

TEXAS PRIVATE SECURITY BOARD

**REGULARLY SCHEDULED BOARD MEETING HELD AT 9:00 A.M.,
JULY 8, 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

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 9:05 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.

Agenda Item I: Approval of Minutes for Board Meeting held April 29, 2011.

Chairman Chism introduced this agenda item. On a motion made by Board Member Washington and seconded by Board Member Black, the Board voted unanimously to approve the minutes for the board meeting of April 29, 2011 as written.

Agenda Item II: Election of Officers, pursuant to Texas Occupation Code §1702.026.

Chairman Chism introduced this agenda item. He stated pursuant to Texas Occupation Code §1702.026 it was necessary to elect officers for the Private Security Board. He asked for nominations for Secretary. Board Member Washington made a motion to retain the present Vice-Chairman and Secretary for an additional term; Howard Johnsen for Vice-Chairman and Mark Smith for Secretary. The Board voted unanimously in favor of the motion.

Chairman Chism stated he was appointing Board Member Crenshaw as the Chairman of the Rules Committee. He further stated he was appointing Secretary Smith and Department Licensing Supervisor Reggie Andrews as Co-Chairs to the Advisory Committee. The other members of this committee are: Billy Garret, representing the locksmiths, Kelly Riddle, representing the private investigators, and Michael Samulin, representing the alarm companies.

Agenda Item III: Report from Regulatory Services Division.

Reggie Andrews presented the licensing totals for the third quarter, 3/1/11-5/31/11. He stated, for this time period, the Division received 304 original company applications, 1,334 company renewals, 12,047 original individual applications, and 8,943 individual renewals not including online applications. He went on to say, for the same time period the Division processed the following licenses/registrations: 222 original company licenses (113 online, 109 manual), 1,319 company renewals (837 online, 482 manual), 10,046 individual registrations (2,463 online, 7,583 manual), 8,353 individual renewals (3,607 online, 4,746 manual), and 5,408 employee information updates (1,221 online, 4,187 manual). He also stated this time period showed 5,511 active company licenses, 259 active school licenses, and 130,118 active individual registrants.

Captain Alexander introduced Regulatory Crimes Bureau Lieutenant Buck Shodrock who presented the investigation statistics for Districts A, B and C to the Board. He stated there were 919 violations investigated for the third quarter, 3/1/11-5/31/11; 426 in District A, 241 in District B and 252 in District C. He further stated there were 5 cases of operating with an expired license, 6 cases of operating with a suspended license, 42 cases of operating without a license, and 12 cases of failure to register employees. He went on to say there were 41 cases presented to prosecutors during this time period. He stated 792 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.

Steve Moninger was the next person to address the Board. He stated Senate Bill 1600 addresses the law enforcement exemption by including peace officers who are employed by guard companies. He stated this bill makes it unnecessary for them to be independent contractors. Mr. Moninger then explained House Bill 1779 adds another exemption for social workers. He stated social workers engaged by the court to investigate family services cases will now be exempt

from license requirements by the Department. He also explained that the only pending rules were those that the Board adopted during the last meeting. He stated he was holding those rules and would submit them to the Texas Register along with any rules adopted from this meeting.

Agenda Item IV: Discussion and possible action regarding request for Stay of Summary Suspension.

Attorney Brent Mayer, representing Albert Phillips addressed the Board on this matter. He stated Mr. Phillips license was summarily suspended due to his charge of Class B offense of criminal trespass. He stated under §35.51, he and his client requested a stay of summary suspension in May and it was approved by the Division. However, he stated, the suspension was only in effect until the next meeting of the Private Security Board. Mr. Mayer asked the Board to consider allowing the stay of suspension to remain in effect until the entire matter was completed and judgment was rendered in the case.

Mr. Mayer stated the incident that surrounded this suspension occurred when Mr. Phillips was retained to locate a vehicle on a company's property. He stated the photos he provided to the Division and the Board showed that it is an open property with several entrances. Mr. Phillips entered the parking garage to locate the vehicle and was asked by security to leave, which he did. He stated that no police were called against his client at this time and no report was made. He stated that it was at a later date in which the report was made and the company decided to pursue criminal charges. He went on to explain that the company asked a police officer working a second job to file the charges. He again asked that the Board consider continuing the stay until the case is heard in court and a decision rendered.

Board Attorney Steve Moninger stated that he spoke with the Compliance and Enforcement Manager regarding this case and he has no objections to the Board allowing the stay to continue, either until the next meeting of the Private Security Board or until resolution of charges. Vice-Chairman Johnsen asked if Mr. Phillips is found guilty on the charges of trespassing, would he then be disqualified from having a license. Mr. Moninger stated that trespassing is on the list of possible disqualifying offenses, but the CES manager would defer to the Board's decision.

On a motion made by Board Member Crenshaw and seconded by Secretary Smith, the Board voted unanimously to continue the Stay of Summary Suspension until the case is resolved.

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

Secretary Smith stated the Advisory Committee would discuss each rule as it appears in the Agenda.

Agenda Item VI: Discussion and possible action regarding proposed repeal of Rule §35.33, "Certificate of Installation".

Steve Moninger presented this item to the Board. He stated this rule was obsolete. He stated the insurance code was no longer in effect and was repealed in 2009. When asked for his take on

repealing this rule, Board Member Crenshaw stated he and the Rules Committee had no objection to the repeal.

Chairman Chism asked if those in attendance had any input into the matter of this rule. Rodney Hooker with TBFAA addressed the Board, stating they also supported the repeal of this rule. He stated the only thing insurance companies care about now is whether alarms are being monitored or not, and this is the only thing they consider when giving insurance discounts.

On a motion made by Secretary Smith and seconded by Board Member Crenshaw, the Board voted unanimously to repeal the rule.

Agenda Item VII: Discussion and possible action regarding proposed repeal of Rule §35.41, “Company Name Selection”, and related discussion of vehicle signage issues.

Secretary Smith addressed this issue to the rest of the Board, stating the Advisory Committee discussed this issue and had no objection to repealing (b) and (c) of this rule, but they felt (a) should remain intact. He went on to say there is an issue that was brought up by a House Representative and the committee would like additional time to review this portion.

Steve Moninger stated the issue of vehicle signage is separate from the company name signage. He went on to say in regards to the Advisory Committee’s concerns that the Board could repeal sections (b) and (c) and section (a) could be moved to the vehicle signage rule. He then stated section (a) poses a problem in that it leaves the name application up to staff. He stated it would be better for the Department to not be involved with name selection.

Chairman Chism asked if there was anyone in the audience who wished to comment on the proposed amendments. There were no additional comments.

On a motion made by Secretary Smith and seconded by Board Member Crenshaw, the Board voted unanimously to accept the repeal of (b) and (c), but refer the repeal of (a) back to the Advisory Committee.

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

Steve Moninger presented this item to the Board. He stated he wanted to take this rule change in conjunction with changes to §35.46, as the addition of (d) directly relates to the rule §35.46. Secretary Smith stated that the Advisory Committee had no objections to the amendments of this rule. Board Member Crenshaw stated the Rules Committee also had no objections.

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

On a motion made by Secretary Smith and seconded by Board Member Crenshaw, the Board voted unanimously to accept amendments as written.

Agenda Item IX: Discussion and possible action regarding proposed amendments to Rule §35.46, “Guidelines for Disqualifying Convictions”.

Steve Moninger presented this item to the Board, stating this issue had been revisited many times before. He stated the changes to the rule at this time were to add the Code of Criminal Procedures 3g offenses and sexually violent offenses as permanently disqualifying, as well as broadening the categories so each refers to a chapter in the penal code rather than the specific offense. He continued by saying that permanently disqualifying means that a person’s application would be denied but they would still be allowed a hearing for consideration. Board Member Crenshaw stated the Rules Committee looked at the rule changes and they had no problem with said changes.

Chairman Chism asked for anyone in the audience with comments to make on this item to step forward. There were no further comments.

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

Agenda Item X: Discussion and possible action regarding proposed Rule §35.47, “Residential Solicitation”.

Board Member Crenshaw presented this item to the rest of the Board, stating the rules committee had reviewed this new rule. He stated it was designed to regulate and enforce door-to-door activity without licenses. He went on to say there has been a lot of negative media attention lately regarding unlicensed activity door-to-door. He further stated it was almost committing criminal acts or fraud. He stated the rules committee was in favor of this new rule.

Board Member England reiterated Mr. Crenshaw’s comments stating there had been some public concern regarding the methods used by these door-to-door sales companies such as whether they are licensed or unlicensed, going through neighborhoods during inappropriate hours, and targeting elderly citizens. He stated it was his position concerning the compliance of local regulations that the Board should seek their attorney’s advice.

Steve Moninger stated that in respect to the statutory interpretation of the provision that states local authority can’t impose fee or conditions on licenses, he felt the Department should stay out of that and allow it to be settled in civil courts. He went on to say that in regards to this proposed rule, he felt it would be best to engage in negotiated rule-making and seek opinion of the industry as this rule does impose additional burden on the licensees.

Rodney Hooker, with TBFAA, addressed the Board on this rule. He stated there has been a lot of bad press, not only state-wide but nationally, regarding the door-to-door sale of alarm sales people not being registered or licensed. He stated that during the Legislative session, House Bill 802 was introduced by Representative Bonham of Angleton that penetrated the protections of §1702. He stated the bill would allow cities to impose fines and fees on alarm sales and companies when they are already exempt by being regulated by DPS. On the other hand, he stated, he was also sensitive to the plight of the cities wanting to ensure background checks and drug tests were performed on those going door-to-door. He stated that during the session some

fictitious statements were made by an individual against TBFAA and DPS. He stated that State Representative Fletcher came to the defense of DPS against those false statements during those hearings. He finished by stating TBFAA felt this was a serious situation and that a rule needed to be considered to address it, knowing it was an additional burden to licensees, but feeling that the protection of the citizens of Texas outweighed that burden.

Secretary Smith asked if Mr. Hooker had read the proposed rule to which he replied that along with Steve Moninger, he wrote the new rule. Secretary Smith asked that since Mr. Hooker is a representative of TBFAA, and he helped to write the new rule, couldn't the Board consider that negotiated rule-making and go ahead with the new rule? Mr. Moninger stated that its not in compliance with the policy adopted by the Board, and since the new rule does impose additional restrictions and obligations on licensees, he felt additional discussion might be in order. However, he stated, since there didn't seem to be any objection to the new rule, it may be considered. Vice-Chairman Johnsen stated he agreed with Secretary Smith and would like to move this rule forward. He felt that this would only assist cities in keeping unlicensed solicitation down.

Mike Samulin, also with TBFAA, addressed the Board stating that while this would not be considered the strictest definition of negotiated rule-making, the essence has been satisfied. He stated that this rule almost exclusively affects the alarm industry and as TBFAA is behind the rule, it would count as negotiated rule-making conditions being satisfied. He also stated that inaction by the Board during the summer when all of these solicitations are so high would be a bigger headline.

Mr. Hooker interjected that at this time there is no fine associated with the violation of this rule. He asked that the board consider a steep fine for violation, perhaps in the range of \$500-\$1000 per occurrence.

Bonnie Brown Morse, as a locksmith representative addressed the Board stating that as a locksmith she didn't see a problem with this new rule either.

Royce Poinsett, an attorney representing a company named Vivint, addressed the board. He stated that this company was supportive of this new rule. He stated this company does a large amount of their business through door-to-door sales. He stated they are a member of TBFAA and worked with them during the last legislative session. He stated the State of Texas has over 2000 cities and felt having a rule for the state rather than city by city would be beneficial to all. He further stated his company did have some comments regarding this rule and would be happy to provide them in writing as the rule-making process progresses. Board Member Crenshaw asked Mr. Poinsett who Vivint was. He stated Vivint was a company that primarily does alarm sales. When asked where the company was based, he responded that they were based in Utah and had 58,000 customers and 78 employees in Texas. Board Member Crenshaw asked if Vivint owned another company named APX, to which Mr. Poinsett stated they were affiliated with APX. Board Member England asked Mr. Poinsett if his company had any comment on the fine amount for violation of this rule, as it seems to be the only part of this rule not yet discussed. Mr. Poinsett stated that since it was just brought up at this meeting, he would have to go back to the company and check with them. Vice-Chairman Johnsen stated that if all people are licensed,

they shouldn't really have a problem with the violation amount, to which Mr. Poinsett stated they were all licensed. Board Member Crenshaw pointed out that a lot of the people doing door-to-door sales with that company are not licensed through the department. He stated that they may hold individual city permits, but they must still be licensed through the Department of Public Safety, Regulatory Services Division. Mr. Poinsett assured the Board that many of their employees hold licenses with the Department and they are continuing to turn in applications for new licenses.

Michael Samulin again addressed the Board, stating it was his understanding that the penalty portion on this rule is not part of the rule-making process. He stated that he doesn't know of any other rule that has a dollar amount listed in the rule. Vice-Chairman Johnson asked if the penalty has to be referenced in the rule. Mr. Moninger stated the rule itself does not have to state penalty. He stated §35.93 provides the penalty range. This rule only addresses licensees; making sure that those with license show their license, giving the consumer some assurance that they are dealing with a licensed individual. Because this penalty range is a separate rule, they would go in and modify the rule. Board Member Crenshaw stated he felt the Board could vote on this rule on this date and then deal with the penalty at a later date after seeking comment from the industry. Mr. Samulin also added that he would like to see a reference made to a penalty so the rule does have some teeth. He also stated that if a person were to Google "Summer Sales, alarm sales, door to door", you would have several companies come up, including the one that had a representative in the room. He stated he found it very frustrating, and hoped the Board would expedite the matter. He further stated the Federal Trade Commission had issued a warning about door-to-door sales. NESA, the National Electronic Security Association, puts out a weekly newsletter, in which door-to-door complaints have grown to 6-10 different headers of problems from all different states.

On a motion made by Secretary Smith and seconded by Board Member Black, the Board voted unanimously to accept the rule as written.

Agenda Item XI: Discussion only regarding proposed amendments to Rule §35.221, "Qualifications for Investigations Company License".

Chairman Chism addressed the rest of the Board regarding this item. He stated in a past meeting the Board approved a rule allowing a specific university to use their training school to replace experience in obtaining a private investigators license. He stated he recently met with the University of North Texas, who is currently providing the training in Dallas, Houston, and Austin. The University has been approached by people in Texarkana, Laredo, El Paso, Amarillo, Lubbock, Brownsville, etc. all wanting to attend the program, but who cannot travel that far for the classes. The University is requesting to be allowed to do a webcast class to those who cannot travel to the other cities. The courses would be taught through the web, and instructors and students would have constant contact throughout the course. There would be a minimum of three contacts between them in the class. They are doing this on an experimental basis, and if it works the University would come back before the Board to seek amendments to the rule to include web-based courses. He stated he was bringing this to the Board's attention to let them know what was going on and to see if they had any questions or concerns.

Secretary Smith asked if Mr. Chism had engaged in negotiated rule-making regarding the rules possibly being changed. Mr. Chism stated he met with members of TALI about the idea and they all indicated they would be on board. Kelly Riddle, president of TALI, addressed the Board. He stated TALI had no objections to this at the present time. He stated they have watched the university program increase in stature and some of their students have joined TALI's ranks. This is a common method of teaching now, and they have no objections as long as it is in conjunction with some monitored contact.

Chairman Chism again told the Board that this is an experiment on the part of University of North Texas and if it works out, then the board will consider amending the rule. He stated that Boston College also teaches this type course.

Agenda Item XII: Discussion and possible action regarding proposed repeal of Rule §35.241, "Business Evaluation Service".

Steve Moninger presented this item to the Board. He stated the repeal of this rule was cleaning up an old purposeless rule. He stated this rule seems to have begun as a way of ensuring that independent consultants hired to do employee interviews, and monitoring of business processes were not conducting investigations without a license. Having this rule has actually created an exemption from the statute. He continued by stating this rule is incoherent as written and if a consultant is hired to study the habits or acts of a person it would be considered an investigation and if they are hired to watch a company's business process and give advice based on those findings, it would not be an investigation. He stated the board would look at these on a case by case basis.

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

On a motion made by Vice-Chairman Johnsen and seconded by Board Member Washington, the Board voted unanimously to repeal the rule.

Agenda Item XIII: Discussion and possible action regarding proposed amendments to Rule §35.256, "Application for a Training Instructor Approval".

Steve Moninger presented this item to the Board. He stated this rule was brought to him by the licensing management with questions regarding its interpretation. He stated it would be a good idea to have the Rules Committee look at it and also gain some input from the industry as well. He stated many of the qualifications listed in subsection (b) are also listed in subsection (d). Staff is encountering some situations where a person has one or more of the qualifications and wants to know why they are required to have 40 hours in one area and 40 hours again in another area. In reading part of the rule, "The classroom instructor and firearm certificates shall each have consisted of a minimum of 40 hours of board approved instruction", leads one to believe that means 80 total hours. He further stated another problem is CHL instructors wanting to use part of the rule, specifically (d)(3), and would like some clarification on this rule.

Chairman Chism stated he was assigning this rule to the Rules Committee to discuss. He also stated the committee should gain the input of the investigative industry as well as working with Mr. Moninger to come up with amendments to this rule. Mr. Moninger asked for clarification in the interim regarding the number of hours required. Secretary Smith stated that through board resolution the hours should be 40, not 80.

On a motion made by Secretary Smith and seconded by Vice-Chairman Johnsen, the Board unanimously resolved the hours required as 40.

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

Secretary Smith stated the Advisory Committee looked at the proposed amendments to this rule, specifically striking reference to the division supplying training video for personal protection officers. He stated the Committee agreed this reference should be stricken.

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

On a motion made by Vice-Chairman Johnsen and seconded by Secretary Smith, the Board voted unanimously to approve amendments to the rule as stricken.

Agenda Item XV: Discussion and possible action regarding proposed Subchapter V, “Active Military and Spouses- Special Conditions”, consisting of Rules §35.321, “Exemption from Penalty for Failure to Renew in Timely Manner”, §35.322, “Extension of Certain Deadlines for Active Military Personnel”, and §35.323, “Alternative License Procedure for Military Spouse”, pursuant to Chapter 55 of the Occupations Code, and SB 1733.

Steve Moninger presented this item to the Board. He stated Senate Bill 1733, which is currently effective, requires all licensing agencies to accommodate spouses of active military personnel. He stated in a pre-existing statute there was already a requirement for the Division to accommodate active military, so this is adding to those requirements. He stated he drafted a new Subchapter V, with rules §35.321 and §35.322 regarding active military and §35.233 referring to spouses.

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

On a motion made by Vice-Chairman Johnsen and seconded by Secretary Smith, board members voted unanimously to approve the Subchapter and rules as written.

Agenda Item XVI: Public Comment

Bob Vallance-, with Vallance, Inc., addressed the Board. He stated he wanted to bring to the board’s attention the need for a company to have two managers. He stated the rules address

manager's licenses and there being only one manager for each company. He stated he knows of a company whose manager is currently in the reserves and is deployed leaving that company with no manager at all. He stated he sees no relevance in only having one manager, because if that manager resigns it leaves a business with no manager for a time. If one manager leaves, he must do so in writing, then have the new manager apply, test, etc. He asked the Board to consider allowing companies to have two managers in place so there is no loss of business flow.

Mike Samulin-, representing TBFAA, addressed the Board. He stated he wished to give the Board a little resource information regarding the rule of company name selection. He stated that back before private security came under DPS, and was its own stand alone agency there was a company who named their company using the same initials as the agency. He stated this caused a lot of problems and that is why this rule was evoked. He stated he wanted the board to be aware of this and keep that fact in mind before deciding to do away with that rule.

Chairman Chism called for a 15 minute break at 10:38am.

Chairman Chism called the meeting back to order at 11:10am.

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

Valerina Walters presented the following Hearing cases to the Board:

Irwon Barnes Docket No. 000102011

Mr. Barnes was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Walters stated Mr. Barnes' application for a security officer commission was denied based on his Class A misdemeanor Assault Bodily Injury conviction. She further stated that under Federal law he is disqualified from owning or possessing firearms and is therefore ineligible for a commissioned security officer license.

Secretary Smith made a motion to uphold SOAH's decision to deny Mr. Barnes' application for a security guard commission. Board Member Washington seconded the motion, and the Board voted unanimously in favor of the motion.

Dustin Reininger- Docket No. 005952010

Mr. Reininger was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Walters stated Mr. Reininger's commissioned security officer license was revoked based on his permanent abuse protection order affecting the spousal relationship entered against him by the Newburyport District Court, Newburyport, Massachusetts. She also stated that under Federal law Mr. Reininger is disqualified from owning or possessing firearms.

Vice-Chairman Johnsen made a motion to uphold SOAH's decision to revoke Mr. Reininger's commissioned security officer license. Secretary Smith seconded the motion, and the Board voted unanimously in favor of the motion.

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

Jimmy Chaverria- Docket No. 008442010

Mr. Chaverria was not present to address the Board on this case, nor did he have counsel present on his behalf. Ms. Carnes-Lemp stated Mr. Chaverria's license as a commissioned security officer was revoked based on his involuntary commitment to a mental institution. She further stated under Federal law Mr. Chaverria is disqualified from owning or possessing a firearm and he is incapable of exercising sound judgment in the proper use and storage of a handgun.

Secretary Smith made a motion to uphold SOAH's decision and revoke Mr. Chaverria's security officer commission. Board member Crenshaw seconded the motion, and the Board voted unanimously in favor of the motion.

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

Chairman Chism stated the board members recently received letters from someone in the industry regarding Administrative Hearings and asked Steve Moninger for further discussion in Executive Session.

Executive Session called at 11:13am.

Meeting resumed at 11:27am.

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 11:28 am, the July 8, 2011 meeting of the Private Security Board was adjourned.