

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
JULY 11, 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 Derrick Howard
Honorable C. D. Siems
Honorable Alan Trevino
Honorable Debbra Ulmer
Honorable Stephen Willeford

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;
Marcia Smith, Program Supervisor, Licensing and Registration Service;
Jay Alexander, Major, Regulatory Crimes Service

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.

Agenda Item I: Oath of Office, Board Members

Chairwoman James administered the Oath of Office to Alan Trevino, Derrick Howard, and Stephen Willeford. She then asked the manager to call roll, who declared a quorum was formed.

The board meeting was called to order at 9:11 a.m.

Agenda Item II: Election of Officers; Vice Chairperson & Secretary

Chairwoman James asked the board for nominations for the position of Vice Chairman.

She made a motion and nominated Alan Trevino for Vice Chairman. Board member Willeford seconded the nomination. The motion carried with a unanimous vote.

Chairwoman James asked the board for nominations for the position of Secretary. She made a motion and nominated Debra Ulmer for Secretary. Board member Hayden seconded the nomination. The motion carried with a unanimous vote.

Agenda Item III: Board Committee Assignments

Chairwoman James stated that Board member Hayden was the current Chair of the Rules Committee while Secretary Ulmer also served on that committee. She asked that Vice Chairman Trevino also serve. Chairwoman James also stated that she was combining the Rules Committee and Advisory Committee into one.

Agenda Item IV: Approval of Minutes for Board Meeting held April 4, 2018

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

Agenda Item V: Quarterly Reports from Regulatory Services Division

Program Supervisor Marcia Smith presented the licensing totals for the third quarter, 3/1/2018 to 5/31/2018. She stated, for this time period, the Division received 418 original company applications, 1,824 company renewals, 15,592 original individual applications, and 10,285 individual renewals. She went on to say, for the same time period the Division processed the following licenses/registrations:

- 273 original company licenses (241 online, 32 manual),
- 1,801 company renewals (1,775 online, 26 manual),
- 9,534 individual registrations (9,269 online, 265 manual),
- 8,906 individual renewals (8,778 online, 128 manual),
- 8,319 employee information updates (8,134 online, 185 manual).

He also stated this time period showed 6,269 active company licenses, 440 active school licenses, and 147,118 active individual registrants.

Major Jay Alexander was next to address the board. He stated that there was a delay in enforcement information at this time, as DPS is in the process of upgrading its processes and procedures and will have this information available to the board at the next board meeting.

Agenda Item VII: Discussion and Possible Action Regarding Chemical Dispensing Device Training Program

Chairwoman James called for this item to be discussed next. Major Alexander addressed the board on this item stating that the Level III and Level IV training does not currently incorporate OC spray into the curriculum. He explained that DPS has heard from many members throughout the industry who have requested that it be added. He stated that currently the only defense to

prosecution someone would have in carrying OC spray is either through TCOLE or if they received training through the Level III or Level IV training that had been approved by the Private Security Board. He went on to say they worked with the Training Division to create this training. Training covers the following:

1. Early History of Chemical Weapons
2. Introduction to Modern Chemical Weapons
3. What is OC Spray?
 - Effectiveness
 - Safety
 - Stability
4. Understanding OC Spray and Techniques for Using as Force
 - Drawing
 - Targets
 - Deployment
 - Spraying
 - Verbal Commands
5. First aid/decontamination
6. Other Considerations
 - Custody Death
 - Excited Delirium
 - Cocaine-induced Excited Delirium
 - Neuroleptic Malignant Syndrome
 - Sudden Death
7. Penal Code Regarding Use of Force
8. Criminal and Civil Liabilities
9. Media (News Organizations and Social Media)

He concluded by requesting that the Board add this new training to the existing Level III and Level IV training. Board member Howard made a motion to approve the inclusion of OC Spray training to the current Level III and Level IV curriculums. Board member Siems seconded the motion, which passed with a unanimous vote.

Agenda Item VI: Reports from Board Committees

There were no reports at this time.

Agenda Item VIII: Public Comment

There were no public comments at this time.

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

Chairwoman James called for an executive session which began at 9:22am.

The meeting was called 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. She further stated that in the interest of time for those who were present for their hearing, she would hear them first.

- Randall S. Guthrie- Docket No. 405-18-1345
- Wayne French- Docket No. 405-18-2104
- Darrin Deray Sells- Docket No. 405-18-2106
- Jacob Tyler Stroh- Docket No. 405-18-2520
- Jermel Lekeith Lewis- Docket No. 405-18-2540
- Rene Garza, Jr- Docket No. 405-18-1348
- Kyle Hunter Burkey- Docket No. 405-18-2522
- Adan Barron- Docket No. 405-18-2569
- Douglas Wayne Roberts- Docket No. 405-18-2567
- Robert Joseph Lopes- Docket No. 405-18-2542
- Michael A. Mendoza- Docket No. 405-18-2541
- Matthew Alexander Miller- Docket No. 405-18-2538

Attorney for the Department, Jean O'Shaw, presented the following cases to the board.

Wayne French - Docket No. 405-18-2104:

Mr. French was present to address the board on this matter, and also had counsel present on his behalf- Oddlie Heath. Ms. O'Shaw stated Mr. French's application for registration as a noncommissioned security officer was summarily denied based on his felony conviction for Burglary of a Habitation.

Oddlie Heath was next to address the board, stating that based on the evidence and the ALJ's recommendation, he asked the board to grant Mr. French the licensure that he was seeking. He went on to say that if Mr. French had been born 10 years later he would have been able to get a deferred adjudication on this case which would allow him to hold the license. He further stated that the board had discretion in whether to take certain factors into account and grant him his license.

Vice-chairman Trevino asked under what capacity Mr. French was currently employed with Securitas. Mr. French stated that due to his lack of a license all he has been able to do is work as a gate operator allowing employees in and out of the chemical plant. Secretary Ulmer asked if his was a new application or a renewal. He stated that he was employed with the company for a year before this issue came up. Board member Willeford asked how old he was at the time of the arrest, to which Mr. French stated he was 17 years old. Chairwoman James then asked if he had ever been convicted of any other crimes since, and he stated that he had but it was over 40 years ago. She asked if that case resulted in a conviction, which he stated it was a drug related conviction.

Board member Hayden stated that the board has a rule in which Burglary is a permanently disqualifying offense, but the Legislature has given Chapter 53 for consideration in such cases. The ALJ considered these factors with his age at the time, length of time since conviction, steady

employment, evidence of rehabilitation and eligibility date all being in his favor for licensure. However, he stated, what he struggled with was with the severity of the crime.

Chairwoman James made a motion to affirm the ALJ's decision and grant Mr. French's application for registration as a noncommissioned security officer. Board member Ulmer seconded the motion. The motion passed with James, Howard, Ulmer, and Willeford voting in favor, while Hayden, Siems, and Trevino voted against.

Attorney for the Department, Victoria Meza, presented the following cases to the board.

Adan Barron - Docket No. 405-18-2569:

Mr. Barron was present to address the board on this matter, but did not have counsel present on his behalf. Ms. Meza stated Mr. Barron's application for registration as an owner, manager and renewal application for registration as a locksmith were summarily denied based on his felony conviction for burglary of a habitation.

Mr. Barron addressed the board stating that he has been in the locksmith business his whole life and had never done anything else wrong. He stated it was a mistake he made when he was only 16 years old. Secretary Ulmer asked what his age was now. Mr. Barron stated that he is 45 years old. Chairwoman James asked if he had any other convictions, to which he stated no. Board member Siems asked why he did not put his conviction on his application. Mr. Barron explained that his lawyer advised him, at the time, that because he was 16 years old when the event occurred he was not obligated to put the conviction on job applications. Board member Hayden asked if his conviction occurred in juvenile court or adult court. Mr. Barron stated that he didn't go to court until he was 18, so it took place in adult court.

Board member Hayden stated that this type of conviction, per Board Rules, is a permanently disqualifying offense. Chairwoman James also stated that this offense is directly related to the registration as a locksmith, as it would take him into people's homes. Mr. Barron stated that if the board knew him and the type of person that he is, they would know that he never took anything from anyone ever. Secretary Ulmer stated that she did read through his case and saw that he stayed inside the car while the house was being burglarized and that he actually was the one to call 911 and report what was happening. She stated that his case also said that the sister of one of the people who committed the crime later accused him of theft.

Board member Howard asked if he ever received an explanation as to why his case was delayed for so long, causing him to go to court when he was 18 instead of when he was 16. Mr. Barron stated that he did not.

Chairwoman James stated that he had initially received his locksmith registration, but due to changes in the law he was denied upon renewal. Board member Siems stated that although the law did change, it did not address Mr. Barron's misstatement on his application; that part of the law did not change. Secretary Ulmer asked Ms. Meza if the department presented his material misstatement as part of its case against Mr. Barron. Ms. Meza stated that the department did not present that as part of its case. Secretary Ulmer then pointed out that the board could only

consider things that were presented at the ALJ hearing, and his misstatement on the application was not presented.

Vice-chairman Trevino asked if he had ever disclosed his conviction on any of his previous applications, and if not how was he able to receive a locksmith registration. Board member Hayden stated that the ALJ referenced that Burglary of a Habitation did not become permanently disqualifying until 2014. Chairwoman James asked when he first received his license, to which he stated it was in 2011.

Board member Ulmer made a motion to uphold the ALJ's decision and grant Mr. Barron's application for registration as an owner, manager and renewal registration as a locksmith. Board member Howard seconded the motion. The motion failed with James, Ulmer, and Howard voting in favor, while Trevino, Hayden, Siems, and Willeford voted against.

Based on the severity of the case and Mr. Barron's material misstatements, Board member Willeford made a motion to overturn the ALJ's decision and deny Mr. Barron's application for registration as an owner, manager and renewal registration as a locksmith. Vice-chairman Trevino seconded the motion. The motion passed with Willeford, Trevino, Hayden, and Siems voting in favor, while James, Ulmer, and Howard voted against.

Kyle Hunter Burkey - Docket No. 405-18-2522:

Mr. Burkey was present to address the board on this matter, but did not have counsel present on his behalf. Ms. Meza stated Mr. Burkey's application for registration as a noncommissioned security officer was summarily denied due to his Class B misdemeanor conviction for obstructing a highway or other passageway. She also stated that in addition the department asked that the board make a correction to Conclusions of Law #6, which should read "date of conviction" not "date of completion of sentence" and #1, which should read "Private Security Act" not "Public Securities Act".

Mr. Burkey was next to address the board stating that in 2013, during SXSW he parked behind Sullivan's restaurant, at 3rd and Colorado. He stated that he was working for the valet parking company and was able to receive free parking there. He explained that he was planning to park overnight but had parked a bit in the way and could be towed because of it. He went on to say that he got in to move the vehicle across the street. He stated that the police didn't stop him due to swerving or a breathalyzer. He stated that the charges were dismissed and his fees were waived. He went on to explain that the company he works for is expanding into security as well, and as a single dad it would allow him the flexibility in hours to help care for his son.

Board member Siems asked him to explain the dismissal of the charges. Mr. Burkey stated that there was no DWI charge, but the charge was changed to obstruction of a highway. Board member Siems asked why the police stopped him in the first place, to which Mr. Burkey stated he thought that they observed him and his demeanor suggested that he was intoxicated. He went on to say that he knew he was intoxicated so he did not plan to drive, he was only wanting to move his vehicle a short distance and that was a lapse in judgement. Vice-chairman Trevino asked what the original charge was. Mr. Burkey stated it was a DWI charge but there was no

breathalyzer given. He further explained that during court the officer stated he was stopped for texting while driving, which his lawyer was able to prove was false.

Board member Ulmer stated that if Mr. Burkey's charge had remained a DWI charge this would be a moot point. Vice-chairman Trevino asked when he would have been eligible for licensure. Mr. Burkey will be eligible in August 2019.

Board member Hayden made a motion to uphold the ALJ's decision and grant Mr. Burkey's application for registration as a non-commissioned security officer. Board member Ulmer seconded the motion. The motion passed with James, Hayden, Howard, Siems, Ulmer and Willeford voting in favor, while Trevino voted against.

Board member Hayden made a second motion to affirm changes to Conclusions of Law #1 and #6, as requested by the Department. Board member Siems seconded the motion. The motion passed with a unanimous vote.

Attorney for the Department, Jean O'Shaw, presented the following cases to the board.

Randall Guthrie- Docket No. 405-18-1345:

Mr. Guthrie was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. O'Shaw stated Mr. Guthrie's application for registration as a private investigator was summarily denied based on his Class A misdemeanor conviction for Driving While Intoxicated BAC ≥ 0.15 . She also stated that in addition, the department asked that the board make a correction to Conclusions of Law #9, which should read "date of commission" not "date of completion of the sentence".

Board member Hayden made a motion to approve the changes to Conclusions of Law #9, as requested by the Department. Vice-chairman Trevino seconded the motion, which passed with a unanimous vote.

Board member Siems made a motion to affirm the ALJ's decision and grant Mr. Guthrie's application for registration as a private investigator. Board member Hayden seconded the motion, which passed with a unanimous vote.

Darrin Sells- Docket No. 405-18-2106:

Mr. Sells was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. O'Shaw stated Mr. Sells' application for registration as a noncommissioned security officer was summarily denied based on his Class A misdemeanor conviction for Official Oppression.

Board member Hayden made a motion to affirm the ALJ's decision and deny Mr. Sells' application for registration as a noncommissioned security officer. Board member Ulmer seconded the motion, which passed with a unanimous vote.

Jacob Stroh- Docket No. 405-18-2520:

Mr. Stroh was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. O'Shaw stated Mr. Stroh's application for registration as a locksmith was summarily denied based on his Class B misdemeanor conviction for obstructing a highway or other passageway, for which he will become eligible on or about December 7, 2018, if he is successfully discharged from his deferred adjudication probation.

Vice-chairman Trevino asked what happens if he is arrested again before he has completed his deferred adjudication probation. Ms. O'Shaw replied that the state would file a motion to adjudicate the deferred adjudication, then the court would rule on whether they should continue the deferred adjudication by a few months or confinement, etc. Board member Siems stated that Mr. Stroh applied for licensure and then 2 months later he received a disorderly conduct charge. He stated that it was his opinion that the board should deny him his license and he should wait until he is eligible in December, just to ensure he is going to be dismissed from the deferred adjudication probation.

Board member Siems stated that based on Mr. Stroh's demonstration of lack of judgement from June 2017 until August 2017 and the fact that he has not yet completed his deferred adjudication, he made a motion to deny the ALJ's decision and Mr. Stroh's application for registration as a locksmith. Board member Willeford seconded the motion, which passed with a unanimous vote.

Attorney for the Department, Victoria Meza, presented the following cases to the board.

Jermel Lewis- Docket No. 405-18-2540:

Mr. Lewis was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. Meza stated Mr. Lewis's application for registration as a commissioned security officer was summarily denied based on his Class B misdemeanor conviction for False Report to a Police Officer. She also asked that a change to the Finding of Fact be made in #6- changing the date of the hearing from March 30, 2018 to April 6, 2018 as the hearing was reset.

Vice-Chairman Trevino asked if his sentence suspension had any effect on his eligibility date. Ms. Meza stated that it changed it to the year 2020. Vice-Chairman Trevino then asked why he was given a second community supervision, to which she stated it was changed from supervised to unsupervised. When asked why Mr. Lewis was not hired back by the police department he had worked for, Ms. Meza stated she was not sure, but he did testify to several inter-departmental issues ongoing with that department.

Board member Hayden made a motion to approve the changes to the Finding of Fact #6 as requested by the Department. Vice-chairman Trevino seconded the motion, which passed with a unanimous vote.

Vice-Chairman Trevino stated that based on the fact that he was a police officer and still gave a false statement, he made a motion to deny the ALJ's decision and Mr. Lewis's application for registration as a commissioned security officer. Board member Willeford seconded the motion, which passed with a unanimous vote.

Rene Garza, Jr- Docket No. 405-18-1348:

Mr. Garza was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. Meza stated Mr. Garza's application for registration as a commissioned security officer was summarily denied based on his felony conviction for Conspiracy to Defraud the United States by Use or Traffic in an Unauthorized Access Device.

Board member Hayden made a motion to affirm the ALJ's decision and deny Mr. Garza's application for registration as a commissioned security officer. Vice-chairman Trevino seconded the motion, which passed with a unanimous vote.

Attorney for the Department, Joanna Starr, presented the following cases to the board.

Douglas Roberts- Docket No. 405-18-2567:

Mr. Roberts was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. Starr stated Mr. Roberts' application for registration as an alarm system installer was summarily denied based on his Class B misdemeanor conviction for Indecent Exposure. She also asked that changes to the Conclusions of Law be made in #1- changing the language from "public securities act" to "private security act", and #4 – changing "noncommissioned" to "alarm system installer".

Board member Hayden made a motion to approve the requested changes to the Conclusions of Law, as requested by the Department. Vice-chairman Trevino seconded the motion, which passed with a unanimous vote.

Board member Siems stated that based on the fact Mr. Roberts is still on deferred adjudication, he made a motion to deny the ALJ's decision and Mr. Roberts' application for registration as an alarm system installer. Board member Willeford seconded the motion, which passed with a unanimous vote.

Board member Hayden further added that he wanted the record to reflect major discrepancies in the PFD and that Find of Facts #17 directly contradicts Conclusions of Law #7 which states:

- FoF #17- "Mr. Roberts's Class B misdemeanor offense of indecent exposure is not a serious crime in the context of the facts of this case, and there is little to no relationship between Mr. Roberts's offense and the occupation of alarm systems installer."
- CoL #7- "Any offense under Chapter 21 of the Texas Penal Code is an offense that is directly related to the duties and responsibilities of those who are registered by the Department."

Robert Joseph Lopes- Docket No. 405-18-2542:

Mr. Lopes was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. Starr stated Mr. Lopes' application for registration as a corporate officer and shareholder was summarily denied based on his Class A misdemeanor conviction for Evading

Arrest. She also asked that a change to the Conclusions of Law be made in #1 – changing the language from “public” to “private”.

Board member Hayden made a motion to approve the requested changes to the Conclusions of Law, as requested by the Department. Secretary Ulmer seconded the motion, which passed with a unanimous vote.

Vice-Chairman Trevino made a motion to affirm the ALJ’s decision and deny Mr. Lopes’ application for registration as a corporate officer and shareholder. Board member Hayden seconded the motion, which passed with a unanimous vote.

Michael A Mendoza- Docket No. 405-18-2541:

Mr. Mendoza was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. Starr stated Mr. Mendoza’s application for registration as a commissioned security officer was summarily denied based on his Felony charge for evading arrest.

Board member Hayden stated that based on a gross misapplication of Federal and State laws, he made a motion to deny the ALJ’s decision and Mr. Mendoza’s application for registration as a commissioned security officer. Secretary Ulmer seconded the motion, which passed with a unanimous vote.

Matthew Alexander Miller- Docket No. 405-18-2538:

Mr. Miller was not present to address the board on this matter, nor did he have counsel present on his behalf. Ms. Star stated Mr. Miller’s application for registration as a commissioned security officer was summarily denied based on his Class A misdemeanor conviction for assault against his wife. She also stated that he made a material misstatement on his application.

Board member Hayden made a motion to affirm the ALJ’s decision and deny Mr. Miller’s application for registration as a commissioned security officer. Board member Howard seconded the motion, which passed with a unanimous vote.

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 10:57am, the July 11, 2018 meeting of the Private Security Board was adjourned.