

No. 2018- 5501

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

**Date: MAY 17 2018**

**Subject Considered:**

TIMOTHY JOEL SCHETELICH  
2426 Hill Road  
Scotch Plains, New Jersey 07076

**CONSENT ORDER**  
TDI ENFORCEMENT FILE NO. 12754

**General remarks and official action taken:**

The subject of this order is whether an adjuster-all lines designated home state Texas license should be issued to Timothy Joel Schetelich (Schetelich).

**WAIVER**

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

**FINDINGS OF FACT**

**License Application**

1. On August 29, 2016, Schetelich applied for an adjuster-all lines designated home state Texas license to be issued by the Texas Department of Insurance.
  - (a) Schetelich disclosed on his license application that he had a misdemeanor or felony conviction.
  - (b) Schetelich disclosed on his license application that he served a period of probation for a misdemeanor or felony offense.
2. On February 2, 2017, the department proposed to deny Schetelich's application based on his criminal history, and he timely submitted a written request for a hearing.

**Criminal History**

3. Schetelich was a certified public accountant in the state of New Jersey from May 2, 1989, until his license expired on December 31, 2011.

4. The charging instrument, dated December 6, 2010, from the United States District Court, District of New Jersey, stated Schetelich prepared 2,126 individual income tax returns for the 2004 and 2005 federal tax years.
5. According to the charging instrument, of those 2,126 returns, Schetelich prepared one individual federal income tax return claiming ineligible Schedule C business expenses, which resulted in an unearned tax refund of approximately \$5,057 for his client.
6. On May 20, 2011, Schetelich entered a plea of guilty to one count of preparation of false income tax returns in the United States District Court, District of New Jersey in case number 3:10-833-01.
7. The court placed Schetelich on three years' supervised probation and ordered him to pay a fine in the amount of \$3,000 and a special assessment in the amount of \$100.

### **Evidence of Rehabilitation**

8. Schetelich cooperated extensively and timely with the department in its investigation of his criminal history. Schetelich provided evidence of his rehabilitation to support his fitness for licensure.
9. In accordance with the requirements of TEX. OCC. CODE § 53.025, the department has developed guidelines relating to the matters which the department will consider in determining whether to grant, deny, suspend, or revoke any license or authorization under its jurisdiction, as described in 28 TEX. ADMIN. CODE §§ 1.502(e)-1.502(k).
10. Pursuant to 28 TEX. ADMIN. CODE §§ 1.502(e)(1) and 1.502(e)(3), among the crimes the department considers to be of such a serious nature that they are of prime importance in determining fitness for licensure are crimes for which fraud, dishonesty, or deceit is an essential element and felony offenses involving moral turpitude or breach of fiduciary duty.
11. Schetelich's sole criminal conviction is included in the crimes the department considers to be of such a serious nature that they are of prime importance in determining fitness for licensure pursuant to 28 TEX. ADMIN. CODE §§ 1.502(e)(1) and 1.502(e)(3).
12. Pursuant to 28 TEX. ADMIN. CODE § 1.502(f), the department may issue a license if the applicant has engaged in criminal activity described in 28 TEX. ADMIN. CODE § 1.502(e)(1) and 1.502(e)(3) if the commissioner determines that the serious nature of the criminal activity is outweighed by the factors described in 28 TEX. ADMIN. CODE § 1.502(h).
13. 28 TEX. ADMIN. CODE § 1.502(h) specifically tracks the rehabilitative factors listed in TEX. OCC. CODE §§ 53.022 and 53.023 that the department must consider in determining whether those factors outweigh the serious nature of an applicant's criminal activity.
14. TEX. OCC. CODE § 53.022 and 28 TEX. ADMIN. CODE § 1.502(h)(1) describes the initial factors the department must consider in determining whether issuance of the license is appropriate:

FACTORS IN DETERMINING WHETHER CONVICTION RELATES TO OCCUPATION. In determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider:

- (a) the nature and seriousness of the crime;
  - (b) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
  - (c) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
  - (d) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.
15. Considering the factors outlined in TEX. OCC. CODE ANN. § 53.022 and 28 TEX. ADMIN. CODE § 1.502(h)(1), Schetelich's sole criminal conviction on one count of preparation of false income tax returns directly relates to the occupation of an insurance agent because "the special nature of the relationship between licensees . . . and the public with respect to insurance and related businesses regulated by the department requires that the public place trust in and reliance upon such persons due to the complex and varied nature of insurance and insurance-related products." 28 TEX. ADMIN. CODE §§ 1.502(a), 1.502(e)(1), and 1.502(e)(3).
16. TEX. OCC. CODE ANN. § 53.023 and 28 TEX. ADMIN. CODE § 1.502(h)(2) describe additional factors the department must consider in determining whether issuance of the license is appropriate:

ADDITIONAL FACTORS FOR LICENSING AUTHORITY TO CONSIDER.

- (a) In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in Section 53.022:
  - (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
  - (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.
  - (b) The 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 as required by Subsection (a)(6).
  - (c) In addition to fulfilling the requirements of Subsection (b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has:
    - (1) maintained a record of steady employment;
    - (2) supported the applicant's 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.
- 17. Schetelich accepted responsibility and expressed remorse for his criminal conduct, attributing his actions in part to the sudden illness and hospitalization of his spouse, requiring him to care for himself, his spouse and three children.
- 18. In consideration of TEX. OCC. CODE § 53.023(a)(1) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(A), Schetelich's criminal conviction for one count of preparation of false income tax returns is Schetelich's only criminal conviction.
- 19. In consideration of TEX. OCC. CODE § 53.023(a)(2) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(B), Schetelich's sole criminal conviction occurred in 2010, when he was 50 years old.
- 20. In consideration of TEX. OCC. CODE § 53.023(a)(3) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(C), it has been six years since Schetelich's sole criminal conviction. The underlying events occurred in the federal tax year 2004, and Schetelich entered a plea of guilty to one count of preparation of a false income tax return on May 20, 2011.
- 21. In consideration of TEX. OCC. CODE §§ 53.023(a)(4) and 53.023(c)(1), and 28 TEX. ADMIN. CODE §§ 1.502(h)(2)(D) and 1.502(h)(2)(G)(i), Schetelich provided the department with a detailed resume describing his education in economics and tax, and work as a self-employed, former Certified Public Accountant and tax preparer for 30 years, from 1988 to the present time. Schetelich prepared thousands of federal income tax returns before the offense date and after without issue.
- 22. In consideration of TEX. OCC. CODE § 53.023(a)(5) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(E), Schetelich provided the department with evidence that the Internal Revenue Service reinstated his right to prepare federal income tax returns on May 13, 2014 after suspending that right by default as a result of his criminal conviction.

23. In consideration of TEX. OCC. CODE § 53.023(a)(6) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(F), the department received three letters of recommendation from Schetelich's friends and colleagues who describe Schetelich both professionally and personally as hard-working, dedicated, and trustworthy. All recommenders have known Schetelich over 10 years, some as long as 30 years.
24. In consideration of TEX. OCC. CODE § 53.023(c)(3) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(G)(iii), Schetelich has maintained a record of good conduct without any criminal convictions for the past six years. Schetelich provided the department with documentation from the United States District Court Probation Office, District of New Jersey that his supervised probation terminated on May 18, 2014.
25. In consideration of TEX. OCC. CODE § 53.023(c)(4) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(G)(iv), Schetelich provided the department with documentation from the United States District Court, District of New Jersey that he has paid all fines and special assessments as part of his criminal conviction.
26. The factors described in 28 TEX. ADMIN. CODE § 1.502(h) and TEX. OCC. CODE §§ 53.022 and 53.023 outweigh the serious nature of Schetelich's criminal conviction.
27. Due to Schetelich'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 an adjuster.

#### **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, 4005.102 and 4101.051; 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. Schetelich committed an act for which a license may be denied, as contemplated by TEX. INS. CODE §§ 4001.105 and 4005.101.
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 Schetelich's criminal conviction.
5. The commissioner is an insurance regulatory official authorized to regulate Schetelich's activities in the business of insurance. The commissioner has primary jurisdiction to grant Schetelich written consent to engage or participate in the business of insurance, pursuant to 18 U.S.C. § 1033.

It is ordered that an adjuster-all lines designated home state Texas license is granted to Timothy Joel Schetelich. It is further ordered that the adjuster-all lines designated home state Texas license is suspended for four years, probated.

If, during the probation period imposed by this order, the department issues any additional licenses or authorizations to Schetelich, those additional licenses or authorizations will be suspended until the probation period imposed by this order has ended. The suspension will be probated, and the same terms and conditions stated in this order will apply.

Beginning from the date of this order and continuing through the probation period, Schetelich must provide written notice of his criminal record to any employer, company, or other entity on behalf of which he performs the acts of an adjuster. Schetelich must provide the department with a copy of the notification within 30 days of being employed or retained 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, Schetelich must file a written report, on or before the 15th day of the month on a quarterly basis for the months of March, June, September, and December, 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:

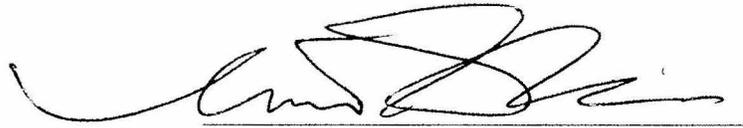
- (a) Schetelich's current mailing address and telephone number;
- (b) the name, mailing address, and telephone number of Schetelich's employer, and if Schetelich is self-employed, a statement that he is self-employed and the name, mailing address, and telephone number of his business;
- (c) the name and address of any insurer or entity which has employed or contracted with Schetelich as an adjuster;
- (d) the name and address of any insurer or entity which has terminated Schetelich's employment or contract as an adjuster; and
- (e) a copy of any and all contracts Schetelich has entered into with an insurer, broker, managing general agent, managing general agency, or any person or entity in the business of insurance.

Schetelich must notify the department immediately of the following:

- (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 Schetelich concerning his performance as an adjuster, as well as a written explanation detailing the steps taken to resolve it.

Schetelich is granted written consent, as contemplated by 18 U.S.C. § 1033(e)(2), to engage in the business of insurance with respect to persons that are domiciled in and risks and subjects of insurance that are resident, located, or to be performed in Texas. This written consent will remain in effect for as long as Schetelich renews his license. This written consent terminates immediately if any insurance license or authorization held by Schetelich is suspended or revoked. The department's written consent set forth here is revoked immediately upon any failure of Schetelich to perform any one of the foregoing actions required by this order.



Kent C. Sullivan  
Commissioner of Insurance

APPROVED AS TO FORM AND CONTENT:



LaKisha T. Seldon McKay  
Staff Attorney  
Enforcement Section

2018- 5501

COMMISSIONER'S ORDER  
Timothy Joel Schetelich  
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Affidavit

STATE OF TEXAS

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COUNTY OF \_\_\_\_\_

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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 Timothy Joel Schetelich. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

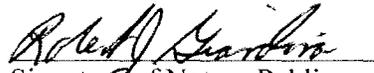
I waive rights provided by the Texas Insurance Code and other applicable law and acknowledge the jurisdiction of the commissioner.

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."

  
\_\_\_\_\_  
Affiant

SWORN TO AND SUBSCRIBED before me on this 5<sup>th</sup> day of March,  
2018

(NOTARY STAMP)

  
\_\_\_\_\_  
Signature of Notary Public

Robert J. Giardina  
ID # 2338020  
Notary Public Of New Jersey  
My Commission Expires 12/10/2020