

No. 2022-7155

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

**Date: 01/05/2022**

**Subject Considered:**

Texas Department of Insurance

v.

Arif Tejani

SOAH Docket No. 454-21-0686.C

**General remarks and official action taken:**

The subject of this order is Arif Tejani's application for a general lines agent license with a property and casualty qualification. This order denies Mr. Tejani's application.

**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. Tejani's application. A copy of the proposal for decision is attached as Exhibit A.

Enforcement Staff (Staff) for TDI filed a letter in response to the administrative law judge's proposal for decision, noting a typographical error in the proposal for decision.

In response to Staff's filing, the administrative law judge corrected the error. The administrative law judge did not change the recommendation that TDI deny Mr. Tejani's application. A copy of the administrative law judge's response to Staff's filing is attached as Exhibit B.

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TDI adopts the administrative law judge's proposed findings of fact and conclusions of law with changes to Finding of Fact No. 1 and Conclusion of Law No. 6 as described in this order. TDI does not adopt Conclusion of Law No. 7.

**Legal Authority for Changes to the 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) and (3), which provide 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 . . . or . . . that a technical error in a finding of fact should be changed."

Finding of Fact No. 1

In Finding of Fact No. 1, the administrative law judge misspells Mr. Tejani's first name, referring to him as "Asif Tejani." In addition, the finding misspells the word "June" as "Jun."

These misspellings are technical errors that this order corrects by adopting the following finding in place of proposed Finding of Fact No. 1:

Between January 1, 2006, and June 13, 2007, Arif Tejani stole more than \$20,000 and less than \$100,000 of cash from the business of Dr. Zaibaq, an ophthalmologist whom Mr. Tejani worked for and regarded as a father figure.

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 or deny a person's license application. Under subsection (b)(8), TDI may deny a license application 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 that directly relates to the duties and responsibilities of the licensed occupation.<sup>1</sup>

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<sup>1</sup> Section 53.021(a) also authorizes TDI to disqualify a person from receiving a license if the applicant was convicted of certain other serious offenses not at issue here.

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In 2008, Mr. Tejani pleaded guilty to theft, with an aggregate greater than \$20,000 but less than \$100,000, a third-degree felony. He received deferred adjudication community supervision for the offense, which he completed in 2014.

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. 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 that Mr. Tejani's deferred adjudication qualifies as a conviction for purposes of both TEX. INS. CODE § 4005.101(b)(8) and TEX. OCC. CODE § 53.021(a)(1). As support for this conclusion, the administrative law judge cites 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; 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:

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- (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 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.<sup>2</sup>

Therefore, based on the analysis above, TDI concludes that the administrative law judge correctly concluded the Mr. Tejani's deferred adjudication can be considered a conviction for purposes of TEX. OCC. CODE § 53.021(a). However, TDI finds 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 Orders Nos. 2021-7000<sup>3</sup> and 2021-7018<sup>4</sup> (both concluding that a deferred adjudication is not a conviction for purposes of TEX. INS. CODE § 4005.101(b)(8)). The administrative law judge's proposal for decision is changed accordingly, as described below.

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

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<sup>2</sup> 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.

<sup>3</sup> *Texas Department of Insurance v. Kayla Leann Smith*, issued September 9, 2021.

<sup>4</sup> *Texas Department of Insurance v. Jesse Juarez*, issued October 13, 2021.

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The Department may consider Mr. Tejani's deferred adjudication to be a conviction for purposes of making a licensing determination. TEX. OCC. CODE § 53.021(d); *see also* TEX. OCC. CODE §§ 53.022-.023.

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

The Department may consider Mr. Tejani's deferred adjudication to be a conviction for purposes of Texas Occupations Code § 53.021(a). TEX. OCC. CODE § 53.021(d).

The administrative law judge's proposed Conclusion of Law No. 7 provides:

The Department may deny Mr. Tejani's license application because he is considered to have been convicted of a felony. TEX. INS. CODE § 4005.101(b)(8); 28 TEX. ADMIN. CODE § 1.502(d).

Based on the analysis above showing the administrative law judge misinterpreted or misapplied the law, Conclusion of Law No. 7 is not adopted.

### **Findings of Fact**

1. The Findings of Fact Nos. 2 – 17 as contained in Exhibit A are adopted by TDI and incorporated by reference into this order.
2. In place of Finding of Fact No. 1 as contained in Exhibit A, the following finding of fact is adopted:

Between January 1, 2006, and June 13, 2007, Arif Tejani stole more than \$20,000 and less than \$100,000 of cash from the business of Dr. Zaibaq, an ophthalmologist whom Mr. Tejani worked for and regarded as a father figure.

### **Conclusions of Law**

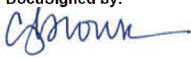
1. Conclusions of Law Nos. 1–5 and 8–13 as contained in Exhibit A are adopted by TDI and incorporated by reference into this order.
2. In place of Conclusion of Law No. 6 as contained in Exhibit A, the following conclusion of law is adopted:

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The Department may consider Mr. Tejani's deferred adjudication to be a conviction for purposes of Texas Occupations Code § 53.021(a). TEX. OCC. CODE § 53.021(d).

**Order**

It is ordered that Arif Tejani's application for a general lines agent license with a property and casualty qualification is denied.

DocuSigned by:  
  
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Cassie Brown  
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:  
  
75578E954EFC48A...  
James Person, General Counsel

DocuSigned by:  
  
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Justin Beam, Assistant General Counsel



<p><b>TEXAS DEPARTMENT OF INSURANCE</b></p> <p>v.</p> <p><b>ARIF TEJANI,</b> <b>Applicant</b></p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p><b>BEFORE THE STATE OFFICE</b></p> <p><b>OF</b></p> <p><b>ADMINISTRATIVE HEARINGS</b></p>
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**PROPOSAL FOR DECISION**

The staff (Staff) of the Texas Department of Insurance (Department) seeks to deny the application of Arif Tejani for a general lines agent license based on his criminal history, prior fraudulent or dishonest acts, and misrepresentations on his license application. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends the Department deny Mr. Tejani’s license application.

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

The hearing in this case was held via Zoom videoconference on March 30, 2021, before ALJ Sarah Starnes at the State Office of Administrative Hearings (SOAH). Staff was represented by staff attorney Stephanie Andrews. Mr. Tejani appeared and represented himself. The hearing concluded that day, and the record closed on April 14, 2021, when the court reporter’s transcript was filed with SOAH. Notice and jurisdiction were not disputed and are set out in the Findings of Fact and Conclusions of Law below.

**II. APPLICABLE LAW**

The Department considers it very important that license-holders be honest, trustworthy, and reliable,<sup>1</sup> and will evaluate an applicant’s criminal history and other conduct to determine whether the applicant possess those qualities. The Department may deny a license to an applicant who has engaged in fraudulent or dishonest acts or practices that directly relate to the duties and

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<sup>1</sup> 28 Tex. Admin. Code § 1.502(c).

responsibilities of an insurance agent.<sup>2</sup> The Department may also deny a license to an applicant who has been convicted of a felony.<sup>3</sup>

To guide its decision-making when considering an applicant's criminal history, the Department has identified certain crimes it considers to be of such a serious nature that they are of prime importance in determining fitness for licensure; these crimes include theft offenses.<sup>4</sup> The Department may also deny a license to an applicant who has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation.<sup>5</sup> The Department has determined that the crimes it considers to be of prime importance are also directly related to the occupations it licenses.<sup>6</sup>

For purposes of making a licensing determination, the Department may consider a deferred adjudication to be a conviction if the person completed their period of community supervision less than five years before applying for the license, and if, after consideration of the factors in Texas Occupations Code §§ 53.022 and .023(a), the Department determines that the person may pose a continued threat to public safety or that employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.<sup>7</sup>

The factors in Texas Occupations Code § 53.022 address whether the person's criminal offense directly relates to the occupation. Those factors are:

- (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;

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<sup>2</sup> Tex. Ins. Code § 4005.101(b)(5); 28 Tex. Admin. Code § 1.502(d).

<sup>3</sup> Tex. Ins. Code § 4005.101(b)(8); 28 Tex. Admin. Code § 1.502(d).

<sup>4</sup> 28 Tex. Admin. Code § 1.502(e)(4)(F).

<sup>5</sup> Tex. Occ. Code § 53.021(a)(1). In 2019, the Texas Legislature made several amendments to Texas Occupations Code chapter 53 that impact the licensing implications of a person's criminal history. *See* Acts 2019, 86th Leg., R.S., Ch. 765 (H.B. 1342), §§ 1-13, effective Sept. 1, 2019. Although this legislation took effect on September 1, 2019, the changes were applied only prospectively. *See id.* §§ 14-15; *see also* Tex. Gov't Code § 311.022. Mr. Tejani's application was submitted before September 1, 2019, so the amendments do not apply in this case. Accordingly, all citations to chapter 53 are to those provisions' pre-amendment language.

<sup>6</sup> 28 Tex. Admin. Code § 1.502(e); *see also* Tex. Occ. Code § 53.025.

<sup>7</sup> Tex. Occ. Code § 53.021(d).



- (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.

As additional factors for the Department to consider, Texas Occupations Code § 53.023(a) lists:

- (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.<sup>8</sup>

An 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 discussed above.<sup>9</sup>

If, after considering the above-listed factors, the Department determines that a deferred adjudication can be treated as a conviction for licensing purposes, then the same factors are

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<sup>8</sup> Tex. Occ. Code § 53.023(a)-(b).

<sup>9</sup> Tex. Occ. Code § 53.023(b).

weighed in determining whether the applicant is fit to perform the duties and discharge the responsibilities of the licensed occupation despite the criminal offense.<sup>10</sup> Additionally, an applicant may furnish proof to the Department that he has: (1) maintained a record of steady employment; (2) supported his 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.<sup>11</sup> The Department will not issue a license unless, when viewed in the light of the occupation being licensed, those mitigating factors outweigh the serious nature of the criminal offense or the fraudulent or dishonest conduct.<sup>12</sup>

In addition to the issues regarding fraudulent or dishonest conduct or an applicant's criminal history, the Department may deny a license if the applicant intentionally made a material misstatement in the license application or attempted to obtain a license by fraud or misrepresentation.<sup>13</sup>

Staff bears the burden of proving its grounds for denying Mr. Tejani's license application but Mr. Tejani has the burden to prove his fitness to be licensed despite his criminal history or fraudulent or dishonest conduct. The burden of proof is by a preponderance of the evidence.<sup>14</sup>

### III. EVIDENCE

At the hearing, Staff had seven exhibits admitted into evidence and presented testimony from Linda Hayes, an optometrist who briefly worked with Mr. Tejani; and Jodie Delgado, a manager in the Department's administrative review and continuing education program for agent/adjuster licensing. Respondent testified on his own behalf and did not offer any exhibits.

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<sup>10</sup> Tex. Occ. Code §§ 53.022-.023(a).

<sup>11</sup> Tex. Occ. Code § 53.023(c).

<sup>12</sup> 28 Tex. Admin. Code § 1.502(g), (h).

<sup>13</sup> Tex. Ins. Code § 4005.101(b)(2)-(3).

<sup>14</sup> Tex. Occ. Code § 53.023(b)-(c); 1 Tex. Admin. Code § 155.427; 28 Tex. Admin. Code § 1.502(g)-(h); *Granek v. Texas St. Bd. of Med. Examn'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

## A. Criminal Background

### 1. Staff's Evidence

Staff presented evidence that Mr. Tejani was placed on deferred adjudication in 2008 for a felony theft and contends that the offense should be considered a conviction for licensing purposes.

On July 15, 2007, an Assistant District Attorney for Harris County filed a probable-cause affidavit alleging that, while working for a complainant named Dr. Zaibaq, Mr. Tejani had been seen “accepting cash payments from patients and placing the money, which belonged to [Dr. Zaibaq,] in [Mr. Tejani’s] pocket.” The affidavit also alleged that Dr. Zaibaq had audited his computer records and found “a large amount of cash missing” from the business between January 2006 and June 2007.<sup>15</sup> Dr. Zaibaq claimed that his computer records had been altered “to show that patients had made cash payments to [Dr. Zaibaq] even though the cash was not in [Dr. Zaibaq’s] possession.” The affidavit alleged that only Dr. Zaibaq and Mr. Tejani had access to the computer system, and that Mr. Tejani had shown another employee how to manipulate the computer system to “indicate zero-balances on patient records to cover for the cash [Mr. Tejani] was pocketing from patients’ payments.”<sup>16</sup>

Subsequently, a Harris County grand jury indicted Mr. Tejani on a charge of felony theft, alleging that between January 19, 2006, and June 13, 2007, Mr. Tejani had “unlawfully, pursuant to one scheme and continuing course of conduct” appropriated over \$20,000 and less than \$100,000 of cash from the complainant.<sup>17</sup>

On January 15, 2008, in the 351st District Court of Harris County, Texas, Mr. Tejani pleaded guilty to a third-degree felony offense of theft in the aggregate amount of more than \$20,000 and less than \$100,000. The court deferred adjudication of his guilt and placed him on community supervision for a period of six years. He was also ordered pay \$35,000 in restitution

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<sup>15</sup> Ex. 6 at 087.

<sup>16</sup> Ex. 6 at 087.

<sup>17</sup> Ex. 6 at 05.

for the offense.<sup>18</sup> On January 29, 2014, Mr. Tejani was released from his community supervision with a finding that he had served the full term and satisfactorily fulfilled the conditions of his supervision.<sup>19</sup>

Ms. Delgado testified that when the Department has a concern about an applicant's criminal history or other background, the application will be referred to her administrative review section for further review.<sup>20</sup> In Mr. Tejani's case, the Department was concerned by his 2007 fraud offense because it involved dishonesty, and the Department is very concerned with the honest and trustworthiness of insurance agents. Ms. Delgado further explained that the Department views his deferred adjudication as a conviction because he completed his deferred adjudication less than five years before he submitted his license application.<sup>21</sup>

In Ms. Delgado's view, Mr. Tejani's crime is very serious, and it directly relates to the occupation of an insurance agent.<sup>22</sup> She thinks Mr. Tejani still poses a threat to the community, and that an insurance agent license would position him to engage in similar criminal conduct because agents engage in transactions involving large amounts of cash and checks and would have the opportunity to steal from their customers, if so inclined.<sup>23</sup> She also testified that Mr. Tejani was an adult, in his early thirties, when the crime was committed, so it was not a youthful offense.<sup>24</sup>

## 2. Mr. Tejani's Statements and Testimony

In connection with his application to the Department, Mr. Tejani provided several statements about the theft offense.

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<sup>18</sup> Ex. 6 at 076.

<sup>19</sup> Ex. 6 at 089.

<sup>20</sup> Tr. 37-39.

<sup>21</sup> Tr. 45-46; *see* Tex. Occ. Code § 53.053(d).

<sup>22</sup> Tr. 62.

<sup>23</sup> Tr. 46, 62-63.

<sup>24</sup> Tr. 64.

He sent a letter on April 12, 2018, to explain the offense and “clear the record.” In it, he wrote that he had been working as an optician for a doctor who was “like a father figure” to him, and that he regarded the office staff “almost like a family.” He said that in the office, he and his coworkers each had computer passcodes that let them “act as managers to help with computer data or patient issues,” but they also knew each other’s passcodes and would use them when needed “to help [the] office run smoother.” He claimed that the fraudulent charges at issue occurred when someone else used his code to manipulate the system.<sup>25</sup> And regarding the allegation that he had stolen cash from the business, he wrote, “at time[s] when we did not have change for patients we would all help by giving change to client from our own pockets only to later be given back our own money so maybe staff saw this . . . .”<sup>26</sup>

In September 2018, Mr. Tejani sent another statement addressing the theft charge. In it, he again emphasized his close relationship with Dr. Zaibaq and described the trust Dr. Zaibaq had placed in him to manage his business. Mr. Tejani wrote that there were three or four employees who shared passcodes and were able to make changes to payment information in the computer database and that it “[s]eems my user name and code [were] used to delete payment and pocket the cash.” He also reiterated that any cash he took would have been to pay himself back for money he took from his own pocket to make change for a customer.<sup>27</sup> He denied taking any money from the business without Dr. Zaibaq’s permission.

In an email sent February 14, 2020, he again asserted that he was “not the only one whom had access to financial fund,” and suggested that Dr. Zaibaq has forgiven him, saying “he has always looked at me as a son, he actually even texted me well after I had left and hoped I was well.”<sup>28</sup>

In his testimony at the hearing, Mr. Tejani reiterated that he was one of several managers who had access to codes in the computer system in Dr. Zaibaq’s office, and that there were times when cash was not available to make change for customers so he would have to make change from

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<sup>25</sup> Ex. 4 at 028.

<sup>26</sup> Ex. 4 at 028.

<sup>27</sup> Ex. 7 at 091.

<sup>28</sup> Ex. 5 at 052.

his own pocket and get repaid later.<sup>29</sup> He denied that his actions constituted a crime and initially claimed, “I never pleaded guilty because I felt like I was not guilty.”<sup>30</sup> However, on cross-examination Mr. Tejani was reminded that the Order of Deferred Adjudication indicates he pleaded guilty. He then adjusted his testimony and conceded he must have pleaded guilty, but said he did so on his lawyer’s advice as part of the agreement to receive deferred adjudication.<sup>31</sup> He said he did not understand at the time that he could be considered guilty even after he completed the community supervision and the case was dismissed.<sup>32</sup> Mr. Tejani also emphasized that he worked hard to pay restitution and comply with the terms of his probation and that he has never been in trouble with the law since pleading guilty to the fraud offense.<sup>33</sup>

## **B. Fraudulent or Dishonest Conduct**

### **1. Staff’s Evidence**

Staff contends that Mr. Tejani engaged in fraudulent or dishonest acts by performing an eye exam without a license in January 2008, and by forging the signature of a licensed optometrist on a prescription for the same patient in February 2008.

Linda Hayes, a board-certified optometrist licensed in Texas since 1987,<sup>34</sup> testified about the incidents at the hearing. In early January 2008, Dr. Hayes accepted a part-time position working one day a week as an optometrist in an office adjacent to New Vision Optical, Mr. Tejani’s family business.<sup>35</sup> Not long after she began working with Mr. Tejani, a customer filed a complaint against Dr. Hayes with the Texas Optometry Board (Board) claiming that when the customer visited her office, Mr. Tejani had performed an eye exam and later forged Dr. Hayes’s signature on a prescription. Dr. Hayes testified that she had never met the customer, let alone performed his eye

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<sup>29</sup> Tr. 89.

<sup>30</sup> Tr. 90.

<sup>31</sup> Tr. 90, 92.

<sup>32</sup> Tr. 95.

<sup>33</sup> Tr. 16-17.

<sup>34</sup> Tr. 22.

<sup>35</sup> Tr. 22-23.

exam or signed or authorized his prescription.<sup>36</sup> In fact, she had not yet started working for Mr. Tejani at the time of the customer's eye exam.<sup>37</sup> After an investigation, Dr. Hayes testified, she was "absolved from any responsibility" by the Board.<sup>38</sup>

The Board reported the incident to the Sugar Land Police Department, which opened an investigation in June 2008.<sup>39</sup> The police report determined that Mr. Tejani "apparently forged a signature of an Optometrist Dr. Linda Hayes on or about February 13, 2008" on an eyeglass prescription form, and that the complaining customer had "apparently received and paid for an eye exam that was also performed by [Mr.] Tejani on or about January 9, 2008," and was charged \$35.00 for the exam.<sup>40</sup> As part of the police investigation, Dr. Hayes said she provided her driver's license and officers compared the signature on her license against the signature on the customer's prescription, quickly determining that the signatures did not match.<sup>41</sup> Dr. Hayes testified that she has never used a signature stamp or authorized anyone else to sign her name to a prescription.<sup>42</sup>

Dr. Hayes told the Board that, when they worked together, Mr. Tejani had repeatedly asked her to sign a standing order that would authorize him to refract eyes, but she refused.<sup>43</sup> At the hearing, Dr. Hayes explained that an eye exam involves refracting, a procedure where a light is shined in the patient's eye and, by observing the movement of the light, the optometrist can tell if the person is nearsighted, farsighted, and/or has astigmatism. Though refracting was formerly performed manually, now there are autorefractors, or electronic machines that automatically determine a preliminary prescription.<sup>44</sup> Then, the optometrist puts that prescription into a phoropter—which Dr. Hayes described as "a lot of eyeglasses mounted on a wheel"—and adjusts the lenses, giving the patient several options and determining which lenses they see best with.

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<sup>36</sup> Tr. 25.73.

<sup>37</sup> Tr. 33.

<sup>38</sup> Tr. 25.

<sup>39</sup> Ex. 5 at 063-73.

<sup>40</sup> Ex. 5 at 066.

<sup>41</sup> Tr. 28; Ex. 5 at 066.

<sup>42</sup> Tr. 28.

<sup>43</sup> Ex. 5 at 067.

<sup>44</sup> Tr. 26.



Typically, the patient's ultimate prescription is different from what was predicted by the autorefractor.<sup>45</sup>

Dr. Hayes conceded that a license is not required to use the autorefractor and some practices authorize optometric assistants to use the machine. But only a licensed optometrist is legally authorized to interpret the results, perform the rest of the eye exam, and write the final prescription.<sup>46</sup> Based on the complaining customer's description of the eye exam he received, Dr. Hayes told investigators that she believed Mr. Tejani had used a phoropter to determine his prescription.<sup>47</sup> Dr. Hayes also testified that she never authorized Mr. Tejani to perform an exam or write a prescription in her name.<sup>48</sup>

Ms. Delgado testified that, in reviewing Mr. Tejani's license application, the forgery incident was very concerning because, like the theft offense, it indicated a lack of honesty. She said that an insurance agent license would position him to engage in similar fraudulent conduct because agents often have to secure customers' signatures on forms and could be motivated to forge a signature if it was difficult to get the customer to sign.<sup>49</sup>

## 2. Mr. Tejani's Testimony and Statements

In connection with his application to the Department, Mr. Tejani was asked about the incidents relating to Dr. Hayes. In an email dated April 23, 2018, he wrote that the forgery incident occurred while he was working at his family's business. He explained:

[W]e had the doctor's signature stamp and usually stamp an RX for patients that doctors have seen, [but it] seems when I stamped this particular patient's RX the Dr was not there at [the] time. [H]onestly this patient was upset because his glasses weren't ready and took awhile . . . .<sup>50</sup>

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<sup>45</sup> Tr. 26.

<sup>46</sup> Tr. 27-30.

<sup>47</sup> Ex. 5 at 067-68, 071.

<sup>48</sup> Tr. 28; Ex. 5 at 071.

<sup>49</sup> Tr. 62-63.

<sup>50</sup> Ex. 4 at 25. Mr. Tejani offered this explanation in response to an inquiry for information about his criminal history, and went on to say he would try "to get this information from Fort Bend County." However, it does not appear that Mr. Tejani was ever charged with a crime in connection with the incident involving the forged prescription or, if he



In September 2018, Mr. Tejani sent another statement to explain the forgery incident, writing that in early 2008 he had been helping his family by working, without pay, in his brother's optical practice.<sup>51</sup> The statement did not address the allegation that he performed an eye exam in January, but explained that when the customer came to pick up his glasses a month later he became angry when he learned they were not ready. Mr. Tejani then gave the customer a copy of his prescription, writing that, "a lot of times when Dr's are not in the office some leave his/her signatures on a print pad, this makes it easier for staff to endorse RX pads [and] release RX of patient."<sup>52</sup>

In another email sent February 14, 2020, he again stated that the customer had become "very upset [and demanded] a copy of his RX" after learning that his glasses were not ready when expected in February 2008. He claimed Dr. Hayes had left a prescription pad with her signature for him to use in such situations, and he used it to give the customer a copy of his prescription, but denied signing the prescription himself.<sup>53</sup>

At the hearing, Mr. Tejani said his family has been in the optical business since he was a child and he knows right from wrong in that practice. He denied performing an eye exam on any customer.<sup>54</sup> However, he acknowledged that he used the autorefractor on the complainant, reiterating that no professional license is required to do so.<sup>55</sup> He explained that the customer was upset because his glasses were not ready and Mr. Tejani realized the customer's prescription was expired. To placate the customer, Mr. Tejani told him "well, I can take some pictures of your eye with an autorefractor and get an idea of what your prescription may be," and the autorefractor showed "his prescription looked the same so [we] made the glasses."<sup>56</sup> Also at the hearing,

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was charged, the charge was dismissed because the forgery allegation arose just as he was beginning his probation on the theft charge. *See* Ex. 7 at 092.

<sup>51</sup> Ex. 7 at 092.

<sup>52</sup> Ex. 7 at 092.

<sup>53</sup> Ex. 5 at 052.

<sup>54</sup> Tr. 87-88, 92.

<sup>55</sup> Tr. 86.

<sup>56</sup> Tr. 87.

Mr. Tejani reiterated his claim that optometrists often leave prescription pads with stamped signatures to use when patients need a copy of their prescriptions.<sup>57</sup>

### C. Misrepresentation on License Application

#### 1. Staff's Evidence

On January 5, 2018, Mr. Tejani applied to the Department for a general lines property and casualty insurance agent license.<sup>58</sup> Staff argues that Mr. Tejani failed to disclose his criminal offense on his license application and was also dishonest in his explanations of the felony theft offense and other misconduct.

The Application asked, “Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?,” and in response, Mr. Tejani answered “no.”<sup>59</sup>

After conducting a background check, the Department wrote Mr. Tejani, advising him that “you may have a criminal history that you failed to disclose on your application,” and he was asked to provide records related to the offense and other information.<sup>60</sup> Mr. Tejani emailed a response on April 11, 2018, stating that he “thought the question asked me if I had been convicted and I answered ‘no’ because I went through the court system and was from what I understand cleared after my abidance of what was asked/needed of me.”<sup>61</sup>

Ms. Delgado testified that Mr. Tejani’s failure to disclose his felony offense on the license application was concerning to the Department, as were the inconsistent and seemingly untruthful explanations he offered regarding the offense.<sup>62</sup> Similarly, Ms. Delgado said the inconsistencies

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<sup>57</sup> Tr. 87.

<sup>58</sup> Ex. 4 at 018-22.

<sup>59</sup> Ex. 4 at 019.

<sup>60</sup> Ex. 4 at 023.

<sup>61</sup> Ex. 4 at 025-26.

<sup>62</sup> Tr. 43, 49-50.

between Mr. Tejani's explanations of the forgery incident, and how they disagreed with Dr. Hayes's testimony, indicated that Mr. Tejani was not honest and forthcoming about the events that occurred.<sup>63</sup> She characterized these as material misrepresentations that Mr. Tejani made in an attempt to secure an insurance agent license, which is further evidence of his dishonesty and lack of fitness to hold a license.<sup>64</sup> The misrepresentations are another reason Mr. Tejani's application should be denied, in Ms. Delgado's opinion.<sup>65</sup>

## **2. Mr. Tejani's Testimony**

Mr. Tejani testified that he was not thinking about the deferred adjudication at the time of his application because it had happened over a decade before and he had not been convicted, so he did not think the offense was still on his record.<sup>66</sup> He characterized the omission as an honest mistake and said he was subsequently forthcoming with the Department when they inquired about the offense.<sup>67</sup>

## **D. Mr. Tejani's Evidence of Rehabilitation and Fitness**

To show that he is fit to hold an insurance-agent license despite his prior conduct, Mr. Tejani provided the Department with a certificate he received in August 2019 for completing a coaching program to become a College Consultant.<sup>68</sup> Mr. Tejani also provided several letters of recommendation in support of his application:

- Mr. Tejani's brother, Amin Tejani, wrote that his brother's legal problems arose from dealing with an angry customer who wanted to make a point. He also said it was customary in their business to have signed prescription forms or pads with the

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<sup>63</sup> Tr. 57-61.

<sup>64</sup> Tr. 61.

<sup>65</sup> Tr. 70.

<sup>66</sup> Tr. 17.

<sup>67</sup> Tr. 17-18.

<sup>68</sup> Ex. 5 at 075.

signature already on them, and that Mr. Tejani had used one of these to placate the customer.<sup>69</sup>

- Rubidia Velasco described meeting Mr. Tejani through his wife and described him as a very “educated[,] polite[,] and courteous individual.”<sup>70</sup>
- Ariz Rahim, a family friend for over 30 years, described Mr. Tejani as dependable, supportive of his friends, resilient, and dedicated to his family.<sup>71</sup>
- Jakeline Tejani, Mr. Tejani’s wife, described her husband as a good father to their two children, a hard worker, and wrote that his “unfortunate legal issues” should not define him.<sup>72</sup>

In addition, Mr. Tejani gave a written statement to the Department in which he said a license would allow him to expand his role in his wife’s insurance business, In-Tex Insurance Agency, LLC, where he is currently limited to performing office work. This would allow him to earn a better income to benefit his family.<sup>73</sup>

At the hearing, Mr. Tejani testified that he is now in his mid-40s and a father to two children, ages 19 and 13. He said he needs an insurance-agent license to be able to make a living and support his family.<sup>74</sup> In addition to the insurance agent license, he also aspires to hold a real estate license someday.<sup>75</sup>

Mr. Tejani described himself as very honest person. He does not believe that his past mistakes should define him and he emphasized that he did everything that was required of him to complete his deferred adjudication and move past his criminal charge.<sup>76</sup> He conceded that his past

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<sup>69</sup> Ex. 7 at 093. Despite Amin Tejani’s reference to legal problems, as stated above, Staff does not allege and the evidence does not show that Mr. Tejani committed a criminal offense by performing an unauthorized eye exam or forging Dr. Hayes’s signature on a prescription. Amin Tejani’s letter did not address his brother’s felony fraud offense committed in Dr. Zaibaq’s office.

<sup>70</sup> Ex. 7 at 095.

<sup>71</sup> Ex. 7 at 096.

<sup>72</sup> Ex. 7 at 097.

<sup>73</sup> Ex. 7 at 098.

<sup>74</sup> Tr. 84, 96, 102.

<sup>75</sup> Tr. 91.

<sup>76</sup> Tr. 18, 84.

does not reflect well on him, but insisted that he is a hard worker and changed person, and said he would not risk his license or business by making the same types of mistakes today.<sup>77</sup>

#### IV. ANALYSIS AND RECOMMENDATION

Staff contends that Mr. Tejani's felony theft offense and his fraudulent or dishonest conduct in performing an eye exam and forging a prescription show that he lacks the honesty and trustworthiness required to hold an insurance agent license. Likewise, Staff contends that his omissions or misrepresentations on his application and related correspondence indicates a lack of honesty that warrants denial.

##### A. Criminal or Fraudulent Conduct as Grounds for Denial

###### 1. Theft Offense

Though Mr. Tejani now denies stealing from his former employer, Staff's evidence shows he previously admitted committing the offense when he pleaded guilty to the third-degree felony theft offense in the criminal proceeding. The preponderance of the evidence established that Mr. Tejani committed the felony offense.

Staff contends that Mr. Tejani's deferred adjudication should be treated as a conviction, making the offense grounds to revoke or deny license pursuant to Texas Insurance Code § 4005.101(b)(8) and/or Texas Occupations Code § 53.021(a)(1). Because Mr. Tejani completed his deferred adjudication less than five years before he applied to the Department for a license, the Department may consider him to have been convicted of the offense if, after considering the factors in Texas Occupations Code §§ 53.022 and .023(a), it determines that he may pose a continued threat to public safety or that his employment as a licensed insurance agent would create an opportunity to repeat the prohibited conduct.<sup>78</sup>

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<sup>77</sup> Tr. 85, 88, 103.

<sup>78</sup> Tex. Occ. Code § 53.021(d)(1)(B)(i), (2).

The Department has already taken the factors in Texas Occupations Code § 53.022 into account in determining that theft offenses are among those offenses so serious that they are of prime importance in determining fitness for licensure.<sup>79</sup> The particular facts of Mr. Tejani's offense only strengthen this determination. His offense was a serious felony involving large sums of money stolen over a prolonged period of time, and the nature of the offense—committed in a workplace against someone who, by his own admission, placed great trust in him—is related to the regulatory reason for requiring insurance agents to hold a license. Customers entrust insurance agents with their premiums and other funds and must have confidence their agents will protect their personal and financial interests. A license would present an opportunity for Mr. Tejani to breach this trust and engage in further criminal activity similar to his theft offense.

Turning to the factors in Texas Occupations Code § 53.023(a), the evidence shows that the felony theft is Respondent's only known criminal charge, though he was an adult when the offense was committed, so it cannot be discounted as a youthful indiscretion. The crime occurred over an 18-month period (between January 2006 and June 2007) but concluded nearly 14 years ago. There is no evidence of Mr. Tejani's conduct or work experience prior to the offense. Since the offense was committed, as discussed below, the evidence shows Mr. Tejani engaged in further misconduct in another workplace in 2008. There is scant evidence of his work history since then, other than his testimony that he has contributed to his wife's insurance business. Mr. Tejani did not present any letters of recommendation or support from prosecutors or law enforcement agents who were involved with his criminal proceedings, but the evidence does show that he complied with the terms of his community supervision, including paying substantial sums in restitution. Respondent's letters of recommendation were from family members and friends who think highly of him but did not squarely acknowledge his criminal history or show why he should be entrusted with a license despite his offense.

On balance, the ALJ concludes that the nature of Mr. Tejani's theft offense and the other evidence support a finding that employment as an insurance agent would create a situation in which Mr. Tejani could commit another theft offense. Therefore, the Department may consider his deferred adjudication to be a conviction for licensing purposes, and his theft offense is a grounds for deny the application.

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<sup>79</sup> 28 Tex. Admin. Code § 1.502(e)(4)(F).

## 2. Fraudulent and Dishonest Conduct

Staff contends that Mr. Tejani's conduct in performing an eye exam and later forging an eyeglasses prescription were fraudulent or dishonest acts or practices that are grounds for denying his license pursuant to Texas Insurance Code § 4005.101(b)(5). The ALJ agrees that the preponderance of the evidence supports this basis for denial.

Mr. Tejani denied performing an eye examination on the complaining customer, but he also admitted using the autorefractor during the customer's visit in January 2008. And while some optometrists permit their assistants to use an autorefractor, Mr. Tejani did not dispute Dr. Hayes's claim that she had never authorized him to do so in her practice. Mr. Tejani also did not explain or directly refute the customer's report, and Dr. Hayes's contention, that he had also used a phoropter in examining the customer, which he was undisputedly not allowed to do without an optometrist license. Therefore, the preponderance of the evidence established that Mr. Tejani engaged in fraudulent or dishonest acts in January 2008, when he performed an eye exam he was not qualified to give for a customer who sought services from a licensed optometrist.

The evidence also established that Mr. Tejani forged an eyeglasses prescription for the customer in February 2008. Again, Mr. Tejani denied the forgery, but his statements on the incident were inconsistent, at varying points claiming that he had written the prescription on a preprinted, pre-signed prescription pad, or that he used a signature stamp Dr. Hayes provided. Dr. Hayes denied ever using pre-signed pads or signature stamps, and the investigation records made close in time to the incident reflect that it was not Dr. Hayes's signature at all on the customer's prescription. When police compared the signature on the prescription to the signature on Dr. Hayes's driver's license, they did not match. Rather, the evidence indicates that Mr. Tejani wrote Dr. Hayes's signature in his own hand on one of her blank prescriptions, without her knowledge. Mr. Tejani's denials were not credible, and the preponderance of the evidence shows that he engaged in fraudulent or dishonest acts in February 2008 when he forged Dr. Hayes's signature and issued an unauthorized prescription in her name. This is an additional basis for denying his license application.



### 3. Fitness in View of Mitigating Factors

Before denying a license on the basis of a person's criminal history or fraudulent or dishonest conduct, the Department will first consider whether the factors specified in Texas Occupations Code §§ 53.022 and .023 outweigh the serious nature of the conduct when viewed in light of the occupation being licensed.<sup>80</sup>

The factors in 53.022 and .023(a) have already been discussed above as they pertain to the theft offense. The same considerations apply with respect to Mr. Tejani's unauthorized eye exam and forged prescription, as well. This misconduct involved fraud, dishonesty or deceit, which are qualities the Department has emphasized are of "prime importance" in making licensing decisions.<sup>81</sup> Further, as Ms. Delgado testified, Mr. Tejani could commit similar forgeries if licensed as an insurance agent because the profession will put him in situations where he might have difficulty securing a signature needed to complete a transaction. Thus, like the theft offense, the eye exam and forged prescription constitute fraudulent and dishonest conduct that directly relates to the duties and responsibilities of an insurance agent.<sup>82</sup> Also like the theft offense, the misconduct occurred in Mr. Tejani's workplace, this time while working for his brother. And while the misconduct occurred approximately 13 years ago, there is little evidence of Mr. Tejani's work history or rehabilitation since then. His letters of recommendation did not directly speak to his fraudulent or dishonest misconduct, other than the letter from Mr. Tejani's brother, who echoed Mr. Tejani's discredited explanation for how the forgery occurred.

Pertaining to the additional factors in 53.023(c), Mr. Tejani has not shown that he has maintained a record of steady employment since his criminal and fraudulent conduct in 2006-2008, other than testimony that he has done some work for his wife's insurance business. He testified that he has contributed to the support of his family and children, one of whom is now an adult. It appears that he has maintained a record of good conduct since 2008, and he fully complied with the terms of his deferred adjudication and community supervision, including paying restitution.

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<sup>80</sup> 28 Tex. Admin. Code § 1.502(g), (h).

<sup>81</sup> 28 Tex. Admin. Code § 1.502(e)(1).

<sup>82</sup> Tex. Occ. Code § 53.022.



It is commendable that Mr. Tejani was able to complete community supervision and has apparently not engaged in further crimes or dishonest conduct since 2008. However, the ALJ shares Staff's concerns about the serious nature of Mr. Tejani's misconduct and the direct relationship that misconduct has to the duties and responsibilities he would have as an insurance agent. Mr. Tejani has not shown his rehabilitation and in fact continues to deny any prior wrongdoing, despite his prior guilty plea to the theft offense and the compelling evidence that he performed an authorized eye exam and forged Dr. Hayes's name on a prescription. He is either untruthful in his description of events or simply does not understand why his conduct was wrong. Neither proposition is reassuring when weighing his fitness to hold a license. The ALJ concludes that the mitigating factors do not outweigh the seriousness of Mr. Tejani's criminal offense and his fraudulent or dishonest conduct, and he has not shown his fitness for licensure.

**B. Misrepresentation on License Application as Grounds for Denial**

Finally, Staff contends that Mr. Tejani's application should be denied because he intentionally made a material misstatement in the license application or attempted to obtain a license by fraud or misrepresentation.<sup>83</sup>

Mr. Tejani untruthfully answered "no" where the application asked him whether he had "ever been convicted of a felony [or] had a judgment withheld or deferred." The question was not ambiguous and his testimony that he simply was not thinking of the theft offense when he completed the application was not credible. Mr. Tejani also said that, even though his initial answer was incorrect, he was subsequently forthcoming about his prior offense and misconduct in his responses to Staff's questions about his license application. However, as discussed above, the explanations he provided for both the theft offense and for the fraudulent eye exam and forged prescription were inconsistent and contradicted by the more contemporaneous records made by those who investigated or prosecuted Mr. Tejani. The preponderance of the evidence supports a finding that he made material misstatements to the Department in his license application and related communications. This is an additional basis for denying his application, and further

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<sup>83</sup> Tex. Ins. Code § 4005.101(b)(2)-(3).

evidence that he lacks the honesty, trustworthiness, and reliability that the Department requires of licensed insurance agents.<sup>84</sup>

### C. Recommendation

Based on the foregoing, the ALJ concludes that Mr. Tejani's application for a general lines agent license with a property and casualty qualification should be denied. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

## V. FINDINGS OF FACT

1. Between January 19, 2006 and Jun 13, 2007, Asif Tejani stole more than \$20,000 and less than \$100,000 of cash from the business of Dr. Zaibaq, an ophthalmologist whom Mr. Tejani worked for and regarded as a father figure.
2. In stealing the funds, Mr. Tejani manipulated computer records and pocketed cash payments that belonged to Dr. Zaibaq.
3. On January 15, 2008, in the 351st District Court of Harris County, Texas, Mr. Tejani pleaded guilty to a third-degree felony offense of theft in the aggregate amount of more than \$20,000 and less than \$100,000. The court deferred adjudication of his guilt and placed Mr. Tejani on community supervision for a period of six years. He was also ordered pay \$35,000 in restitution for the offense.
4. On January 29, 2014, Mr. Tejani was released from his community supervision with a finding that he had served the full term and satisfactorily fulfilled the conditions of his supervision.
5. On or about January 9, 2008, while working in an optical business owned by his brother, Mr. Tejani performed an eye exam on a customer, using an autorefractor and phoropter, to derive the customer's prescription. He charged the customer \$35.00 for the exam.
6. Mr. Tejani is not a licensed optometrist authorized perform eye exams, nor did he have the permission of Dr. Linda Hayes, the optometrist affiliated with his brother's business, to use the autorefractor or perform any part of an eye exam.
7. On or about February 13, 2008, the customer tried to pick up his prescription eyeglasses and became angry when they were not ready. To placate the angry customer, Mr. Tejani forged a prescription for the customer, signing in Dr. Hayes's name.

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<sup>84</sup> 28 Tex. Admin. Code § 1.502(c).

8. Mr. Tejani did not have Dr. Hayes's permission to use her signature or issue any prescription in her name.
9. The customer reported Mr. Tejani's forgery to the Texas Optometry Board, which investigated and cleared Dr. Hayes of any wrongdoing. Mr. Tejani's conduct was reported to and investigated by the Sugar Land Police Department.
10. On January 5, 2018, Arif Tejani applied to the Texas Department of Insurance (Department) for a general lines agent license with a property and casualty qualification.
11. The application asked, "Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?," and in response, Mr. Tejani untruthfully answered "no."
12. In response to inquiries from the staff (Staff) of the Department about his application, Mr. Tejani provided inconsistent and untruthful explanations for his theft offense, and for the unauthorized eye exam he performed and the prescription he forged while working with Dr. Hayes.
13. On April 30, 2018, Staff of the Department proposed to deny Mr. Tejani's application for a general lines agent license based on his criminal history, prior conduct, and misrepresentation on the application.
14. Mr. Tejani requested a hearing to challenge the denial.
15. On November 23, 2020, Staff issued a notice of hearing on the denial of his application.
16. The notice of hearing 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 incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.
17. The hearing in this case was held via Zoom videoconference on March 30, 2021, before Administrative Law Judge Sarah Starnes at the State Office of Administrative Hearings (SOAH). Staff was represented by staff attorney Stephanie Andrews. Mr. Tejani appeared and represented himself. The hearing concluded that day, and the record closed on April 14, 2021, when the court reporter's transcript was filed with SOAH.


## **VI. 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. Tejani received timely and sufficient notice of hearing. Tex. Gov't Code §§ 2001.051-.052.; Tex. Ins. Code § 4005.104(b).
4. Staff had the burden of proving its basis for denying Mr. Tejani's application. Mr. Tejani has the burden to prove his fitness to be licensed despite the criminal history or fraudulent or dishonest conduct. The burden of proof is by a preponderance of the evidence. Tex. Occ. Code § 53.023(b)-(c); 1 Tex. Admin. Code § 155.427; 28 Tex. Admin. Code § 1.502(g)-(h); *Granek v. Texas St. Bd. of Med. Examn'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).
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 theft. 28 Tex. Admin. Code § 1.502(e)(4)(F).
6. The Department may consider Mr. Tejani's deferred adjudication to be a conviction for purposes of making a licensing determination. Tex. Occ. Code § 53.021(d); *see also* Tex. Occ. Code §§ 53.022-.023.
7. The Department may deny Mr. Tejani's license application because he is considered to have been convicted of a felony. Tex. Ins. Code § 4005.101(b)(8); 28 Tex. Admin. Code § 1.502(d).
8. The Department may deny Mr. Tejani's license application because he is considered to have been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. Tex. Occ. Code § 53.021(a)(1).
9. The Department may deny Mr. Tejani's license application because he has engaged in fraudulent or dishonest acts or practices that directly relate to the duties and responsibilities of an insurance agent. Tex. Ins. Code § 4005.101(b)(5); 28 Tex. Admin. Code § 1.502(d).
10. 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 despite a criminal offense or fraudulent or dishonest conduct, and will not issue a license unless those mitigating factors outweigh the serious nature of the criminal offense or fraudulent or dishonest conduct when viewed in the light of the occupation being licensed. 28 Tex. Admin. Code § 1.502(g), (h).
11. The mitigating factors do not outweigh the seriousness of Mr. Tejani's criminal offense and his fraudulent or dishonest conduct, and he has not shown his fitness for licensure. Tex. Occ. Code §§ 53.022-.023; 28 Texas Administrative Code § 1.502(g)-(h).
12. The Department may deny Mr. Tejani's license application because he intentionally made a material misstatement in the license application or attempted to obtain a license by fraud or misrepresentation. Tex. Ins. Code § 4005.101(b)(2)-(3).

13. The Department should deny Mr. Tejani's application for a license.

SIGNED May 27, 2021.

  
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**SARAH STARNES**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**



**Exhibit B**

# State Office of Administrative Hearings

Kristofer S. Monson  
Chief Administrative Law Judge

June 15, 2021

Kent Sullivan  
Commissioner of Insurance  
Texas Department of Insurance  
333 Guadalupe, Tower 1, 13<sup>th</sup> Floor, MC 113-2A  
Austin, TX 78714

VIA EFILE TEXAS

**RE: SOAH Docket No. 454-21-0686.C; Texas Department of Insurance v. Arif Tejani**

Dear Commissioner Sullivan:

Please be advised that the time period to file exceptions to the Proposal for Decision (PFD) issued in the above-referenced hearing has expired. Neither party filed exceptions, but Staff of the Texas Department of Insurance filed a letter noting a minor typographical error. On page 19, line 7, the PFD should read that Mr. Tejani “performed an unauthorized eye exam . . . .”

With that minor correction, the Administrative Law Judge recommends that the PFD be adopted as written. Because SOAH has concluded its involvement in the matter, the case is being remanded to [the referring agency]. See Tex. Gov’t Code § 2003.051(a).

Sincerely,

A handwritten signature in black ink that reads "Sarah Starnes".

Sarah Starnes  
Administrative Law Judge

SS/tt

cc: Stephanie Andrews, Staff Attorney, Texas Department of Insurance, 333 Guadalupe, Tower 1, 13<sup>th</sup> Floor, Austin, TX 78701 - VIA EFILE TEXAS  
Chief Clerk, Texas Department of Insurance, 333 Guadalupe, Tower I, Suite 1300D, Austin, TX 78701 – VIA EFILE TEXAS  
Arif Tejani [REDACTED] Richmond, TX 77406 - VIA EFILE TEXAS