

No. **2021-6815**

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

**Date: 05/06/2021**

**Subject Considered:**

Texas Department of Insurance

v.

Tailor James Poe

SOAH Docket No. 454-21-0466.C

**General remarks and official action taken:**

The subject of this order is Tailor James Poe's application for a general lines agent license. Mr. Poe's application is denied.

**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) deny Mr. Poe's application for a general lines agent license. A copy of the proposal for decision is attached as Exhibit A.

**Discussion of Applicable Law**

In determining Mr. Poe's fitness for licensure, the administrative law judge applied and weighed the factors from Texas Occupations Code §§ 53.022 and 52.023. However, §§ 53.022 and 53.023 were amended by House Bill 1342, 86th Legislature, Regular Session, effective September 1, 2019. Applications for a license submitted on or after September 1, 2019, are subject to §§ 53.022 and 53.023 as they were amended by HB 1342, while applications submitted before that date are subject to the prior versions of those statutes.

Mr. Poe submitted his application on June 30, 2020, but in listing the factors to be considered under Occupations Code §§ 53.022 and 52.023, the administrative law judge

COMMISSIONER'S ORDER  
TDI v. Tailor James Poe  
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appears to have mistakenly cited factors from the prior versions of those statutes. See Proposal for Decision, pg. 4-5. Nevertheless, this misstatement of the factors to be considered under Occupations Code §§ 53.022 and 52.023 does not impact any findings of fact or conclusions of law or the resolution suggested by the administrative law judge, so this order does not change those findings or conclusions, and it adopts the administrative law judge's recommendation.

**Findings of Fact**

The findings of fact contained in Exhibit A are adopted by TDI and incorporated by reference into this order.

**Conclusions of Law**

The conclusions of law contained in Exhibit A are adopted by TDI and incorporated by reference into this order.

**Order**

It is ordered that Tailor James Poe's application for a general lines agent license is denied.

Commissioner of Insurance

By:   
Doug Slape  
Chief Deputy Commissioner  
Tex. Gov't Code § 601.002  
Commissioner's Order No. 2018-5528

Recommended and reviewed by:

  
James Person, General Counsel

  
Justin Beam, Assistant General Counsel



**TEXAS DEPARTMENT OF  
INSURANCE,  
Petitioner**

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**BEFORE THE STATE OFFICE**

**OF**

v.

**TAILOR JAMES POE,  
Applicant**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The staff (Staff) of the Texas Department of Insurance (Department) seeks to deny the application of Tailor James Poe for a general lines agent license based on his criminal history. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends the Department deny Mr. Poe’s license application.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

The hearing in this case was held via Zoom videoconference on January 12, 2021, before ALJ Beth Bierman at the State Office of Administrative Hearings (SOAH). Staff was represented by staff attorney Sydney Moore. Mr. Poe represented himself. The hearing concluded and the record closed when the transcript was received by SOAH on January 26, 2021. Notice and jurisdiction were not disputed and are set out in the Findings of Fact and Conclusions of Law below.

**II. DISCUSSION**

**A. Background**

On December 13, 2012, Mr. Poe pleaded guilty to the second-degree felony offense of Indecency with a Child by Contact, in Cause No. 416-82471-2012, in the 416th Judicial District in Collin County, Texas.<sup>1</sup> Mr. Poe committed the offense on June 1, 2012. The adjudication of his guilt was deferred by the court, and Mr. Poe was placed on community supervision for five years. He was required to register as a sexual offender.

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<sup>1</sup> Staff Ex. 1 at 20.

On October 12, 2015, the State of Texas filed a Petition to Enter a Final Adjudication of Defendant's Guilt (Petition) because Mr. Poe had failed to comply with the terms of his community supervision.<sup>2</sup> Specifically, the Petition stated that Mr. Poe:

1. Failed to make payments towards the assessed \$500 fine, of which he had paid \$0.00;
2. Failed to submit to sexual history polygraph testing;
3. Failed to make payments towards the monthly \$50 supervision fee, of which he was delinquent in the amount of \$1,295;
4. Failed to reimburse the county \$160 for the cost of urinalysis testing;
5. Failed to participate in the Cognitive Thinking Program;
6. Failed to attend sex offender treatment;
7. Had internet access without permission of his supervision officer;
8. Stayed overnight in child safety zones;
9. Failed to report every other week of each month or as scheduled by the supervision officer for the months of September 2013, August 2014, September 2014, and September 2015;
10. Completed only eight hours of the required 160 hours of community service;
11. Failed to participate in a sexual abuse treatment program to the full satisfaction of the supervision officer and treatment provider because he was unsuccessfully discharged from the program due to failing to attend, failing to pay fees, and failing to make necessary progress;
12. Failed to work faithfully at suitable employment;
13. Failed to reimburse the county \$750 as directed by his supervision officer for compensation paid to appointed counsel;
14. Failed to pay court costs of \$683.50 within 30 days, having paid \$156; and
15. Failed to pay an additional sex offender fee of \$5 per month, and was delinquent in the amount of \$90.

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<sup>2</sup> Staff Ex. 1 at 35-36.

On February 26, 2016, Mr. Poe pleaded “true” to the allegations in the State’s Petition, and was adjudicated guilty of the offense of Indecency with a Child. Mr. Poe was sentenced to four years’ confinement in the Institutional Division of the Texas Department of Criminal Justice, with back-time credit of 235 days served.<sup>3</sup> He was released on parole on March 6, 2019, and was discharged from parole on July 8, 2019.

On June 30, 2020, Mr. Poe applied for a general lines agency license with life, accident, health, and HMO qualifications.<sup>4</sup> On July 14, 2020, the Department proposed to deny his application based on his criminal history.<sup>5</sup> On July 14, 2020, Mr. Poe requested a hearing on the proposed denial.<sup>6</sup>

## **B. Applicable Law**

The Department may deny a license to an applicant who has been convicted of a felony.<sup>7</sup> Further, an offense against the person, as described in Texas Penal Code 21.11 (relating to Indecency with a Child), is considered by the Department to be of such a serious nature that it has developed guidelines to determine whether or not to grant a license to an applicant who has been convicted of that offense.<sup>8</sup> The Department considers the factors listed in Texas Occupations Code §§ 53.022 and 53.023 in determining whether to grant a license to an applicant with a criminal conviction.<sup>9</sup> Under its rules, the Department is to deny a license application unless it finds these factors outweigh the seriousness of the criminal offense.<sup>10</sup>

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<sup>3</sup> Staff Ex. 1 at 15.

<sup>4</sup> Staff Ex. 1 at 2-10.

<sup>5</sup> Staff Ex. 1 at 14.

<sup>6</sup> Staff Ex. 1 at 11.

<sup>7</sup> Tex. Ins. Code § 4005.101(b)(8); 28 Tex. Admin. Code § 1.502(d).

<sup>8</sup> 28 Tex. Admin. Code § 1.502(e)(4)(H). Ms. Moore agreed during the hearing that the Department was proceeding under 28 Texas Administrative Code § 1.502(e)(4)(H), and not under subsection (e)(4)(C), which relates to arson offenses and was cited in the Amended Notice of Hearing. Both parties agreed that notice and jurisdictional were not contested. Tr. at 13-14.

<sup>9</sup> 28 Tex. Admin. Code § 1.502(h).

<sup>10</sup> 28 Tex. Admin. Code § 1.502(f).

The first set of factors that the Department considers are those that are used to determine whether a conviction directly relates to the occupation:

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 occupation;
3. the extent to which the 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 responsibilities of the licensed occupation.<sup>11</sup>

The Department must also consider the following factors related to fitness:

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 prior to and following the criminal activity;
5. evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;
6. other evidence of the person's present 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 persons in contact with the convicted person; and
7. proof furnished by the applicant that the applicant has:
  - a. maintained a record of steady employment;

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<sup>11</sup> Tex. Occ. Code § 53.022; 28 Tex. Admin. Code § 1.502(h)(1).

- b. supported the applicant's dependents;
- c. maintained a record of good conduct; and
- d. paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant or holder has been convicted.<sup>12</sup>

### **C. Evidence**

Staff offered one exhibit, which was admitted into evidence. Staff also offered the testimony of Lewis Weldon Wright, IV, an Administrative Review Liaison for the Department. Mr. Poe testified on his own behalf, and had one exhibit admitted.

#### **1. Testimony of Mr. Wright**

Mr. Wright has been employed with the Department for thirteen years. Currently, he is the liaison from the Agent and Adjuster Licensing Office to the Department's Enforcement Division. As part of his duties, he reviews applications which require more investigation prior to making a licensing determination, such as applications that contain criminal history. Mr. Poe's application was reviewed by his division because Mr. Poe indicated in this application that he had a criminal history, he said.

Mr. Wright testified that Mr. Poe's application was denied by the Department because of the nature and severity of his criminal history. The offense of Indecency with a Child is considered of prime importance to the Department's decision, and it is specifically listed in the Department's rules at 28 Texas Administrative Code § 1.502(e)(4)(H), he said. Although Mr. Poe committed his offense in 2012, Mr. Wright stated that it had only been about one year from the date of his discharge from parole to the date when Mr. Poe filed his license application. According to Mr. Wright, the Department considers the amount of time from discharge to the filing of an application as one indication of rehabilitative evidence.

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<sup>12</sup> Tex. Occ. Code § 53.023; 28 Tex. Admin. Code § 1.502(h)(2).

Mr. Wright also reviewed the letters of recommendation that Mr. Poe provided to the Department.<sup>13</sup> The letters were from work colleagues. Perry Lunsford is a Field Sales Leader for USHEALTH Advisors. He wrote that he has known Mr. Poe for ten years and was aware of his criminal background. Derrick Berry is a Divisional Manager for the same business. He wrote that he had known Mr. Poe for one month. Mr. Wright stated that both these letters contained positive opinions of Mr. Poe, and acknowledged his criminal past. David Castillo is the manager for Western Extrusions, and was Mr. Poe's past employer. Mr. Castillo also wrote positively regarding Mr. Poe's work ethic and acknowledged his criminal background.

Mr. Poe did not provide any letters from law enforcement or his parole officer. Mr. Wright stated that he would weigh more heavily letters from those in law enforcement or the criminal justice system with specific knowledge of Mr. Poe's offense and his rehabilitation. Mr. Wright testified that Mr. Poe did not provide any other evidence of rehabilitative efforts other than his claims in his statement to the Department that he participated in therapy or other programs. With regard to employment, Mr. Wright agreed that Mr. Poe had maintained a record of steady employment since his release from prison.

Mr. Wright characterized Mr. Poe's rehabilitative effort as brief and not significant enough for the Department to recommend approval of his application. He also noted that Mr. Poe's statement to the Department had indicated that his deferred adjudication was revoked because of technical violations related to his inability to pay, rather than the extensive list of violations noted by the State in the Petition. Mr. Wright stated that Mr. Poe did not complete any of the terms of his community supervision.

## **2. Testimony of Mr. Poe**

Mr. Poe testified that due to a difficult childhood, he developed unhealthy coping mechanisms for dealing with stress in his life. As a result, he said, when he was 20 years old he victimized a 15 -year-old family member. At the time of his offense, he was homeless and living a "very unhealthy lifestyle." During his community supervision, he continued to be homeless, but

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<sup>13</sup> Staff Ex. 1 at 46-48.



received a monthly subsidy from the probation office. Mr. Poe testified that he took full responsibility for not meeting the terms of his community supervision. He believed his inability to meet the financial requirements of his community supervision was the main factor in his failure to successfully complete his supervision.

Mr. Poe stated that his rehabilitation began when he was incarcerated in 2016. Because he was a registered sex offender, he could not be released from prison until he finished his rehabilitation. While he was in prison, he participated in classes involving critical thinking, substance abuse, and rehabilitation and treatment for sexual abuse offenders. These classes involved four months of psychology education and five months of intensive group and individual therapy. He said he was also a senior coordinator in the prison therapeutic community where he was required to hold himself and others accountable in the therapeutic process. After completing these programs, he was released in March 2019 when space at a halfway house became available.

After his release from prison, Mr. Poe was employed by Western Extrusions Corporations. He continued to attend therapy at least once a week, and attended meetings with Alcoholics Anonymous and Narcotics Anonymous up to three times a week. Mr. Poe was eventually able to move out of the halfway house into his own apartment. He also bought a car. More recently, he has completed training for a peer support assistance program, and meets with that group on a weekly basis at a sober living center in Fort Worth. The group is spiritually-based, and Mr. Poe states he is a Christian.

Mr. Poe explained that he will have to register as a sex offender for the rest of his life, and must report once a year. Because he is under the age of 50, he said he was assessed as a moderate risk sex offender. At the time of the hearing, he was 28 years old.

After his discharge from parole in July 2019, Mr. Poe began to develop a relationship with his five-year-old daughter. Mr. Poe also married in May 2020. He and his wife had a newborn who passed away in November 2020. He attends jujitsu martial arts class on a regular basis.

Mr. Poe stated that he has been working for Mr. Lunsford by performing clerical duties, recruiting, and leadership development. He applied for a license so that he could further his

employment in the insurance business. His wife is also a licensed agent, and Mr. Poe stated that he wanted to have an agency at some point with his wife. He noted that most of insurance sales is conducted over the phone with adults, so being licensed would not put him in a position to re-offend.

#### **D. Analysis**

Under Texas Insurance Code § 4005.101(b)(8), the Department may deny a license application if the Department determines that the applicant has been convicted of a felony. Mr. Poe's guilty plea was for a felony offense, and he was convicted for that offense when his guilt was adjudicated after he failed to comply with his community supervision.

Pursuant to 28 Texas Administrative Code § 1.502(h), the Department will consider the factors listed in Texas Occupations Code §§ 53.022 and 53.023, set out above, in determining whether to grant Mr. Poe's license application. Regarding these factors, the evidence established that the felony Indecency with a Child offense was Mr. Poe's only criminal activity, but that it was a very serious offense. So serious in fact that the crime is specifically listed by the Department in its rule as a crime of "prime importance in determining fitness for licensure..."<sup>14</sup>

Mr. Poe was approximately 20 years old when he committed the crime, so his actions were not exactly a youthful crime. At the time of hearing, a little over eight years had passed since his criminal offense, but Mr. Poe had only been discharged for approximately one year. Mr. Poe does have a record of steady employment since his release from prison and positive letters of recommendation that focus on his work ethic and character. From all indications, he supports his dependents.

Nonetheless, the ALJ agrees with Staff that evidence of his rehabilitative efforts since his discharge is unpersuasive and that more time is needed to determine whether Mr. Poe is fit to hold a license. There is no documentation to support Mr. Poe's rehabilitative efforts. Further, Mr. Poe's guilt was adjudicated not solely due to a technical violation—as he claimed—but due to the fact

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<sup>14</sup> 28 Tex. Admin. Code § 1.502(e).

that he hardly met any of the terms of his community supervision. He did not attend any sex offender classes while on community supervision despite the fact that his crime was considered a sexually violent offense<sup>15</sup> that he admittedly committed against a 15-year-old. Because of his crime, he was required to register as a sex offender.

In his most recent written statement, Mr. Poe reiterated that because most his insurance business would be conducted by telephone with adult clients that there should be no concern that he might re-offend.<sup>16</sup> Once licensed, however, the Department could not control whether Mr. Poe met clients or other persons related to his insurance business in-person. For all of these reasons, the ALJ concludes that Mr. Poe's application for a general lines agent license should be denied at this time. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

### III. FINDINGS OF FACT

1. On June 30, 2020, Tailor James Poe applied for a general lines agency license with life, accident, health, and HMO qualifications to be issued by the Texas Department of Insurance (the Department).
2. On July 14, 2020, the Department proposed to deny his application based on his criminal history.
3. On July 14, 2020, Mr. Poe requested a hearing on the proposed denial.
4. On October 26, 2020, Staff issued an amended notice of hearing on the denial of his application.
5. The date and time for the hearing were set in Order Nos. 1 and 2, issued by the Administrative Law Judge (ALJ).
6. The amended notice of hearing, together the orders, contained 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 the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.

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<sup>15</sup> Tex. Code of Crim. Proc. Art. 62.001(6)(A).

<sup>16</sup> Applicant Ex. 1.

7. The hearing in this case was held Zoom videoconference on January 12, 2021, before ALJ Beth Bierman of the State Office of Administrative Hearings (SOAH). Staff was represented by staff attorney Sydney Moore. Mr. Poe represented himself. The hearing concluded that day, and the record closed when the transcripts were received by SOAH on January 26, 2021.
8. On December 13, 2012, Mr. Poe pleaded guilty to the second-degree felony offense of Indecency with a Child by Contact, in Cause No. 416-82471-2012, in the 416th Judicial District in Collin County, Texas. The offense was committed in June 2012 when Mr. Poe was 20 years old. His victim was a 15-year-old family member. The adjudication of his guilt was deferred by the court, and Mr. Poe was placed on community supervision for five years. He was required to register as a sexual offender.
9. On October 12, 2015, the State of Texas filed a Petition to Enter a Final Adjudication of Defendant's Guilt (Petition) because Mr. Poe had failed to comply with the following terms of his community supervision:
  - a. Failed to make payments towards the assessed \$500 fine, of which he had paid \$0.00;
  - b. Failed to submit to sexual history polygraph testing;
  - c. Failed to make payments towards the monthly \$50 supervision fee, of which he was delinquent in the amount of \$1,295;
  - d. Failed to reimburse the county \$160 for the cost of urinalysis testing;
  - e. Failed to participate in the Cognitive Thinking Program;
  - f. Failed to attend sex offender treatment;
  - g. Had internet access without permission of his supervision officer;
  - h. Stayed overnight in child safety zones;
  - i. Failed to report every other week of each month or as scheduled by the supervision officer for the months of September 2013, August 2014, September 2014, and September 2015;
  - j. Completed only eight hours of the required 160 hours of community service;
  - k. Failed to participate in a sexual abuse treatment program to the full satisfaction of the supervision officer and treatment provider because he was unsuccessfully discharged from the program due to failing to attend, failing to pay fees, and failing to make necessary progress;

- l. Failed to work faithfully at suitable employment;
  - m. Failed to reimburse the county \$750 as directed by his supervision officer for compensation paid to appointed counsel;
  - n. Failed to pay court costs of \$683.50 within 30 days, having paid \$156; and
  - o. Failed to pay an additional sex offender fee of \$5 per month, and was delinquent in the amount of \$90.
10. On February 26, 2016, Mr. Poe pleaded “true” to the allegations in the State’s Petition, and was adjudicated guilty of the offense of Indecency with a Child. Mr. Poe was sentenced to four years’ confinement in the Institutional Division of the Texas Department of Criminal Justice, with back-time credit of 235 days served. He was released on parole on March 6, 2019, and was discharged from parole on July 8, 2019.
  11. Licensure as a general lines agent would provide Mr. Poe the opportunity to reoffend.
  12. Mr. Poe has no criminal history other than his guilty plea to Indecency with a Child.
  13. Approximately eight years have elapsed since Mr. Poe’s offense.
  14. Mr. Poe has worked steadily after his release from prison.
  15. Three people who know Mr. Poe praised his work ethic and character.
  16. The mitigating factors Mr. Poe established do not outweigh the serious nature of his criminal offense especially in light of the relatively short period of time since his discharge from parole.

#### **IV. CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 4001.002, .105, 4005.101.
2. SOAH 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. Poe received timely and sufficient notice of hearing. Tex. Gov’t Code §§ 2001.051-.052.; Tex. Ins. Code § 4005.104(b).
4. The Department may deny a license if the Department determines that the applicant has been convicted of a felony. Tex. Ins. Code § 4005.101(b)(8).

5. The Department has determined that certain crimes are of such a serious nature that they are of prime importance in determining fitness for licensure. These crimes include any felony offense or an offense against the person such as Indecency with a Child. 28 Tex. Admin. Code §§ 1.502(d), (e)(4)(H); Tex. Penal Code § 21.11.
6. The Department will consider the factors listed in Texas Occupations Code §§ 53.022 and 53.023 in determining whether to issue a license to an applicant with a criminal history and will not issue a license unless those mitigating factors outweigh the serious nature of the criminal offense when viewed in the light of the occupation being licensed. 28 Texas Administrative Code § 1.502(f), (h).
7. Mr. Poe has not shown that he is currently fit to hold a general lines agent license. Tex. Occ. Code §§ 52.022-023; 28 Tex. Admin. Code § 1.502(h).
8. The Department should deny Mr. Poe's application for a license.

**SIGNED March 22, 2021.**

**/s/ Beth Bierman**  
**Administrative Law Judge**  
**State Office of Administrative Hearings**