

BOARD OF PRIVATE DETECTIVES AND GUARDS

Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

Date: Thursday, July 11, 2013

Time: 10:30 a.m.

Place: Exam Room
King Kalakaua Building
335 Merchant Street, 3rd Floor
Honolulu, HI 96813

Present: Douglas Inouye, Public Member, Chairperson
Gary Yabuta, Chief of Police, County of Maui, Vice Chairperson
Darryl Perry, Chief of Police, County of Kauai
Edward Akiona, Industry Member
Rodney J. Tam, Deputy Attorney General
Charlene L.K. Tamanaha, Executive Officer
Christine Hironaka, Secretary

Excused: Kenneth Chang, Industry Member
Ray Galas, Public Member

Guests: Anne Anderson – Anderson Lahne & Fujisaki, LLP
Paul Koftinow – Anderson Lahne & Fujisaki, LLP
Jeremiah Ana – Securitas Security Services USA, Inc.
Albert Denis – Securitas Security Services USA, Inc.
Lee Burgwinkel – G4S Secure Solutions, Inc.
Jeff Owens – Transcend, Inc.
Jane Sugimura – Hawaii Council of Apartment Owners

Agenda: The agenda for this meeting was filed with the Office of the Lieutenant Governor as required by Hawaii Revised Statutes (“HRS”) section 92-7.

Call to Order: There being a quorum present, the meeting was called to order at 10:40 a.m. by Chairperson Inouye.

Additions to
Or Deletions
From the Agenda: None

Approval of the
Board Minutes: It was moved by Vice Chairperson Yabuta, seconded by Mr. Akiona, and unanimously carried to defer approval of the Board minutes and executive session minutes of the June 20, 2013 meeting.

Chairperson Inouye asked the guests to introduce themselves. The guests in attendance were Anne Anderson and Paul Koftinow from Anderson Lahne & Fujisaki, LLP, Albert Denis and Jeremiah Ana from Securitas Security Services USA, Inc., Lee Burgwinkel from G4S Secure Solutions, Inc., Jeff Owens – Transcend, Inc. and Jane Sugimura from the Hawaii Council of Apartment Owners.

Applications:

a. Oral Interview for Licensure

None

b. Review for Examination

It was moved by Vice Chairperson Yabuta, seconded by Chief Perry and unanimously carried to approve the following applications for examination:

1. Guard

- i. Jim A. Carlton - GD
Innovative Security Solutions of Hawaii, LLC
- ii. Danford Keanu – GD
Sole Proprietor

c. Guard Instructor

None.

d. Guard Instructor Ratification

It was moved by Vice Chairperson Yabuta, seconded by Chief Perry, and unanimously carried to ratify the approval of the following Guard Instructors and dates of approval:

Burt K. A. AKANA – 6/28/13
Gordon K. NAKANELUA – 6/28/13

e. Guard Employee

None.

f. Guard Employee Ratification

None.

Executive Officer's
Report:

- a. Guard Employee (GDE) Applications Received – 7,076
as of July 8, 2013
- a. Total Guard Employees Licensed – 3,712
- b. GDE Applications with Deficiencies – 421

- c. GDE Applications Requiring Review by the Executive Officer & Board – 443

Examination:

- a. Review & Report

The Executive Officer distributed the following results of the Private Detectives' and Guards' examination:

Security Guard Exam (administered June 21, 2013)

Exams Administered	1
Successful	0
Unsuccessful	1

Private Detective Exam (administered June 21, 2013)

Exams Administered	2
Successful	0
Unsuccessful	2

The Executive Officer informed the Board that some of the references for the exams are no longer in print and asked the Board members for more recent references in order to get information to update the exams.

Act 208 (SLH 2010)
and Any Matters
Relating to its
Implementation:

- a. Curriculum Review Committee

None

- b. Ad Hoc Committee Report

The Executive Officer asked the Board for direction regarding topics for the 4 hour continuing education requirement for guard employees.

Mr. Owens recommended Workplace Violence training for the average employee and was asked to give a presentation. Mr. Owens explained that there is no established definition of "workplace violence" but a similar recognized definition is "a spectrum of behaviors which would reasonably be perceived as acts of violence against persons and property occurring in or related to the workplace. These acts range from threatening behaviors and threats of violence against persons and property, to acts of physical assaults, and other physical harms up to and including death." Mr. Owens added that there are 4 generally recognized classifications of workplace violence:

- Criminal intent
- Customer/client/patient initiated violence
- Co-worker
- Personal

Mr. Owens emphasized that training would target the average employee and the topics need to be expanded based upon the specific workplace. The Board deferred the Topic of Workplace Violence to the Ad Hoc committee for their recommendations.

c. Criminal Convictions

The Executive Officer had notified Deputy Attorney General (“DAG”) Tam of convictions that should be included on the list of approved convictions. DAG Tam informed the Board that he will have to research some of the sections because they no longer appear in the HRS or may have been repealed or amended.

It was moved by Vice Chairperson Yabuta, seconded by Mr. Akiona and unanimously carried to allow the Executive Officer to approve convictions of the same offense although the statutory section numbers may be different or amended.

d. Industry Request to Address Applications for Applications Received After June 30, 2013.

Mr. Denis, speaking on behalf of the contract and proprietary security industry, informed the Board that the main issue is regarding guard employee applications that are yet to be reviewed. There are approximately 9 guard agencies that rely on getting new hires processed immediately. Securitas projects that it will be 4 weeks before any of the new hires can be put on schedule to work. Mr. Denis stated that turnover is currently 85 employees per week and referred the Board to the following cumulative financial impact illustration in his memo:

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Avg # of hires/week	Avg Wage	OT (Incremental Wage)	1-Week Impact (\$) excl loads
85.00	10.00	5.00	17,000.00

Cumulative Impact Illustration												
	Week 1	Week 2	Week 3	Week 4	Subtotal	Week 5	Week 6	Week 7	Week 8	Subtotal	Weeks 9 - 52	Annual
	Hires	Hires	Hires	Hires		Hires	Hires	Hires	Hires			
Week 1	17,000	17,000	17,000	17,000	68,000							68,000
Week 2		17,000	17,000	17,000	51,000	17,000				17,000		68,000
Week 3			17,000	17,000	34,000	17,000	17,000			34,000		68,000
Week 4				17,000	17,000	17,000	17,000	17,000		51,000		68,000
Week 5						17,000	17,000	17,000	17,000	68,000		68,000
Week 6							17,000	17,000	17,000	51,000		51,000
Week 7								17,000	17,000	34,000		34,000
Week 8									17,000	17,000		17,000
Week 9 - 52											-	2,992,000
	17,000	34,000	51,000	68,000	170,000	68,000	68,000	68,000	68,000	272,000	2,992,000	3,434,000
Loads (11.26%)*	1,914	3,828	5,743	7,657	19,142	7,657	7,657	7,657	7,657	30,627	336,899	386,668
Total	18,914	37,828	56,743	75,657	189,142	75,657	75,657	75,657	75,657	302,627	3,328,899	3,820,668
Cum Impact	18,914	56,743	113,485	189,142	378,284	453,941	529,598	605,254	605,254	907,882	3,934,154	4,425,923

* Loads are comprised of: FICA (7.65%), FUI (0.6%), SUI (3.01%)

Mr. Denis asked the Board on behalf of the security industry that conditional approvals be extended to new hires because licensees and guard agencies and guard employees are all subject to criminal and financial penalty for non-compliance.

Chairperson Inouye asked "How many employees do you lose in a week?" Mr. Denis responded "85 – 100 employees a week". Mr. Denis also added that there is a core group of 30% that do not turn over.

Vice Chairperson Yabuta asked "What is the time frame from when you receive an application to becoming a Securitas guard?" Mr. Denis responded, "4 – 5 days that's why they need to be approved by the DCCA within 5 – 6 days".

Chairperson Inouye informed Mr. Denis that the Board cannot make an exception for the industry because the law does not provide any grace period.

Ms. Sugimura stated that she supported the memo from Securitas and added that she was receiving calls from associations and guards regarding their guard cards. The Executive Officer responded that there has been a manufacturing problem with the pocket cards that postponed issuance of all recent licensees and that the Professional Vocational Licensing website's on-line services can confirm license numbers, although cards have yet to be issued and received.

Ms. Sugimura asked if the definition of "Acting In A Guard Capacity" was open to public comment? DAG Tam asked if there was a question regarding the definition. The Executive Officer added that the Board may consider amendments to the definition

at anytime. Ms. Anderson responded by asking if the definition covered officers who look for violations of property rules. DAG Tam suggested that a letter with a detailed job description be sent to the Board for determination if the job description is subject to the requirements of Act 208 (SLH 2010). Ms. Anderson added that many were not aware of the June 20, 2013 deadline and could not get training in time and asked the Board for leniency for employees who have not submitted their applications. The Executive Officer stated that notifications were sent through the Hawaii Council of Apartment Owners, and the Real Estate Branch in its newsletter. Ms. Sugimura stated that management companies such as Hawaiiana Management Company and Certified Management were notified. Ms. Anderson stated that some associations are self-managed and may not be aware of the new law.

Mr. Denis asked if the Board could continue the exemption after July 1, 2013 for new hires if the completion of the application process takes 3 months. The Executive Officer responded that most of the delay occurs in the review of convictions and 40% to 50% of the applications have convictions which may or may not pertain to the profession. DAG Tam added that the liability is now on the State regarding the determination of whether a conviction is related to the profession, wherein the past it was left to the employers to make that determination. The Executive Officer also added that due to the requirements mandated by the FBI, employees are not allowed to pull criminal history reports. The FBI reports sometimes state "arrest from other sources" and DCCA's licensing branch has to request and wait for responses from other states. In addition, DCCA has received applications with a "No" response to question # 5 on the application, but in reality, there are convictions which will trigger a deferral letter requesting documentation of the conviction(s).

Mr. Burgwinkel informed the Board that his company's process for new employees is normally 2 weeks. Applications are done on-line, job offer, drug test and background check (approximately 3-4 business days and DUI convictions need co-approval).

Mr. Denis asked the Board if new hires could be reviewed before the applications submitted before July 1, 2013 because the prior applications have the exemption. The Executive Officer responded that a change in process can be considered.

Mr. Denis' memo listed the following Proposed Solutions for Discussion:

- Board grants conditional approval to all new hires of guard agencies and proprietary operations whose employers have attested to their guards having met the requirements of the

statute. Cover letter with attestation and list of hires submitted to DCCA with registration packages.

- Board initiates temporary rules to hold proprietary employers responsible for new employees and as well as hires, post 07/01/13, to receive conditional approval for assurances that guards assigned to sites first meet the requirements of the Act.
- Board requests DCCA to immediately initiate bifurcated registration for new registration applicant processing.
- Board requests DCCA to provide adequate resources to timely process new hire applications.
- “Pass Crimes” list be posted.
- June 29 Bulletin be clarified re guard names posted on PVL site v. “issued a guard card”.

Executive Session: It was moved by Vice Chairperson Chief Yabuta, seconded by Mr. Akiona, and unanimously carried to enter into executive session pursuant to HRS sections 92-4 and 92-5, to consider and evaluate personal information relating to the applicant applying for licensure and to consult with the Board’s attorney on questions and issues pertaining to the Board’s powers, duties, privileges, immunities, and liabilities and to consider sensitive matters related to public safety or security in accordance with HRS sections 92-5(a)(4) and (6) at 11:47 a.m.

EXECUTIVE SESSION

It was moved by Vice Chairperson Yabuta, seconded by Mr. Akiona, and unanimously carried to reconvene to the Board’s regular order of business at 12:15 p.m.

The Board’s responses to Mr. Denis’ Proposed Solutions for Discussion are as follows:

- Board grants conditional approval to all new hires of guard agencies and proprietary operations whose employers have attested to their guards having met the requirements of the statute. Cover letter with attestation and list of hires submitted to DCCA with registration packages.

Response: *The Board is unable to do this based on the statutory language. There is a difference between new hires who were not previously working as guards as opposed to those who were working as guards prior to July 1, 2013. No Board under the Department of Commerce and Consumer Affairs (“DCCA”) allows applicants to enter into a profession without being approved. Thus, DCCA cannot give preferential*

treatment to guards versus the applicants from the other professions and vocations, and the Board cannot give preferential treatment to employees of guard agencies versus in-house employees that act in a guard capacity.

No other Board pulls background checks and determines if convictions preclude the applicant from working in the profession or trade. The Board noticed that the guard profession has a very large number of applicants with convictions and because the onus is on the Board (not the employer) to review the convictions, the Board cannot in good conscience allow an individual with a conviction to enter the guard profession without first reviewing the conviction.

- Board initiates temporary rules to hold proprietary employers responsible for new employees and as well as hires, post 07/01/13, to receive conditional approval for assurances that guards assigned to sites first meet the requirements of the Act.

Response: *The Board is unable to do this because it has no statutory authority to establish temporary rules.*

- Board requests DCCA to immediately initiate bifurcated registration for new registration applicant processing.

Response: *The Board may be able to shift some of its focus to reviewing applications received on or after July 1, 2013. The Board noted that applications are confidential and cannot be reviewed by volunteers (i.e., non-Board members or non-DCCA staff).*

- Board requests DCCA to provide adequate resources to timely process new hire applications.

Response: *The Board will discuss this with the Licensing Administrator; however, the Professional Vocational Licensing's standard review time is 15 – 20 business days for all professions and trades.*

- "Pass Crimes" list be posted.

Response: *This is still being reviewed.*

- June 29 Bulletin be clarified re guard names posted on PVL site v. "issued a guard card".

Response: *As long as the name is listed online with a number, the individual and employer can assume that a guard card will follow.*

Mr. Denis stated that the industry may be able to ask the Legislature for special funding for staffing. DAG Tam added that amending the law to remove the criminal conviction review process for the Board may decrease the time to process guard applications. The Executive Officer responded that the FBI will not release data to private employers and therefore, it does not appear this responsibility may be placed on employers. A deferral of CE requirements to the June 30, 2016 renewal may ease the burden on registrants and employers.

Next Meeting: Thursday, August 15, 2013
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii 96813

Adjournment: There being no further business to discuss the meeting adjourned at 1:05 p.m.

Reviewed and approved by:

Taken by:

/s/ Charlene L.K. Tamanaha
Charlene L.K. Tamanaha
Executive Officer

/s/ Christine Hironaka
Christine Hironaka
Secretary

8/9/13

[X] Minutes approved as is.
[] Minutes approved with changes; see minutes of _____.