

No. 2022-7335

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

**Date: 06/08/2022**

**Subject Considered:**

Texas Department of Insurance  
v.  
Arnita Session

SOAH Docket No. 454-21-1349.C

**General remarks and official action taken:**

The subject of this order is Arnita Session's application for a life agent license. This order denies her application.

**Background**

After proper notice was given, the above-styled case was heard by an administrative law judge for the State Office of Administrative Hearings. The administrative law judge made and filed a proposal for decision containing a recommendation that the Texas Department of Insurance (TDI) deny Arnita Session's application. 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 Findings of Fact Nos. 7 and 21 and Conclusion of Law No. 14. TDI does not adopt Conclusion of Law No. 7.

**Legal Authority for Changes to the Proposal for Decision**

The legal authority for the changes to the proposal for decision made in this order is TEX. GOV'T. CODE § 2001.058(e)(1) and (3), which provide that "[a] state agency may

COMMISSIONER'S ORDER  
TDI v. Arnita Session  
SOAH Docket No. 454-21-1349.C  
Page 2 of 7

change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines . . . that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies [of the agency], or prior administrative decisions . . . or . . . that a technical error in a finding of fact should be changed."

Finding of Fact No. 7

The hearing in this contested case took place on May 3, 2021, but Finding of Fact No. 7 incorrectly states that the hearing took place on May 3, 2020. Finding of Fact No. 7 is amended to correct that technical error.

Finding of Fact No. 21

In Finding of Fact No. 21, the administrative law judge incorrectly references Article 62.001(4) of the Code of Criminal Procedure. The proper statutory citation is Article 62.001(5). Finding of Fact No. 21 is amended to correct that technical error.

TEX. INS. CODE § 4005.101(b)(8) and TEX. OCC. CODE § 53.021(d)

TEX. INS. CODE § 4005.101 provides grounds on which TDI may discipline a license holder or deny a person's license application. Under subsection (b)(8), TDI may deny a license application if it determines the applicant "has been convicted of a felony[.]" Relatedly, TEX. OCC. CODE § 53.021(a) authorizes licensing agencies such as TDI to disqualify a person from receiving a license if the person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation.<sup>1</sup>

On February 4, 2016, Ms. Session pleaded guilty to a state-jail-felony offense of credit/debit card abuse. The court found that the evidence substantiated her guilt but deferred proceedings without entering an adjudication of guilt and placed her on two years' deferred-adjudication community supervision and imposed a fine, court costs, and restitution. Ms. Session was discharged from community supervision on October 3, 2017, and the court proceeding was dismissed.

A deferred adjudication is generally not considered a conviction unless otherwise provided in statute. See *McNew v. State*, 608 S.W.2d 166, 172 (Tex. Crim. App. 1978) ("[A] 'conviction,' regardless of the context in which it is used, always involves an adjudication of guilt."); *Hassan v. State*, 440 S.W.3d 684, 687 (Tex. App.—Houston [14th

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

COMMISSIONER'S ORDER  
TDI v. Arnita Session  
SOAH Docket No. 454-21-1349.C  
Page 3 of 7

Dist.] 2012, no pet.) ("[A]n order deferring adjudication of guilt and placing a defendant on probation or community supervision is not a conviction."); Tex. Att'y Gen. Op. No. JC-396 (2001) at 2 ("As commonly defined, the term 'convicted' means "[p]roved or found guilty; condemned.") (citing III Oxford English Dictionary 879 (2d ed. 1989)).

In this case, the administrative law judge concluded that Ms. Session's deferred adjudication qualifies as a conviction for purposes of both TEX. INS. CODE § 4005.101(b)(8) and TEX. OCC. CODE § 53.021(a)(1). As support for this conclusion, the administrative law judge cites TEX. OCC. CODE § 53.021(d), which provides:

A licensing authority may consider a person to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the person was discharged as described by Subsection (c) if:

(1) the person was charged with:

(A) any offense described by Article 62.001(5), Code of Criminal Procedure; or

(B) an offense other than an offense described by Paragraph (A) if:

(i) the person has not completed the period of supervision or the person completed the period of supervision less than five years before the date the person applied for the license; or

(ii) a conviction for the offense would make the person ineligible for the license by operation of law; and

(2) after consideration of the factors described by Sections 53.022 and 53.023(a), the licensing authority determines that:

(A) the person may pose a continued threat to public safety; or

(B) employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.

By its plain language, however, subsection (d) of § 53.021 applies only in the context of that section. See TEX. OCC. CODE § 53.021(d) ("A licensing authority may consider a

COMMISSIONER'S ORDER  
TDI v. Arnita Session  
SOAH Docket No. 454-21-1349.C  
Page 4 of 7

person to have been convicted of an offense *for purposes of this section . . .*") (emphasis added). It cannot be used to establish a conviction outside the context of § 53.021. The Office of the Attorney General recognized as much in Tex. Att'y Gen. Op. No. KP-107 (2016), albeit indirectly.<sup>2</sup>

Therefore, based on the analysis above, TDI concludes that the administrative law judge correctly concluded that Ms. Session's deferred adjudication can be considered a conviction for purposes of TEX. OCC. CODE § 53.021(a). However, TDI finds that the administrative law judge misinterpreted or misapplied the law in concluding that TEX. OCC. CODE § 53.021(d) may be used to treat a deferred adjudication as a conviction for purposes of TEX. INS. CODE § 4005.101(b)(8). *See, e.g.,* Commissioner's Order No. 2022-7155<sup>3</sup> (concluding that a deferred adjudication is not a conviction for purposes of TEX. INS. CODE § 4005.101(b)(8)). The administrative law judge's proposal for decision is changed accordingly, as described below.

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

The Department may deny a license application if the applicant has been convicted of a felony. Tex. Ins. Code § 4005.101(b)(8).

Based on the analysis above showing the administrative law judge misinterpreted or misapplied the law, Conclusion of Law No. 7, while accurately stated, is not adopted, as it is not relevant to the denial of the application.

The administrative law judge's proposed Conclusion of Law No. 14 provides:

Staff met its burden to prove that Ms. Session intentionally made a material misstatement in her license application; attempted to obtain a license by fraud

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<sup>2</sup> At issue in that opinion was the Texas Lottery Commission's statutory authority to revoke a sales agent's license if the agent had been "convicted of . . . gambling or a gambling-related offense[.]" TEX. GOV'T. CODE § 466.155. The operative question posed to the Attorney General was whether the Commission could revoke a license based on a sales agent's deferred adjudication for the offense of gambling, a Class C misdemeanor. After analyzing TEX. GOV'T. CODE § 466.155 and TEX. OCC. CODE § 53.021(d), the Attorney General concluded that the Commission could not revoke a license based on a deferred adjudication for gambling because § 53.021(a) did not extend to Class C misdemeanors. Implicit in that conclusion is a finding that the Commission could not use § 53.021(d) as a basis to treat a deferred adjudication as a conviction for purposes of TEX. GOV'T. CODE § 466.155, where a gambling conviction is expressly listed as a basis for license revocation.

<sup>3</sup> *Texas Department of Insurance v. Arif Tejani*, issued January 5, 2022.

or misrepresentation; engaged in dishonest acts or practices; was "convicted" of a felony, 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)(2), (3), (5), (8); Tex. Occ. Code §§ 53.021(a), .022; 28 Tex. Admin. Code § 1.502(h)(1).

Based on the analysis above showing the administrative law judge misinterpreted or misapplied the law, Conclusion of Law No. 14 is changed to state:

Staff met its burden to prove that Ms. Session intentionally made a material misstatement in her license application; attempted to obtain a license by fraud or misrepresentation; engaged in dishonest acts or practices; was "convicted" of a felony for purposes of Occupations Code § 53.021, 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)(2), (3), (5); Tex. Occ. Code §§ 53.021(a) and (d), .022; 28 Tex. Admin. Code § 1.502(h)(1).

### **Findings of Fact**

1. Except for Findings of Fact Nos. 7 and 21, the findings of fact contained in Exhibit A are adopted by TDI and incorporated by reference into this order.
2. In place of Finding of Fact No. 7 as contained in Exhibit A, the following finding of fact is adopted:

The hearing was held via the Zoom videoconferencing platform on May 3, 2021, before ALJ Meaghan Bailey. Staff was represented by attorney Amanda Cagle. Ms. Session represented herself. The hearing concluded and the record closed on the same day.

3. In place of Finding of Fact No. 21 as contained in Exhibit A, the following finding of fact is adopted:

Ms. Session's offense is not described by Article 62.001(5) in the Code of Criminal Procedure.

### **Conclusions of Law**

1. Conclusions of Law Nos. 1–6, 8–13, and 15–16 contained in Exhibit A are adopted by TDI and incorporated by reference into this order.
2. Conclusion of Law No. 7 as contained in Exhibit A is not adopted.

COMMISSIONER'S ORDER  
TDI v. Arnita Session  
SOAH Docket No. 454-21-1349.C  
Page 6 of 7

3. In place of Conclusion of Law No. 14 as contained in Exhibit A, the following Conclusion of Law is adopted:

Staff met its burden to prove that Ms. Session intentionally made a material misstatement in her license application; attempted to obtain a license by fraud or misrepresentation; engaged in dishonest acts or practices; was "convicted" of a felony for purposes of Occupations Code § 53.021, 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)(2), (3), (5); Tex. Occ. Code §§ 53.021(a) and (d), .022; 28 Tex. Admin. Code § 1.502(h)(1).

COMMISSIONER'S ORDER  
TDI v. Arnita Session  
SOAH Docket No. 454-21-1349.C  
Page 7 of 7

**Order**

It is ordered that Arnita Session's application for a life agent license is denied.

DocuSigned by:  
  
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Cassie Brown  
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:  
  
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James Person, General Counsel

DocuSigned by:  
  
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James Kelly, Staff Attorney

**Exhibit A**

SOAH DOCKET NO. 454-21-1349.C

<p><b>TEXAS DEPARTMENT OF INSURANCE,</b>  <b>Petitioner</b></p> <p>v.</p> <p><b>ARNITA SESSION,</b>  <b>Respondent</b></p>	<p>§ § § § § § § §</p>	<p><b>BEFORE THE STATE OFFICE</b></p> <p><b>OF</b></p> <p><b>ADMINISTRATIVE HEARINGS</b></p>
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**PROPOSAL FOR DECISION**

The staff (Staff) of the Texas Department of Insurance (Department) seeks to deny the application of Arnita Session for a life agent license. Staff’s grounds for denial are based on: a 2015 state-jail-felony offense to which Ms. Session pleaded guilty and received two years of deferred-adjudication community supervision, from which he has since been discharged; as well as an alleged intentional material misstatement in her application concerning her criminal history. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends that the Department deny Ms. Session’s license application.

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

The hearing on the merits was held via Zoom videoconferencing on May 3, 2021, before ALJ Meaghan Bailey. Staff was represented by attorney Amanda Cagle, and Ms. Session represented herself. The hearing concluded that same day. Janis Simon, Certified Shorthand Reporter, prepared a transcript, which is the official record of the hearing.<sup>1</sup> The record closed at the conclusion of the hearing.

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

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<sup>1</sup> Ms. Simon transcribed the hearing into one volume. References to the transcript in this Proposal for Decision are abbreviated as “Tr. at \_\_.”



## II. DISCUSSION

### A. Relevant Licensing Law

Staff alleged four bases for the Department's authority to deny Ms. Session's license application,<sup>2</sup> namely, that Ms. Session has (1) intentionally made a material misstatement in the license application;<sup>3</sup> (2) attempted to obtain a license by fraud or misrepresentation;<sup>4</sup> (3) engaged in fraudulent or dishonest acts or practices;<sup>5</sup> and (4) been convicted of a felony.<sup>6</sup>

Texas Occupations Code § 53.021(a) authorizes a "licensing authority," such as the Department, to deny 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>7</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 a criminal history, that the licensing authority must weigh in its ultimate determination to deny or approve licensure in light of the applicant's criminal history.

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<sup>2</sup> Staff Ex. 1 at Bates TDI 7-8.

<sup>3</sup> Tex. Ins. Code § 4005.101(b)(2) ("The department may deny a license application . . . if the department determines that the applicant . . . has intentionally made a material misstatement in the license application.").

<sup>4</sup> *Id.* § 4005.101(b)(3) ("The department may deny a license application . . . if the department determines that the applicant . . . has obtained or attempted to obtain a license by fraud or misrepresentation.").

<sup>5</sup> *Id.* § 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>6</sup> *Id.* § 4005.101(b)(8) ("The department may deny a license application . . . if the department determines that the applicant . . . has been convicted of a felony."); Tex. Occ. Code § 53.021(a)(1) and (d) (Staff also included these citations in its petition under "Legal Allegations" subsection (d) as a basis for treating Ms. Session's deferred adjudication as a "conviction" for purposes of Section 53.021, as discussed above.).

<sup>7</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)").

Texas Occupations Code § 53.021(d) provides that, “for purposes of this section,” 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>8</sup>: (1) the offense is not described by Article 62.001(5) in the Code of Criminal Procedure; (2) the person has not yet completed the period of supervision or has completed it less than five years before the date the person applied for the license; and (3) after consideration of the factors described in Texas Occupations Code §§ 53.022 and 53.023(a), the licensing authority determines 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>9</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 that is treated as a conviction.

The Department’s rule governing “Licensing Persons With Criminal Backgrounds,” codified at 28 Texas Administrative Code (Rule) § 1.502,<sup>10</sup> incorporates a version of the Texas Occupations Code §§ 53.022 and 53.023 analyses. Rule 1.502(h) requires 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 states:

The Department shall not issue a license . . . if an applicant has committed a felony or misdemeanor, or engaged fraudulent or dishonest activity that directly relates to the duties of and responsibilities of the licensed occupation 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.

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<sup>8</sup> Staff Ex. 1 at Bates TDI 8.

<sup>9</sup> Tex. Occ. Code § 53.021(d)(1)(B)(i), (2)(B).

<sup>10</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 \_\_\_\_.”

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;
  - (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.

Because Ms. Session submitted her license application after the effective date of the 2019 amendments, her application is governed by the current versions of Sections 53.022 and 53.023, and the ALJ will address any inconsistencies, if needed, between the factors set out in Rule 1.502(h) and the current Texas Occupations Code Sections 53.022 and 53.023.

The analysis performed under Rule 1.502(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 of prime importance in determining fitness for licensure or authorization.”<sup>11</sup> Staff alleges Ms. Session’s offense falls under the “guideline” crimes<sup>12</sup> because it was an “offense for which fraud, dishonesty, or deceit is an essential element.”<sup>13</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>14</sup>

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<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 8.

<sup>13</sup> Rule 1.502(e)(1).

<sup>14</sup> *Id.* 1.502(c).

Staff bears the burden of proving its alleged grounds for denying Ms. Session's license application, while Ms. Session has the burden to prove her fitness to be licensed despite the existence of any such grounds.<sup>15</sup> The standard of proof is by a preponderance of the evidence.<sup>16</sup>

## **B. Evidence**

Staff offered nine exhibits, all of which were admitted without objection. Staff Exhibits 1 through 3 went to jurisdiction and notice; Staff Exhibits 4 and 5 are certified copies of court papers reflecting Ms. Session's criminal history; Staff Exhibit 6 is the Department's file regarding Ms. Session's license application; and Staff Exhibits 7 through 9 are applicable statutes and regulations.<sup>17</sup> Staff also called Department employee Lewis Wright to present testimony. Ms. Session called Jae Murphy to present testimony and she also testified on her own behalf. Ms. Session did not offer any additional documentary exhibits.

### **1. Ms. Session's Criminal History**

Although Ms. Session contests the basis and illegality of her offense, it is undisputed that on February 24, 2016, she pleaded guilty in the 363rd Judicial District Court in Dallas County, Texas to the state-jail-felony offense of Credit/Debit Card Abuse for her actions taken on March 22, 2015. The district court placed her on deferred-adjudication community supervision for

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<sup>15</sup> See Tex. Ins. Code § 4005.101(b)(2), (3), (5), (8); Tex. Occ. Code §§ 53.0021(a), (d), .211(b), .022, .023; 1 Tex. Admin. Code § 155.427; and Rule 1.502(h)(3).

<sup>16</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)).

<sup>17</sup> Staff Ex. 1 (Bates TDI 1-11) is a copy of the notice of hearing, including Staff's petition, and also proof of service. Staff Ex. 2 (Bates TDI 12-14) is a copy of SOAH's order setting the hearing on the merits. Staff Ex. 3 (Bates TDI 15-17) is a copy of Ms. Session's response to Staff's notice of hearing. Staff Ex. 4 (Bates TDI 18-27) is a copy of the court records concerning Ms. Session's felony credit card abuse offense. Staff Ex. 5 (Bates TDI 28-31) is a copy of the police records concerning Ms. Session's felony credit card abuse. Staff Ex. 6 (Bates TDI 32-74) is a copy of Ms. Session's life agent license application and accompanying documents and correspondence the Department has compiled for this case. Staff Exs. 7-8 (Bates TDI 75-86) are copies of the following pertinent statutes and rules: Texas Insurance Code § 4005.101, Rule 1.502, and Texas Occupations Code §§ 53.021-.023.

a two-year period and imposed a fine, court costs, and restitution in varying amounts.<sup>18</sup> It is further undisputed that, on October 3, 2017, she was granted early dismissal from her court-ordered supervision and the charge against her was dismissed.<sup>19</sup> No evidence was offered to show that Ms. Session had any prior criminal history before her credit/debit card abuse offense or that she has committed any criminal offenses since.

## 2. Testimony of Lewis Wright

Mr. Wright, who indicated that he has worked in the insurance field for almost 34 years, including the last 13 years at the Department, presented the Department's position and reasoning in proposing to deny licensure to Ms. Session.<sup>20</sup> He confirmed that Ms. Session applied for a life agent license on or around November 16, 2019, and that she did not disclose her criminal history in the application when directly asked whether she had any prior criminal history. More specifically, Mr. Wright explained the application includes a screening question which asks the applicant "[h]ave you ever been convicted of a felony, had a judgement withheld or deferred, or are you currently charged with committing a felony."<sup>21</sup> In response to this question, Mr. Wright confirmed Ms. Session answered "no." Mr. Wright indicated that Department only discovered Ms. Session's criminal history after it conducted a routine background investigation that revealed her state-jail-felony offense of credit card abuse described above.<sup>22</sup>

According to Mr. Wright, Ms. Session's answer regarding her criminal history concerns the Department because the question was "designed to elicit an honest response related to any kind of criminal activity" and "the [Texas Insurance Code] provides for any misrepresentations that were intentional to be considered as grounds for license denial."<sup>23</sup> While it is true that she was not

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<sup>18</sup> Staff Ex.4 at Bates TDI 19.

<sup>19</sup> Staff Ex. 4 at Bates TDI 26.

<sup>20</sup> Tr. at 17-56.

<sup>21</sup> Staff Ex. 6 at Bates TDI 69; Tr. at 30-31.

<sup>22</sup> Tr. at 29-30.

<sup>23</sup> Tr. at 31-32.

convicted, her judgement was deferred, and that situation is specifically referenced in the question; therefore, he asserts, she should have responded “yes” to the screening question.

In her opening statement during the hearing, Ms. Session argued that she did not lie on her application and that to her knowledge she answered the question honestly because she was not convicted and the offense was ultimately dismissed.<sup>24</sup> Mr. Wright opined that, if this were the case and there was no intentional deceit in Ms. Session’s application response, the Department would still have concerns regarding her attention to detail and the possible consequences that lack of detail could have on her potential insurance clients. He emphasized that, when dealing with insurance policies and contracts, the specific wording can make a huge difference as to what is covered and what is not. “That attention to detail . . . and being able to communicate that with others is a prime duty for an insurance agent.”<sup>25</sup>

Mr. Wright described a letter, dated January 3, 2020, that Ms. Session submitted to the Department in response to the Department’s requests for additional information regarding her criminal offense, as well as any reference letters, her resume, and other similar documentation.<sup>26</sup> In her letter, Ms. Session indicated in part:

In 2015, I abused my own credit card, because I was struggling and I had no help financially to provide for my daughter. I was placed on [d]eferred [a]djudication for 2 years but I was approved for early [r]elease . . . . I have gone through the proper steps to get a non-disclosure and unfortunately it has not gone into effect. This is the reason why I did not inform it on my application status because I was under the impression that [m]y non-disclosure was complete.<sup>27</sup>

Mr. Wright indicated that the Department did not receive any orders of nondisclosure or any other similar documentation regarding Ms. Session’s offense, and that the explanation provided in her letter as to why she answered “no” to the criminal history question in the

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<sup>24</sup> Tr. at 12-13. Ms. Session repeated this explanation and argument during her testimony.

<sup>25</sup> Tr. at 31-32.

<sup>26</sup> Tr. at 33-34; Staff Ex. 6 at Bates TDI 43-44.

<sup>27</sup> Staff Ex. 6 at Bates TDI 43.

application differs from the reason she argued during her opening statement at the hearing as discussed above (i.e., non-disclosure versus she was not convicted and the charge was ultimately dismissed).

Additionally, according to Mr. Wright, through its routine background investigation, the “Department discovered that [Ms. Session] actually abused someone else’s credit card and that it was obtained without the permission of the individual.”<sup>28</sup> Ms. Session even alluded to this fact in a separate section of her January 3, 2021 letter wherein she stated:

I used a co-worker’s/[f]riend/me being a signer on the credit card, [b]ecause I needed gas in my vehicle and she offered to help me. The following day when I tried to return the card, she was not at work and I kept it and tried to reach out to her and there was no response for months and she did not even return to work. I used the card again weeks later for the same reason and when I returned to work later that evening, I was told that she had filed a police report saying I stole the card and was not given permission to use it.<sup>29</sup>

Mr. Wright testified that this explanation of the Ms. Session’s offense aligns more closely with the details included in the police report as compared to her contradicting statement that she had abused her own credit card. He also noted that Ms. Session’s statement indicates that she was authorized to use the card to purchase gas for her vehicle, and that she did so twice, while the police report indicates Ms. Session made four purchases with the card at four different stores on March 22, 2015. More specifically, the police report indicates that on two separate occasions Ms. Session purchased a soda, she then bought gas and some Black & Mild cigars, and she also purchased an iPad mini.<sup>30</sup>

Mr. Wright opined that Ms. Session’s January 3, 2020 letter concerns the Department because it reflects a snapshot of her current integrity regarding whether she is fully disclosing and being honest about what occurred in the past. Mr. Wright also referenced Ms. Session’s

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<sup>28</sup> Tr. at 34-35.

<sup>29</sup> Staff Ex. 6 at Bates TDI 44.

<sup>30</sup> Tr. at 39; Staff Ex. 5 at Bates TDI 28-29.



February 15, 2021 response to Staff's notice of hearing in which she stated:

My credit card felony had everything to do with my information and not any other person's information being misused. I would never misuse anyone else's information that would cause me to do jail time knowing [sic] have a daughter to take care of.<sup>31</sup>

This more recent statement led Mr. Wright to further doubt Ms. Session's veracity and capacity for telling the truth because it is at odds with the police report, Ms. Session's own prior statements, and her 2016 guilty plea. It is Mr. Wright's opinion that Ms. Session's February 15, 2021 response appeared to be an attempt to deceive or mislead the Department.<sup>32</sup>

Mr. Wright testified that, according to the police report, the owner of the credit card that was abused (the complainant) was a former co-worker of Ms. Session's at the Dallas County Sheriff's Department (Sheriff's Department) and that the complainant did not give Ms. Session her credit card to use. Rather, the report indicates, that on March 22, 2015, the complainant left her credit card (which was in her wallet) secured in her lunch box that was stored in a room inside the Sheriff's Department that Ms. Session was overseeing for security while the complainant was at work. On March 26, 2015, the complainant stopped for gas and realized her credit card was missing from her wallet and immediately reported the card as lost or stolen. The complainant was then informed by her credit card representative that the card had been used at four different locations in Arlington, Texas on March 22, 2015. The complainant indicated that she lived in Red Oak, Texas and has not been to Arlington, Texas within the last three months, and that she was the sole user of the credit card and did not authorize anyone else to make purchases with the card.<sup>33</sup>

In sum, Mr. Wright testified the Department decided to deny Ms. Session's license in light of her criminal history after considering the applicable statutes and regulations. More specifically, the Department considered Texas Insurance Code § 4005.101(b)(2), (3), (5), and (8), which authorize the Department to deny a license application if it determines the applicant has

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<sup>31</sup> Staff Ex. 3 at Bates TDI 16.

<sup>32</sup> Tr. at 54-55.

<sup>33</sup> Staff Ex. 5 at Bates TDI 28-29.

“intentionally made a material misstatement in the license application;” “attempted to obtain a license by fraud or misrepresentation;” “engaged in fraudulent or dishonest acts or practices;” and “been convicted of a felony.”

With regard to the Department’s consideration of Ms. Session’s deferred adjudication being treated as a “conviction,” Mr. Wright referenced the factors the Department considered under Texas Occupations Code § 53.021(d). He explained that under the statute, the Department is authorized to consider her deferred adjudication a conviction because (1) she was charged with an offense that is not described by Article 62.001(5) in the Code of Criminal Procedure; (2) she completed her deferred-adjudication community supervision less than five years before she applied for a life agent license with the Department; and (3) after considering the factors under Texas Occupations Code §§ 53.022 and .023(a), the Department determined that Ms. Session’s employment as a licensed life agent would create a situation in which she would have an opportunity to repeat the prohibited conduct. As Mr. Wright indicated, “a life agent has access to sensitive personal information, financial information, oftentimes credit card and debit card account numbers, and the opportunity to reoffend would be increased exponentially for a life agent to abuse credit cards.”<sup>34</sup>

Mr. Wright also explained that, in its determination to deny Ms. Session’s application, the Department considered the guidance set out in Rule 1.502 regarding how to evaluate a criminal offense and that the utmost important consideration should be focused on whether the applicant is honest, trustworthy, and reliable. Mr. Wright addressed the Department’s analysis of the factors set out in Texas Occupations Code §§ 53.022 and .023(a) and Rule 1.502(h), and indicated the following:

- According to the Department’s files, Ms. Session has no other criminal history other than the March 22, 2015 offense of Credit/Debit card abuse.<sup>35</sup>
- Ms. Session was approximately 26 years old when she committed the criminal offense. She was an adult and had established herself in the workplace at the

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<sup>34</sup> Tr. at 43.

<sup>35</sup> Tex. Occ. Code § 53.023(a)(1); Rule § 1.502(h)(2)(A), (G)(iii); Tr. at 48.

Sheriff's Department, so the Department did not consider her offense to be a youthful indiscretion.<sup>36</sup>

- At the time the application was received, a little over three years had elapsed since Ms. Session's offense; and as of the hearing, approximately six years had elapsed. The Department considered her offense a recent activity.<sup>37</sup>
- Ms. Session complied with the conditions of her deferred-adjudication community service and was discharged on October 3, 2017.<sup>38</sup>
- The offense took place at Ms. Session's workplace and the complainant was a fellow co-worker. This indicates it was a work-related offense which provided Ms. Session an opportunity to have access to the property of the complainant as part of her job duties. Therefore, there is a high exposure to future possibilities of similar occurrences, and the nature of a life agent's work and responsibilities will create an increased opportunity to commit a similar act. As such, the Department reviewed this as a severe offense for consideration.<sup>39</sup>
- Ms. Session's resume indicates a steady record of employment; however, her resume does not include her employment with the Sheriff's Department although the timeframe she was employed with the Sheriff's Department is represented. It indicates a degree of deception that this employment was not reported on the resume when considering how that employment ties in with the offense.<sup>40</sup>
- Ms. Session did not submit any rehabilitation evidence other than three recommendation letters.<sup>41</sup>
- Gaylord Thomas's recommendation letter does not acknowledge Ms. Session's criminal history, does not explain in detail the relationship between Mr. Thomas and Ms. Session, and it does not address her honesty, trustworthiness, or reliability. It does appear to reflect that Mr. Thomas's interactions with Ms. Session have been congenial and that she is a devoted and loving mother to her daughter. Cassandra Cumby's letter acknowledges Ms. Session's criminal history and indicates that she is bright, very intelligent, has exceptional technical skills, and would be an asset to any organization.<sup>42</sup> Latrina Chandler's letter indicates Ms. Session works or has worked to provide child care for Ms. Chandler's children and that Ms. Chandler recommended Ms. Session to others needing child care services. Ms. Chandler states that Ms. Session is a very honest and reliable person.

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<sup>36</sup> Tex. Occ. Code § 53.023(a)(2); Rule 1.502(h)(2)(B); Tr. at 47-48.

<sup>37</sup> Tex. Occ. Code § 53.023(a)(3); Rule 1.502(h)(2)(C); Tr. at 50.

<sup>38</sup> Tex. Occ. Code § 53.023(a)(6); Rule 1.502(h)(2)(G)(iv); Tr. at 43.

<sup>39</sup> Tex. Occ. Code § 53.022(a)(1)-(5); Rule 1.502(h)(1)(A)-(D); Tr. at 50.

<sup>40</sup> Tex. Occ. Code § 53.023(a)(4); Rule 1.502(h)(2)(D), (G)(i); Tr. at 50-51.

<sup>41</sup> Tex. Occ. Code § 53.023(a)(5); Rule 1.502(h)(2)(E); Tr. at 50.

<sup>42</sup> As will be discussed in greater detail below, Ms. Cumby also indicated that Ms. Session is applying for a position with the People Helping People insurance company as a licensed insurance agent. Staff Ex. 6 at Bates TDI 60.

Ms. Chandler's letter does not indicate how long she has known Ms. Session, and she did not sign her letter.<sup>43</sup>

In sum, Mr. Wright testified that, after consideration of the applicable factors, the Department determined Ms. Session was unfit for licensure and that her application for a life agent license should be denied.<sup>44</sup>

### 3. Testimony of Ms. Session

Although she pleaded guilty to the criminal offense, Ms. Session maintained that she and the complainant were friends, she was a "user on the credit card," and the complainant knew what she was purchasing with the credit card.<sup>45</sup> According to Ms. Session, the complainant knew she did not have any gas in her vehicle and the complainant told her that she could purchase gas with the card.<sup>46</sup> With regard to her purchase of the cigars, Ms. Session stated, "me smoking a Black & Mild, me being under stress, that's just a habit."<sup>47</sup>

On cross examination, Ms. Session confirmed that she had been represented by a court-appointed attorney in her criminal case when she pleaded guilty to the following charge:

That **ARNITA DEON SESSION**, hereinafter called Defendant, on or about 22nd day of March, 2015 in the County of Dallas, State of Texas, did then and there with intent to fraudulently obtain a benefit, use a CREDIT ONE credit/debit card, the last four digits of the number of said card being 5010, with knowledge that the card had not been issued to the said defendant and that the said card was not used with the effective consent of the cardholder, TAMEKA ANDERSON.<sup>48</sup>

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<sup>43</sup> Tex. Occ. Code § 53.023(a)(7); Rule 1.502(h)(2)(F); Tr. at 51-54.

<sup>44</sup> Tr. at 55-56.

<sup>45</sup> Tr. at 58-59. Ms. Session did not testify about how she became a user or "signer" on the complainant's credit card or when that authorization was given to her by the complainant.

<sup>46</sup> Tr. at 60.

<sup>47</sup> Tr. at 60. Ms. Session did not indicate whether she received verbal authorization from the complainant to purchase the cigars. Additionally, Ms. Session did not address the occasions when she used the complainant's credit card to purchase sodas or the iPad mini, or whether she received authorization from the complainant before making those purchases with the complainant's credit card.

<sup>48</sup> Staff Ex. 6 at Bates TDI 51 (emphasis in original).

However, she stressed that the narrative included in the police report, and ultimately the indictment, stemmed from her being unable to hire her own attorney to fight her case. Although she was awarded a court-appointed attorney, she insisted that the outcome of her case would have been different if she “would have had money to go out there and find [her] own personal attorney . . . who does not have other cases piled up . . . and want[s] everyone to just take the deal.”<sup>49</sup> According to Ms. Session, she had to accept what her court-appointed attorney pleaded on her behalf and she did not get a chance to explain what happened regarding her use of the complainant’s credit card.<sup>50</sup> She emphasized that she is “not the type of person that’s going to just work at a police department and then turn around and be dishonest and lie and take somebody else’s credit card knowing that [she has] a little girl” that she has to care for as a single mother.<sup>51</sup>

In response to Staff’s assertion that she made a material misstatement in her application, Ms. Session maintained that she did not answer the question untruthfully because she “did not get convicted,” and she had been told by her probation officer that if she received a question about her employment history that asks “have you ever been convicted, your answer is no.”<sup>52</sup> According to Ms. Session, “if [she] would have seen a choice that said, have you been on deferred adjudication, [she] would have put that on there because, to [her], what happened is not a secret.”<sup>53</sup> It was her understanding that the reference to “deferred” in the application question “was talking about the conviction part” and that she “did not know that [she] was supposed to put ‘yes’.”<sup>54</sup> She expressed remorse for her inaccurate answer, asserting that while she does have a Master’s and a Bachelor’s degree and can read and understand questions, she did not lie on the application; and she stated

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<sup>49</sup> Tr. at 77.

<sup>50</sup> Tr. at 59-60.

<sup>51</sup> Tr. at 59.

<sup>52</sup> Tr. at 61, 63.

<sup>53</sup> Tr. at 61.

<sup>54</sup> Tr. at 62.

that, from now on, if she sees the word "convicted" on an employment application she is going to answer "yes" just to be on the safe side.<sup>55</sup>

In discussing her recommendation letters, Ms. Session explained that she knows Ms. Chandler through Ms. Chandler's position as a director for the People Helping People life insurance company. Additionally, she explained that she worked with Mr. Thomas at the Sheriff's Department.<sup>56</sup> Ms. Session stated she was under the impression that the reference letters simply needed to include what the individuals know about her personally, and that she was unaware the letters should have included the individuals' opinions as to her honesty, trustworthiness, and reliability.<sup>57</sup>

Ms. Session testified that the Sheriff's Department fired her due to her criminal offense, and confirmed that she is currently receiving unemployment assistance. She stated that, while unemployed, she is providing independent healthcare and home maintenance assistance to an older gentleman, Yvon LeBlanc, for whom she used to work at the Arlington Career Institute and at his private law office. She testified that while she does not ask Mr. LeBlanc for payment, he sometimes pays her for her assistance or will provide her with money to get food or to get her daughter something.<sup>58</sup>

During her testimony, Ms. Session expressed frustration about her current situation and explained that she filed for nondisclosure because she does not want to continuously be put in a position where she has to explain herself and fight for a job or license when she knows she did not get a fair trial.<sup>59</sup> Ms. Session stated that she is a different person and more committed to honesty

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<sup>55</sup> Tr. at 64-65.

<sup>56</sup> Tr. at 64-65. Ms. Session did not testify as to her connection with People Helping People, whether she has applied for a position with the company, or whether an employee of People Helping People assisted her in filling out her application to the Department. This matter is discussed in more detail by Ms. Murphy below.

<sup>57</sup> Tr. at 65.

<sup>58</sup> Tr. at 67-70.

<sup>59</sup> Tr. at 65-66.

today than she was when the offense occurred.<sup>60</sup> She also revealed that she was recently ordained and is now practicing ministry and focused on helping people. Ms. Session stressed that she wants a second chance to obtain an insurance license so that she can get off of unemployment and start providing for herself and her daughter.<sup>61</sup>

#### 4. Testimony of Jae Murphy

Ms. Murphy<sup>62</sup> met Ms. Session in 2019 through ministry activities, and initially all their conversations revolved around that topic, including questions from Ms. Session about “being forgiven.”<sup>63</sup> After a couple weeks of knowing each other, Ms. Session inquired as to what Ms. Murphy does to produce income outside of the ministry. It was through this conversation that Ms. Murphy disclosed that she holds a life insurance license from the Department.<sup>64</sup> Ms. Murphy explained the process of how to get a Department-issued license to Ms. Session because Ms. Murphy believes that Ms. Session was misled by an agent who worked for People Helping People. From her testimony, it is apparent that Ms. Murphy believes an agent with People Helping People assisted Ms. Session in filling out the Department’s application by reading the application questions to Ms. Session instead of Ms. Session reading and understanding the questions herself. To this point, Ms. Murphy testified:

So, it’s not just asking, do you have a felony, or were you ever convicted and leave out the rest. No, everything has to be given and disclosed to that person who’s trying to obtain a license so that when something like this happens, it’s not looking fraudulent. That’s my . . . heart confession over all of this, is that [Ms. Session] was not given a fair chance to, first and foremost, answer the question the correct way because [whomever] provided the information did not provide it for her correctly.<sup>65</sup>

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<sup>60</sup> Tr. at 68.

<sup>61</sup> Tr. at 86.

<sup>62</sup> Ms. Murphy clarified that her official name is Alice Johnette Murphy, but that everyone refers to her as Jae. Tr. at 84-85.

<sup>63</sup> Tr. at 78-79.

<sup>64</sup> Ms. Murphy indicated that she holds an insurance license, a Licensed Practical Nurse (LPN) license, and is also an ordained minister. Tr. at 85.

<sup>65</sup> Tr. at 80. Ms. Session did not claim, and no evidence was offered to indicate, that another individual read the Department’s application questions to her or that any employee with People Helping People assisted her in filling out the application. Instead, Ms. Session unambiguously indicated in her testimony that she herself read the application

Ms. Murphy also expressed her opinion that court-appointed public defenders do not work for the offender but rather for the court and that, because Ms. Session had no prior criminal history or experience in a courtroom, if the public defender did not explain everything to her then Ms. Session would have been unable to understand what was happening during her trial.

Due to her understanding of Ms. Session's experiences in filling out the application and working with the court-appointed attorney, Ms. Murphy opined that this situation has not shown Ms. Session to be the person that she is—an honest, caring woman of God. Ms. Murphy testified that Ms. Session wants to be “redeemed” from this situation and is making amends to do what is right for her and her family.<sup>66</sup>

### **C. Analysis and Recommendation**

It is undisputed that Ms. Session pleaded guilty to a state-jail-felony level offense of credit card abuse. After hearing both parties' testimony, the ALJ finds the evidence presented by the Department more credible, and that the Department has proven by a preponderance of the evidence the grounds upon which it determined to deny Ms. Session's application. Accordingly, the ALJ recommends that Ms. Session's application for a life agent be denied.

It is clear from Ms. Session's testimony that she is well-educated and holds a Bachelor's and Master's degree. The applicable screening question in the application regarding her past criminal history is not complex and specifically asks whether an applicant has had a prior judgement deferred. Ms. Session was clearly aware that she had been placed on deferred adjudication for her credit card abuse offense because she complied with the imposed community supervision conditions and was early released from supervision approximately two years prior to submitting her application to the Department.

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questions and responded to them, and that it was her understanding that the reference to “deferred” in the question related to a conviction, which she maintains is the reason why she answered “no.” There is no evidence in the record to substantiate Ms. Murphy's testimony on this issue. As such, the ALJ will not address this argument in the Analysis and Recommendation section below.

<sup>66</sup> Tr. at 82-83.



Additionally, Ms. Session provided the Department with numerous statements that differed not only from her own prior statements but also from the details included in the police report as reported by the complainant. Ms. Session provided varying statements regarding whose card she abused (she initially stated she abused her own credit card and later indicated the card belonged to the complainant) and what authorization or status she had in relation to the card (in one statement she indicated she was a signer on the card but later admitted that she used the card without the complainant's authorization when she purchased gas for the second time<sup>67</sup>). Furthermore, Ms. Session only admitted to using the complainant's card to purchase gas and cigars, while the police report indicated that she used the card four times at four different stores to purchase sodas, gas, cigars, and an iPad mini. In fact, according to the police report, detectives with the Sheriff's Department visited each of the four retail stores where the unauthorized purchases were made and reviewed the surveillance footage from that date. From the footage, the detectives identified Ms. Session as the individual who had used the complainant's credit card to make each of the four unauthorized purchases.<sup>68</sup> When these facts are considered in conjunction with Ms. Session's knowledge of her deferred adjudication, the ALJ finds that the evidence shows by a preponderance of the evidence that Ms. Session intentionally made a material misstatement in her license application and in her subsequent communications to the Department regarding her criminal history, and attempted to obtain a license by fraud or misrepresentation, as contemplated by Texas Insurance Code § 4005.101(b)(2) and (3).

The ALJ is not persuaded by Ms. Session's testimony that she was a user or "signer" on the complainant's credit card or that she received direct authorization from the complainant to use her credit card to purchase any of the items Ms. Session purchased with the complainant's card. Although it was never discussed how someone becomes a "signer" on another individual's card or what benefits are provided to the "signer," the ALJ concludes that a reasonable inference is that

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<sup>67</sup> Staff Ex. 6 at Bates TDI 44. Ms. Session's statement provides that she "was placed in [handcuffs] because [she] told the truth about [her] using the card the 2<sup>nd</sup> time around without [the complainant's] permission." It is clear from a prior admission in the same statement that the second purchase Ms. Session is referring to was for gas for her vehicle. More specifically, Ms. Session stated, "I used a co-worker's/[f]riend/me being a signer on the card, [b]ecause I needed gas in my vehicle and she offered to help me . . . I used the card again weeks later for the same reason."

<sup>68</sup> Staff Ex. 6 at 29-30.

an individual authorized to sign for purchases on a credit card would not need approval prior to make purchases with that credit card. Based on this presumption, coupled with the inconsistencies in Ms. Session's prior statements and testimony regarding the offense, as well as her admission that she did make an unauthorized purchase for gas with complainant's credit card,<sup>69</sup> the ALJ finds that Ms. Session engaged in fraudulent or dishonest practices, as contemplated by Texas Insurance Code § 4005.101(b)(5).

The nature of Ms. Session's fraudulent and dishonest acts also "directly relate" to the duties and responsibilities of a life agent, as they implicate concerns that insurance agents not misuse their licenses or positions of trust and access, or take advantage of their clients when collecting and transmitting sensitive personal and financial information including credit and debit card numbers and banking information.<sup>70</sup> And for materially the same considerations, licensing Ms. Session as a life agent "would create a situation in which [she] has an opportunity to repeat the prohibited conduct."<sup>71</sup> For this reason, and because (1) her offense is not described by Article 62.001(5) in the Code of Criminal Procedure, and (2) she was discharged from her community supervision less than five years before she submitted her license application, the Department is authorized to treat Ms. Session's deferred adjudication as a "conviction" for purposes of Texas Occupations Code § 53.021(a),<sup>72</sup> thereby authorizing denial of licensure under that statute also.<sup>73</sup> Additionally, Ms. Session's offense was a state-jail felony level offense; therefore, her deferred

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<sup>69</sup> Ms. Session admitted to the Board that she used the complainant's credit card to make an unauthorized purchase for gas the second time she used the complainant's card which she indicated was weeks after she used the card to make the first purchase. However, the four unauthorized purchases that the complainant reported to the Sheriff's Department and that are detailed within the police report all occurred on March 22, 2015. Staff Ex. 6 at Bates TDI 29-30, 44.

<sup>70</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," "the relationship of the crime to the ability or capacity required to perform the duties and responsibilities of the licensed occupation," and "any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation."); Rule 1.502(h)(1) (generally same, except this rule does not include the factor set out in Tex. Occ. Code § 53.022(5)).

<sup>71</sup> See Tex. Occ. Code § 53.021(d)(2)(B).

<sup>72</sup> See *id.* § 53.021(d)(1)(B)(i).

<sup>73</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").

adjudication, treated as conviction, meets the threshold for licensure denial as set out in Texas Insurance Code § 4005.101(b)(8).

The ALJ must now determine whether Ms. Session presented evidence to demonstrate that her fitness for licensure outweighs the serious nature of her criminal offense when viewed in light of her requested licensed occupation.<sup>74</sup> In making this determination the ALJ considered the factors set out in Texas Occupations Code § 53.023 and Rule 1.502(h)(2). As Mr. Wright testified, the nature of Ms. Session's offense was serious and raised valid concerns as to her fitness to be trusted with the sensitive personal and financial information of others, which is a necessary duty and responsibility for a licensed life agent. He also confirmed that Ms. Session was approximately 26 years old when she committed the offense and, therefore, her offense cannot be described as a youthful indiscretion. Moreover, the evidence shows that, prior to her credit card abuse offense, Ms. Session had no criminal history and has not committed any additional offenses in the approximately six years since. Ms. Session's resume, even with the omission of her employment at the Sheriff's Department, demonstrates a steady work history beginning in 2014, and her testimony indicates that she is motivated and eager to learn new skills and find a new career. Ms. Session also provided three letters of recommendation in which individuals with personal knowledge of her, one with knowledge of her criminal history, indicated that she is a bright, kind, and career-motivated person. Additionally, it should be noted that Ms. Session complied with the conditions of her court-ordered community supervision and paid all imposed fines, court costs and restitution, and was discharged from said supervision approximately five months early.

However, the ALJ must also consider other evidence of Ms. Session's present fitness that demonstrates Ms. Session has repeatedly and is currently evading or misrepresenting the facts surrounding her offense. As previously discussed, Ms. Session's differing statements concerning the nature of her offense damaged her credibility, and her testimony was unable to repair that damage in order for the ALJ to find that Ms. Session is honest, trustworthy, or reliable.

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<sup>74</sup> See Tex. Occ. Code § 53.023; Rule 1.502(f), (h)(2)-(3).

Ultimately, the ALJ concludes that the evidence regarding Ms. Session's current fitness for licensure does not outweigh the serious nature of her offense when viewed in light of the potential occupation being licensed. Ms. Session's license application should be denied.

### III. FINDINGS OF FACT

1. On November 16, 2019, Arnita Session applied to the Texas Department of Insurance (Department) for a life agent license.
2. On February 5, 2020, the Department staff (Staff) proposed to deny Ms. Session's application and notified her of her right to a hearing before the State Office of Administrative Hearings (SOAH).
3. On October 6, 2020, Ms. Session requested a hearing. Although Ms. Session's request was untimely, Staff accepted it as evidence of her request for an appeal of the Department's decision.
4. On February 8, 2021, Staff issued a notice of hearing to Ms. Session, which attached and incorporated by reference its petition in the case. Ms. Session filed a responsive pleading on February 15, 2021.
5. On February 26, 2021, the SOAH Administrative Law Judge (ALJ) issued Order No. 1, which specified that the hearing would be held via the Zoom videoconferencing platform and provided the applicable log-in information.
6. The notice of hearing, petition, and SOAH Order No. 1 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 the Zoom videoconferencing platform on May 3, 2020, before ALJ Meaghan Bailey. Staff was represented by attorney Amanda Cagle. Ms. Session represented herself. The hearing concluded and the record closed on the same day.
8. On March 22, 2015, Ms. Session, while working as a Detention Service Officer at the Dallas County Sheriff's Department (Sheriff's Department), stole her co-worker's (the complainant's) credit card out of her lunchbox and used the credit card to make four unauthorized purchases at four different retail stores that same day. Two purchases were for soda, one purchase was for gas for her vehicle and cigars, and the remaining purchase was for an iPad mini.

9. On March 26, 2015, the complainant realized her credit card was missing and immediately reported the card as lost or stolen. The complainant's credit card representative informed the complainant of the four March 22, 2015 purchases that occurred in Arlington, Texas.
10. On April 22, 2015, the complainant filed a criminal complaint with the Sheriff's Department and identified the four March 22, 2015 purchases as unauthorized purchases. The complainant indicated that she had not visited Arlington, Texas within the past three months, and that she is sole user of her credit card and did not authorize anyone else to make purchases with her card.
11. Detectives with the Sheriff's Department visited each of the four retail stores where the unauthorized purchases were made and reviewed the surveillance footage from March 22, 2015. From the footage, the detectives identified Ms. Session as the individual who had used the complainant's credit card to make each of the four unauthorized purchases.
12. On February 24, 2016, Ms. Session pleaded guilty to a state-jail-felony offense of credit/debit card abuse. The court found that the evidence substantiated Ms. Session's guilt but deferred proceedings without entering an adjudication of guilt and placed Ms. Session on two years' deferred-adjudication community supervision and imposed a fine, court costs, and restitution.
13. Ms. Session complied with her community supervision conditions and paid the imposed fine, court costs, and restitution. Ms. Session's community supervision was discharged early on October 3, 2017, and the court proceeding was dismissed.
14. In her November 16, 2019 application, Ms. Session answered "no" to the following question: "Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?"
15. Ms. Session's answer was an intentional material misstatement and an attempt to obtain a license by fraud or misrepresentation.
16. After receiving Ms. Session's application, the Department conducted a routine background investigation and discovered her 2015 credit/debit card abuse offense and resulting deferred adjudication.
17. The Department requested additional information from Ms. Session concerning her criminal history; and Ms. Session provided numerous differing statements as to the nature of the offense, including whose credit card had been abused and whether she had authorization to use the card.

18. In one statement, Ms. Session admitted that she had made an unauthorized purchase for gas with the complainant's card. However, her admitted unauthorized use of the card was not one of the four purchases that the complainant identified to the Sheriff's Department and that were detailed in the police report.
19. Ms. Session's crime was facilitated by the access, opportunity, and trust afforded to her by virtue of her position as a Detention Service Officer with the Sheriff's Department and her control over the room in which the complainant's credit was stored.
20. In committing the offense, Ms. Session engaged in fraudulent or dishonest acts or practices.
21. Ms. Session's offense is not described by Article 62.001(4) in the Code of Criminal Procedure.
22. Ms. Session submitted her application to the Department less than five years after being discharged from community supervision.
23. Employment of Ms. Session as a life agent would create a situation in which she would have an increased opportunity to repeat the prohibited conduct.
24. Ms. Session's crime was a serious, felony-level offense that involved her misuse of the complainant's financial information. Ms. Session would have access to that type of financial information, and more, for all of her clients if she were licensed as a life agent.
25. Ms. Session's crime reflects adversely upon her ability, capacity, or fitness to perform the duties and discharge the responsibilities of life agent.
26. Ms. Session's crime directly related to the duties and responsibilities of a life agent.
27. Aside from the proceeding concerning her credit card abuse offense, there was no evidence of any other criminal proceedings against Ms. Session.
28. Ms. Session was 26 years old when she committed the offense.
29. Ms. Session committed the crime approximately three years before submitting her application with the Department, and approximately six years before the hearing convened.
30. Ms. Session presented evidence of a steady work history. Ms. Session's resume did not include her employment with the Sheriff's Department although the time period she was employed with the Sheriff's Department was represented.
31. Ms. Session submitted reference letters from three individuals, one of whom is aware of her criminal history, all of whom indicated that Ms. Session is kind, bright, and career-motivated.

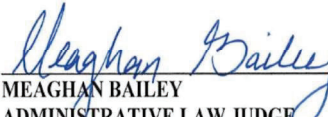
32. Ms. Session is dedicated to providing for herself and her daughter.
33. Ms. Session is not presently fit to hold a life agent license.

#### IV. CONCLUSIONS OF LAW

1. The Commissioner of Insurance and the Department have jurisdiction over this matter. Tex. Ins. Code §§ 4005.101, .102; Tex. Occ. Code §§ 53.021-.023.
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. Ms. Session 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 intentionally made a material misstatement in the license application. Tex. Ins. Code § 4005.101(b)(2).
5. The Department may deny a license application if the applicant has obtained or attempted to obtain a license by fraud or misrepresentation. Tex. Ins. Code § 4005.101(b)(3).
6. 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).
7. The Department may deny a license application if the applicant has been convicted of a felony. Tex. Ins. Code § 4005.101(b)(8).
8. 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)(1).
9. 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 was charged with an offense other than an offense described by Article 62.001(5) in the Code of Criminal Procedure; (2) the person completed the period of supervision less than five years before the date the person applied for the license; and (3) 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)(1)(B)(i), (d)(2)(B).

10. 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; 28 Tex. Adm. Code § 1.502(h).
11. Staff has the burden to prove by a preponderance of the evidence its alleged grounds to deny Ms. Session's license application, while Ms. Session has the burden to prove by a preponderance of the evidence that she is fit to perform the duties and discharge the responsibilities of an insurance agent despite her criminal history. *See* Tex. Ins. Code § 4005.101(b); Tex. Occ. Code §§ 53.021, .0211(b), .022 & .023; 1 Tex. Admin. Code § 155.427; 28 Tex. Admin. Code § 1.502(h).
12. The Department may consider Ms. Session to have been "convicted" of her criminal credit/debit card abuse offense (state-jail-felony offense) for purposes of Texas Occupations Code § 53.021(a). Tex. Occ. Code § 53.021(d).
13. Ms. Session'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)(1); *see* Tex. Occ. Code § 53.025.
14. Staff met its burden to prove that Ms. Session intentionally made a material misstatement in her license application; attempted to obtain a license by fraud or misrepresentation; engaged in dishonest acts or practices; was "convicted" of a felony, 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)(2), (3), (5), (8); Tex. Occ. Code §§ 53.021(a), .022; 28 Tex. Admin. Code § 1.502(h)(1).
15. Ms. Session did not meet her burden to prove that she is presently fit to perform the duties and discharge the responsibilities of the licensed occupation despite her criminal history. Tex. Occ. Code § 53.023; 28 Tex. Admin. Code § 1.502(d), (h)(2)-(3).
16. Ms. Session's license application should be denied.

**SIGNED July 2, 2021.**

  
MEAGHAN BAILEY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS