

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
JANUARY 24, 2018**

**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;
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 DVD recording on file at the Board's office.

The board meeting was called to order at 9:10 a.m.

Agenda Item I: Approval of Minutes for Board Meeting held October 4, 2017

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

Agenda Item II: Quarterly Licensing Report from Regulatory Services Division

Major Jay Alexander addressed the Board regarding investigations. He went on to read the following activity report for the 4th quarter CY17, October - December 2017:

Region 1 (Dallas area)

- On 10/16/17 RSD HQ initiated an investigation involving a private investigator in the Dallas area wearing a badge resembling that of a law enforcement officer. Case referred to Dallas Special Agents for further investigation.
- On 11/3/17 Dallas Special Agents conducted an undercover operation at nightclubs and gentlemen's clubs in Dallas and Tarrant counties during which 49 commissioned and non-commissioned security guards were inspected. As a result of this operation, 18 violations were documented, including one (1) felony arrest for Unlawful Carrying of a Weapon. Administrative action was also taken against involved companies for employing non registered guards and operating without a qualified manager.
- On 11/15/17 Dallas Special Agents were referred a case by RSD HQ involving an unlicensed individual operating as a locksmith in the Region 1 area. Video located on Facebook shows the individual cutting keys as part of advertisement for an unlicensed locksmith company. Investigation is on-going.
- On 12/7/17 Dallas Special Agents were referred a case by RSD HQ involving a company advertising commercial and residential installation of security cameras without a license in the Dallas area. Investigation is on-going.

Region 2 (Houston area)

- On 10/10/17 RSD Houston area investigators initiated an investigation into a security company that allegedly took payment from an employee, but did not provide the employee with their pocket card. Administrative action was taken on this violation.
- On 10/24/17 RSD HQ received notification from Houston Special Agents of an undercover operation conducted involving an unlicensed locksmith. Investigation confirmed the individual to be unlicensed, and as part of the operation the unlicensed individual offered to rekey four (4) door locks for a total of \$300. Criminal charges of Operating Without a License were filed.
- On 10/10/17 RSD Houston area investigators finalized investigation involving a security company in Houston allegedly carrying unauthorized weapons, and wearing uniforms failing to display the word "security." Administrative action was taken on these violations, as well as failure to report an arrest.
- On 12/7/17 Houston Special Agents were referred a case involving an unlicensed electronic access control company operating in Bryan. Investigation is on-going.
- On 12/7/17 Houston Special Agents were referred a case involving a locksmith company in Humble operating without a license. Investigation is on-going.

Region 3 (Valley area)

- On 11/27/17 RSD HQ received information regarding a commissioned security guard in Region 3 who had discharged his firearm while on duty; and that this information had not

been properly reported to DPS. Initial investigation revealed the guard in question had not only discharged his weapon, but was also not registered. Other violations were also discovered, including failure to maintain employee records and failure to transfer registration within 14 days. Case has been referred to Corpus Christi Special Agents, investigation is on-going.

Region 4 (West Texas area)

- On 11/7/17 RSD HQ received information involving a security company operating without a license at a job center in El Paso. Complaint alleged the majority of the employed guards did not have pocket cards. Investigation revealed the allegations to be unfounded, case closed with no action taken.
- On 12/7/17 RSD HQ received information involving a company operating without a qualified manager in the El Paso area. Investigation revealed that the company has been operating without a qualified manager since February 2017. A \$1000 administrative fine was assessed for this violation.

Region 6 (Central Texas area)

- On 11/17/17 San Antonio Special Agents were referred a case involving an unqualified security guard working without a license. The guard in question is ineligible for a license due to criminal convictions. Investigation is on-going.
- On 11/30/17 RSD HQ received a complaint regarding a company advertising online without displaying their company license number or address. An advisory notice was sent for advertising violations.

RCS HQ

- On 12/18/17 RSD HQ received information concerning an alarm company operating without a license in the Katy area, installing surveillance cameras at an area pool. Investigation by RSD HQ staff revealed these allegations to be unfounded, case closed with no action.
- On 12/20/17 RSD HQ received two (2) separate complaints regarding unlicensed security guards working at large retail locations in the Tyler area. Investigation by RSD HQ staff revealed no violations had occurred, cases closed with no action.
- On 11/13/17 RSD HQ received information regarding an individual forging paperwork in order to issue level III licenses to former and present employees who had not taken the required classes. Investigation is on-going.

Board member Hayden asked if there were new laws regarding the color of lights on security cars and what was prohibited. Major Alexander stated each company's lights are looked at individually, but the use of red or blue lights are prohibited. Division Director Bowie stated that the statute did recently change regarding private security vehicles. During the last session it was decided on, by the Legislature, that acceptable colors are green, amber, and white; regardless of if they are actively on or not, it would be a violation to have any other color lights.

Assistant Manager Ryan Garcia presented the licensing totals for the first quarter, 9/1/17 to 11/30/17. He stated, for this time period, the Division received 406 original company applications, 1,506 company renewals, 14,416 original individual applications, and 8,859 individual renewals. He went on to say, for the same time period the Division processed the following licenses/registrations:

- 330 original company licenses (284 online, 46 manual),
- 1,481 company renewals (1,431 online, 50 manual),
- 11,163 individual registrations (10,777 online, 386 manual),
- 8,482 individual renewals (8,326 online, 156 manual),
- 6,621 employee information updates (6,476 online, 145 manual).

He also stated this time period showed 5,930 active company licenses, 418 active school licenses, and 143,279 active individual registrants.

Chairwoman James asked for clarification regarding why there are manual entries, when TOPS was designed to do away with paper applications. Mr. Garcia answered that there are some applications that get hung up in the system and staff has to do them manually. He also pointed out that they do still receive a few paper applications.

Agenda Item III: Reports from Board Committees

There are no reports at this time.

Agenda Item IV: Public Comment

Division Director RenEarl Bowie addressed the board. He stated that over the years the Agency has dealt with background checks and making certain that those wishing to work in the Private Security industry have the proper FBI checks as well. TOPS was designed to help with that. He went on to say in mid-January the FBI approved the use of the Rapback program for States to use. He explained that the Department could now begin the process in enrolling registrants into the FBI Rapback system. Those individuals already registered in TOPS have completed Phase 1. He stated that Phase 2 will begin with the Agency transferring that information to the FBI who will enroll those individuals. Once this program is running at 100% it will give the Agency virtual watch of all those enrolled, as well as be a cost saving for companies who have to deal with fingerprinting. He further stated that the Agency is 6 months away from completing the 1st 2-year cycle in TOPS. He went on saying that this will hopefully take care of those odd individuals who may have been “grandfathered in”, or whose prints were lost, etc. Board member Hayden asked if this system addresses the various jurisdictions who have a lag in reporting, causing the board to revoke licenses after they have already been issued. He further asked if there was anything in this new system that required all law enforcement jurisdictions to report in a timely manner. Division Director Bowie answered the questions stating that while this would assist in addressing the issue of notification, it is left to individual entities on when they report convictions. He also stated that he did not know if there were any time requirement in this system and would need to defer to the Agency’s Crime Records Department. Board member Hayden stated the Agency would still suffer from finding late information, causing the revocation of licensure, if jurisdictions are late in reporting. Division Director Bowie stated that

though that may happen, the good thing with the system is that it will be caught sooner than it might have been before, such as upon renewal of the license.

Kelly Ryan- representing TBFAA - addressed the board. He stated that he was re-elected president at the October convention. He wanted to thank Mr. Hayden for his seminar at the convention, as well as Division Director Bowie. He also wanted to thank Marcia Smith, as she has been phenomenal with helping with TOPS. Finally, he thanked Lieutenant Lowery for being very helpful regarding some of the complaints that the industry had.

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

The board went into executive session at 9:38am.

The board returned from executive session at 10:01am. Chairwoman James reconvened the meeting at this time.

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

Chairwoman James called roll to determine which individuals, with cases before them, were present. She further stated that in the interest of time for those who were present for their hearing, she would hear them first.

- Andrew C. Cardenas- Docket No. 405-18-0116
- James R. Sifers- Docket No. 405-17-5159
- Keith W. Schmidt- Docket No. 405-17-4281
- James W. Louder- Docket No. 405-17-1683
- Christopher Stevenson- Docket No. 405-17-4652
- Shayne D. Gatlin- Docket No. 405-18-0437
- James G. Lea- Docket No. 405-17-5273

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

Shayne D. Gatlin- Docket No. 405-18-0437:

Mr. Gatlin was present to address the Board on this case, and also had counsel present on his behalf; his attorney, Steve Thorton. Ms. Burkhalter stated Mr. Gatlin's applications for registration as an owner and manager were summarily denied based on his felony conviction for Burglary of a Habitation. She further stated that he made a material misstatement on this application by failing to disclose the conviction.

Attorney Steve Thorton next addressed the board stating he was representing Mr. Gatlin.

Board member Hayden made a motion to affirm the ALJ's decision and grant Mr. Gatlin's applications for registration as an owner and manager. Board member Ulmer seconded the motion. The motion passed unanimously.

James W. Louder- Docket No. 405-17-1683:

Mr. Louder was present to address the board, and had counsel present on his behalf; his attorney, Jenny Smith. Ms. Burkhalter stated Mr. Louder's application for registration as an alarm salesperson was summarily denied based on his conviction for the Class 5 Felony offense of criminal damage out of Arizona (involving damage of more than \$2,000 but less than \$10,000).

Ms. Smith was next to address the board. Board member Hayden asked what would the amount of time that could have been assessed for the Class 5 Felony in Arizona, to which Ms. Smith stated she did not know off hand. Board member Hayden then asked what defined a felony, to which Ms. Smith stated in Texas it would be imprisonment for a year or more. She went on to explain that the criminal damage for a class 5 felony in Arizona was defined as reckless damage to the property of another. However, in trying to translate that into Texas law it was determined by DPS that it should be compared to criminal mischief. However, she stated, because it was classified as reckless in Arizona, it should translate to reckless damage or destruction in Texas, which is a Class C misdemeanor and therefore not a disqualifying offense. Board member Hayden asked if someone could be incarcerated for a year or more on a Class C misdemeanor, to which Ms. Smith answered no. He then asked if someone could be incarcerated on a Class 5 Felony in Arizona, to which she stated she did not know. Board member Hayden stated he was trying to understand the difference between a Class 5 Felony, for which a person could be incarcerated for a year; versus a Class C misdemeanor, which is basically a traffic ticket. Ms. Smith continued stating that in DPS rules regarding translation of offenses from state to state, the focus is on the substantially similar elements of the offenses. Board member Hayden stated that the rules also take in to account the fact of similar punishment for the crimes as well. Ms. Smith stated that under §35.4 (b), it states "Such offenses include crimes under the laws of another state or the United States, if the offense contains elements that are substantially similar to the elements of an offense under the law of this state."

Board member Hayden stated that after review of the Conclusions of Law and Findings of Facts, he moved to strike Conclusion of Law #10, as it was not properly applied, and affirm the ALJ's decision and grant Mr. Louder's application for registration as an alarm salesperson. Board member Ulmer seconded the motion. The motion passed unanimously.

Andrew C. Cardenas- Docket No. 405-18-0116:

Mr. Cardenas was present to address the board on this matter, but he did not have counsel present on his behalf. Ms. Burkhalter stated Mr. Cardenas' application for registration as a noncommissioned security officer was summarily denied based on his Class A misdemeanor conviction for driving while intoxicated with blood alcohol concentration of 0.15 or more.

Mr. Cardenas next addressed the Board stating that he was convicted on these charges. He went on to say that he satisfied all fines, fees, and obligations except that his probation would not be completed until March 5th. Board member Ulmer asked if he had been in any other trouble with the law, to which he stated no. She also asked if he disclosed his arrest on his application, to which he answered yes, he had.

Chairwoman James asked if the board should take his probationary status into consideration when rendering their decision. Ms Burkhalter stated that it was taken into consideration by the ALJ during the hearing.

Board member Siems asked if he had devices installed on his vehicle. Mr. Cardenas stated that he did have an Ignition Interlock device installed due to court order, within 2 weeks though he had been given 30 days to do so.

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

James R. Sifers- Docket No. 405-17-5159:

Mr. Sifers was present to address the board on this matter, but did not have counsel present on his behalf. Ms. Burkhalter stated Mr. Sifers' applications for registration as an alarm installer and electronic access control device installer were summarily denied due to his Class A misdemeanor conviction for theft and his state jail felony conviction for fraudulent use of identifying information.

Mr. Sifers addressed the board stating he did have these convictions, and served 2 years in prison. He stated that the offense happened in 2007, he was sentenced in 2008 and jailed in 2011 just to get it over with. He was out of jail March of 2013. He went on to say that he was licensed the entire time he was in jail and received his renewal licenses in 2013 and 2015, but was this time denied a renewal. He stated that he has not been in trouble since. Board member Siems asked if he worked for himself, Mr. Sifers stated that he worked for a security company in Waco.

Board member Ulmer made a motion to affirm the ALJ's decision and grant Mr. Sifers' applications for registration as an alarm installer and electronic access control device installer. Board member Siems seconded the motion. The motion passed with James, Siems, and Ulmer voting in favor of the motion, while Hayden voted against.

James G. Lea- Docket No. 405-17-5273:

Mr. Lea was present to address the board on this matter, but he did not have counsel present on his behalf. Ms. Burkhalter stated Mr. Lea's application for registration as a noncommissioned security officer was summarily denied based on his Class A misdemeanor conviction for Driving While Intoxicated with BAC ≥ 0.15 .

Mr Lea addressed the board stating that his conviction happened in 2014 after he had already applied for licensure. He stated that he disclosed that he had a charge pending on his application and received a license. He stated he was only denied licensure upon renewal. Mr. Lea was then asked a series of questions:

- Are you still employed by Allied? – No
- Who are you employed with? – I am currently unemployed

- What other types of jobs have you held – I've been in the US Army, worked for my father and worked in security for the last 3 years.
- As a non-commissioned security officer do you work in or out of a car? – The last job I had, I worked in an office monitoring camera screens.
- The job you are trying to get currently would not require you to drive? – Depending on the board's decision today, I can go back to working for my previous employer
- Did you attend any classes such as AA? – No
- Did you receive an Honorable Discharge from the Army? - Yes

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

Keith W. Schmidt- Docket No. 405-17-4281:

Mr. Schmidt was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. Burkhalter stated Mr. Schmidt's renewal application for registration as a private investigator was summarily denied based on his 2nd degree felony conviction for burglary of a habitation and his 1st degree felony conviction for aggravated robbery (three counts).

Ms Burkhalter was asked a series of questions by the board:

- Was Mr Schmidt issued a license in 2012 and renewed again in 2014? – yes
- Does Mr. Schmidt have multiple DUI convictions? – yes, but they are not considered Disqualifying.
- Did Mr. Schmidt receive jail time? – yes, in Findings of Fact #7 it states he was released in 1986.
- What was Mr. Schmidt's age at the time that he committed? – Findings of Fact #6 states that he was a teenager at the time.

Board member Siems made a motion to affirm the ALJ's decision and grant Mr. Schmidt's renewal application for registration as a private investigator. Chairwoman James seconded the motion. The motion failed with Siems and James voting in favor of the motion, while Hayden and Ulmer voted against.

Board member Ulmer stated that Mr. Schmidt had a career and the board took that away due to legislation. Chairwoman James asked if there was any evidence that he lied on his application, to which Ms. Burkhalter stated she did not know. Board member Hayden stated he was having difficulty understanding how these licensures went through twice. He asked if this were an instance where it was not reported to the Department until now. Chairwoman James pointed out that this conviction was over 40 years ago. Board member Ulmer also pointed out that he was an exemplary prisoner also, as evidenced that he was sentenced to 30 years, but only served 3 years.

Board member Ulmer made a motion to affirm the ALJ's decision and grant Mr. Schmidt's renewal application for registration as a private investigator. Board member Siems seconded the motion. The motion passed unanimously.

Board member Hayden asked the record reflect that the reason for his vote is due to the fact that the Department previously granted him a license and there is no evidence that he made a material misstatement on this application.

Christopher Stevenson- Docket No. 405-17-4652:

Mr. Stevenson was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. Burkhalter stated Mr. Stevenson's application for registration as a noncommissioned security officer was summarily denied based on his Class B misdemeanor conviction for Obstructing Highway or Other Passageway.

Board member Ulmer asked if Mr. Stevenson attempted to correct his misstatement, which Ms. Burkhalter stated that he had. Board member Ulmer stated that if Mr. Stevenson had not pled to the lesser charge his conviction would not have been disqualifying. She further stated that he had presented several letters of recommendation and achievement awards during this hearing.

Board member Hayden asked if the Department knew when Mr. Stevenson was notified that his application was summarily denied; specifically if it was before or after he attempted to correct the misstatement on his application. Ms. Burkhalter answered by saying that in the Proposal for Decision the ALJ states "According to Applicant, he realized his mistake quickly, brought it to the attention of the HR department, and resubmitted an application with the correct response to that question within 48-72 hours of the submission of his original application, with the hope of "rectifying" his error."

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

Agenda Item VII: 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 11:12 am, the January 24, 2018 meeting of the Private Security Board was adjourned.