

No. 2019-6080

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

Date: SEP 09 2019

Subject Considered:

Texas Department of Insurance

v.

Dennis Tod Palmer

SOAH Docket No. 454-19-3020.C

General remarks and official action taken:

The subject of this order is the consideration of Dennis Tod Palmer's application for a general lines agent license with a property and casualty qualification.

Background

After proper notice was given, this 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. Palmer's application for a general lines agent license with a property and casualty qualification. A copy of the proposal for decision is attached as Exhibit A.

TDI adopts the administrative law judge's proposed findings of fact and conclusions of law with changes to the findings and conclusions as described in this order. TDI adopts the administrative law judge's recommendation that Mr. Palmer's application for licensure be denied.

Changes to Proposed Findings of Fact and Conclusions of Law

The legal authority for changes to the proposal for decision made in this order is TEX. GOV'T CODE § 2001.058(e)(1).

TEX. INS. CODE § 4005.101(b)(3) and (5)

TEX. INS. CODE § 4005.101 provides grounds on which TDI may deny a license application. Under paragraph (b)(3) of the section, TDI may deny a license application if it determines the license holder "has obtained or attempted to obtain a license by fraud or misrepresentation," and under paragraph (b)(5) TDI may deny a license application if it determines the license holder "has engaged in fraudulent or dishonest acts or practices." TDI sought to deny Mr. Palmer's application under both TEX. INS. CODE § 4005.101(b)(3) and (5) based on his failure to fully disclose the scope of his criminal history to the TDI when applying for licensure.¹ Specifically, Mr. Palmer informed TDI that he pleaded guilty to a charge of Child Abuse and Neglect Involving Sexual Exploitation and/or Abuse based solely on his admission that he allowed a child to view pornographic material. However, Mr. Palmer failed to disclose to the Department that his conviction was also based on allegations that he had a sexual encounter with the child.

The administrative law judge ultimately found that Mr. Palmer's application should not be denied under TEX. INS. CODE § 4005.101(b)(3) or (5) because the "evidence is insufficient to establish that Mr. Palmer intentionally misled the Department about the scope of his conviction[.]" However, the administrative law judge failed to recognize that a fraudulent act may be committed by someone acting intentionally or recklessly. *See Meyer v. Tex. Dept. of Ins.*, No. 03-10-00642-CV, 2011 WL 5865240 (Tex. App.—Austin 2011, pet. denied) (mem. op.); *see also Johnson & Higgins of Tex., Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 527 (Tex. 1998) (An individual commits fraud recklessly when he does not possess sufficient information upon which to base a representation or does not know whether a statement he makes is true, but he makes the statement anyway). By failing to consider whether Mr. Palmer acted recklessly, the administrative law judge misapplied the law. But because the administrative law judge concluded that

¹ TDI also sought denial under TEX. INS. CODE § 4005.101(b)(8), on the basis that Mr. Palmer has been convicted of a felony.

Mr. Palmer's application should be denied due to his felony conviction and failure to show his fitness to be licensed, it is not necessary to conduct that inquiry now.²

The findings of fact and conclusions of law based on the administrative law judge's improper interpretation and application of TEX. INS. CODE § 4005.101 are changed as described in this order.

Changes to Proposed Findings of Facts

As submitted in the proposal for decision, proposed findings of fact nos. 24 and 25 state:

24. By telling the Department that he had pleaded guilty only to exposing a child to pornography, Mr. Palmer spoke inaccurately but did not deliberately misrepresent the facts.

25. Mr. Palmer did not attempt to obtain a license through fraud or misrepresentation.

The Commissioner does not adopt proposed findings of fact nos. 24 and 25 in this order, because the administrative law judge misapplied the law as previously described in this order.

Changes to Proposed Conclusions of Law

As submitted in the proposal for decision, proposed conclusion of law no. 7 states:

² The administrative law judge also appears to have concluded that a misrepresentation under TEX. INS. CODE § 4005.101(b)(3) requires an intent to deceive. There is support for such a finding. *See Avery v. State*, 341 S.W.3d 490, 498 (Tex. App.—Corpus Christi 2011), *aff'd*, 359 S.W.3d 230 (Tex. Crim. App. 2012) (citing Black's Law Dictionary's definition of "misrepresentation"). However, in other contexts, an intent to deceive is not a requisite element of misrepresentation. *See Larsen v. Carlene Langford & Assocs., Inc.*, 41 S.W.3d 245, 250 (Tex. App.—Waco 2011, pet. denied) (discussing common law tort of negligent misrepresentation). Nevertheless, because Mr. Palmer's application is denied on other grounds, it is not necessary to conclusively determine the elements of misrepresentation under TEX. INS. CODE § 4005.101(b)(3) in this order.

7. Mr. Palmer's application is not subject to denial on the grounds that he attempted to obtain it by fraud or misrepresentation or for engaging in fraudulent or dishonest acts or practices. Tex. Ins. Code § 4005.101(b)(3), (5).

The Commissioner does not adopt proposed conclusion of law no. 7 in this order, because the administrative law judge misapplied the law as previously described in this order.

Findings of Fact

Findings of fact nos. 1 through 23 as contained in Exhibit A are adopted by the Texas Department of Insurance and incorporated by reference into this order.

Conclusions of Law

Conclusions of law nos. 1 through 6 and 8 as contained in Exhibit A are adopted by the Texas Department of Insurance and incorporated by reference into this order.

Order

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



Kent C. Sullivan
Commissioner of Insurance

2019- 6080

COMMISSIONER'S ORDER
TDI v. Dennis Tod Palmer
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Recommended and reviewed by:



James Person, General Counsel



Justin Beam, Assistant General Counsel



TEXAS DEPARTMENT
OF INSURANCE,
Petitioner

v.

DENNIS TOD PALMER,
Applicant

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Dennis Tod Palmer applied to the Texas Department of Insurance (Department) for a general lines agent license with a property and casualty qualification. The Department’s staff (Staff) proposes denial of the application based on Mr. Palmer’s criminal history and an alleged failure to fully disclose that history. After considering the evidence and the law, the Administrative Law Judge (ALJ) recommends the Department deny Mr. Palmer’s license application.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this case was held on April 3, 2019, before ALJ Shannon Kilgore at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff was represented by staff attorney Stephanie Maugham Andrews. Mr. Palmer was represented by attorney Anthony Icenogle. The hearing concluded the same day. The record closed on April 25, 2019, when the hearing transcript was delivered to SOAH. Notice and jurisdiction were not disputed and are set out in the Findings of Fact and Conclusions of Law below.

II. DISCUSSION

A. Mr. Palmer’s Conviction

On August 26, 2004, in *State of Nevada v. Dennis Tod Palmer*, Case No. C203982 in the District Court of Clark County, Nevada, Mr. Palmer pleaded guilty¹ to Child Abuse and Neglect Involving Sexual

¹ Staff Ex. 6 at 129-36.

Exploitation and/or Abuse, a felony.² Mr. Palmer was convicted and sentenced to serve 24 to 60 months in the Nevada Department of Corrections, but this sentence was suspended, and Mr. Palmer was placed on probation for five years. He was also sentenced to “lifetime supervision” that, among other things, prohibited out-of-state travel.³

The exact scope of Mr. Palmer’s conviction—whether he pleaded guilty to just one count brought against him—is a point of dispute between the parties. Having examined the criminal court documents in evidence, the ALJ determines that Mr. Palmer’s plea was not limited to just one count. Part of the confusion seems to have arisen from the fact that a case—Case No. 04FN0277X—was first brought against Mr. Palmer in Justice Court, North Las Vegas Township, Clark County, Nevada (Justice Court case).⁴ However, as stated above, Mr. Palmer’s guilty plea and conviction were in Case No. C203982 in the District Court of Clark County, Nevada (District Court case).

The complaint and amended complaint in the Justice Court Case set out enumerated counts (e.g., “Count 1,” “Count 2”).⁵ No guilty plea or judgment of conviction from the Justice Court case is in evidence. The matter appears to have been transferred to the District Court. In the District Court case, the information, which was filed August 17, 2004, did not include separately enumerated counts. It alleged that, on or between January 1, 2002, and December 10, 2003, Mr. Palmer knowingly neglected, caused, or permitted an approximately 16-year-old youth⁶ to suffer unjustifiable physical pain or mental suffering or be placed in a situation where he may have suffered unjustifiable physical pain or mental suffering as a result of sexual exploitation. The information went on to specifically allege that Mr. Palmer had forced, allowed, or encouraged the youth to view pornography and/or committed sex acts with the youth.⁷

² See NRS 200.508 (Nevada statute concerning abuse, neglect, or endangerment of a child; sexual abuse and sexual exploitation included).

³ Staff Ex. 6 at 140-42; Tr. at 38.

⁴ Staff Ex. 3 at 24-26; Staff Ex. 4 at 78-79.

⁵ Staff Ex. 3 at 24-26; Staff Ex. 4 at 78-79.

⁶ The evidence reflects that the child at issue was born on September 2, 1987. Staff Ex. 4 at 81.

⁷ Staff Ex. 5 at 91-92.

Mr. Palmer's guilty plea stated, "I hereby plead guilty to CHILD ABUSE AND NEGLECT INVOLVING SEXUAL EXPLOITATION AND/OR ABUSE (Felony – NRS 200.508), as more fully alleged in the charging document attached hereto as Exhibit '1'."⁸ Exhibit 1 to the guilty plea is the District Court case information without enumerated counts but with allegations that Mr. Palmer had forced, allowed, or encouraged the youth to view pornography and/or committed sex acts with the youth.⁹

At the hearing in the instant case, Mr. Palmer pointed to a "Register of Actions" from the District Court case, which appears to be a summary of all the events and orders in the case. The "minutes" for Mr. Palmer's sentencing on October 21, 2004, reflect that he was "adjudged guilty of Count 1."¹⁰ Count 1 of the amended complaint in the Justice Court case was the allegation that Mr. Palmer forced, allowed, or encouraged the child to view pornography.¹¹ Mr. Palmer contends that he pleaded guilty just to the first count, involving only pornography, and made no plea with respect to sexual contact allegations.

The ALJ is unpersuaded by Mr. Palmer's argument. The controlling documents are not pages of an unsigned "register" of events and orders in a case, but the events and orders themselves. The guilty plea signed by Mr. Palmer unambiguously and without qualification reflects his plea to the crime "as alleged" in the information, which does not break down the allegations into discrete counts. Minutes, created by an unknown person and not signed by a judge, cannot change the plea earlier entered by Mr. Palmer in a written document that he, his attorney, and the district attorney all signed.¹² Further, the August 26, 2004 Register of Actions entry for the guilty plea (as opposed to the later October 21, 2004 entry for the sentencing) makes no mention of any particular count.¹³ The record strongly indicates that Mr. Palmer pleaded to, and was adjudged guilty of, all the allegations as set out in the information. That said, while the information spoke of both exposing the youth to pornography and sexual contact, it employed an

⁸ Staff Ex. 6 at 129 (capitalization in original).

⁹ Staff Ex. 6 at 135-36.

¹⁰ Staff Ex. 7 at 173.

¹¹ Staff Ex. 3 at 24. Count 1 of the original complaint in the Justice Court case was sexual assault of a minor. Staff Ex. 4 at 78.

¹² Staff Ex. 5 at 97-98.

¹³ Staff Ex. 7 at 165.

“and/or” construction. In effect, then, Mr. Palmer pleaded guilty to either exposing the youth to pornography, or having sexual contact with him, or both.

Mr. Palmer was honorably discharged from probation on August 29, 2008.¹⁴ He was released from lifetime supervision on April 13, 2016.¹⁵

B. Mr. Palmer’s Application

On or about June 29, 2017, Mr. Palmer applied to the Department for a general lines agent license with a property and casualty qualification.¹⁶ He responded affirmatively to the question, “Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?”¹⁷

C. Applicable Law

Texas Insurance Code § 4005.101(b)(8) provides that the Department may deny a license application if the applicant has been convicted of a felony.¹⁸ In determining whether to grant or deny the application, the Department will consider the factors in Texas Occupations Code §§ 53.022 and 53.023.¹⁹ The § 53.022 factors are as follows:

¹⁴ Staff Ex. 3 at 30.

¹⁵ Staff Ex. 6 at 144-45.

¹⁶ Staff Ex. 3 at 63.

¹⁷ Staff Ex. 3 at 65.

¹⁸ In addition, Texas Occupations Code § 53.021(a)(4) allows a licensing agency to deny an application if an applicant has been convicted of a sexually violent offense, as defined by Article 62.001, Texas Code of Criminal Procedure, which includes the offense of indecency with a child. Although Staff, in its Notice of Hearing, cited to this statutory provision in a paragraph titled, “Texas Criminal Equivalent,” Staff did not plead this provision as a basis for denial in this case. The failure to plead the provision as a basis for denial was raised by Mr. Palmer at the hearing. Tr. at 198. Accordingly, the ALJ does not consider § 53.021(a)(4) in this case.

¹⁹ 28 Tex. Admin. Code § 1.502(h).

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; 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.²⁰

The § 53.023 factors are:

1. the extent and nature of the person's past criminal activity;
2. the age of the person when the crime was committed;
3. the amount of time that has elapsed since the person's last criminal activity;
4. the conduct and work activity of the person prior to and following the criminal activity;
5. evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;
6. other evidence of the person's present fitness, including letters of recommendation from:
 - a. prosecutors, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - b. the sheriff or chief of police in the community where the person resides; and
 - c. any other persons in contact with the person; and
7. proof furnished by the applicant that the applicant has:
 - a. maintained a record of steady employment;
 - b. supported the applicant's dependents;

²⁰ Tex. Occ. Code § 53.022.

- c. maintained a record of good conduct; and
- d. paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which the applicant or holder has been convicted.²¹

The Department has developed guidelines relating to matters it will consider in determining whether to grant a license if the applicant has been convicted of a crime. The crimes that the Department considers to be of such a serious nature that they are of prime importance in determining fitness for licensure in this case include any offense with the essential element of Texas Penal Code § 21.11 (indecent with a child).²²

Further, a license may be denied if an applicant attempts to obtain it by fraud or misrepresentation²³ or if the licensee has engaged in fraudulent or dishonest acts or practices.²⁴

Staff has the burden of producing evidence to support its bases for proposed denial, but Mr. Palmer has the overall burden to prove his fitness to be licensed.²⁵

D. Evidence

Staff offered seven exhibits, including the criminal court documents and other materials submitted to the Department by Mr. Palmer, which were admitted. Staff presented the testimony of Lewis Wright, who is responsible for the Department's review and analysis of license applications by persons who have criminal histories. Mr. Palmer was called as a witness by Staff and testified further on his own behalf. He also offered the testimony of his brother, David Palmer, and one exhibit.

²¹ Tex. Occ. Code § 53.023.

²² 28 Tex. Admin. Code § 1.502(e)(4)(H).

²³ Tex. Ins. Code § 4005.101(b)(3).

²⁴ Tex. Ins. Code § 4005.101(b)(5).

²⁵ 1 Tex. Admin. Code § 155.427.

1. Statements of Mr. Palmer**a. Testimony**

Mr. Palmer testified that he trained to become a law enforcement officer and was certified in Nevada as a deputy sheriff.²⁶ Mr. Palmer explained that, after his conviction in 2004, he worked any job he could find to support his family, running equipment and driving trucks for TB&E construction, shoeing horses, and most recently working across Nevada for the Nevada Department of Transportation.²⁷ He was a volunteer firefighter in Nevada.²⁸ He indicated he re-located from Nevada, despite his good job there, and took a job at his brother's insurance agency in Texas in order to be closer to his parents during their later years.²⁹ He explained that he has been working at the agency in an unlicensed capacity, developing leads for new business and watching for marketing ideas. He wants to become licensed to work there.³⁰

Mr. Palmer testified that he was divorced at the time of conviction and was allowed to live with his eight-year-old son, with the agreement of his ex-wife.³¹ He added that he continued to have weekend visits with his two daughters and to pay child support but admitted that the conviction placed stress on their relationship.³² He testified that he was excommunicated from The Church of Jesus Christ of Latter Day Saints after his conviction.³³ He explained that after years of meeting with his bishop regarding the incident, he was readmitted to the church.³⁴

²⁶ Tr. at 15-16. The events leading up Mr. Palmer's arrest and conviction occurred while he was deputy sheriff and deputy coroner with Lincoln County, Nevada. TDI Ex. 3 at 37; Applicant Ex. 1 at 3.

²⁷ Tr. at 13-14.

²⁸ Tr. at 46.

²⁹ Tr. at 32.

³⁰ Tr. at 12.

³¹ Tr. at 33-34.

³² Tr. at 35-36.

³³ Tr. at 42.

³⁴ Tr. at 43.

Mr. Palmer stated that he was honorably discharged from probation and restored his civil rights.³⁵ He explained that he was released from lifetime supervision, allowing him to travel, in 2016.³⁶ To be eligible for release from lifetime supervision, he needed to complete probation, be subject to no further arrests or charges, wait a period of time, and undergo a psychosexual evaluation.³⁷ He described the evaluation as a number of tests to determine the likelihood of recidivism, and on all of these tests he was described as a low-to-nonexistent risk.³⁸

Although Mr. Palmer admits to committing the acts with which he was charged,³⁹ he does not believe he pleaded guilty to fondling the genitals of a minor and performing oral sex on a minor, and he believes those acts were not the basis of his conviction.⁴⁰ Mr. Palmer stated that he provided the Department with information and paperwork regarding his Guilty Plea Agreement and conviction during his time as a deputy sheriff, explaining that the charge was allowing a minor to view pornographic material.⁴¹

b. Letters to the Department

Mr. Palmer wrote to the Department on July 3, 2017, following the submission of his application. He spoke of his conviction, saying:

I was 34 years old at the time. The nature of this charge was specifically allowing a minor to view pornographic material. I made a mistake, and I accept full responsibility for my actions. I not only paid my debt to society but also invested a great deal of time and effort into learning from this situation and made changes in my life to make sure that I never allowed myself to be in a position again that would put my family or me in this position ever again.⁴²

³⁵ Tr. at 36-37.

³⁶ Tr. at 38.

³⁷ Tr. at 38.

³⁸ Tr. at 40-41.

³⁹ Tr. at 28-29.

⁴⁰ Tr. at 27-28, 48, 50, 53.

⁴¹ Tr. at 29-30.

⁴² Staff Ex. 3 at 22. The child was a member of family with whom Mr. Palmer was close. Applicant Ex. 1 at 5.

He went on to speak of having raised his son. He talked about his career in highway maintenance for the State of Nevada starting in 2008, and his having risen to a supervisory position in 2013 with multiple employees under his direction.⁴³

In a letter dated November 4, 2017, Mr. Palmer reiterated that he had pleaded guilty to only the first count in the charging document. He spoke of having completed counseling and been open with his family and friends about his mistakes. He admitted to having given his victim access to pornographic material and subjected him to solicitations and innuendos for about a year prior to the night in December 2003 when they watched a pornographic film together and had a sexual encounter. He said that the victim was at the age of consent in Nevada at the time of the encounter, and it was consensual.⁴⁴

2. Testimony of David Palmer⁴⁵

Mr. David Palmer testified that all of his family's net worth is invested in his insurance business, and he would not have hired his brother if he thought that hiring him would put that business at risk.⁴⁶ Mr. David Palmer verified that his brother moved and started working at the insurance agency to be near his parents, just as Mr. David Palmer did years before with his family.⁴⁷ Mr. David Palmer explained that his brother's criminal background had been disclosed to Allstate.⁴⁸ Mr. David Palmer defined what "appointment" means in the insurance industry, explaining that an insurance company "appoints" someone to write insurance as an agent of the company, a process separate from obtaining a license.⁴⁹ He went on to say that Allstate is prepared to appoint his brother, and that his appointment is approved except for the last requirement, that he receive his license.⁵⁰ Mr. David Palmer noted that his brother submitted the same information to Allstate as he submitted to the Department, including that he was only convicted of the

⁴³ Staff Ex. 3 at 22, 37.

⁴⁴ Staff Ex. 7 at 179.

⁴⁵ Mr. David Palmer also wrote a letter echoing much of his testimony about his brother. See Staff Ex. 3 at 35.

⁴⁶ Tr. at 162-63.

⁴⁷ Tr. at 159.

⁴⁸ Tr. at 164, 173-74.

⁴⁹ Tr. at 164-65.

⁵⁰ Tr. at 165.

charge of showing pornography to a minor.⁵¹ Mr. David Palmer stated that he thinks if his brother failed to disclose other charges for which there was a conviction, he suspects that Allstate would not appoint Mr. Dennis Palmer, nor allow him to access their systems.⁵²

According to Mr. David Palmer, his brother's work for the agency is currently limited while he does not have a license, but that he could continue to stay employed at the agency without a license, performing administrative tasks, and could afford basic necessities for his family by working in that capacity.⁵³ Mr. David Palmer qualified this statement, however, by explaining that his brother does not have the same opportunities available to him working at the agency without a license that he would have at other jobs.⁵⁴

Mr. David Palmer stated that, if his brother were to receive a license, he would man the phones, work on leads, answer questions about insurance, and make quotes.⁵⁵ Mr. David Palmer added that he does not allow his employees to perform door-to-door solicitation as part of business, both for the safety of his employees and to avoid liability.⁵⁶

Mr. David Palmer testified that he has been in the insurance business for two years and that his wife has been in the insurance business for fifteen years.⁵⁷ He stated that he has never met with a client while a child was present, other than the clients whose children he would come into contact with at social events regardless of whether he was their insurance agent.⁵⁸ He explains that the view that an insurance agent will go into someone's home, act as a friend, and potentially have contact with a minor child is an outdated one, and the industry standard and training has shifted in recent years to maintaining transactional

⁵¹ Tr. at 174.

⁵² Tr. at 174.

⁵³ Tr. at 167-68.

⁵⁴ Tr. at 168.

⁵⁵ Tr. at 160.

⁵⁶ Tr. at 160-61.

⁵⁷ Tr. at 161.

⁵⁸ Tr. at 169-70.

relationships only, and conducting business only over the phone and never in a person's home.⁵⁹ He testified that he keeps in contact with insurance agents outside of Texas and outside of Allstate, and stays updated about the market through newsletters and attending conferences, allowing him to have a broad understanding of what kind of behavior is standard in the insurance industry.⁶⁰

3. Testimony of Mr. Wright

Mr. Wright is the liaison between the Agent and Adjuster Licensing Office and the Enforcement Division of the Department and has been with the Department for eleven years.⁶¹ He gathers facts and makes recommendations on the facts in evaluating nonstandard license applications.⁶² Mr. Wright testified that he analyzed Mr. Palmer's application, saw everything sent in by Mr. Palmer and gathered by the analysts, and sent Mr. Palmer a Proposal to Deny based on this information.⁶³ Mr. Wright stated he determined that, while the credible reference letters and steady employment were evidence in favor of Mr. Palmer's licensure, his recent release from supervision, the fact that the release was obtained through a court battle, the nature and seriousness of his conviction, and the alleged mischaracterization of the conviction to the Department outweighed the evidence in favor. Mr. Wright concluded that Mr. Palmer should not be granted a license.⁶⁴

Mr. Wright testified that the Department looks at the extent of criminal history as part of its investigation into an application.⁶⁵ He noted that the criminal activity took place over the course of two years, the conviction is the equivalent in Texas of a felony-level event, and Mr. Palmer was released only in 2016, in Mr. Wright's opinion very recently for someone applying for a license.⁶⁶ He added that the nature and seriousness of the crime must be considered and emphasized that there was an abuse of power

⁵⁹ Tr. at 161-62.

⁶⁰ Tr. at 170-71, 173.

⁶¹ Tr. at 59, 62.

⁶² Tr. at 61-62.

⁶³ Tr. at 69-70.

⁶⁴ Tr. at 98, 100.

⁶⁵ Tr. at 94.

⁶⁶ Tr. at 94, 96, 103.

in Mr. Palmer's criminal history, as he was a deputy sheriff at the time, and he had a particular duty because of his position of authority, and this duty was breached.⁶⁷ Mr. Wright said that, for the Department, the "bottom line" is to assess the honesty, trustworthiness, and reliability of applicants in order to protect Texas consumers.⁶⁸

Mr. Wright also testified that the dishonesty in Mr. Palmer's alleged misrepresentation of his conviction was a reason for the denial of his application.⁶⁹ Mr. Wright said that it is standard for applicants to provide information on all of the counts against them in addition to the counts of which they were convicted.⁷⁰ He stated that he has experience reviewing court records and, based on the documents collected, he believes that Mr. Palmer was convicted of more than allowing a minor to view pornography.⁷¹ He opined that the two statements provided to the Department by Mr. Palmer are misleading and show a clear decision to conceal and misrepresent the nature and manner of the offense.⁷² He admitted that, regardless of how Mr. Palmer characterized his conviction, the Department nonetheless made its decision based on an understanding that the conviction was for showing pornographic material, fondling the genitals of a minor, and performing fellatio on a minor.⁷³ Mr. Wright testified that the information of Mr. Palmer's six counts was provided, but that he believes they did not receive the Plea Agreement and the Judgment.⁷⁴ He later corrected this statement to say that the Department did receive the Judgment.⁷⁵ He agreed that the information did not lay out counts that Mr. Palmer was charged with, and that the Department did not seek guidance in Nevada law in determining exactly what act Mr. Palmer's conviction was for.⁷⁶ He also agreed that Mr. Palmer had not concealed any of the charges against him.⁷⁷ He testified that Mr. Palmer's

⁶⁷ Tr. at 96-97.

⁶⁸ Tr. at 72, 92.

⁶⁹ Tr. at 101.

⁷⁰ Tr. at 118.

⁷¹ Tr. at 86.

⁷² Tr. at 80-81.

⁷³ Tr. at 122, 125.

⁷⁴ Tr. at 126.

⁷⁵ Tr. at 127. It appears Mr. Palmer did not provide the information, which the Department obtained independently.

⁷⁶ Tr. at 132, 134.

⁷⁷ Tr. at 136.

characterization of the scope of his conviction was the only potential mischaracterization found by the Department.⁷⁸

Mr. Wright testified that the Legislature provides guidelines for reviewing applications, and the Department uses those guidelines in considering applications.⁷⁹ He explained that the final decision is based on a weighing of the factors laid out by the Legislature, and that two of the four factors, the opportunity to re-offend and the seriousness and nature of the crime, weigh against licensing him.⁸⁰ Mr. Wright testified that he believes Mr. Palmer's offense was very serious, characterizing it as grooming a minor while in a position of authority as a deputy sheriff that was a breach of trust and, coupled with his mischaracterization of the conviction, makes Mr. Palmer an extreme risk to be dishonest.⁸¹ Further, said Mr. Wright, Mr. Palmer was only released from lifetime supervision in 2016.⁸²

Mr. Wright agreed there is no evidence that Mr. Palmer had re-offended.⁸³ Although he testified that, in his experience as an insurance agent, an agent may go into a client's home and meet the client's children, he also agreed that the only purchasers of insurance policies are adults and that a large amount of modern insurance business is now done online or over the phone.⁸⁴

4. Nevada Department of Public Safety Affidavit for Warrant of Arrest

The evidence in this case includes the arrest warrant affidavit by Detective Lieutenant Matthew Alberto, who investigated the allegations against Mr. Palmer and interviewed the victim, a 16-year-old boy. The boy stated that, on one occasion in December 2003, he traveled with Mr. Palmer to a rodeo, spending one night with him. During that night, according to the boy, Mr. Palmer showed him a

⁷⁸ Tr. at 106.

⁷⁹ Tr. at 66.

⁸⁰ Tr. at 68, 92.

⁸¹ Tr. at 88, 96-98.

⁸² Tr. at 96. However, Mr. Wright later seemed to say that the recent release from lifetime supervision was not a factor. *Id.* at 136-38.

⁸³ Tr. at 142.

⁸⁴ Tr. at 90-91, 140-41.

pornographic video and performed a sex act with him. The boy stated that, on prior occasions, Mr. Palmer had asked to perform a sex act on him.⁸⁵ In a second interview, the boy stated that, on at least two previous occasions, Mr. Palmer had played pornographic movies with the boy present.⁸⁶ The affidavit related that the boy reported anxiety and problems with his girlfriend since the sexual encounter, and the affidavit also described his nervousness and embarrassment during the interviews.⁸⁷

5. Psychosexual Evaluation and Letters of Recommendation

In 2014, Mr. Palmer underwent a psychosexual evaluation by a licensed clinical social worker, who deemed Mr. Palmer to pose little-to-no risk of sexually re-offending, considering his completion of counseling, the nature of the offense, his stability in the community for the 10 years after the offense, his support systems, and his lack of relapses.⁸⁸ Mr. Palmer told the evaluator he had groomed his victim, who was a child in a family close to Mr. Palmer, with pornography. He also stated that, after showing the boy pornography and having sexual contact with him, he sent the boy an explicit instant message.⁸⁹

Lincoln County, Nevada Sheriff Kerry Lee, who has been with the Sheriff's Office for over 28 years and has been sheriff since about 2007, wrote a letter of recommendation stating he first became acquainted with Mr. Palmer when they worked together in the Sheriff's Office. Sheriff Lee, who is aware of Mr. Palmer's criminal history, said that he and Mr. Palmer remain friends. Sheriff Lee went on to say he feels Mr. Palmer is a trustworthy and honest person.⁹⁰

Likewise, Shawn Cheeney, a long-term friend of Mr. Palmer who is aware of his criminal history, wrote that Mr. Palmer has paid his debt for his mistake, works as a volunteer firefighter, and is highly reliable and trustworthy.⁹¹

⁸⁵ Staff ex. 4 at 81-82.

⁸⁶ Staff Ex. 4 at 85-86.

⁸⁷ Staff Ex. 4 at 83.

⁸⁸ Applicant Ex. 1.

⁸⁹ Applicant Ex. 1 at 5.

⁹⁰ Staff Ex. 3 at 34.

⁹¹ Staff Ex. 3 at 36.

E. Analysis

Staff's proposal to deny Mr. Palmer's application tests on two primary bases: his felony conviction and his alleged misrepresentation of the scope of that conviction.

1. Conviction

The Department may deny Mr. Palmer's license application because he has a Nevada conviction for Child Abuse and Neglect Involving Sexual Exploitation and/or Abuse, a felony. Pursuant to 28 Texas Administrative Code § 1.502, the Department will consider the factors listed in Texas Occupations Code §§ 53.022 and 53.023, set out above, in determining whether to grant Mr. Palmer's license application.

Several factors weigh in Mr. Palmer's favor. He has no other criminal convictions, either before or after the one at issue in this case. It has been 15 years since he committed the crime. He has been gainfully employed for years—first with the State of Nevada and now with his brother's insurance agency—and he has a good record of supporting his dependents. He successfully completed probation in 2008.⁹² He offered three letters of recommendation, one of them from a Nevada sheriff, a friend of Mr. Palmer (although the letter was not from the sheriff of the county in which Mr. Palmer was convicted). Mr. Palmer's psychosexual evaluation indicates that he poses little or no risk of again sexually victimizing a child. And, in any event, the Department's evidence that insurance agents have opportunities to victimize children was unconvincing.

Despite these positive factors, the weight of evidence militates against licensure for Mr. Palmer. First, he committed his crime while in his mid-thirties. Further, at the time he took sexual advantage of a child—a member of a family Mr. Palmer was close to—Mr. Palmer was a deputy sheriff. And, his exploitation of the child was no momentary lapse. The evidence indicates that Mr. Palmer groomed the boy by approaching him in a sexual manner a number of times over at least a year and that he sent the child

⁹² Mr. Palmer was more recently released from lifetime supervision, which involved a travel ban. The fact remains that his probation ended in 2008.

an explicit message following their sexual encounter.⁹³ As discussed above, the ALJ is not concerned that, as a licensed agent, Mr. Palmer would repeat of this exact kind of crime; however, what these details say about Mr. Palmer's trustworthiness in general, and his willingness to engage in long-term concealed wrongdoing, is extremely concerning.⁹⁴ That a trusted family friend and law enforcement officer, as a middle-aged adult, engaged in a prolonged victimization of a vulnerable person was an egregious breach of trust. Insurance agents may not regularly deal with children, but, as Mr. Wright's testimony indicated, honesty and trustworthiness are important qualities for agents. Mr. Palmer has the burden of proving his fitness to be licensed. He offered no evidence from persons familiar with his work over the years since his crime. The letters of recommendation from his friends lack specificity about how Mr. Palmer has manifested the trustworthiness of which they speak. His own assertions, along with those of two friends and a brother, that he is trustworthy and honest are insufficient to overcome the gravity and circumstances of his criminal conduct evidencing the opposite. For these reasons, the ALJ determines that Mr. Palmer has not demonstrated his fitness to be licensed.

2. Misrepresentation

The evidence is insufficient to establish that Mr. Palmer intentionally misled the Department about the scope of his conviction when he stated that it was limited to the pornography charge. As discussed above, he pleaded guilty to the crime as described in the information, which set out allegations about showing pornography to a child and having a sexual encounter with a child. And Mr. Palmer admits his guilt as to both the allegations. But, given the apparent error in the "Register of Actions" from the District Court case, coupled with the "and/or" construction of the information, it is quite believable that Mr. Palmer was under a misimpression about the precise scope of his plea and conviction. The Department

⁹³ The boy was 16 years old when the sexual encounter occurred, but the evidence indicates he was 14 or 15 when the grooming began.

⁹⁴ The crimes that the Department considers to be of such a serious nature that they are of prime importance in determining fitness for licensure include any offense with the essential element of Texas Penal Code § 21.11 (indecent with a child, such as sexual contact with a child younger than 17 years old). 28 Tex. Admin. Code § 1.502(e)(4)(H). Mr. Palmer was convicted based on a plea to an information that included elements of this crime (albeit in an "and/or" context) and admits that he committed those acts. The ALJ notes that exposing a child younger than 18 to pornographic material is a separate offense in Texas and is a class A misdemeanor. Tex. Penal Code § 43.24.

may not deny his license for attempting to obtain it by fraud or misrepresentation⁹⁵ or for engaging in fraudulent or dishonest acts or practices.⁹⁶

F. Conclusion

The ALJ determines that Mr. Palmer's application for a general lines agent license with a property and casualty qualification should be denied because he has been convicted of a felony and failed to show that he is nevertheless fit to be licensed.

III. FINDINGS OF FACT

1. On or about June 29, 2017, Dennis Tod Palmer applied to the Texas Department of Insurance (Department) for a general lines agent license with a property and casualty qualification.
2. On his application, Mr. Palmer responded affirmatively to the question, "Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?"
3. The Department proposed to deny Mr. Palmer's application.
4. Mr. Palmer requested a hearing to challenge the denial.
5. On February 26, 2019, the Department's staff (Staff) filed and issued a Notice of Hearing to Mr. Palmer. The notice 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.
6. The hearing in this case was held on April 3, 2019, before ALJ Shannon Kilgore at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff was represented by staff attorney Stephanie Maugham Andrews. Mr. Palmer was represented by attorney Anthony Icenogle. The hearing concluded the same day. The record closed on April 25, 2019, when the hearing transcript was delivered to SOAH.
7. During 2003, Mr. Palmer subjected a boy whose date of birth was September 2, 1987, to sexual innuendos and solicitations. Mr. Palmer also gave the child access to pornographic material.

⁹⁵ Tex. Ins. Code § 4005.101(b)(3).

⁹⁶ Tex. Ins. Code § 4005.101(b)(5).

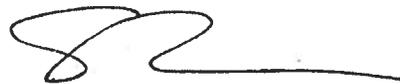
8. On a night in December 2003, Mr. Palmer showed a pornographic film to the child and had a sexual encounter with him.
9. Mr. Palmer sent the child an explicit message following their sexual encounter.
10. On August 26, 2004, in *State of Nevada v. Dennis Tod Palmer*, Case No. C203982 in the District Court of Clark County, Nevada, Mr. Palmer pleaded guilty to Child Abuse and Neglect Involving Sexual Exploitation and/or Abuse, a felony.
11. Mr. Palmer's guilty plea stated, "I hereby plead guilty to CHILD ABUSE AND NEGLECT INVOLVING SEXUAL EXPLOITATION AND/OR ABUSE (Felony – NRS 200.508), as more fully alleged in the charging document attached hereto as Exhibit '1'." Exhibit 1 to the guilty plea was an information with allegations that Mr. Palmer had forced, allowed, or encouraged the youth to view pornography and/or committed sex acts with the youth.
12. Mr. Palmer was convicted and sentenced to serve 24 to 60 months in the Nevada Department of Corrections, but this sentence was suspended, and Mr. Palmer was placed on probation for five years. He was also sentenced to "lifetime supervision" that, among other things, prohibited out-of-state travel.
13. Mr. Palmer was honorably discharged from probation on August 29, 2008. He was released from lifetime supervision on April 13, 2016.
14. At the time he committed the offense, Mr. Palmer was approximately 34 years old.
15. At the time of the offense, Mr. Palmer was a deputy sheriff and deputy coroner in Lincoln County, Nevada.
16. At the time of the offense, Mr. Palmer was a close friend of the child victim's family.
17. Mr. Palmer has been through counseling and undergone a psychosexual evaluation that indicates he poses little or no risk of committing the same kind of crime again.
18. Since committing his crime, Mr. Palmer has been employed with the State of Nevada in highway maintenance (including as a supervisor) and with his brother's insurance agency.
19. Since his crime, Mr. Palmer has had a good record of supporting his dependents.
20. Mr. Palmer has no other criminal history.
21. While a law enforcement officer, by sexually grooming and exploiting a child who was a member of a family with whom Mr. Palmer was close, Mr. Palmer raised significant doubts about his trustworthiness.
22. Two friends of Mr. Palmer (one of them the Lincoln County, Nevada Sheriff) and his brother speak highly of Mr. Palmer's trustworthiness.

23. The preponderance of the evidence fails to show Mr. Palmer's current fitness to hold a license.
24. By telling the Department that he had pleaded guilty only to exposing a child to pornography, Mr. Palmer spoke inaccurately but did not deliberately misrepresent the facts.
25. Mr. Palmer did not attempt to obtain a license through fraud or misrepresentation.

IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 4001.002, .105, 4005.101.
2. SOAH has authority to hear this matter and issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
3. Mr. Palmer received timely and sufficient notice of the hearing. Tex. Gov't Code ch. 2001; Tex. Ins. Code § 4005.104(b).
4. Texas Insurance Code § 4005.101(b)(8) provides that the Department may deny a license application if the applicant has been convicted of a felony.
5. In determining whether to grant or deny the application, the Department will consider the factors in Texas Occupations Code §§ 53.022 and 53.023. 28 Tex. Admin. Code § 1.502(h).
6. Mr. Palmer has failed to show the fitness required to perform the duties and discharge the responsibilities of the licensed occupation. Tex. Occ. Code §§ 53.022-.023.
7. Mr. Palmer's application is not subject to denial on the grounds that he attempted to obtain it by fraud or misrepresentation or for engaging in fraudulent or dishonest acts or practices. Tex. Ins. Code § 4005.101(b)(3), (5).
8. The Department should deny Mr. Palmer's application for a license because a preponderance of the evidence fails to establish his fitness to be licensed in light of his felony conviction.

SIGNED June 6, 2019.



**SHANNON KILGORE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**