

No. 2023-8052

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

Date: 6/29/2023

Subject Considered:

Texas Department of Insurance v.
Edwin Mercado Viera

SOAH Docket No. 454-22-1354.C

General Remarks and Official Action Taken:

The subject of this order is Edwin Mercado Viera's application for a nonresident life agent license.

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 commissioner of insurance deny Mr. Viera's license application. A copy of the proposal for decision is attached as Exhibit A.

Mr. Viera filed exceptions to the administrative law judge's proposal for decision. Enforcement staff for the Texas Department of Insurance filed a reply to the exceptions.

In response to the exceptions, the administrative law judge did not recommend revising the proposal for decision. A copy of the administrative law judge's response to exceptions is attached as Exhibit B.

The following findings of fact and conclusions of law are adopted by the commissioner.

Findings of Fact

The findings of fact contained in Exhibit A are adopted by the commissioner and incorporated by reference into this order.

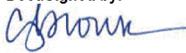
COMMISSIONER'S ORDER
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Conclusions of Law

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

Order

It is ordered that Edwin Mercado Viera's application for a nonresident 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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Jessica Barta, General Counsel

DocuSigned by:

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Justin Beam, Assistant General Counsel

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

—
**TEXAS DEPARTMENT OF INSURANCE/ENFORCEMENT DIVISION,
PETITIONER**

V.

**EDWIN MERCADO VIERA,
RESPONDENT**

PROPOSAL FOR DECISION

The Staff of the Texas Department of Insurance (TDI) seeks to deny the application by Edwin Mercado Viera (Respondent) for a nonresident life agent license (License) based on his criminal history. Having considered the evidence and applicable law, the Administrative Law Judge (ALJ) recommends the Commissioner of Insurance (Commissioner) deny the application.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were undisputed and are set forth in the findings of fact and conclusions of law without further discussion.

Respondent filed his application on March 1, 2020. Staff proposed denying the application and Respondent requested a hearing. Staff docketed this case at the State Office of Administrative Hearings (SOAH) on January 13, 2022. A hearing convened via videoconference on June 28, 2022, and, upon Respondent's failure to appear, the ALJ granted Staff's motion for a continuance to seek a default order from the Commissioner. On July 22, 2022, Staff filed a motion to reset the case, stating that Respondent had been unable to attend the hearing because SOAH's videoconference platform blocked participants in Puerto Rico, where Respondent resides. The motion was granted and the hearing was reset.

ALJ Pratibha J. Shenoy convened the hearing on the merits via videoconference on November 17, 2022. Staff Attorney Kaycee Crisp represented Staff.¹ Respondent appeared and represented himself. The record closed on December 7, 2022, with the eFiling of the transcript and admitted exhibits.

II. APPLICABLE LAW AND STAFF'S ALLEGATIONS

To engage in the business of insurance in Texas, a person must hold the appropriate license or certificate issued by TDI.² TDI may deny a license application

¹ On December 16, 2022, Staff Attorney Anna Kalapach was substituted as counsel after Ms. Crisp left TDI.

² Tex. Ins. Code § 4001.101; *see also* Tex. Ins. Code § 4005.301 (pertaining to life insurance).

if, among other things, the applicant has been convicted of a felony³ or an offense that directly relates to the duties and responsibilities of the licensed occupation.⁴ Chapter 53 of the Texas Occupations Code (Chapter 53) sets forth factors for licensing agencies to use in determining whether a person’s criminal conduct disqualifies the person from obtaining or holding a license.⁵ Each licensing authority is directed to determine the types of offenses that are directly related to the duties and responsibility of a licensed occupation, and to issue guidelines stating the reasons a particular crime is deemed to be directly related.⁶

TDI has determined that, due to the “complex and varied nature of insurance [and] insurance-related products,” the public must be able to “place trust in and reliance upon” its licensees.⁷ Therefore, TDI considers it “very important” that licensees “be honest, trustworthy, and reliable.”⁸ Pursuant to Chapter 53, TDI has promulgated rules identifying crimes that are “of such serious nature that they are of prime importance in determining fitness for licensure.”⁹ Among such offenses is felony assault, as described in Texas Penal Code chapter 22.¹⁰

³ Tex. Ins. Code § 4005.101(b)(8); *see also* 28 Tex. Admin. Code § 1.502(d) (authorizing TDI to deny a license if the applicant has committed a felony or misdemeanor).

⁴ Tex. Occ. Code § 53.021(a)(1).

⁵ *See* Tex. Occ. Code §§ 53.021-.023.

⁶ Tex. Occ. Code §§ 53.022, .025.

⁷ 28 Tex. Admin. Code § 1.502(a).

⁸ 28 Tex. Admin. Code § 1.502(c).

⁹ 28 Tex. Admin. Code § 1.502(e).

¹⁰ 28 Tex. Admin. Code § 1.502(e)(4)(B).

If a person has committed a felony or misdemeanor, or engaged in fraudulent or dishonest activity directly related to the duties and responsibilities of the licensed occupation, TDI “shall not issue a license” unless the Commissioner finds that mitigating factors “outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed.”¹¹ These factors, set out in Chapter 53 as well as in TDI’s rules, include considerations such as the extent and nature of the person’s past criminal activity; the conduct and work activity of the person prior to and following the criminal activity; and evidence of the person’s rehabilitation while incarcerated or following release.¹² An applicant is directed to furnish relevant letters of recommendation as well as evidence that the applicant has maintained a record of steady employment; supported the applicant’s dependents where applicable; and otherwise maintained a record of good conduct.¹³

Staff contends Respondent should not be granted the License because, as discussed below, Respondent has been convicted of a felony. The crime to which Respondent pleaded guilty—felony assault—is listed by TDI as an offense of “prime importance” in assessing fitness for licensure. Staff had the burden of proving its basis for denying Respondent’s application, while Respondent had the burden of proving his fitness to be licensed despite his criminal history.¹⁴ The standard of proof is by a preponderance of the evidence.¹⁵

¹¹ 28 Tex. Admin. Code § 1.502(f).

¹² 28 Tex. Admin. Code § 1.502(h)(2)(A), (D)-(E); *see also* Tex. Occ. Code § 53.023. The full list of factors is discussed in the Analysis section below.

¹³ 28 Tex. Admin. Code § 1.502(h)(2)(F)-(G).

¹⁴ 1 Tex. Admin. Code § 155.427.

¹⁵ *Granek v. Tex. St. Bd. of Med. Examin’rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

III. DISCUSSION

A. EVIDENCE

Staff presented the testimony of Lewis Weldon Wright IV, who is the Administrative Review Liaison to TDI's Enforcement Division. Staff also submitted 34 exhibits that were admitted.¹⁶ Respondent testified on his own behalf and provided a number of letters of reference and recommendation, which are included in Staff's exhibits and were discussed in Mr. Wright's testimony.

1. Staff's Evidence

Mr. Wright has worked for TDI for 15 years, and previously was an insurance agent. He is tasked with reviewing applications that involve criminal history. Mr. Wright's testimony and the documentary evidence regarding the following facts were undisputed.

In 2007, Respondent was the parish priest for Santa Ana Parish in Arecibo, Puerto Rico. At some point between April and June 2007, Respondent drove to a neighboring city to give mass, accompanied by a 13-year-old altar boy (Child). While driving back to Arecibo, Respondent put his hand inside Child's pants and fondled and stroked Child's penis and testicles.¹⁷ On March 6, 2014, Respondent was charged with the third-degree felony of Lewd Acts toward a person under age 16.¹⁸

¹⁶ Staff Exhibit 34 is a demonstrative. The ALJ took official notice of Staff Exhibits A-E (reference copies of applicable law).

¹⁷ Staff Ex. 32 at 278.

¹⁸ Staff Ex. 32 at 278-79.

As part of a plea bargain, the indictment was amended to reflect a charge of “assaulting and causing prolonged psycho-emotional damage.”¹⁹ Respondent pleaded guilty to and was convicted of the felony offense of Aggravated Assault on December 4, 2014.²⁰ He was sentenced to serve one year of confinement in a federal penal institution followed by two years on probation.²¹

Respondent was released from incarceration on November 21, 2015, and completed probation on November 22, 2017.²² His application for reinstatement of his Puerto Rican insurance license was granted on a provisional basis for one year, effective December 22, 2017,²³ and on a permanent basis on October 2, 2018.²⁴

As previously noted, TDI Staff proposed to deny Respondent’s March 1, 2020 License application. Respondent requested a hearing, and TDI’s Enforcement Division asked Respondent for more information regarding his criminal history.²⁵ Respondent provided the documents, his résumé, and six letters of recommendation.

Mr. Wright testified that he and other Staff closely reviewed the materials Respondent submitted, but continue to advocate denial of his application. For recommendation letters, Mr. Wright explained that TDI wants to see whether the

¹⁹ Staff Ex. 32 at 295.

²⁰ Staff Ex. 32 at 286.

²¹ Staff Ex. 32 at 285.

²² Staff Ex. 32 at 295-96.

²³ Staff Ex. 32 at 301. In 2011, Respondent obtained an insurance agent license in Puerto Rico. The Puerto Rican Commissioner of Insurance revoked the license on July 7, 2015, as required by law. *See* Staff Ex. 32 at 290.

²⁴ Staff Ex. 4 at 130.

²⁵ Staff Ex. 5.

letter writer understands the nature and importance of the criminal conduct at issue and can shed light on Respondent's character and rehabilitation.²⁶ Mr. Wright made the following observations concerning the letters provided by Respondent.

Javier Corujo-Ramsey, President of Pinnacle Partners, where Respondent currently works as an insurance agent, wrote that he has known Respondent since September 2018, and finds him to be talented, hard-working, and "exceptionally well-prepared."²⁷ Respondent's "conduct has been flawless to [Pinnacle Partners and its] clients[.]" The letter references "a process in [Respondent's] life that caused a hard and severe impact in various existential aspects" but adds that Respondent has shown "improvement and successful rehabilitation since 2015[.]" A second letter from Mr. Corujo-Ramsey is similar, but notes that Respondent is requesting a nonresident agent license and does not seek to be physically present in Texas. Respondent would use the License to sell insurance via telemarketing to Latino business owners.²⁸ This letter also states that Pinnacle Partners is "committed to the personal development and rehabilitation of our citizens" and hired Respondent to allow him to "have a job and continue his life as an ordinary citizen, as this new stage in his life has begun." Mr. Wright found it significant that Mr. Corujo-Ramsey appeared to have some knowledge of Respondent's criminal involvement and that he was pleased with Respondent's work performance.²⁹

²⁶ Tr. at 49-52.

²⁷ The statements attributed to Mr. Corujo-Ramsey in this paragraph are contained in Staff Ex. 8 at 164-67.

²⁸ The second letter is addressed to Staff but states that the application is for a nonresident license in Florida, which appears to be a typographical error.

²⁹ Transcript of the Hearing on the Merits (Tr.) at 49.

Orlando Colon-Soto is a City Council Member of the Arecibo Municipality and Legislative Director of the Senate of Puerto Rico Committee on Infrastructure. He wrote that he met Respondent in 2006 through religious activities, and Respondent inspired him to work with young people. In Mr. Colon-Soto's opinion, Respondent has "great emotional intelligence," can work "skillfully in diverse teams in very complicated and challenging scenarios," and represents "the core values of a professional."³⁰ Respondent's personal life "has brought very heavy challenges" but Respondent has "overcome and maintained focus on a better future." Mr. Colon-Soto stated that Respondent "has passed an unfair judicial process, which he has successfully endured." Mr. Wright said it was important that Mr. Colon-Soto had known Respondent both before and after the criminal activity, but the letter was not very helpful because it made only vague references to past problems without explaining how Respondent has been rehabilitated.³¹

A letter from Vanessa Raices Lopez, M.D., states that Respondent has been "a spiritual guide and financial advisor" for her since 2000, and he shows "a courteous manner," holds "high ethical values," and "is a respectable and productive member of society after his judicial process."³² Mr. Wright found the letter contained no meaningful indication that Dr. Lopez knew of Respondent's criminal history.³³

³⁰ The statements attributed to Mr. Colon-Soto in this paragraph are contained in Staff Ex. 9 at 1.

³¹ Tr. at 50-51.

³² Staff Ex. 10 and certified Spanish-to-English translation in Staff Ex. 32 at 273. The letter was originally provided by Respondent to the State of Florida Department of Financial Services to support an application Respondent filed there.

³³ Tr. at 51.

Father Jose M. Diaz Rodriguez, the Senior Pastor of the Missionaries of Divine Mercy in Glendale, Arizona, wrote that he has known Respondent since they were classmates in college, and is aware of Respondent's "track record and development in the area of personal finance and as a financial planner which he has performed with excellence and excellent results."³⁴ Father Rodriguez commended Respondent for his "great availability to work as a team and his pleasant gift of people." Mr. Wright stated that it is helpful to have input from someone who has known Respondent for decades, but the letter itself lacks any specifics regarding Respondent's criminal activity or subsequent conduct.³⁵

Spanish teacher Monica Delgado-Garcia wrote that Respondent has been a counselor to her since 1997, helping her develop her educational, professional, and personal life. Ms. Delgado-Garcia praised Respondent's communication skills, ability to work independently and multitask, and "excellent rapport with many clients, employers, and other professional organizations."³⁶ Mr. Wright noted that the letter does not make any mention of Respondent's criminal history.³⁷

Judicial Assistant Linda Rivera wrote that she and her husband are head chaplains at the correctional facility where Respondent was incarcerated, and met Respondent when he had six months of confinement remaining. Respondent participated in all of the activities organized by the chaplains, served as a speaker at

³⁴ The statements attributed to Father Rodriguez in this paragraph are contained in Staff Ex. 11 at 171.

³⁵ Tr. at 52.

³⁶ Staff Ex. 26 at 218.

³⁷ Tr. at 54.

conferences for the inmates, and had a good reputation with other inmates and correctional officers. Ms. Rivera noted Respondent had excellent behavior during his rehabilitation process, complied fully with post-release probation, and demonstrated “improvement, perseverance and success”³⁸ after his release. The letter concludes by stating that Ms. Rivera is unaware of any “negative, immoral or illegal acts which can jeopardize [Respondent’s] proven example of rehabilitation and good workings.” Mr. Wright opined that the letter has only “a vague reference to the criminal activity” committed by Respondent.³⁹

Mr. Wright testified that, taken as a whole, the letters provided only vague mentions of Respondent’s misconduct. None of the writers demonstrated specific knowledge of the crime or how Respondent had rehabilitated himself.⁴⁰ Mr. Wright elaborated that, when Respondent was asked for a personal statement regarding his criminal history,⁴¹ he submitted a “recap of the criminal justice system actions taken related to the offense” without “any detail or description of events leading up to the [criminal conduct] or motivations towards how the offense took place.”⁴² An additional written statement provided by Respondent was “more of the same.”⁴³

A clinical psychologist evaluated Respondent at the start of his incarceration and found that Respondent “does not require individual or group treatment in the

³⁸ The statements attributed to Ms. Rivera in this paragraph are contained in Staff Ex. 27 at 219.

³⁹ Tr. at 55.

⁴⁰ Tr. at 48-56.

⁴¹ Staff Ex. 4.

⁴² Tr. at 55.

⁴³ Staff Ex. 6.

area of mental health, such as Management of Addictive Disorders or Impulse Control, at the time of the interview [May 14, 2015]” and no other “areas of need were identified that should be dealt with in the Mental Health Clinic.”⁴⁴ Mr. Wright said he considered this letter, and added that he reviewed Respondent’s résumé, which demonstrates Respondent’s extensive experience as a member of the clergy, a church administrator, and a canonical lawyer in matters of divorce.⁴⁵ Finally, Mr. Wright noted that during TDI’s review process, Respondent’s application for an insurance license in Florida was denied by operation of law based on his criminal history.⁴⁶ Per Mr. Wright, the denial of a license in any other jurisdiction is “evaluated and considered as to whether licensure in [Texas] would be proper.”⁴⁷

After reviewing the entire application, Mr. Wright opined that “the rehabilitative effort demonstrated . . . was minimal” and there “was little to allay [TDI’s] concerns.”⁴⁸ Consequently, he continued to recommend denial of the License application.

2. Respondent’s Evidence

Respondent testified he knows his actions were “very, very wrong”⁴⁹ and he said he pleaded for forgiveness from Child and Child’s mother.⁵⁰ He explained that

⁴⁴ Staff Ex. 12 and certified Spanish-to-English translation in Staff Ex. 32 at 274.

⁴⁵ Tr. at 48.

⁴⁶ Tr. at 53-54.

⁴⁷ Tr. at 46.

⁴⁸ Tr. at 45.

⁴⁹ Tr. at 62.

⁵⁰ Tr. at 61.

he has done his best to “be a good citizen now and not [be] a person who depends on the government[.]”⁵¹ Respondent professed “shock” to hear that his rehabilitation efforts were considered “minimal.”⁵² It has been very hard, he stated, to suffer prejudice based on his criminal record, but he has dedicated himself to getting “back to normality” so he can be “a good person, a good citizen,” and be of service to others.⁵³ Respondent expressed that he sometimes feels he is being “judged for a second time for the same crime” and his efforts in the last several years are being disregarded.⁵⁴ He added that, since he was re-licensed in Puerto Rico in 2017, no complaints, either personal or professional, have been made against him.⁵⁵

In a pleading addressed to SOAH, Respondent provided additional information.⁵⁶ Respondent wrote that he was initially charged with Lewd Acts against a minor but the charge was amended to Aggravated Assault because his attorney “presented a defense that [Respondent] never had an intention to commit a sexual assault.”⁵⁷ Respondent conceded that “there was an improper touch on my part to the minor,” but added that Child “confused and misinterpreted” the incident.⁵⁸ As a result, Respondent pointed out, he was not required to wear “an electronic shackle” during probation⁵⁹ and he did not have to register as a sex

⁵¹ Tr. at 62.

⁵² Tr. at 61-62.

⁵³ Tr. at 62.

⁵⁴ Tr. at 61.

⁵⁵ Tr. at 60.

⁵⁶ Staff Ex. 2.

⁵⁷ Staff Ex. 2 at 14.

⁵⁸ Staff Ex. 2 at 14.

⁵⁹ Staff Ex. 2 at 14.

offender.⁶⁰ He added that the supervising court allowed him to leave his municipality for personal and professional development, including a symposium in Atlanta.⁶¹

Respondent argued in his pleading that the amended charge, as well as the absence of electronic monitoring and granting of permission to leave the jurisdiction, all demonstrate he was not considered a flight risk or a threat to others. He successfully completed his probation without any “breaches or faults.”⁶² In addition, he satisfied all conditions of the provisional Puerto Rican insurance agent license granted to him in December 2017 and successfully secured an unrestricted license.⁶³ Respondent also argued that, because he is applying for a nonresident license, there is no opportunity for him to commit criminal conduct and he does not pose any risk to the citizens of Texas.⁶⁴

B. ANALYSIS

Staff contends Respondent’s License application may be denied because Respondent has been convicted of a felony, and because he has committed an offense that is of prime importance in determining fitness for licensure. Either basis for denial requires a consideration of the factors listed in TDI’s rule at 28 Texas Administrative Code section 1.502(h). The factors are as follows.

⁶⁰ Staff Ex. 2 at 14, 16.

⁶¹ Staff Ex. 2 at 16.

⁶² Staff Ex. 2 at 16.

⁶³ Staff Ex. 2 at 17.

⁶⁴ Staff Ex. 2 at 18.

The extent and nature of the person’s past criminal history.⁶⁵ There is evidence of only one crime committed by Respondent. The charge was amended from lewd acts to aggravated assault, and Respondent stated that he touched Child improperly but Child “confused and misinterpreted” the touch. However, the underlying conduct is not disputed: Respondent put his hand inside Child’s pants and fondled Child’s genitals. This is serious misconduct, made more concerning because the victim was a minor in Respondent’s custody. Respondent implied he was not required to wear an electronic monitor and was allowed to leave the jurisdiction because he was deemed low risk. While that could be true, there is an equal inference that restrictions were not applied because the charge was changed from a sexually-oriented offense. The absence of restrictions does not reduce the gravity of the offense or show that Respondent is not at risk of reoffending.

The age of the person when the crime was committed.⁶⁶ Respondent was 47 years old when he committed the crime. The conduct was not a youthful mistake.

The amount of time since the person’s last criminal activity.⁶⁷ The crime occurred in 2007, but Respondent was not charged until 2014. As of the hearing, 15 years had passed since the crime, and five years since Respondent’s release from probation. Five years is a relatively short time to demonstrate rehabilitation, and there is evidence Respondent has not fully reformed, as discussed below.

⁶⁵ 28 Tex. Admin. Code § 1.502(h)(2)(A).

⁶⁶ 28 Tex. Admin. Code § 1.502(h)(2)(B).

⁶⁷ 28 Tex. Admin. Code § 1.502(h)(2)(C).

The person's conduct and work activity prior to and following the criminal activity.⁶⁸ Respondent was employed by a religious institution both before and after the criminal activity occurred and until he was charged. He held an insurance license in Puerto Rico for some time before he was charged, and, although he was denied a Florida license, his Puerto Rican license was reinstated. The evidence of his professional conduct is generally positive as shown by his letters of recommendation.

Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.⁶⁹ **Other evidence of the person's present fitness, including letters of recommendation from law enforcement officials and others.**⁷⁰ These factors are discussed together because the relevant evidence overlaps. Ms. Rivera (the chaplain at the correctional facility where Respondent was held) indicated that Respondent participated in organized activities, served as a speaker, and had a good reputation with other inmates as well as correctional officers. He complied fully with probationary requirements.

However, the evidence provided does not establish meaningful rehabilitation on Respondent's part. Two of his six recommendation letters (from Father Rodriguez and Spanish teacher Ms. Delgado-Garcia) make no mention at all of Respondent's criminal history. The other letters contain, at best, vague references to challenges that Respondent has overcome and state he has been rehabilitated

⁶⁸ 28 Tex. Admin. Code § 1.502(h)(2)(D).

⁶⁹ 28 Tex. Admin. Code § 1.502(h)(2)(E).

⁷⁰ 28 Tex. Admin. Code § 1.502(h)(2)(F).

without further explanation. Even Ms. Rivera’s letter does not show she is aware of Respondent’s specific crime. Mr. Orlando-Soto wrote that Respondent “successfully endured” an “unfair judicial process,” calling into question whether he accepts Respondent’s guilt. Given that the letter writers do not appear to grasp the gravity of the criminal offense, the ALJ finds their accounts of limited utility in assessing the extent to which Respondent has reformed.

Evidence that the person has maintained a record of steady employment; supported dependents where applicable; and otherwise maintained a record of good conduct.⁷¹ Respondent was employed both before and after his confinement. He has no dependents.⁷² There is no evidence he has committed any offenses or been accused of misconduct after his release from probation.

Taking all the applicable factors into consideration, the ALJ finds the mitigating evidence does not outweigh the serious nature of Respondent’s crime when viewed in light of the trustworthiness and reliability required for the insurance occupation. In Respondent’s favor, he has been steadily employed and there is no evidence of misconduct since his release from probation. His employer is pleased with his performance, and several of his friends and colleagues praised his work ethic, professional success, and helpfulness as a spiritual guide, financial advisor, and mentor. However, the record does not establish that Respondent fully accepts his crime and has taken specific steps to reform.

⁷¹ 28 Tex. Admin. Code § 1.502(h)(2)(G).

⁷² Staff Ex. 32 at 275.

Respondent committed a single offense 15 years ago, but it is a very serious crime, and involved a child. Only five years have passed since Respondent was released from probation, a relatively short period of time in which to assess rehabilitation. Respondent was an adult at the time of his offense and cannot claim a youthful mistake. He was in a position of authority as Child's parish priest, and was entrusted with Child's custody. As a 13-year-old dependent on Respondent for his physical and emotional safety, Child was vulnerable. As admitted by Respondent, he betrayed that trust and committed assault that caused "prolonged psycho-emotional damage" to Child.

Importantly, Respondent's own statements indicate that he does not fully accept responsibility for his actions, which demonstrates he is not fit for licensure at this time. He stated that he begged for forgiveness from Child and Child's mother, but also contended that Child "confused and misinterpreted" his actions. Respondent testified he knows his conduct was "very, very wrong," but also objected that he is being "judged for a second time for the same crime." Respondent provided no explanation of what led to the criminal conduct, what he learned from it, or what steps he has taken to ensure that he will not reoffend. Full acceptance of his offense would include an understanding that his successful employment and good conduct since his release may not dispel concerns about his character and fitness, and do not entitle him to a license. Consequently, the ALJ recommends that the License application be denied, and makes the following findings of fact and conclusions of law.

IV. FINDINGS OF FACT

1. Edwin Mercado Viera (Respondent) filed an application for a nonresident life agent license (License) with the Texas Department of Insurance (TDI) on March 1, 2020.
2. The Staff of TDI proposed denial of the License based on Respondent's criminal history. Respondent requested a hearing and his case was docketed at the State Office of Administrative Hearings (SOAH) on January 13, 2022.
3. A SOAH Administrative Law Judge (ALJ) convened a hearing via videoconference on June 28, 2022, and, upon Respondent's failure to appear, the ALJ granted Staff's motion for a continuance to seek a default order from the Commissioner of Insurance (Commissioner). On July 22, 2022, Staff filed a motion to reset the case, stating that Respondent had been unable to attend the hearing because SOAH's videoconference platform blocked participants from Puerto Rico, where Respondent resides. Staff's motion was granted and the hearing was reset.
4. SOAH ALJ Pratibha J. Shenoy convened the hearing on the merits via videoconference on November 17, 2022. Staff Attorney Kaycee Crisp represented Staff. Respondent appeared and represented himself. The record closed on December 7, 2022, with the eFiling of the transcript and admitted exhibits.
5. In 2007, Respondent was the parish priest for Santa Ana Parish in Arecibo, Puerto Rico. At some point between April and June 2007, Respondent drove to a neighboring city to give mass, accompanied by a 13-year-old altar boy (Child). While driving back to Arecibo, Respondent put his hand inside Child's pants and fondled and stroked Child's penis and testicles.
6. On March 6, 2014, Respondent was charged with the third-degree felony of Lewd Acts toward a person under age 16. As part of a plea bargain, the charge was amended to assault causing prolonged psycho-emotional damage. On December 4, 2014, Respondent pleaded guilty to and was convicted of the felony offense of Aggravated Assault. He was sentenced to serve one year of confinement in a federal penal institution followed by two years on probation.

7. In 2011, Respondent had obtained an authorized insurance representative license in Puerto Rico. The Puerto Rican Commissioner of Insurance revoked the license on July 7, 2015, as required by the applicable law.
8. Respondent was released from incarceration on November 21, 2015, and successfully completed probation on November 22, 2017. He applied for reinstatement of his Puerto Rican insurance license, which was granted on a provisional basis for one year, effective December 22, 2017, and permanently on October 2, 2018.
9. Respondent has extensive experience as a member of the clergy, a church administrator, and a canonical lawyer in matters of divorce. Prior to being indicted, he was employed at a religious institution.
10. Since 2018, Respondent has been employed as an insurance agent by Pinnacle Partners in Puerto Rico. His employer commends his work ethic, preparation, and performance.
11. Respondent's criminal history is limited to one crime, but it is a very serious offense involving a child.
12. Respondent was 47 years old at the time of the misconduct and his actions cannot be dismissed as a youthful mistake.
13. Fifteen years have passed since the commission of the crime, but it has been only five years since Respondent was released from probation.
14. Since his release from probation, Respondent has not been charged with any offenses or accused of personal or professional misconduct. He does not have any dependents and has maintained steady employment.
15. Respondent provided evidence that he has a reputation among his friends and colleagues as a talented professional, spiritual guide, mentor, and skilled financial advisor with strong communication skills and a courteous manner.
16. The letters of recommendation provided by Respondent do not demonstrate that the letter writers are aware of the gravity of Respondent's misconduct or can address how he has reformed.

17. Respondent was in a position of authority as Child's parish priest and was entrusted with Child's custody. Child was vulnerable and Respondent betrayed that trust.
18. Respondent claims that he takes responsibility for his actions and admits that they were very wrong, but also contends that his conduct was misinterpreted by Child and objects that he is being judged twice for the same crime.
19. Respondent did not provide evidence of what led to his criminal conduct, what he learned from it, or the steps he has taken to ensure he will not reoffend.
20. Respondent has not shown sufficient evidence of rehabilitation at this time.

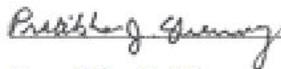
V. CONCLUSIONS OF LAW

1. TDI has jurisdiction over this matter. Tex. Ins. Code §§ 4001.002, .101, .105, 4005.101-.102, 4054.301.
2. SOAH has jurisdiction over the conduct of the hearing in this matter and authority to 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 §§ 2001.051-.052; Tex. Ins. Code § 4005.104(b).
4. Staff had the burden of proving its basis for denying Respondent's License application, while Respondent had the burden of proving his fitness to be licensed despite his criminal history. The standard of proof is by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427; *Granek v. Tex. St. Bd. of Med. Examn'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).
5. The Commissioner may deny Respondent's License application because he has been convicted of a felony. Tex. Ins. Code § 4005.101(b)(8); 28 Tex. Admin. Code § 1.502(d).

6. TDI has determined that felony assault is a crime of such a serious nature that it is of prime importance in determining a person's fitness for licensure. 28 Tex. Admin. Code § 1.502(e)(4)(B).
7. The Commissioner may deny Respondent's License application because he 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).
8. If a person has committed a felony or misdemeanor, TDI shall not issue a license unless the Commissioner of Insurance finds mitigating factors outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed. 28 Tex. Admin. Code § 1.502(f). In making this determination, TDI considers the factors set forth in Texas Occupations Code §§ 53.022 and .023, and in 28 Texas Administrative Code § 1.502(h).
9. The preponderance of the evidence shows that Respondent is not currently fit to be licensed as a nonresident life insurance agent in light of the trustworthiness and reliability required for the insurance profession. Tex. Occ. Code §§ 53.022-.023; 28 Tex. Admin. Code § 1.502(h).
10. The Commissioner should deny Respondent's License application.

Signed January 26, 2023.

ALJ Signature:



Pratibha J. Shenoy,

Presiding Administrative Law Judge

2023-8052

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Associated Case Party: Texas Department of Insurance/ Enforcement Division

Name	BarNumber	Email	TimestampSubmitted	Status
Rachel Cloyd		Rachel.Cloyd@tdi.texas.gov	1/26/2023 8:44:03 AM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	1/26/2023 8:44:03 AM	SENT
Kaycee Crisp		Kaycee.Crisp@tdi.texas.gov	1/26/2023 8:44:03 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Rachel Cloyd	24027456	rachel.cloyd@tdi.texas.gov	1/26/2023 8:44:03 AM	SENT
KAYCEE CRISP		KAYCEE.CRISP@TDI.TEXAS.GOV	1/26/2023 8:44:03 AM	SENT
CHIEF CLERK		chiefclerk@tdi.texas.gov	1/26/2023 8:44:03 AM	SENT
EDWIN VIERA		[REDACTED]	1/26/2023 8:44:03 AM	SENT

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	1/26/2023 8:44:03 AM	SENT

Associated Case Party: Edwin Mercado Viera

Name	BarNumber	Email	TimestampSubmitted	Status
Edwin MercadoViera		[REDACTED]	1/26/2023 8:44:03 AM	SENT

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

February 24, 2023

Exhibit B

Anna Kalapach
TDI Staff

VIA EFILE TEXAS

Edwin Mercado Viera
URB. Marisol, C-15
Arecibo, RQ 00612

VIA REGULAR MAIL

**RE: Docket Number 454-22-1354.C; Texas Department of Insurance
No. 24882; *Texas Department of Insurance/ Enforcement Division v.
Edwin Mercado Viera***

Dear Parties:

On January 25, 2023, I issued the Proposal for Decision (PFD) in this case, recommending that the Commissioner of Insurance (Commissioner) deny the application by Edwin Mercado Viera (Respondent) for a nonresident life agent license, based on Respondent's criminal history. On February 7, 2023, Respondent filed exceptions (Exceptions)¹ along with three letters and documents (in Spanish) that appear to be a police incident report. The Staff of the Texas Department of Insurance (TDI) did not file exceptions, but responded to the Exceptions on February 10, 2023.

In his Exceptions, Respondent agrees that his personal statement submitted to Staff during its investigation discussed only the facts associated with the criminal

¹ The document is styled "Response to the proposed decision." It does not request any changes to specific findings of fact or conclusions of law, but it appears to be for the purpose of stating exceptions.

justice process in his case, without addressing the details of how the criminal conduct occurred or his motivations. Respondent explains that he did not believe he was at liberty to discuss the details of the matter because it involved a minor victim. After the PFD was issued, he consulted a lawyer and learned that no restriction applies because a trial is not pending and the victim is now an adult. Accordingly, the Exceptions include an extensive discussion of Respondent's relationship over time with the minor and the minor's family; the criminal conduct at issue; Respondent's experience with the criminal justice system; his decision to plead guilty; his activities while incarcerated and on probation; and his personal and professional life since his release from probation.

Respondent also states in his Exceptions that he misunderstood the purpose of the recommendation letters he provided to TDI during the application and investigation process. He asked the letter writers to prepare letters of recommendation for a job, and thus those letters did not demonstrate the writers' knowledge of his criminal background. Respondent asserts that the new letters attached to his Exceptions are from persons who understand his criminal history and who nonetheless hold a high opinion of him.

I cannot consider either the statements made by Respondent in the Exceptions or the new letters of recommendation because the evidentiary record in this case closed on December 7, 2022. This new information was not provided to Staff during the investigation or discovery process, thereby depriving Staff of the chance to depose the letter writers and/or cross-examine them at the hearing. Staff also had no opportunity to cross-examine Respondent—whose statements in the Exceptions are unsworn—about the veracity and accuracy of any of those statements. Fairness to both parties in this process requires that all matters to be considered and included in the PFD be subject to a thorough examination during the hearing process and prior to the close of the record.

Even if the new materials could be considered, they do not contain information that would alter my recommendation. Respondent acknowledges that he assaulted the minor victim by hitting him on the thigh—and then, when the child did not calm down—hitting him between the legs, “grab[bing] his genitals and squeez[ing] them, and [telling] him, ‘You’re going to calm down now or I’ll explode

your genitals.’”² Respondent was aware that he “had touched [the minor’s] genitals and there was crime,” but he “doubted [he] could get an impartial jury” because of the extensive press coverage of sexual abuse of minors by clergy.³

Respondent states he decided to plead guilty in part because “the star witness to settle the doubt and suspicion in this case,” the victim’s father, had died.⁴ The father allegedly forgave Respondent for his conduct toward the minor and chose not to report the incident to police because the minor was mentally and emotionally unwell and suffered from personality disorders for which he had been treated in psychiatric hospitals from a young age.⁵ According to Respondent, the father also “warned” Respondent not to say anything to the child’s mother because the child “tended to manipulate his mother,” and said that the minor physically assaulted both his parents. Then, Respondent states that the victim at one point claimed to investigating authorities that the assault was a dream,⁶ and possibly “made up this story to get revenge for [Respondent] not officially installing him as an altar boy.”⁷

Respondent writes that “the experience of court proceedings and jail time definitely prevented me from doing what I did again.”⁸ Based on life expectancy averages, Respondent estimates he has around 18 years to live, and “If I risk committing another lewd act at my age today and I go to jail,” the penalty is 15 years without the right to probation, effectively a life sentence.⁹ Therefore, he chooses to “comply with the laws and leads [his] life on one path . . . the path of doing the right thing and avoiding repeat crimes.”¹⁰

² Exceptions at 5-6.

³ Exceptions at 13.

⁴ Exceptions at 15.

⁵ Exceptions at 7, 15.

⁶ Exceptions at 11.

⁷ Exceptions at 14.

⁸ Exceptions at 23.

⁹ Exceptions at 24.

¹⁰ Exceptions at 24.

Assuming they were to be considered, these statements only underscore the findings in the PFD that Respondent's crime is serious and was committed as a fully-grown adult in a position of authority and trust, against a child who was vulnerable (perhaps even more so if he had psychological challenges). As noted in the PFD, Respondent does not accept full responsibility for his actions. He continues to draw attention to the victim's mental state and now suggests a "star witness" could have changed the outcome of a criminal trial. Further, Respondent's avoidance of additional criminal activity is due to a desire to avoid any additional jail time—which is a positive development, but does not indicate personal growth or rehabilitation.

Accordingly, I do not make any changes to the PFD or my recommendation to the Commissioner. The PFD now goes to the Commissioner for his decision.

ALJ Signature:

Pratibha J. Shenoy,
Presiding Administrative Law Judge

CC: Service List

2023-8052

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Associated Case Party: Texas Department of Insurance/ Enforcement Division

Name	BarNumber	Email	TimestampSubmitted	Status
Rachel Cloyd		Rachel.Cloyd@tdi.texas.gov	2/24/2023 1:00:06 PM	SENT
Anna Kalapach		Anna.Kalapach@tdi.texas.gov	2/24/2023 1:00:06 PM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	2/24/2023 1:00:06 PM	SENT

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	2/24/2023 1:00:06 PM	SENT

Associated Case Party: Edwin Mercado Viera

Name	BarNumber	Email	TimestampSubmitted	Status
Edwin MercadoViera		[REDACTED]	2/24/2023 1:00:06 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Rachel Cloyd	24027456	rachel.cloyd@tdi.texas.gov	2/24/2023 1:00:06 PM	SENT
CHIEF CLERK		chiefclerk@tdi.texas.gov	2/24/2023 1:00:06 PM	SENT
EDWIN VIERA		[REDACTED]	2/24/2023 1:00:06 PM	SENT
KAYCEE CRISP		KAYCEE.CRISP@TDI.TEXAS.GOV	2/24/2023 1:00:06 PM	ERROR