

No. 2019-5984

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

Date: JUN 17 2019

Subject Considered:

Jeffry Thomas Herzog
31234 Liberty Knoll Ln
Spring, Texas 77386

Consent Order
TDI Enforcement File No. 19348

General remarks and official action taken:

The subject of this order is whether a general lines agent license with a life, accident, and health qualification should be issued to Jeffry Thomas Herzog (Herzog).

Waiver

Herzog acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Herzog waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

Findings of Fact

License Application

1. On January 18, 2019, Herzog applied for a general lines agent license with a life, accident, and health qualification with the Texas Department of Insurance.

Criminal History

2. On March 6, 2009, Herzog was convicted of intoxication manslaughter, a 2nd degree felony, in the 214th District Court of Nueces County, Texas, in cause no. 08-AR-3761-F. The court sentenced Herzog to 11 years confinement and a \$10,000 fine.
3. Herzog was released from confinement and placed on parole on April 7, 2017. He remains on parole until November 2019.

Evidence of Rehabilitation

4. Herzog cooperated extensively and timely with the department in its investigation of his criminal background. Herzog provided evidence of his rehabilitation to support his fitness for licensure.
5. 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).
6. 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 the applicant's criminal history.
7. TEX. OCC. CODE § 53.022 and 28 TEX. ADMIN. CODE § 1.502(h)(1) describe 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:

- (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 licensed 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.
8. Considering the factors outlined in TEX. OCC. CODE § 53.022 and 28 TEX. ADMIN. CODE § 1.502(h)(1), Herzog's conviction for intoxication manslaughter does not directly relate to the occupation of a general lines agent.
9. TEX. OCC. CODE § 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 for a person who has committed a crime:

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 and 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.
10. In consideration of TEX. OCC. CODE § 53.023(a)(1) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(A), Herzog has attributed his conduct leading to his conviction to being a huge mistake and the result of foolishness on his part. Herzog has accepted responsibility and expressed extreme remorse and guilt for his criminal conduct.
11. In consideration of TEX. OCC. CODE § 53.023(a)(2) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(B), Herzog was 28 years old at the time of his criminal conviction.
12. In consideration of TEX. OCC. CODE § 53.023(a)(3) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(C), Herzog's conviction was in 2009 and he is on parole until November 2019.
13. In consideration of TEX. OCC. CODE §§ 53.023(a)(4)-(5) and 53.023(c)(1), and 28 TEX. ADMIN. CODE §§ 1.502(h)(2)(D) and 1.502(h)(2)(G)(i), Herzog has provided the department with evidence demonstrating his commitment to rehabilitation while incarcerated and continuing on parole. While incarcerated, Herzog completed college courses, vocational courses, and several substance abuse programs, including AA and Christians Against Substance Abuse. Since his

release, Herzog has continued in AA. Herzog also provided the department with a detailed resume showing that he has been steadily employed before and after his release. Herzog worked as a superintendent of construction for general contractors from May 2017 through December 2018. In this position, he had full responsibility for the onsite production of projects, which included directing subcontractors, providing quality control, and maintaining timelines and schedules. Herzog was also responsible for a company credit card for project related expenses. Herzog also handled expense reports, receipts, and invoices. Herzog has been working at an insurance agency since January 2018, helping in a non-agent capacity. Herzog has communicated he will work as an insurance agent for the agency, if he obtains his insurance license.

14. In consideration of TEX. OCC. CODE § 53.023(a)(6) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(F), the department received several letters of recommendation attesting to Herzog's fitness and trustworthiness:
 - a. Herzog's Division Manager at his current place of employment, insurance agency US Health Advisors, confirms knowledge of Herzog's criminal history and that the agency has extended Herzog a job offer as an agent pending receipt of his insurance license.
 - b. Herzog's AA sponsor describes Herzog as 100% committed to a sober life, and states that he attends meetings regularly, has a good heart, and would do what is right for the insurance business. He states that Herzog gives everything he has to be successful and take care of his family.
 - c. A friend, who has known Herzog since high school, describes Herzog as smart, caring, and as someone who takes responsibility for his past mistakes. He states that Herzog has lived a responsible life since his release.
 - d. Another friend describes Herzog as thoughtful, hardworking, intelligent, and someone who loves helping people. He states that Herzog is a wonderful person and should not be defined by a past mistake that he has paid for and for which he accepts responsibility.
15. In consideration of TEX. OCC. CODE § 53.023(c)(2) and 28 TEX. ADMIN. CODE § 1.502(h)(2)(G)(iv), Herzog has provided the department with evidence showing he has paid all court costs, fines, and restitution in full.

16. 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 Herzog's conviction.
17. Due to Herzog's criminal background, the department needs the opportunity to monitor his insurance activities to ensure he demonstrates the ability, capacity, and fitness required to perform and discharge the responsibilities of a licensed insurance agent.

Conclusions of Law

1. The commissioner of insurance has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051-82.055, 4005.101, 4005.102, and 4051.051; 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 of insurance has the authority to dispose of this case informally pursuant to TEX. GOV'T CODE § 2001.056, TEX. INS. CODE § 82.055, and 28 TEX. ADMIN. CODE § 1.47.
3. Herzog has knowingly and voluntarily waived all procedural rights to which he may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. Herzog has committed an act for which the department may deny a license under TEX. INS. CODE §§ 4001.105 and 4005.101.
5. Pursuant to 28 TEX. ADMIN. CODE § 1.502(f), the factors in TEX. OCC. CODE §§ 53.022-53.023 outweigh the serious nature of Herzog's criminal conviction.

Order

It is ordered that a general lines agent license with a life, accident, and health qualification is granted to Jeffrey Thomas Herzog. It is further ordered that the general lines agent license with a life, accident, and health qualification is suspended for two years or until the termination of Herzog's parole in Cause No. 08-AR-3761-F, whichever period is longer. The suspension shall be probated, and the terms and conditions stated in this order will apply.

If, during the probation period imposed by this order, the department issues any additional licenses or authorizations to Herzog, those additional licenses or authorizations will be suspended until the probation period imposed by this order has ended. The suspension shall 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, Herzog must provide written notice of his criminal record to any appointing company, agency, employer, sponsor, or other entity on behalf of which he performs the acts of an insurance agent. Herzog must provide the department with a copy of the notification within 30 days of appointment, employment, or sponsorship by emailing it to the Texas Department of Insurance at EnforcementReports@tdi.texas.gov.

Beginning from the date of this order and continuing through the probation period, Herzog must file a written report, on or before the 15th date of each month on a quarterly basis for the months of March, June, September, and December with the Texas Department of Insurance by emailing it to EnforcementReports@tdi.texas.gov. The reports must include the following information:

- a. Herzog's current mailing address and telephone number;
- b. the name, mailing address, and telephone number of Herzog's employer, and if Herzog 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 Herzog as an agent;
- d. the name and address of any insurer which has canceled Herzog's appointment as an agent; and
- e. a copy of any and all contracts Herzog has entered into with an insurer, broker, managing general agent, managing general agency, or any person or entity in the business of insurance.

Herzog must notify the department immediately of the following by emailing EnforcementReports@tdi.texas.gov.

- 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 of 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 Herzog concerning his performance as an agent, as well as a written explanation detailing the steps taken to resolve it.

Kent C. Sullivan
Commissioner of Insurance

By: 

Doug Slape
Chief Deputy Commissioner
Commissioner's Order No. 2018-5528

Recommended and reviewed by:



Leah Gillum, Associate Commissioner
Enforcement Section



Sarah White, Staff Attorney
Enforcement Section

