

No. **2025-9081**

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

Date: 01/16/2025

Subject Considered:

Texas Department of Insurance

v.

Andrew Kirkman

SOAH Docket No. 454-24-19313.C

General Remarks and Official Action Taken:

The subject of this order is Andrew Kirkman's application for an adjuster all lines license. This order denies Mr. Kirkman's 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 Mr. Kirkman's application should be granted. A copy of the proposal for decision is attached as Exhibit A.

Legal Authority for Changes to Findings of Fact and Conclusions of Law

The legal authority for the changes to the proposal for decision made in this order is Tex. Gov't Code § 2001.058(e)(1), which provides that "[a] state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines . . . that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies [of the agency], or prior administrative decisions"

Analysis

The administrative law judge determined that Mr. Kirkman was indicted on five counts of smuggling persons, a felony, and that this can be considered a conviction because he has not completed the period of supervision and his employment as an insurance adjuster would create a situation in which he has the opportunity to smuggle persons.¹ The administrative law judge also determined that Mr. Kirkman's crime directly relates to the duties and responsibilities of an insurance agent.² Based on these determinations, TDI has authority to deny his application under Tex. Occ. Code §§ 53.022 and 53.023, and 28 Tex. Admin. Code § 1.502 after considering factors set out in Tex. Occ. Code §§ 53.022 and 53.023.

Texas Occupations Code §§ 53.022 and 53.023

Because Mr. Kirkman has committed a felony and because his crime directly relates to the duties and responsibilities of an insurance agent, TDI must consider the factors specified in Tex. Occ. Code §§ 53.022 and 53.023 in determining whether to issue him a license.³ State law requires that all applicable factors be weighed in determining an applicant's fitness for licensure.⁴ Thus, a failure to properly weigh all applicable factors is a misapplication of law and agency rules that could warrant changes to the proposal for decision under Tex. Gov't Code § 2001.058(e)(1).

In this case, the administrative law judge purported to engage in the required analysis and concluded that the factors outweigh the serious nature of Mr. Kirkman's offense and that he is fit to perform the duties and discharge the responsibilities of a licensed insurance agent. Upon closer examination of the proposal for decision, however, it is not clear that the administrative law judge correctly weighed the applicable factors in reaching his conclusion. TDI has reviewed the record and weighed all applicable factors and does not accept the administrative law judge's conclusion that Mr. Kirkman should be issued a license.

¹ See Exhibit A, proposed Finding of Fact No. 11 and proposed Conclusion of Law No. 10.

² See Exhibit A, proposed Conclusion of Law No. 10.

³ See 28 TAC § 1.502(e).

⁴ See Tex. Occ. Code §§ 53.022 and 53.023(a) (stating that "the licensing authority *shall* consider" enumerated factors) (emphasis added).

Commissioner's Order
TDI v. Andrew Kirkman
SOAH Docket No. 454-24-19313.C
Page 3 of 5

While there are factors that weigh in favor of granting Mr. Kirkman a license, one specific factor that weighs against Mr. Kirkman is particularly noteworthy in this case: the amount of time that has elapsed since his criminal activity.⁵ In July 2022, Mr. Kirkman committed the criminal acts for which he pleaded guilty on September 18, 2023. He applied for licensure on October 23, 2023, only slightly more than a month after pleading guilty to five counts of the third-degree felony offense of smuggling of persons. The hearing in this case took place on September 11, 2024, barely a year after Mr. Kirkman's guilty plea, which means Mr. Kirkman still has years of community supervision left.⁶ The short amount of time since Mr. Kirkman's crime and the fact that he is still under community supervision for it both strongly weigh against granting his application.

In addition, the administrative law judge appears to have given great weight to Mr. Kirkman's account of the events, stating that Mr. Kirkman "testified credibly about what happened" and concluding that Mr. Kirkman "took a couple unlucky unconsidered turns." There is reason to question Mr. Kirkman's credibility in this case,⁷ but TDI acknowledges that an administrative law judge is generally in a better position to judge a witness's credibility. *See Yarborough v. State*, No. 14-00-00929-CR, 2001 WL 1386441, at *4 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd) (not designated for publication) ("The trier of fact has the opportunity to observe the demeanor of the witnesses on the stand and is able to better judge their credibility.")

But the fact remains that Mr. Kirkman was stopped while transporting five strangers he had picked up at a gas station in the dark, with whom he could barely communicate, and at a time when he was unable to contact anyone.⁸ This stop resulted in his arrest and an indictment for five felonies. If Mr. Kirkman's credibility is accepted, his judgment

⁵ Tex. Occ. Code § 53.023(a)(3).

⁶ Mr. Kirkman remains on community supervision until September 2027. Exhibit A, proposed Finding of Fact No. 13.

⁷ For example, Mr. Kirkman's disingenuous description of the five men he transported as "yard workers" he was "dropping off" when asked about his criminal history by TDI licensing staff. *See* TDI Exhibit 2 at TDI025 and Exhibit A at page 7.

⁸ "It was dark, he got lost, and he had no phone service. He pulled into a gas station and saw five guys there. Communication was difficult because they only spoke Spanish. . . . He decided to give them a ride so he could get back to San Antonio."

Commissioner's Order
TDI v. Andrew Kirkman
SOAH Docket No. 454-24-19313.C
Page 4 of 5

still must be questioned. TDI considers it very important that its licensees be honest, trustworthy, and reliable,⁹ but the events leading up to Mr. Kirkman's arrest, even if his account is accepted as true, raise questions about his judgment that impinge on his trustworthiness and reliability.

Proper consideration of the factors specified in Tex. Occ. Code §§ 53.022 and 53.023 shows that they do *not* outweigh the serious nature of Mr. Kirkman's offense, and the factors leading to his arrest raise questions about his trustworthiness and reliability that cannot be disregarded. Based on this, his application should not be approved.

Proposed Conclusions of Law Nos. 12 and 13

It has been determined, on the basis of the points addressed in this analysis, that Mr. Kirkman's application should not be approved. Accordingly, proposed Conclusions of Law Nos. 12 and 13 as adopted by this order are revised as follows:

12. Mr. Kirkman is not fit to hold an insurance license. Tex. Occ. Code § 53.023.
13. Mr. Kirkman's application should be denied. Tex. Occ. Code § 53.023.

Findings of Fact

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

Conclusions of Law

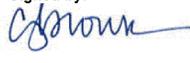
1. Proposed Conclusions of Law Nos. 1–11 as contained in Exhibit A are adopted and incorporated by reference into this order.
2. Proposed Conclusion of Law No. 12 is revised and adopted as follows:
Mr. Kirkman is not fit to hold an insurance license. Tex. Occ. Code § 53.023.
3. Proposed Conclusion of Law No. 13 is revised and adopted as follows:
Mr. Kirkman's application should be denied. Tex. Occ. Code § 53.023.

⁹ 28 Tex. Admin. Code § 1.502(c)

Commissioner's Order
TDI v. Andrew Kirkman
SOAH Docket No. 454-24-19313.C
Page 5 of 5

Order

It is ordered that Andrew Kirkman's application for an adjuster all lines license is denied.

Signed by:

FC5D7EDDFFB4F8... _____
Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

Signed by:

5DAC5618BBC74D4... _____
Jessica Barta, General Counsel

Signed by:

27ADF3DA5BAF4B7... _____
Justin Beam, Chief Clerk

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

—
**TEXAS DEPARTMENT OF INSURANCE,
PETITIONER**

v.

**ANDREW KIRKMAN,
RESPONDENT**

PROPOSAL FOR DECISION

Andrew Kirkman grew up in Ohio and moved to Houston in late 2021. While trying to visit a friend near Camp Wood, Texas, he got lost, lost cell service, and picked up five men at a gas station, giving them a ride in exchange for directions home. He was arrested for smuggling persons and placed on deferred adjudication until September 2027. Recently, Mr. Kirkman applied to the Texas Department of Insurance for an adjuster license. Mr. Kirkman has a solid work history and has complied with community supervision. He is an honest man who was unfamiliar

with Texas. The administrative law judge recommends that the Department grant Mr. Kirkman an adjuster license.

I. PROCEDURAL HISTORY

Mr. Kirkman applied for an adjuster license. The Department proposed to deny his application. Mr. Kirkman requested a hearing. The Department referred the matter to the State Office of Administrative Hearings.

Hearing Date:	September 11, 2024
For the Department:	Sydney Moore
For Mr. Kirkman:	Andrew Kirkman
Administrative Law Judge:	Andrew Lutostanski
Record Close Date:	September 27, 2024

II. APPLICABLE LAW

The Department regulates the practice of insurance and may deny an application for a license for certain reasons.¹ One reason the Department may deny an application is if the applicant has been convicted of a crime that “directly relates” to the practice of insurance.²

Certain factors are considered when determining whether a crime “directly relates” to insurance:

¹ Tex. Ins. Code § 4005.101(b). This proposal for decision cites the substantive law in effect when Mr. Kirkman applied for a license in October 2023 and the procedural law in effect now.

² Tex. Occ. Code § 53.021(a)(1).

- the nature and seriousness of the crime;
- the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- 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;
- the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of the licensed occupation; and
- any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.³

The Department has promulgated a rule identifying crimes that it believes “directly relate” to the practice of insurance.⁴ The Department’s list of crimes that directly relate to insurance includes smuggling persons.⁵ A person smuggles persons if they knowingly:

- use a motor vehicle to transport an individual with intent to conceal the individual from a peace officer or flee from a person the actor knows is a peace officer attempting to lawfully arrest or detain the actor;
- encourage or induce a person to enter or remain in this country in violation of federal law by concealing, harboring, or shielding that person from detection; or
- assist, guide, or direct two or more individuals to enter or remain on agricultural land without the effective consent of the owner.⁶

³ Tex. Occ. Code § 53.022.

⁴ Tex. Occ. Code § 53.025(a); 28 Tex. Admin. Code § 1.502(f).

⁵ 28 Tex. Admin. Code § 1.502(f)(4)(D).

⁶ Tex. Penal Code § 20.05(a). *See also* 8 U.S.C. § 1324(a)(1)(A) (defining federal crime for bringing in, inducing to come in, transporting, or harboring undocumented aliens).

Even if an applicant has not been convicted of a crime but only placed on deferred adjudication, the Department may still consider that to be a “conviction,” for licensing purposes, in certain circumstances:

- the person has not completed the period of supervision; and
- after considering certain factors, the Department determines that: (A) the person may pose a continued threat to public safety; or (B) the employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.⁷

When deciding whether to deny an application for a license based on an applicant’s criminal history, the Department considers certain factors:

- the extent and nature of the person’s past criminal activity;
- the age of the person when the crime was committed;
- the amount of time that has elapsed since the person’s last criminal activity;
- the conduct and work activity of the person before and after the criminal activity;
- evidence of the person’s rehabilitation or rehabilitative effort while incarcerated or after release;
- evidence of the person’s compliance with any conditions of community supervision, parole, or mandatory supervision; and
- other evidence of the person’s fitness, including letters of recommendation.⁸

⁷ Tex. Occ. Code § 53.021(d).

⁸ Tex. Occ. Code § 53.023; 28 Tex. Admin. Code § 1.502(e).

The applicant is entitled to a hearing to contest the proposed denial of the application.⁹ At the hearing, the Department has the burden of proving, by a preponderance of the evidence, a basis for denying the application (here, a conviction or deemed “conviction” of an offense directly related to the practice of insurance), while the applicant has the burden of bringing forward any favorable evidence that he is fit to be licensed despite his criminal history.¹⁰ Afterward, the administrative law judge prepares a proposal for decision with findings of fact and conclusions of law.¹¹ The Commissioner then considers the proposal for decision and issues a final order.¹²

III. EVIDENCE

The Department’s three exhibits were admitted.¹³ Two people testified:

- Lewis Wright discussed Mr. Kirkman’s application and why the review committee recommended denying it; and
- Mr. Kirkman discussed his life.

⁹ Tex. Ins. Code § 4005.104(a).

¹⁰ Tex. Occ. Code § 53.0211(b); 1 Tex. Admin. Code § 155.427. The burden of proof is by a preponderance of the evidence. *See Granek v. Texas State Bd. of Med. Exam’rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.); *Southwestern Pub. Servs. Co. v. Pub. Util. Comm’n of Tex.*, 962 S.W.2d 207, 213-14 (Tex. App.—Austin 1998, pet. denied).

¹¹ Tex. Ins. Code § 40.058.

¹² Tex. Ins. Code §§ 40.059-.060.

¹³ TDI Exs. 1-3.

A. LEWIS WRIGHT’S TESTIMONY

Mr. Wright has worked in insurance for many years. For the last seventeen years, he has worked for the Department, where he reviews and screens applicants for licensure.

Mr. Kirkman applied for an all-lines insurance-adjuster license—someone who represents insurance companies during a claim for a loss. An insurance adjuster reviews claims, gets proof of loss, estimates damages, analyzes coverage, checks whether insurance premiums were paid, and ultimately either disburses money for the covered loss or denies the claim, Mr. Wright said.

Mr. Kirkman was indicted for smuggling persons, allegedly transporting five men with intent to conceal them from a peace officer.¹⁴ It happened in July 2022 in Edwards County, which is west of San Antonio, northeast of Del Rio, and far from his home in Houston. The court deferred adjudicating Mr. Kirkman guilty, placed him on community supervision for four years, and ordered him to pay a \$2,000 fine, \$365 in court costs, \$75 in fees, and to complete 160 hours of community service.¹⁵ Mr. Kirkman remains on community supervision until September 2027.¹⁶

Smuggling persons is a crime related to the practice of insurance, Mr. Wright said. Rule 1.502(f)(4)(D) lists smuggling persons as a crime related to insurance.¹⁷

¹⁴ TDI Ex. 3 at 48-49.

¹⁵ TDI Ex. 3 at 51.

¹⁶ TDI Ex. 3 at 52.

¹⁷ 28 Tex. Admin. Code § 1.502(f)(4)(D).

Mr. Wright reasoned that insurance is a “complex” business, and an insurance adjuster must be trustworthy because they distribute money and deny claims. In contrast, smuggling persons is a “severe” offense (a felony), indicating deceit and disregard for the law.¹⁸ And Mr. Kirkman was charged with multiple counts—allegedly smuggling five people.

The Department considered Mr. Kirkman’s circumstances. This is his only crime. He was about thirty-three years old when he committed it. About two years have passed since then. Aside from 2011 to 2015, Mr. Kirkman has been steadily employed, working as a corporate travel assistant, which is a position that involves some responsibility and trust but not as much as an insurance adjuster, which requires more independent judgment involving money and contracts, Mr. Wright said. And although Mr. Kirkman had three letters of recommendation in support of his application, none of them showed they knew about his crime, Mr. Wright said.

Mr. Wright said Mr. Kirkman’s account of his arrest is inconsistent with smuggling persons—which, in Mr. Wright’s view, called into question Mr. Kirkman’s honesty. In a written statement, Mr. Kirkman said he was arrested for giving some “yard workers” a ride:

I had a couple of yard workers in my car dropping them off and I was pulled over for speeding. They didn’t have their papers and were illegal immigrants. I didn’t know how serious it was because I had just moved to Texas. Even though I was just giving them a ride it had to be identified as a smuggling case. The charges were deferred.¹⁹

¹⁸ Tr. 30-31.

¹⁹ TDI Ex. 2 at 25.

The Department recommended denying Mr. Kirkman's application. Mr. Wright urged that Mr. Kirkman recently committed a "severe" crime and remains on community supervision until 2027.

B. ANDREW KIRKMAN'S TESTIMONY

Mr. Kirkman grew up in Ohio. He lived there all his life until he wanted something different. He visited Houston, loved it, and moved there in late 2021. Mr. Kirkman discussed his arrest, his work, and his rehabilitative efforts.

It started when he met someone on social media. In July 2022 they invited him to visit them near Camp Wood, Texas, which is a small town about an hour's drive from the border by Del Rio. It was dark, he got lost, and he had no phone service. He pulled into a gas station and saw five guys there. Communication was difficult because they only spoke Spanish. But he told them that, after failing to find his way, he was just trying to get back to San Antonio (and then home to Houston). While struggling to get directions, the men offered to show him the way if he gave them a ride. He decided to give them a ride so he could get back to San Antonio. On the way, an officer stopped him for speeding and asked him how he knew the men with him. "I told him I didn't know them and that I was just giving them a ride because they were showing me how to get back to where I needed to be."²⁰ The men were undocumented aliens, and he was arrested.

Mr. Kirkman was indicted on five counts of smuggling persons, a felony in Texas. "I had no knowledge of how serious the matter was. Like I said, I was from

²⁰ Tr. 46-47.

Ohio; I'm fairly new to Texas and to the issues and problems [here.]”²¹ Mr. Kirkman didn't have the money to pay his lawyer, and he didn't want to take it to trial.²² He took deferred adjudication.²³

Mr. Kirkman was asked why in his written statement he said the men he picked up were “yard workers.” Mr. Kirkman said it was because of the clothes they wore, and some of the men had “grass on their arms” and looked like “they just got done working in the yard.”²⁴ They did not have any lawn equipment. “They had water bottles. They had sunglasses. They had hats like yard hats kind of like garden hats.”²⁵ One of them had a backpack.

Mr. Kirkman discussed his work history. More than a decade ago, he was an inventory manager at a warehouse in Lima, Ohio, responsible for shipping and receiving items, organizing the warehouse, and maintaining inventory. Then he moved to Columbus and was a ticket agent at the airport for Envoy Air for about a year. He reviewed documentation, checked travelers in for flights, charged them for baggage and upgrades, and completed and changed itineraries. Then he was a personal assistant, scheduling appointments and doing administrative work. For the last seven years, he has been a corporate travel consultant, first for Uniglobe Travel Designer and now for American Express. He manages travel budgets for

²¹ Tr. 47.

²² Tr. 48.

²³ Tr. 48.

²⁴ Tr. 52.

²⁵ Tr. 52.

several corporations, arranging travel for their executives and clients and invoicing the expenses. He is responsible for corporate credit cards, employee credit cards, and swaths of personal information. He has been doing his job responsibly for many years, he said.

Three people provided letters of recommendation supporting Mr. Kirkman:

- Chuck Henderson, a marketing director for a chiropractic firm and family friend, described Mr. Kirkman as a polite and intelligent team player with “tremendous character, integrity, and work ethic”;
- Denise Kenner, his one-time landlord and later friend, called him courteous and kind, calm and dependable, and “wholeheartedly” believes “he’d be a great insurance adjuster”; and
- Rachell Cobb-Valion of Houston, Texas, recommended him as kind, honest, and responsible.²⁶

Mr. Kirkman also discussed his rehabilitative efforts. He complies with the terms of his community supervision. He visits his probation officer each month. He has completed 80 of his 160 hours of community service by working at a local food bank. He has also studied immigration in more detail, trying to understand it better and what it means for Texas—and paying close attention to politicians discussing immigration reform.

Mr. Kirkman said he is an honest man who was new to Texas and made a mistake. He takes full responsibility for that mistake. He said he wants to live in Houston and work in insurance. He requested an adjuster license.

²⁶ TDI Ex. 2 at 34-36.

IV. ANALYSIS

The Department can deny Mr. Kirkman’s application for a license under section 53.021(a) of the Texas Occupations Code because, for purposes of the analysis prescribed under that section, his placement on deferred adjudication can be considered a “conviction” for a crime that’s “directly related” to insurance. But the Department should grant Mr. Kirkman a license because the factors it must also consider, prescribed in section 53.023 of the Texas Occupations Code, show he is fit to be an insurance adjuster despite his criminal history.

The Department has determined by rule that smuggling persons is a crime that’s “directly related” to insurance.²⁷ A review of the factors in section 53.022 of the Texas Occupations Code supports that determination.²⁸ An insurance agent must be open and honest and not conceal or hide significant matters. Smuggling persons is a serious crime that may well involve deceit—concealing someone from detection. As an insurance agent who may travel around Houston and across Texas, Mr. Kirkman would have the opportunity to smuggle people. As Mr. Wright explained, there is some correlation between the elements of the crime and the responsibilities of a licensed insurance adjuster. Because smuggling persons is crime that is “directly related” to the practice of insurance, the Department may deny Mr. Kirkman’s application if he has been convicted of the offense.

²⁷ Tex. Occ. Code § 53.025(a); 28 Tex. Admin. Code § 1.502(f)(4)(D).

²⁸ Tex. Occ. Code § 53.022.

Although Mr. Kirkman has not been convicted but only placed on deferred adjudication, section 53.021(d) of the Texas Occupations Code authorizes the Department to consider his deferred adjudication to be a “conviction” for purposes of section 53.021(a). That’s because Mr. Kirkman has not completed his period of supervision and his employment as an insurance adjuster in Houston would give him the opportunity to smuggle persons.

But ultimately the Department should grant Mr. Kirkman a license because the factors in section 53.023 of the Texas Occupations Code show he is fit to be an insurance adjuster. To be sure, Mr. Kirkman committed a serious crime, smuggling, and when he was thirty-three years old. But it is his only offense, and two years have passed since then. He has a solid work history. As a corporate travel consultant for the last seven years, he has been responsible for spending money and been trusted with financial information. He has also complied with the terms of his community supervision and made rehabilitative efforts—considering how immigration impacts Texas and serving his community by working at the local food bank. He testified credibly about what happened and appeared to be as his three letters of recommendation described him: an honest man. Mr. Kirkman took a couple unlucky unconsidered turns. But he’s fit to be an insurance adjuster.

V. FINDINGS OF FACT

1. Andrew Kirkman applied to the Texas Department of Insurance (Department) for an all lines insurance adjuster license.
2. Mr. Kirkman grew up in Ohio.

3. More than a decade ago, Mr. Kirkman was an inventory manager at a warehouse in Lima, Ohio, responsible for shipping and receiving items, organizing the warehouse, and maintaining inventory.
4. In 2015, Mr. Kirkman lived in Columbus, Ohio. He was a ticket agent at the local airport for Envoy Air for about a year. He reviewed documentation, checked travelers in for flights, charged them for baggage and upgrades, and completed and changed itineraries.
5. For a year, Mr. Kirkman was a personal assistant, scheduling appointments and doing administrative work.
6. For the last seven years, Mr. Kirkman has been a corporate travel consultant, first for Uniglobe Travel Designer and now for American Express. He manages travel budgets for several corporations, arranging travel for their executives and clients. He is responsible for corporate credit cards, employee credit cards, personal information, and invoicing expenses.
7. Mr. Kirkman moved to Houston in late 2021.
8. Mr. Kirkman met someone on social media. In July 2022 they invited him to visit them near Camp Wood, Texas, which is small town about an hour's drive from the border by Del Rio.
9. Mr. Kirkman got lost, lost cell service, and picked up five men at a gas station, planning to give them a ride in exchange for receiving directions back to San Antonio.
10. Mr. Kirkman was pulled over for speeding. The men riding with him turned out to be undocumented aliens, and he was arrested.
11. Mr. Kirkman was indicted on five counts of smuggling persons, a felony in Texas. Mr. Kirkman did not have the money to pay his lawyer, and he did not want to take it to trial.
12. The court deferred adjudicating Mr. Kirkman guilty, placed him on community supervision for four years, and ordered him to pay a \$2,000 fine, \$365 in court costs, \$75 in fees, and to complete 160 hours of community service.

13. Mr. Kirkman remains on community supervision until September 2027.
14. Mr. Kirkman was thirty-three years old when the crime was committed.
15. About two years have passed since the crime was committed.
16. Mr. Kirkman has been steadily employed for the last several years.
17. Mr. Kirkman has complied with the terms of community supervision.
18. Mr. Kirkman has made rehabilitative efforts—considering how immigration impacts Texas and working at the local food bank. He has completed 80 of his 160 assigned hours of community service.
19. Three people recommended Mr. Kirkman for licensure based on his character.
20. An insurance adjuster reviews claims, gets proof of loss, estimates damages, analyzes coverage, checks whether insurance premiums were paid, and ultimately either disburses money for the covered loss or denies the claim.
21. An insurance adjuster must be open and honest and not conceal or hide significant matters.
22. Smuggling persons is a serious crime that may well involve deceit—concealing someone from detection.
23. Mr. Kirkman does not pose a continued threat to public safety.
24. As an insurance adjuster who may travel around Houston and across Texas, Mr. Kirkman would have the opportunity to smuggle people.
25. There is some correlation between the elements of smuggling persons and the responsibilities of a licensed insurance agent.
26. Mr. Kirkman is an honest man who was not familiar with Texas.

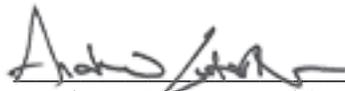
VI. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code chs. 4001, 4005.
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. Mr. Kirkman received proper notice. Tex. Gov't Code §§ 2001.051-.052; Tex. Ins. Code § 4005.104(b).
4. Staff had the burden of proving a basis for denying the license application, while Mr. Kirkman had the burden of bringing forward any favorable evidence that he is fit to be licensed despite his criminal history. 1 Tex. Admin. Code § 155.427.
5. The standard of proof is by a preponderance of the evidence. *Granek v. Tex. St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.); *Southwestern Pub. Servs. Co. v. Pub. Util. Comm'n of Tex.*, 962 S.W.2d 207, 213-14 (Tex. App.—Austin 1998, pet. denied).
6. The Department may disqualify a person from receiving a license on the grounds that the 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), 53.0211(b).
7. Certain factors are considered when determining whether a crime directly relates to the duties and responsibilities of an insurance agent. Tex. Occ. Code § 53.022.
8. Smuggling persons is a crime that directly relates to the duties and responsibilities of an insurance agent. Tex. Occ. Code § 53.022; 28 Tex. Admin. Code § 1.502(f)(4)(D).
9. Even if a person has only been placed on deferred adjudication, the Department can still consider the person to have been convicted in certain circumstances. Tex. Occ. Code § 53.021(d).

10. The Department can consider Mr. Kirkman's placement on deferred adjudication to be a conviction for purposes of section 53.021(a) of the Texas Occupations Code because he has not completed the period of supervision and his employment as an insurance adjuster would create a situation in which he has the opportunity to smuggle persons. Tex. Occ. Code § 53.021(d).
11. Certain factors are considered when determining whether a person is fit to hold a license. Tex. Occ. Code § 53.023.
12. Mr. Kirkman is fit to hold an insurance license. Tex. Occ. Code § 53.023.
13. Mr. Kirkman's application should be granted. Tex. Occ. Code § 53.023.

Signed October 11, 2024.

ALJ Signature:



Andrew Lutostanski

Presiding Administrative Law Judge