

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
OCTOBER 2, 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, Vice Chairman
Honorable Debra Ulmer
Honorable Stephen Willeford

STAFF PRESENT:

RenEarl Bowie, Chief, 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 Compliance 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 9:01 am.

Agenda Item I: Approval of Minutes for Board Meeting held July 11, 2018

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 Reports from Regulatory Services Division

Program Supervisor Marcia Smith presented the licensing totals for the fourth quarter, 6/1/2018 to 8/31/2018. She stated that for this time period the Division received 369 original company applications, 1,903 company renewals, 16,782 original individual applications, and 9,756 individual renewals. She went on to say, for the same time period the Division processed the following licenses/registrations:

- 243 original company licenses (217 online, 26 manual),
- 1,857 company renewals (1,801 online, 56 manual),
- 8,403 individual registrations (8,185 online, 218 manual),
- 7,417 individual renewals (7,279 online, 138 manual),
- 7,909 employee information updates (7,831 online, 78 manual).

She also stated this time period showed 6,352 active company licenses, 450 active school licenses, and 150,082 active individual registrants.

Major Jay Alexander was next to address the board. He introduced Deputy Manager Anne Yusim, who presented the enforcement totals for the fourth quarter, 6/1/2018 to 8/31/2018. She stated, for this time period, the Division processed a total of 931 final disciplinary actions: 381 denials, 517 suspensions, 23 revocations, and 10 fines; totaling \$5,450.00. She also stated that 336 guard inspections and 18 business inspections by Regulatory Compliance Service staff had been conducted. She went on to say that for the same time period, the Division received a total of 170 complaints; 14 have been resolved/closed, with 156 pending/open. These complaints are in reference to the following sub-program:

- 66 guard
- 59 operating without a license (all sub-programs)
- 40 alarm
- 26 security contractor
- 19 private investigator
- 14 locksmith
- 2 guard dog
- 1 training school level III
- 1 MAB

Chairwoman James asked if the total mentioned by Anne for fines was cumulative for all fines assessed during that time period, to which Anne stated yes. Vice Chairman Trevino asked if there were statistics available regarding resolved complaints from the previous quarter, to which Major Alexander stated yes, that this information would be submitted to the board as soon as possible.

Agenda Item III: Report from Rules Committee

There was no report at this time.

Agenda Item IV: Discussion and possible action regarding Rule §35.121, Investigations Company License, and related presentation by Jason McLendon, National Protective Services Institute.

Mr. McLendon introduced himself to the board and provided a presentation on a recommended amended to Rule §35.121(a)(5), regarding schools authorized to teach the specialized course of study for private investigators. The current rule states:

“A specialized course of study directly designed for and related to the private investigation profession, taught and presented through affiliation with a four (4) year college or university accredited and recognized by the State of Texas. This course of study must be endorsed by the four (4) year college or university’s department of criminal justice program and include a departmental faculty member(s) on its instructional faculty. This course of study must consist of a minimum of two hundred (200) instructional hours including coverage of ethics, the Act, and this chapter.”

Recommended change of rule to read:

“A specialized course of study directly designed for and related to the private investigation profession, taught and presented through affiliation with a school which:

- (1) Is accredited by an accrediting agency recognized by the Texas Higher Education Coordinating Board; or
- (2) Holds either a Certificate of Authorization or a Certificate of Authority to operate a school in Texas from the Texas Higher Education Coordinating Board; or
- (3) Holds a Certificate of Approval to operate a school in Texas from the Texas Workforce Commission Career Schools and Colleges.

This course of study must consist of a minimum of two hundred (200) instructional hours including coverage of ethics, the Act, and this chapter.”

Mr. McLendon stated that his justification for this change in rule request is that the stringent requirements of mandating affiliation with a four (4) year college or university accredited and recognized by the State of Texas provides no added value to the industry, the end-user, or the general public. He continued by stating that the necessary high standards could be achieved through the rigorous requirements set forth by the State of Texas to obtain certificates to operate a school from either the Texas Higher Education Coordinating Board or the Texas Workforce Commission Career Schools and Colleges. Mr. McLendon stated this change in rule would potentially increase the ability to offer better and more readily available training to prospective private investigators; that the current rule and resultant high costs for training serve to limit the ability of otherwise qualified and eager applicants to enter the private security industry.

Chairwoman James asked for clarification that this recommendation only applies to private investigators, to which Mr. McLendon stated yes. Board member Hayden asked Mr. McLendon if his company, the National Protective Services Institute, is affiliated with any school or school system to which Mr. McLendon stated they are not at this time. NPSI is working to eventually become a four (4) year degree granting program, but is currently authorized to operate as a vocational college through the Texas Workforce Commission. Board member Hayden also asked if Mr. McLendon had support from within the industry or the related associations for his recommended rule change. Mr. McLendon stated that he has support within the private investigation field, but at this time is unsure of the level of support from TALI and their new board. Chairwoman James referred this recommendation to the rules committee for further review.

Agenda Item V: Discussion and possible action regarding Rule §35.123, Locksmith Company License

Senior Policy Analyst Steve Moninger, Regulatory Services Division, addressed the board at Chairwoman James' request and stated that this issue is similar to the one raised by Mr. McLendon regarding private investigators; this particular issue applies to locksmiths and the substitution of training for experience. Under the current rules, there is no room for discretion regarding such a substitution. Chairman James referred this potential change in rule to the rules committee.

Agenda Item VI: Public Comment

There were no public comments at this time.

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

Chairwoman James called for an executive session which began at 9:18 am.

The meeting was called back to order at 9:56 am.

Agenda Item VIII: 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.

- Clyde Blankenship, III – Docket No. 405-18-2572
- Margie L. Alvarado – Docket No. 405-18-3909
- Daniel P. Hoch – Docket No. 405-18-2568
- Matthew D. Navarrete – Docket No. 405-18-4028
- Cody Shane Drywater – Docket No. 405-18-3984
- Lesa Marie Favors – Docket No. 405-18-3752
- James R. Wilson – Docket No. 405-18-3904
- Cameron S. Risinger – Docket No. 405-18-4545
- Terry A. Moody – Docket No. 405-18-3756
- Adan Barron – Docket No. 405-18-2569 (rehearing)
- Regan V. Welborn – Admin. Case No. Z00275911 & Z00275893 (Direct Appeal)

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

Adan Barron – Docket No. 405-18-2569 (rehearing)

The Board voted unanimously to rehear Mr. Barron's case. Mr. Barron was present to address the board on this matter, but did not have counsel present on his behalf. Board member Siems addressed Mr. Barron and stated that at Mr. Barron's previous hearing at the July 11, 2018 meeting some questions were asked of him that were outside the scope of the Board's purview, for which Board member Siems apologized. Board member Siems made a motion to affirm the ALJ's decision and grant Mr. Barron his application as an owner/manager and his renewal

application as a locksmith. Board member Ulmer seconded the motion. The motion passed with James, Howard, Siems, and Ulmer voting in favor, while Hayden, Trevino, and Willeford voted against.

Cody Shane Drywater – Docket No. 405-18-3984:

Mr. Drywater was present to address the board on this matter, but did not have counsel present on his behalf. Ms. Meza stated Mr. Drywater's application for registration as a noncommissioned security officer was summarily denied based on his Class A Misdemeanor conviction for Driving Under the Influence.

Mr. Drywater addressed the board stating that he understands the severity of his actions that he takes full responsibility for his arrest and has since done what he can to give back to the community that he took away from. He stated he had been in the military approximately 10 years when the arrest occurred, and is now a full-time student and also volunteers to help disabled veterans. He applied for registration as a noncommissioned security officer to help support his wife, a disabled veteran, and their three (3) children. Employers within the industry are prepared to hire him as soon as he is eligible to work. He assured the Board this was a one-time lapse in judgment for him, and nothing of this nature would ever happen again.

Chairwoman James asked him when he completed probation from his conviction. Mr. Drywater stated he completed probation in 2014. Board member Hayden asked him when the DUI occurred, to which Mr. Drywater stated 2013. Board member Hayden stated that Mr. Drywater would be eligible for licensure in 10 months. Board member Hayden also asked Mr. Drywater when he was discharged from the military, to which Mr. Drywater stated he was honorably discharged from service following the incident in 2014. He explained that even though it was his first offense on a nearly 10 year honorable service with the military, they were still forced to discharge him from military service. He appeared before a review panel similar to the Board, and upon review of his military career, the review panel chose to discharge him honorably.

Board member Hayden made a motion to uphold the ALJ's decision and grant Mr. Drywater's application for registration as a noncommissioned security officer. Board member Howard seconded the motion. The motion passed with a unanimous vote.

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

Cameron S. Risinger – Docket No. 405-18-4545:

Mr. Risinger was present to address the board on this matter, and also had counsel present on his behalf – Jason Denowsky. Ms. Starr stated that Mr. Risinger's application for registration as a locksmith had been summarily denied due to his third degree felony charge for Possession of a Controlled Substance of One Gram or More but Less than Four Grams. She also stated that in addition, the department asked that the Board make a correction to Conclusion of Law #5, which should reference 37 Tex. Admin Code §35.4; not §37.4.

Attorney Jason Denowsky spoke on Mr. Risinger's behalf stating that Texas Government Code §2001.058 allows for a state agency to change a finding of fact or conclusion of law made by the

administrative law judge only if they feel the applicable laws, agency rules, or written policies were not applied correctly. Chairwoman James asked Mr. Risinger if he was still on probation, to which he stated yes, he would be on probation for another year. Board member Ulmer asked when this pending case would be considered closed. Ms. Starr stated the case would be considered closed upon Mr. Risinger's successful discharge. She also stated that if it was successful discharged there would not be a conviction, therefore this pending charge would not be a disqualifier. Deferred probation should be complete in October 2019. Board member Hayden asked what would happen if he was not successfully discharged. Ms. Starr stated if he was not successfully discharged, this pending charge would become a conviction and he would be ineligible for licensure in 2021.

Board member Siems made a motion to overturn the ALJ's decision and deny Mr. Risinger's application for registration as a locksmith on the grounds that until he has successfully completed probation and is discharged, this charge is still pending. Board member Willeford seconded. Motion passed with James, Howard, Siems, Trevino, Ulmer, and Willeford voting in favor, while Hayden voted against.

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

Margie L. Alvarado – Docket No. 405-18-3909:

Ms. Alvarado was not present to address the board, nor did she have counsel present on her behalf. Ms. Meza stated Ms. Alvarado had previously been licensed as a noncommissioned security guard and let that registration lapse. She stated her recent application for registration as a noncommissioned security was summarily denied due to her second degree felony conviction for burglary of a habitation.

Board member Hayden stated he was concerned with some of the factors that the ALJ considered to be in Ms. Alvarado's favor; particularly given the severity of her charges. Board member Hayden made a motion to overturn the ALJ's decision and deny Ms. Alvarado's application for registration as a noncommissioned security officer. Board member Siems seconded. The motion passed with a unanimous vote.

Daniel P. Hoch – Docket No. 405-18-2568:

Mr. Hoch was not present to address the board, nor did he have counsel present on his behalf. Ms. Meza stated that Mr. Hoch's registration as a owner/manager was revoked due to his Class A misdemeanor convictions for cruelty to non-livestock animals.

Board member Howard made a motion to affirm to ALJ's decision to revoke Mr. Hoch's registration as a owner/manager. Board member Hayden seconded. The motion passed with a unanimous vote.

Matthew D. Navarrete – Docket No. 405-18-4028:

Mr. Navarrete was not present to address the board, nor did he have counsel present on his behalf. Ms. Meza stated that Mr. Navarrete's application for registration as an alarm systems installer, electronic access control device installer, and alarm salesperson were summarily denied due to his Class A misdemeanor conviction of Driving While Intoxicated.

Vice Chairman Trevino made the motion to affirm the ALJ's decision to deny Mr. Navarrete's application for registration as an alarm systems installer, electronic access control device installer, and alarm salesperson. Board member Hayden second. The motion passed with a unanimous vote.

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

Lesia Marie Favors – Docket No. 405-18-3752:

Ms. Favors was not present to address the Board, nor did she have counsel present on her behalf. Ms. Starr stated that Ms. Favors' application for renewal registration as a noncommissioned security officer was summarily denied based on her Class A misdemeanor conviction of driving while intoxicated, as well as the fact that she made a material misstatement on her application by not disclosing this conviction. Ms. Favors disclosed a previous Class B misdemeanor conviction within the preceding five (5) years on this application, however the ALJ determined that Ms. Favors was a pro se defendant who believe when the judge said "A misdemeanor" he actually meant " a misdemeanor" leading her to believe it was not necessary to disclose the Class A misdemeanor.

Vice Chairman Trevino asked what the difference was between a Class A and Class B misdemeanor. Ms. Starr responded that an unrelated Class B misdemeanor would not be disqualifying. Board member Howard asked what her eligible date would be, to which Ms. Starr responded that it would be December 30, 2019. Board member Ulmer asked what her date of application was, to which Ms. Starr responded August 21, 2017.

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

James R. Wilson – Docket No. 405-18-3904:

Mr. Wilson was not present to address the Board, nor did he have counsel present on his behalf. Ms. Starr stated that Mr. Wilson's application for registration as a noncommissioned security officer was summarily denied based on his Class A misdemeanor conviction of Driving While Intoxicated.

Board member Hayden expressed concerns over the lack of detail included in the conclusions of law, stating that the Board does not know what factors were taken into consideration. Board member Ulmer asked if the Board was required to vote, or if they could ask Mr. Wilson to attend the next meeting. Department staff stated that his presence at the next meeting could be

requested, but he would not be required to attend. Chairwoman James shared concerns over depending on Mr. Wilson to appear at the next meeting when he did not attend this one. Chairwoman James also asked if there was a possibility that Mr. Wilson believed the SOAH ruling to be final, to which Ms. Starr stated no, that she had spoken to Mr. Wilson's attorney to be sure that he was ok with the hearing being placed on the docket for today's Board meeting since the 15 day exceptions period following the Proposal For Decision had not have expired. Ms. Starr explained to Mr. Wilson's attorney during this phone call that the final decision would be handed down by the Board at today's meeting. Board member Hayden expressed concern that the conclusions of law were not fully examined by the ALJ; Conclusion of Law #8 in particular states that the evidence is sufficient to prove that Mr. Wilson possess the fitness to perform the duties of a noncommissioned security officer despite his criminal conviction, but of the eight (8) factors listed in the analysis only three (3) of them are positive.

Board member Hayden made a motion to overturn the ALJ's decision and summarily deny Mr. Wilson's application for registration as a noncommissioned security officer based on the findings of fact and conclusions of law not supporting the ALJ's decision. Board member Ulmer seconded. The motion passed with a unanimous vote.

Terry A. Moody – Docket No. 405-18-3756:

Mr. Moody was not present to address the Board, nor did he have counsel present on his behalf. Ms. Starr stated that Mr. Moody's application for registration as a noncommissioned security officer was summarily denied based on his Class A misdemeanor conviction for Driving While Intoxicated.

Vice Chairman Trevino made a motion to uphold the ALJ's decision to summary deny Mr. Moody's application for registration as a noncommissioned security officer. Board member Hayden seconded. The motion passed with a unanimous vote.

Regan V. Welborn – Admin. Case No. Z00275911 & Z00275893 (Direct Appeal):

Mr. Welborn was not present to address the board, nor did he have counsel present on his behalf. Ms. Starr requested that since Mr. Welborn was not present that his appeal be continued until the next scheduled Board meeting.

Vice Chairman Trevino made a motion to continue Mr. Welborn's appeal until the next scheduled Board meeting. Board member Siems seconded. The motion passed with a unanimous vote.

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

Clyde Blankenship, III – Docket No. 405-18-2572:

Mr. Blankenship was not present to address the Board, nor did he have counsel present on his behalf. Ms. O'Shaw stated that Mr. Blankenship's application for registration as an electronic

access device installer based on his second degree felony conviction of Aggravated Battery (Deadly Weapon).

Ms. O'Shaw requested the Board change Conclusion of Law #1 which incorrectly states "security salesperson registration" to the correct registration in this case, "electronic access device installer."

Board member Ulmer made a motion to uphold the ALJ's decision and summarily deny Mr. Blankenship application for registration as an electronic access device installer and approve the requested change to Conclusion of Law #1. Board member Siems seconded. The motion passed with a unanimous vote.

Agenda Item IX: Adjournment

Chairwoman James introduced this agenda item. Board member Willeford made a motion for adjournment. Board member Siems seconded the motion, and the Board voted unanimously in favor of the motion. At 10:40 am, the October 2, 2018 meeting of the Private Security Board was adjourned.