

No. **2021-6668**

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

**Date: 01/28/2021**

**Subject Considered:**

Texas Department of Insurance

v.

Jonathan David Newsom

SOAH Docket No. 454-20-3663.C

**General remarks and official action taken:**

The subject of this order is Jonathan David Newsom's application for a general lines agent license with a life, accident, and health qualification.

**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 department deny Mr. Newsom's application for a license. A copy of the proposal for decision is attached as Exhibit A.

**Findings of Fact**

The findings of fact contained in Exhibit A are adopted by the Texas Department of Insurance (TDI) and incorporated by reference into this order.

**Conclusions of Law**

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

COMMISSIONER'S ORDER  
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**Order**

It is ordered that Jonathan David Newsom's application for a general lines agent license with a life, accident, and health qualification is denied.

Commissioner of Insurance

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

Recommended and reviewed by:

DocuSigned by:  
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James Person, General Counsel

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Justin Beam, Assistant General Counsel

SOAH DOCKET NO. 454-20-3663.C

TEXAS DEPARTMENT OF INSURANCE,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
JONATHAN DAVID NEWSOM,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

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<b>TEXAS DEPARTMENT OF INSURANCE,</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	<b>§</b>	
	<b>§</b>	
<b>v.</b>	<b>§</b>	<b>OF</b>
	<b>§</b>	
<b>JONATHAN DAVID NEWSOM,</b>	<b>§</b>	
<b>Respondent</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

### **PROPOSAL FOR DECISION**

The staff (Staff) of the Texas Department of Insurance (Department) seeks to deny the application of Jonathan David Newsom for a general-lines-agent license with a life, accident, and health qualification. Staff's asserted grounds for denial are predicated on a 2013 state-jail felony-theft offense to which Mr. Newsom pleaded guilty and received three years of deferred-adjudication supervision, from which he has since been discharged. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends that the Department deny Mr. Newsom's license application.

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

The hearing on the merits was held via Zoom videoconferencing on August 4, 2020, before ALJ Robert Pemberton. Staff was represented by attorney Amanda Cagle, while Mr. Newsom represented himself. The hearing concluded that same day. Lorrie A. Schnoor, Certified Shorthand Reporter, prepared a transcript, which is the official record of the hearing.<sup>1</sup> The record was closed on October 14, 2020, to allow for post-hearing briefing.

Notice and jurisdiction were not disputed and are thus addressed solely in the Findings of Fact and Conclusions of Law, below.

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<sup>1</sup> The court reporter transcribed the hearing into one volume. References to the transcript in this Proposal for Decision (PFD) are abbreviated as "Tr. \_\_\_."

## II. DISCUSSION

### A. Relevant Licensing Law

Staff has alleged three alternative bases for the Department's authority to deny Mr. Newsom's license application,<sup>2</sup> namely, that Mr. Newsom has (1) "engaged in fraudulent or dishonest acts or practices" within the meaning of Texas Insurance Code § 4005.101(b)(5)<sup>3</sup>; (2) "been convicted of a felony" within the meaning of Texas Insurance Code § 4005.101(b)(8)<sup>4</sup>; and (3) "been convicted of a felony" that is grounds for denying licensure under Texas Occupations Code § 53.021(a) and (d). Texas Occupations Code § 53.021(a) authorizes a "licensing authority," such as the Department, to deny or revoke licensure on the grounds that a person "has been convicted" of a crime that includes, as relevant here, "an offense that directly relates to the duties and responsibilities of the licensed occupation."<sup>5</sup> Whether an offense is "directly related to the duties and responsibilities of the licensed occupation" under § 53.021(a) is to be analyzed in light of the factors prescribed in Texas Occupations Code § 53.022. Section 53.023 then prescribes additional factors, in the nature of mitigating circumstances and other considerations that may bear upon the individual's fitness for licensure despite having criminal history, that the licensing authority must weigh in its ultimate determination to deny or revoke licensure based on the criminal history.

Texas Occupations Code § 53.021(d) provides that, "for purposes of this section" (*i.e.*, § 53.021), and contrary to the general rule, a licensing authority may consider a person to have been "convicted" of an offense where deferred-adjudication community supervision was imposed if, as relevant here<sup>6</sup>: (1) the person has not yet completed the period of supervision or has

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<sup>2</sup> Staff Ex. 1 at Bates TDI 006.

<sup>3</sup> Tex. Ins. Code § 4005.101(b)(5) (The department may deny a license application . . . if the department determines that the applicant has engaged in fraudulent or dishonest acts or practices").

<sup>4</sup> *Id.* § 4005.101(b)(8) (similarly authorizing license denial where Department determines that the applicant ". . . has been convicted of a felony").

<sup>5</sup> Tex. Occ. Code § 53.021(a)(1); *see also id.* § 53.0211 (generally requiring that, "[n]otwithstanding any [other] law," "a licensing authority shall issue to an otherwise qualified applicant" either the license for which the applicant applied or a provisional license, despite criminal history, "unless the applicant has been convicted of an offense described by Section 53.021(a)").

<sup>6</sup> Staff Ex. 1 at Bates TDI 007 (pleading these two bases under Subsection (d) for treating deferred adjudication as a "conviction" for purposes of Section 53.021).

completed it less than five years before the date the person applied for the license; and (2) after consideration of the factors described in Texas Occupations Code §§ 53.022 and 53.023(a), employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.<sup>7</sup> In other words, the factors prescribed under Texas Occupations Code §§ 53.022 and 53.023 are taken into account both in determining, per § 53.021(d), whether a deferred adjudication should be treated as a “conviction” that can *potentially* be a ground for denying licensure under Texas Occupations Code § 53.021(a) *and* the ultimate question, under § 53.021(a), of whether licensure can and should be denied based on that deferred adjudication, treated as a conviction.

The Department’s rule governing “Licensing Persons With Criminal Backgrounds,” codified at 28 Texas Administrative Code § 1.502,<sup>8</sup> incorporates a version of the Texas Occupations Code §§ 53.022 and 53.023 analyses. Rule 1.502(h) requires that the Department to “consider the factors specified in Texas Occupations Code §§ 53.022 and 53.023 in determining whether to grant [or] deny . . . any license or authorization under its jurisdiction.” Rule 1.502(f) further prohibits the Department from issuing a license despite criminal history or “fraudulent or dishonest activity” “unless the commissioner [of insurance] finds that the matters set out in subsection (h) of this [rule] outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed.”

In addition to cross-referencing Texas Occupations Code §§ 53.022 and 53.023, Subsection (h) of Rule 1.502 explicitly incorporates the provisions’ substance and virtually all of their wording, albeit in the versions that applied prior to the Legislature’s recent amendments that took effect on September 1, 2019:

- (1) In determining whether a criminal offense directly relates to the duties and responsibilities of the licensed occupation, the department shall consider the following factors:
  - (A) the nature and seriousness of the crime;

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<sup>7</sup> Tex. Occ. Code § 53.021(d)(1)(B)(i), (2)(B).

<sup>8</sup> 28 Tex. Admin. Code § 1.502. For ease of reference, a rule found in title 28 of the Texas Administrative Code will be referred to as “Rule \_\_\_\_.”

- (B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
  - (C) 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
  - (D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.
- (2) In addition to the factors listed in paragraph (1) . . . the department shall consider the following evidence in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has committed a crime:
- (A) the extent and nature of the person's past criminal activity;
  - (B) the age of the person when the crime was committed;
  - (C) the amount of time that has elapsed since the person's last criminal activity;
  - (D) the conduct and work activity of the person prior to and following the criminal activity;
  - (E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;
  - (F) other evidence of the person's present fitness, including letters of recommendation . . . .
  - (G) . . . proof that the applicant . . . has:
    - (i) maintained a record of steady employment;
    - (ii) supported . . . dependents where applicable;
    - (iii) otherwise maintained a record of good conduct; and
    - (iv) paid all outstanding court costs, supervision fees, fines, and restitution.
- (3) It shall be the responsibility of the applicant . . . to the extent possible to secure and provide to the commissioner the information required by paragraph (2) of this subsection.<sup>9</sup>

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<sup>9</sup> *Id.* § 1.502(h); *cf.* Acts 2019, 86th Leg., R.S., ch. 765 (H.B. 1342), §§ 6-8, 12, 15.

Because Mr. Newsom submitted his license application prior to the effective date of the 2019 amendments, his application continues to be governed by the prior versions of Sections 53.022 and 53.023.<sup>10</sup> Consequently, the ALJ has no occasion to address the extent of any inconsistencies between Subsection (h)'s text and the amended Sections 53.022 and 53.023, or the implications.

The analysis under Subsection (h) and Texas Occupations Code §§ 53.022 and 53.023 must also take account of certain “guideline” crimes, identified in Rule 1.502(e), that the Department “considers to be of such serious nature that they are prime importance in determining fitness for licensure or authorization.”<sup>11</sup> Staff has alleged two such categories of crimes here<sup>12</sup>: (1) “any offense for which fraud, dishonesty, or deceit is an essential element”<sup>13</sup>; and (2) “an offense with the essential elements of . . . a theft offense, as described by Penal Code Chapter 31.”<sup>14</sup> Rule 1.502 also emphasizes that the Department “considers it very important that license and authorization holders and applicants . . . be honest, trustworthy, and reliable.”<sup>15</sup>

Staff bears the burden of proving its asserted grounds for denying Mr. Newsom's license application, while Mr. Newsom has the burden to prove his fitness to be licensed despite the existence of any such grounds.<sup>16</sup> The standard of proof is by a preponderance of the evidence.<sup>17</sup>

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<sup>10</sup> See Acts 2019, 86th Leg., R.S., ch. 765 (H.B. 1342) § 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. An application for a license submitted before the effective date of this Act is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.”). Accordingly, all citations in this Analysis to Act provisions are intended to refer to their pre-amendment versions.

<sup>11</sup> 28 Tex. Admin. Code § 1.502(e); see Tex. Occ. Code § 53.025 (requiring licensing authorities to publish “guidelines relating to [their] practice . . . under [Occupations Code Chapter 53],” which “must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority”).

<sup>12</sup> Staff Ex. 1 at Bates TDI 007.

<sup>13</sup> *Id.* § 1.502(e)(1).

<sup>14</sup> *Id.* § 1.502(e)(4)(F).

<sup>15</sup> *Id.* § 1.502(c).

<sup>16</sup> See Tex. Ins. Code § 4005.101(b)(5), (8); Tex. Occ. Code §§ 53.0021(a), (d), .211(b), .022, .023; 1 Tex. Admin. Code § 155.427; 28 Tex. Admin. Code § 1.502(h).

<sup>17</sup> See *Granek v. Texas St. Bd. of Med. Examn'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.) (in rejecting application of higher proof standard, observing that “agency license-revocation proceedings are civil in nature [and] that in civil cases, no doctrine is more firmly established than that issues of fact are resolved by a preponderance of the evidence” (internal citations and quotations omitted)).

**B. Evidence**

Staff offered eight exhibits, all of which were admitted without objection. Staff Exhibits 1 and 2 went to jurisdiction and notice,<sup>18</sup> Staff Exhibits 3 through 7 were certified copies of court papers reflecting Mr. Newsom's criminal history, and Staff Exhibit 8 was the Department's "Application Package" or file regarding Mr. Newsom's license application.<sup>19</sup> Staff also called Department employee Lewis Weldon Wright IV, who testified in both Staff's direct case and on rebuttal. Mr. Newsom testified on his own behalf. He did not offer any additional exhibits.

**1. Mr. Newsom's Criminal History**

The basic facts and circumstances in Mr. Newsom's criminal history were undisputed. In May 2013, while servicing a client's home as lead technician for his father's pest-control business—an occupation for which he held a state license—Mr. Newsom stole an engagement ring and Cartier watch that the client had left on a dresser in her bedroom.<sup>20</sup> Six days later, after the client reported the items missing and implicated Mr. Newsom as a suspect, the law-enforcement investigation determined—and Mr. Newsom, though initially denying involvement, ultimately admitted—that he had stolen the items, pawned them, and then lost the proceeds in a poker tournament at an Oklahoma casino.<sup>21</sup> Mr. Newsom had no prior criminal history.<sup>22</sup>

In addition to being fired from his job with his father's company,<sup>23</sup> Mr. Newsom was indicted for a state-jail-felony offense of theft of property having a value between \$1,500 and \$20,000.<sup>24</sup> In August of the same year, Mr. Newsom pleaded guilty to the charge, and the district court found that the evidence substantiated his guilt but placed him on three years' deferred-

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<sup>18</sup> Staff Ex. 1 (Bates TDI 001-011) is a copy of the notice of hearing, including the attached original petition and also proof of service. Ex. 2 (Bates TDI 0012-13) is a copy of a responsive pleading filed by Mr. Newsom. The ALJ also took official notice of Order No. 2, which had ordered that the hearing would be conducted via Zoom videoconferencing and prescribed procedures. Tr. at 12.

<sup>19</sup> Staff Ex. 8 at Bates TDI 036-066. Staff also presented copies of pertinent statutes and rules as its Exhibits 9-11, of which the ALJ took official notice. Tr. at 15.

<sup>20</sup> Tr. at 17-18, 52-53, 57, 59-60; Staff Ex. 4 at Bates TDI 016-022.

<sup>21</sup> Staff Ex. 4 at Bates TDI 018-021.

<sup>22</sup> *Id.* at Bates TDI 019.

<sup>23</sup> Tr. at 60.

<sup>24</sup> Staff Ex. 3 at Bates TDI 015; Staff Ex. 5 at Bates TDI 023.

adjudication community supervision, plus imposed a fine and court costs.<sup>25</sup> Thereafter, as he acknowledged, Mr. Newsom struggled in complying with the terms and conditions of his community supervision—including failures to report, pay supervision fees, or perform community-service hours—prompting the court to send him to thirty days of work release and, subsequently, the State to petition to proceed to adjudication.<sup>26</sup> However, at the conclusion of the three-year supervision period in August 2016, the district court ultimately discharged Mr. Newsom and dismissed the charge against him.<sup>27</sup>

## **2. Mr. Newsom’s Licensing Application**

On May 13, 2019—less than three years after being discharged from community supervision—Mr. Newsom submitted his license application to the Department.<sup>28</sup> Mr. Newsom answered “yes” to a question inquiring whether he had ever been convicted of a felony or had a judgment withheld or deferred,<sup>29</sup> prompting the Department to request a “statement regarding the circumstances of the offense,” a copy of Mr. Newsom’s resume or work history, and three letters of recommendation from individuals who knew him.<sup>30</sup> Mr. Newsom provided the requested documents.<sup>31</sup>

Mr. Newsom provided the following “brief explanation of the time leading to [his] arrest”:

It’s pretty embarrassing to talk about, because it was a down time in my life, but I know it’s necessary to be transparent.

At the time, I was working as a pest control technician, and was battling severe depression. I was to the point of committing suicide. I had seen someone on TV say that stealing gave them a high, and I was so desperate to feel something that, in the moment, I decided to take a watch & ring from a client’s house while doing a service call.

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<sup>25</sup> Staff Ex. 5 at Bates TDI 023-029.

<sup>26</sup> Tr. at 18, 54, 67; Staff. Ex. 5 at TDI 030; Staff Ex. 6 at Bates TDO 031-034.

<sup>27</sup> Staff Ex. 7.

<sup>28</sup> Staff Ex. 8 at Bates TDI 048.

<sup>29</sup> *Id.* at Bates TDI 049.

<sup>30</sup> *Id.* at Bates TDI 066.

<sup>31</sup> *Id.* at Bates TDI 044.

About an hour later, I received a call from the local police, and went in for questioning, where I almost immediately confessed to the crime. The items were returned that day to the customer. Because of the monetary value of the items, the offense was elevated from a misdemeanor, to a felony charge. I was offered deferred adjudication, and upon completion, the case was dismissed.

I'm not proud of myself, but I am glad that things happened the way they did. It saved me from spiraling further out of control, and most likely following through on my desire to end my life. I was able to get some help with my depression, and overcome the mental obstacles I faced. I have never been in trouble before then, and have not been since.<sup>32</sup>

The resume provided by Mr. Newsom indicated that, after working as lead technician for his father's pest-control company between March 2004 and May 2012, he had worked as a "training coordinator" for Wholesale Texas between June 2012 and October 2016, a "store manager/sales manager" for a Mattress Depot between January 2018 and March 2019, a "Life Insurance Sales Agent" for Colonial Life and Health Insurance since May 2019, and also as a Lyft driver since October 2016.<sup>33</sup> The resume also indicated, under a heading for "Certifications/Licenses," "Life and Health Insurance" and "Texas General Lines Agent."<sup>34</sup>

The three recommendation letters furnished by Mr. Newsom included one from Robert Zuckert, who indicated that he had known "Jon, both personally and professionally, for over six years," including during four years of work (2013-17) "as a sales manager in my previous corporation" and also a current job working for him.<sup>35</sup> Mr. Zuckert praised Mr. Newsom for "show[ing] exemplary personal and professional conduct" and "establish[ing] himself as a leader," with responsibilities that included "handling of cash flow/banking, key holder, and development and supervision of new hires."<sup>36</sup> Mr. Zuckert added that Mr. Newsom, "in partnership with my agency, is currently working to become an independent sales agent of health/life insurance," and recommended him as "an excellent candidate" for licensure, one whose "calling [is] to work in a position where he can genuinely help others," and who would help "the general public" if permitted to work as a health insurance sales agent.<sup>37</sup>

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<sup>32</sup> *Id.* at Bates TDI 044.

<sup>33</sup> *Id.* at Bates TDI 044-046.

<sup>34</sup> *Id.* at Bates TDI 046.

<sup>35</sup> *Id.* at Bates TDI 053

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

Mr. Newsom's other two recommendation letters were written by personal friends. One author, who professed to have known Mr. Newsom for "over 12 years," praised him as "a knowledgeable, helpful, and fun person," and as also being "efficient," "detail oriented," "extremely competent" and "extremely organized."<sup>38</sup> "Even during [Mr. Newsom's] lowest moments in life," the author added, "I always believed him to be a valuable member of society."<sup>39</sup> The other friend, who had "known [Mr. Newsom] as a close, personal friend for over 13 years," extolled Mr. Newsom for, in addition to possessing professional abilities and interpersonal skills, being "one of the kindest, smartest, most reliable people I have ever met."<sup>40</sup> He further indicated that Mr. Newsom "has had a key to my house for most of my friendship, as I have relied on him time & again to handle the day-to-day responsibilities there during my various trips away."<sup>41</sup> The author additionally maintained that "I have never had reason to question [Mr. Newsom's] authenticity, even during the down time in his life. In fact, seeing him overcome this and continue to make something of himself, brings me great pride as a friend."<sup>42</sup>

### **3. Direct Testimony of Lewis Weldon Wright IV**

Mr. Wright, who indicated that he had worked in the insurance field for over thirty years, including the last thirteen years at the Department, presented the Department's position and reasoning in proposing to deny licensure to Mr. Newsom.<sup>43</sup> In summary, he explained, the Department had determined to deny licensure in light of Mr. Newsom's criminal history after applying the factors under Rule 1.502(h).<sup>44</sup> Under that analysis, Mr. Wright emphasized, "[i]t's not an automatic denial if there's criminal history," but entails "a balancing test" under which "a number of factors . . . have to be considered" on a "case-by-case basis."<sup>45</sup> An overarching concern in the Department's licensing decisions, he added, was that licensees need to be honest, trustworthiness, and reliable, to ensure that they would not take advantage of consumers who

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<sup>38</sup> *Id.* at Bates TDI 054.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at Bates TDI 055.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Tr. at 20-21.

<sup>44</sup> *Id.* at 20.

<sup>45</sup> *Id.* at 21, 29.

tended to be comparatively uninformed regarding the complex and varying nature of the insurance business.<sup>46</sup> He further observed that a general-lines life, accident, and health licensee, as Mr. Newsom had applied to be, would also be entrusted with the specific responsibilities of soliciting insurance products on behalf of insurance companies, collecting premiums from customers, transmitting premiums to the carrier, and assisting in claims or loss-settlement situations.<sup>47</sup>

Regarding specific factors in the Rule 1.502 analysis, Mr. Wright opined that “we want to know how long has it been since the offense” and “the age of the applicant at the time of the offense,” and also “evaluate any rehabilitative evidence that may exist since the event, . . . includ[ing] work history, the type of work, the levels of responsibility and positions held, and reference letters from individuals that know the applicant,” in short, “any information that can demonstrate a rehabilitative effort that might outweigh the fact that a criminal offense is evidence and has to be considered.”<sup>48</sup> Turning to the factors, Mr. Wright observed that Mr. Newsom had committed the crime in May 2013, when he had been thirty-three years of age, thereby “indicat[ing] that [the crime] wasn’t a youthful indiscretion.”<sup>49</sup> Mr. Wright also noted Mr. Newsom’s noncompliance with the terms and conditions of his community supervision, including “failure to report . . . on several occasions,” “failure to pay the required fees,” and “failure to do the community service required for approximately ten months of the time.”<sup>50</sup> This was significant, in Mr. Wright’s view, because it showed that Mr. Newsom had failed to comply “even under the orders of a court, and in relation to a personal criminal offense.”<sup>51</sup>

Mr. Wright maintained that the duration of time between Mr. Newsom’s discharge from community supervision in August 2016 and his application date, “a little under three years” later, was also cause for skepticism, as “[a]nything under five years should really be paid attention to.”<sup>52</sup> He added that the less-than-five-year duration, along with the opportunity licensure as an insurance

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<sup>46</sup> *Id.* at 25.

<sup>47</sup> *Id.* at 26.

<sup>48</sup> *Id.* at 29-30.

<sup>49</sup> *Id.* at 30-31.

<sup>50</sup> *Id.* at 31-32.

<sup>51</sup> *Id.* at 32.

<sup>52</sup> *Id.* at 32-33.

agent would provide Mr. Newsom to repeat his criminal conduct, had also authorized the Department to treat Mr. Newsom's deferred adjudication as a "conviction."<sup>53</sup>

Mr. Wright also emphasized written statements by Mr. Newsom that, in Mr. Wright's view, reflected unfavorably upon Mr. Newsom's present honesty, trustworthiness, and reliability. In Mr. Newsom's written account of the offense, as Mr. Wright pointed out, Mr. Newsom had claimed that he was questioned about the offense within roughly an hour after committing it, "almost immediately confessed to the crime," and that "[t]he items were returned that day to the customer."<sup>54</sup> But according to the police report from the incident, as Mr. Wright observed, Mr. Newsom had pawned the stolen items, spent the money on gambling, and had not confessed until six days afterward, and after initially denying his involvement.<sup>55</sup>

Mr. Wright also criticized Mr. Newsom's resume as "misleading," and "indicat[ing] that there's not a good understanding of the licensing process," in stating that he was presently employed as a "Life Insurance Sales Agent."<sup>56</sup> On the other hand, Mr. Wright credited Mr. Newsom with the "positive" of having maintained a record of steady employment, including performing "well" in "respectable" positions of authority and trust.<sup>57</sup> Mr. Wright also found Mr. Newsom's recommendation letters to be "credible," although pointing out that none of them had explicitly reflected the author's knowledge of Mr. Newsom's criminal history.<sup>58</sup>

Based on review of the information and the factors under Rule 1.502, Mr. Wright opined that Mr. Newsom's mitigating evidence did not outweigh the serious nature of his criminal history—"a felony-level, severe theft, then the details of the crime being involved with his occupation, and that a client of his was a victim and that the two items taken [were] of high value."<sup>59</sup> A "major consideration" weighing against "whether rehabilitation had taken place," he elaborated, was "current evidence of dishonesty or untrustworthiness," namely "the

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<sup>53</sup> *Id.* at 35-36.

<sup>54</sup> *Id.* at 37; *see* Staff Ex. 8 at Bates TDI 044.

<sup>55</sup> Tr. at 38-39; *see* Staff Ex. 4 at Bates TDI 020-021.

<sup>56</sup> Tr. at 39-40; *see* Staff Ex. 8 at Bates TDI 045.

<sup>57</sup> Tr. at 40-41.

<sup>58</sup> *Id.* at 41-44.

<sup>59</sup> *Id.* at 45, 47.

inconsistencies between the current statement provided by Mr. Newsom regarding what happened and . . . the incident report.”<sup>60</sup> This was especially so where “it’s only been five years since the offense, [so] we were already taking a really hard look at any rehabilitative evidence in order to . . . make a favorable licensing decision.”<sup>61</sup>

#### 4. Testimony of Mr. Newsom

Mr. Newsom began his testimony by attempting to address the “discrepancies” that Mr. Wright had cited as reflecting negatively on his present state of rehabilitation, honesty, and trustworthiness. Regarding his resume claim to presently be a “Life Insurance Sales Agent,” Mr. Newsom testified that this was the job title he had been given when hired by Colonial Life and Health Insurance and not any attempt to deceive.<sup>62</sup> As for the differences between the police report and “the brief description” he had been asked to provide regarding his offense, Mr. Newsom insisted that he “was trying to be very truthful” in conveying his recollection, but that he did not have the specific dates and details at hand when preparing his statement, over six years had passed since the events, and “it all had melded together” in his mind over time into “a same-day situation.”<sup>63</sup> He acknowledged, however, that the police report, elaborating on his claims to have “almost immediately confessed,” showed that “I did deny [the crime] at first, but they showed me the photos of the ring[] and the watch, and [then] I confessed.”<sup>64</sup> He sought to justify his reticence, urging “I think anyone who’s put in that situation would be defensibly trying to give out hope that they weren’t caught.”<sup>65</sup>

Turning to the crime itself, Mr. Newsom testified, similar to his written explanation, that he had been “suicidal,” that “someone had told me that they got a high off of stealing,” and that he had committed the crime at “the spur of the moment, when I was in the client’s home [and] I saw the ring and the watch,” “just looking for something to honestly make me feel alive.”<sup>66</sup> Following

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<sup>60</sup> *Id.* at 46.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 49-50.

<sup>63</sup> *Id.* at 50-51.

<sup>64</sup> *Id.* at 51.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 52.

his arrest, Mr. Newsom recounted, he had himself “committed to a local hospital” because “I thought I was going crazy,” was diagnosed with “severe depression,” and put on medication.<sup>67</sup>

While accepting “[his] responsibility” and that there was “no excuse” for failing to comply with the terms and conditions of his community supervision, Mr. Newsom claimed that he “was battling depression heavily during that time.”<sup>68</sup> Even so, Mr. Newsom emphasized, “I maintained a job the entire time I was there [apparently referring to his struggles with depression], where I was responsible for handling large sums of money on a daily basis.”<sup>69</sup> He insisted that the theft was not the real “issue for me; the depression was,” further characterizing the theft as “my reaching-out point.”<sup>70</sup> Although acknowledging that he “still struggle[d] with depression,” Mr. Newsom claimed that “I have found a way to control it.”<sup>71</sup>

Mr. Newsom added that during the ten months leading up to the hearing, and thus not reflected on the resume he had submitted to the Department in June 2019, he had been working for a company, Aftermath Services, that handled “crime scene cleanup, trauma cleanup, COVID treatment,” and had quickly been promoted to a supervisory role.<sup>72</sup> In that capacity, he explained, his responsibilities included going into people’s homes, handling their personal belongings, training other employees, and handling large sums of money in connection with payment through deposits or credit-card transactions.<sup>73</sup> “And not once in ten months,” he insisted, “have I had an issue with theft or taking something that doesn’t belong to me.”<sup>74</sup>

While admitting that “all the evidence presented against me is factual” and that “I did what I did,” Mr. Newsom urged that “the theft is not the end result of me,” “doesn’t define me as a person,” nor his capacity to “help others,” “a position I was destined for,” in either his current job

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<sup>67</sup> *Id.* at 53-54.

<sup>68</sup> *Id.* at 54.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 54-56.

<sup>74</sup> *Id.* at 55.

or in insurance.<sup>75</sup> “And for 33 years,” he added, “I never got in trouble, and had not gotten into trouble since “besides my indiscretions . . . during probation.”<sup>76</sup> Mr. Newsom insisted that “despite my history, . . . I am someone who can be trusted with clients’ money” and giving them guidance, adding that “I do not like to take advantage of people.”<sup>77</sup>

Under cross-examination, Mr. Newsom explained that he had “moved away from the antidepressants that I was given” to manage his mental health because he had been experiencing “some physical issues with it and emotional trouble.”<sup>78</sup> Instead, Mr. Newsom “use[d] CBD oil on a daily basis,” which “does help me from an emotional standpoint and [] physical well-being,” and had also “eliminated negative people from my life.”<sup>79</sup>

Under further questioning, Mr. Newsom agreed that it was important for insurance agents to be entirely truthful, including in regard to the details of insurance policies.<sup>80</sup> He further agreed that there would be adverse consequences if an agent had misstated an insurance policy’s effective date by six days.<sup>81</sup> Staff then questioned Mr. Newsom about the differences between his written description of his crime, which suggested a nearly contemporaneous arrest, and the police report reflecting a six-day interim before he was finally apprehended down and confessed.<sup>82</sup> Mr. Newsom again insisted that he had no intent to deceive, but had prepared his statement “as quickly as possible,” without resort to the police records, and had also “misunderstood the nature of the description I was giving, as far as how detailed it needed to be.”<sup>83</sup> Staff then inquired whether “it help[ed] the client if the agent didn’t intend to be deceptive” about a six-day difference in coverage dates.<sup>84</sup> Mr. Newsom acknowledged, “probably not,” but insisted that Mr. Zuckert had been “kind enough to take me under his wing” and show him “the proper way to do insurance and how to

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<sup>75</sup> *Id.* at 57.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 58.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 58-59.

<sup>80</sup> *Id.* at 60-61.

<sup>81</sup> *Id.* at 62.

<sup>82</sup> *Id.* at 62-63.

<sup>83</sup> *Id.* at 63.

<sup>84</sup> *Id.* at 64.

communicate with clients.”<sup>85</sup> “And all I can say,” he added, “is that I would continue to grow and learn and be able to understand that being meticulous is a necessity in order to make sure that people are well taken care of.”<sup>86</sup>

In response to clarifying questions from the ALJ, Mr. Newsom indicated that all three persons who had written his recommendation letters “knew everything that had happened, as far as me getting arrested and what I did during my probationary period,” and had been steadfast and loyal to him through those struggles.<sup>87</sup> Mr. Newsom also elaborated that although he had been working for Colonial Life—the most recent employer reflected on his resume—at the time he was filling out his license application in May 2019 (and that Colonial, in fact, had “set [him] up for doing the state test and the application”), he had thereafter gone to work for Mr. Zuckert at a company called US Health.<sup>88</sup> Mr. Newsom also emphasized that his various past and current jobs had entailed his being entrusted with cash and credit-card transactions, bank deposits, issuing checks to vendors, and also, in his current position, handling clients’ personal possessions that would sometimes include jewelry.<sup>89</sup>

The ALJ also afforded Mr. Newsom the opportunity to explain why his resume had indicated, under “Certifications/Licenses,” “Life and Health Insurance,” “Texas General Lines Agent.”<sup>90</sup> Mr. Newsom responded that he had no intent to deceive, but had understood from “the Colonial Life people,” as of the time he completed his licensing application, that he would be licensed because he had passed his exam and “did not realize that . . . there was going to be a holdup and that I was not guaranteed [licensure].”<sup>91</sup>

On recross, Staff inquired further about this representation in Mr. Newsom’s resume. Mr. Newsom denied having had any contemporaneous understanding, when submitting his resume

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 65-67.

<sup>88</sup> *Id.* at 66.

<sup>89</sup> *Id.* at 69-72.

<sup>90</sup> *Id.* at 67; *see* Staff Ex. 8 at Bates TDI 046.

<sup>91</sup> Tr. at 67-68.

to the Department in June 2019,<sup>92</sup> that he had already been licensed as an agent or the intent to suggest that he was.<sup>93</sup> Instead, he maintained, he had understood from “the people at Colonial Life” that he was already “*certified*” by virtue of passing the exam, although not yet a licensed agent, and that he had intended only to reflect this “certification” on the resume he sent to the Department, not current licensure.<sup>94</sup> Mr. Newsom also suggested that any error or misunderstanding in the resume’s content stemmed from his preparing the resume “on Indeed” and the blanks or prompts to which he had attempted to respond.<sup>95</sup>

## 5. Rebuttal testimony of Mr. Wright

On rebuttal, with reference to Mr. Newsom’s testimony that the authors of his recommendation letters were aware of his criminal history, Mr. Wright asserted that such testimony was “not evidence that there is knowledge.”<sup>96</sup> Absent “clear indication” of such knowledge in the letter itself, he insisted, the Department “can’t count [the author] as having full knowledge of the character of the individual that they’re submitting a reference [letter] on.”<sup>97</sup>

Similarly, dismissing Mr. Newsom’s attempts to explain the asserted discrepancies in his statement and resume, Mr. Wright maintained that the Department “has to look at face value” and “the inconsistencies that have to be considered as current evidence of either honesty, trustworthiness, or reliability.”<sup>98</sup> He further opined that Mr. Newsom’s resume showed him to be unlawfully holding himself out as an insurance agent.<sup>99</sup>

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<sup>92</sup> See Staff Ex. 8 at TDI 044 (transmittal email from Mr. Newsom dated June 18, 2019).

<sup>93</sup> Tr. at 80, 81.

<sup>94</sup> *Id.* at 79-81.

<sup>95</sup> *Id.* at 78-80.

<sup>96</sup> *Id.* at 83.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 83-84.

<sup>99</sup> *Id.* at 84-85.

Finally, Mr. Wright opined that Mr. Newsom's work with Aftermath Services did not change the Department's position, as "[i]t's a rather recent employment" and "not a significant amount of additional time since the date of the offense."<sup>100</sup>

### C. Analysis and Recommendation

It is undisputed that Mr. Newsom committed a felony-level theft against one of his pest-control clients that had been facilitated by the access, opportunity, and trust afforded him by virtue of his former license in that occupation. By betraying that trust and position of state-conferred privilege, Mr. Newsom engaged in "dishonest acts or practices" within the meaning of Texas Insurance Code § 4005.101(b)(5), however broadly or narrowly "dishonest" might be read.<sup>101</sup> The nature of Mr. Newsom's dishonest acts and theft crime also "directly relate" to the duties and responsibilities of an insurance agent, as they implicate concerns that insurance agents not misuse their licenses, and attendant position of trust and access, to take advantage of trusting and comparatively unsophisticated consumers when collecting and transmitting premiums, selling policies, and the like.<sup>102</sup> And for materially the same considerations, licensing of Mr. Newsom as an insurance agent "would create a situation in which [he] has an opportunity to repeat the prohibited conduct."<sup>103</sup> For this reason, and because Mr. Newsom was discharged from his community supervision less than five years before he submitted his license application, the

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<sup>100</sup> *Id.* at 85.

<sup>101</sup> Honest. In The American Heritage Dictionary of the English Language (5th ed. 2020) ("1. Marked by or displaying integrity; upright: *an honest lawyer*"; "2. Not deceptive or fraudulent; genuine: *honest weight*"; "3. *Equitable; fair: honest wages for an honest day's work*"; "4.a. Characterized by truth; not false: *honest reporting*"; "5.a. Of good repute; respectable"; "6. Virtuous"); *see also id.* definition of Dishonest ("Disposed to lie, cheat, defraud, or deceive" and noting that synonyms include "lying, untruthful, deceitful, mendacious," with dishonest being "the least specific"); National Inst. of Ins. Comm'rs, *Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994* (2011), at 21-25 (discussing potential difficulties in construing and applying "criminal felony involving dishonesty and breach of trust" standard under 18 U.S.C. § 1033 and, in light of jurisprudence applying similar language in Fed. R. Evid. 609(a)(2), suggesting that term might well exclude crimes of theft that lack an element of deceit).

<sup>102</sup> *See* Tex. Occ. Code § 53.022 (requiring consideration of "the nature and seriousness of the crime," "the relationship of the crime to the purposes for requiring a license to engage in the occupation," "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 "the relationship of the crime to the ability or capacity required to perform the duties and responsibilities of the licensed occupation"); 28 Tex. Admin. Code § 1.502(h)(1) (same); *see also* 28 Tex. Admin. Code § 1.502(e)(4)(F) (specifying "a theft offense, as described by Penal Code, Chapter 31," among the "guideline" crimes that the Department "considers to be of such serious nature that they are of prime importance in determining fitness for licensure").

<sup>103</sup> *See* Tex. Occ. Code § 53.021(d)(2)(B).

Department is authorized to treat his deferred adjudication as a “conviction” for purposes of Texas Occupations Code § 53.021(a),<sup>104</sup> thereby authorizing denial of licensure under that statute also.<sup>105</sup>

Consequently, the material issues distill to whether Mr. Newsom has presented evidence of fitness for licensure that would outweigh the serious nature of his criminal offense when viewed in light of the occupation being licensed.<sup>106</sup> Relevant factors in this analysis include “the extent and nature of the person’s past criminal activity,” “the age of the person when the crime was committed,” “the amount of time that has elapsed since the person’s last criminal activity,” “the conduct and work activity of the person prior to and following the criminal activity,” “evidence of the person’s rehabilitation or rehabilitative effort,” and “other evidence of the person’s present fitness,” including letters of recommendation.<sup>107</sup> In this case, Mr. Newsom also had the burden to furnish proof that he had maintained a record of steady employment, supported any dependents (if applicable), and “otherwise maintained a record of good conduct.”<sup>108</sup>

As previously recognized, the nature of Mr. Newsom’s offense was serious and also had strong negative implications for his fitness to be entrusted with an insurance license. He also committed the offense at thirty-three years of age, hardly a youthful indiscretion. However, by all accounts, Mr. Newsom had no prior criminal history during those preceding thirty-three years, nor during the now-more-than-seven years afterward, beyond initially failing to comply with the terms and conditions of community supervision, which he evidently corrected so as to ultimately obtain discharge. Mr. Newsom attributed his criminal behavior and initial probation difficulties to an underlying severe bout with depression, a claim that Staff does not appear to dispute. Mr. Newsom professes to have his depression in check now, although there was no evidence presented of any recent medical or psychological assessment as it would bear upon his present fitness. What can be said, however, in addition to noting the isolated (albeit still serious) nature of Mr. Newsom’s criminal conduct, is that he presented evidence of a steady and even commendable work history

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<sup>104</sup> See *id.* § 53.021(d)(1)(B)(1).

<sup>105</sup> See *id.* § 53.021(a)(1) (authorizing denial of licensure on the grounds that a person has been convicted of “an offense that directly relates to the duties and responsibilities of the licensed occupation”). In light of these conclusions, the ALJ does not address whether Mr. Newsom was also “convicted of a felony” within the meaning of Texas Insurance Code § 4005.101(b)(8). *But cf.* Tex. Occ. Code § 53.021(d) (authorizing licensing authority to deem a person’s deferred adjudication to be a conviction “for purposes of *this section*”) (emphasis added).

<sup>106</sup> See Tex. Occ. Code § 53.023; 28 Tex. Admin. Code § 1.502(f), (h)(2)-(3).

<sup>107</sup> See Tex. Occ. Code § 53.023; 28 Tex. Admin. Code § 1.502(h)(2).

<sup>108</sup> See Tex. Occ. Code § 53.023; 28 Tex. Admin. Code § 1.502(h)(3).

despite any issues with depression, including in positions that have entailed considerable responsibility and trust with financial matters and leadership roles. Likewise, Mr. Newsom's recommendation letters reflected that the authors considered him to be capable and worthy of trust, despite being aware of his darker times if not also his crime specifically.

Yet the analysis must also take account of other evidence of Mr. Newsom's present fitness that is less favorable to him. This includes Mr. Newsom's representation in his 2019 resume that he held "Certifications/Licenses" of "Life and Health Insurance" and "Texas General Lines Agent." The most obvious reading of this representation, the objective meaning most apparent to both writer and reader, is that Mr. Newsom had already been licensed in Texas as a general-lines agent. So understood, that representation was false—as Mr. Newsom acknowledged, he was neither licensed nor had any contemporaneous belief that he was already licensed at the time he prepared or submitted the resume. The representation also had independently serious legal and regulatory consequences, as Staff has emphasized, implicating the Insurance Code's prohibitions against holding oneself out as an insurance agent without being licensed.<sup>109</sup>

In attempting to justify the misleading representation, Mr. Newsom relied ultimately on a professed contemporaneous belief that he had been "certified" as an insurance agent (although admittedly not "licensed") because he had passed the licensing exam, making the representation (to this extent) truthful. Mr. Newsom's proposed distinction between being "certified" as an insurance agent versus "licensed" finds no support in the Insurance Code or Department rules, and his professed reliance on unnamed "Colonial Life people" is unconvincing. The more plausible explanation is that Mr. Newsom either intentionally misrepresented his licensing status or made the statement with such carelessness as to still raise concerns about his trustworthiness and reliability. While it is admittedly perplexing that Mr. Newsom would submit the misleading resume to the very Department that was withholding his licensure pending further scrutiny of his crime and his work history, that additional circumstance, in context, only weighs further against his present fitness for licensure.

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<sup>109</sup> See Tex. Ins. Code §§ 101.051, .102, 4001.051, .101.

In the end, the ALJ concludes that the evidence regarding Mr. Newsom's current fitness for licensure does not outweigh the serious nature of his crime when viewed in light of the occupation being licensed. Mr. Newsom's license application should be denied.

### **III. FINDINGS OF FACT**

1. On May 13, 2019, Jonathan David Newsom applied to the Texas Department of Insurance (Department) for a general lines agent license with a life, accident, and health qualification.
2. On July 16, 2019, the Department staff (Staff) proposed to deny Mr. Newsom's application and notified him of his right to a hearing before the State Office of Administrative Hearings (SOAH).
3. On August 1, 2019, Mr. Newsom timely requested a hearing.
4. On May 15, 2020, Staff issued a notice of hearing to Mr. Newsom, which attached and incorporated by reference its petition in the case. Mr. Newsom filed a responsive pleading on June 3, 2020.
5. On July 9, 2020, the SOAH Administrative Law Judge (ALJ) issued Order No. 2, which specified that the hearing would be held via Zoom videoconferencing and provided call-in information.
6. The notice of hearing, petition, and Order No. 2 contain 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 particular sections of the statutes and rules involved; and the factual matters asserted.
7. The hearing was held via Zoom videoconferencing on August 4, 2020, before ALJ Robert Pemberton. Staff was represented by attorney Amanda Cagle. Mr. Newsom represented himself. The hearing concluded on the same day. The record was closed on October 14, 2020, pursuant to Order No. 3, to allow for filing of post-hearing briefs.
8. On May 23, 2013, Mr. Newsom, while a pest-control licensee providing pest-control services in a client's home, stole an engagement ring and a watch belonging to the client.
9. On August 23, 2013, Mr. Newsom pleaded guilty to a state-jail-felony offense of theft of property valued between \$1,500 and \$20,000. The court found that the evidence substantiated Mr. Newsom's guilt but deferred proceedings without entering an adjudication of guilt and placed Mr. Newsom on three years' deferred-adjudication community supervision.
10. During his community-supervision period, Mr. Newsom committed multiple violations of the terms and conditions of his community supervision, including failing to report to his supervision officer, pay supervision fees, and complete community-service hours.

11. However, Mr. Newsom was ultimately discharged at the conclusion of his three-year supervision period, and the charge was dismissed.
12. Mr. Newsom's crime was facilitated by the access, opportunity, and trust afforded him by virtue of his business relationship with the client and the pest-control license he held at the time.
13. In committing his crime, Mr. Newsom engaged in dishonest acts or practices.
14. Mr. Newsom submitted the present insurance-license application less than five years after being discharged from community supervision.
15. Employment of Mr. Newsom as an insurance agent would create a situation in which he would have an opportunity to repeat the prohibited conduct.
16. Mr. Newsom's crime was a serious, felony-level theft offense that entailed his betrayal of the position of trust and state-conferred privilege conferred upon him through his former pest-control license.
17. Mr. Newsom's crime reflects adversely upon his ability, capacity, or fitness to perform the duties and discharge the responsibilities of insurance agent, which would entail a similar position of trust with potentially vulnerable clients.
18. Mr. Newsom's crime directly related to the duties and responsibilities of an insurance agent.
19. Aside from the proceedings concerning his crime and subsequent noncompliance with the terms and conditions of his community supervision, there was no evidence of any other criminal proceedings against Mr. Newsom.
20. Mr. Newsom was thirty-three years of age when he committed the crime.
21. Mr. Newsom committed the crime over seven years ago.
22. Mr. Newsom presented evidence of a steady work history in which he has been entrusted with leadership roles and financial matters.
23. Mr. Newsom submitted reference letters from a current employer and two personal friends, all of whom indicated that they respect and trust Mr. Newsom, despite some awareness of his past difficulties.
24. Although Mr. Newsom attributes his crime and subsequent community-supervision noncompliance to mental-health struggles, there was no evidence presented of any recent diagnoses or evaluations regarding his mental health or how it would bear upon his present fitness for licensure.

25. Mr. Newsom submitted a resume to the Department containing a misleading representation that he was presently “certified” or “licensed” as an insurance agent.
26. Mr. Newsom is not presently fit to hold an insurance license.

#### IV. CONCLUSIONS OF LAW

1. The Commissioner of Insurance and the Department have jurisdiction over this matter. Tex. Ins. Code §§ 82.051-.055, 4001.002, 4005.101, .102; Tex. Occ. Code §§ 53.021-.023 (since amended, eff. Sept. 1, 2019); Tex. Gov’t Code §§ 2001.051-.178.
2. The State Office of Administrative Hearings 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. Newsom received timely and sufficient notice of hearing. Tex. Gov’t Code ch. 2001; Tex. Ins. Code § 4005.104(b).
4. The Department may deny a license application if the applicant has engaged in fraudulent or dishonest acts or practices. Tex. Ins. Code § 4005.101(b)(5).
5. The Department may deny a license application if the applicant has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. Tex. Occ. Code § 53.021(a) (since amended, eff. Sept. 1, 2019).
6. The Department may consider a person to have been “convicted” of an offense for purposes of Texas Occupations Code § 53.021(a), regardless whether the proceedings were dismissed and the person was discharged upon completion of deferred adjudication, if: (1) the person completed the period of supervision less than five years before the date the person applied for the license; and (2) after consideration of the factors described in Texas Occupations Code §§ 53.022-.023(a), the Department determines that employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct. Tex. Occ. Code § 53.021(d).
7. The Department considers the factors specified in Texas Occupations Code §§ 53.022 and 53.023 in determining whether to grant or deny any license under its jurisdiction. Tex. Occ. Code §§ 53.022-.23 (since amended, eff. Sept. 1, 2019); 28 Tex. Adm. Code § 1.502(h); *see also* 28 Tex. Admin. Code § 1.502(d), (f).
8. Staff has the burden to prove by a preponderance of the evidence that grounds exist to deny Mr. Newsom’s license application, while Mr. Newsom has the burden to prove by a preponderance of the evidence that he is fit to perform the duties and discharge the responsibilities of an insurance agent despite his criminal history. *See* Tex. Ins. Code § 4005.101(b)(5); Tex. Occ. Code §§ 53.021(b), .021, .022 & .023 (since amended, eff. Sept. 1, 2019); 1 Tex. Admin. Code § 155.427; 28 Tex. Admin. Code § 1.502(h).
9. The Department may consider Mr. Newsom to have been “convicted” of his criminal offense (state-jail-felony of theft of property valued between \$1,500 and \$20,000) for purposes of Texas Occupations Code § 53.021(a). Tex. Occ. Code § 53.021(d).

10. Mr. Newsom's offense is a type that the Department considers to be of such serious nature that it is of prime importance in determining fitness for licensure. 28 Tex. Admin. Code § 1.502(e)(4)(F); *see* Tex. Occ. Code § 53.025.
11. Staff met its burden to prove that Mr. Newsom engaged in "dishonest acts or practices," was "convicted" of an offense, and the acts and the offense were "directly related" to the duties and responsibilities of the licensed occupation. *See* Tex. Ins. Code § 4005.101(b)(5); Tex. Occ. Code §§ 53.021(a) & .022 (since amended, eff. Sept. 1, 2019); 28 Tex. Admin. Code § 1.502(h)(1).
12. Mr. Newsom has not met his burden to prove that he is presently fit to perform the duties and discharge the responsibilities of the licensed occupation despite his criminal history. Tex. Occ. Code § 53.023 (since amended, eff. Sept. 1, 2019); 28 Tex. Admin. Code § 1.502(d), (h)(2)-(3).
13. Mr. Newsom's license application should be denied.

**SIGNED December 8, 2020.**



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**ROBERT H. PEMBERTON**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**