

No. **2022-7334**

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

Date: 06/08/2022

Subject Considered:

Texas Department of Insurance

v.

Victor Ikechy Gab-Ojukwu

SOAH Docket No. 454-21-1143.C

General remarks and official action taken:

The subject of this order is Victor Ikechy Gab-Ojukwu's application for an adjuster all lines – designated home state license. This order denies Mr. Gab-Ojukwu's 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 Mr. Gab-Ojukwu'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 Conclusion of Law Nos. 6 and 11.

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), which provide that "[a] state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency

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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."

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.¹

On January 23, 2019, Mr. Gab-Ojukwu pleaded guilty to felony criminal mischief and misdemeanor theft, but adjudication was deferred.

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 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 Mr. Gab-Ojukwu'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 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.

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- (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 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.²

² 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.

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Therefore, based on the analysis above, TDI concludes that the administrative law judge correctly concluded the Mr. Gab-Ojukwu'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. 2022-7155³ (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. 6 provides:

The Department may consider a person who has pleaded guilty to an offense, but whose adjudication has been deferred, to be convicted if the period of supervision was completed less than five years before the date of the application and the Department determines that employment of the person in the licensed occupation would create a situation in which he has the opportunity to repeat the prohibited conduct. Tex. Occ. Code § 53.021(d).

Based on the analysis above showing that the administrative law judge misinterpreted or misapplied the law, Conclusion of Law No. 6 is changed to state:

The Department may consider a person who has pleaded guilty to an offense, but whose adjudication has been deferred, to be convicted for purposes of Texas Occupations Code § 53.021 if the period of supervision was completed less than five years before the date of the application and the Department determines that employment of the person in the licensed occupation would create a situation in which he has the opportunity to repeat the prohibited conduct. Tex. Occ. Code § 53.021(d).

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

Staff met its burden to prove that Respondent 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.

³ *Texas Department of Insurance v. Arif Tejani*, issued January 5, 2022.

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Code § 4005.101(b)(5), (8); Tex. Occ. Code §§ 53.021, .022, .023; 28 Tex. Admin. Code § 1.502(d), (f).

Based on the analysis above showing the administrative law judge misinterpreted or misapplied the law, Conclusion of Law No. 11 is changed to state:

Staff met its burden to prove that Respondent engaged in dishonest acts or practices and was convicted of offenses that were directly related to the duties and responsibilities of the licensed occupation. See Tex. Ins. Code § 4005.101(b)(5); Tex. Occ. Code §§ 53.021, .022, .023; 28 Tex. Admin. Code § 1.502(d), (f).

Findings of Fact

1. Findings of Fact Nos. 1–23 as contained in Exhibit A are adopted by TDI and incorporated by reference into this order.

Conclusions of Law

1. Conclusions of Law Nos. 1–5, 7–10, and 12–13 as contained in Exhibit A are adopted by TDI and incorporated by reference into this order.
2. In place of Conclusion of Law No. 6 as contained in Exhibit A, the following conclusion of law is adopted:

The Department may consider a person who has pleaded guilty to an offense, but whose adjudication has been deferred, to be convicted for purposes of Texas Occupations Code § 53.021 if the period of supervision was completed less than five years before the date of the application and the Department determines that employment of the person in the licensed occupation would create a situation in which he has the opportunity to repeat the prohibited conduct. Tex. Occ. Code § 53.021(d).

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

Staff met its burden to prove that Respondent engaged in dishonest acts or practices and was convicted of offenses that were directly related to the duties and responsibilities of the licensed occupation. See Tex. Ins.

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Code § 4005.101(b)(5); Tex. Occ. Code §§ 53.021, .022, .023; 28 Tex. Admin. Code § 1.502(d), (f).

Order

It is ordered that Victor Ikechy Gab-Ojukwu's application for an adjuster all lines – designated home state license is denied.

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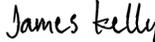
Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

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James Person, General Counsel

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James Kelly, Staff Attorney

Exhibit A

SOAH DOCKET NO. 454-21-1143.C

**TEXAS DEPARTMENT OF
INSURANCE,
Petitioner**

v.

**VICTOR IKECHY GAB-OJUKWU,
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 deny the application of Victor Ikechy Gab-Ojukwu (Respondent) for an adjuster all lines – designated home state (DHS) license based on his criminal history. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends the Department deny Respondent’s license application at this time.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this case was held via Zoom videoconference on April 26, 2021, before State Office of Administrative Hearings (SOAH) ALJ Meitra Farhadi. Staff was represented by staff attorney Kaycee Crisp. Respondent represented himself. The hearing concluded that day, and the record closed on May 10, 2021, when the court reporter’s transcript was filed with SOAH. Notice and jurisdiction were not disputed and are set out in the Findings of Fact and Conclusions of Law below.

II. DISCUSSION

A. Background

Respondent previously served as the sole owner of Careprox, LLC, (Careprox), an in-home healthcare provider agency that rendered services to people with developmental disabilities under

the Colorado State Medicaid Program (Medicaid). The State of Colorado Department of Health Care Policy and Financing launched an investigation into Careprox's practices, and determined that between February 2, 2015, and July 12, 2016, Careprox was paid \$44,490.08 by Medicaid for services not actually rendered to Medicaid clients. The investigation further revealed that Respondent did the billing on behalf of Careprox and was responsible for the fraudulent billing.¹

On June 19, 2018, Respondent was charged with two counts of felony theft and two counts of felony cybercrime in Adams County, Colorado, for his involvement with Careprox's fraudulent practices. On January 23, 2019, Respondent was additionally charged with one count of felony criminal mischief and one count of misdemeanor theft, related to the same conduct. Respondent entered into a plea agreement under which the two felony counts of theft and two counts of felony cybercrime were dismissed in exchange for Respondent's guilty plea to a newly added count of felony criminal mischief and count of misdemeanor theft, related to the same conduct.²

Respondent pleaded guilty to felony criminal mischief and misdemeanor theft in Case No. 2018CR002342 in District Court in Adams County, Colorado. Adjudication was deferred, and Respondent was placed on probation for three years. He was ordered to pay \$44,490.08 in restitution and \$2,311.50 in court costs.³ The two counts of felony theft and two counts of felony cybercrime were dismissed.

On August 27, 2019, Respondent applied for an Adjuster – DHS license with the Department. On April 17, 2020, Staff proposed to deny his application based on his criminal history. Staff alleged two bases for the Department's authority to deny Respondent's license

¹ Staff Ex. 5 at 9.

² Staff Ex. 5.

³ Staff Ex. 5.

application;⁴ that Respondent has (1) engaged in fraudulent or dishonest acts or practices;⁵ and (2) been convicted of a felony.⁶ Respondent timely requested a hearing.⁷

B. Applicable Law

The Department considers it very important that license-holders be honest, trustworthy, and reliable,⁸ and will evaluate an applicant's criminal history and other conduct to determine whether the applicant possesses those qualities. The Department may deny a license to an applicant who has engaged in fraudulent or dishonest acts or practices or who has been convicted of a felony.⁹ The Department may consider a person who has pleaded guilty to an offense, but whose adjudication has been deferred, to be convicted if the period of supervision was completed less than five years before the date of the application and the Department determines that the person may pose a continued threat to public safety or the employment of the person in the licensed occupation would create a situation in which he or she has the opportunity to repeat the prohibited conduct.¹⁰

To guide its decision-making when considering an applicant's criminal history, the Department has established guidelines that identify certain crimes it considers to be of such a serious nature that they are of prime importance in determining fitness for licensure; these crimes include offenses involving fraud, dishonesty, or deceit as an essential element.¹¹ The Department

⁴ Staff Ex. 1.

⁵ Tex. Ins. Code § 4005.101(b)(5).

⁶ Tex. Ins. Code § 4005.101(b)(8).

⁷ Staff Ex. 2.

⁸ 28 Tex. Admin. Code § 1.502(c).

⁹ Tex. Ins. Code § 4005.101(b)(5), (8).

¹⁰ Tex. Occ. Code § 53.021(d). The legislature amended Texas Occupation Code chapter 53, effective September 1, 2019. The amendments apply to applications submitted after September 1, 2019. *See* Acts 2019, 86th Leg, ch. 765 (H.B. 1342), § 14, eff. Sept. 1, 2019. Because Respondent applied for a license before the amendments, the prior version of chapter 53 applies and is cited in this Proposal for Decision.

¹¹ 28 Tex. Admin. Code § 1.502(e)(1).

has determined that the crimes it considers to be of prime importance are also directly related to the occupations it regulates.¹²

In deciding whether to deny a license based on a person's criminal history, the Department will weigh the factors in Texas Occupations Code §§ 53.022 and .023 and determine whether the applicant is fit to perform the duties and discharge the responsibilities of the licensed occupation despite the criminal offense.¹³ The factors in Texas Occupations Code § 53.022 address whether the person's criminal offense directly relates to the occupation, and those factors are:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

As additional factors for the Department to consider, Texas Occupations Code § 53.023(a) lists:

- (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 after release; and

¹² 28 Tex. Admin. Code § 1.502(e); *see also* Tex. Occ. Code § 53.025.

¹³ 28 Tex. Admin. Code § 1.502(h).

- (6) other evidence of the person's fitness, including letters of recommendation from:
- (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - (B) the sheriff or chief of police in the community where the person resides; and
 - (C) any other person in contact with the convicted person.¹⁴

An applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities discussed above.¹⁵ Additionally, an applicant may furnish proof to the Department that he has: (1) maintained a record of steady employment; (2) supported his dependents; (3) maintained a record of good conduct; and (4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.¹⁶ The Department will not issue a license unless, when viewed in the light of the regulated occupation, those mitigating factors outweigh the serious nature of the applicant's criminal offense or the fraudulent or dishonest conduct.¹⁷

Staff bears the burden of proving its grounds for denying Respondent's license application but Respondent has the burden to prove his fitness to be licensed despite his criminal history or fraudulent or dishonest conduct.¹⁸ The burden of proof is by a preponderance of the evidence.¹⁹

¹⁴ Tex. Occ. Code § 53.023(a)-(b).

¹⁵ Tex. Occ. Code § 53.023(b).

¹⁶ Tex. Occ. Code § 53.023(c).

¹⁷ 28 Tex. Admin. Code § 1.502(h).

¹⁸ Tex. Ins. Code § 4005.101(b); 1 Tex. Admin. Code § 155.427; 28 Tex. Admin. Code § 1.502(h).

¹⁹ *Granek v. Texas St. Bd. of Med. Examin'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pct.).

C. Evidence

Staff offered five exhibits, which were admitted into evidence. Staff also offered the testimony of Lewis Weldon Wright, an Administrative Review Liaison for the Department. Respondent testified on his own behalf, but did not offer any exhibits.

1. Testimony of Mr. Wright

Mr. Wright has worked for the Department for 13.5 years. His job responsibilities include facilitating the evaluation of license applications which raise concerns for the Department, such as those with a criminal history. He explained the application review process, and confirmed that Respondent applied for an adjuster all lines – DHS license on August 27, 2019.²⁰ Mr. Wright explained that an adjuster all lines license holder is given the authority to process claims related to insurance for any carrier—essentially giving the license holder the authority to adjust claims for any insurance carrier. Mr. Wright stated that due to Respondent’s criminal history, Respondent submitted additional information as part of the application. After review, Staff proposed to deny Respondent’s application based on his criminal history.

According to Mr. Wright, the Department considers the nature and seriousness of the felony criminal mischief offense to be severe. He explained that the elements of the criminal mischief offense against Respondent include elements of insurance (Medicaid), which means there was a direct relationship between Respondent’s criminal activity and the business of insurance. With regard to the misdemeanor theft offense, Mr. Wright testified that theft is specifically enumerated as a crime of prime importance that should be taken into account when determining fitness for licensure. Mr. Wright stressed that when considering the amount of money at issue, \$44,490.08, the theft was on the high end of the severity spectrum.²¹

²⁰ Staff Ex. 3 at 29.

²¹ Tr. at 38-39.

Turning to the additional factors for consideration, Mr. Wright noted that the Department considered the proximity in time of the offense and the application, and that in this case the offense occurred between February 2015 and July 2016, Respondent was charged in June 2018, entered the plea agreement in January 2019, and submitted his application with the Department in August 2019. Therefore, at the time the application was received, approximately 3 years had elapsed since Respondent's offense, and only 8 months had passed since he pleaded guilty and entered into a deferred adjudication.

Mr. Wright testified that the additional information Respondent submitted to the Department shows that Respondent has complied with all conditions of his supervision, paid the restitution ordered by the court, completed 200 hours of public service, and that on August 5, 2020, Respondent was granted early termination of his deferred adjudication.²² Mr. Wright also noted that according to the resume Respondent provided, he has maintained steady employment both before and after his criminal offense. However, Mr. Wright pointed out that Respondent's resume also states that he is a "Licensed Texas All-Lines Adjuster," when in fact, Respondent is not.²³

Respondent provided three reference letters to the Department, which were introduced into evidence. They were from people who have known him personally and a coworker. Those reference letters praise Respondent as a hardworking, respectful, and responsible individual. Respondent did not provide any letters from law enforcement personnel.

In addition, Mr. Wright noted that Respondent did not provide any rehabilitative evidence, such as certificates of counseling related to the underlying criminal activity. He testified that there has not been enough time since the offense for Respondent to establish enough positive work experience after the offense.

²² Staff Ex. 2 at 13.

²³ Staff Ex. 3 at 143-44.

2. Testimony of Respondent

Respondent testified that, as he explained in his written statement to the Department, he was the owner of Careprox, and that as the owner he was ultimately responsible for the activities of his company. He explained that even though he believes he was framed for the fraudulent billing by a manager he hired, he could not prove it. Respondent stressed that he has paid the full amount of restitution, performed the community service, and was granted early termination of the deferred adjudication.

Respondent explained that he trained for the adjuster license and applied for it because he needs to be able to support his family. He answered honestly on the application form regarding his criminal history, and appealed the proposed denial because his probation was completed and the charges have been dismissed.

D. Analysis

Under Texas Insurance Code § 4005.101(b)(5), the Department may deny a license application if the Department determines that the applicant has engaged in fraudulent or dishonest acts or practices. The Department may also deny a license application if the applicant has been convicted of a felony, as contemplated by Texas Insurance Code § 4005.101(b)(8). Respondent's guilty plea was for a felony criminal mischief offense, where elements of insurance were involved. Because less than five years have passed since Respondent completed his period of community supervision, and being licensed would provide him an opportunity to reoffend, his guilty plea may be treated as a conviction.²⁴

The ALJ must now determine whether Respondent presented evidence to demonstrate that his fitness for licensure outweighs the serious nature of his criminal offense when viewed in light of his requested licensed occupation.²⁵ In making this determination the ALJ considered the factors

²⁴ Tex. Occ. Code § 53.021(d).

²⁵ See Tex. Occ. Code § 53.023; 28 Tex. Admin. Code § 1.502(f), (h)(2)-(3).

set out in Texas Occupations Code § 53.023 and Rule 1.502(h)(2). As Mr. Wright testified, the nature of Respondent's offense was serious and raised valid concerns as to his fitness. While the evidence established that the Medicaid fraud was Respondent's only criminal activity, Respondent was 46 years old at the time he entered his guilty plea, so it was not a crime of youthful indiscretion. Respondent's resume demonstrates a steady work history, and his testimony indicates a desire to be licensed to support his family. Respondent also provided three letters of recommendation in which individuals with personal knowledge of him indicated that he is hardworking and professional. Additionally, it should be noted that Respondent complied with the conditions of his deferred judgment and supervised probation, paid all imposed fines, court costs and restitution, and was discharged from said supervision and probation early.

However, the ALJ must also consider other evidence of Respondent's present fitness that demonstrates Respondent is currently misrepresenting his licensure status. According to Respondent's resume, he has maintained steady employment both before and after his criminal offenses; however, in that same resume, Respondent dishonestly identified himself as holding a Texas All-Lines license when he does not. In addition, the felony offense, per Mr. Wright, was on the high end of the severity spectrum.

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

III. FINDINGS OF FACT

1. On August 27, 2019, Victor Ikechy Gab-Ojukwu (Respondent) applied for an adjuster all lines – designated home state (DHS) license with the Texas Department of Insurance (Department).
2. On April 17, 2020, the staff (Staff) of the Department proposed to deny his application based on his criminal history.
3. Respondent requested a hearing to challenge the denial.

4. On February 11, 2021, the State Office of Administrative Hearings (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.
5. On April 9, 2021, Staff issued a notice of hearing which attached and incorporated by reference its petition in the case.
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 the particular sections of the statutes and rules involved; and the factual matters asserted.
7. The hearing in this case was held via Zoom videoconference on April 26, 2021, before SOAH ALJ Meitra Farhadi. Staff was represented by staff attorney Kaycee Crisp. Respondent represented himself. The hearing concluded that day, and the record closed on May 10, 2021, when the court reporter's transcript was filed with SOAH.
8. Respondent previously served as the sole owner of Careprox, LLC, (Careprox) an in-home healthcare provider agency that rendered services to people with developmental disabilities under the Colorado State Medicaid Program (Medicaid). The State of Colorado Department of Health Care Policy and Financing launched an investigation into Careprox's practices, and determined that between February 2, 2015, and July 12, 2016, Careprox was paid \$44,490.08 by Medicaid for services not actually rendered to Medicaid clients.
9. On June 19, 2018, Respondent was charged with two counts of felony theft and two counts of felony cybercrime in Adams County, Colorado for his involvement with Careprox's fraudulent practices. On January 23, 2019, Respondent was additionally charged with one count of felony criminal mischief and one count of misdemeanor theft, related to the same conduct.
10. On January 23, 2019, Respondent entered into a plea agreement under which the two felony counts of theft and two counts of felony cybercrime were dismissed in exchange for Respondent's guilty plea to the newly added count of felony criminal mischief and count of misdemeanor theft, related to the same conduct.
11. On January 23, 2019, Respondent pleaded guilty to felony criminal mischief and misdemeanor theft in Case No. 2018CR002342 in District Court in Adams County, Colorado. Adjudication was deferred, and Respondent was placed on probation for three years. He was ordered to pay \$44,490.08 in restitution and \$2,311.50 in court costs. The two counts of felony theft and two counts of felony cybercrime were dismissed.
12. Respondent has complied with all conditions of his supervision, paid the restitution ordered by the court, completed 200 hours of public service, and was granted early termination of his deferred adjudication on August 5, 2020.
13. In committing the offense, Respondent engaged in fraudulent or dishonest acts or practices.

14. Respondent submitted his application to the Department less than five years after being discharged from deferred adjudication.
15. In the resume Respondent submitted to the Department, he dishonestly identified himself as a Licensed Texas All-Lines Adjuster when he does not hold such a license.
16. Licensure as an adjuster all lines agent would provide Respondent the opportunity to reoffend.
17. Medicaid fraud involves fraudulent conduct or dishonesty.
18. Respondent has no other criminal history.
19. Respondent was 46 years old at the time he entered his guilty plea.
20. Respondent worked steadily both before and after his criminal offense.
21. Respondent provided three letters of recommendation in which individuals with personal knowledge of him indicated that he is hardworking and professional.
22. The mitigating factors Respondent established do not outweigh the serious nature of his criminal offense.
23. Respondent is not presently fit to hold an adjuster all lines – DHS 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. Respondent received timely and sufficient notice of hearing. Tex. Gov't Code §§ 2001.051-.052.; Tex. Ins. Code § 4005.104(b).
4. The Department may deny a license if the Department determines that the applicant has engaged in fraudulent or dishonest acts or practices or has been convicted of a felony. Tex. Ins. Code § 4005.101(b)(5), (8).
5. The Department may deny a license application if the applicant has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. Tex. Occ. Code § 53.021(a)(1).

6. The Department may consider a person who has pleaded guilty to an offense, but whose adjudication has been deferred, to be convicted if the period of supervision was completed less than five years before the date of the application and the Department determines that employment of the person in the licensed occupation would create a situation in which he has the opportunity to repeat the prohibited conduct. Tex. Occ. Code § 53.021(d).
7. The Department may consider Respondent to have been convicted of his felony criminal mischief and misdemeanor theft offenses for purposes of Texas Occupations Code § 53.021(a). Tex. Occ. Code § 53.021(d).
8. The Department has determined that certain crimes are of such a serious nature that they are of prime importance in determining fitness for licensure. These crimes include any offense for which fraud, dishonesty, or deceit is an essential element. 28 Tex. Admin. Code § 1.502(e)(1).
9. The Department will consider the factors listed in Texas Occupations Code §§ 53.022 and .023 in determining whether to issue a license to an applicant with a criminal history, and will not issue a license unless those mitigating factors outweigh the serious nature of the criminal offense when viewed in the light of the occupation being licensed. 28 Texas Administrative Code § 1.502(h).
10. Staff has the burden to prove by a preponderance of the evidence its alleged grounds to deny Respondent's license application, while Respondent has the burden to prove by a preponderance of the evidence that he is fit to perform the duties and discharge the responsibilities of an insurance agent despite his criminal history. *See* Tex. Ins. Code § 4005.101(b); 1 Tex. Admin. Code § 155.427; 28 Tex. Admin. Code § 1.502(h).
11. Staff met its burden to prove that Respondent 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)(5), (8); Tex. Occ. Code §§ 53.021, .022, .023; 28 Tex. Admin. Code § 1.502(d), (f).
12. Respondent did not meet his burden to prove that he is presently fit to perform the duties and discharge the responsibilities of the licensed occupation despite his criminal history. Tex. Occ. Code § 53.023; 28 Tex. Admin. Code § 1.502(d), (h)(2)-(3).
13. Respondent's license application should be denied.

SIGNED July 9, 2021.



METRA FARHADI
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS