

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
APRIL 29, 2011**

**TEXAS DEPARTMENT OF PUBLIC SAFETY
6100 GUADALUPE ST. BUILDING E
CRIMINAL LAW ENFORCEMENT BUILDING
AUSTIN, TX 78752**

BOARD MEMBERS PRESENT:

Honorable John Chism, Chairman
Honorable Howard Johnsen, Vice-Chairman
Honorable Mark Smith, Secretary
Honorable Albert Black
Honorable Charles Crenshaw
Honorable Brian England
Honorable Doris Washington

BOARD MEMBERS NOT PRESENT:

STAFF PRESENT:

RenEarl Bowie, Assistant Director, Regulatory Services Division,
Texas Department of Public Safety;
Steve Moninger, Senior Staff Attorney, Regulatory Services Division,
Texas Department of Public Safety;
Reggie Andrews, Program Supervisor II – Licensing and Registration Service,
Regulatory Services Division;
Jay Alexander, Captain – Compliance and Enforcement Service, Regulatory Services
Division;
Other members of the staff;
Members of the industry;
Members of the general public.

MINUTES

These minutes are a summary record of the Board's work session meeting. This 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 video DVD on file at the Board's office.

The Board meeting was called to order at 9:32 a.m.

Chairman Chism welcomed everyone to the meeting and asked that all cell phones and pagers be turned off or set to vibrate for the duration of the meeting.

Chairman Chism also welcomed Mr. Black and Mr. England as the two newest members of the Private Security Board. Both were sworn in by Chairman Chism.

Agenda Item I: Approval of Minutes for Board Meeting from January 5, 2011.

Chairman Chism introduced this agenda item. On a motion made by Secretary Smith and seconded by board member Crenshaw, the Board voted unanimously to approve the Minutes for the Board meeting of January 5, 2011 as written.

Agenda Item II: Report from Regulatory Services Division.

Reggie Andrews presented the Licensing totals for the first quarter, 12/1/10-2/28/11. He stated, for this time period, the Bureau received 283 original company applications, 1,302 company renewals, 10,113 original individual applications, and 8,006 individual renewals not including online applications. He went on to say, for the same time period the Bureau processed the following licenses/registrations: 184 original company licenses (106 online, 78 manual), 1,303 company renewals (872 online, 431 manual), 9,459 individual registrations (2,307 online, 7,152 manual), 7,489 individual renewals (3,212 online, 4,277 manual), and 4,519 employee information updates (1,144 online, 3,375 manual). He also stated this time period showed 5,560 active company licenses, 263 active school licenses, and 128,861 active individual registrants. Vice-chairman Johnsen asked Mr. Andrews how long the application process takes before a person receives their pocket card. He answered by stating the longest time in the process is with the fingerprint cards, but generally it takes 2-4 weeks.

Captain Alexander presented the Investigation statistics for Districts A, B and C to the Board. He stated there were 1636 violations investigated for the first quarter, 12/1/10-2/28/11; 1034 in District A, 273 in District B and 329 in District C. He further stated there were 10 cases of operating with an expired license, 9 cases of operating with a suspended license, 37 cases of operating without a license, and 19 cases of failure to register employees. He went on to say there were 27 cases presented to prosecutors during this time period. He stated 1501 cases were closed with no action, 11 cases were closed with administrative citation, 28 were closed with administrative warnings, and 96 cases were closed with other actions. Upon questioning from the board, he went on to explain the way the districts were broken down. He stated district A is broken down into two areas with offices in McKinney and Garland. District B also has two areas, but both offices are in Houston. District C is broken down into three areas: area C01 has its office in San Antonio, and covers San Antonio, Austin, and Waco, area C02 is the El Paso and Lubbock area of the state, while area C03 covers McAllen, Corpus Christi, and Laredo.

Steve Moninger was the next person to address the Board. He stated there were rule changes that became effective April 19th. Some of these rules had been voted on by the board as far back as the April 2010 meeting. These rules are: §35.93, Penalty Range, §35.181, Employment Requirements, §35.142, Application for a Security Officer Commission, §35.186, Registration Applications, §35.292, Requirements for Continuing Education Courses, and §35.46, Guidelines for Disqualifying Convictions. He went on to say the Public Safety Commission approved additional rule changes at their last meeting. These rules would be published in the Texas Register May 13 issue and would become effective on May 17, 2011. These rules are: §35.35, Standard of Service, §35.187, Renewal Applications, §35.222, Qualifications for Locksmith Company License, and §35.311, Exemptions.

Mr. Moninger updated the board on pending legislation stating Senate Bill 1400 passed the Senate and is now in the House for discussion. Mr. Chism asked Rodney Hooker, with TBFAA, to further explain SB 1400. Mr. Hooker stated that the Texas Legislature combined SB 1400 with HB 1867. He explained that the only difference in the bills was further clarification requested by Houston law enforcement regarding cameras. He finished by stating the hearing of the bills is scheduled for the next week. Mr. Moninger further stated that the combination of these bills added language to peace officer exemptions, where peace officers are now able to work for guard companies and still remain exempt. He went on to explain that SB 1733 applies to all occupational licensing agencies, and requires that special consideration be provided to military spouses who are made to move from one state to another. He stated the bill is vague as to specifics. He also stated that HB 2528 requires explicit vehicle sign in and sign out sheets on all private security vehicles, stating they are not law enforcement, but rather private security.

Mr. Moninger discussed the latest information regarding Rife vs. PSB. He stated that a lawsuit was filed against the Board approximately 3 years ago in response to a 2007 change in statute, where the intention was to clarify the definition of investigation to include computer information, not just paperwork. The claimants hired attorneys to sue stating PSB was trying to regulate computer repair work. The 2009 legislature put additional clarification on the matter to close the door, by stating it did not include repair work. He stated this effectively mooted the lawsuit, but the claimants were still asking for their attorney fees. He finished by stating the case has been dismissed and the claim for attorneys fees was denied.

Agenda Item III: Report from Private Security Board's Advisory Committee.

Secretary Smith stated that the Advisory Committee would report on agenda items IX and X when the items came up in the meeting.

Agenda Item IV: Discussion and possible action regarding proposed repeal of Rule §35.41, "Company Name Selection".

Mr. Moninger addressed the board on this matter. He stated this rule has caused numerous problems for the Licensing Service, and puts the department in an undesirable position. He went on to explain that the Service has received complaints that it has allowed companies with similar names to be licensed. He stated this puts the Service in the position of having to say they either made or mistake or to argue the point. He stated that with the current software being used by staff, it is too easy for something to be missed. In one particular case, he stated, a company whose name is an acronym, asked for their name with an extra space between letters. With the current software, the request was granted without anyone picking up on a problem. He stated the Service cannot then go back and revoke a license because of the similar name. He went on to say that a name selection is a business decision and should not be decided by a state agency.

Chairman Chism asked if those in attendance had any input into the matter of this rule. When no one spoke up, he asked that this rule be posted for those not in attendance to consider, and the board would take comments into consideration before voting at the next meeting.

On a motion made by Vice-chairman Johnsen and seconded by Secretary Smith, the Board voted unanimously to make it a matter of Board policy that the Division not enforce this rule until it is voted on at the next meeting.

Agenda Item V: Discussion and possible action regarding proposed amendments to Rule §35.43, “Military Discharges”, maintaining consistency with proposed amendments to Rule §35.46.

Mr. Moninger addressed the board regarding this item. He stated proposed amendments to this rule were related amendments to rule 35.46, in order to make things uniform. Secretary Smith stated it was brought to his attention that the use of the word “other” rather than “less” would encompass those discharged from the military on a medical discharge. He stated he felt the wording might need to be changed to reflect the intention, so no one is disqualified who may only be discharged due to medical reasons. Mr. Moninger stated that the term “other than honorable” was a defined military term referring to something just short of a bad conduct discharge. Board member Crenshaw asked if the term “other than” was used in Texas Occupation Code 1702 as well, to which Mr. Moninger stated “no”. He went on to explain that Code 1702 the statute is in broader terms leaving the determination up to the Board.

Chairman Chism asked if there was anyone in the audience who wished to comment on the proposed amendments. Mr. Jeff Bright, a member of TBFAA, addressed the board regarding the use of the term “other than honorable”. He stated that he had been discharged from the military on a medical issue, but also received an honorable discharge. He stated that “other than honorable” referred to actions while in the military, and it was not encompassing of a medical release.

Chairman Chism stated that this rule was being referred to the advisory committee for discussion and would be revisited at the next meeting of the board.

Agenda Item VI: Discussion and possible action regarding proposed amendments to Rule §35.46, “Guidelines for Disqualifying Convictions”, relating to disqualifications for certain violent crimes.

Steve Moninger presented this item to the board. He stated that after a meeting of the Public Safety Commission, Commissioner Brown had some concern regarding this rule. He also stated that he thought this was also a good opportunity to make a few other changes to assist in SOAH hearings. He explained that often the SOAH judges read this rule literally and if an offense is not specifically listed, they will not find it disqualifying. The solution he suggested was to describe the offenses more broadly. As an example, rather than list “Fraud against revenue or other government functions”, list “Fraud- any offense under Penal Code Chapter 32”. He went on to say Commissioner Brown’s primary concern was that a person could still be licensed in private security after 10 years, even if they had committed a particularly violent offense. He stated Commissioner Brown was of the opinion that some offenses should be permanently disqualifying. He began the amendment to this rule by taking the 3g offenses, which are the violent crimes to which a person cannot receive deferred adjudication, and listing them as

permanently disqualifying. He also listed sexually violent crimes, as defined by the Code of Criminal Procedure, as permanently disqualifying. He explained that by doing this it did not mean that anyone is permanently barred from receiving a private security license. Those with these type offenses on their record would still be entitled to a hearing before SOAH and have a chance to prove they should receive a license. He stated Commissioner Brown also asked him to add the bullet point “any other evidence considered by the department to be relevant to the person’s fitness for the license sought” as an additional catch all. Finally, he said, the final paragraph in this rule was added by him as a means of clarifying how everything ties in with the eligibility criteria and, the summary action provisions of the occupation code. He thought this was the best way to clarify all of these things short of legislative changes.

Secretary Smith stated that while engaging in negotiated rule-making with the industry, it was brought to his attention that adding “Penal Code 22” to the language along with the reference to penal code 21, would make these changes more effective. He asked Mr. Moninger if he also felt this was needed. Mr. Moninger responded that he felt reference to penal code 22 was already covered by adding the bullet point “Assault of any type, if classified as a Class A misdemeanor or greater under the Texas Penal Code, or similar law of another state”. Board member Crenshaw asked where specifically it states that an offense like murder would be permanently disqualifying, to which Mr. Moninger responded it is a 3g offense listed in Article 42.12.

Chairman Chism asked if anyone in the audience wished to give any input on this item. There were no comments given.

On a motion made by Vice-chairman Johnsen and seconded by Board member Washington, the Board voted unanimously to accept the amendments to this rule as written.

Agenda Item VII: Discussion and possible action regarding proposed repeal of Subchapter G, “Uniformed Motorcycle Escort Service”, consisting of Rules §35.111, “Escort License Required”, §35.112, “Approved Uniforms”, §35.113, “Insurance”, §35.114, “Driver License Required”, §35.115, “Restrictions on Lights”, §35.116, “Arrest for Driving While Intoxicated”, and §35.117, “Police Officers May Furnish Escorts”.

Steve Moninger presented this item to the board, stating that the repeal of these rules were basic cleanup. He stated that back in the late 1990s, there was some controversy regarding this issue. At that time the agency went after a group that was performing this service illegally, but rather than just inform the group, they also sent letters to their clients letting them know not to hire them because they were providing illegal services. This resulted in a lawsuit being filed against the agency, and DPS inherited it when the agency merged with them. At this point, he stated, DPS requested an Attorney General opinion on the matter, which came back stating that Texas Occupations Code 1702 does not regulate motorcycle escort services because peace officers are the only ones to control traffic, unless there is a city ordinance stating otherwise. Therefore, he stated there is no need for a separate license for motorcycle escorts. He also stated some of the other rules are also unnecessary, such as uniform approval, insurance, driver license requirements, and light restrictions.

Chairman Chism asked for anyone in the audience with comments to make on this item to step forward. George Craig, former Private Security Board chairman, addressed the board. He stated that at the time of this rule, the Board was approached by a group of companies that provided this service, and they requested these rules be adopted. He also stated there are only two or three companies in the State who provide this service, and he didn't feel the repeal of these rules would be contested.

On a motion made by Secretary Smith and seconded by board member Crenshaw, the board voted unanimously to repeal these rules as recommended.

Additional Discussion of Agenda Item II: Report from Regulatory Services Division.

Assistant Director Bowie asked the Board to allow additional discussion of a previous agenda item, report from the Regulatory Services Division. He stated there was additional information that would be presented regarding Vice-Chairman Johnsen's request for an update on pocket cards. He introduced Sherry Johnson, Operations Manager of the Operations and Shared Services Service.

Ms. Johnson began by giving the board members samples of possible pocket cards to view. She stated that she is the Operations Manager and her Service handles IT requests, all incoming and outgoing mail, as well as fulfillment of products from triple prescription pads to the inspection certificates on everyone's vehicle. She went on to explain they are currently evaluating potential vendors and what they can offer in the pocket cards. She referred to the first slide in her presentation, stating it was similar to a Texas Drivers License. She stated that one thing to be removed on these cards would be the person's personal address, as this information would be kept confidential. She referred to the second slide in her presentation and stated that this vendor took the initiative to represent the industry through various symbols added, including barbed wire and German Sheppards for guard dog companies to locks for the locksmiths. She further stated that some of the security features the Division is evaluating at this time are design, security holograms, colored ink, hidden words or symbols, and intentional misspelling of words. Information that would need to be on all card fronts would be name, license number, date of birth, height, weight, gender, ethnicity, and category of license. On the back of cards, she explained, multiple registrations and the dates of expiration would be listed. Chairman Chism asked what the timeline for receiving these cards were, to which she stated by the end of the calendar year.

Agenda Item VIII: Discussion and possible action regarding proposed amendments to Rule §35.281, "Training- Personal Protection Officers", relating to video training materials.

Mr. Bowie addressed the board on this item, stating the current training materials used for Level IV- Personal Protection Officers, was outdated; especially the video. He stated the video was dated and of poor quality and asked the board to suspend the use of the video until an updated version could be completed and approved. Chairman Chism stated he had also been contacted by members of the industry who are PPOs and they wished the training materials to be revamped as well.

Chairman Chism asked if anyone in the audience had input into this matter. Fidel Garcia, a level IV instructor, agreed that the current video is outdated and of poor quality. He agreed with AD Bowie that it needed to be fixed. Susan Griswold, with ASSIST, stated ASSIST approved 2008 changes to the PPO curriculum, changing the required hours to a 40 hour class. These changes have been submitted to the Department and are awaiting board approval.

On a motion made by Secretary Smith and seconded by board member Crenshaw, the board voted unanimously to approve amendments to the rule as written, and suspend the use of the PPO training video.

Agenda Item IX: Discussion and possible action regarding proposed amendments to Rule §35.291, “Continuing Education Courses Requirements”, relating to continuing education curriculum requirements.

Steve Moninger presented this item to the board. He stated the changes to 35.291 address the curriculum rules while changes to 35.292 is a description of what each industry has to do. He explained that deleting part (11) of subsection (a) takes the Department out of approving classes, lays out the criteria that needs to be satisfied, while leaving the rest up to the investigative and complaint process. He explained that changes to subsection (b), by adding “security-related”, limits the type of courses that qualify, rather than any generic class that is not security related. A change to (6) in subsection (b) allows industry vendors to present classes specific to equipment or new procedures. Subsection (c) was added to recognize college courses as means of continuing education.

Board member Washington asked if she was correct in understanding that the Department would not be approving mandated continuing education courses. Mr. Moninger replied that the old way of having an instructor or school submit its curriculum and materials for approval prior to teaching the class has become burdensome, was not consistently applied, and would result in a person with no expertise making the determination with little to no knowledge of area. In changing this rule it is allowing the Department to focus on investigative compliance on rule violations. Board member Crenshaw stated that when his employees’ renewal is due, his company has to ensure they have satisfied their CE requirement and report it to the Department. He went on to say this change puts the burden on the company to ensure these requirements are met with each employee. Finally, he stated, if more restrictions and rules are placed on continuing education, it may not occur at all. Board member Washington asked what happens if she were to lose her copy of her CE classes taken. Chairman Chism stated that there are three copies of completion certificates issued: one to the individual, one to that person’s company, and one to the school who provided the course.

Chairman Chism asked if there were any comments on this agenda item to be made by anyone in the audience. Randy Kildow, president of TALI, addressed the board. He stated the changes to this rule were a vast improvement from where it began. These changes would allow flexibility. He stated TALI has a huge investment in training and offer training twice a year across the state. He went on to say that in Dallas, they had Frank Branson, a nationally known attorney, come speak to their group as well as the local director of TABC. Neither of these speakers would provide curriculum on their speeches, but their members will be better prepared to serve the

citizens of Texas by having attended their talks. Allen Trevino, vice-president of ASSIST, was the next person to address the board. He stated that ASSIST also brings in speakers from the Department of Labor and Texas Workforce Commission who are not security related. He asked if these courses would be disqualified according to the language of (b)(2), "security-related". Mr. Moninger stated that if it were the board's intention to allow these types of classes to count toward CE credits, they would need to clarify in the rule for as the changes were currently worded those courses would not count. Bonnie Brown Morse, president of Locksmith Association of San Antonio, addressed the Board. She thanked the Board of all of the time they had spent on this subject and stated it was a vast improvement. However, she stated, she wanted to make the Department and the Board aware that there would be numerous complaints filed regarding CE credits not taken; people claiming a certain number of credits for which they had not actually taken the courses.

On a motion made by Secretary Smith and seconded by Vice-chairman Johnsen, the board voted unanimously to accept the amendments as written, with the exception of (b)(2) which should be changed to reflect the language "business practices".

Agenda Item X: Discussion and possible action regarding proposed amendments to Rule §35.292, "Requirements for Continuing Education Courses", relating to board approval of continuing education schools, and school record-keeping requirements.

Steve Moninger presented this item to the board. He stated that the amendments to this rule were to clarify the application of schools and repeal the requirement for these schools to be licensed. According to statute, the Board does not have the authority to require licensure of CE schools. He went on to say that with the proposed amendments schools should be approved by the Department having each school identify a person who is responsible for maintaining attendance records, the verification of curricula, and instructor qualifications. The amendments also list the consequences of failure to comply.

Secretary Smith stated that in the revisions to the rule, (4) requires schools to keep their records somewhere in the State of Texas. He then stated that the point was raised that records could be verified online instead. Chairman Chism stated the adopting of this part of the rule occurred several years ago in response to some out of state schools who refused to cooperate with investigators. Assistant Director Bowie addressed the board, stating it would make it simpler on the Department investigators to have a point of contact somewhere in the State. Also, he pointed out, the investigators only have legal authorities in the State of Texas to require compliance.

Chairman Chism asked if there was anyone in the audience who wished to speak on this topic. There was no additional discussion.

On a motion made by Secretary Smith and seconded by Vice-chairman Johnsen, the board voted unanimously to accept amendments as written.

Agenda Item XI: Discussion and possible action regarding proposed amendments to Rule §35.141, “Requirement for Issuance of a Security Officer Commission by the Board”. Presented by ASSIST for the Board’s consideration.

Susan Griswold, with ASSIST, addressed the board. She stated that as far back as the October meeting of 2008, ASSIST presented a new curriculum for Continuing Education Schools to the board. ASSIST has now made changes to the Level III requirements, changing from 30 hours to 40 hours. She further stated these changes have been approved by the Department.

Chairman Chism asked if there was anyone else wishing to comment on this topic. There was no additional discussion.

On a motion made by Secretary Smith and seconded by Vice-chairman Johnsen, board members voted unanimously to accept the changes as written.

Agenda Item XII: Discussion and possible action regarding proposed amendments to Rule §35.251, “Training Requirements”. Presented by ASSIST for the Board’s consideration.

Susan Griswold, with ASSIST, addressed the board. She stated changes to this included changing the minimum hours required from 8 to 6, because the current curriculum does not extend the full 8 hours. The other change made to (b) was the addition of the sentence “The level III Training Course shall consist of a minimum of 40 hours using the most recent version training manual prepared by and obtained from the board” to ensure the correct curriculum is used.

Chairman Chism asked if there was anyone else wishing to comment on this topic. There was no additional discussion.

On a motion made by Secretary Smith and seconded by Vice-chairman Johnsen, board members voted unanimously to approve amendments to the rule as written.

Agenda Item XIII: Discussion and possible action regarding development of a proposed rule to allow companies to have former employees removed from their license and database.

Mark Smith addressed the rest of the board on this matter. He stated a couple years ago the Bureau asked himself and George Craig to send all of their employee terminations to them for removal in the database. Discussion of this item was to expand this opportunity to other companies and make them aware this is available. George Craig addressed the board by stating that under the old software the industry was able to remove terminated employees from the database, but once CLIPS was implemented, that option was not available any longer. This has lead to the current database getting larger and larger and it takes years for an inactive employee to be removed.

Reggie Andrews stated the Bureau began in 2009 asking for companies to voluntarily submit the PSB-19 form on terminated employees and the Licensing Service is now processing 350 of these

a month. Vice-Chairman Johnsen asked if this caused the employee to be completely purged from the system and Mr. Andrews responded that it did not.

Board member Washington asked if she were an employee who was terminated from a company and went to work for another company, would the system show that she is working for both at the same time. Mr. Andrews stated that it would show both companies, but it was allowable in the industry to work for more than one company at a time. Board member Washington then stated that perhaps there should be a rule making it mandatory to report terminated employees in a timely manner. Assistant Director Bowie addressed this by saying that a rule would make this issue into one of babysitting. Also a rule making it mandatory would mean consequences being imposed on violators, such as tickets being issued. He asked that the board consider both sides before imposing a rule. Mrs. Washington stated it is the responsibility of the owners, they should be held accountable, and therefore she felt a mandatory rule would be necessary. Mr. Bowie stated that the industry had a very high turnover rate. He went on to say the Division is currently processing 350 of these a month, but it is not widely known by the owners that they can do this; there is sure to be many more out there. Mike Samulin, with TBFAA, stated it was his opinion that instead of inundating the agency with more paperwork, an expedition of online processing would better serve the industry. He stated that owners could then do their own terminations with the click of a button. Once these online processes were in place, then the board could do a rule making the process mandatory.

Sherry Johnson addressed the board, stating that much of what was discussed by the board at this meeting are enhancements that the Division is trying to work toward. She stated that in the future, online training, managing of employees, and even employees managing their own profile could be done online. She explained that over the next few months everyone will notice changes to the PSB website. Some of the enhancements to be made will make it easier to navigate through the portal and find the information being sought. She also asked that if the board members thought of additional enhancements that would be useful, they should contact someone in the Division so it could be considered.

Chairman Chism concluded discussion on this topic by stating the Department has done a marvelous job putting these changes together within extreme budget constraints.

Agenda Item XIV: Discussion and possible action regarding proposed rule relating to training requirements for computer forensic investigators.

Randy Kildow addressed the board regarding this issue. He stated the main concern or focus should be on the enforcement of computer forensic personnel being licensed. He also stated his group would like to see main focus be on those who are acting as computer forensic investigators without license and who are competing against those who do hold a state license. He went on to explain that those who are not licensed are not following the mandatory requirement to charge sales tax, while those who are licensed are following this law. He stated that the sales tax on an oft time bill of 100,000 can be substantial and provides unlicensed persons a significant competitive advantage in the marketplace.

Chairman Chism asked if those concerned would be satisfied if their minimum certification requirements mimicked those of licensed investigators. Mr. Kildow responded that they would like to see some sort of expertise beyond investigation licensing or growing up messing with computers. As an example, he stated that accident deconstructionists have to have basic investigative licensing but also must be very knowledgeable in physics and everything above.

Vice-chairman Johnsen asked how investigators can tell when a person moves from software or repair to forensic specialist. Mr. Kildow stated that a computer forensic investigator is someone who comes in looking for theft, corporate espionage, and child pornography, documents the findings and then testifies in court.

Board member Washington asked if he was aware of specific individuals advertising themselves as computer forensic experts. He replied that within 24 hours he could generate a large list of specific companies.

Chairman Chism asked Mr. Moninger, in his opinion, what the board should do on this issue. Mr. Moninger stated there was nothing to be done, as 1702.104(b) clarifies what constitutes computer repair versus investigations. He went on to say the PSB website has opinions on this listed there to clarify. He also stated he had been in contact with the state Comptroller's office to alert them to the issue of sales tax with these companies, and they are also required to charge sales tax.

An unidentified gentleman from the audience also provided information to the board on this topic. He stated he came from the field of computer forensics and there are certifications that are available in the field of IT. One such certification is called the Certification for Information Systems Security Professionals. This, he stated, is a globally recognized certification that leans heavily toward computer forensics. He suggested that the board may want to make that certification a requirement.

Agenda Item XV: Public Comment

Susan Griswold-, with ASSIST, addressed the board. She stated there is a problem with the online renewal process. She explained that renewing a license on line, with multiple licenses that expire within 60 days of each other, will force you to renew all licenses at the same time.

Rodney Hooker-, vice-president of Texas Burglar & Fire alarm Association, addressed the Board. He brought to the board's attention a possible need for a new rule regarding door-to-door sales activities for security systems. He stated during the Legislative process a bill was introduced that would have been bad for the industry, giving control of door-to-door sales activities to every city individually. This would have been a hardship trying to comply with the ordinances of 1200 plus cities across the state. He stated a group from TBFAA recently met with the Texas Police Chief's Association and one question raised was who is in their neighborhoods selling security systems door-to-door. He went on to say that due to these questions and multiple complaints in the last year, TBFAA proposes a rule change to address this issue and asked the board to place the new rule on the agenda for discussion at the next meeting. Chairman Chism agreed and asked it to be placed on the next meeting's agenda.

At 12:10 pm, Chairman Chism called for a one hour lunch break.

Meeting was called back to order at 1:05 pm.

Agenda Item XVI: Executive Session as authorized under §551.071 to discuss lawsuit Rife v. PSB

Executive Session not taken.

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

Valerina Walters presented the following Hearing cases to the Board:

Javier Pena Jr.- Docket No. 009442010

Mr. Pena was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Walters stated Mr. Pena's application for a security officer commission was denied based on his conviction for violation of 8 USC §1325 (a)(3), Aiding and Abetting Two Undocumented Minor Aliens to Gain Illegal Entry into the United States from Mexico, considered to be a Class B misdemeanor.

Vice-Chairman Johnsen made a motion to uphold SOAH's decision to deny Mr. Pena's application for a security guard commission. Board member Washington seconded the motion, and the Board voted unanimously in favor of the motion.

Terry Killion- Docket No. 008982010

Mr. Killion was present to address the Board on this case, but did not have counsel present on his behalf. Ms. Walters stated Mr. Killion's application for registration as a locksmith was denied based on his Class A misdemeanor conviction for Assault with Bodily Injury.

Vice-chairman Johnsen asked Ms. Walters if SOAH asked for the Board to reverse the Summary Denial in this case, to which she answered yes. Secretary Smith asked what the difference in the years was on date of offense and date of completion. Ms. Walters stated that the offense occurred in 2004, but the completion of sentence did not occur until 2010, making him eligible of a locksmith registration in 2015. Board member Crenshaw stated the SOAH judge wanted to grant him a license because his conviction was not directly related to the duties of a locksmith and also that the offense was not specifically listed. Board member Washington stated on page 27, it stated "based on the foregoing Findings of Fact and Conclusions of Law, the Board should reverse the summary denial", and asked what the Department wished the board to do. Ms. Walters stated that the Department sought to deny SOAH's decision and deny him his license.

Mr. Killion addressed the board on his own behalf. He stated the offense occurred in 2004, and it took 5 years to go to court on the matter due to Austin courts being backlogged. He also stated he had learned his lesson, has a one year old son, house, and responsibilities. He explained that he was 20 at the time and is now 27 and going forward with his life he has changed. He stated he was at his brother's house when someone began banging on the glass of the door. He said he opened the door, was pushed, and began fighting. As it turned out, he stated, the person at the door was a plain clothes police officer who was in the neighborhood for another party.

Secretary Smith asked Mr. Moninger what happened to a speedy trial in this case; why did it take so long? Mr. Moninger stated that he was not a criminal defense attorney, but his understanding was that applied to those in jail, not out on bail. He also stated he could not speak as to what was going on in the Austin courts. He also stated he could offer some advice as to the board's decision. He stated the rule does not specifically describe Mr. Killion's offense, but the Department was going on the assumption that the board would find the offense related, and the board had voted on the rule adding all assaults to the rule. The judge did not see it listed and said it did not count. He advised the board that they could either let this one case go, allowing him a license and knowing that all cases going forward would fall under the amendments made to the rule, or they could deny him based on the same amendments.

Vice-chairman Johnsen asked Mr. Killion if he had been involved in any other problems since this incident. Mr. Killion stated he had not. He stated he attended St. Edward's University, obtained his degree and has been working at Cothoron's. Board member Crenshaw asked if Steve Cothoron spoke on his behalf at the SOAH hearing and why he was not present today. Mr. Killion stated that he did speak on his behalf, but was not able to attend today due to being on vacation.

Board member Crenshaw made a motion to uphold SOAH's decision to grant Mr. Killion's registration as a locksmith. Board member Washington seconded the motion, and the Board voted in favor of the motion, with Vice-Chairman Johnsen abstaining from the vote.

William Bailey- Docket No. 007762010

Mr. Bailey was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Walters stated Mr. Bailey's application for licensure as an alarm systems installer was denied based on his third degree felony conviction for Assault, for which he was incarcerated following the revocation of his probation. Secretary Smith pointed out that Mr. Bailey's problem came when he left the state and was charged with a parole violation. He stated that had he handled relocating in a better manner, he would have been eligible.

Board member Washington made a motion to uphold SOAH's decision and grant Mr. Bailey's application for licensure as an alarm systems installer. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of the motion.

Sarah Carnes-Lemp presented the following Hearing cases to the Board:

Duane Wright- Docket No. 000022011

Mr. Wright was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Carnes-Lemp stated Mr. Wright's application for licensure as an Officer/Shareholder/Manager of an Alarm Company was denied based on his requirement to register as a sex offender.

Vice-chairman Johnsen made a motion to uphold SOAH's decision and deny Mr. Wright's application for licensure as an Officer/Shareholder/Manager of an Alarm Company. Secretary Smith seconded the motion, and the Board voted unanimously in favor of the motion.

Charles Williams- Docket No. 009182010

Mr. Williams was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Carnes-Lemp stated Mr. Williams' application for registration as a non-commissioned security officer was denied based on his Class A misdemeanor conviction of Assault. As the conviction occurred in March 2006, Mr. Williams will be eligible in March 2011.

Vice-Chairman Johnsen made a motion to uphold SOAH's decision and grant Mr. Williams' application for registration as a non-commissioned security officer. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of the motion.

Eric Lopez- Docket No. 010232010

Mr. Lopez was present to address the board on this case, but did not have counsel present. Ms. Carnes-Lemp stated Mr. Lopez's licensure as an Owner/Manager of a locksmith company was revoked based on his requirement to register as a sex offender.

Board member Washington asked how he was allowed to receive a license and then be renewed, if he was ineligible. Ms. Carnes-Lemp stated Mr. Lopez applied for his license in 2006, before the 2007 legislation passed. He was renewed in 2009 as an oversight, but when his 2011 renewal came up it was discovered that he is ineligible under the 2007 changes.

Mr. Lopez addressed the board. He stated it was his opinion his license was renewed because the Department doesn't really look into such matters, and this only became an issue when he lost his pocket card and asked for a duplicate. He stated he told the Department that he was a registered sex offender when he applied for his license and would not be off registration until 2016. He went on to say he, in good faith, bought a van, equipment, etc and entered into this business at great expense. He said that if he knew he wasn't eligible, he would not have pursued this career. Secretary Smith asked him how old he was at the time of the offense, to which Mr. Lopez answered 27. Secretary Smith then asked the age of the minor involved. Mr. Lopez stated 14. Secretary Smith stated the sex registry printout states "no contact, but someone was partially nude with intent to sexually arouse", and asked who was unclothed. Mr. Lopez stated that he was partially unclothed.

Secretary Smith asked Ms. Carnes-Lemp if he was correct in stating there was no grandfathering on individuals from statute change to statute change on this, and she stated he was correct. Board member Crenshaw stated SOAH pointed out that the Department failed to meet the burden of proof. He went on to say that the Department did grant Mr. Lopez his license and he has taken on a great amount of debt. He said he found it difficult to take away his license at this point after it being granted and renewed all this time. Board member England asked why SOAH stated in its Discussion and Analysis that “Staff failed to establish several critical elements: (1) that Mr. Lopez had a criminal charge and that the nature of the criminal charge required him to register as a sex offender” when he just testified to the Board that he was indeed a registered sex offender. Ms. Carnes-Lemp stated that when she went before the SOAH judge, she provided the DPS printout of his sex offender registry. She stated she had provided this same type of proof in other cases, but this time the judge took issue with the fact that it was not a certified document. She went on to say she asked Mr. Lopez, on the stand, if he was a registered sex offender and he answered that he was. Board member Washington stated she was not one to give a license to a registered sex offender, as that is a serious crime; however, this was a unique situation. She stated he revealed his registry in the beginning, he was granted a license, and even renewed. Board member England asked if the board were to grant his license based on staff error, how far would they carry that out; what type of precedent would that set? Vice-Chairman Johnsen answered that the board had the ability to grant his license with stipulations attached, such as eligibility re-evaluation and restrictions.

Secretary Smith stated that before he could vote to give Mr. Lopez a license, he would like to hear a reason that would be acceptable if asked by the press why he granted him the license. Mr. Lopez answered that he had already gone before the press. He stated that the press called him for a job to open a house, when he did there were cameras inside and they began asking him direct questions about his eligibility. Vice-chairman Johnsen asked if he had any trouble with the law before he was 27, and Mr. Lopez stated no. Mr. Lopez explained he did make some bad decisions like stealing radios, but he didn't get in trouble with the police. Chairman Chism asked if he has had to go through any psychological evaluations or classes as a registered sex offender and if so did he have any proof. Mr. Lopez stated that he had to take mandatory classes when he was first put on probation and he has a letter from the STOP program. Board member Brown asked if he was still on probation, to which he stated no. Board member Brown then asked what happens when he goes to a residence and they are aware of his registry, does he have to show ID? Mr. Lopez stated he didn't really do locksmith work at homes. Vice-chairman Johnsen stated the board could make that one of the stipulations to him having a license. In addition to not servicing homes, he would also include not servicing schools, or daycares; no where that he might have any contact with a child. Mr. Lopez asked if this would be for the rest of his life or until his sex offender registry ended. Secretary Smith stated that after his requirement to register expired, he could legally do what he wished to with his business. Mr. Lopez asked what he would be allowed to do if he were called to a home to unlock a vehicle. Vice-chairman Johnsen stated the board would not restrict that activity, as long as he was not re-keying or entering the home itself. Board member Crenshaw stated he would like to see that definition of restriction expanded to include multi-family dwellings, such as apartments. Board member Washington asked if he had employees who worked under him. Mr. Lopez responded that he has people that he contracts from time to time. Vice-chairman Johnsen stated his restrictions would not follow the employees he contracts; they would be able to do those jobs for him.

Mr. Lopez's aunt, Sharon Huff, asked to address the board. She stated she has seen sex offender cases come before the board who have received their license. Some of them, she stated received a probation period of only six months, and some have no stipulations at all. She also stated that if the board took his license away, it would be very hard on him and his family. She went on to say that the SOAH judge agreed he could work with the public. She urged the board to consider allowing the probation for only 6 months. She further stated that he is trying to get an early release from the sex offender registry, but that takes time and money.

Board member England asked Mr. Moninger if the board had the authority to grant Mr. Lopez a license with certain stipulations as to length of time for license and places he cannot work. Mr. Moninger stated that the board has done so in the past, and statute implies the authority to put restrictions lies with the board as long as they are not overly burdensome and he agrees to them. He further suggested that if the board did decide to grant a probationary license, they accept the Proposal For Decision conditionally on the execution of the agreed order reflecting the terms they set out, within 30 days. That way, he continued, if the conditions are not satisfied, the board would reject the PFD on the grounds that the judge misread the law as to statutory prohibition.

Board member Washington made a motion to reject SOAH's findings, but uphold SOAH's decision and grant a probationary license, conditional on the execution of an agreed order, within 30 days, reflecting the following terms:

- Stay away from residential re-keying to include both single and multi-family homes, daycares, and schools
- Provide proof of psychological evaluation to Attorney Steve Moninger

Board member Black seconded the motion, and the Board voted 6-1 in favor of the motion, with Board member England opposed to the motion.

Agenda Item XVIII: Executive Session (consultation with attorney) as authorized under §551.071, if necessary.

The Board did not take Executive Session at this time.

Agenda Item XIX: Adjournment

Chairman Chism introduced this agenda item. Board member Black made a motion for adjournment. Secretary Smith seconded the motion, and the Board voted unanimously in favor of the motion. At 2:28 pm, the April 29, 2011 meeting of the Private Security Board was adjourned.