

No. **2016-4720**

**OFFICIAL ORDER  
of the  
TEXAS COMMISSIONER OF INSURANCE**

Date: OCT 11 2016

**Subject Considered:**

PHILIP MERCADO JR.  
6001 Reims Road Apt. 203  
Houston, Texas 77036

**CONSENT ORDER**  
TDI ENFORCEMENT FILE NO. 10378

**General remarks and official action taken:**

The commissioner of insurance considers whether a general lines agent license with a life, accident, and health qualification should be issued to Philip Mercado Jr.

**WAIVER**

Mercado acknowledges that the Texas Insurance Code and other applicable laws provide certain rights. Mercado waives all of these rights in consideration of the entry of this consent order.

**FINDINGS OF FACT**

1. On January 15, 2015, Mercado applied for a temporary life agent license to be issued by the Texas Department of Insurance. The department proposed to deny his license application based on his criminal history, and Mercado made a written request for a hearing.
2. On June 28, 2016, Mercado applied for a general lines agent license with a life, accident, and health qualification.
3. On August 12, 2016, Mercado made a written request to withdraw his original application for a temporary life agent license and requested that it be replaced with his application for a general lines agent license with a life, accident, and health qualification.
4. On October 6, 1994, Mercado received deferred adjudication for the offense of evading arrest/detention, a class B misdemeanor, in cause no. 9434342 in County Criminal Court No. 4 of Harris County, Texas. Mercado was ordered to serve 180 days of community supervision and pay a \$150 fine.

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5. On August 3, 1999, Mercado was ordered to serve 45 days confinement and had his driver's license suspended for one year for the offense of possession of marijuana less than 2 ounces, a class B misdemeanor, in cause no. 9924164 in County Criminal Court No. 4 of Harris County, Texas.
6. On August 3, 1999, Mercado was ordered to serve 45 days confinement and had his driver's license suspended for one year for the offense of possession of marijuana less than 2 ounces, a class B misdemeanor, in cause no. 9931532 in County Criminal Court No. 4 of Harris County, Texas.
7. On September 16, 1999, Mercado was ordered to serve 15 days confinement for the offense of driving with a suspended license, a class B misdemeanor, in cause no. 99401950 in County Criminal Court No. 7 of Harris County, Texas.
8. On September 8, 2000, Mercado was ordered to serve 15 days confinement for the offense of driving while license invalid, a class A misdemeanor, in cause no. 10199270 in County Criminal Court No. 15 of Harris County, Texas.
9. On January 26, 2001, Mercado received deferred adjudication for the offense of possession of cocaine in the amount of 1-4 grams, a 3rd degree felony, in cause no. 861207 in the 263rd District Court of Harris County, Texas. Mercado was ordered to serve four years of community supervision and pay a \$500 fine. On May 2, 2002, the court amended the terms of Mercado's conditions of community supervision and ordered Mercado to serve 180 days confinement for the cocaine offense. On February 17, 2005, Mercado was successfully discharged from his community supervision.
10. On May 9, 2002, Mercado was ordered to serve 60 days confinement for the offense of assault causing bodily injury, a class A misdemeanor, in cause no. 1103064 in County Criminal Court No. 13 of Harris County, Texas.
11. On May 9, 2005, Mercado was ordered to serve one year confinement for the offense of unlawful labeling, a felony, in cause no. 1026135 in the 179th District Court of Harris County, Texas. Mercado served five months in confinement and was released early for good behavior. Mercado served his remaining time on parole.
12. On May 2, 2007, Mercado was ordered to serve 20 days confinement and had his driver's license suspended for six months for the offense of possession of marijuana less than 2 ounces, a class B misdemeanor, in cause no. 1435830 in County Criminal Court No. 13 of Harris County, Texas.
13. On May 2, 2007, Mercado was ordered to serve 20 days confinement and had his driver's license suspended for six months for the offense of possession of marijuana less than 2 ounces, a class B misdemeanor, in cause no. 1449867 in County Criminal Court No. 13 of Harris County, Texas.

14. On May 16, 2012, Mercado was ordered to serve 70 days confinement for the offense of possession of marijuana, a felony, in cause no. 67243 in the 23rd District Court of Brazoria County, Texas.
15. On May 16, 2012, Mercado was ordered to serve eight years confinement, for the offense of possession of a controlled substance, a 2nd degree felony, in cause no. 67244 in the 23rd District Court of Brazoria County, Texas. The court suspended Mercado's confinement and placed him on community supervision for six years. Mercado remains on community supervision until May 2018.
16. Mercado has cooperated with TDI in its investigation of his criminal background. Mercado provided mitigating evidence to support his fitness for licensure as follows:
  - a. he is in full compliance with all of his parole rules and conditions;
  - b. he has attended narcotics anonymous and alcoholics anonymous and has been sober since December 2011;
  - c. he has been continuously employed at Final Direct Expense, since October 2014, where he works in customer service and verifies bank accounts for agents, enters client data, and monitors pending client applications;
  - d. he is providing financial assistance to his daughter for college;
  - e. he has submitted six letters of recommendation, including letters from his current employers at Final Direct Expense, licensed insurance agents, former employers, and other well-respected members of the community who are aware of his past conduct and consistently refer to him as honest, hardworking, having a strong work ethic, and having learned from his past mistakes.
17. Due to Mercado's criminal background, the department needs an opportunity to monitor his insurance activities to ensure he demonstrates the ability, capability, and fitness required to perform and discharge the responsibilities of a licensed general lines life, accident, and health agent.

### CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051-82.055, 4001.002, 4001.102, 4001.105, 4005.101-4005.103, and 4054.051; TEX. GOV'T CODE §§ 2001.051-2001.178; 28 TEX. ADMIN. CODE § 1.502; and TEX. OCC. CODE §§ 53.021-53.023.
2. The commissioner has the authority to dispose of this case informally pursuant to the provisions of TEX. GOV'T CODE § 2001.056, 28 TEX. ADMIN. CODE § 1.47, and TEX. INS. CODE § 82.055.
3. Mercado committed an act for which a license may be denied, as contemplated by TEX. INS. CODE §§ 4001.105 and 4005.101.

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4. Pursuant to 28 TEX. ADMIN. CODE § 1.502(f), the commissioner has determined that the factors in TEX. OCC. CODE §§ 53.022-53.023 outweigh the serious nature of Mercado's criminal convictions.

The commissioner orders that a general lines agent license with a life, accident, and health qualification is granted to Philip Mercado Jr. The commissioner further orders that the general lines agent license with a life, accident, and health qualification is suspended for two years or until his criminal supervision in cause no. 67244 is discharged, whichever period is longer. The suspension is probated.

Beginning from the date of this order and continuing through the probation period, Mercado must provide written notice of his criminal record to any appointing company, agency, or sponsor. Mercado must provide the department with a copy of the notification within 30 days of the appointment or sponsorship to the Texas Department of Insurance, Attn: Catherine Bell or her successor, Enforcement Section, Mail Code 110-1A, P.O. Box 149104, Austin, Texas 78714-9104.

Beginning from the date of this order and continuing through the probation period, Mercado must file a written report, on or before the 15th day of each month, with the Texas Department of Insurance, Attn: Catherine Bell or her successor, Enforcement Section, Mail Code 110-1A, P.O. Box 149104, Austin, Texas 78714-9104. The reports must include the following information:

- a. Mercado's current mailing address and telephone number;
- b. the name, mailing address, and telephone number of Mercado's employer, and if Mercado is self-employed, a statement that he is self-employed and the name, mailing address, and telephone number of his business;
- c. the name and address of any insurer which has appointed Mercado as a general lines life, accident, and health agent;
- d. the name and address of any insurer which has canceled Mercado's appointment as a general lines life, accident, and health agent; and
- e. a copy of any and all contracts Mercado has entered into with an insurer, broker, managing general agent, managing general agency, or any person or entity in the business of insurance.

In addition to the information required above, Mercado must include the following additional information in his written reports for the months of June and December of each year.

- a. a letter, statement, or similar document from the supervising parole officer, parole office, or other court official which evidences his compliance with the rules and conditions of parole in cause no. 67244; and
- b. proof of a clean urinalysis, at Mercado's expense, administered by a certified drug testing center or lab.

Mercado shall submit a certified copy of any order modifying, discharging, terminating, or revoking his probation in cause no. 67244 within 15 days after the order is signed to the Texas Department of Insurance, Attn: Catherine Bell or her successor, Enforcement Section, Mail Code 110-1A, P.O. Box 149104, Austin, Texas 78714-9104.

Mercado must notify the department immediately of the following:

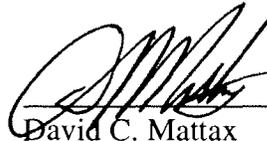
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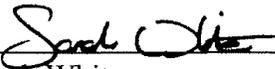
- a. any charges or indictments filed against him for a misdemeanor or felony during the period he is required to file reports, excluding traffic offenses and Class C misdemeanors;
- b. any state or regulatory actions taken against him including formal and informal actions;
- c. any change in his employment or his residence; and
- d. any complaint made against Mercado concerning his performance as an insurance agent, as well as a written explanation detailing the steps taken to resolve it.



David C. Mattax

Commissioner of Insurance

APPROVED AS TO FORM AND CONTENT:



Sarah White

Staff Attorney

Compliance Division, Enforcement Section

Texas Department of Insurance

Affidavit

STATE OF TEXAS

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COUNTY OF Brazoria

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Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

"My name is Philip Mercado Jr. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

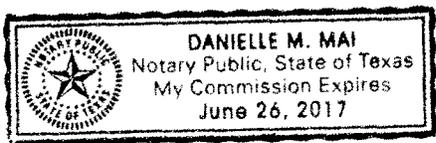
I waive rights provided by the Texas Insurance Code and other applicable law and acknowledge the jurisdiction of the commissioner.

I have knowingly and voluntarily entered into this consent order and agree with and consent to the issuance and service of the same by the commissioner of insurance of the state of Texas."

Philip Mercado  
Affiant

SWORN TO AND SUBSCRIBED before me on this 11<sup>th</sup> day of September 2016.

(NOTARY STAMP)



D. Mai  
Signature of Notary Public