

Texas Private Security Advisory Committee (TPSAC)

Meeting Minutes

July 14, 2021

1. Call to Order

The regular meeting of the Texas Private Security Advisory Committee was called to order at 11:07 a.m. on July 14, 2021 via conference call.

2. Roll Call

Patti James	Chairwoman	Private Investigator Representative
Debi Ulmer	Member	Alarm Syst. & Elect. Access Rep.
Wade Hayden	Member	Public Representative
John Helweg	Member	Locksmith Representative
Jason Hester	Assistant Chief	Texas Department of Public Safety
Sherrie Zgabay	Service Director	Texas Department of Public Safety
Chris Sims	Service Director	Texas Department of Public Safety
Pablo Luna	Service Director	Texas Department of Public Safety
Ryan Garcia	Program Manager	Texas Department of Public Safety
Jeremy LeCrone	Program Manager	Texas Department of Public Safety
Molly Sanchez	Program Supervisor	Texas Department of Public Safety
Anne Yusim	Manager	Texas Department of Public Safety
Lisa Cargill	Manager	Texas Department of Public Safety
Steve Moninger	Sr. Policy Analyst	Texas Department of Public Safety
Leslie Stevens	Executive Assistant	Texas Department of Public Safety
Krystal Sanders	Executive Assistant	Texas Department of Public Safety

3. Minutes from April 14, 2021

The minutes of the previous meeting were unanimously approved as distributed.

4. Quarterly Reports from Regulatory Services Division

a. Licensing Statistics

Ryan Garcia presented this information to the committee members, stating there was nothing unusual to report this quarter.

Assistant Chief Hester stated there were some minor changes being made in TOPS. Ryan explained that along with a correction to ensure updates are not being charged a fee, notice reminders will also generate letting everyone know of upcoming renewal dates.

b. Disciplinary Actions

Jeremy LeCrone presented this information to the committee members. There were no questions from the committee.

c. Complaints/Investigations

Pablo Luna presented this information to the committee members. John Helweg asked if there was a detail showing what industry these occurred in. Assistant Chief Hester explained that the Department does not list that information out on the report to try to keep the report consistent with the end of year report that DPS is statutorily required to post. Patti James asked for an example of an Advertising Violation. Assistant Chief Hester stated as an example, someone who didn't list their license number or any of the other requirements on their advertisements.

d. Executive Office Report

Assistant Chief Hester began by recognizing the committee's newest member, John Helweg, as the Locksmith Representative. He went on to discuss a few things regarding the penalty matrix that was to be discussed later in the meeting. He stated that there was one new item listed, Unlicensed Practice Administrative fines. This was for those who are supposed to have a license but do not. He went on to say that after looking at all rules and statutes after the last Legislative session it was believed that the Department has the authority to levy fines in these situations. Finally, he stated that the overall goal is still to get those who may be in violation, into compliance with the rules and regulations. Steve Moninger pointed out that the change came about from language added by the Sunset Committee to SB 616, allowing for imposing fines.

5. Industry Reports

a. Security Officers

There were no updates or reports at this time.

b. Investigators

There were no updates or reports at this time.

c. Alarm systems and Electronic Access Control

There were no updates or reports at this time.

d. Locksmiths

John Helweg stated that he was glad to see the new implementation of fines for unlicensed activity, as it is one of the locksmith industry's biggest complaints. He had nothing further to report at this time.

e. Public Report

There were no updates or reports at this time.

6. Discussion and Possible Recommendation Items

a. Proposed amendments to Rule 35.5, Standards of Conduct

Steve Moninger began discussion of this item saying that this amendment was required by SB 968. The change adds section (d), providing that a company license holder cannot require a customer to provide documentation of vaccination in order to receive services. John Helweg commented that he does not agree with this and feels that he and his employees should be allowed to ask people, while going into their homes, if

they have a medical disease. Steve Moninger explained that the rule is limited to documentation only and does not preclude anyone from asking if they are vaccinated.

b. Proposed amendments to Rule 35.8, Consumer Information and Signage; and proposed new Rule 35.10, Execution of Capias and Arrest Warrant

Steve Moninger began discussion of this item, stating changes to rule 35.8 are to clarify the reference to 'licensee' as referring to companies, not individuals and providing for a more general requirement to not mislead or confuse clients. He further explained that in section (e) the phrase "reasonable confusion or misunderstanding on the part of the client regarding services" is a definition of deceptive trade from the Deceptive Trade Practices Act.

Steve Moninger began discussion of Rule 35.10, stating changes to this rule were to help provide standards for conduct of those licensees serving warrants. He went on to say there had been recent cases in which bounty hunters were acting like police and changes to this rule would clarify what can and cannot be done when executing a capias or arrest warrant. Steve Moninger pointed out that to provide this service a person must be a peace officer, private investigator, or commissioned security officer.

c. Proposed amendments to Rule 35.52, Administrative Penalties

Steve Moninger began discussion of this item, stating that changes to this rule were to clarify that failure to pay an administrative fine after adjudication could lead to a suspension of the license. He stated it also provided clarification of the authority to deny an application for two years after revocation of license. John Helweg gave an example of a person who didn't have their license number on their truck being fined and asked that if they were to ignore the fine, would their license be revoked for two years? Steve Moninger explained that the license would only be suspended until the fine was paid. John Helweg then asked for further clarification regarding the suspension and revocation section of this rule change. Sherrie Zgabay explained that the section of the proposed rule change relating to the two year rejection of a new application is solely related to revocation and not suspensions. A person is suspended until they pay, whether up for renewal or not. If the person attempts to renew the license and still owes a fee, that application is considered incomplete until the fine is paid. She further explained that the Department is offering payment plans to help with making it easier for the customer and allowing them to still be able to work. Sherrie Zgabay went on to say that a revocation is different as those occur on a much more egregious situation than what a fine would be assessed for. She stated those are typically "repeat offenders" or much more serious violations than an advertising violation. Steve Moninger stated that maybe adding a sentence to section (b) stating "a license that expires while suspended may be renewed but will remain suspended until payment is made" might help with this confusion.

Steve Moninger went on stating that section (d) is clarifying that a violation by the company representative is a violation by the company. This is because company representatives are not licensed, so it has to be a violation by the company itself.

Steve Moninger also discussed the new penalty schedule, going over the levels of action to be taken for violations. He stated that with the passing of SB 616 the Department has the authority to do settlement conferences, rather than sending them to SOAH. Debi Ulmer stated that operating without a license or with an expired license used to have a fine based on the number of days in violation and asked if these new fines were still calculated the same way. Steve Moninger stated that they were still going to be assessed the same way if there is proof that they were operating each of those days.

d. Proposed amendments to Rule 35.62, Preliminary Hearing; Settlement Conference

Steve Moninger began discussion of this item, stating this is providing clarification taking out reference to 35.66 which no longer exists.

e. Proposed amendments to Rule 35.111, Employee Records, Rule 35.112, Business Records, and repeal of Rule 35.113, Records on Commissioned Security officers

Steve Moninger began discussion of this item, stating changes to rule 35.111 was to allow for electronic storage of records rather than just physical, as well as clarifying address record requirements. He also stated that changes to number eight clarified that the rule is not talking about commissioned or PPO training certificates, but rather continuing education.

Steve Moninger stated that changes to 35.112 removes the requirement that an out of state company have a physical location with paper records somewhere in Texas and allow for electronic storage of records. John Helweg asked if this change was also removing the requirement for out of state companies to have a presence in Texas. Steve Moninger said that these changes were only to make it easier for those companies to comply with the requirement of keeping records. John Helweg went on to say that he thought the rule to have them present in Texas was to hold them accountable and have them within the department's jurisdiction. Ryan Garcia stated that there is no requirement for a company to be physically located in this state. He went on to explain that there are numerous companies that operate outside of Texas but do business here. John Helweg asked if the companies were still required to have a registered agent physically here in the state. Steve Moninger stated that 1702.110 in part stated "an applicant for a company license shall maintain a physical address within this state and provide that address to the department. The commission shall adopt rules to enable an out of state company license holder to comply with this section." Steve Moninger went on to say that this rule is only about where the records are kept. Wade Hayden explained that the Texas Business Organization Code requires any out of state entity to conduct business in the state of Texas, to not only have a registered agent, but also to obtain a certificate of authority from our Secretary of State to do so.

f. Proposed amendments to Rule 35.13, Drug-Free Work Place Policy

Steve Moninger began discussion of this item, stating these changes were cleaning up language regarding a sole proprietor who has no employees and whether they need to have a drug policy in place. John Helweg stated that a sole proprietor is still an employee of the business and should still fall under this requirement. Debi Ulmer stated that the company is the license holder, not a human entity. She also asked if the sole proprietor is required to do a background check on themselves and have it in their file. She went on to say that if so then they should also have a drug policy. John Helweg stated that if a company has to have a policy that would apply to a future employees, then it should also apply to the proprietor. Wade Hayden stated that

he didn't think this was a fair analogy to say that a pre-employment background check is equal to a drug free policy. No one has to take a drug test before they get their license. He went on to say this applies to companies that have employees that require licensure. Steve Moninger stated that if the committee felt strongly about changing the language to require sole proprietors to have drug-free policies then this could be considered. Wade Hayden stated that the point of changing the language was to be consistent with TWC's drug-free workplace policy. He suggested tabling amendments to this rule and taking a look at TWC's policy to mirror their requirements.

g. Proposed amendments to Rule 35.143, Training Instructor Approval

Steve Moninger began discussion of this item, stating the changes to this rule were to simplify the proof of experience for certain instructors. He stated the current rule requires the instructor applicant submit an affidavit from their previous employer reflecting the individual had been working for three years or provide a copy of the curriculum that they taught. He explained that this was not always available. Changes to this rule would have the applicant submit a description instead and because it is part of the application, they could be subject to prosecution if they submitted a false record. Debi Ulmer pointed out that the person who would have the most to say on this item was not present at the meeting and suggested that they withhold further discussion until Alan Trevino could weigh in.

Wade Hayden made a motion to approve all rule changes as presented, with the minor edits discussed, with the exception of 35.13 and 35.143, which are to be placed on hold for further discussion. This was seconded by Debi Ulmer and voted unanimously to approve.

7. Future agenda items

- a. Proposed amendments to Rule 35.13, Drug-Free Work Place Policy
- b. Proposed amendments to Rule 35.143, Training Instructor Approval

8. Date of next meeting- October 13, 2021, 11:00 a.m.

Date of the next meeting was confirmed to be October 13, 2021.

9. Adjourn

Meeting adjourned at 12:58 p.m.