations including failure to conduct pre-employment checks, employee records, and transfer of employee registration to employer. Administrative action was taken on these violations.
- On 9/15/17 RSD HQ received information concerning a security guard involving in the shooting of an individual in the back at a restaurant in the Region 4 area. Local law

enforcement is the lead investigative agency, RSD HQ providing investigative assistance as needed.

- On 9/19/17 RSD HQ received information from the Texas Highway Patrol regarding an individual with no private security license driving a vehicle displaying the logo of a security company. Investigation revealed the individual in question does have the appropriate private security license. Case closed with no further action.
- On 9/21/17 RSD HQ received notification of a firearms discharge of a security guard from an incident more than 12 months previously. Initial investigation is on-going.

Agenda Item III: Reports from Board Committees

Board member Hayden addressed the board regarding this item. He stated that the committee had received several comments regarding some of the rule changes and thanked the industry for their input. He further stated that some of the changes made to rule §35.26 were made to help clarify how to define ownership. He read the corresponding rule change §35.26(c)(3): individual designated by the manager in writing and verified by affidavit by the manager as authorized to assign the license. He went on to say that, based on some of the comments the committee received, they were recommending §35.26(g): (An assignment or termination effected by written consent of the qualified manager may be overturned within 10 business days of the department's receipt of the consent documentation) be changed from 10 days to 30 days.

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

Steve Moninger presented this item to the board. He stated this rule does not address termination of company licenses; but rather addresses reclassifications and assignments. He explained that the department has allowed owners to assign the license under certain circumstances and currently that is only when the majority of ownership stays the same. He went on to say that this was quite restrictive and in order to assist the industry, changes were made to accommodate industry needs by allowing changes if the ownership does not remain the same, as long as the majority of owners consent. He further stated that the most difficult change to make to this rule was in regards to what defines ownership and to allow changes where there is no majority owner, to allow the manager, or manager's designee, to make the changes as long as the department staff is notified as to what to do. The proposed changes to this rule were made to help simplify for both staff and the industry.

Board member Hayden made a motion to adopt the rule changes as proposed, including the change from 10 days to 30 days as outlined in section (g). Board member Ulmer seconded the motion and the board voted unanimously in favor.

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

Steve Moninger presented this item to the board. He stated that the proposed changes to this rule clarified that Private Business Letters of Authority can employ Personal Protection Officers as well as registered non-commissioned security guards.

Board member Hayden made a motion to adopt the rule changes as proposed. Board member Siems seconded the motion and the board voted unanimously in favor.

Agenda Item VI: Discussion and possible action regarding amendments to Rule §35.147- Certificates of Completion, and Training Records

Steve Moninger presented this item to the board. He stated that the proposed changes to this rule were made in response to House Bill 1508, which applies to any entity that provides training. It requires the entity to notify attendees of their potential ineligibility under the Board's rules. He further stated that there were some comments received that this rule was not needed; however it was a Legislative change from the last session.

Board member Hayden made a motion to adopt the rule changes as proposed. Board member Siems seconded the motion and the board voted unanimously in favor.

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

Steve Moninger presented this item to the board. He stated the only change to come about since the last meeting was to add an explicit exemption for individuals who are not required to obtain a registration. He went on to say that the remaining changes were previously discussed and vetted. These changes clarify the application of Continuing Education rules to different types of owners: non-participating, but registered vs participating.

Board member Hayden stated the committee did receive many comments regarding these rule changes and most were positive, stating that the changes simplified things.

Board member Hayden made a motion to adopt the rule changes as proposed. Board member Siems seconded the motion and the board voted unanimously in favor.

Agenda Item VIII: Public Comment

Susan Griswold- representing ASSIST - addressed the board. She thanked the Board for the 30 day extension in §35.26. She also asked if there was a way to send out information to stake holders when there are changes or company terminations. She also thanked the staff and Division Director Bowie for attending the last ASSIST convention.

Bonnie Brown Morse- representing Locksmith Association of San Antonio - addressed the board. She asked for clarification of §35.147 regarding notification to CEU schools, as they are not usually under the "record area", only training. She further asked if they were going to have to figure out if people are pocket card holders before training. She stated their CE school

received the same letter as training schools. Steve Moninger stated that he would need to refer to the bill to be 100% sure, but thought that that rule only applied to original applications.

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

The board went into executive session at 9:31am.

The board returned from executive session at 9:38am. Chairwoman James reconvened the meeting at this time.

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 Ozuna- Docket No. 405-17-4636
- Kenneth E. Humphrey- Docket No. 405-17-3746
- Uvaldo De La Rosa- Docket No. 405-17-4306
- Lindsey M. Kimmons- Docket No. 405-17-3747
- Bradley D. Cumby- Docket No. 405-17-3819
- Erin B. Striplin- Docket No. 405-17-3820
- Mykal Sunrise- Docket No. 405-17-4280
- Jason L. White- Docket No. 405-17-4307
- Ruben T. Acosta- Docket No. 405-17-4301
- Linda Settlemire- Docket No. 405-17-3744
- Christopher R. Frerichs- Docket No. 405-17-4525
- David Ryan- Docket No. 405-17-3832
- Edgar T. Jones, Jr.- Docket No. 405-17-5274

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

Robert Ozuna- Docket No. 405-17-4636:

Mr. Ozuna was present to address the Board on this case, but did not have counsel present on his behalf. Mr. Heath stated Mr. Ozuna's application for registration as a security salesperson was summarily denied based on his felony conviction for Misapplication of Fiduciary Property or Property of a Financial Institution: \$20,000 - \$100,000. As a result of this conviction, Mr. Ozuna was granted community supervision, which was later revoked and he was sentenced to ten years' confinement and ordered to pay a fine of \$5,000 and restitution of \$58,750.

Mr. Ozuna next addressed the board stating that while the information given was true he did not mean to make a misstatement on his application. He was asked the following questions:

Board member Ulmer- How long were you incarcerated?

- Three and a half (3 ½) years

Board member Ulmer- Your parole ended in 2015?

- Yes

Chairwoman James- You haven't been in trouble since then?

- No. Not before or since.

Chairwoman James- What was the mistake you made on your application?

- The question asking if I had a conviction that happened before 10 years. I said no and it should have been yes.

Board member Hayden stated that the record should reflect that the application question stated “-if ‘yes’, has it been less than 10 years since completing your sentence or probationary period”. He further stated Mr. Ozuna’s parole was not complete until 2015.

He went on to say that Texas Government Code 2001.058(e) stated that the only time the board can make changes to an Administrative Law Judge’s decision, findings of fact, or conclusion of law, is only if the ALJ didn’t properly apply or interpret the law or if there is a technical error in the Findings of Fact. He went on further to state that he didn’t think the board has the authority to change FOF #13 in this case.

Board member Hayden made a motion to affirm the ALJ’s decision and deny Mr. Ozuna’s application for registration as a security salesperson. Board member Ulmer seconded the motion. The motion passed unanimously.

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

Lindsey M. Kimmons- Docket No. 405-17-3747:

Ms. Kimmons was present to address the board, but did have counsel present on her behalf; her attorney, Maisie Barringer, was unable to attend the meeting but did give permission for the board to speak directly with Ms Kimmons on these matters. Ms. Burkhalter stated Ms. Kimmons renewal application for registration as a private investigator was summarily denied based on her Class B misdemeanor conviction for obstructing a highway passageway.

Chairwoman James asked about Ms. Kimmons’ rehabilitative efforts. Ms. Kimmons stated that she was originally charged with a DUI but took a plea for the lesser charge of Obstruction of a Highway. She went on to state her rehabilitative efforts included wearing a scam bracelet for 90 days, voluntarily putting a breathalyzer device in her vehicle, completing 50 hours of community service, as well as classes for alcohol addiction.

Ms. Burkhalter directed the board to review pages 67 and 68 of the Proposal for Decision, specifically Findings of Fact #9, #10, #12, #13, #14 and Conclusion of Law #4. Board member Ulmer asked if Ms. Kimmons had not pleaded to the Obstruction of a Highway charge, would she still be disqualified from licensure. Ms. Burkhalter replied that she was originally charged with a Class A, would not have if a Class B.

Board member Hayden again stated that the board should refer back to Texas Government Code 2001.058(e) in this case as well.

Board member Hayden made a motion to affirm the ALJ's decision and grant Ms. Kimmons' renewal application for registration as a Private Investigator. Board member Ulmer seconded the motion. The motion passed unanimously.

Kenneth E. Humphrey- Docket No. 405-17-3746:

Mr. Humphrey was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. Burkhalter stated Mr. Humphrey's registration as a noncommissioned security officer was revoked based on his Class B misdemeanor conviction for obstructing a highway.

Board member Ulmer asked if Mr. Humphrey had private counsel or an appointed attorney representing him, to which Board member Hayden stated that records indicated that he represented himself.

Board member Hayden made a motion to affirm the ALJ's decision and reinstate Mr. Humphrey's registration as a noncommissioned security officer. Board member Siems seconded the motion. The motion passed unanimously.

Uvaldo De La Rosa- Docket No. 405-17-4306:

Mr. De La Rosa was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. Burkhalter stated Mr. De La Rosa's renewal application for registration as a commissioned security officer was summarily denied based on his two (2) pending state jail felony offenses of engaging in organized criminal activity. The Department also alleged that Mr. De La Rosa made a material misstatement in his renewal application.

Board member Hayden asked if Mr. De La Rosa lied on his application, to which Ms. Burkhalter stated that the Department alleged that he did lie on his application but it was not part of the ALJ's Findings of Fact. Board member Hayden read Finding of Fact #6: "In the Application, Applicant responded 'No' to the question: 'Are you currently charged with, or under indictment for, a felony, or Class A misdemeanor?'"

Board member Hayden made a motion to affirm the ALJ's decision, based on Findings of Fact #6 & #7, and summarily deny Mr. De La Rosa's renewal application for registration as a commissioned security officer. Board member Ulmer seconded the motion. The motion passed unanimously.

Bradley D. Cumby- Docket No. 405-17-3819:

Mr. Cumby was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. Burkhalter stated Mr. Cumby's application for registration as a noncommissioned security office was summarily denied based on his Class A misdemeanor conviction for driving while intoxicated- misdemeanor repetition.

Board member Hayden made a motion to affirm the ALJ's decision and summarily deny Mr. Cumby's application for registration as a noncommissioned security officer. Board member Ulmer seconded the motion. The motion passed unanimously.

Erin B. Striplin- Docket No. 405-17-3820:

Ms. Striplin was not present to address the board on this matter, nor did she have counsel present on her behalf. Ms. Burkhalter stated Ms. Striplin's application for registration as an employee of a license holder was summarily denied based on her Class A misdemeanor conviction for driving while intoxicated with blood alcohol concentration over 0.15.

Board member Hayden asked if Ms. Striplin's employer requested her to apply for this registration since it is permissive. Ms. Burkhalter stated that Ms. Striplin's testimony was that her employer did require her to register as an employee of a license holder, but her job with that company is as a receptionist. Board member Ulmer stated that Ms. Striplin would be eligible for licensure in 2 months. Board member Hayden asked if Ms. Striplin were still working for this company, to which Ms. Burkhalter stated she was.

Board member Hayden made a motion to affirm the ALJ's decision and summarily deny Ms. Striplin's registration as an employee of a license holder. Board member Ulmer seconded the motion. The motion passed unanimously.

Mykal Sunrise- Docket No. 405-17-4280:

Mr. Sunrise was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. Burkhalter stated Mr. Sunrise's application for registration as a security salesperson was summarily denied based on his state jail felony offense of endangering a child.

Board member Hayden made a motion to affirm the ALJ's decision and summarily deny Mr. Sunrise's registration as a security salesperson. Board member Siems seconded the motion. The motion passed unanimously.

Jason L. White- Docket No. 405-17-4307:

Mr. White was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. Burkhalter stated Mr. White's registration as a manager was summarily suspended based on his pending Class A misdemeanor charge for deadly conduct. She further explained that subsequent action on this case resulted in Mr. White receiving deferred adjudication for 6 months, but that should not change the current Proposal for Decision.

Board member Hayden asked, based on Findings of Fact #13, #14, & #15, if Mr. White gave any mitigating factors as outlined in Chapter 53. Ms. Burkhalter stated that he did not give much and that he did not testify.

Board member Hayden made a motion to affirm the ALJ's decision and summarily suspend Mr. White's registration as a manager. Board member Ulmer seconded the motion. The motion passed unanimously.

Ruben T. Acosta- Docket No. 405-17-4301:

Mr. Acosta was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. Burkhalter stated Mr. Acosta's application for registration as a commissioned security officer was summarily denied based on his Class A misdemeanor conviction for driving while intoxicated with blood alcohol concentration 0.15 or over.

Board member Ulmer asked if Mr. Acosta has had other convictions since this one, to which Ms. Burkhalter stated yes. Board member Ulmer then asked if he was also behind on child support, which Ms. Burkhalter stated that according to Findings of Fact #17 he is behind.

Board member Hayden made a motion to affirm the ALJ's decision and summarily deny Mr. Acosta's application for registration as a commissioned security officer. Board member Ulmer seconded the motion. The motion passed unanimously.

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

Linda Settlemire- Docket No. 405-17-3744:

Ms. Settlemire was not present to address the board on this matter, nor did she have counsel present on her behalf. Mr. Nemer stated Ms. Settlemire's renewal application for registration as a noncommissioned security officer was summarily denied based on her Class A misdemeanor conviction for Theft Control Intent <\$500. Illinois' Theft Control Intent <\$500 offense is substantially similar to the Texas offense of Theft.

Board member Hayden asked if she presented any mitigating factors as outlined in Chapter 53, to which Mr. Nemer stated she did testify as to employment history. He went on to say that the ALJ also found that youth was not a factor and she still owed money.

Board member Hayden made a motion to affirm the ALJ's decision and summarily deny Ms. Settlemire's renewal application for registration as a noncommissioned security officer. Board member Siems seconded the motion. The motion passed unanimously.

Christopher R. Frerichs- Docket No. 405-17-4525:

Mr. Frerichs was not present to address the board on this matter, nor did he have counsel present on his behalf. Mr. Nemer stated Mr. Frerichs' application for registration as an alarm system installer was summarily denied based on his Class A misdemeanor conviction for Driving While Intoxicated BAC \geq 0.15.

Chairwoman James asked if evidence of Mr. Frerichs' fitness was included in their packets. Mr. Nemer replied that the ALJ gave the following examples of his fitness:

- no other criminal history
- employed since 18 years old
- supports 2 children
- letters of recommendation from his employer

Board member Ulmer asked if Mr. Frerichs was also a military veteran, to which Mr. Nemer stated that was correct.

Board member Hayden made a motion to affirm the ALJ's decision and grant Mr. Frerichs' application for registration as an alarm system installer. Board member Ulmer seconded the motion. The motion passed unanimously.

David Ryan- Docket No. 405-17-3832:

Mr. Ryan was not present to address the board on this matter, nor did he have counsel present on his behalf. Mr. Nemer stated Mr. Ryan's application for registration as a noncommissioned security officer was summarily denied based on multiple disqualifying California convictions. The disqualifying crimes include a misdemeanor Criminal Trespass conviction, a misdemeanor Resist and Obstruct Officer conviction, two separate felonies Possession of a Controlled Substance (Methamphetamine) convictions and a misdemeanor Possession of a Controlled Substance (Methamphetamine) conviction. Both felony offenses were subsequently reclassified as misdemeanors under California law.

Mr. Nemer further stated that the Department requested the ALJ make corrections to the Proposal for Decision #17, which stated Mr. Ryan would not be eligible for registration until December 2019, when it should be December 2021. He also stated that the Department requested the ALJ accurately reflect the name of the similar offense from Resist and Obstruct Officer to Resisting Arrest, Search, or Transportation. The ALJ agreed these changes should be made and agreed that they could be corrected by the Board during the Final Orders.

Board member Hayden asked for further information regarding the Supreme Court of California setting aside 5 criminal convictions. Mr. Nemer explained that it was part of a program called Turning Over a New Leaf.

Board member Siems made a motion to affirm the ALJ's decision and summarily deny Mr. Ryan's application for registration as a noncommissioned security officer. Board member Hayden seconded the motion. The motion passed unanimously.

Board member Hayden made a second motion for the final orders should include a correction to Finding of Fact #17 to properly reflect his eligibility for registration date and Conclusion of Law #7 to accurately reflect the name of the similar offense. Board member Siems seconded the motion. The motion passed unanimously.

Edgar T. Jones, Jr. - Docket No. 405-17-5274:

Mr. Jones was not present to address the board on this matter, nor did he have counsel present on his behalf. Mr. Nemer stated Mr. Jones' application for renewal of his registration as a noncommissioned security officer was summarily denied based on his Class A misdemeanor conviction for Driving While Intoxicated 2nd.

Chairwoman James asked what his age was at the time of the offense, to which she was told he was 51.

Board member Ulmer made a motion to affirm the ALJ's decision and grant Mr. Jones' renewal application for registration as a noncommissioned security officer. Board member Hayden seconded the motion. The motion passed unanimously.

Agenda Item XI: Adjournment

Chairwoman James introduced this agenda item. Board member Hayden made a motion for adjournment. Board member Siems seconded the motion, and the Board voted unanimously in favor of the motion. At 10:31 am, the October 4, 2017 meeting of the Private Security Board was adjourned.