III. ANALYSIS

The gravity of this case cannot be overstated.[24] While Respondent urges that his criminal history should not prevent him from obtaining an insurance license now that he has turned his life around, Staff argues Respondent's misdeeds and lack of candor demonstrate that he cannot be trusted with an insurance license. As is often the case, the record bears evidence on each side of the regulatory scale. Staff presented evidence detailing Respondent's serious criminal history and the Department's associated concerns. On the other hand, the record also contains evidence of Respondent's rehabilitative journey—ranging from proof that he successfully completed court-ordered counselling to letters vouching for his newfound sobriety, work ethic, and trustworthiness. In the end, however, Respondent's commendable efforts do not outweigh the seriousness of his criminal history when considering the nature of licensed insurance work. The ALJ therefore recommends that the Department deny Respondent's application.

Two points support this recommendation. First, Respondent's guilty pleas to both Injury to a Child and Indecent Exposure are already deemed by the Department as directly related to licensed insurance work; these offenses are so grievous that they *must* receive "prime importance" when contemplating fitness for licensure.[25] Furthermore, the Department may consider the latter offense as a disqualifying conviction even though it was treated as a deferred adjudication and

[24] *See Patel v. Texas Dep't of Licensing & Regulation*, 469 S.W.3d 69, 92 (Tex. 2015) (Willett, J., concurring) ("[T]he right to put your mind and body to productive enterprise[] . . . is indispensable to human dignity and prosperity.").

[25] 28 Tex. Admin. Code §§ 1.502(e)(4)(B) (listing "a felony offense of assault, as described by Penal Code, Chapter 22"), .502(e)(4)(H) (listing "an offense against the person as described by Penal Code . . . [§] 21.08"); *see also* Tex. Pen. Code §§ 21.08 (Indecent Exposure, misdemeanor), 22.04 (Injury to a Child, felony).

ultimately resulted in dismissal. This is because (a) the coordinate order of community supervision expired within five years of Respondent's application for licensure, and (b) licensure would create an opportunity for Respondent to reoffend.[26] Of course, this does not mean recidivism is inevitable. The Occupations Code concerns itself with probability, not prophecy, and none of the evidence bearing in Respondent's favor—*e.g.*, his corroborated sobriety through March 2022, steady work history, letters of support, court-ordered counselling, or the near-decade that has passed since pleading guilty to his only felonious offense—ameliorates the "exponential" exposure to children that licensure would invite. Neither is it clear that Respondent is *presently* sober.[27] Thus whether one considers the severity of Respondent's prior felony or the degree to which that same offense contradicts even the most modest duties or integrity expected of insurance agents,[28] a single fact remains: licensure would create an intolerable opportunity to reoffend. This is similarly echoed in Respondent's less-than-consistent history of adhering to court-ordered conditions.[29] Respondent's record therefore reflects two offenses on which denial of his application may soundly rest.[30]

---

[26] Tex. Occ. Code § 53.021(d)(1)–(2).

[27] This carries unique consequence given that alcohol is a recurring factor in Respondent's criminal history. Unfortunately, the only evidence corroborating Respondent's in-application claim of temperance is found in the now-outdated character letters he submitted in March 2022. *See* Staff Ex. 2 at 49–52. This leaves the subsequent (and most recent) seven months unaccounted for.

[28] Also pertaining to the requisite degree of integrity is the fact that Respondent minimizes, if not contests, the propriety of his plea. *Cf.* Tex. Occ. Code § 53.023(a)(4), (7). His application describes the child-related offense as merely "sleeping on top of [the victim] while she was under the covers" and labors to emphasize that "[n]o evidence was presented." Staff Ex. 2 at 46. This creates an irreconcilable tension between Respondent's in-court admission of guilt and his in-application insinuation of innocence. Both cannot truthfully coexist.

[29] *See, e.g.*, Staff Ex. 3 at 136 (asserting noncompliance with court-ordered conditions).

[30] Tex. Ins. Code § 4005.101(b)(8); *accord* 28 Tex. Admin. Code § 1.502(d).

Second, even assuming Respondent's felony offense does not independently preclude licensure,[31] he failed to demonstrate that the redemptive factors in the Administrative Code outweigh the gravity of his criminal record. Consider first the nature and extent of Respondent's conduct. Whereas Respondent's plea to Indecent Exposure arose from allegations that he twice sexually assaulted his wife's friend,[32] his plea to Injury to a Child stemmed from a sworn report that he digitally penetrated a sleeping child under the age of fourteen. Even more, Respondent contests the facts underlying *both* associated guilty pleas. A statement alongside Respondent's application asserts that the indecent exposure offense "did not happen" and minimizes the child-related offense, describing it merely as "sleeping on top of [the victim] while she was under the covers" and highlighting that "[n]o evidence was presented."[33] These are not trivial inconsistencies. Even a cursory read of the relevant court documents paints a lascivious picture that, framed

---

[31] It is unclear why, at a minimum, Respondent's admitted guilt to a felony—Injury to a Child—does not independently justify denial of his application. *See* Tex. Ins. Code § 4005.101(b)(8) ("The department may deny a license . . . if . . . the applicant . . . has been convicted of a felony."); *accord* 28 Tex. Admin. Code § 1.502(d) ("The department may refuse to issue an original license . . . if . . . the applicant . . . has committed a felony . . . ."); *see also, e.g.*, Tex. Occ. Code § 53.021(a)(2) (similar disjunctive list of disqualifications, separating "an offense that directly relates . . . [to] the licensed occupation" from Injury to a Child). But Staff's silence on this point precludes the need to wade too far into this interpretive dilemma. It nonetheless bears note that the Department may be called to confront why the phrase "that directly relates to the duties and responsibilities of the licensed occupation" is reasonably read to modify not only the preceding referent ("fraudulent or dishonest activity") but also the earlier, grammatically isolated portion ("a felony") of the Administrative Code's disjunctive list. *See generally* Antonin Scalia & Brian Garner, *Reading Law: The Interpretation of Legal Texts* 149 (2012) (discussing the "Series-Qualifier Canon," explaining "backward reach" of postpositive modifiers). Put differently, it is unclear why the postpositive modifier is not limited to its nearest referent—a construction that would mirror the equally disjunctive but more-obviously-divorced framing in *both* the Occupations and Insurance Code. *See* Tex. Occ. Code § 53.021(a)(1)–(3); Tex. Ins. Code § 4005.101(b)(1)–(11). *See generally* Tex. Gov't Code § 311.011 (Code Construction Act).

[32] Respondent was originally indicted for three counts of sexual assault, which generally alleged that he (a) twice digitally penetrated the victim's sexual organ while she was unconscious or unable to resist, (b) touched the victim with his penis or attempted to pull down either her shorts or underwear, and (c) exposed his genitals with the intent to gratify his sexual desire. Staff Ex. 2 at 101. Further, this offense culminated in a conviction because Respondent violated his court-ordered conditions—another factor pertaining to fitness. *See* Tex. Occ. Code § 53.023(a)(6).

[33] Staff Ex. 2 at 46.

generously,[34] puts Respondent's in-court admission of guilt at odds with his present disavowal of the same. This belies Respondent's fitness for licensure—though not in the manner the Department originally urged.[35] As noted earlier, the salient concern is an irreconcilable tension between Respondent's in-court admissions of guilt and his in-application claims of innocence. Both cannot be true. These inconsistencies are thus properly viewed either as post-offense "conduct" or "other evidence of . . . fitness" given the premium placed on integrity within the insurance industry.[36] Additionally, though not of "prime importance" under the Department's deliberative framework, Respondent was twice convicted of Driving While Intoxicated: once in 2008, and again in 2013. This confirms that Respondent's criminal misconduct between the approximate ages of 28 to 34 was something more than youthful indiscretion. This, too, counsels against licensure.

Granted, this is not to say that Respondent lacks weight on his side of the regulatory scale. It bears reiterating that nearly a decade has passed since Respondent's last known criminal activity, Respondent has remained gainfully employed, and Respondent completed his court-ordered counselling. These accomplishments speak for themselves. Furthermore, because alcohol appears to be the common denominator in his troubled past, Respondent's journey to sobriety is particularly consequential.[37] The record also indicates that, as of March 2022,

---

[34] Framed less generously, Respondent's gloss borders on intentional misrepresentation—an independent basis for denial. *See* Tex. Ins. Code § 4005.101(b)(2). But Staff's silence on this point, as with others, forfeited the matter.

[35] The Department's original petition improperly claims "[Respondent's] mischaracterization[s] . . . indicate he is not fully rehabilitated." Staff Ex. 1 at 9. Not so. This exact reasoning was condemned by the Texas Supreme Court. *Thompson v. Texas Dep't of Licensing & Regulation*, 455 S.W.3d 569, 572 (Tex. 2014) (per curiam) (rejecting an interpretation of "rehabilitation" that would impose "an additional, extra-statutory requirement of confession").

[36] *See* Tex. Occ. Code § 53.023(a)(4), (7); *see also* 28 Tex. Admin. Code § 1.502(a) (emphasizing the special nature of public trust that underlies licensed insurance work); *cf., e.g.*, *Locklear*, 30 S.W.3d at 598 (same).

[37] As previously noted, however, the record does not establish that Respondent is *presently* sober. *See supra* note 27.

four individuals were willing to vouch for Respondent's progress and potential. Admittedly, none appeared at his hearing or provided updated letters. But their earlier endorsements still lend some support to Respondent's cause.[38] Finally, in terms of relevant financial considerations, Respondent satisfied all pecuniary obligations related to his criminal charges. Though the only evidence pertaining to his familial obligations indicates that he had "a balance on child support" as of March 2022. It remains unclear whether that balance was resolved or whether Respondent has continued to make "consistent payments," as previously self-reported.

In the end, Respondent's record reveals two disqualifying offenses and he has not shown that the redemptive regulatory factors outweigh the seriousness of his criminal history.[39] This should not be taken to deny Respondent's effort to turn a new leaf. Quite the opposite: his journey is commendable. But the question at bar does not invite a binary choice between denying progress or recommending licensure. The question is one of balance. Regrettably, that balance does not favor Respondent—at least for now. The Department should thus deny his application for licensure as an insurance agent.

---

[38] These now-dated letters do not ameliorate Respondent's failure to produce any statements from officials involved with his past offenses (*e.g.*, a prosecutor, law enforcement officer, or someone with custodial responsibility) or from law enforcement officials residing within Respondent's community. *See* 28 Tex. Admin. Code § 1.502(h)(2)(F)(i)–(ii); *see also* 28 Tex. Admin. Code § 1.502(h)(3) (noting the burden of production for these items rests with the applicant). Even assuming Texas Occupations Code § 53.023(a)(7)'s general reference to "letters of recommendation" *sub silentio* abrogated the specific letters demanded by the earlier-enacted Administrative Code—an unlikely proposition for a host of reasons—the weakness of Respondent's letters would still prove problematic.

[39] *See* 28 Tex. Admin. Code § 1.502(f).

IV. FINDINGS OF FACT

1. In 2008, the Grand Jurors of the 372nd District Court for Tarrant County, Texas, indicted Joshua Joel Haney (Respondent) for three counts of Sexual Assault.

2. In 2008, Respondent pleaded guilty to misdemeanor Driving While Intoxicated (DWI) under Texas Penal Code § 49.04(c) in Collin County Court at Law No. 2. He was assessed, and later satisfied, various fees.

3. In 2009, Respondent pleaded guilty to Indecent Exposure under Texas Penal Code § 21.08—a misdemeanor, in lieu of Sexual Assault—in Tarrant County Criminal District Court No. 2. Respondent received deferred adjudication and, *inter alia*, was ordered to pay a monthly supervision fee. He was also assessed, and satisfied, various costs.

4. In 2011, Tarrant County Criminal District Court No. 2 issued a judgment adjudicating guilt for Indecent Exposure, a misdemeanor, because Respondent failed to pay his court-ordered supervision fee and allegedly committed a felony offense: Penetration of a Child.

5. In 2013, Respondent pleaded guilty to Injury to a Child under Texas Penal Code § 22.04—a third-degree felony, in lieu of Penetration of a Child—in Dallas County Criminal District Court No. 1. Respondent received deferred adjudication and, *inter alia*, was sentenced to five years of community supervision and sex-offender counselling. He was also assessed, and later satisfied, various costs.

6. Later in 2013, Respondent pleaded guilty to a second misdemeanor DWI under Texas Penal Code § 49.04(a) in Denton County Criminal Court No. 4. He was also assessed, and later satisfied, various costs.

7. In 2014, Respondent applied for a general life, accident, and health agent license (Insurance License) from the Texas Department of Insurance.

8. In 2020, Respondent's community supervision was extended for two years.

9. Respondent completed his mandatory counselling and community supervision in February of 2022 and, as a result, the Dallas County Criminal District Court No. 1 dismissed the Injury to a Child charge.

10. Less than a month after completing community supervision for his Injury to a Child offense, Respondent reapplied for an Insurance License from the Department.

11. Respondent's application for an Insurance License explained that the indecent exposure offense "did not happen" and reported that "[n]o evidence was presented" to support the child-related offense, describing the underlying conduct as "sleeping on top of [the victim] while she was under the covers."

12. The Department proposed to deny Respondent's application because of his criminal history and a perceived lack of candor in his description of the same.

13. Respondent requested a hearing to challenge the proposed denial of his application, and the Department issued the requisite notice.

14. The Department's notice of hearing 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 a short, plain statement of the factual matters asserted.

15. On October 11, 2022, a hearing on the merits was held via Zoom videoconference before Administrative Law Judge Joshua C. Fiveson at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff was represented by Attorney Jeanni Ricketts, and Respondent represented himself. Respondent offered no evidence.

16. On October 27, 2022, the record closed upon filing of the transcript.

17. Respondent's offenses were committed between the approximate ages of 28 to 34 years old, indicating that his recurring failure of judgment was something more than youthful indiscretion.

18. Respondent has no known criminal record from 2014 to present, revealing a period of "good conduct."

19. Respondent has a steady work history—working as the general manager of a pizza franchise from 2012 to 2015, an office manager from 2015 to 2020, and a street sweeper from 2020 to 2022.

20. As of March 2022, four individuals—Ms. Edwards, Mr. Haney, Mr. Edwards, and Mr. McMahon—provided character letters that generally attest to Respondent's sobriety, progress, and potential.

21. As of March 2022, Mr. Edwards maintained a standing offer of employment for Respondent. This offer was contingent on licensure.

22. As of March 2022, Respondent had "a balance on child support" but reported that he had otherwise "made consistent payments." It is unclear whether Respondent subsequently resolved that balance or continued making consistent payments.

23. Respondent's criminal history is both serious and extensive.

24. Respondent's guilty plea to feloniously injuring a child is uniquely serious and contradicts the duties and integrity expected of licensees.

25. Licensure would grant Respondent "exponential" access to members of the public, including children, and would thereby invite an intolerable opportunity to reoffend.

26. Respondent's description of the Injury to a Child offense minimizes, if not contests, the propriety of his underlying guilty plea and thereby creates an irreconcilable concern with his honesty and integrity.

27. Respondent's description of the Indecent Exposure offense contradicts his underlying guilty plea and thereby creates an irreconcilable concern with his honesty and integrity.

28. Respondent has a history of failing to comply with court-ordered conditions, though his most recent period of community supervision was successfully completed.

29. Respondent introduced no character statements from officials involved with his past offenses (*e.g.*, a prosecutor, law enforcement officer, or someone who exercised custody over Respondent) or from specified law enforcement officials from Respondent's community.

30. The record corroborates Respondent's sobriety from February 2014 to March 2022, leaving the last seven months unaccounted for and precluding a conclusion that he is presently sober.

V. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 4001.002, 4001.105, 4005.101.

2. SOAH has authority to hear this matter and issue a proposal for decision, which includes findings of fact and conclusions of law. Tex. Gov't Code §§ 2001.001–.903; Tex. Ins. Code § 4005.104.

3. Respondent received adequate notice. Tex. Gov't Code §§ 2001.001–.903; Tex. Ins. Code § 4005.104(b).

4. The Department may deny licensure to an applicant who committed a felony. Tex. Ins. Code § 4005.101(b)(8); *accord* 28 Tex. Admin. Code § 1.502(d).

5. The Department may deny licensure to an applicant who committed an offense directly related to the insurance industry. Tex. Occ. Code § 53.021(a)(1); 28 Tex. Admin. Code § 1.502(d) (listing "fraudulent or dishonest activity that directly relates to the . . . occupation").

6. Though Respondent successfully completed his court-ordered supervision and counselling, which resulted in dismissal of the underlying felony, the Injury to a Child charge may constitute a conviction for the purposes of licensure because the associated period of supervision was completed less than five years before Respondent's application and licensure would create an intolerable opportunity for Respondent to similarly reoffend. Tex. Occ. Code § 53.021(d)(1)–(2).

7. Indecent Exposure and Injury to a Child are such serious offenses that they are directly related to licensed insurance work and must be given "prime importance" in determining Respondent's fitness for a license. 28 Tex. Admin. Code § 1.502(e); *accord* Tex. Occ. Code §§ 53.022–.023; 28 Tex. Admin. Code § 1.502(h).

8. Respondent failed to demonstrate that the factors set out in the Administrative Code outweigh the serious nature of his criminal history when considering the nature and duties of licensed insurance work. *See* 28 Tex. Admin. Code § 1.502(f); *cf. also* Tex. Ins. Code § 4005.101(b)(8); 28 Tex. Admin. Code § 1.502(d).

9. Having failed his burden, the Department should deny Respondent's application for licensure. *See* 28 Tex. Admin. Code § 1.502(f)

SIGNED December 12, 2022

Joshua C. Fiveson
Presiding Administrative Law Judge

2023-8126

Exhibit B

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

January 10, 2023

Jeannie Ricketts **VIA EFILE TEXAS**

Joshua Joel Haney **VIA EFILE TEXAS**

RE: SOAH Docket Number 454-22-05837.C; *Texas Department of Insurance v. Joshua Joel Haney*

Dear Parties:

I issued a Proposal for Decision (PFD) in this case on December 12, 2022. The Texas Department of Insurance's Staff subsequently filed timely exceptions, and Mr. Haney neither replied nor filed exceptions of his own. Having reviewed Staff's exceptions, I recommend one typographical correction to the PFD. My analysis and recommendation remain unchanged.

Staff correctly notes that her name, Jeannie Ricketts, is missing an "e" in two portions of the PFD—specifically, on Page 2 and in Finding of Fact No. 15. I regret the oversight and concur with the recommended edit.[1]

The remaining exceptions do not urge changes, though both merit brief comment. First, in response to dicta referencing the possibility that Respondent's "admitted guilt to a felony" might serve as an independent basis for denial, Staff "points out . . . that Tex. Ins. Code § 4005.101(b)(8) . . . would only apply to a felony offense involving deferred adjudication if the applicant was ultimately convicted." I concur. Though this citation appears to have proven misleading, the footnote's purpose is thereafter made explicit: "[T]he Department may be called to confront . . . *the Administrative Code*'s disjunctive list."[2] All citations to the Texas Insurance Code were intended only to show that an ordinary reading of the

[1] *See* 1 Tex. Admin. Code § 155.507(d)(2) (addressing scrivener's errors).

[2] PFD at 10 n.31 (emphasis added) (citing 28 Tex. Admin. Code § 1.502(d)).

Texas Administrative Code would "mirror the equally disjunctive but more-obviously-divorced framing in *both* the Occupations and Insurance Code."[3]

Second, in response to dicta pertaining to the disqualifying effect of intentional misrepresentations, Staff asserts that "TDI had no independent understanding of the facts or circumstances leading to [Respondent's disqualifying] charges[] and therefore was . . . unable to plead that Respondent's explanations were . . . intentional misrepresentations." This is perplexing. Staff indicated that the Department was "concern[ed]" by Respondent's disavowal of the facts underlying his offenses,[4] and the Original Petition claimed—unlawfully,[5] as noted in the PFD—that "[Respondent's] mischaracterization[s] . . . indicate he is not fully rehabilitated." One premise unifies these assertions: Respondent *misrepresented* the facts underlying his criminal history. Anything short of this would prove irrelevant. Thus, in the interest of clarity, the PFD contours the precise arguments advanced (and forfeited) by Staff.

With the scrivener's revision discussed above, the PFD is complete. I therefore suggest the Department adopt it in its entirety.

Sincerely,

Joshua C. Fiveson
Presiding Administrative Law Judge

CC: Service List

[3] PFD at 10 n.31 (citations omitted).

[4] Staff emphasized that "[Respondent] made statements concerning his offenses, which appear to conflict with . . . the descriptions in the court record" and, during its case in chief, solicited testimony regarding the perceived mischaracterization. Transcript at 38 ("TDI . . . think[s] it's not completely consistent . . . ."); *see also, e.g.*, Transcript at 66–67 (emphasizing the same when asked to identify "the perceived mischaracterization").

[5] *Compare* PFD at 11 n.35 (rejecting the claim that "[Respondent's] mischaracterization[s] . . . indicate he is not fully rehabilitated" because "this exact reasoning was condemned" in *Thompson v. Texas Dep't of Licensing & Regulation*, 455 S.W.3d 569, 572 (Tex. 2014) (per curiam)), *with* Staff Ex. 1 at 9 (Original Petition).

2023-8126

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 71709135
Status as of 1/11/2023 3:28 PM CST

Associated Case Party: Texas Department of Insurance

Name	BarNumber	Email	TimestampSubmitted	Status
Whitney Fraser		Whitney.Fraser@tdi.texas.gov	1/11/2023 3:19:23 PM	SENT
Jeannie Ricketts		Jeannie.Ricketts@tdi.texas.gov	1/11/2023 3:19:23 PM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	1/11/2023 3:19:23 PM	SENT

Associated Case Party: Joshua Joel Haney

Name	BarNumber	Email	TimestampSubmitted	Status
Joshua Joel Haney		Chooselife14@live.com	1/11/2023 3:19:23 PM	SENT

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	1/11/2023 3:19:23 PM	SENT