

No. 2019-6028

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

Date: JUL 31 2019

Subject Considered:

Texas Department of Insurance

v.

Everett Wayne Collier

SOAH Docket No. 454-18-4457.C

General remarks and official action taken:

The subject of this order is the disciplinary action against Everett Wayne Collier, a general lines agent license holder.

Background

After proper notice was given, this 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 license held by Mr. Collier not be revoked. A copy of the proposal for decision is attached as Exhibit A.

The Texas Department of Insurance (TDI) adopts the administrative law judge's proposed findings of fact and conclusions of law with changes as described in this order. TDI does not adopt the administrative law judge's recommendation that the license held by Mr. Collier not be revoked, but instead orders that Mr. Collier's license be revoked.

Changes to Proposed Findings of Fact and Conclusions of Law

The legal authority for changes to the proposal for decision made in this order is TEX. GOV'T CODE § 2001.058(e)(1).

Texas Insurance Code § 4005.101

TEX. INS. CODE § 4005.101 provides grounds on which TDI may take disciplinary action against a license holder. Under paragraph (b)(1) of the section, TDI may discipline a license holder if it determines the license holder "has wilfully [sic] violated an insurance law of this state," and under paragraph (b)(5) TDI may discipline a license holder if it determines the license holder "has engaged in fraudulent or dishonest acts or practices." The Department sought to revoke Mr. Collier's license under both TEX. INS. CODE § 4005.101(b)(1) and (b)(5).

In the "Analysis" portion of the proposal for decision, the administrative law judge repeatedly references a standard of "willful fraud"¹ but, there is no such reference in the Insurance Code. As such, the use of the phrase "willful fraud," appears to mistakenly conflate paragraphs (b)(1) and (b)(5). The two paragraphs, however, are separate provisions that can be pleaded and proven independently.²

As previously noted, paragraph (b)(5) authorizes TDI to discipline a license holder who "has engaged in fraudulent or dishonest acts or practices." To determine whether an act or practice is fraudulent for purposes of this statute, we turn to the generally accepted definition of fraud. *See Zaal v. Tex. Dept. of Ins.*, No. 03-11-00512-CV, 2013 WL 5878912 at 6 (Tex. App.—Austin 2013, no pet.) (mem. op.) (fraud is defined as "a material misrepresentation, which was false, and which was asserted as a positive assertion without knowledge of its truth, which was intended to be acted on, which was relied on, and which caused injury.").

TDI attempted to show that Mr. Collier engaged in a fraudulent act by introducing evidence of his guilty plea to a misdemeanor charge of attempted insurance fraud. However, the administrative law judge concluded that Mr. Collier's plea did not

¹ The administrative law judge uses variations of the term "willful fraud" four times in the Analysis portion of the proposal for decision when discussing whether Mr. Collier had engaged in fraudulent acts.

² Furthermore, while a fraud claim certainly has a scienter requirement, the proposal for a decision fails to recognize that a fraudulent act may be committed by someone acting willfully (intentionally) or recklessly. *See Meyer v. Tex. Dept. of Ins.*, No. 03-10-00642-CV, 2011 WL 5865240 (Tex. App.—Austin 2011, pet. denied) (mem. op.).

establish an intent to defraud, thus Mr. Collier's conduct did not qualify as fraudulent under TEX. INS. CODE § 4005.101(b)(5).

It "is well settled that when a defendant, who is charged with committing a misdemeanor offense, pleads guilty or nolo contendere to the charge, such plea constitutes an admission to every element of the charged offense." *Dees v. State*, 676 S.W.2d 403, 404 (Tex. Crim. App. 1984). Intent to defraud or deceive is an element of the crime of insurance fraud, and by pleading guilty to attempted insurance fraud, Mr. Collier has admitted to acting with the requisite intent. See TEX. PEN. CODE §§ 15.01(a) and 35.02(a). Therefore, by introducing evidence of Mr. Collier's guilty plea, TDI has established that Mr. Collier engaged in a fraudulent act under TEX. INS. CODE § 4005.101(b)(5).

And because a fraudulent act is inherently dishonest, Mr. Collier's conduct also constitutes a "dishonest act" for purposes of section 4005.101(b)(5). See Black's Law Dictionary 777 (10th ed. 2014) (A fraudulent act is defined as "conduct involving bad faith, dishonesty, a lack of integrity, or moral turpitude."). Consequently, in finding that TDI failed to prove that Mr. Collier engaged in a fraudulent or dishonest act, the administrative law judge misapplied the law.

The administrative law judge also misapplied the law in finding that Mr. Collier did not willfully violate an insurance law of this state under TEX. INS. CODE § 4005.101(b)(1). For purposes of paragraph (b)(1), "willful" means "deliberate, voluntary, or intentional." See *Otis Engineering Corp. v. Pennington*, No. 05-91-00002-CV, 1992 WL 172389 at 9 (Tex. App.—Dallas 1992, no writ) (not designated for publication) (citing Webster's Encyclopedic Unabridged Dictionary 1634 (1989)). TEX. PEN. CODE § 35.02(a) (prohibiting insurance fraud) is an "insurance law of this state" for purposes of paragraph (b)(1). Therefore, by introducing evidence of Mr. Collier's guilty plea, TDI established that Mr. Collier willfully violated an insurance law of this state under TEX. INS. CODE § 4005.101(b)(1).

The findings of fact and conclusions of law based on the administrative law judge's improper interpretation and application of TEX. INS. CODE § 4005.101 are changed as described in this order.

Texas Occupations Code § 53.021

TEX. OCC. CODE § 53.021 addresses an agency's authority to revoke, suspend, or deny a license based on a criminal conviction. Subsection (c) of that section generally prohibits an agency from treating a dismissal pursuant to the terms of a deferred adjudication as a conviction. However, subsection (d) provides an exception: an agency may consider a person to have been convicted of an offense regardless of whether the proceedings were dismissed pursuant to the terms of a deferred adjudication and the person was discharged if (1) the person completed the period of supervision less than five years before the date the person applied for the license and (2) the agency determines that, after considering the factors listed in TEX. OCC. CODE §§ 53.022 and 53.023(a), the person may pose a continued threat to public safety, or employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.

The administrative law judge concluded that TEX. OCC. CODE § 53.021(d)(1)(B)(i) only applies in cases in which an applicant is seeking licensure, but because Mr. Collier was already licensed, the statute was inapplicable in this case. This interpretation, however, is erroneous and a misapplication of the law.³ Mr. Collier completed the period of supervision and an order dismissing the criminal case against him was entered on October 7, 2017, after he received his license. Therefore, his period of supervision was clearly not completed more than five years before he applied for his license. Furthermore, the administrative law judge failed to recognize that insurance agents generally must reapply for a license every two years. *See* TEX. INS. CODE § 4003.001.

Because the administrative law judge concluded that the statute was inapplicable under clause (d)(1)(B)(i), she did not complete the requisite inquiry under TEX. OCC. CODE § 53.021(d)(2) to determine whether Mr. Collier poses a continued threat to public safety or his employment as a licensed agent would create a situation in which he had an opportunity to repeat the prohibited conduct. Without such a determination, TDI may not revoke Mr. Collier's license under TEX. OCC. CODE § 53.021. But because Mr. Collier's license is subject to disciplinary action under TEX. INS. CODE § 4005.101, it is not necessary to conduct the examination under TEX. OCC. CODE § 53.021 in this case.

³ The administrative law judge failed to cite any authority in support of her interpretation.

The findings of fact and conclusions of law concerning TEX. OCC. CODE § 53.021(d)(1)(B)(i) are changed accordingly, as described in this order.

Administrative Law Judge's Recommendation

The administrative law judge's recommendation that Mr. Collier's license not be revoked was also predicated on a misapplication of the law, as previously described in this order. Furthermore, the recommendation is too lenient. The evidence cited by the administrative law judge in support of Mr. Collier, including his family turmoil, remorse, lack of disciplinary history, and positive references,⁴ is outweighed by the serious nature of his fraudulent and dishonest act and its direct relation to the insurance agent profession.

The recommendation is also insufficient to protect the public interest. Permitting an individual who has recently admitted to attempting insurance fraud to remain a licensed insurance agent would clearly undercut the public's faith in the insurance agent profession and in TDI's oversight of the insurance industry. The recommendation also sends the wrong message to current and prospective licensees that TDI may tolerate similar fraudulent or dishonest acts in the future.⁵

The administrative law judge's recommendation regarding Mr. Collier's licensure is changed, as described in this order.

⁴ The administrative law judge also referenced Mr. Collier's assertion that he believed entering a guilty plea to attempted insurance fraud would "absolve him from the threat of losing his insurance license." It is important to note, however, that Mr. Collier was represented by counsel when he entered his plea and should have known the impact such an admission could have on his license.

⁵ TDI acknowledges the impact revocation of a license has on an individual. However, under the Insurance Code, revocation is not necessarily permanent. An individual may apply for reinstatement after five years from the date of an order revoking a license, as long as the individual can show good cause as to why the revocation should no longer be a bar to the issuance of a new license. TEX. INS. CODE § 4005.105.

Incorrect Citations

In conclusions of law nos. 6 and 8, the proposal for decision incorrectly cites TEX. INS. CODE § 4001.101 rather than § 4005.101. These errors are corrected by this order.

Changes to Proposed Findings of Fact Nos. 5, 6, and 7

As submitted in the proposal for decision, proposed findings of fact nos. 5, 6, and 7 state:

5. Mr. Collier did not intend to defraud Progressive.
6. Mr. Collier did not willfully violate an insurance law of this state.
7. Mr. Collier did not engage in a fraudulent or dishonest act.

In this order, proposed findings of fact nos. 5, 6, and 7 are changed to state:

5. Mr. Collier intended to defraud Progressive.
6. Mr. Collier willfully violated an insurance law of this state.
7. Mr. Collier engaged in a fraudulent or dishonest act.

The specific basis for the changes is that the administrative law judge did not properly apply or interpret applicable law, as previously addressed in this order.

Changes to Conclusions of Law Nos. 6, 7, 8, 9, and 10

As submitted in the proposal for decision, proposed conclusions of law nos. 6, 7, 8, 9, and 10 state:

6. The Department may take disciplinary action against a license holder who has willfully violated an insurance law of this state or who has engaged in fraudulent or dishonest acts or practices. TEX. INS. CODE §§ 4001.101(b)(1), (5).
7. Staff failed to meet its burden of proof that Mr. Collier's deferred adjudication can be considered as a conviction or that he was convicted of a crime that

renders him ineligible for licensure by operation of law. TEX. OCC. CODE §§ 53.021(d)(1)(B)(i)-(ii).

8. Staff failed to meet its burden of proof that Mr. Collier willfully violated an insurance law of this state or engaged in fraudulent or dishonest acts or practices. TEX. INS. CODE §§ 4001.101(b)(1), (5).

9. Staff failed to meet its burden of proof to establish grounds for revocation of Mr. Collier's license. TEX. INS. CODE §§ 4005.101-.102; 28 TEX. ADMIN. CODE § 1.502.

10. Mr. Collier's license should not be revoked. TEX. INS. CODE §§ 4005.101.

In this order, proposed conclusion of law no. 6 is changed to state:

6. The Department may take disciplinary action against a license holder who has willfully violated an insurance law of this state or who has engaged in fraudulent or dishonest acts or practices. TEX. INS. CODE § 4005.101(b)(1), (5).

The specific basis for the change is that proposed conclusion of law no. 6 contains an incorrect citation.

In this order, proposed conclusion of law no. 7 is not adopted because the administrative law judge did not properly apply or interpret applicable law, as previously addressed in this order. Furthermore, because the Commissioner concludes that Mr. Collier's license is subject to revocation under TEX. INS. CODE § 4005.101 and not TEX. OCC. CODE § 53.021, proposed conclusion of law no. 7 is not necessary for this order.

In this order, proposed conclusions of law nos. 8, 9, and 10 are renumbered as 7, 8, and 9, and are changed to state:

7. Staff met its burden of proof that Mr. Collier willfully violated an insurance law of this state or engaged in fraudulent or dishonest acts or practices. TEX. INS. CODE § 4005.101(b)(1) and (5).

8. Staff met its burden of proof to establish grounds for revocation of Mr. Collier's license. TEX. INS. CODE §§ 4005.101 – 4005.102.

9. Mr. Collier's license should be revoked. TEX. INS. CODE §§ 4005.101 – 4005.102.

The specific basis for the changes to proposed conclusions of law nos. 8, 9, and 10 is that the administrative law judge did not properly apply or interpret applicable law, as

previously addressed in this order. Additionally, proposed conclusion of law no. 8 is also changed to correct a citation, while proposed conclusion of law no. 10 is also changed because the administrative law judge's recommendation is too lenient and insufficient to protect the public interest.

Findings of Fact

1. Proposed findings of fact nos. 1 through 4 and 8 through 10 as contained in Exhibit A are adopted by TDI and incorporated by reference into this order.⁶
2. In place of finding of fact no. 5 as proposed in Exhibit A, TDI adopts the following finding of fact:

Mr. Collier intended to defraud Progressive.

3. In place of finding of fact no. 6 as proposed in Exhibit A, TDI adopts the following finding of fact:

Mr. Collier willfully violated an insurance law of this state.

4. In place of finding of fact no. 7 as proposed in Exhibit A, TDI adopts the following finding of fact:

Mr. Collier engaged in a fraudulent or dishonest act.

Conclusions of Law

1. Proposed conclusions of law nos. 1 through 5 are adopted by TDI and incorporated by reference into this order.
2. In place of conclusion of law no. 6 as proposed in Exhibit A, TDI adopts the following conclusion of law:

The Department may take disciplinary action against a license holder who has willfully violated an insurance law of this state or who has engaged in fraudulent or dishonest acts or practices. TEX. INS. CODE § 4005.101(b)(1), (5).

⁶ The proposal for decision has two findings of fact numbered as "1." Both findings are adopted by TDI.

3. The Commissioner declines to adopt conclusion of law no. 7 as proposed in Exhibit A.
4. In place of conclusion of law no. 8 as proposed in Exhibit A, TDI adopts the following conclusion of law:

Staff met its burden of proof that Mr. Collier willfully violated an insurance law of this state or engaged in fraudulent or dishonest acts or practices. TEX. INS. CODE § 4005.101(b)(1) and (5).

5. In place of conclusion of law no. 9 as proposed in Exhibit A, TDI adopts the following conclusion of law:

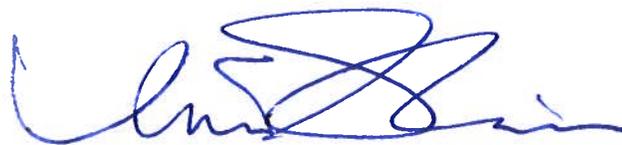
Staff met its burden of proof to establish grounds for revocation of Mr. Collier's license. TEX. INS. CODE §§ 4005.101 – 4005.102.

6. In place of conclusion of law no. 10 as proposed in Exhibit A, TDI adopts the following conclusion of law:

Mr. Collier's license should be revoked. TEX. INS. CODE §§ 4005.101 – 4005.102.

Order

It is ordered that the general lines agent license held by Everett Wayne Collier is revoked.



Kent C. Sullivan
Commissioner of Insurance

2019- 6028

COMMISSIONER'S ORDER
TDI v. Everett Wayne Collier
SOAH Docket No. 454-18-4457.C
Page 10 of 10

Recommended and reviewed by:

A handwritten signature in black ink, appearing to read "J. Person", written over a horizontal line.

James Person, General Counsel

A handwritten signature in blue ink, appearing to read "Justin Beam", written over a horizontal line.

Justin Beam, Assistant General Counsel

2019- 6028

State Office of Administrative Hearings

EXHIBIT

A



Lesli G. Ginn
Chief Administrative Law Judge

March 25, 2019

Kent Sullivan
Commissioner of Insurance
Texas Department of Insurance
333 Guadalupe, Tower 1, 13th Floor, Mail Code 113-2A
Austin, Texas 78714

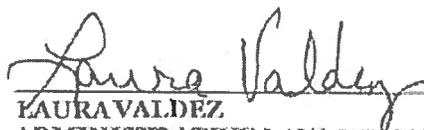
INTERAGENCY

RE: Docket No. 454-18-4457.C; *Texas Department of Insurance v. Everett Wayne Collier*

Dear Commissioner Sullivan:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507, a SOAH rule which may be found at www.soah.texas.gov.


LAURA VALDEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

LV/lc

cc: Elissa Mazza, Staff Attorney, Texas Department of Insurance, 333 Guadalupe, Tower 1, 13th Floor, Austin, Texas 78701 VIA INTER-AGENCY
Bruce Gregory, Gregory Law Firm, 1617 Magnolia Ave., Port Neches, TX 77651 - VIA REGULAR MAIL

SOAH DOCKET NO. 454-18-4457.C

TEXAS DEPARTMENT OF
INSURANCE,
Petitioner

v.

EVERETT WAYNE COLLIER,
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) brought this enforcement action to revoke the general lines agent license held by Respondent, Everett Wayne Collier. Staff alleges Mr. Collier violated the Texas Insurance Code (Code) and the Department’s rules by filing a false insurance claim. The Administrative Law Judge (ALJ) determines that Mr. Collier did not commit the alleged violation and recommends the Department not revoke Mr. Collier’s license.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no disputed issues of notice or jurisdiction in this case. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing on the merits was held on November 13, 2018, before ALJ Laura Valdez at the State Office of Administrative Hearings (SOAH), in Austin, Texas. Staff appeared and was represented by Staff Attorney Elissa Mazza. Mr. Collier was represented by attorney Bruce Gregory. The record closed on January 24, 2019, after the parties filed post-hearing briefs.

II. APPLICABLE LAW

The Code authorizes the Department to regulate the business of insurance in Texas.¹ The Department has developed guidelines relating to the matters it considers in determining whether to revoke any license under its jurisdiction when licensing persons with a criminal background.² Those guidelines emphasize that the Department considers it very important that license holders be honest, trustworthy, and reliable.³ As such, Code § 4005.101 provides that the Department may take disciplinary action against a license holder who has willfully violated an insurance law of this state;⁴ or who has engaged in fraudulent or dishonest acts or practices.⁵ For violations of insurance laws or Department rules, the Department may suspend or revoke a license.⁶

Additionally, the Department may revoke a license if the licensee has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation.⁷ Texas Occupations Code § 53.021(d) authorizes the Department to treat a person who has been placed on deferred adjudication as if the person has a criminal conviction for licensing purposes if: (1) the person completed the period of supervision less than five years before the date the person applied for the license or a conviction of an offense would make the person ineligible for the license by operation of law; and (2) the licensing authority determines that the person may pose a continued threat to public safety or employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.⁸

¹ Tex. Ins. Code (Code) § 31.002(1).

² Tex. Occ. Code § 53.025(a); 28 Tex. Admin. Code § 1.502(e).

³ 28 Tex. Admin. Code § 1.502(c).

⁴ Code § 4005.101(b)(1).

⁵ Code § 4005.101(b)(5).

⁶ Code § 4005.102.

⁷ 28 Tex. Admin. Code § 1.502(d); Tex. Occ. Code § 53.021(a)(1). The criteria to be used by an agency in determining whether a crime is directly related to the occupation are set forth in Tex. Occ. Code § 53.022 and 28 Tex. Admin. Code § 1.502(h)(1).

⁸ Tex. Occ. Code §§ 51.356, 53.021(c)-(d).

In deciding whether to revoke the license of a person because of a conviction (or a deferred adjudication that can be treated as a conviction), the Department must determine whether that person is fit to perform the duties and discharge the responsibilities of the licensed profession, notwithstanding the criminal history. In making this determination, the Department is required to consider the following factors set forth in § 53.023 of the Code:

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 following release;
6. other evidence of the person's present 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 persons in contact with the convicted person; and
7. proof furnished by the person that the he/she has:
 - a. maintained a record of steady employment;
 - b. supported his/her dependents;
 - c. maintained a record of good conduct; and

- d. paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the licensee has been convicted.⁹

Staff has the burden to prove by a preponderance of the evidence that a basis exists to revoke Respondent's license.¹⁰

III. EVIDENCE

The facts of this case are largely undisputed. At the hearing, Staff offered 5 exhibits, which were all admitted, and called to testify Lewis Wright, an investigator with the Department. Mr. Collier was called by Staff as an adverse witness and also testified on his own behalf. Mr. Collier called Blake Borel and Terry Cauthen to testify on his behalf. No other evidence was presented.

A. Staff Evidence

Mr. Wright, an investigator with the Department for 11 years, testified about the Department's investigation into a complaint filed by Progressive Group of Insurance Companies (Progressive) against Mr. Collier's license. Mr. Wright testified that on October 29, 1987, the Department issued a general lines agent license with a life, accident, and health qualification to Mr. Collier. On March 10, 1989, Mr. Collier attained a property and casualty qualification for his general lines agent license from the Department.¹¹

On or about August 21, 2013, Mr. Collier filed a claim with Progressive for an automobile loss. Mr. Collier filed a comprehensive insurance claim on behalf of his mother, for damages that happened prior to the effective date of the comprehensive policy. Prior to the loss, the automobile was insured under a liability-only policy. After the loss occurred,

⁹ Tex. Occ. Code § 53.023. The same factors are restated in the Department's guidelines. 28 Tex. Admin. Code § 1.502(h)(2).

¹⁰ 1 Tex. Admin. Code § 155.427.

¹¹ Staff Ex. 3.

Mr. Collier obtained a new policy that included both liability and comprehensive coverage. The actual loss occurred at least two months before the date Mr. Collier represented the date of the loss to Progressive. Mr. Collier was subsequently indicted for the offense of insurance fraud, a state jail felony, in Jefferson County, Texas, on April 24, 2014. On October 24, 2016, Mr. Collier entered a plea of guilty to the lesser-included offense of attempted insurance fraud, a Class A misdemeanor. Mr. Collier was ordered to serve one-year deferred adjudication and pay a \$500 fine and \$329 in court costs.¹² On October 7, 2017, the court entered an order dismissing the criminal case against Mr. Collier.

Mr. Wright testified regarding the importance that Department places on license holders being honest, trustworthy, and reliable. He stated that because Mr. Collier's indictment stemmed from filing a false insurance claim, Mr. Collier did not meet the Department's standards regarding honesty, trustworthiness, and reliability. Mr. Wright testified that in his opinion, Mr. Collier's indictment brought into question his ability to provide insurance services according to Department's standards. He opined that Mr. Collier's filing of a false claim directly related to his ability to perform his duties as an agent in an honorable and trustworthy manner. Mr. Wright noted that Mr. Collier has no prior disciplinary history with the Department.

Mr. Wright testified that Progressive terminated Mr. Collier's ability to handle Progressive policies for a period of time after it filed the complaint with the Department. However, Mr. Wright noted that Progressive later re-instated Mr. Collier as an authorized Progressive agent and he currently is allowed to service Progressive policies.

B. Mr. Collier's Evidence

Mr. Collier testified that in 2013 he was undergoing numerous hardships in his life-he was estranged from his wife, his family had experienced four deaths in an 18-month period, and he was attempting to prevent his brother from taking advantage of their elderly mother

¹² Staff Ex. 5.

who was experiencing the early stages of dementia. He testified that, at the time, he was caring for his mother and he was concerned about her driving since she was suffering from the early stages of dementia. Mr. Collier stated that after his mother's car accident, he delayed filing the claim as a means to keep his mother off the roads. However, because she was frequently at Mr. Collier's insurance office, he felt increasing pressure from his wife and his mother to file the claim. In light of the family turmoil going on, Mr. Collier explained that he had lost track of when the accident actually occurred when he called in the claim to Progressive. Once Mr. Collier was informed that Progressive was denying the claim because his mother did not have the appropriate coverage, he did not pursue the claim. Mr. Collier clarified that he attempted to file the claim on his mother's behalf as the claimant, and not as an insurance agent. Mr. Collier expressed remorse and contrition for filing the claim.

Mr. Collier has been an insurance agent for over 26 years. He testified that throughout the pending matter, he maintained his insurance business. And he notes that even though there was a pending indictment for insurance fraud stemming from the Progressive claim, Progressive kept him on as an insurance agent who services Progressive insurance policies.

When asked about why he pleaded guilty to attempted insurance fraud, Mr. Collier testified he believed that such a plea would absolve him from the threat of losing his insurance license. Mr. Collier stated that had he known his license would remain in jeopardy after his plea, he would have continued on to a jury trial because he believed he would have been found innocent of the fraud charge.

Blake Borel is an insurance agent who has known Mr. Collier for over 20 years. He and Mr. Collier have worked together over the years and Mr. Collier helped him process windstorm policies. Mr. Borel stated that Mr. Collier has a reputation as an honest and ethical man, who is known to be an upfront individual. When asked about Mr. Collier's indictment, Mr. Borel stated that he knew of the charge against Mr. Collier, and reasserted that Mr. Collier is an "up-standing guy."

Terry Cauthen has been in the insurance business for over 40 years and he trained Mr. Collier when he first started in the industry in the 1980's. Mr. Cauthen testified that Mr. Collier is a "very honorable" man, who won numerous awards in the insurance industry early in his career. Mr. Cauthen still consults with Mr. Collier regarding insurance business matters. He testified that Mr. Collier is an honest man and he has never known Mr. Collier to be unethical. When asked about Mr. Collier's indictment, Mr. Cauthen stated that he knew of the charge against Mr. Collier, and that it did not change his opinion about Mr. Collier's character.

IV. ANALYSIS

Staff cites three grounds for revocation of Mr. Collier's license. First, Staff asserts that Mr. Collier's license should be revoked due to his criminal background. Second, Staff alleges that Mr. Collier violated Texas insurance law and Department rules. Third, Staff alleges that Mr. Collier engaged in fraudulent and dishonest conduct. In support of its second and third bases for revocation, Staff contends that Mr. Collier's guilty plea to the lesser-included attempted insurance fraud proves that he violated Texas insurance law and Department rules and that he engaged in fraudulent and dishonest conduct. The ALJ acknowledges that attempted insurance fraud committed by an insurance agent is troubling, but the totality of the evidence strongly suggests that Mr. Collier's action was not willfully fraudulent. Nor did the evidence demonstrate that Mr. Collier's conduct was a violation of Texas insurance law or the Department's rules.

Militating against a determination of willful fraud are a number of facts. In order to show that Mr. Collier committed fraud, Staff must prove that Mr. Collier had the requisite intent to defraud. Mr. Collier credibly testified that he called in the claim for the damage to his mother's car in an attempt to "get her off his back." Given the litany of hardships he was undergoing at the time and the constant pressure from his mother and wife to file the claim, Mr. Collier's version of events is credible. Mr. Collier's lack of willful intent to defraud Progressive was acknowledged in Staff's closing argument: "Mr. Collier testified that his intent was not to defraud Progressive insurance company, but Mr. Collier pled guilty to the

lesser-included attempted fraud insurance.”¹³ Here, there was no controverting evidence presented that Mr. Collier intended to *willfully* defraud Progressive by filing a claim involving his mother’s car.

Staff relies heavily on the fact that Mr. Collier pleaded guilty to the lesser-included offense as proof of his intent. However, despite Staff’s contention that Mr. Collier’s guilty plea was proof of his fraudulent intent, Staff offered no controverting evidence to dispute Mr. Collier’s testimony. Mr. Collier testified that he pled guilty to attempted insurance fraud because he (mistakenly) believed that such a plea would absolve him from the threat of losing his insurance license. He stated that had he known his license would remain in jeopardy even after the plea deal, he would have continued in the jury trial for the fraud charge because he believed he would have been found innocent of the charge. The evidence did not show that Mr. Collier’s plea amounted to an admission that he intended to defraud Progressive. Based on the evidence presented, the ALJ determines that Mr. Collier did not engage in dishonest, fraudulent, or criminal conduct, and did not violate any Department rule.

Staff also asserts that Mr. Collier’s criminal conduct warrants revocation of his license. Mr. Collier pleaded guilty to the lesser-included offense of attempted insurance fraud, which was dismissed pursuant to the terms of a deferred adjudication. Texas Occupations Code § 53.021(d)(1)(B)(i) states that a deferred adjudication may be considered as a conviction for licensure purposes if the person completed the period of supervision less than five years before the date the person applied for the license. Based on a plain reading of Texas Occupations Code § 53.021(d)(1)(B)(i), that provision applies only in cases in which an applicant is seeking licensure. Therefore, that provision does not apply here because Mr. Collier is not seeking licensure.

Further, under Texas Occupations Code § 53.021(d)(1)(B)(ii), the Department may also revoke Mr. Collier’s license if it determines that a conviction makes the person ineligible for the license by operation of law. The record is clear that Mr. Collier was not convicted of

¹³ Staff Closing at 3.

an offense that would make him ineligible for the licensure by operation of law. Staff failed to show that Mr. Collier's guilty plea to attempted insurance fraud made him ineligible for the license by operation of law.

While the Department considers it very important that a licensee be honest, trustworthy, and reliable, Staff failed to prove that Mr. Collier's deferred adjudication for attempted fraud is subject to the provisions of 28 Texas Insurance Code § 1.502 (governing licensing persons with criminal backgrounds) or Texas Occupations Code Chapter 53. Staff also failed to prove that Mr. Collier's conduct was dishonest or fraudulent and was subject to sanction under Texas Insurance Code § 4005.101(b)(1) (willfully violated an insurance law of this state) or § 4005.101(b)(5) (engaged in a fraudulent or dishonest act or practice).

Based on the preponderance of the evidence, the ALJ concludes that Mr. Collier's license should not be revoked.

V. FINDINGS OF FACT

1. On October 29, 1987, the Texas Department of Insurance (Department) issued a general lines agent license with a life, accident, and health qualification to Everett Wayne Collier.
1. On or about August 21, 2013, Mr. Collier filed a comprehensive insurance claim with Progressive Group of Insurance Companies (Progressive) on behalf of his mother, for damages that happened prior to the effective date of the comprehensive coverage policy.
2. On April 24, 2014, Mr. Collier was indicted for the offense of insurance fraud, a state jail felony, in Jefferson County, Texas.
3. On October 24, 2016, Mr. Collier entered a plea of guilty to the lesser-included offense of attempted insurance fraud, a Class A misdemeanor. Mr. Collier was ordered to serve one-year deferred adjudication and pay a \$500 fine and \$329 in court costs
4. On October 7, 2017, the court entered an order dismissing the criminal case against Mr. Collier.
5. Mr. Collier did not intend to defraud Progressive.

6. Mr. Collier did not willfully violate an insurance law of this state.
7. Mr. Collier did not engage in a fraudulent or dishonest act.
8. Mr. Collier has no disciplinary history with the Department.
9. On June 25, 2018, the Department's staff (Staff) filed and issued a Notice of Hearing to Mr. Collier. The notice contained 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 either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
10. The hearing on the merits was held on November 13, 2018, before Administrative Law Judge Laura Valdez at the State Office of Administrative Hearings (SOAH), in Austin, Texas. Staff appeared and was represented by Staff Attorney Elissa Mazza. Mr. Collier was represented by attorney Bruce Gregory. The record closed on January 24, 2019, after the parties filed post-hearing briefs.

VI. CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter of this proceeding. Tex. Ins. Code chapters 4001 and 4005.
2. SOAH has jurisdiction over all matters relating to the conduct of the proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104(a).
3. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052; Tex. Ins. Code § 4005.104(b).
4. The Department may deny, revoke, or suspend a license for a person if that person 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).
5. The Department may revoke or suspend the license of a person who received deferred adjudication for a criminal offense if: (1) the person has not completed the period of court-ordered supervision or the person completed the period of supervision less than five years before the date the person applied for the license or a conviction for the offense would make the person ineligible for the license by operation of law; and (2) the Department determines that the person may pose a continued threat to public safety or that employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct. The

Department must determine whether the person is fit to hold the license. Tex. Occ. Code § 53.021(c)-(d).

6. The Department may take disciplinary action against a license holder who has willfully violated an insurance law of this state or who has engaged in fraudulent or dishonest acts or practices. Tex. Ins. Code §§ 4001.101(b) (1), (5).
7. Staff failed to meet its burden of proof that Mr. Collier's deferred adjudication can be considered as a conviction or that he was convicted of a crime that renders him ineligible for licensure by operation of law. Tex. Occ. Code §§ 53.021(d)(1)(B)(i)-(ii).
8. Staff failed to meet its burden of proof that Mr. Collier willfully violated an insurance law of this state or engaged in fraudulent or dishonest acts or practices. Tex. Ins. Code §§ 4001.101(b) (1), (5).
9. Staff failed to meet its burden of proof to establish grounds for revocation of Mr. Collier's license. Tex. Ins. Code §§ 4005.101-.102; 28 Tex. Admin. Code § 1.502.
10. Mr. Collier's license should not be revoked. Tex. Ins. Code §§ 4005.101.

SIGNED March 25, 2019.


LAURA VALDEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS