

No. **2022-7232**

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

Date: 02/17/2022

Subject Considered:

Texas Department of Insurance

v.

Carl W. Johnson

SOAH Docket No. 454-21-1395.C

General remarks and official action taken:

The subject of this order is Carl W. Johnson's applications for a non-resident life agent license and a non-resident general lines agent license with a life, accident, health, and HMO qualification. This order approves Mr. Johnson's applications, but with a two-year probated suspension.

Background

After proper notice was given, the above-styled case was heard by an administrative law judge for the State Office of Administrative Hearings. The administrative law judge made and filed a proposal for decision containing a recommendation that the Texas Department of Insurance (TDI) approve Mr. Johnson's application.¹ A copy of the proposal for decision is attached as Exhibit A.

Enforcement staff for TDI filed exceptions to the administrative law judge's proposal for decision. Mr. Johnson did not file a reply to the exceptions. In response to the exceptions, the administrative law judge did not recommend revising the proposal for decision. A copy of the administrative law judge's response to exceptions is attached as Exhibit B.

¹ The administrative law judge's recommendation only refers to one of Mr. Johnson's applications. This issue is addressed below.

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TDI adopts the administrative law judge's proposed findings of fact and conclusions of law with new Finding of Fact No. 14.A and changes to Findings of Fact Nos. 1, 2, 4, and 12–14 and Conclusions of Law Nos. 8, 9, 11, and 12.

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 Texas Government 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."

Applications Submitted by Mr. Johnson

As previously noted, the proposal for decision recommends that TDI approve Mr. Johnson's application. However, the proposal for decision only addresses Mr. Johnson's application for a general lines agent license with a life, accident, health, and HMO qualification.²

The notice of hearing, witness testimony, and evidence admitted into the record clearly show that Mr. Johnson submitted two license applications, one for a life agent license and the other for a general lines agent license with a life, accident, health, and HMO qualification.

Factual Allegation No. 1 in the notice of hearing states:

On January 20, 2020, Carl W. Johnson (Johnson) applied for a non-resident life agent and general lines license with life, accident, health, and HMO qualification to be issued by the Texas Department of Insurance (TDI).³

In addition, during the hearing Lewis Wright, the witness called by TDI Enforcement staff, testified:

² See Proposal for Decision, introductory paragraph, page 1; Background, page 2; Analysis, page 13; and Findings of Fact Nos. 1, 2, 4, 13, and 14 and Conclusions of Law Nos. 8, 9, 11, and 12.

³ Notice of Hearing, page 1.

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Mr. Johnson applied for two license types. He applied for a life agent's license, as well as a general lines license with a life, accident, and health qualification.⁴

Finally, TDI's Exhibit 1 includes copies of the two separate applications submitted by Mr. Johnson.⁵

The applicable law and factors to be considered, and the administrative law judge's reasoning, findings, and conclusions, regarding Mr. Johnson's fitness for licensure apply equally to either a general lines agent license or a life agent license. Therefore, TDI considers the failure of the administrative law judge to note both Mr. Johnson's applications to be a technical error that requires changes to Findings of Fact Nos. 1, 2, 4, 13, and 14 and Conclusions of Law Nos. 8, 9, 11, and 12. In accordance with this analysis, this order corrects these findings of fact and conclusions of law as described below. In addition, both licenses are addressed in new Finding of Fact 14.A, which is adopted in response to additional analysis below.

Finding of Fact No. 1 also contains two additional technical errors related to the license type for which Mr. Johnson applied. First, Finding of Fact No. 1 incorrectly refers to the license type as a general lines agency license rather than an agent license. Second, Finding of Fact No. 1 fails to note that Mr. Johnson applied for licensure as a non-resident. These errors are corrected as described below.

Texas Occupations Code § 53.022 and 28 Texas Administrative Code § 1.502

As noted in the proposal for decision, on May 31, 2019, Mr. Johnson pleaded guilty in Wisconsin state court to four counts of the Class A misdemeanor of fourth degree sexual assault, and one count of the Class A misdemeanor of pandering-solicitation. He received probation and was assessed court costs and other charges. Mr. Johnson is still serving his probation.

TDI may refuse to issue a license if TDI determines that the applicant has committed a misdemeanor that directly relates to the duties and responsibilities of the occupation for which licensure is sought. See Texas Occupations Code § 53.021(a)(1); 28 Texas Administrative Code § 1.502(d). The administrative law judge correctly notes that TDI must consider the factors enumerated in Texas Occupations Code § 53.022 to determine whether an offense directly relates to the duties and responsibilities of a

⁴ Transcript, page 19.

⁵ TDI Exhibit 1, Bates numbers TDI010–TDI019.

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licensed occupation.⁶ The administrative law judge found that Mr. Johnson's crimes are not directly related to the duties and responsibilities of a licensed agent, and he should be granted a license.⁷ However, the administrative law judge applies an older version of Texas Occupations Code § 53.022, before it was amended in 2019.⁸ Mr. Johnson submitted his applications in 2020, and TDI must apply Texas Occupations Code § 53.022 as it existed at that time.⁹ Failure to do so is a misapplication of the law.

Texas Occupations Code § 53.022, as amended by HB 1342, provides:

In determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed occupation, the licensing authority shall consider each of the following factors:

- (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 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;
- (4) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of the licensed occupation; and
- (5) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

⁶ Proposal for Decision, page 3.

⁷ The administrative law judge also concluded that Mr. Johnson's sexual assault offense did not have the same essential elements as the felony offense of assault under Chapter 22 of the Texas Penal Code, and was thus not a crime of prime importance in determining fitness for licensure under 28 Texas Administrative Code § 1.502(e)(4)(B). But TDI notes that the list of crimes in § 1.502(e) is not exhaustive, and not being placed on the list is not determinative of whether the crime directly relates to the duties and responsibilities of the licensed occupation.

⁸ See House Bill (HB) 1342, 86th Leg. (2019).

⁹ See HB 1342, Sec. 14 ("The changes in law made by this Act apply only to an application for a license submitted on or after the effective date of this Act.") and Sec. 15 ("This Act takes effect September 1, 2019.").

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The primary difference between the prior and current versions of Texas Occupations Code § 53.022 is the addition of factor (5): any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.¹⁰

As noted in page 10 of the proposal for decision, the essential elements of Mr. Johnson's sexual assault offense are: (1) intentional (2) touching (3) of another's intimate parts (4) without consent.¹¹ Licensed insurance agents hold a position of trust with consumers and the public, and they must establish a relationship of confidence with the consumer. *See, e.g.*, 28 Texas Administrative Code § 1.502(a) ("The special nature of the relationship between licensees, insurance companies, other insurance-related entities, discount health care programs, and the public with respect to insurance and related businesses regulated by the department requires that the public place trust in and reliance upon such persons due to the complex and varied nature of insurance, insurance-related products, and discount health care programs."). It is difficult to contemplate many things that would damage public trust and confidence in an agent more than nonconsensual touching of a sexual nature.¹² Therefore, there is a clear correlation between the elements of Mr. Johnson's sexual assault offenses and the duties and responsibilities of the licensed occupation.¹³

As to the remaining factors in Texas Occupations Code § 53.022 that the administrative law judge did consider, he weighed those factors and ultimately concluded Mr.

¹⁰ Current TDI rule 28 Texas Administrative Code § 1.502(h)(1) mirrors the prior version of Texas Occupations Code § 53.022. Nevertheless, TDI's rule must yield to the current statutory language in Texas Occupations Code § 53.022. *See Tex. State Bd. of Exam'rs of Marriage & Fam. Therapists v. Tex. Med. Ass'n.*, 511 S.W.3d 28, 33 (Tex. 2017) (an administrative rule may not contravene specific statutory language).

¹¹ The administrative law judge characterizes the sexual contact at issue as consensual. *See* Proposal for Decision, page 11. But Texas Occupations Code § 53.022(5) requires TDI to analyze the actual elements of the offense, and the Wisconsin law at issue makes it clear that the sexual contact is done without consent. Wis. Stat. § 940.225(3m).

¹² *See* the SOAH proposal for decision *In Regard to the Application of Eduardo Inocente Iglesias for A General Life, Accident and Health License*, 2011 WL 761704, at *3 ("Most people reasonably have a sense of bodily integrity and trust that others will not threaten harm to them undeservingly. Choosing to knowingly put others at risk . . . by . . . actually assaulting another person—is inherently 'untrustworthy'"), adopted by Commissioner's Order No. 11-0349, issued April 21, 2011.

¹³ The administrative law judge noted that TDI Enforcement Staff "did not allege, or argue," that Mr. Johnson's solicitation-pandering offense "played any role in its analysis." Proposal for Decision, page 9. For that reason, we do not analyze that offense in this order.

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Johnson's sexual assault offense was not directly related to the duties and responsibilities of a licensed agent. The administrative law judge acknowledged that Mr. Johnson's crime was serious, but he concluded that there is no evidence that Mr. Johnson's crime relates to the purposes of requiring a license to sell insurance products because the purpose of a license is to ensure that the public's trust in and reliance on a license holder is not misplaced due to the complex and varied nature of the insurance industry. The administrative law judge is correct, to the extent that a consumer should be able to trust that a licensee has professional knowledge of the insurance industry. *See id.* However, the administrative law judge fails to consider the full scope of the relationship between an agent and consumer, and by doing so has not weighed the relevant factors properly.¹⁴

The relationship between an agent and the consumer can be close. Agents generally have access to their consumer's personal and financial information, but they can also engage with consumers and their families in person, sometimes in private settings like a home or office.¹⁵ Consumers must be able to trust that, in those settings, their agent will not take advantage of them physically.¹⁶ Therefore, there is a direct relation between sexual assault crimes and the purposes for requiring a license. *See Texas Insurance Code § 31.002(4)* (It is the department's duty to protect consumers).

The department has also determined that licensed agents must be honest, trustworthy, and reliable. *See 28 Texas Administrative Code § 1.502(c)*. Mr. Johnson's sexual assault offense, *which was committed on a 15-year-old child*, demonstrates at the very least

¹⁴ Failure to properly weigh all relevant factors is a misapplication or misinterpretation of law. *See Texas Department of Insurance v. Cody Trace Forcade*, Commissioner's Order No. 2021-6775, issued April 7, 2021, at page 5; *Texas Department of Insurance v. Andrea D. Beller*, Commissioner's Order No. 2021-6818, issued May 10, 2021.

¹⁵ *See* the SOAH proposal for decision *In Re: the Application of Warren M. Waley for an Insurance Adjuster License*, 2010 WL 5004424, at *3 and *5 (acknowledging TDI's witness's testimony that TDI "has found assaultive offenses to be directly related to the business of insurance because of [a licensee]'s access to the public" and stating that "if licensed[,] Applicant will have ongoing contact with the public and the opportunity to commit a similar act"), adopted by Commissioner's Order No. 11-0064, issued January 21, 2011.

¹⁶ *See* the SOAH proposal for decision *In the Matter of Andre R. Robinson, Sr. Application for a General Property and Casualty License*, 2007 WL 1176524, at *9 ("[B]y virtue of the interpersonal contact the holder of an insurance license would have with members of the public when discharging his responsibilities under the license, such individuals could be placed in a vulnerable position with a licensee prone to assaultive conduct"), adopted by Commissioner's Order No. 07-0174, issued March 6, 2007.

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that his judgment is suspect and he is unreliable.¹⁷ Therefore, there is a relationship between the crime and the ability or capacity required to perform the duties and discharge the responsibilities of a licensed agent.

When the Texas Occupations Code § 53.022(5) factor is taken into account, and the remaining factors are properly weighed in light of the close relationship between an agent and consumer, it becomes clear that the four counts of the Class A misdemeanor of fourth degree sexual assault to which Mr. Johnson pleaded guilty are directly related to the duties and responsibilities of the licensed occupation as contemplated in Texas Occupations Code §§ 53.021–53.022 and 28 Texas Administrative Code § 1.502. Consistent with this analysis, new Finding of Fact 14.A is adopted and proposed Findings of Fact Nos. 12 and 13 and proposed Conclusions of Law Nos. 8 and 9 are changed as described below.

Probated Suspension

Notwithstanding the analysis above showing that Mr. Johnson's crimes are directly related to the duties and responsibilities of the licensed occupation, TDI has reviewed the record and accepts the administrative law judge's analysis under Texas Occupations Code § 53.023 and his ultimate recommendation to grant Mr. Johnson's applications. However, while the administrative law judge concludes that the evidence overall weighs in favor of granting the licenses, additional monitoring of Mr. Johnson by TDI is warranted because of the serious nature of his crime and the fact that he just recently committed the offense and is still on probation for it. TDI acknowledges that Mr. Johnson presents a low risk of recidivism, but even a low risk associated with Mr. Johnson's serious crime is concerning enough to warrant further monitoring. Therefore, TDI finds that his licenses should be placed on probated suspension for two years, with reporting requirements, to allow TDI to observe how he performs as a licensee. Proposed Conclusion of Law No. 12 is changed accordingly.

Changes to Proposed Findings of Fact and Conclusion of Law

The administrative law judge's proposed Finding of Fact No. 1 states:

¹⁷ "Reliable" is defined as "trustworthy" or "worthy of confidence." *Comperry v. State*, 375 S.W.3d 508, 514 (Tex. App.—Houston [14th] 2012, no pet.) (citing Black's Law Dictionary). Committing assault crimes can also demonstrate untrustworthiness. See supra footnote 12.

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On January 20, 2020, Carl W. Johnson (Applicant) applied for a general lines agency license with life, accident, health, and HMO qualifications to be issued by the Texas Department of Insurance (Department).

Based on the analysis above, the administrative law judge's proposed Finding of Fact No. 1 is changed to state:

On January 20, 2020, Carl W. Johnson (Applicant) applied for a non-resident life agent license and a non-resident general lines agent license with life, accident, health, and HMO qualifications to be issued by the Texas Department of Insurance (Department).

The administrative law judge's proposed Finding of Fact No. 2 states:

On May 15, 2020, the Department proposed to deny his application based on his criminal history.

Based on the analysis above, the administrative law judge's proposed Finding of Fact No. 2 is changed to state:

On May 15, 2020, the Department proposed to deny his applications based on his criminal history.

The administrative law judge's proposed Finding of Fact No. 4 states:

On February 11, 2021, Department staff (Staff) issued a notice of hearing on the denial of his application.

Based on the analysis above, the administrative law judge's proposed Finding of Fact No. 4 is changed to state:

On February 11, 2021, Department staff (Staff) issued a notice of hearing on the denial of his applications.

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

Applicant's crimes do not relate closely to the purposes for requiring an insurance license.

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

Applicant's four counts of fourth degree sexual assault are related to the purposes for requiring an insurance license.

The administrative law judge's proposed Finding of Fact No. 13 states:

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Licensure as a general lines agent would not provide Applicant the opportunity to reoffend beyond his current opportunities.

Based on the analysis above, the administrative law judge's proposed Finding of Fact No. 13 is changed to state:

Licensure as a life agent or a general lines agent would provide Applicant the opportunity to reoffend.

The administrative law judge's proposed Finding of Fact No. 14 states:

Applicant's crime does not relate to his ability, capacity, or fitness to perform the duties of a general lines agent.

Based on the analysis above, the administrative law judge's proposed Finding of Fact No. 14 is changed to state:

Applicant's four counts of fourth degree sexual assault relate to his ability or capacity to perform the duties of a life agent and a general lines agent.

Based on the analysis above, new Finding of Fact No. 14.A is adopted:

The elements of Applicant's four counts of fourth degree sexual assault correlate to the duties and responsibilities of a life agent and a general lines agent.

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

The Wisconsin Class A misdemeanors of fourth degree sexual assault and pandering-solicitation do not directly relate to the duties and responsibilities of a general lines agent license. 28 Tex. Admin. Code § 1.502(h)(1).

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

The Wisconsin Class A misdemeanor of fourth degree sexual assault directly relates to the duties and responsibilities of a life agent license and a general lines agent license. Tex. Occ. Code § 53.022.

The administrative law judge's proposed Conclusion of Law No. 9 states:

The Department may not deny Applicant's license application because the Wisconsin offenses are not directly related to the duties and responsibilities of a general lines agent license. Tex. Occ. Code § 53.021(a).

Based on the analysis above, the administrative law judge's proposed Conclusion of Law No. 9 is changed to state:

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The Department may deny Applicant's license applications because the Wisconsin Class A misdemeanor of fourth degree sexual assault is directly related to the duties and responsibilities of a life agent license and a general lines agent license. Tex. Occ. Code §§ 53.021(a), .022.

The administrative law judge's proposed Conclusion of Law No. 11 states:

Applicant has shown that he is currently fit to hold a general lines agent license. Tex. Occ. Code §§ 53.022–.023; 28 Tex. Admin. Code § 1.502(h).

Based on the analysis above, the administrative law judge's proposed Conclusion of Law No. 11 is changed to state:

Applicant has shown that he is currently fit to hold a life agent license and a general lines agent license. Tex. Occ. Code §§ 53.022–.023; 28 Tex. Admin. Code § 1.502(h).

The administrative law judge's proposed Conclusion of Law No. 12 states:

The Department should approve Applicant's application for a license.

Based on the analysis above, the administrative law judge's proposed Conclusion of Law No. 12 is changed to state:

The Department should approve Applicant's license applications. However, the licenses should be subject to a two-year probated suspension.

Findings of Fact

1. Findings of Fact Nos. 3, 5–11 and 15–22 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:

On January 20, 2020, Carl W. Johnson (Applicant) applied for a non-resident life agent license and a non-resident general lines agent license with life, accident, health, and HMO qualifications to be issued by the Texas Department of Insurance (Department).
3. In place of Finding of Fact No. 2 as contained in Exhibit A, the following finding of fact is adopted:

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On May 15, 2020, the Department proposed to deny his applications based on his criminal history.

4. In place of Finding of Fact No. 4 as contained in Exhibit A, the following finding of fact is adopted:

On February 11, 2021, Department staff (Staff) issued a notice of hearing on the denial of his applications.

5. In place of Finding of Fact No. 12 as contained in Exhibit A, the following finding of fact is adopted:

Applicant's four counts of fourth degree sexual assault are related to the purposes for requiring an insurance license.

6. In place of Finding of Fact No. 13 as contained in Exhibit A, the following finding of fact is adopted:

Licensure as a life agent or a general lines agent would provide Applicant the opportunity to reoffend.

7. In place of Finding of Fact No. 14 as contained in Exhibit A, the following finding of fact is adopted:

Applicant's four counts of fourth degree sexual assault relate to his ability or capacity to perform the duties of a life agent and a general lines agent.

8. The following new Finding of Fact No. 14.A is adopted:

The elements of Applicant's four counts of fourth degree sexual assault correlate to the duties and responsibilities of a life agent and a general lines agent.

Conclusions of Law

1. Conclusions of Law Nos. 1–7, and 10 as contained in Exhibit A are adopted by TDI and incorporated by reference into this order.
2. In place of Conclusion of Law No. 8 as contained in Exhibit A, the following conclusion of law is adopted:

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The Wisconsin Class A misdemeanor of fourth degree sexual assault directly relates to the duties and responsibilities of a life agent license and a general lines agent license. Tex. Occ. Code § 53.022.

3. In place of Conclusion of Law No. 9 as contained in Exhibit A, the following conclusion of law is adopted:

The Department may deny Applicant's license applications because the Wisconsin Class A misdemeanor of fourth degree sexual assault is directly related to the duties and responsibilities of a life agent license and a general lines agent license. Tex. Occ. Code §§ 53.021(a), .022.

4. In place of Conclusion of Law No. 11 as contained in Exhibit A, the following conclusion of law is adopted:

Applicant has shown that he is currently fit to hold a life agent license and a general lines agent license. Tex. Occ. Code §§ 53.022–.023; 28 Tex. Admin. Code § 1.502(h).

5. In place of Conclusion of Law No. 12 as contained in Exhibit A, the following conclusion of law is adopted:

The Department should approve Applicant's license applications. However, the licenses should be subject to a two-year probated suspension.

Order

It is ordered that Carl W. Johnson's applications for a non-resident life agent license and a non-resident general lines agent license with a life, accident, health, and HMO qualification are approved.

It is further ordered that Mr. Johnson's licenses are suspended for two years. The suspension is probated, and during the period of probation, Mr. Johnson must comply with the terms and conditions in this order.

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

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

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

The reports must include the following information:

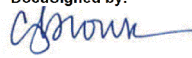
- a. Mr. Johnson's current mailing address and telephone number;
- b. the name, mailing address, and telephone number of Mr. Johnson's employer, and if Mr. Johnson is self-employed, a statement that he is self-employed and the name, mailing address, and telephone number of his business;
- c. the name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

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

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

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- d. any complaint made against Mr. Johnson concerning his performance as an agent, as well as a written explanation detailing the steps taken to resolve it.

DocuSigned by:

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Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

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James Person, General Counsel

DocuSigned by:

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Justin Beam, Assistant General Counsel



SOAH DOCKET NO. 454-21-1395.C

TEXAS DEPARTMENT OF
INSURANCE,
Petitioner

v.

CARL W. JOHNSON,
Applicant

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

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

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing was held on April 14, 2021, before ALJ Christiaan Siano of the State Office of Administrative Hearings (SOAH) via the Zoom videoconference platform. Staff was represented by Sydney Moore. Applicant represented himself. The hearing concluded the same day, and the record closed on April 28, 2021, on receipt of the transcript. Notice and jurisdiction are not disputed and are set out in the findings of fact and conclusions of law.

II. DISCUSSION

A. Background

Applicant is a resident of Wisconsin and holds insurance licenses in approximately 17 states.¹ He is married with two young daughters.² On August 9, 2017, he met

¹ TDI Ex. 1 at 15, 20.

² TDI Ex. 1 at 37; Applicant Ex. 4 at 2.

privately with a young girl he had contacted through a dating website.³ They had sex.⁴ Applicant, 39 years old at the time, believed he was entering into a consensual adult relationship.⁵ In fact, the girl was under the age of consent.⁶

Under Wisconsin law, Applicant was charged with one count of the Class C felony of sexual assault of a child under 16 years of age, four counts of the Class A misdemeanor of fourth degree sexual assault, and one count of the Class A misdemeanor pandering-solicitation.⁷

On May 31, 2019, Applicant pled guilty to the five Class A misdemeanors in Case No. 2017CF002708, in the Circuit Court Branch 14, in Dane County, Wisconsin.⁸ Applicant was sentenced to four years of probation, with the possibility of early termination after three years.⁹ Applicant was also assessed a total of \$1,215 in court costs and other charges, which he paid in full.¹⁰ The Class C felony charge of sexual assault of a child under 16 years of age was dismissed.¹¹

On January 20, 2020, Applicant applied for a general lines agency license with life, accident, health, and HMO qualification.¹² On May 15, 2020, Staff proposed to deny his application based on his criminal history.¹³ On June 15, 2020, Applicant requested a hearing on the proposed denial.¹⁴

³ TDI Ex. 1 at 40; Applicant Ex. 4 at 5.

⁴ Applicant Ex. 5 at 6.

⁵ TDI Ex. 1 at 26.

⁶ TDI Ex. 1 at 26.

⁷ TDI Ex. 1 at 31-32.

⁸ TDI Ex. 1 at 39.

⁹ TDI Ex. 1 at 39.

¹⁰ TDI Ex. 1 at 40.

¹¹ TDI Ex. 1 at 40.

¹² TDI Ex. 1 at 10.

¹³ TDI Ex. 1 at 4.

¹⁴ TDI Ex. 1 at 3.

B. Applicable Law

The Department may disqualify a person from receiving a license on the grounds that the person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation.¹⁵ Whether an offense directly relates to the occupation is determined by considering the following factors:

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.¹⁶

The Department has developed guidelines to determine an applicant's fitness for licensure.¹⁷ Under these guidelines, "an offense with the essential elements of . . . a felony offense of assault" under the Texas Penal Code, Chapter 22, is of such a serious nature that it is of prime importance in determining fitness for licensure.¹⁸

However, the Department must also consider the following factors to determine a person's fitness for licensure:

1. the extent and nature of the person's past criminal activity;
2. the age of the person when the crime was committed;

¹⁵ Tex. Occ. Code § 53.021(a)(1).

¹⁶ Tex. Occ. Code § 53.022; 28 Tex. Admin. Code § 1.502(h)(1).

¹⁷ Tex. Occ. Code § 53.025; 28 Tex. Admin. Code § 1.502(e).

¹⁸ 28 Tex. Admin. Code § 1.502(e)(4)(B).

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;¹⁹ and
7. proof furnished by the applicant that the applicant has:
 - a. maintained a record of steady employment;
 - 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.²⁰

The Department will deny a license application unless it finds these factors outweigh the seriousness of the criminal offense.²¹

At the hearing, Staff argued that Applicant's offenses also constituted a crime of moral turpitude.²² However, this was not alleged in its Notice of Hearing and will not be further addressed.

¹⁹ Tex. Occ. Code § 53.023(a). This section was amended effective September 1, 2019, to remove reference to the persons listed in 28 Texas Administrative Code § 1.502(h)(2)(F)(i)-(iii). The Administrative Law Judge views the statute as controlling.

²⁰ Tex. Occ. Code § 53.023; 28 Tex. Admin. Code § 1.502(h)(2).

²¹ 28 Tex. Admin. Code § 1.502(f).

²² 28 Tex. Admin. Code § 1.502(e)(3).

Staff has the burden of producing evidence to show that Applicant's application should be denied because he has a criminal history that warrants denial of the registration.²³ Once Staff produces such evidence, the burden of production shifts to Applicant to show that he is fit for registration despite his criminal history.²⁴

C. Evidence

Staff offered one exhibit, which was admitted into evidence, and the testimony of Lewis Weldon Wright, IV, an Administrative Review Liaison for the Department. Applicant testified on his own behalf and was allowed to submit post-hearing exhibits. Applicant's post-hearing submission included (1) a letter from the Wisconsin Department of Corrections, (2) two letters from co-workers, (3) a letter from a therapist, (4) a psychosexual evaluation, and (5) a transcript from his sentencing hearing. No objections were filed. Applicant's submissions have been admitted as Applicant exhibits 1, 2, 3, 4, and 5.

1. Testimony of Mr. Wright

Mr. Wright has been employed with the Department for 13 years.²⁵ As part of his duties, he reviews applications, such as Applicant's, that contain criminal history and require more investigation prior to making a licensing determination.²⁶

Following Department guidelines, Mr. Wright considered Applicant's guilty plea to four counts of sexual assault and one count of pander-solicitation;²⁷ his age at the time of the offense;²⁸ and that his four years of probation, which will end in 2023, is ongoing.²⁹ Regarding the nature

²³ 1 Tex. Admin. Code § 155.427.

²⁴ 28 Tex. Admin. Code § 1.502(h)(3).

²⁵ Tr. at 10.

²⁶ Tr. at 19.

²⁷ Tr. at 24; TDI Ex. 1 at 39.

²⁸ Tr. at 24.

²⁹ Tr. at 25, 28-29; TDI Ex. 1 at 39.

and severity of the crime, Mr. Wright also considered the criminal complaint.³⁰ Based on this, Mr. Wright concluded that the conduct alleged, and to which Applicant pled guilty, meets the essential elements of Texas Penal Code section 22.011.³¹ Of particular concern to Mr. Wright is the age of the victim, that the assault had an element of force, and that Applicant did not acknowledge the severity of the offense.³² Mr. Wright opined that the license would allow Applicant to reoffend because social media, often used in today's insurance industry, was used in the commission of his offense.³³

Applicant's resume shows steady employment at Park Avenue Securities since 2001.³⁴ However, Mr. Wright noted that Applicant provided no other evidence of rehabilitation relating to the offense, either required or voluntary.³⁵

The application included three letters of recommendation. Mark A. Smith is president of Third Coast Advisors (registered agent of Park Avenue Securities) and Applicant's supervisor of many years. In a letter dated February 26, 2020, Mr. Smith describes Applicant as "committed," "a leader," and "sought out."³⁶ Daniel T. Melka is Chief Executive Officer of Third Coast Advisors and Applicant's supervisor of 15 years. In a letter dated February 26, 2020, Mr. Melka states that he is confident in Applicant's ability to advise and service his clients in a professional manner.³⁷ Karen Johnson, Applicant's wife and colleague,³⁸ describes Applicant as professionally trusted, reliable, admirable to his clients, invested in staying on top of his industry, and mentoring newer agents.³⁹ Mr. Wright found Applicant's good professional reputation significant, but gave the

³⁰ Tr. at 23; TDI Ex. 1 at 36.

³¹ Tr. at 25-26.

³² Tr. at 26-27, 32; TDI Ex. 1 at 27, 36-38.

³³ Tr. at 28.

³⁴ TDI Ex. 1 at 29.

³⁵ Tr. at 31.

³⁶ TDI Ex. 1 at 25.

³⁷ TDI Ex. 1 at 29.

³⁸ Applicant's wife works with him. Applicant Ex. 4 at 2.

³⁹ TDI Ex. 1 at 30.

letters less value because none mention his criminal history, and none are from law enforcement or probation officers.⁴⁰

Based on the foregoing, Mr. Wright opined that Applicant should not be given a license.⁴¹ Though dismissed, Mr. Wright considered the felony charge in reaching his opinion.⁴² He stated that in assessing the nature and severity of the offense, he considers the information underlying the offense.⁴³ However, Mr. Wright testified that his opinion would be no different if the felony charge were disregarded because a Class A misdemeanor is nevertheless a serious crime in Texas.⁴⁴ Thus, in his opinion, the counts to which Applicant pled guilty alone were adequate to arrive at his recommendation.⁴⁵

2. Testimony of Applicant

Applicant admitted that he made a mistake but testified that he did not intend to commit any criminal activity.⁴⁶ In his application, he stated that he did not believe he did anything wrong other than being a bad judge of age, and would never knowingly have done what he did.⁴⁷ He testified that parts of the criminal complaint that Mr. Wright considered are not true, which is reflective of the charges he pled guilty to and the one that was dismissed.⁴⁸ He testified that he does not believe that his crime justifies barring him from a Texas license.⁴⁹ He is now 42 years old and has no criminal history apart from a speeding ticket when a teenager.⁵⁰ He further testified

⁴⁰ Tr. at 29-30.

⁴¹ Tr. at 32.

⁴² Tr. at 35.

⁴³ Tr. at 35.

⁴⁴ Tr. at 26.

⁴⁵ Tr. at 26.

⁴⁶ Tr. at 38-39.

⁴⁷ TDI Ex. 1 at 26.

⁴⁸ Tr. at 38.

⁴⁹ Tr. at 38-39.

⁵⁰ Tr. at 38.

that he has been in the insurance industry for over 20 years and, despite many clients, never had a complaint.⁵¹

Applicant's post-hearing submission included letters of recommendation from the same Mark A. Smith and Daniel T. Melka, updated April 14, 2021, identical to the original versions except that they express full awareness of his criminal conviction and confidence in his ability to perform his professional duties.⁵²

Applicant also provided a letter dated April 15, 2021, from his Wisconsin probation officer, stating that Applicant has complied with all terms of his community supervision. Additionally, despite being evaluated for treatment as a sex offender, none was recommended and, as a result, his supervision level was lowered.⁵³

A letter dated April 16, 2021, from Judy Roethe, his therapist, states that Applicant has great remorse for what he has done and works hard to become a better person.⁵⁴

Finally, Applicant submitted a psychosexual evaluation report by Nic Yackovich, Ph.D, Licensed Psychologist.⁵⁵ The report's purpose is to "assess sexual dysfunction, risk for future sexual misbehavior, and establish a mental health profile."⁵⁶ The report shows that Applicant had been married at the time for 12 years and had two young daughters, with whom he is actively involved, including dedicated weekends and basketball team coaching.⁵⁷ After memorializing Applicant's statements regarding his domestic life, and his personal, sexual, and professional development, the report concludes that Applicant "presents as a low risk for future sexual

⁵¹ Tr. at 38.

⁵² Applicant Ex. 2.

⁵³ Applicant Ex. 1.

⁵⁴ Applicant Ex. 3.

⁵⁵ Applicant Ex. 4.

⁵⁶ Applicant Ex. 4 at 1.

⁵⁷ Applicant Ex. 4 at 2.

offending behavior” and gives Applicant a strong prognosis for “future prosocial functioning.”⁵⁸ The report further concludes that sanctions used for traditional sexual offenses, such as those involving sexual exploitation, would be “counter therapeutic and would do very little to preserve community safety.”⁵⁹ Based on this report, Applicant testified that no rehabilitation was needed or ordered.⁶⁰ He further testified that he and his wife are in marriage counseling.⁶¹

On cross examination, Applicant admitted that Kansas and Indiana denied him an insurance license because of this criminal history but he stated many other states had taken no action against his license.⁶²

D. Analysis

Staff alleges that Applicant’s application should be denied because his conviction on four counts of sexual assault directly relates to the duties and responsibilities of the licensed occupation, and is of such a serious nature as to be of prime importance in determining fitness for licensure.⁶³ For the reasons set out below, the ALJ concludes that Staff has failed to meet its burden of proof.

As a preliminary matter, it must be determined the extent to which the statements contained in the criminal complaint should be regarded. Mr. Wright testified that he considered these statements in assessing the underlying circumstances of a crime. However, the ALJ gives little weight to the statements in the charging instrument. Those statements are simply allegations of facts to be proven.⁶⁴ Ultimately, the prosecution abandoned the one felony charge, further calling

⁵⁸ Applicant Ex. 4 at 8.

⁵⁹ Applicant Ex. 4 at 8.

⁶⁰ Tr. at 39.

⁶¹ Tr. at 40.

⁶² Tr. at 42.

⁶³ Staff did not allege, or argue, that the one count of solicitation-pandering played any role in its analysis.

⁶⁴ *Myers v. Continental Panhandle Lines*, 278 S.W.2d 365, 368 (Tex. Civ. App.—Amarillo 1954, no writ).

into question their probative value.⁶⁵ Therefore, the ALJ gives more weight to Applicant's sworn testimony.

The analysis now turns to whether Applicant committed an offense of prime importance, as Staff alleges. The ALJ concludes he did not.

Applicant was convicted of the Class A misdemeanor of fourth degree sexual assault under Wisconsin law. The applicable Wisconsin statute provides that "whoever has sexual contact with a person without the consent of that person is guilty of a Class A misdemeanor."⁶⁶ "Sexual contact" is defined to include "intentional touching by the defendant . . . by the use of any body part or object, of the complainant's intimate parts."⁶⁷ "Intimate parts" means the breast, buttock, anus, groin, scrotum, penis, vagina or pubic mound of a human being.⁶⁸ For purposes of this analysis, the essential elements of the Wisconsin offense are (1) intentional (2) touching (3) of an intimate part (4) without consent.

To be a crime of prime importance, as Staff alleges, Applicant's offense would have to have the essential elements of the felony offense of assault, as described by Penal Code, Chapter 22.⁶⁹ Under the Texas Penal Code, a person commits a felony offense of sexual assault if the person intentionally or knowingly causes the penetration of the anus, sexual organ, or mouth of another person by any means, without that person's consent.⁷⁰ The essential elements of the Texas felony offense are (1) intentional or knowing (2) penetration (3) of the anus, sexual organ, or mouth (4) without consent.

⁶⁵ The transcript of the sentencing hearing indicates that the charging document conflated two separate perpetrators on the victim, one used force; the other – Applicant – did not. Applicant Ex. 5 at 5-7. The judge also expressed concern that that simply reading the complaint could mislead one to believe this was a violent sexual assault. *Id.* at 12.

⁶⁶ Wis. Stat. § 940.225(3m).

⁶⁷ Wis. Stat. § 940.225(5)(b)(1)(a).

⁶⁸ Wis. Stat. § 939.22(19).

⁶⁹ 28 Tex. Admin. Code § 1.502(e)(4)(B).

⁷⁰ Tex. Penal Code § 22.011(a)(1)(A)-(B), (f).

Therefore, the essential element of penetration is missing from the Wisconsin Class A misdemeanor under which Applicant was convicted. Instead, Applicant's Wisconsin Class A misdemeanor is more aligned with the Texas Class A misdemeanor of indecent assault, committed if the person "touches the anus, breast, or any part of the genitals of another person;" "without the other person's consent."⁷¹ The ALJ therefore concludes that Applicant's crime does not have the essential elements of a felony offense of sexual assault under Texas law and therefore, is not a crime of prime importance under the Department guidelines.

The analysis next turns to considering the factors listed in Texas Occupations Code §§ 53.022 and 53.023, set out above, in determining whether to grant Applicant's license application.⁷² The first question is whether Applicant's crime directly relates to the duties and responsibilities of a licensed insurance agent.⁷³ The ALJ concludes that Applicant's Class A misdemeanors are not directly related to the duties and responsibilities of an insurance agent.

Applicant's Class A misdemeanor of sexual assault, akin to the Texas Class A misdemeanor of indecent assault, is serious; however, there is no evidence of predation or exploitation. The evidence shows that, after meeting online, Applicant met the victim in person once. The evidence further shows that the contact was in fact, if not legally, a consensual private matter.⁷⁴ There is no evidence that a consensual, non-predatory offense, relates to the purposes for requiring a license to sell insurance products. The purpose of a license is to ensure that the public's trust in and reliance upon license holders is not misplaced due to the complex and varied nature of the insurance industry.⁷⁵ No evidence supports finding that Applicant's crime in any way affects the public trust and reliance on Applicant in the licensed profession. Rather, the preponderance of the evidence shows Applicant is trusted and relied upon by his clients and colleagues, and that he

⁷¹ Tex. Penal Code § 22.012(a)(1), (b).

⁷² 28 Tex. Admin. Code § 1.502(h).

⁷³ 28 Tex. Admin. Code § 1.502(f).

⁷⁴ At Applicant's sentencing hearing, the judge expressed concern that the complaint might mislead one to believe that this was a violent sexual assault when it "may have been more of a nonconsensual by law but otherwise consensual act." Applicant Ex. 5 at 12.

⁷⁵ 28 Tex. Admin. Code § 1.502(a).

continues to be licensed in many jurisdictions, notwithstanding his conviction. Thus, the ALJ finds that Applicant's crime does not relate to the purposes for requiring a license to engage in the insurance industry.

The evidence further fails to demonstrate that Applicant's employment in the insurance industry would create a situation in which Applicant has an opportunity to repeat sexual assault. Applicant has been in the insurance industry for 20 years and has no other criminal history or professional complaints. Applicant continues to be licensed in many states, including his home state. Approving Applicant's licensure in Texas would therefore have no effect on his ability to repeat the prohibited conduct he does not already have.⁷⁶ Thus, Applicant's opportunity to commit sexual assault is in no way enhanced by licensure in the insurance industry.

Finally, there is no evidence that the crime relates to Applicant's ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation. Applicant's tenure and stature in the insurance industry show that he is fully capable of carrying out his professional duties and responsibilities notwithstanding his conviction. This is further supported by the opinion of his colleagues, including his wife, who describe Applicant as trusted and relied upon to advise and service his client's in a professional manner.

Based on the foregoing analysis, the ALJ concludes that Applicant's offense does not directly relate to the duties and responsibilities of the insurance industry. Accordingly, Staff has failed to meet its burden of proof to show that Applicant's application should be denied based on his criminal history. Nevertheless, the ALJ offers the following analysis regarding the Applicant's fitness.⁷⁷

⁷⁶ The concern that licensure would give Applicant the opportunity to reoffend because of his access to social media is speculative and not persuasive. Applicant met the victim through a dating website, having no relationship to his professional employment. Moreover, the terms of Applicant's probation forbid him from accessing social media websites or the internet without approval. TDI Ex. 1 at 34 (SP 002, SSO 003). Thus, at least until 2022, such an eventuality would be a violation of his community supervision.

⁷⁷ 28 Tex. Admin. Code § 1.502(h)(2). Although Texas Occupations Code § 53.023 only requires additional analysis if the crime directly relates to the duties and responsibilities of a licensed occupation, the Department's rules require the analysis regardless of whether the crime directly relates to the occupation. *Compare* Tex. Occ. Code § 53.023(a) with 28 Tex. Admin. Code § 1.502(h)(2).

Weighing against fitness is that Applicant was 39 years old at the time of the crime, and, at the time of the hearing, approximately three years had passed since his criminal offense, for which he is still on probation. Therefore, the offense is recent and was not a youthful indiscretion. However, the following weigh in the Applicant's favor. The evidence established that the incident was Applicant's only criminal activity. Applicant's work activity before and after his criminal activity is an uninterrupted 20 years of employment in the insurance industry. His colleagues speak highly of him. He has no criminal history before the crime at issue, and his probation officer stated that he has been in full compliance with the terms of his community supervision. Accordingly, his conduct and work activity before and after the criminal activity can be described as exemplary. Although there is no evidence that Applicant was incarcerated,⁷⁸ or that any rehabilitative measures were ordered, the evidence shows that Applicant presents a low risk of future sexual offense and has a strong prognosis for prosocial functioning. As previously noted, Applicant's community supervision level was lowered, and he is in marriage counseling with his wife. Applicant is engaged in personal therapy and is remorseful for his actions. The preponderance of the evidence shows that Applicant is rehabilitated and has made sufficient rehabilitative efforts. Applicant's colleagues, therapist, and parole officer all describe Applicant as capable to perform the duties required by the license and show that Applicant is well on his way to recovery. Finally, the evidence shows that Applicant has maintained a record of steady employment, supports his two daughters, maintained a record of good conduct, and paid all outstanding costs and fees associated with his conviction. The evidence of Applicant's fitness heavily outweighs the seriousness of the offense in favor of finding Applicant fit to discharge the duties and responsibilities of the licensed occupation.

For all of these reasons, the ALJ concludes that Applicant's application for a general lines agent license should be approved. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

⁷⁸ This factor requires consideration of "the person's rehabilitation or rehabilitative effort *while incarcerated* or *after release*." 28 Tex. Admin. Code § 1.502(h)(2)(E); Tex. Occ. Code § 53.023(a)(5) (emphasis added).

III. FINDINGS OF FACT

1. On January 20, 2020, Carl W. Johnson (Applicant) applied for a general lines agency license with life, accident, health, and HMO qualifications to be issued by the Texas Department of Insurance (Department).
2. On May 15, 2020, the Department proposed to deny his application based on his criminal history.
3. On June 15, 2020, Applicant requested a hearing.
4. On February 11, 2021, Department staff (Staff) issued a notice of hearing on the denial of his application.
5. The date and time for the hearing were set in Order No. 1, issued by the Administrative Law Judge (ALJ).
6. The amended notice of hearing, together with 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.
7. The hearing was held before ALJ Christiaan Siano of the State Office of Administrative Hearings (SOAH) by Zoom videoconference on April 14, 2021. Staff was represented by staff attorney Sydney Moore. Applicant represented himself. The hearing concluded that day, and the record closed when the transcripts were received by SOAH on April 28, 2021.
8. A resident of Wisconsin, Applicant is married with two young daughters.
9. On May 31, 2019, Applicant pled guilty to four counts of the Class A misdemeanor of fourth degree sexual assault, and one count of the Class A misdemeanor of pandering-solicitation, in Case No. 2017CF002708, in the Circuit Court Branch 14, in Dane County, Wisconsin. The offenses were committed on August 9, 2017.
10. Applicant was sentenced to four years of probation, with the possibility of early termination after three years, and assessed a total of \$1,215 in court costs and other charges. Applicant is still serving probation and has complied with all terms of his community supervision, and he paid all court costs.
11. Applicant's crimes are serious but not predatory or exploitative.
12. Applicant's crimes do not relate closely to the purposes for requiring an insurance license.

13. Licensure as a general lines agent would not provide Applicant the opportunity to reoffend beyond his current opportunities.
14. Applicant's crime does not relate to his ability, capacity, or fitness to perform the duties of a general lines agent.
15. Applicant has no criminal history other than his convictions for the Class A misdemeanors.
16. Applicant was 39 years old at the time of the offense.
17. Approximately three years have passed since his only criminal activity.
18. Applicant has worked in the insurance financial industry for 20 years, is licensed in approximately 17 states, and is highly regarded by his colleagues.
19. Applicant was not required to receive treatment as a sexual offender, and, according to a licensed psychologist, such treatment would be counter-therapeutic. He received a strong diagnosis for prosocial behavior.
20. There is no evidence Applicant was incarcerated; however, Applicant has sufficiently demonstrated his rehabilitation given that no rehabilitative measures were ordered, Applicant presents a low risk of future sexual offense, has a strong prognosis for prosocial functioning, had his community supervision level lowered, is in marriage counseling with his wife, is engaged in personal therapy, and is remorseful for his actions.
21. Applicant complied with the terms of his probation, supports his dependents, maintains a record of good conduct, and has paid all court costs and associated expenses.
22. The mitigating factors outweigh the serious nature of his criminal offense.

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. Applicant received timely and sufficient notice of the hearing. Tex. Gov't Code §§ 2001.051-.052.; Tex. Ins. Code § 4005.104(b).
4. 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 of assault such as sexual assault. 28 Tex. Admin. Code § 1.502(d), (e)(4)(B); Tex. Penal Code § 22.011.
5. A Wisconsin Class A misdemeanor offense of sexual assault is not an offense with the essential elements of the Texas felony of sexual assault. *Compare* Wis. Stat. § 940.225(3m) *with* Tex. Penal Code § 22.011.
 6. Applicant has not committed a crime of prime importance. 28 Tex. Admin. Code § 1.502(e).
 7. The Department may refuse to issue an original license if the Department determines that the applicant has committed a misdemeanor that directly relates to the duties and responsibilities of the licensed occupation. 28 Tex. Admin. Code § 1.502(d).
 8. The Wisconsin Class A misdemeanors of fourth degree sexual assault and pandering-solicitation do not directly relate to the duties and responsibilities of a general lines agent license. 28 Tex. Admin. Code § 1.502(h)(1).
 9. The Department may not deny Applicant's license application because the Wisconsin offenses are not directly related to the duties and responsibilities of a general lines agent license. Tex. Occ. Code § 53.021(a).
 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 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 Tex. Admin. Code § 1.502(f), (h).
 11. Applicant has shown that he is currently fit to hold a general lines agent license. Tex. Occ. Code §§ 53.022-.023; 28 Tex. Admin. Code § 1.502(h).
 12. The Department should approve Applicant's application for a license.

SIGNED June 15, 2021.


CHRISTIAAN SIANO
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

2022-7232

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454-21-1395
7/22/2021 10:55 AM
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Carol Hale, CLERK



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454-21-1395
07/22/2021 11:13 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge



July 22, 2021

Kent Sullivan/Chief Clerk
Commissioner of Insurance
Texas Department of Insurance
333 Guadalupe, Tower 1, 13th Floor, Mail Code 113-2A
Austin, Texas 78714

VIA E-FILE TEXAS

**RE: Docket No. 454-21-1395.C; Texas Department of Insurance
v. Carl W. Johnson**

Dear Commissioner Sullivan:

I issued a proposal for decision (PFD) in this matter on June 15, 2021. On June 29, 2021, the Texas Department of Insurance Staff filed exceptions. The exceptions contend that the PFD erred by failing to find that the applicant had committed a crime that directly relates to the duties and responsibilities of the licensed occupation under Chapter 53 of the Texas Occupations Code and Commission rules.¹ While recognizing that the applicant has not been *convicted* of such a felony, Staff argues that the evidence shows that he nevertheless *committed* such an offense. Specifically, Staff contends that applicant has “committed an offense” with the essential elements of a felony sexual assault under Texas Penal Code § 22.011.

Chapter 53, Texas Occupations Code, is titled Consequences of Criminal *Conviction*. It is intended to “enhance opportunities for a person to obtain gainful employment after the person has: (1) been *convicted* of an offense; and (2) discharged the sentence for the offense.”² The chapter “shall be liberally construed” to carry out this intent.³ The chapter allows a person to be considered convicted regardless of whether the

¹ Tex. Occ. Code §§ 53.021(a)(1), .025, and 28 Texas Administrative Code § 1.502(e)(4)(B).

² Tex. Occ. Code § 53.003(a)(emphasis added).

³ Tex. Occ. Code § 53.003(b).



State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

charges were dismissed, under circumstances, Staff does not argue apply here.⁴ The chapter does not otherwise authorize the administrative law judge to make an independent finding of a crime, and doing so would not carry out its intended purpose.

Pages 9 and 10, the PFD explains that the crimes for which applicant was convicted do not support a finding that they directly relate to the duties and responsibilities of a licensed insurance agent. The PFD goes on to explain that the evidence of applicant's fitness outweighs the seriousness of the crime.

I recommend no changes to the PFD and it is ready for your consideration.

Sincerely,


Christiaan Siano
Administrative Law Judge

CS/nm
Enclosure

cc: Sydney Moore, Staff Attorney, Texas Department of Insurance, 333 Guadalupe, Tower 1, 13th Floor,
Austin, Texas 78701 - **VIA E-FILE TEXAS**
Carl W. Johnson [REDACTED] Blue Mounds, WI 53517 - **VIA E-FILE TEXAS**

⁴ Tex. Occ. Code § 53.021(d).