

No. 2021-7140

**Official Order
of the
Texas Commissioner of Insurance**

Date: 01/03/2022

Subject Considered:

Texas Department of Insurance

v.

Ray Ali Kennel

SOAH Docket No. 454-20-4231.C

General remarks and official action taken:

The subject of this order is Ray Ali Kennel's application for a general lines agent license with a life, accident, and health qualification. This order approves Mr. Kennel's application, but with a two-year probated suspension.

Background

After proper notice was given, the above-styled case was heard by an administrative law judge for the State Office of Administrative Hearings. The administrative law judge made and filed a proposal for decision containing a recommendation that the Texas Department of Insurance (TDI) approve Mr. Kennel's application. A copy of the proposal for decision is attached as Exhibit A.

Enforcement staff for TDI (Staff) filed exceptions to the administrative law judge's proposal for decision. Mr. Kennel did not file a reply to the exceptions.

In response to the exceptions, the administrative law judge did not revise the proposal for decision. A copy of the administrative law judge's response to exceptions is attached as Exhibit B.

TDI adopts the administrative law judge's proposed findings of fact and conclusions of law with changes to Findings of Fact Nos. 7 and 12 and Conclusions of Law Nos. 5, 6,

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and 8, and the addition of new Conclusions of Law Nos. 4.A and 4.B as described in this order.

Legal Authority for Changes to Proposal for Decision

The legal authority for the changes to the proposal for decision made in this order is TEX. GOV'T. CODE § 2001.058(e)(1), which provides that "[a] state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines . . . that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies [of the agency], or prior administrative decisions"

TEX. INS. CODE § 4005.101(b)(8) and TEX. OCC. CODE § 53.021(d)

TEX. INS. CODE § 4005.101 provides grounds on which TDI may discipline a license holder, including denying a person's license application. Under subsection (b)(8), TDI may discipline a license holder if it determines the applicant "has been convicted of a felony[.]" Relatedly, TEX. OCC. CODE § 53.021(a) authorizes licensing agencies such as TDI to disqualify a person from receiving a license if the person has been convicted of an offense listed in Article 42A.054, Code of Criminal Procedure, or a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.¹

In 2007, Mr. Kennel pleaded guilty to indecency with a child by contact, a second-degree felony.² He received deferred adjudication community supervision for the offense, and his case was ultimately dismissed in February of 2013. A deferred adjudication is generally not considered a conviction unless otherwise provided in statute. See *McNew v. State*, 608 S.W.2d 166, 172 (Tex. Crim. App. 1978) ("[A] 'conviction,' regardless of the context in which it is used, always involves an adjudication of guilt."); *Hassan v. State*, 440 S.W.3d 684, 687 (Tex. App.—Houston [14th Dist.] 2012, no pet.) ("[A]n order deferring adjudication of guilt and placing a defendant on probation or community supervision is not a conviction."); Tex. Att'y Gen. Op. No.

¹ Section 53.021(a) also authorizes license denial if the applicant was convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation.

² TEX. PEN. CODE § 21.11.

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JC-396 (2001) at 2 ("As commonly defined, the term 'convicted' means "[p]roved or found guilty; condemned.") (citing III Oxford English Dictionary 879 (2d ed. 1989)).

In this case, the administrative law judge concluded, without analysis, that Mr. Kennel's deferred adjudication qualifies as a conviction for purposes of TEX. INS. CODE § 4005.101(b)(8). As support for his conclusion, the administrative law judge simply cites to TEX. OCC. CODE § 53.021(d), which provides:

A licensing authority may consider a person to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the person was discharged as described by Subsection (c) if:

(1) the person was charged with:

(A) any offense described by Article 62.001(5), Code of Criminal Procedure;³ or

(B) an offense other than an offense described by Paragraph (A) if:

(i) the person has not completed the period of supervision or the person completed the period of supervision less than five years before the date the person applied for the license; or

(ii) a conviction for the offense would make the person ineligible for the license by operation of law; and

(2) after consideration of the factors described by Sections 53.022 and 53.023(a), the licensing authority determines that:

(A) the person may pose a continued threat to public safety; or

(B) employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.

By its plain language, however, subsection (d) of § 53.021 applies only in the context of that section. *See* TEX. OCC. CODE § 53.021(d) ("A licensing authority may consider a

³ Indecency with a child is an offense described by Article 62.001(5), Code of Criminal Procedure.

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person to have been convicted of an offense for purposes of this section . . .") (emphasis added). It cannot be used to establish a conviction outside the context of § 53.021. The Office of the Attorney General recognized as much in Tex. Att'y Gen. Op. No. KP-107 (2016), albeit indirectly.⁴

Therefore, based on the analysis above, TDI concludes that the administrative law judge misinterpreted or misapplied the law in concluding that TEX. OCC. CODE § 53.021(d) may be used to treat a deferred adjudication as a conviction for purposes of TEX. INS. CODE § 4005.101(b)(8). See Commissioner's Order Nos. 2021-7000⁵ and 2021-7018⁶ (both concluding that a deferred adjudication is not a conviction for purposes of TEX. INS. CODE § 4005.101(b)(8)).

While TEX. OCC. CODE § 53.021(d) may not be used to treat a deferred adjudication as a conviction for purposes of TEX. INS. CODE § 4005.101(b)(8), it can be used as such for purposes of TEX. OCC. CODE § 53.021(a). Section 53.021(a) applies in this case because indecency with a child is both an offense listed in Article 42A.054, Code of Criminal Procedure, and a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure. See TEX. OCC. CODE § 53.021(a)(2)-(3). Therefore, while TEX. INS. CODE § 4005.101(b)(8) may not serve as a basis to deny Mr. Kennel's application, TEX. OCC. CODE § 53.021(a) does. The administrative law judge's proposal for decision is changed accordingly, as described below.

⁴ At issue in that opinion was the Texas Lottery Commission's statutory authority to revoke a sales agent's license if the agent had been "convicted of . . . gambling or a gambling-related offense[.]" TEX. GOV'T. CODE § 466.155. The operative question posed to the Attorney General was whether the Commission could revoke a license based on a sales agent's deferred adjudication for the offense of gambling, a Class C misdemeanor. After analyzing TEX. GOV'T. CODE § 466.155 and TEX. OCC. CODE § 53.021(d), the Attorney General concluded that the Commission could not revoke a license based on a deferred adjudication for gambling because § 53.021(a) did not extend to Class C misdemeanors. Implicit in that conclusion is a finding that the Commission could not use § 53.021(d) as a basis to treat a deferred adjudication as a conviction for purposes of TEX. GOV'T. CODE § 466.155, where a gambling conviction is expressly listed as a basis for license revocation.

⁵ *Texas Department of Insurance v. Kayla Leaann Smith*, issued September 9, 2021.

⁶ *Texas Department of Insurance v. Jesse Juarez*, issued October 13, 2021.

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Based on the analysis above showing that the administrative law judge misinterpreted or misapplied the law, new Conclusion of Law No. 4.A is adopted:

The Department may deny a license if the applicant has been convicted of an offense listed in Article 42A.054, Code of Criminal Procedure, or a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure. TEX. OCC. CODE § 53.021(a)(2)–(3).

Based on the analysis above showing that the administrative law judge misinterpreted or misapplied the law, new Conclusion of Law No. 4.B is adopted:

The Department may consider a person who has pleaded guilty, but whose adjudication has been deferred, to be convicted for purposes of TEX. OCC. CODE § 53.021(a) if the offense is described by Article 62.001(5), Code of Criminal Procedure, and the Department determines that the person may pose a continued threat to public safety or the employment of the person in the licensed occupation would create a situation in which he or she has the opportunity to repeat the prohibited conduct. TEX. OCC. CODE § 53.021(d).

The administrative law judge's proposed Conclusion of Law No. 5 states:

Staff has the burden to prove by a preponderance of the evidence that grounds exist to deny Mr. Kennel's license, while Mr. Kennel has the burden to prove by a preponderance of the evidence that he is fit to perform the duties and discharge the responsibilities of an insurance agent despite his criminal history. *See* 1 Tex. Admin. Code § 155.427; 28 Tex. Admin. Code § 1.502(h)(3); Tex. Ins. Code § 4005.101(b)(5), (8); Tex. Occ. Code §§ 53.0211(b), .022, .023.

Based on the analysis above showing that the administrative law judge misinterpreted or misapplied the law, Conclusion of Law No. 5 is changed to state:

Staff has the burden to prove by a preponderance of the evidence that grounds exist to deny Mr. Kennel's license, while Mr. Kennel has the burden to prove by a preponderance of the evidence that he is fit to perform the duties and discharge the responsibilities of an insurance agent despite his criminal history. *See* 1 TEX. ADMIN. CODE § 155.427; 28 TEX. ADMIN. CODE § 1.502(h)(3); TEX. INS. CODE § 4005.101(b)(5), (8); TEX. OCC. CODE §§ 53.021 - .023.

The administrative law judge's proposed Conclusion of Law No. 6 states:

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Staff met its burden to show that Mr. Kennel was convicted of a felony within the meaning of Texas Insurance Code § 4005.101(b)(8). Staff did not meet its burden to show that Mr. Kennel engaged in "fraudulent or dishonest acts or practices" within the meaning of Texas Insurance Code § 4005.101(b)(5).

Based on the analysis above showing that the administrative law judge misinterpreted or misapplied the law, Conclusion of Law No. 6 is changed to state:

Staff met its burden to show that Mr. Kennel was convicted of a felony within the meaning of TEX. OCC. CODE § 53.021(a). Staff did not meet its burden to show that Mr. Kennel engaged in "fraudulent or dishonest acts or practices" within the meaning of TEX. INS. CODE § 4005.101(b)(5).

TEX. OCC. CODE §§ 53.022-.023 and 28 TEX. ADMIN. CODE § 1.502

As noted in the proposal for decision, on February 26, 2007, Mr. Kennel pleaded guilty to indecency with a child by contact, a second-degree felony, and received deferred adjudication community supervision.

Due to Mr. Kennel's criminal history, TDI may not issue him a license unless the factors specified in TEX. OCC. CODE §§ 53.022–53.023 and 28 TEX. ADMIN. CODE § 1.502(h) outweigh the serious nature of his offense when viewed in light of the occupation being licensed. See 28 TEX. ADMIN. CODE § 1.502(f). State law and TDI rules require that all applicable factors must be weighed in determining an applicant's fitness for licensure. See TEX. OCC. CODE §§ 53.022–53.023(a) (stating that "the licensing authority shall consider" enumerated factors); 28 TEX. ADMIN. CODE § 1.502(h)(1)–(2) (stating that "the department shall consider" enumerated factors). Thus, a failure to properly weigh all applicable factors is a misapplication of law and agency rules that could warrant changes to the proposal for decision under TEX. GOV'T. CODE § 2001.058(e)(1).

In exceptions to the proposal for decision, Staff argues that the administrative law judge failed to properly weigh the factors contained in 28 TEX. ADMIN. CODE § 1.502 against the serious nature of Mr. Kennel's criminal conduct. See TEX. OCC. CODE § 53.022(1) (TDI shall consider "the nature and seriousness of the crime"); 28 TEX. ADMIN. CODE § 1.502(h)(1)(A) (same). In response to Staff's exceptions, the administrative law judge asserts that the proposal for decision does weigh the applicable factors properly. A review of the Analysis and Recommendation portion of the proposal for decision shows that the administrative law judge acknowledges that Mr. Kennel's crime is serious.⁷

⁷ Proposal for Decision, pg. 9.

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However, Staff's point is well taken, and the seriousness of Mr. Kennel's offense should have been included in the findings of fact to ensure all applicable factors are properly weighed.

The same is true for another factor: the extent to which a license might offer an opportunity to engage in further criminal activity of the same type. See TEX. OCC. CODE § 53.022(3); 28 TEX. ADMIN. CODE § 1.502(h)(1)(C). The administrative law judge acknowledged that a license could offer Mr. Kennel an opportunity to engage in similar criminal activity,⁸ but he failed to include a finding of fact on that point.

The administrative law judge's proposal for decision is changed as described below to address the seriousness of Mr. Kennel's offense and the extent to which a license would offer Mr. Kennel an opportunity to engage in similar criminal activity.

The administrative law judge's proposed Finding of Fact No. 7 states:

Mr. Kennel has no other criminal history, before or since the 2006 offense.

Based on the analysis above showing that the administrative law judge misinterpreted or misapplied the law, the administrative law judge's proposed Finding of Fact No. 7 is changed to state:

Mr. Kennel has no other criminal history, before or since the 2006 offense. However, Mr. Kennel's crime is serious.

The administrative law judge's proposed Finding of Fact No. 12 states:

Mr. Kennel was assessed as a low risk to reoffend.

Based on the analysis above showing that the administrative law judge misinterpreted or misapplied the law, the administrative law judge's proposed Finding of Fact No. 12 is changed to state:

A license could offer Mr. Kennel an opportunity to engage in similar criminal activity, though he was assessed as a low risk to offend.

TDI has reviewed the record and accepts the administrative law judge's recommendation to grant Mr. Kennel a license. However, while the administrative law judge concluded that the factors overall weigh in favor of granting a license, additional monitoring of Mr. Kennel by TDI is warranted because of the serious nature of his crime and because a license would offer him an opportunity to engage in similar criminal

⁸ *Id.*, at 10.

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activity. TDI acknowledges that Mr. Kennel was assessed as a low risk to reoffend, but even a low risk associated with Mr. Kennel's serious crime is concern enough to warrant further monitoring. Therefore, TDI finds that his license should be placed on probated suspension for two years, with reporting requirements, to allow TDI to observe how he performs as a licensee.

The administrative law judge's proposed Conclusion of Law No. 8 states:

The Department should approve Mr. Kennel's application for a general-lines-agent license with a life, accident, and health qualification.

Based on the analysis above, the administrative law judge's proposed Conclusion of Law No. 8 is changed to state:

The Department should approve Mr. Kennel's application for a general lines agent license with a life, accident, and health qualification. However, the license should be subject to a two-year probated suspension.

Findings of Fact

1. Findings of Fact Nos. 1–6, 8–11, 13, and 14 as contained in Exhibit A are adopted by TDI and incorporated by reference into this order.
2. In place of Finding of Fact No. 7 as contained in Exhibit A, the following finding of fact is adopted:

Mr. Kennel has no other criminal history, before or since the 2006 offense. However, Mr. Kennel's crime is serious.
3. In place of Finding of Fact No. 12 as contained in Exhibit A, the following finding of fact is adopted:

A license could offer Mr. Kennel an opportunity to engage in similar criminal activity, though he was assessed as a low risk to offend.

Conclusions of Law

1. Conclusions of Law Nos. 1–4 and 7 as contained in Exhibit A are adopted by TDI and incorporated by reference into this order.

2. The following Conclusion of Law 4.A is adopted:

The Department may deny a license if the applicant has been convicted of an offense listed in Article 42A.054, Code of Criminal Procedure, or a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure. TEX. OCC. CODE § 53.021(a)(2)–(3).

3. The following Conclusion of Law 4.B is adopted:

The Department may consider a person who has pleaded guilty, but whose adjudication has been deferred, to be convicted for purposes of TEX. OCC. CODE § 53.021(a) if the offense is described by Article 62.001(5), Code of Criminal Procedure, and the Department determines that the person may pose a continued threat to public safety or the employment of the person in the licensed occupation would create a situation in which he or she has the opportunity to repeat the prohibited conduct. TEX. OCC. CODE § 53.021(d).

4. In place of Conclusion of Law No. 5 as contained in Exhibit A, the following conclusion of law is adopted:

Staff has the burden to prove by a preponderance of the evidence that grounds exist to deny Mr. Kennel's license, while Mr. Kennel has the burden to prove by a preponderance of the evidence that he is fit to perform the duties and discharge the responsibilities of an insurance agent despite his criminal history. See 1 TEX. ADMIN. CODE § 155.427; 28 TEX. ADMIN. CODE § 1.502(h)(3); TEX. INS. CODE § 4005.101(b)(5), (8); TEX. OCC. CODE §§ 53.021 - .023.

5. In place of Conclusion of Law No. 6 as contained in Exhibit A, the following conclusion of law is adopted:

Staff met its burden to show that Mr. Kennel was convicted of a felony within the meaning of TEX. OCC. CODE § 53.021(a). Staff did not meet its burden to show that Mr. Kennel engaged in "fraudulent or dishonest acts or practices" within the meaning of TEX. INS. CODE § 4005.101(b)(5).

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6. In place of Conclusion of Law No. 8 as contained in Exhibit A, the following conclusion of law is adopted:

The Department should approve Mr. Kennel's application for a general lines agent license with a life, accident, and health qualification. However, the license should be subject to a two-year probated suspension.

Order

It is ordered that Ray Ali Kennel's application for a general lines agent license with a life, accident, and health qualification is approved.

It is further ordered that Mr. Kennel's license is suspended for two years. The suspension is probated, and during the period of probation, Mr. Kennel must comply with the following terms and conditions:

If, during the probation period imposed by this order, TDI issues any additional licenses or authorizations to Mr. Kennel, those additional licenses or authorizations will be suspended until the probation period imposed by this order has ended. The suspension will be probated, and the same terms and conditions stated in this order will apply.

Beginning from the date of this order and continuing through the probation period, Mr. Kennel must provide written notice of his criminal record to any appointing company, agency, employer, sponsor, or other entity on behalf of which he performs the acts of an agent. Mr. Kennel must provide TDI with a copy of the notification within 30 days of the appointment, employment, or sponsorship by emailing it to TDI at EnforcementReports@tdi.texas.gov.

Beginning from the date of this order and continuing through the probation period, Mr. Kennel must file a written report, on or before the 15th day of the month on a quarterly basis for the months of January, April, July, and October, with TDI by emailing it to EnforcementReports@tdi.texas.gov.

The reports must include the following information:

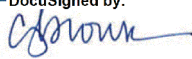
- a. Mr. Kennel's current mailing address and telephone number;
- b. the name, mailing address, and telephone number of Mr. Kennel's employer, and if Mr. Kennel is self-employed, a statement that he is self-

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- employed and the name, mailing address, and telephone number of his business;
- c. the name and address of any insurer that has appointed Mr. Kennel as an agent;
 - d. the name and address of any insurer that has cancelled Mr. Kennel's appointment as an agent; and
 - e. a copy of any and all contracts Mr. Kennel enters into with an insurer, broker, agent, agency, managing general agent, or any other person or entity in the business of insurance.

Mr. Kennel must notify TDI immediately of the following by emailing EnforcementReports@tdi.texas.gov:

- a. any charges or indictments filed against him for a misdemeanor or felony during the period he is required to file reports, excluding traffic offenses and Class C misdemeanors;
- b. any state or regulatory actions taken against him, including formal and informal actions;
- c. any change in his employment or his residence; and
- d. any complaint made against Mr. Kennel concerning his performance as an agent, as well as a written explanation detailing the steps taken to resolve it.

DocuSigned by:

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Cassie Brown
Commissioner of Insurance

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Recommended and reviewed by:

DocuSigned by:

James Person

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James Person, General Counsel

DocuSigned by:

Justin Beam

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Justin Beam, Assistant General Counsel



<p>TEXAS DEPARTMENT OF INSURANCE, Petitioner</p> <p>v.</p> <p>RAY ALI KENNEL, Respondent</p>	<p>§ § § § § § §</p>	<p>BEFORE THE STATE OFFICE</p> <p>OF</p> <p>ADMINISTRATIVE HEARINGS</p>
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PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) proposes to deny the application of Ray Ali Kennel for a general-lines-agent license with a life, accident, and health qualification. The proposed denial is based on a 2006 offense of indecency with a child by contact to which Mr. Kennel pleaded guilty; the adjudication was deferred, and the case was dismissed after Mr. Kennel successfully completed a six-year term of probation. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends that the Department approve Mr. Kennel’s application and grant him the requested license.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing on the merits was held by videoconference on September 15, 2020, before ALJ David DuBose of the State Office of Administrative Hearings. Staff was represented by attorneys Stephanie Andrews and Anna Kalapach, while Mr. Kennel represented himself. The hearing concluded that same day, and the record closed on October 7, 2020, the deadline for written closing briefs. Notice and jurisdiction were not disputed and are thus addressed solely in the Findings of Fact and Conclusions of Law below.

II. DISCUSSION

A. Relevant Licensing Law

The Department may deny a license to an individual who has been convicted of a felony or has engaged in fraudulent or dishonest activity that directly relates to the duties and

responsibilities of the licensed occupation.¹ A licensing authority may consider a person to have been convicted of indecency with a child even if the proceedings were dismissed.² The offense of indecency with a child is a felony³ and is considered to be of such a serious nature that it is of prime importance in determining fitness for licensure.⁴ The Department also considers it very important that applicants be honest, trustworthy, and reliable.⁵

The Department shall not issue a license if an applicant has committed a felony or engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation, unless the Commissioner finds that the factors listed in Texas Occupations Code §§ 53.022 and 53.023 outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed.⁶ Section 53.022 lists factors that a licensing authority must consider in deciding whether a criminal conviction “directly relates to the duties and responsibilities of the licensed occupation.”⁷ Section 53.023 lists mitigating circumstances and other considerations that may bear on the individual’s fitness for licensure despite having criminal history that the licensing authority must weigh in deciding whether to deny licensure based on the criminal history.⁸

In addition to referencing Occupations Code sections 53.022 and 53.023, Texas Administrative Code title 28, subsection 1.502(h) incorporates their substance and virtually all of their wording, albeit of the versions in place before the statutory amendments effective on September 1, 2019:

¹ Tex. Ins. Code § 4005.101(b)(5), (8); 28 Tex. Admin. Code (TAC) § 1.502(d).

² Tex. Occ. Code § 53.021(d)(1)(A); Tex. Code Crim. App. art. 62.001(5)(A).

³ Tex. Penal Code § 21.11(d).

⁴ 28 TAC § 1.502(e)(4)(H).

⁵ 28 TAC § 1.502(c)

⁶ 28 TAC § 1.502(f), (h).

⁷ See Tex. Occ. Code § 53.022; see also *id.* § 53.0211 (generally requiring that, “[n]otwithstanding any [other] law,” “a licensing authority shall issue to an otherwise qualified applicant” either the license for which the applicant applied or a provisional license, despite criminal history, “unless the applicant has been convicted of an offense described by Section 53.021(a),” which includes “an offense that directly relates to the duties and responsibilities of the licensed occupation”).

⁸ See Tex. Occ. Code. § 53.023.

- (1) In determining whether a criminal offense directly relates to the duties and responsibilities of the licensed occupation, the department shall consider the following factors:
 - (A) the nature and seriousness of the crime;
 - (B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
 - (C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
 - (D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

- (2) In addition to the factors listed in paragraph (1) . . . the department shall consider the following evidence in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has committed a crime:
 - (A) the extent and nature of the person's past criminal activity;
 - (B) the age of the person when the crime was committed;
 - (C) the amount of time that has elapsed since the person's last criminal activity;
 - (D) the conduct and work activity of the person prior to and following the criminal activity;
 - (E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;
 - (F) other evidence of the person's present fitness, including letters of recommendation from:
 - (i) prosecutor, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - (ii) the sheriff or chief of police in the community where the person resides; and
 - (iii) any other persons in contact with the person.
 - (G) . . . proof that the applicant . . . has:

- (i) maintained a record of steady employment;
 - (ii) supported . . . dependents where applicable;
 - (iii) otherwise maintained a record of good conduct; and
 - (iv) paid all outstanding court costs, supervision fees, fines, and restitution.
- (3) It shall be the responsibility of the applicant . . . to the extent possible to secure and provide to the commissioner the information required by paragraph (2) of this subsection.⁹

Because Mr. Kennel submitted his license application before the effective date of the 2019 amendments, his application is governed by the prior versions of sections 53.022 and 53.023.¹⁰ Consequently, the ALJ need not address any inconsistencies between subsection (h) and the amended sections 53.022 and 53.023.

Staff bears the burden to prove its asserted grounds for denying Mr. Kennel's license application, while Mr. Kennel has the burden to prove his fitness to be licensed despite the existence of any such grounds.¹¹ The standard of proof is by a preponderance of the evidence.¹²

B. Evidence

Staff's evidence included Mr. Kennel's application file¹³ and records from Mr. Kennel's criminal proceeding.¹⁴ The testifying witnesses were Mr. Kennel and Lewis Wright, the administrative review board liaison to the enforcement division of the Department.

⁹ 28 TAC § 1.502(h); *cf.* Acts 2019, 86th Leg., R.S., ch. 765 (H.B. 1342), §§ 6-8, 12, 15.

¹⁰ *See* Acts 2019, 86th Leg., R.S., ch. 765 (H.B. 1342) § 14 (“The changes in law made by this Act apply only to an application for a license submitted on or after the effective date of this Act. An application for a license submitted before the effective date of this Act is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.”).

¹¹ *See* 1 TAC § 155.427; 28 TAC § 1.502(h)(3); Tex. Ins. Code § 4005.101(b)(5), (8); Tex. Occ. Code §§ 53.0211(b), .022, .023.

¹² *See Granek v. Texas St. Bd. of Med. Examn'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

¹³ TDI Ex. 5.

¹⁴ TDI Ex. 6.

Documents in evidence showed that Mr. Kennel was charged with three counts of indecency with a child alleged to have occurred on or about January 28, 2006.¹⁵ Mr. Kennel pleaded guilty to one count of indecency with a child by contact.¹⁶ The court deferred adjudication of guilt and placed Mr. Kennel on probation for six years.¹⁷ He satisfied his probation terms and his case was dismissed.¹⁸

In fulfillment of a probation term, Mr. Kennel completed required counseling and was not recommended for sex offender treatment.¹⁹ Apart from that counseling, he more recently was assessed as having a low risk to reoffend.²⁰ The counselor assessing Mr. Kennel set out Mr. Kennel's version of events with the victim of the offense for which he was convicted, summarized as follows.²¹ Mr. Kennel reported that, while making a late-night beer run to a convenience store, he met and exchanged telephone number with a female who stated that she was 18 years old. Months later, the female called and asked him for a ride; he picked her up and took her to his house while deciding where to go later. She asked him to take her to party and asked if she could take a bottle of liquor from his house. When he denied her request, they argued, and when he refused to let her take the liquor because she was only 18, she told him he was actually 15 years old. He said he then dropped her off at the convenience store where they had met. He denied any sexual behavior occurred.²² The counselor also stated that in his court-mandated therapy, Mr. Kennel discussed what he learned about the reasons for his previous loose sexual behavior, thinking errors that led him to bad decisions, and his coping strategies to avoid situations in which he might act out on a tendency to objectify women.²³

¹⁵ TDI Ex. 5 at 017-018.

¹⁶ TDI Ex. 5 at 019-020.

¹⁷ TDI Ex. 5 at 019-020.

¹⁸ TDI Ex. 5 at 021.

¹⁹ See TDI Ex. 5 at 024-025.

²⁰ TDI Ex. 5 at 034-041. The report was made at the request of Ms. Kennel.

²¹ Ex. 5 at 036. This description is inconsistent with the guilty plea Mr. Kennel entered in court.

²² Ex. 5 at 036.

²³ Ex. 5 at 036-037.

Reference letters praised Mr. Kennel. A former employer described Mr. Kennel as a kind-hearted man with a strong work ethic and described him as honest and forthcoming about his offense; she concluded that he had been “at the WRONG place at the WRONG time with the WRONG person.”²⁴ A police officer who started as Mr. Kennel’s tax client, but became a good friend, asserted that he had seen similar accusations that were not always true. He described Mr. Kennel as upfront, honest about his background, and knowledgeable about his tax work.²⁵ Mr. Kennel’s wife described him as hardworking, kind, and honest.²⁶ A family friend and former employer described Mr. Kennel’s growth as a tax preparer, who said there was “NO WAY that Ray committed what he has been accused of.” That reference described Mr. Kennel as transparent with great business savvy and a tremendous work ethic.²⁷

Mr. Wright testified that Mr. Kennel was 27 years old at the time of the 2006 offense, and that he was released from probation in 2013.²⁸ He found no other criminal history for Mr. Kennel.²⁹ Mr. Wright testified that indecency offenses are specifically denoted as of prime importance in the licensure decision.³⁰ The statutes permit the Department to treat Mr. Kennel’s offense as a conviction, despite the facts that adjudication was deferred, probation was successfully completed, and the case was dismissed.³¹

Mr. Wright testified that Mr. Kennel applied for a generalized life, accident, and health insurance license, and that such agents typically conduct one or more home visits before writing a life-insurance policy.³² Mr. Wright testified that the work of a life insurance agent would provide Mr. Kennel the opportunity to reoffend because it would require him enter people’s homes, which

²⁴ TDI Ex. 5 at 042.

²⁵ TDI Ex. 5 at 043.

²⁶ TDI Ex. 5 at 044.

²⁷ TDI Ex. 5 at 045.

²⁸ Tr. at 31.

²⁹ Tr. at 30.

³⁰ Tr. at 27.

³¹ Tr. at 34.

³² Tr. at 24-25

would exponentially increase his opportunities to meet individuals, including minors.³³ Though Mr. Kennel is a registered sex offender, Mr. Wright testified that insurance clients would not typically review the state sex-offender registry before allowing an insurance agent into their home.³⁴

Mr. Wright testified that Mr. Kennel was working in the tax preparation service industry.³⁵ He said that Mr. Kennel did not submit any evidence of volunteer work or rehabilitative activities, education classes, or counseling sessions occurring after his probation ended.³⁶

Mr. Wright testified that the Department expects honesty, trustworthiness, and reliability from its licensees.³⁷ He testified that Mr. Kennel's written statement to the Department in support of his license application raised concerns because he appeared to downplay the incident that he pleaded guilty to committing.³⁸ He said that Mr. Kennel provided letters of recommendation that accurately expressed the writers' opinions of Mr. Kennel, but that caused Mr. Wright to wonder if the recommenders had full knowledge of Mr. Kennel's offense.³⁹ On cross-examination, Mr. Wright conceded that a polygraph examination "failed to reveal criteria indicative of deception" when Mr. Kennel denied committing the two offenses to which he did not plead guilty, and showed "marginal nondeception" when denying committing the offense to which he pleaded guilty.⁴⁰ Mr. Wright recommended that the Department deny the application for license.⁴¹

³³ Tr. at 29.

³⁴ Tr. at 30.

³⁵ Tr. at 31.

³⁶ Tr. at 32.

³⁷ Tr. at 24.

³⁸ Tr. at 28; TDI Ex. 5 at 022 (Mr. Kennel's statement).

³⁹ Tr. at 33; TDI Ex. 5 at 042-045.

⁴⁰ Tr. at 40.

⁴¹ Tr. at 35.

Mr. Kennel testified that he did not commit the offense that he nevertheless pled guilty to committing.⁴² He testified that his attorney persuaded him to take the plea deal because he was a black male being accused of wrongdoing by an underage white female.⁴³ Mr. Kennel testified that he had no contact with the criminal justice system since his probation ended.⁴⁴

Mr. Kennel testified that he has been preparing taxes for almost eleven years and owns a business at which he also does accounting and bookkeeping and helps people set up companies.⁴⁵ He said he has 384 clients, and that he and his wife had previously had an insurance business.⁴⁶ He went with her on home visits, though he could not write the insurance policies.⁴⁷ His wife had partnered with Fidelity,⁴⁸ and he wanted an insurance license so that he could help his tax clients with insurance and annuities.⁴⁹ He had passed his test.⁵⁰ He said he was knowledgeable in insurance and business and was great with people.⁵¹ Mr. Kennel testified that he mentored younger men who played on an adult football team, counseling them against making behavioral errors.⁵²

Mr. Kennel said he wanted to file an affidavit from the attorney who represented him in the criminal case.⁵³ He said the affidavit described the circumstances surrounding his guilty plea.⁵⁴ Although Mr. Kennel reportedly sent the affidavit to Staff,⁵⁵ he did not file it with SOAH.

⁴² Tr. at 69.

⁴³ Tr. at 71.

⁴⁴ Tr. at 77.

⁴⁵ Tr. at 76-77.

⁴⁶ Tr. at 69-70.

⁴⁷ Tr. at 70.

⁴⁸ Tr. at 72-73.

⁴⁹ Tr. at 71-72.

⁵⁰ Tr. at 72.

⁵¹ Tr. at 74.

⁵² Tr. at 78.

⁵³ Tr. at 66, 80.

⁵⁴ Tr. at 80.

⁵⁵ Staff's Additional Closing Arguments and Objections to Respondent's Untimely Evidence.

Accordingly, Staff's objections to the affidavit are moot, and the affidavit is not in evidence in this case and provides no basis for the ALJ's analysis and recommendation.

C. Analysis and Recommendation

Based on Mr. Kennel's deemed conviction for indecency with a child by contact, this determination turns on the mitigating factors of Texas Occupation Code § 53.023. Mr. Kennel's protestations that he did not commit the offense to which he pled guilty are not part of this analysis, except to the extent that his denials of an offense he pled guilty to committing cause concern.

By statute, Mr. Kennel's guilty plea to one count of indecency with a child can be considered a conviction.⁵⁶ Though he was not adjudicated guilty and his case was dismissed after he successfully completed his probationary term,⁵⁷ the Department may by law consider him convicted of indecency with a child.⁵⁸ The offense of indecency with a child is a felony⁵⁹ and is, by regulation, of prime importance in determining fitness for licensure.⁶⁰

Though the petition mentions the Department's power to deny an applicant who engages in "fraudulent or dishonest acts or practices," Staff did not present evidence of dishonest acts or practices within the meaning of Texas Insurance Code § 4005.101(b)(5),⁶¹ and did not argue for denial of Mr. Kennel's license on that basis.

Staff proved that the crime of indecency with a child directly relates to the licensed profession. It is a serious crime. Evidence that the license might put a licensee in the homes with

⁵⁶ Tex. Occ. Code § 53.021(d); Tex. Code Crim. App. art. 62.001(5).

⁵⁷ TDI Ex. 5 at 019-021; Tr. at 31.

⁵⁸ Tex. Occ. Code § 53.021(d); Tex. Code Crim. App. art. 62.001(5).

⁵⁹ Tex. Penal Code § 21.11.

⁶⁰ 28 TAC § 1.502(e)(4)(H).

⁶¹ See *Zaal v. Tex. Dep't of Ins.*, 03-11-00512-CV, 2013 WL 5878912, at *6 (Tex. App.—Austin Oct. 29, 2013, no pet.) (misleading clients regarding investment without knowledge of the truth of his representations); *De La Garza v. Tex. Dep't of Ins.*, 03-11-00869-CV, 2015 WL 1285702, at *1 (Tex. App.—Austin Mar. 19, 2015, no pet.) (misappropriating funds belonging to an insurer).

underage girls when doing home visits is relevant to the other three factors of the relevant version of Occupations Code § 53.022.⁶² The license could offer an opportunity to engage in further indecency-with-a-child crimes; the crime might bear on a licensee's fitness to perform the duties of conducting house visits; and the licensing process could be used to guard against the crime of indecency with a child by screening out undesirable applicants.

The evidence on the balance of the mitigating factors favors licensing Mr. Kennel.⁶³ The record did not show any other criminal history, before or after the offense.⁶⁴ The crime plainly was not one of youthful indiscretion, but in the more than a decade since the offense, Mr. Kennel has progressed from having sexually compulsive behaviors, to developing a safety plan to avoid risky situations, to dating the same woman for eight years before marrying her, reporting that he had been faithful to her since the beginning of their relationship.⁶⁵ There is no testimony regarding his work before the offenses, but since the offense, Mr. Kennel has worked as a tax preparer for more than ten years, starting by working for others and building to 384 clients of his own business.⁶⁶ Though Mr. Kennel did not report any sex therapy beyond that required as a term of his probation, the licensed sex offender treatment provider who conducted the mandatory counseling did not recommend sex offender therapy.⁶⁷ He described to an examiner the coping strategies he used to avoid acting out on a tendency to objectify women.⁶⁸ He was assessed as being a low risk to reoffend, having a low risk for general criminality, and a low risk for chronic or severe violence and criminal acts.⁶⁹ The record contains letters of recommendation from a police officer, two former employers, and his wife/business partner.⁷⁰ Whether Mr. Kennel fully described the circumstances of his offense to the writers is unknown and concerning, but the writers describe

⁶² Tex. Occ. Code § 53.022; 28 TAC 1.502(h)(1).

⁶³ See Tex. Occ. Code § 53.023.

⁶⁴ Tr. at 30, 77.

⁶⁵ Ex. 5 at 024, 036, 037, 044.

⁶⁶ Ex. 5 at 042, 045; Tr. at 69, 77.

⁶⁷ Ex. 5 at 024.

⁶⁸ Ex. 5 at 036-037.

⁶⁹ Ex. 5 at 034, 039-041.

⁷⁰ Ex. 5 at 042-045.

him as kind, hardworking, and honest person who is successful in business and passionate about helping people. Though there is no documentation that he paid the court costs and fees in his criminal case, there is a notation that the court cannot dismiss a case without payment of fees, and Staff acknowledged that the case had been dismissed.⁷¹

Though Mr. Kennel pled guilty to and is deemed to have been convicted of a serious felony, the mitigating evidence supports granting his application for a license. Since the offense of approximately 14 years ago, Mr. Kennel has changed his personal life by avoiding risky situations and choosing monogamy with his wife. He successfully completed his probation term and was not recommended for further sex therapy. He was assessed as being a low risk to reoffend, and has no other criminal offenses. Further, he has built a tax-preparation business over a decade without incident. On the record presented, Mr. Kennel is fit to perform the duties and discharge the responsibilities of an insurance agent. The Department should grant his application.

III. FINDINGS OF FACT

1. On July 27, 2018, the Texas Department of Insurance (Department) received Ray Ali Kennel's application for a general lines agent license with a life, accident, and health qualification.
2. On September 28, 2018, the Department staff (Staff) proposed to deny Mr. Kennel's application.
3. On October 11, 2018, Mr. Kennel timely requested a hearing.
4. On July 15, 2020, Staff issued a notice of hearing to Mr. Kennel, which attached and incorporated by reference its petition in the case. On August 18, 2020, the Administrative Law Judge (ALJ) issued Order No. 1, which clarified that the hearing would be held by videoconference and provided participation information. The notice of hearing, petition, and Order No. 1 contain a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to particular sections of the statutes and rules involved; and the factual matters asserted.

⁷¹ Ex. 5 at 021; Tr. at 31.

5. The hearing was held by videoconference on September 15, 2020, before ALJ David DuBose of the State Office of Administrative Hearings. Staff was represented by attorneys Stephanie Andrews and Anna Kalapach. Mr. Kennel represented himself. The hearing concluded on the same day, and the record was closed on October 7, 2020, the deadline for submission of written closing briefs.
6. On February 26, 2007, Mr. Kennel pleaded guilty to indecency with a child by contact, a felony. Adjudication of guilt was deferred, and Mr. Kennel was placed on six years of probation. Mr. Kennel successfully completed his probationary term, and the case was dismissed.
7. Mr. Kennel has no other criminal history, before or since the 2006 offense.
8. Mr. Kennel was 27 years old at the time of his offense.
9. More than fourteen years have passed since the offense.
10. Mr. Kennel has worked as a tax preparer since at least 2010, and has built a business with hundreds of clients.
11. Mr. Kennel learned coping strategies to avoid situations where he might act out on a tendency to objectify women.
12. Mr. Kennel was assessed as a low risk to reoffend.
13. Mr. Kennel successfully completed his probation term.
14. Mr. Kennel received recommendation letters from a police officer, former employers, and his wife/business partner. The letter writers describe him as kind, hardworking, and honest who is successful in business and passionate about helping people.

IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 4001.002, 4005.101.
2. The State Office of Administrative Hearings has authority to hear this matter and issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
3. Mr. Kennel received timely and sufficient notice of hearing. Tex. Gov't Code ch. 2001; Tex. Ins. Code § 4005.104(b).

4. The Department may deny a license application if the applicant has committed a felony or engaged in fraudulent or dishonest acts or practices that directly relates to the duties and responsibilities of the license profession. Tex. Ins. Code § 4005.101(b)(5), (8); *see also* 28 Tex. Admin. Code § 1.502(d).
5. Staff has the burden to prove by a preponderance of the evidence that grounds exist to deny Mr. Kennel's license, while Mr. Kennel has the burden to prove by a preponderance of the evidence that he is fit to perform the duties and discharge the responsibilities of an insurance agent despite his criminal history. *See* 1 Tex. Admin. Code § 155.427; 28 Tex. Admin. Code § 1.502(h)(3); Tex. Ins. Code § 4005.101(b)(5), (8); Tex. Occ. Code §§ 53.0211(b), .022, .023.
6. Staff met its burden to show that Mr. Kennel was convicted of a felony within the meaning of Texas Insurance Code § 4005.101(b)(8). Staff did not meet its burden to show that Mr. Kennel engaged in "fraudulent or dishonest acts or practices" within the meaning of Texas Insurance Code § 4005.101(b)(5).
7. Weighing the factors under 28 Texas Administrative Code § 1.502(h), Mr. Kennel has shown that he is fit to perform the duties and discharge the responsibilities of a licensed insurance agent, notwithstanding his criminal history. *See also* Tex. Occ. Code § 53.023.
8. The Department should approve Mr. Kennel's application for a general-lines-agent license with a life, accident, and health qualification.

SIGNED November 30, 2020



DAVID DUBOSE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

2021-7140ACCEPTED
454-20-4231
03/22/2021 1:26 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERKFILED
454-20-4231
3/22/2021 1:04 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK**Exhibit B**

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

March 22, 2021

Kent Sullivan
Commissioner of Insurance
Texas Department of Insurance
333 Guadalupe, Tower 1, 13th Floor, Mail Code 113-2A
Austin, Texas 78714**VIA E-FILE TEXAS****RE: Docket No. 454-20-4231.C; Texas Department of Insurance v.
Ray Ali Kennel**

Dear Commissioner Sullivan:

On December 1, 2020, the Administrative Law Judge (ALJ) issued the Proposal for Decision (PFD) in this case. The staff of the Texas Department of Insurance (Staff) timely filed exceptions and corrected exceptions to the PFD on December 15, 2020. Applicant Ray Ali Kennel did not file any exceptions and did not respond to Staff's exceptions. The ALJ has reviewed Staff's exceptions and recommends no changes to the PFD.

Exception A. Staff asserts that the PFD fails to weigh statutory factors contained in 28 Texas Administrative Code § 1.502 and Texas Occupations Code §§ 53.022 and 53.023 against the serious nature of the criminal conduct, resulting in a misapplication of the law. The ALJ concludes that the PFD weighs the applicable factors properly, and recommends no changes regarding Exception A.

Exception B. Staff asserts that the PFD misapplies the law in Conclusion of Law Number 7 by concluding that "Kennel has shown that he is fit to perform the duties and discharge the responsibilities of a licensed insurance agent, notwithstanding this criminal history." Staff asserts that this conclusion that Mr. Kennel "can do the job" fails to consider 28 Texas Administrative Code § 1.502(f) which prohibits the department from issuing a license unless the matters set out in subsection (h) outweigh the serious nature of the criminal offense.

The PFD properly applies the applicable rules and statutes. Rule 1.502(h)(2) expressly requires the Department to determine "the fitness to perform the duties and

discharge the responsibilities of the licensed occupation of a person who has committed a crime.” Further, Staff’s excerpt omits the introductory clause of Conclusion of Law Number 7, which provides “Weighing the factors under 28 Texas Administrative Code § 1.502(h)” Conclusion of Law Number 7 expressly addresses weighing the relevant factors to assess the applicant’s fitness to perform the duties. The ALJ recommends no change regarding Exception B.

Exception C. Staff contends that the PFD misapplies the law because it fails to consider the underlying circumstances that led to Mr. Kennel’s felony offense and the full nature of his offense. Staff contends that the PFD “focuses on Kennel’s version of events then admits that his story is inconsistent with the plea of guilty.” Staff asserts that the PFD “completely exclude[s] any discussion, analysis and Findings of Fact related to the serious nature of the offense and the underlying circumstances.” Staff contends that the PFD ignores the serious nature of the offense by failing to make a finding of fact that the offense is serious.

Contrary to Staff’s assertion, the PFD plainly states on page 10 that indecency with a child “is a serious crime” and on page 11 that it is a “serious felony” in the paragraph immediately preceding the findings of fact. Further, Finding of Fact Number 6 states that offense is a felony. The ALJ is unaware of any non-serious felonies. The PFD’s inclusion of Mr. Kennel’s version of events shows the contrast between it and the felony offense to which he pleaded guilty. By doing so, the PFD acknowledges concerns about what he might have told the persons who wrote his recommendation letters. The PFD sufficiently recognizes the seriousness of the offense. The ALJ recommends no changes regarding Exception C.

Exception D. Staff then contends that Mr. Kennel’s age of 27 years at the time of the offense established that the offense was not a youthful indiscretion, and that the mere passage of time does not overcome that factor. Staff also asserts that the PFD should have included in the Findings of Fact the date Kennel completed his probation term.

The PFD does not conclude that the serious and non-youthful nature of the offense is overcome merely by the passage of time. Rather, the PFD discusses and includes findings of fact on other statutory and rule-based factors weighed in the decision. Though the PFD does not explicitly state the date Mr. Kennel completed his probation, the information was sufficiently conveyed in Finding of Fact Number 6, which states that Mr. Kennel pleaded guilty on February 26, 2007, had a six-year term of probation, and successfully completed that term.

Staff also argues that the PFD fails to take into consideration the lack of evidence of rehabilitative effort. Staff characterizes Mr. Kennel’s plans for avoiding “risky” situations as showing a lack of rehabilitation, and posits that “low risk is not zero risk” of reoffending. Staff takes issue with the PFD for treating Mr. Kennel’s testimony that he was mentoring youth as more credible than his failure to provide proof to the Department

before or during the hearing that he was mentoring youth. Staff contends that rehabilitation is a separate issue from the letters of recommendation.

The PFD treats evidence of rehabilitation as one of the factors considered, but not conclusive. Having a plan to avoid risk is some evidence of rehabilitation compared to having no plan. Being low risk is not zero risk, but it is distinguishable from a high or medium risk to reoffend. Testimony is evidence that must be considered. While not conclusive, the content of the letters of recommendation provide some evidence that rehabilitation has occurred. These are all factors weighed in the PFD. The ALJ recommends no changes related to Exception D.

Exception E. Staff urges that Mr. Kennel's failure to file an affidavit from his criminal counsel regarding the circumstances surrounding his guilty plea shows a lack of good conduct and shows that he is not an honest, trustworthy, and reliable person. At the hearing, Mr. Kennel described what the affidavit purportedly said and requested an opportunity to file it after the hearing. He did not file it, but Staff filed objections, and now complains that the PFD did not rule on those objections. Staff claims "obvious prejudice" and asserts that Mr. Kennel made misstatements about the exhibit. Staff expresses curiosity about what else Mr. Kennel might have misstated and what other rules and regulations he might be willing to bend to get what he wants.

Because the affidavit was not filed, the ALJ will not speculate regarding whether Mr. Kennel misstated its contents. As the PFD states, the affidavit is not in evidence and its alleged contents provide no basis for the analysis and recommendation. Further, the PFD does not mention or rely on Mr. Kennel's statements regarding the affidavit's contents. There is no evidence of why Mr. Kennel opted not to file the affidavit, and the PFD properly does not speculate on why that occurred or attribute any motive to that lack of filing. The ALJ recommends no changes related to Exception E.

Exception F. Staff asserts that the PFD "seemingly" requires the Department to prove a high likelihood of reoffending instead of using the statutory requirement that requirement that licensure would offer the opportunity to reoffend. Staff also urges a different assessment of some of the factors under 22 Texas Administrative Code § 1.502(h)(2).

The PFD imposes no requirement to prove a high likelihood of reoffending, expressly or implicitly. Finding of Fact Number 12 that Mr. Kennel was assessed as a low risk to reoffend is evidence of rehabilitation, a factor weighed under 22 Texas Administrative Code § 1.502(h)(2)(E). The ALJ recommends no changes related to Exception F.

Requested Changes to Findings of Fact and Conclusions of Law. Staff recommends numerous amended and additional findings of fact and conclusions of law related to the exceptions addressed above. A proposal for decision must contain a statement of each finding of fact and conclusion of law necessary to the proposed decision. Tex. Gov't Code

§ 2001.062(c). The ALJ does not recommend adopting any of the amended and additional findings and conclusions because they are not necessary to the proposal for decision.

After considering Staff's exceptions, the ALJ does not recommend any changes to the PFD and recommends that it be adopted as filed.

Sincerely,



David DuBose
Administrative Law Judge

DD/jh
Attachment

cc: Stephanie Maugham Andrews, Staff Attorney, Texas Department of Insurance, 333 Guadalupe, Tower 1, 13th Floor, Austin, Texas 78701 **VIA E-FILE TEXAS**
Ray Ali Kennel [REDACTED] Arlington, TX 76016 - **VIA E-FILE TEXAS**