

No. 2021-6715

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

**Date:** 03/10/2021

**Subject Considered:**

Texas Department of Insurance

v.

Justin Demonbreun

SOAH Docket No. 454-20-4230.C

**General remarks and official action taken:**

The subject of this order is Justin Demonbreun.

**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 revoke Justin Demonbreun's general lines agent 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 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.

# 2021-6715

COMMISSIONER'S ORDER  
TDI v. Justin Demonbreun  
SOAH Docket No. 454-20-4230.C  
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## Order

It is ordered that the general lines agent license with a life, accident, and health qualification and a property and casualty qualification held by Justin Demonbreun is revoked.

Commissioner of Insurance

DocuSigned by:  
*Doug Slape*  
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By: \_\_\_\_\_

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

DocuSigned by: \_\_\_\_\_ and reviewed by:  
*James Person*  
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DocuSigned by: \_\_\_\_\_ General Counsel  
*Justin Beam*  
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Justin Beam, Assistant General Counsel

## SOAH DOCKET NO. 454-20-4230.C

TEXAS DEPARTMENT OF  
INSURANCE,  
Petitioner

v.

JUSTIN DEMONBREUN,  
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

### PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) seeks to revoke the general lines agent license with a life, accident, and health qualification and a property and casualty qualification held by Justin Demonbreun (Respondent). The Department alleges that Respondent is currently serving deferred adjudication for a felony charge and for over six months he was not actively engaged in soliciting or writing insurance for the public. The Administrative Law Judge (ALJ) finds that the Department should revoke Respondent's license.

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

Notice and jurisdiction were not disputed and are set forth in the Findings of Fact and Conclusions of Law below without further discussion here. On November 12, 2020, Administrative Law Judge (ALJ) Steven Neinast convened the hearing on the merits by videoconference. Attorney Stephanie Andrews represented Staff. Respondent appeared and represented himself. The hearing adjourned and the record closed on November 30, 2020, when the ALJ received a copy of the hearing transcript.

#### II. DISCUSSION

##### A. Applicable Law

The Department has developed guidelines relating to matters it will consider in determining whether to revoke a license if the licensee has been convicted of a crime. The guidelines state that it is very important that a licensee be honest, trustworthy, and reliable, and the Department may revoke a license if it determines that the licensee has engaged in fraudulent or dishonest activity

that directly relates to the duties and responsibilities of the licensed occupation.<sup>1</sup> The Department considers any offense for which fraud, dishonesty, or deceit is an essential element to be a crime of such serious nature that it is of prime importance in determining fitness for licensure.<sup>2</sup>

The Department may discipline a license holder if the Department determines the license holder has been convicted of a felony.<sup>3</sup> The Department may consider a person to have been convicted of an offense regardless of whether the proceedings were dismissed and the person was discharged if the person charged with an offense 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.<sup>4</sup>

Under the Texas Penal Code, a person commits the offense of enticing a child if, with the intent to interfere with the lawful custody of a child younger than 18 years, the person knowingly “entices, persuades, or takes the child from the custody of the parent or guardian or person standing in the stead of the parent or guardian of such child.”<sup>5</sup> Typically, enticing a child is a Class B misdemeanor unless it is shown that the person intended to commit a felony against the child, in which event the offense is a third degree felony.<sup>6</sup>

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

1. the nature and seriousness of the crime;
2. the relationship of the crime to the purposes for requiring a license to engage in the occupation;

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

<sup>2</sup> 28 Tex. Admin. Code § 1.502(e)(1).

<sup>3</sup> Tex. Ins. Code § 4005.101(b)(8); Tex. Occ. Code § 53.021(a).

<sup>4</sup> Tex. Occ. Code § 53.021(d)(1)(B)(i).

<sup>5</sup> Tex. Penal Code § 25.04(a).

<sup>6</sup> Tex. Penal Code § 25.04(b).

3. the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;
4. the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of the licensed occupation; and
5. any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.<sup>7</sup>

In determining the fitness to perform the duties and responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority must also consider the following factors:

1. the extent and nature of the person's past criminal activity;
2. the age of the person when the crime was committed;
3. the amount of time that has elapsed since the person's last criminal activity;
4. the conduct and work activity of the person before and after the criminal activity;
5. evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;
6. evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and
7. other evidence of the person's fitness, including letters of recommendation.<sup>8</sup>

The Respondent has the responsibility, to the extent possible, to obtain and provide to the licensing authority the letters of recommendation and other evidence of his fitness.<sup>9</sup>

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<sup>7</sup> Tex. Occ. Code § 53.022.

<sup>8</sup> Tex. Occ. Code § 53.023(a). The Department has adopted these factors in its rules. 28 Tex. Admin. Code § 1.502(h)(2).

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

The Department may not issue a license to write any line of insurance unless the Department determines that the applicant is or intends to be actively engaged in soliciting or writing insurance for the general public and is to be actively engaged in the business of insurance.<sup>10</sup> Once licensed, the Department may discipline a license holder if the Department determines that the license holder is not actively engaged in soliciting or writing insurance for the public.<sup>11</sup>

Staff has the burden of proving its basis for revoking Respondent's license, while Respondent has the burden to prove he is fit to be licensed despite his criminal history.<sup>12</sup>

## **B. Evidence**

### **1. Background Facts**

Respondent received his general lines agent insurance license from the Department on July 17, 2015.<sup>13</sup> He initially held appointments with various State Farm-related companies, which ended in November 2015.<sup>14</sup> Commencing in early 2017, he held appointments with a number of Allstate Insurance-related companies, but all of his Allstate Insurance appointments were terminated "for cause" on May 31, 2019.<sup>15</sup> From May 31, 2019, through December 18, 2019, Respondent did not hold active appointments. Commencing on December 18, 2019, Respondent obtained an appointment with Spinnaker Insurance Company and, on August 4, 2020, he obtained an appointment with Progressive County Mutual Insurance Company.<sup>16</sup> The Progressive and Spinnaker appointments remained in effect as of the date of the hearing on the merits.

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<sup>10</sup> Tex. Ins. Code § 4001.104(a).

<sup>11</sup> Tex. Ins. Code § 4005.101(b)(10).

<sup>12</sup> Tex. Occ. Code § 53.023(a); 1 Tex. Admin. Code § 155.427.

<sup>13</sup> TDI Ex. 4. Staff's exhibits offered in this case are referred to as TDI exhibits.

<sup>14</sup> *Id.* at 12-13. The exhibit does not state why these State Farm-related appointments were terminated.

<sup>15</sup> *Id.* TDI Ex. 4 does not show any appointments in 2016, but this gap was not raised at the hearing.

<sup>16</sup> *Id.*

On February 7, 2017, in Cause No. 77433-CR in the 412th District Court of Brazoria County, Texas, Respondent was sentenced to five years deferred adjudication probation for the third degree felony offense of enticing a child.<sup>17</sup> Four charges were originally brought against Respondent, but the first three were not pursued in the plea agreement.<sup>18</sup> The offense subject to the plea agreement occurred on August 9, 2015, which is less than one month after Respondent received his license. The deferred adjudication order does not permit early termination of the probated sentence.

Respondent applied to renew his insurance license in 2017 and 2019. On both renewal applications, he noted that he was currently on probation serving deferred adjudication. The Department renewed his license in both instances. He testified that he took the deferred adjudication plea because he did not want to “drag my family through a court case,” and he could not afford a lawyer to contest the charges.

## 2. Respondent’s Evidence

Respondent does not dispute that he is currently serving deferred adjudication for the felony offense of enticing a child. Assuming he completes his probation without violating any terms of the deferred adjudication order, his probation will terminate on January 23, 2022. The child at issue is his stepdaughter—the biological daughter of Respondent’s wife at the time of the incident. Respondent did not explain the incident that led to his plea, but noted that, since the incident, he has written an insurance policy for the child’s mother. Respondent testified that “it’s really a family matter that I decided to handle through deferred adjudication.”

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<sup>17</sup> TDI Ex. 5.

<sup>18</sup> *Id.* at 18. Count Four states:

[O]n or about the 9th day of August, 2015, ... Justin Demonbreun did then and there with the intent to interfere with the lawful custody of [child’s name deleted], a child younger than 18 years of age, and with intent to commit a felony against said child, knowingly entice, persuade, or take said child from the custody of Emily Demonbreun, the parent or person acting in the stead of the parent of such child.

*Id.* at 16.

Respondent testified that he has done very well practicing insurance; he is an advocate for insurance and has trained several insurance professionals. He stated he takes insurance very seriously. He emphasized that he has not committed any insurance or business fraud and has not violated any terms of his probation. He noted that all of his criminal information is public record, and this hearing will lead to more public information regarding his situation. Respondent believes he does a very good job of practicing insurance and would like to continue with his license.

As to current appointments, Respondent stated that in addition to Progressive and Spinnaker, he also has an appointment from Nationwide Insurance and continues to write policies through a Managing General Agent (MGA) and with P2 Insurance Brokers. He stated he is searching for other companies for appointments, but acknowledges that some companies have declined his association. He noted that the fact that he continues to have appointments with insurance agencies or companies shows that he is doing well as an insurance agent, despite the deferred adjudication.

With regard to the gap in his appointments, Respondent stated that he was not aware that an appointment had been removed until several weeks after the removal. Once he realized he did not have an appointment, he actively searched for a new appointment, which he located. Respondent testified that it was difficult initially for him to obtain an appointment because of the Department's investigation.<sup>19</sup> He stated that it has always been his intent to sell insurance since he first obtained his insurance license.

On cross-examination, Respondent conceded that enticing a child can be considered a serious offense. He was not forced to plead guilty to this charge. Respondent testified that he ran out of money to fight the court case and his lawyer recommended that if he did not have the money, he should not fight the case. Respondent was advised by his lawyer that deferred adjudication was the best option available because there would not be a conviction on his record if he successfully completed probation. This option was "best for me and my family." Respondent confirmed that the child's parent was Respondent's spouse, but the parent is now Respondent's ex-wife.

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<sup>19</sup> TDI Ex. 6 at 33.



### 3. The Department's Evidence

Staff presented testimony from Lewis Wright, the liaison between the Department's licensing review office and the Department's Enforcement Division. Mr. Wright explained that Department policy is to renew an agent's license if the agent has submitted a complete application, paid all necessary fees, and complied with continuing education requirements. If these requirements are met, the Department will renew the application even if the application notes that the agent has a criminal history. That is why Respondent's renewal applications were approved in 2017 and 2019 despite the ongoing deferred adjudication. Following Respondent's background check commencing with his disclosure in 2017, the decision was made to revoke his license based on his criminal history.

Mr. Wright testified that Respondent did not hold an active appointment from May 31, 2019, to sometime in November 2019. He initially stated that an agent must be active and engaged in the insurance business, but clarified that there "should be an intent to do business" to hold an insurance license. He acknowledged that a gap in appointments is not typically evaluated as a lack of intent. On cross-examination by Respondent, Mr. Wright acknowledged that Respondent had written an insurance policy for Respondent's now ex-wife (the child's mother) on July 21, 2019. This and Respondent's current appointments and association with MGA indicate, to Mr. Wright, an intent to practice insurance.

Regarding the felony charge, Mr. Wright testified that the Department can consider the deferred adjudication to be a conviction, and enticing a child, with intent to commit a felony against the child, is a serious felony. In addition, the Department perceives a level of deceit or dishonesty in this offense. Honesty and trustworthiness are goals within the Department's Guidelines and, in Mr. Wright's opinion, a license holder must demonstrate all the elements of honesty, trustworthiness, and reliability. Mr. Wright acknowledged that the Department has not received any adverse information related to Respondent's deferred adjudication, indicating that Respondent has been complying with all of the conditions of his probation.

Mr. Wright commented that insurance agents continue to meet personally with some of their clients: it is “commonplace” for agents today to meet face-to-face with the community at large and with individual families. This means agents will often come into contact with clients’ children, and the clients would have no reason to know about Respondent’s criminal background. Mr. Wright testified that the Department should not give Respondent an opportunity to engage in similar criminal activity. Interaction with the public would “increase the opportunity to re-offend in the same fashion.” Although the Department’s rules do not specifically list enticing a child as a felony that justifies revocation of an agent’s license, the severity of the offense and the deceit and dishonesty involved in the offense, in Mr. Wright’s opinion, are sufficient grounds for the Department to revoke Respondent’s license.

In closing arguments, Staff argued that just because Respondent is getting his life back in order does not mean he can keep his license. Staff asserted that the license is a privilege, not a right, and it is not up to Respondent’s clients or companies to determine whether he retains his license.

### **C. Analysis**

As an initial matter, Staff did not meet its burden of proof to show that the gaps in Respondent’s appointments indicated that Respondent did not have an intent to practice insurance. The record instead shows that Respondent maintained a sincere intent to practice insurance since he was first licensed in 2015. Although there was at least one gap in his appointments earlier in his career, Respondent continued to seek appointments despite his deferred adjudication. Revocation of Respondent’s license should not be based on a charge that he was “not actively engaged in soliciting or writing insurance for the public” as generally required by the Texas Insurance Code.<sup>20</sup>

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<sup>20</sup> Tex. Ins. Code § 4005.101(b)(1).

Regarding the other allegation, the Department may, but is not required to, revoke a license if the Department determines that the license holder “has committed a felony or misdemeanor, or has engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation.”<sup>21</sup> Because Respondent currently is serving deferred adjudication probation, the Department may consider Respondent to have been convicted of an offense for purposes of determining whether to revoke his license.<sup>22</sup>

The record does not and need not provide details of the incident, such as why Respondent enticed his stepdaughter away from his then-wife. This administrative law court will not second guess the ruling by the district court. As discussed below, after considering the factors listed in Texas Occupations Code §§ 53.022 and 53.023, the ALJ finds Respondent is not currently fit for licensure.

Considering the factors set out in Texas Occupations Code § 53.022, the crime of enticing a child directly relates to the duties and responsibilities of a licensed occupation. Enticing a child, in particular if that crime is elevated from a misdemeanor to a felony as it was in Respondent’s case, is a serious crime. Taking a child from the child’s parent demonstrates a lack of trustworthiness that is crucial to the business of selling insurance.<sup>23</sup> Although Respondent’s crime in this case involved a family member, Respondent’s interaction with clients or potential clients virtually or in person could offer an opportunity for Respondent to come into contact with the clients’ children. The crime of enticing a child could thus impair Respondent’s ability or capacity to perform the duties and discharge his responsibilities as a licensed insurance agent. For these reasons the record shows that Respondent’s crime directly relates to the duties and responsibilities of a licensed insurance agent.

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<sup>21</sup> 28 Tex. Admin. Code § 1.502(d), (g).

<sup>22</sup> Tex. Occ. Code § 53.021(d)(1)(B)(i).

<sup>23</sup> Staff argued that enticing a child also involves acts of deceit or dishonesty, which are Department considerations in determining whether to revoke a license. Staff, however, did not show that Respondent acted with deceit or dishonesty in knowingly taking the child from the child’s mother. A lack of trustworthiness in this situation, however, is supported by the very act of taking the child from the child’s mother.

Considering the factors set out in Texas Occupations Code § 53.023, the evidence shows that Respondent is fit to perform some, but not all, of the duties and responsibilities of an insurance agent. Except for the incident that led to Respondent's plea arrangement, which was a serious crime, the record does not show that he has engaged in any other criminal activity. The record does not indicate Respondent's current age or his age in 2015 when the criminal activity occurred. He is, however, an adult and was married at the time to the child's mother. This indicates that Respondent's criminal activity in 2015 was not an act of youthful indiscretion. Respondent has shown that his work activity since 2015 has been successful and without any complaints from his clients. Respondent testified that he has complied fully with the terms of his probation, and the Department did not offer any evidence indicating otherwise. Respondent testified at the hearing that he could produce a number of witnesses who could attest to his character, but he did not produce any letters of recommendation. Even if Respondent had produced letters of recommendation or character witnesses, additional examination would be necessary to determine if those attesting to Respondent's character are or were fully aware of his criminal activity. Considering all of these factors, although some tend to weigh in Respondent's favor, the evidence does not show that Respondent is fit, at this time, to practice insurance.

Based on the foregoing, the ALJ recommends that Respondent's license be revoked.

### III. FINDINGS OF FACT

1. Justin Demonbreun (Respondent) received his General Lines Agent insurance license from the Texas Department of Insurance (Department) on July 17, 2015.
2. Respondent initially held appointments with various State Farm-related companies, which ended in November 2015.
3. Commencing in early 2017, Respondent held appointments with a number of Allstate Insurance-related companies, but all of his Allstate Insurance appointments were terminated "for cause" on May 31, 2019.
4. From May 31, 2019, through December 18, 2019, the Department's records indicate that Respondent did not hold any active appointments.

5. Commencing on December 18, 2019, Respondent obtained an appointment with Spinnaker Insurance Company and, on August 4, 2020, he obtained an appointment with Progressive County Mutual Insurance Company. The Progressive and Spinnaker appointments remained in effect as of the date of the hearing on the merits.
6. Respondent also received an appointment with a Nationwide Insurance company and continues to work with a Managing General Agent and P2 Insurance Brokers.
7. Because Respondent continued to seek appointments from the time he was licensed through the date of the hearing on the merits in this case, he showed an intent to practice insurance.
8. On February 7, 2017, in Cause No. 77433-CR in the [REDACTED] Brazoria County, Texas, Respondent was sentenced to five years deferred adjudication probation for the third degree felony offense of enticing a child.
9. The incident in which Respondent enticed a child occurred on August 9, 2015.
10. The child was his stepdaughter—the biological daughter of his then-wife.
11. Respondent's deferred adjudication will be lifted in January 2022 if he does not violate any terms of his probation prior to that date; to date, Respondent has not violated any of those terms.
12. Four charges were originally brought against Respondent, but the first three were not pursued in the plea agreement. The deferred adjudication order does not permit early termination of the probated sentence.
13. Respondent applied to renew his license in 2017 and 2019. On both renewal applications, he noted that he was currently on probation serving deferred adjudication. The Department renewed his license in both instances.
14. After the Department first renewed Respondent's license in 2017, the Department commenced a criminal background check of Respondent on his felony deferred adjudication.
15. The felony offense of enticing a child is a serious crime.
16. There is no evidence that Respondent has any further criminal history.
17. Over five years have elapsed since Respondent committed the offense, and over three years since he commenced deferred adjudication probation.
18. Enticing a child from the child's guardian can involve deceit, dishonesty, or a lack of trustworthiness.


19. Except for a short gap in appointments in 2019, Respondent has a record steady employment.
20. On July 13, 2020, the Department filed its original petition seeking to revoke Respondent's license.
21. On July 15, 2020, the Department filed its Notice of Hearing in this docket.
22. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted, or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
23. On November 12, 2020, Administrative Law Judge (ALJ) Steven Neinast convened the hearing on the merits by videoconference. Attorney Stephanie Andrews represented Department Staff. Respondent appeared and represented himself. The hearing adjourned and the record closed that day.

#### IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 4001.002, .105, 4005.101.
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. Respondent received timely and sufficient notice of the hearing. Tex. Gov't Code ch. 2001; Tex. Ins. Code § 4005.104(b).
4. The Department may discipline a license holder if the Department determines that the license holder is not actively engaged in soliciting or writing insurance for the public. Tex. Ins. Code § 4005.101(b)(10).
5. The Department may discipline a license holder if the Department determines the license holder has been convicted of a felony. Tex. Ins. Code § 4005.101(b)(8).
6. The Department may consider a person to have been convicted of an offense regardless of whether the proceedings were dismissed and the person was discharged if the person charged with an offense has not completed the period of supervision or completed the period of supervision less than five years before the date the person applied for the license. Tex. Occ. Code § 53.021(d)(1)(B)(i).
7. In determining whether to revoke a license based on the license holder's criminal history, the Department must consider the factors listed in Texas Occupations Code §§ 53.022 and 53.023. 28 Tex. Admin. Code § 1.502(h).

8. The Department should revoke Respondent's license because a preponderance of the evidence establishes that he is not currently fit to be licensed to practice insurance. Tex. Ins. Code § 4005.101(b)(8); Tex. Occ. Code § 53.021(a)(1).

**SIGNED January 8, 2021.**



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STEVEN H. NEINAST  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS