

No. 2020 - 6224

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

Date: FEB 10 2020

Subject Considered:

Katheryn Nycole Dale
[REDACTED]
Denton, Texas 76210-8000

Consent Order
TDI Enforcement File No. 17880

General remarks and official action taken:

This is a consent order with Katheryn Nycole Dale (Dale). The department grants Dale a general lines agent property and casualty license. The license is suspended for two years. The suspension shall be probated, and the terms and conditions stated in the order will apply.

Waiver

Dale acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Dale waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

Findings of Fact

License Application

1. Dale submitted an application for a general lines agent property and casualty license to be issued by the department.

2. Based on Dale's criminal history, the department requested additional evidence in support of her licensure. Dale provided additional evidence and the department has determined that she should be issued a license.

Criminal History

3. On July 29, 2010, Dale was convicted of two felonies: aggravated endangerment of a child for intentionally or recklessly placing her son in a situation in which the child's life, body, or health was injured or endangered; and abuse of a child for marks found on the child's body. The convictions are encompassed in cause no. 10-CR-88, in the 9th Judicial District of Harvey County, Kansas. Dale was sentenced to a total of 41 months incarceration and 24 months post-release supervision. Dale was discharged from post-release supervision on February 16, 2014.
4. Dale represents to the department that the events leading up to her arrest and convictions are as follows:
 - a. Dale, 20 years old, was on the run from an abusive husband, with a very young son and soon-to-be born daughter.
 - b. Dale connected with a partner she thought could provide safety for her and her family from her abusive husband.
 - c. The partner had children of his own that would come to his residence and play with Dale's children.
 - d. While Dale took her infant daughter to an event, Dale left her young son in the care of her partner.
 - e. Dale returned to discover her 19-month old son was murdered by her partner.
 - f. During this time Dale was suffering from severe post-partum depression.
 - g. Marijuana and drug paraphernalia were found inside the partner's residence at the time of the child's murder. Dale was aware her partner smoked marijuana.
 - h. Shortly after the child's murder, police questioned Dale about her son.
 - i. Dale admitted she fed her son with a metal fork and stab marks were found in her son's in the mouth, corroborated by the indictment.

Evidence of Rehabilitation

5. Dale cooperated extensively and timely with the department in its investigation of her criminal background. Dale provided evidence of her rehabilitation to support her fitness for licensure.

6. In accordance with the requirements of TEX. OCC. CODE §53.025, the department has developed guidelines relating to the matters which the department will consider in determining whether to grant, deny, suspend, or revoke any license or authorization under its jurisdiction, as described in 28 TEX. ADMIN. CODE §§ 1.502(e)(1)-1.502(k).
7. 28 TEX. ADMIN. CODE § 1.502(h) specifically tracks the rehabilitative factors listed in TEX. OCC. CODE §§ 53.022 and 53.023 that the department must consider in determining whether those factors outweigh the serious nature of the applicant's criminal history.
8. TEX. OCC. CODE § 53.022 and 28 TEX. ADMIN. CODE § 1.502(h)(1) describe the initial factors the department must consider in determining whether issuance of the license is appropriate:

FACTORS IN DETERMINING WHETHER CONVICTION RELATES TO OCCUPATION.

In determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider:

- (1) the nature and seriousness of the crime;
 - (2) the relationship of the crime to the purposes for requiring a license to engage in the licensed occupation;
 - (3) 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
 - (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.
9. Considering the factors outlined in TEX. OCC. CODE ANN. § 53.022 and 28 TEX. ADMIN. CODE § 1.502(h)(1), Dale's convictions for felony aggravated endangerment of a child and felony abuse of a child does not relate directly to the occupation of a general lines agent, but do demonstrate a history of criminal behavior that reflects on her ability, capacity, or fitness to perform the duties and responsibilities of the licensed occupation.

10. TEX. OCC. CODE ANN. § 53.023 and 28 TEX. ADMIN. CODE § 1.502(h)(2) describe additional factors the department must consider in determining whether issuance of the license is appropriate of a person who has committed a crime:

ADDITIONAL FACTORS FOR LICENSING AUTHORITY TO CONSIDER.

- (a) In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in Section 53.022:
- (1) the extent and nature of the person's past criminal activity;
 - (2) the age of the person when the crime was committed;
 - (3) the amount of time that has elapsed since the person's last criminal activity;
 - (4) the conduct and work activity of the person before and after the criminal activity;
 - (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
 - (6) other evidence of the person's fitness, including letters of recommendation from:
 - (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - (B) the sheriff or chief of police in the community where the person resides; and
 - (C) any other person in contact with the convicted person.
- (b) The applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by Subsection (a)(6).
- (c) In addition to fulfilling the requirements of Subsection (b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has:
- (1) maintained a record of steady employment;

- (2) supported the applicant's dependents;
 - (3) maintained a record of good conduct; and
 - (4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.
11. In consideration of TEX. OCC. CODE § 53.023(a)(1) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(A), Dale has attributed her two convictions to being on the run from an abusive husband, trusting the wrong people, and suffering from severe post-partum depression. Dale has accepted responsibility for her criminal conduct.
12. In consideration of TEX. OCC. CODE § 53.023(a)(2) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(B), Dale's criminal convictions occurred when she was 21 years old.
13. In consideration of TEX. OCC. CODE § 53.023(a)(3) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(C), Dale's only convictions were in 2010.
14. In consideration of TEX. OCC. CODE §§ 53.023(a)(4)-(5) and 53.023(c)(1), and 28 TEX. ADMIN. CODE §§ 1.502(h)(2)(D) and 1.502(h)(2)(G)(i), Dale has provided the department with evidence demonstrating her commitment to rehabilitation. Dale has represented to the department that she has taken parenting classes, battery prevention classes, pre-marital counseling, financial peace classes, joined a support group, and took a workshop through the Texas Workforce Commission. Dale's resume shows she has been steadily employed. Dale started her own business after being released from incarceration. Dale was the owner and manager of Nycole's Cleaning. Dale also worked as a house parent of a half-way house that took in young men from ages of 17 to 25 years old that had been incarcerated within the Texas Juvenile Justice Department system. Dale currently works as a billing specialist and receptionist at an insurance agency. Her employer has offered Dale an insurance agent position once Dale becomes licensed. Dale has handled money transactions, maintained account records, entered data, and handled customer service in all her job positions.
15. In consideration of TEX. OCC. CODE § 53.023(a)(6) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(F), the department received six letters of recommendation, including letters from her current employer, an insurance industry executive, a licensed rehabilitation director, pastors, and friends attesting to her fitness and character:

- a. Dale's current employer, who is aware of Dale's criminal history, first met Dale at a financial seminar. Dale was then hired to be a customer service specialist and additionally given the responsibility of being the office account manager. Dale is "responsible for handling customer complaints regarding their bills to making changes on their policies, such as address changes and lienholder updates for vehicles and homes." Dale "exhibits a level of care to my customers that is top notch." Dale performs her duties in an efficient and professional manner, always going the extra mile for the clients. Dale is a hard worker and trusts Dale "beyond a shadow of a doubt." Her employer is "honored" to have Dale on her team and wants Dale to continue to grow and promote within the office. Dale "deserves the opportunity to better herself."
- b. An insurance agency executive describes Dale as having "a passion for the insurance industry." He states Dale has completed many training modules and has attended the company's product knowledge seminars. He reports Dale "has received no complaints and in fact has had several compliments in her professionalism." Dale has "demonstrated her ethics, hard work, integrity, and overall willing to help our customers and our company." The executive has also "observed [Dale's] willingness to be better person by having two jobs to help her household, involved in her local church, and has helped family members in need of a helping hand in life." He "strongly recommends allowing [Dale] to receive her state license... to improve herself and the people she is in contact with."
- c. A director of rehabilitation at a hospital, who has known Dale for five and half years, describes Dale has have impeccable character. The director is aware of Dale's criminal history and has found Dale "to demonstrate high integrity in her work and personal relationships." Dale has been involved in and severed as a leader with the director in numerous church ministries: women's ministry, young adult's ministry, children's ministry, choir and praise team, and the addiction's ministry. Dale is a "compassionate, honest, hardworking, and selfless person. [Dale] is very moral, working under authority, rules, and standards completely and without issues." The director has observed Dale with her children and has seen no issues. The director has "no doubt [Dale] will be able to gain and maintain a clear license in the work she desires and will be asset to the insurance field."

- d. Dale's pastors have known Dale for five years, and state Dale has always been upfront about her convictions. Dale is involved in many areas of the church "as she has shown herself to be a very reputable, on time, loving, person of character and integrity who truly loves God and has turned her life around from her past experiences and learned from them." They highly recommend Dale to become licensed.
 - e. A family friend and fellow parishioner, who has known Dale for about seven years, has watched as Dale has grown into an "incredible worker in the church and friend to many." Dale is dependable and "has a great attitude and demonstrates her passion for what she is doing." Dale is also committed and "goes above and beyond to what needs to be done." The friend has seen an "incredible amount of growth emotionally, mentally, and spiritually. [Dale] has become a blessing and an asset to our church." Dale sets goals and "achieves them by hard work and seeking God." The friend "highly recommends" Dale because she is a "valuable asset."
 - f. Another family friend and fellow parishioner, who has known Dale for six years, has observed Dale as "a woman who has built her life through learning her value and strength by using the Christian values we are taught and she shares love, commitment, and practices living a responsible life, caring for her family, church friends, ministry, and her full time job." Dale "is someone that can be relied upon to help other people, serve others, and counted on by others" Dale's family and "commitment to them is her primary focus, but is very diligent in keeping close relationships, strong work ethics, and a joy to all who encounter her. [Dale] has a way of making other feel comfortable, and I'm proud to call her a friend."
16. In consideration of TEX. OCC. CODE § 53.023(c)(2) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(G)(ii), Dale supports her dependents, and has custody of her two young children.
 17. In consideration of TEX. OCC. CODE § 53.023(c)(3) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(G)(iii), Dale has maintained a record of good conduct since her convictions in 2010.

18. In consideration of TEX. OCC. CODE § 53.023(c)(4) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(G)(iv), Dale has provided the department with evidence showing she has paid all court costs, fines, and restitution in full.
19. The factors described in 28 TEX. ADMIN. CODE§ 1.502(h) and TEX. OCC. CODE §§ 53.022 and 53.023 outweigh the serious nature of Dale's convictions.

Conclusions of Law

1. The commissioner of insurance has jurisdiction over this matter pursuant to: TEX. INS. CODE §§ 82.051-82.055, 4005.101, 4005.102, and 4051.051; TEX. GOV'T CODE §§ 2001.051-2001.178; 28 TEX. ADMIN. CODE § 1.502; AND TEX. OCC. CODE §§ 53.021-53.023.
2. The commissioner has the authority to informally dispose of this matter as set forth in TEX. GOV'T CODE § 2001.056; TEX. INS. CODE §§ 36.104 and 82.055; and 28 TEX. ADMIN. CODE § 1.47.
3. Dale has knowingly and voluntarily waived all procedural rights to which she may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. Dale committed an act for which the department may deny a license under TEX. INS. CODE §§ 4001.105 and 4005.101.
5. Pursuant to 28 TEX. ADMIN. CODE § 1.502(f), the factors in TEX. OCC. CODE §§ 53.022-53.023 outweigh the serious nature of Dale's criminal convictions.

Order

It is ordered that a general lines agent property and casualty license is granted to Katheryn Nycole Dale. It is further ordered that that the general lines agent license with a life, accident, and health qualification is suspended for two years. The suspension shall be probated, and the terms and conditions stated in this order will apply.

If, during the probation period imposed by this order, the department issues any additional licenses or authorizations to Dale, those additional licenses or authorizations will be suspended until the probation period imposed by this order has ended. The suspension shall 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, Dale must provide written notice of her criminal record to any appointing company, agency, employer, sponsor, or other entity on behalf of which she performs the acts of an insurance agent. Dale must provide the department with a copy of the notification within 30 days of the appointment, employment, or sponsorship by emailing it to the Texas Department of Insurance at EnforcementReports@tdi.texas.gov.

Beginning from the date of this order and continuing through the probation period, Dale must file a written report, on or before the 15th day of each month on a quarterly basis for the months of March, June, September, and December with the Texas Department of Insurance by emailing it to EnforcementReports@tdi.texas.gov. The reports must include the following information:

- a. Dale's current mailing address and telephone number;
- b. the name, mailing address, and telephone number of Dale's employer, and if Dale is self-employed, a statement that she is self-employed and the name, mailing address, and telephone number of her business;
- c. the name and address of any insurer which has appointed Dale as an agent;
- d. the name and address of any insurer which has canceled Dale's appointment as an agent; and
- e. a copy of any and all contracts Dale has entered into with an insurer, broker, managing general agent, managing general agency, or any person or entity in the business of insurance.

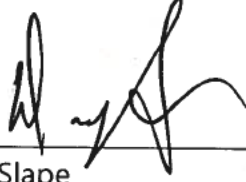
Dale must notify the department immediately of the following by emailing EnforcementReports@tdi.texas.gov:

- a. any charges or indictments filed against her for a misdemeanor or felony during the period she is required to file reports, excluding traffic offenses and Class C misdemeanors;
- b. any state or regulatory actions taken against her including formal and informal actions;
- c. any change in her employment or her residence; and

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Kent C. Sullivan
Commissioner of Insurance

By:  _____

Doug Slape
Chief Deputy Commissioner
Commissioner's Order No. 2018-5528

Recommended and reviewed by:



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