

No. **2024-8950**

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

Date: 11/13/2024

Subject Considered:

Texas Department of Insurance

v.

Paula Domingue Jones

SOAH Docket No. 454-24-11563.C

General Remarks and Official Action Taken:

The subject of this order is Paula Domingue Jones' application for an adjuster all lines license. This order denies Ms. Jones' application.

Background

After proper notice was given, the above-styled 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 Texas Department of Insurance deny Ms. Jones' application. A copy of the proposal for decision is attached as Exhibit A.

Findings of Fact

The findings of fact contained in Exhibit A are adopted and incorporated by reference into this order.

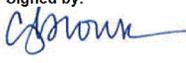
Conclusions of Law

The conclusions of law contained in Exhibit A are adopted and incorporated by reference into this order.

COMMISSIONER'S ORDER
TDI v. Paula Domingue Jones
SOAH Docket No. 454-24-11563.C
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Order

It is ordered that Paula Domingue Jones' application for an adjuster all lines license be denied.

Signed by:

FC5D7EDDFFBB4F8... _____
Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

Signed by:

5DAC5618BBC74D4... _____
Jessica Barta, General Counsel

Signed by:

5026FD92CD734A7... _____
Nash Noal, Attorney

SOAH Docket No. 454-24-11563

Suffix: C

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TEXAS DEPARTMENT OF INSURANCE,
PETITIONER**

v.

**PAULA DOMINGUE JONES,
RESPONDENT**

PROPOSAL FOR DECISION

Paula Domingue Jones (Respondent)¹ applied to the Texas Department of Insurance (Department) for an adjuster all lines license. Department staff (Staff) seeks to deny licensure because of Respondent's criminal history. After considering the evidence and applicable law, the Administrative Law Judge (ALJ) recommends Respondent's license application be denied.

¹ Respondent presented herself as "Paula Domingue" at the hearing stating that she no longer goes by the last name "Jones" since her divorce. However, the case style remains unchanged because she filed an application under the last name of "Jones" and has not updated her last name with the Texas Department of Insurance.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

On June 27, 2024, ALJ Dee Marlo Chico with the State Office of Administrative Hearings (SOAH) convened a hearing by videoconference. Attorney Casey Dick represented Staff, and Respondent represented herself. The hearing concluded and the record closed that same day.² Since notice and jurisdiction are not disputed, they are addressed solely in the Findings of Fact and Conclusions of Law.

II. APPLICABLE LAW

The Department is charged with regulating the business of insurance in the State of Texas.³ The Department considers it very important that license holders and applicants are honest, trustworthy, and reliable.⁴

A person may not act or represent that the person is an adjuster in Texas unless the person holds a license.⁵ The Department may deny the license application if it determines that an applicant has engaged in fraudulent or dishonest acts or practices or has been convicted of a felony that directly relates to the duties and responsibilities of the licensed occupation.⁶

² The Department had obtained, without notice to SOAH, the services of a court reporter. Mr. Dick noted the court reporter could not comply with the ALJ’s instructions regarding the transcript due to her contract with the Department. Accordingly, the ALJ ordered that the audio recording of the hearing—not the transcript—is the official record of the proceeding.

³ Tex. Ins. Code § 31.002(1).

⁴ 28 Tex. Admin. Code § 1.502(c). Section 1.502 was amended to be effective September 26, 2023. This Proposal for Decision cites to the version of the law that was in effect at the time Respondent submitted her application on August 17, 2023.

⁵ Tex. Ins. Code § 4101.051.

⁶ Tex. Ins. Code §§ 4005.101(b)(5), (8), .102(1); Tex. Occ. Code § 53.021(a); 28 Tex. Admin. Code § 1.502(d).

For applicants with criminal convictions, the Department considers the factors specified in Texas Occupations Code sections 53.022 and 53.023 in determining whether to grant, deny, suspend, or revoke a license or authorization.⁷ Under its rules, the Department shall not issue a license or authorization if it finds these factors outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed.⁸

Texas Occupations Code section 53.022 sets forth factors the Department must consider when determining whether a criminal conviction directly relates to the duties and responsibilities of the licensed occupation, including:

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 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;
4. the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of the licensed occupation; and
5. any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.⁹

The “directly relates” analysis must also take into account certain “guideline” crimes the Department “considers to be of such serious nature that they are of *prime*

⁷ 28 Tex. Admin. Code § 1.502(h).

⁸ 28 Tex. Admin. Code § 1.502(f).

⁹ Tex. Occ. Code § 53.022; *see also* 28 Tex. Admin. Code § 1.502(h)(1).

importance in determining fitness for licensure.”¹⁰ These crimes—that the Department has determined to be of prime importance and are also directly related to the occupations it licenses—include, among others, “any offense for which fraud, dishonesty, or deceit is an essential element; any criminal violation of the Texas Insurance Code or any state or federal insurance or security law regulating or pertaining to the business of insurance;” or “any felony involving moral turpitude or breach of fiduciary duty”¹¹

If the Department determines that an offense directly relates to the duties and responsibilities of the licensed occupation, it must then consider the following factors prescribed by Texas Occupations Code section 53.023 in determining whether to take any action against the licensee or applicant:

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;
6. evidence of the person’s compliance with any conditions of community supervision, parole, or mandatory supervision; and

¹⁰ 28 Tex. Admin. Code § 1.502(e) (emphasis added); *see* Tex. Occ. Code § 53.025.

¹¹ 28 Tex. Admin. Code § 1.502(e)(1)-(3).

7. other evidence of the person's fitness, including letters of recommendation.¹²

Each applicant has the responsibility, to the extent possible, to obtain and provide to the Department their evidence of fitness discussed above.¹³ An applicant must also furnish proof to the Department that the applicant has: 1) maintained a record of steady employment; 2) supported the applicant's dependents, where applicable; 3) otherwise 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.¹⁴

Staff has the burden of proving its grounds for disciplinary action against Respondent; while Respondent has the burden to prove her fitness to be licensed despite her criminal history or fraudulent or dishonest conduct. The standard of proof is by a preponderance of the evidence.¹⁵

¹² Tex. Occ. Code § 53.023; *see also* 28 Tex. Admin. Code § 1.502(h)(2).

¹³ Tex. Occ. Code § 53.023(b); Tex. Admin. Code § 1.502(h)(3).

¹⁴ 28 Tex. Admin. Code § 1.502(h)(2)(G).

¹⁵ 1 Tex. Admin. Code § 155.427; *Granek v. Tex. St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

III. EVIDENCE

Staff offered five exhibits, all of which were admitted without objection,¹⁶ and the testimony of Lewis Wright, the Department’s Administrative Review Liaison to the Enforcement Division. Respondent testified on her own behalf and did not offer any exhibits.

A. BACKGROUND

The evidence regarding Respondent’s criminal history and the filing of her application were not disputed.

Respondent worked for Abide Home Care Services, Inc. (Abide) from 1996-2005 as an “Accountant/Biller/Human Resources” and from 2012-2015 as an “Accountant/Biller.”¹⁷ Abide was a Louisiana corporation in the business of providing home health care to Medicare beneficiaries and beneficiaries of other health care benefit plans.¹⁸ On March 12, 2015, the United States District Court of the Eastern District of Louisiana indicted several individuals, including Respondent and her then husband, and entities, including Abide, for conspiring against Medicare.

According to the indictment, the purpose of the conspiracy was to fraudulently bill the Medicare system in order to divert funds for personal use by the

¹⁶ Staff Exhibits 1-5. The ALJ also took official notice of the rules and statutes in Staff Exhibits A (Texas Insurance Code sections 4005.101 and .102), B (28 Texas Administrative Code section 1.502; the rule in effect at the time Respondent filed her application), and C (Texas Occupations Code sections 53.021-.023).

¹⁷ Staff Ex. 2 at TDI 056; *see* Staff Ex. 3 at TDI 086 ¶ 26.

¹⁸ Staff Ex. 3 at TDI 085 ¶ 21.

co-conspirators.¹⁹ The indictment stated Respondent performed “ongoing fraudulent billing” of medically unnecessary home health services²⁰ and received compensation for the fraudulent billing through “payments.”²¹ Respondent was indicted on two counts:²² conspiracy to commit healthcare fraud²³ and conspiracy to pay and receive illegal health care kickbacks.²⁴

After a plea of not guilty, Respondent was found guilty of both counts on September 25, 2018,²⁵ and sentenced to imprisonment for a term of one year and one

¹⁹ Staff Ex. 3 at 88 ¶ 32.

²⁰ Staff Ex. 3 at 90 ¶ 38.

²¹ Staff Ex. 3 at 93 ¶ 48.

²² See Staff Ex. 3 at TDI 79-128, 135.

²³ [W]illfully and knowingly did combine, conspire, confederate and agree together and with each other to knowingly and willfully execute and attempt to execute a scheme and artifice to defraud a health care benefit program affecting commerce ... that is, Medicare, and to obtain by means of materially false and fraudulent pretenses, representations, and promises, money owed by and under the custody and control of Medicare in connection with the delivery of and payment for healthcare benefits and services in violation of Title 18, United States Code, Section 1347.

Staff Ex. 3 at TDI 087 ¶ 31.

²⁴ [K]nowingly and willfully solicit and receive remuneration, specifically, kickbacks and bribes, directly and indirectly, to overtly and covertly, in return for referring individuals for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole or in part by Medicare; and for the purchasing, leasing, and ordering of any good, item, and service for which payment may be made in whole and in part by ... Medicare; in violation of Title 42, United States Code, Section 1320a-7b(b)(1); and

[K]nowingly and willfully offer and pay remuneration, specifically, kickbacks and bribes, directly and indirectly, to overtly and covertly, in return for referring individuals for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole or in part by Medicare; and for the purchasing, leasing, ordering, and arranging for and recommending the purchasing, leasing, and ordering of any good, item, and service for which payment may be made in whole and in part by...Medicare; in violation of Title 42, United States Code, Section 1320a-7b(b)(2).

Staff Ex. 3 at TDI 091 ¶ 42a-42b.

²⁵ Staff Ex. 2 at TDI 151.

day, placed on supervised release for three years upon release from imprisonment, and ordered to pay restitution to Medicare in the amount of \$3,106,954.²⁶ Respondent's period of active supervision terminated on December 3, 2022.²⁷

On August 17, 2023, Respondent submitted her application for an adjuster all lines license with the Department and indicated on her application her felony conviction.²⁸ The Department proposed to deny her application based on Respondent's criminal history.²⁹ Respondent timely requested a hearing to challenge the proposed denial,³⁰ and, on February 14, 2024, the Department referred this matter to SOAH for a hearing.

B. MR. WRIGHT'S TESTIMONY

Mr. Wright testified he is a seventeen-year Department employee who is currently employed as the Administrative Review Liaison to the Department's Enforcement Division where he serves as the primary contact between the Department's Agent and Adjuster License Office and the Legal Division regarding reports of agent misconduct.

²⁶ Staff Ex. 3 at TDI 152-57.

²⁷ Staff Ex. 5 at TDI 185. Respondent's restitution balance as of December 5, 2022, was \$3,096,686.08.

²⁸ See Staff Ex. 2 at TDI 068-78.

²⁹ Staff Ex. 2 at TDI 026.

³⁰ Staff Ex. 2 at TDI 030.

Mr. Wright stated that when the Department issues a license, it has deemed the individual has the minimal amount of competence to be granted the authority the license affords. The Department also considers the individual honest, trustworthy, and reliable in dealings within the insurance industry. To illustrate, adjusters are relied upon to protect consumers because the insurance industry—with its products and the language used—is a complex industry.

Mr. Wright testified that the duties of an adjuster all lines are to represent the insurance company during the loss settlement process (i.e., claims process). The policy holder would make a claim against the policy. The carrier who issued the policy assigns an adjuster to represent them in the process. The adjuster would gather information related to any possible coverage for the loss; document the cause of the loss; ascertain if coverage exists in any contract; determine the policy holder's responsibility, if any; and issue money for expenses covered by the policy. Based on these duties, Mr. Wright asserted this type of license requires an applicant to be trustworthy and to act in a fiduciary capacity.

Referring to Respondent's personal statements in support of her application explaining her role in the conspiracy, Mr. Wright testified that she was involved in setting up the billing system used and in billing claims and was also a co-biller for over 200 patients.³¹ Mr. Wright asserted Respondent did not express any remorse or accountability in her role of fraudulently billing Medicare.³² Instead, she deflected to

³¹ See Staff Exs. 2 at TDI 057, 5 at TDI 179.

³² Staff Ex. 5 at TDI 179. "I believe then as I believe now that I behaved ethically and performed my duties without intent of fraud."

the nurses, whom she indicated played a part in overcoding and manipulating the system to cause overbilling.³³ Mr. Wright opined that as a biller, it was Respondent’s responsibility to accurately bill expenses. He said Respondent had indicated she signed off on bills. Consequently, she understood that she was responsible for the information presented in the billings.

Mr. Wright testified that the fraudulent billing took place over six years, which resulted in Medicare paying over \$30 million dollars to Abide. He mentioned how Respondent had described her restitution payments of over \$3 million as, “Unfortunately, I will be paying \$200 for the rest of my life.”³⁴ The Department did not consider her statement—when there is a balance of over \$3 million still owed—favorably even when she later tried to explain herself.³⁵ Any rehabilitative evidence—such as her restitution payments—did not alleviate the Department’s concerns since it did not outweigh the nature and severity of her crimes.

Mr. Wright noted that the only evidence of rehabilitation Respondent’s resume showed was her steady employment. Since her sentencing, Respondent has

³³ See Staff Exs. 2 at 57, 5 at TDI 179.

During the trial it was however demonstrated that the nurses truly committed fraud changing diagnoses for the purpose of changing payment. I later signed off on as my role as biller. I accept full responsibility for my involvement as I should have been more diligent in making sure the bills were signed, and in-house.

Staff Ex. 5 at TDI 179.

³⁴ Staff Ex. 2 at 62.

³⁵ “What I was trying to say is that my restitution is so large that even under the best circumstances I would not be able to pay it before my death.” Staff Ex. 5 at TDI 086.

had three different employers, which he considers steady—not stable—employment due to the number of employers in a short period of time.³⁶

The Department received four letters of recommendations: three character affidavits in support of Respondent’s application “to the President of the United States for pardon”³⁷ and a letter sent by email to Respondent from Angela Russell, PhD, dated November 29, 2023.³⁸ Regarding the character affidavits, Mr. Wright testified they were written in an effort to receive a presidential pardon. The email also raised concern to him because it did not mention any knowledge of Respondent’s criminal history and it lacked a signature.

Mr. Wright testified that the nature of Respondent’s crimes impacted the Department’s decision to deny her application because they are directly related to the occupation for which she seeks a license, and he categorized them as severe. First, the crimes are directly related because they involve claims payments and claims information exchanged between carriers, providers, and beneficiaries to the program. An adjuster, he explained, acts as fiduciary, has access to the insurance carriers’ funds, and has authority to distribute those funds amongst individuals often at the adjuster’s discretion. The Department, he posited, is concerned about adjusters who

³⁶ See Staff Ex. 2 at TDI 055-056. Mr. Wright also noted Respondent’s resume indicated an address in Georgia when her application provided an address in Texas and Respondent was being considered for a resident license in Texas. See Staff Ex. 2 at TDI 055. Respondent admitted she is no longer a Texas resident and currently resides in Georgia. Mr. Wright explained that Respondent no longer qualifies for a resident license since she no longer lives within the state of Texas. However, since this was not an issue raised in the Petition, it is not addressed in this Proposal for Decision.

³⁷ Staff Exs. 2 at TDI 059-61, 5 at 182-84.

³⁸ Staff Ex. 5 at TDI 181.

might misrepresent claims or accept dubious documentation at face value, such as Respondent’s act of diverting funds to individuals who are not beneficiaries of coverage. Considering the nature and severity of the offenses, the Department arrived at the decision to propose denial of Respondent’s application. Moreover, Mr. Wright testified that Respondent engaged in fraudulent or dishonest acts or practices and had been convicted of a felony—both of which were grounds for the Department to deny her license application.³⁹ Finally, he described the severity of the crimes as “off the scale” severe based on the amount of money defrauded from Medicare: over \$30 million total through the conspiracy with \$3 million attributed to Respondent.

The Department did not consider Respondent’s actions youthful offenses (based on age of late 30-mid 40s) since she was approximately 43 towards the end of the documentation of the offenses and 45-46 at the time of the indictment. Additionally, Mr. Wright testified that not enough time has elapsed to observe her conduct while not under supervision since the Department received Respondent’s application in August 2023, which was less than one year since her supervision ended (December 2022).

Mr. Wright concluded that Respondent’s offenses qualified as crimes of prime importance in determining her fitness for licensure; were comprised of fraud, dishonesty, or deceit as an essential element; were crimes pertaining to the business

³⁹ See Tex. Ins. Code § 4005.101(b)(5), (8).

of insurance; and were crimes of moral turpitude.⁴⁰ Even after reviewing and considering the additional information provided by Respondent, the Department still sought denial of her application because the mitigating or rehabilitative evidence she provided did not outweigh the nature and severity of the offenses.

C. RESPONDENT’S TESTIMONY

Respondent testified she was naive to think Abide employed qualified people to do their jobs and would hold its employees accountable, including the nurses who improperly billed. After working with Abide for ten years, she later returned not realizing how bad the oversight had become and expecting the employer to “do the right thing.” Respondent opined that what she did wrong was relying on the computer and the fallability of her coworkers.

Moreover, Respondent testified she was not the only biller. There was someone else who, she said, had just as many years at Abide doing just billing. Additionally, the billing software could not attribute billing actions to Respondent or the other biller. Respondent also noted that her role in human resources was downplayed despite her having “a lot of work to do in that role.” She handled over 80 employee records for state audits in human resources and instituted forms to keep track of billing while the employer was in the processes of getting new billing software.

⁴⁰ See 28 Tex. Admin. Code § 1.502(e)(1)-(3).

To clarify some statements made by Mr. Wright, Respondent provided the following. First, the conspiracy occurred over a period of six years, but she did not start working at Abide until 2012 and the company closed in 2014. Second, she was not deflecting when she mentioned the nurses in her statement. She was explaining that the nurses—not the biller—do the coding in home health care because the nurses see the patients at their homes. Billers, however, keep up with billing and only bill what the nurse has billed. Third, regarding her statement on her restitution payments, Respondent understood how the Department could perceive her statement in a negative light; however, she was merely stating a practical matter: that she can never pay the \$3 million before she dies despite wishing she can repay her debt to society. Finally, the letters of reference were not for a pardon of her crimes. She merely had her references use the pardon form so that their letters would be certified copies. Had she known the Department had concerns regarding the emailed reference letter, she would have asked the writer for a signed letter. Respondent expressed her belief that the Department is “looking for anything” to deny her application. She stated that, if her paperwork was not in proper order, she would have obtained whatever the Department needed.

Respondent testified that she did not partake in any rehabilitative measures while incarcerated because she spent several months in solitary confinement due to Abide’s administrator being placed in the same facility as her. Respondent spent her entire time while in solitary confinement working to transfer to a new camp. However, while incarcerated, she did work for about a month in the kitchen washing dishes. After her release, Respondent said she focused on finding a job to take care of her children because her husband at the time had to serve his sentence. Although

she has not able to do as much work helping others as she would like to because she has to take care of her children, Respondent said she volunteers for the National Association for the Advancement of Colored People (NAACP). She works remotely using her administrative skills for their free clinic.

Respondent provided that she has no other criminal history. She acknowledged she was 45 years old when the charges were brought against her and still owes restitution to Medicare in the amount of \$3 million, which she pays on time in installments. Finally, Respondent concluded that she has learned from her experiences and wants to create an environment that is healthy and whole for her, her children, and her career.

IV. ANALYSIS

Staff contends that Respondent's conspiracy convictions show that she lacks the honesty and trustworthiness required to hold an adjuster all lines license. There is no dispute regarding Respondent's criminal history as set forth above. Her convictions are serious and are given significant weight as crimes of prime importance in determining fitness for licensure. The Department considers crimes of prime importance to be directly related to the duties and responsibilities of the licensed occupation.⁴¹

As explained by Mr. Wright, adjusters act in a fiduciary capacity and the Department's primary concern are adjusters who might misrepresent claims or

⁴¹ See 28 Tex. Admin. Code § 1.502(e).

accept dubious documentation at face value. If licensed, Respondent would have opportunities to commit the same act of diverting funds to individuals who are not beneficiaries of coverage because she would have access to money and claims information exchanged between providers, beneficiaries, and the insurance carriers.

Turning to the factors in Texas Occupations Code section 53.023(a), the evidence shows Respondent's criminal offenses—although not extensive—are serious. The evidence further shows that Respondent was 45 years old when the charges were brought against her and therefore in her late 30s to early 40s when she committed the offenses of conspiracy to commit healthcare fraud and conspiracy to pay and receive illegal health care kickbacks. Hence, her crimes cannot be discounted as youthful indiscretion. Moreover, less than two years has elapsed since she was discharged from active supervision. As such, she has not been able to establish a record of good conduct while not under court supervision, and the Department is unable to measure her character and integrity while not complying with the terms of her supervision. Finally, the four letters of recommendation she provided speak very highly of her work ethic, character, and trustworthiness, but they do not reveal that all the individuals are knowledgeable about the nature and seriousness of Respondent's criminal history.

Mitigating these factors are Respondent's steady work history both before and after the criminal offense, and her compliance with the terms of her supervision. Further mitigating is evidence that Respondent has supported her dependents through continued work and seeking better employment and she volunteers her time

and skills with the NAACP free clinic. However, as discussed above, Respondent's convictions are serious.

Respondent has the burden of proving present fitness to be licensed despite her criminal history. While she appears to be making significant strides toward rehabilitation, the ALJ finds that insufficient time has passed to demonstrate that she is reformed considering her crimes. Respondent is heading in the right direction, and her continued work ethic and efforts to make better decisions and surround herself with reliable people moving forward in her life and career are commended. However, after considering the applicable factors outlined above, Respondent has not yet demonstrated she is fit for licensure at this time. Accordingly, the ALJ concludes that the mitigating factors do not outweigh the nature and seriousness of her criminal offenses, and Respondent has not shown her fitness for licensure.

Based on the foregoing, the ALJ concludes that Respondent's application for an adjuster all lines license should be denied at this time. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

V. FINDINGS OF FACT

1. On March 12, 2015, Paula Domingue Jones, also known as Paula Domingue, (Respondent) was indicted for one count of felony Conspiracy to Commit Health Care Fraud and one count of felony Conspiracy to Pay and Receive Illegal Health Care Kickbacks in Case No. 2:15-CR-00061 in the United States District Court, Eastern District of Louisiana.

2. On May 9, 2017, after Respondent pleaded not guilty, Respondent was found guilty on both felony counts and was convicted in Case Number 2:15-CR-00061 in the United States District Court, Eastern District of Louisiana.
3. On September 25, 2018, Respondent was sentenced to imprisonment for a term of one year and one day for each count, to be served concurrently, at the Federal Bureau of Prisons, and upon release from imprisonment, was sentenced to three years of supervised release for each count, to be served concurrently. Respondent was also ordered to pay a \$200 criminal penalty assessment and \$3,106,954 in restitution to the victim, Medicare.
4. On December 3, 2022, Respondent completed her period of active supervision. As of December 5, 2022, Respondent still had an outstanding restitution balance of \$3,096,686.08.
5. The crime of conspiracy to pay and receive illegal health care kickbacks is a serious crime that the Texas Department of Insurance (Department) considers to be of prime importance in determining licensure.
6. The crime of conspiracy to pay and receive illegal health care kickbacks is directly related to the duties and responsibilities of the licensed occupation.
7. The crime of conspiracy to commit health care fraud is a serious crime that the Department considers to be of prime importance in determining licensure.
8. The crime of conspiracy to commit health care fraud is directly related to the duties and responsibilities of the licensed occupation.
9. Respondent has no other criminal history.
10. Respondent was 45 years old when the charges were brought against her and therefore in her late 30s to early 40s when she committed the offenses of conspiracy to commit healthcare fraud and conspiracy to pay and receive illegal health care kickbacks. Therefore, the offenses were not a youthful indiscretion.
11. Respondent has maintained steady employment both before and since her release from imprisonment.

12. Respondent submitted four letters of recommendation in support of her licensure. These letters are from former employers and personal friends. They universally speak highly of Respondent and praise her character, trustworthiness, and work ethic. The letters do not reveal that all the individuals are knowledgeable about the nature and seriousness of Respondent's criminal history.
13. Respondent has supported her dependents through continued work.
14. Respondent seeks better employment, and she volunteers her time and skills with the National Association for the Advancement of Colored People's free clinic.
15. Respondent is not fit for licensure by the Department at this time.
16. On August 17, 2023, Respondent applied for an adjuster all lines license with the Department.
17. On September 25, 2023, the Department proposed to deny the application based on Respondent's criminal history.
18. Respondent timely requested a hearing to challenge the proposed denial.
19. On February 14, 2024, the Department referred this matter to the State Office of Administrative Hearings (SOAH) for a hearing.
20. On February 22, 2024, the Administrative Law Judge (ALJ) issued the Order Scheduling Hearing on the Merits. That same day, staff (Staff) of the Department issued a notice of hearing with an original petition in which it sought to deny Respondent's license application.
21. Together the Notice of Hearing and the SOAH Order Scheduling Hearing on the Merits 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.

22. On June 27, 2024, SOAH ALJ Dee Marlo Chico convened a hearing by videoconference. Attorney Casey Dick represented Staff, and Respondent represented herself. The hearing concluded and record closed that same day.

VI. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 4001.002, .105; 4005.101.
2. SOAH has authority to hear this matter and issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
3. Respondent received timely and sufficient notice of hearing. Tex. Gov't Code ch. 2001; Tex. Ins. Code § 4005.104(b).
4. Staff had the burden of proving its grounds for denying Respondent's application, and Respondent had the burden of proving her fitness to be licensed despite her criminal history. The standard of proof is by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427; Tex. Occ. Code § 53.023; *Granek v. Tex. St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).
5. The Department considers the factors listed in Texas Occupations Code sections 53.022 and 53.023 in determining whether to suspend or revoke a license despite a criminal offense or fraudulent or dishonest conduct and shall not issue a license unless the mitigating factors outweigh the serious nature of the criminal offense or fraudulent or dishonest conduct when viewed in the light of the occupation being licensed. 28 Tex. Admin. Code § 1.502(f), (h).
6. The Department may deny licensure to an applicant who committed an offense that directly relates to the duties and responsibilities of the licensed occupation. Tex. Occ. Code § 53.021(a)(1); Tex. Ins. Code §§ 4005.101(b)(5), (8), .102(1); 28 Tex. Admin. Code § 1.502(d).
7. Respondent's offenses are the type that the Department considers to be of such a serious nature that it is of prime importance in determining fitness for licensure. 28 Tex. Admin Code § 1.502(e)(1)-(3).

8. Respondent was convicted of an offense for which fraud, dishonesty, or deceit is an essential element; any criminal violation of the Texas Insurance Code or any state or federal insurance or security law regulating or pertaining to the business of insurance and any felony involving moral turpitude or breach of fiduciary duty. 28 Tex. Admin. Code § 1.502(e)(1)-(3).
9. Respondent engaged in fraudulent or dishonest acts or practices or has been convicted of a felony that directly relates to the duties and responsibilities of the licensed occupation. Tex. Ins. Code §§ 4005.101(b)(5), (8), .102(1); Tex. Occ. Code § 53.021(a); 28 Tex. Admin. Code § 1.502(d).
10. The mitigating factors do not outweigh the seriousness of Respondent's criminal offenses, and she has not shown her fitness for licensure despite her criminal history. Tex. Occ. Code §§ 53.022-.023; 28 Tex. Admin. Code § 1.502(f).
11. The Department should deny Respondent's application for an adjuster all lines license.

Signed August 7, 2024

ALJ Signature:



Dee Marlo Chico

Presiding Administrative Law Judge