

No. 2025-9122

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

Date: 02/04/2025

Subject Considered:

Texas Department of Insurance

v.

Joeseeph Lee Lucas Sears

SOAH Docket No. 454-24-16652.C

General Remarks and Official Action Taken:

The subject of this order is Joeseeph Lee Lucas Sears' application for a general lines agent license with life, accident, health, and HMO and property and casualty qualifications. This order approves Mr. Sears' application, but with a two-year probated suspension.

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 (TDI) approve Mr. Sears' application. A copy of the proposal for decision is attached as Exhibit A.

TDI adopts the administrative law judge's proposed findings of fact and conclusions of law with changes to Conclusions of Law Nos. 10 and 11 as described in this order.

Legal Authority for Changes to Proposal for Decision

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

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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"

Tex. Occ. Code §§ 53.022 and 53.023 and 28 Tex. Admin. Code § 1.502(f)

As noted in the proposal for decision, on July 5, 2018, Mr. Sears pleaded guilty to one count Class A misdemeanor criminal sexual abuse, offender less than five years older than victim, under Illinois law. Mr. Sears was sentenced to 40 days' incarceration, 24 months' probation, completion of sex offender treatment and evaluation, and registration as a sex offender. He was also ordered to pay various court costs and fines.

Due to Mr. Sears' criminal history, TDI may not issue him a license without considering the factors specified in Tex. Occ. Code §§ 53.022 and 53.023 and 28 Tex. Admin. Code § 1.502(h). State law and TDI rules require that all applicable factors be weighed in determining an applicant's fitness for licensure. See Tex. Occ. Code §§ 53.022 and 53.023(a) (stating that "the licensing authority shall consider" enumerated factors). 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).

TDI has reviewed the record and accepts the administrative law judge's recommendation to grant Mr. Sears a license. However, while the administrative law judge concluded that the factors overall weigh in favor of granting a license, additional monitoring of Mr. Sears by TDI is warranted because of the serious nature of his crime and because of the factors that weigh against granting a license, which include the short period of time since he was released from probation, his transient work history, and that he has not paid all required court fees associated with his conviction.

Further, while TDI acknowledges that Mr. Sears was assessed as a low risk to reoffend, even a low risk associated with Mr. Sears' serious crime is concern enough to warrant further monitoring. Therefore, TDI finds that his license should be placed on probated suspension for two years, with reporting requirements, to allow TDI to observe how he performs as a licensee.

The administrative law judge's proposed Conclusion of Law No. 10 states:

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Despite his criminal conviction, Respondent has shown the fitness required to perform the duties and discharge the responsibilities of the licensed occupation. Tex. Occ. Code §§ 53.022-.023.

Based on the analysis above, the administrative law judge's proposed Conclusion of Law No. 10 is changed to state:

Despite his criminal conviction, Respondent has shown the fitness required to perform the duties and discharge the responsibilities of the licensed occupation. However, the factors that weigh against his fitness warrant monitoring of Mr. Sears's activity as a license holder by TDI. Tex. Occ. Code §§ 53.022-.023.

The administrative law judge's proposed Conclusion of Law No. 11 states:

The Department should approve Respondent's applications for a Texas general lines life, accident, health, and HMO agent license and an additional qualification for property and casualty.

Based on the analysis above, the administrative law judge's proposed Conclusion of Law No. 11 is changed to state:

The Department should approve Respondent's applications for a Texas general lines life, accident, health, and HMO agent license and an additional qualification for property and casualty, subject to a two-year probated suspension.

Findings of Fact

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

Conclusions of Law

1. Conclusions of Law Nos. 1–9 as contained in Exhibit A are adopted and incorporated by reference into this order.
2. In place of Conclusion of Law No. 10 as contained in Exhibit A, the following conclusion of law is adopted:

Despite his criminal conviction, Respondent has shown the fitness required to perform the duties and discharge the responsibilities of the licensed occupation. However, the factors that weigh against his fitness

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warrant monitoring of Mr. Sears' activity as a license holder by TDI. Tex. Occ. Code §§ 53.022-.023.

3. In place of Conclusion of Law No. 11 as contained in Exhibit A, the following conclusion of law is adopted:

The Department should approve Respondent's applications for a Texas general lines life, accident, health, and HMO agent license and an additional qualification for property and casualty, subject to a two-year probated suspension.

Order

It is ordered that Joeseeph Lee Lucas Sears' application for a general lines agent license with life, accident, health, and HMO and property and casualty qualifications is approved.

It is further ordered that Mr. Sears' license is suspended for two years. The suspension is probated, and during the period of probation, Mr. Sears must comply with the following terms and conditions:

If, during the probation period imposed by this order, TDI issues any additional licenses or authorizations to Mr. Sears, those additional licenses or authorizations will be suspended until the probation period imposed by this order has ended. The suspension will be probated, and the same terms and conditions stated in this order will apply.

Beginning from the date of this order and continuing through the probation period, Mr. Sears must provide written notice of his criminal record to any appointing company, agency, employer, sponsor, or other entity on behalf of which he performs the acts of an agent. Mr. Sears must provide TDI with a copy of the notification within 30 days of the appointment, employment, or sponsorship by emailing it to TDI at EnforcementReports@tdi.texas.gov.

Beginning from the date of this order and continuing through the probation period, Mr. Sears must file a written report with TDI, on or before the 15th day of the month on a quarterly basis for the months of March, June, September, and December, by emailing it to EnforcementReports@tdi.texas.gov.

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The reports must include the following information:

- a. Mr. Sears' current mailing address and telephone number;
- b. the name, mailing address, and telephone number of Mr. Sears' employer, and if Mr. Sears is self-employed, a statement that he is self-employed and the name, mailing address, and telephone number of his business;
- c. the name and address of any insurer that has appointed Mr. Sears as an agent;
- d. the name and address of any insurer that has canceled Mr. Sears' appointment as an agent; and
- e. a copy of any and all contracts Mr. Sears enters into with an insurer, broker, agent, agency, managing general agent, or any other person or entity in the business of insurance.

Mr. Sears must notify TDI immediately of the following by emailing EnforcementReports@tdi.texas.gov:

- a. any charges or indictments filed against him for a misdemeanor or felony during the period he is required to file reports, excluding traffic offenses and Class C misdemeanors;
- b. any state or regulatory actions taken against him, including formal and informal actions;
- c. any change in his employment or his residence; or
- d. any complaint made against Mr. Sears concerning his performance as an agent, as well as a written explanation detailing the steps taken to resolve them.

Signed by:

FC5D7EDDFB4F8...
Cassie Brown
Commissioner of Insurance

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Recommended and reviewed by:

Signed by:
Jessica Barta
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Jessica Barta, General Counsel

Signed by:
Justin Beam
27ADF3DA5BAF4B7... _____
Justin Beam, Chief Clerk

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

—
**TEXAS DEPARTMENT OF INSURANCE,
PETITIONER**

v.

**JOSEPH LEE LUCAS SEARS,
RESPONDENT**

PROPOSAL FOR DECISION

The Texas Department of Insurance (Department) seeks to deny the application of Joseph Lee Lucas Sears (Respondent) for a Texas general lines life, accident, health, and HMO¹ agent license with an additional qualification for property and casualty based on his criminal history. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends the Department grant Respondent’s license application.

¹ “HMO” was not defined at the hearing. Given the context in which the term is used, it likely stands for “health maintenance organization.”

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were not disputed and are addressed in the findings of fact and conclusions of law below. The hearing in this case was held by videoconference on August 20, 2024, before SOAH ALJ Michelle Kallas. The Department was represented by staff attorney Jeannie Ricketts. Respondent represented himself. The hearing concluded the same day. The record closed on September 10, 2024, with the filing of the admitted exhibits and the hearing transcript.

II. APPLICABLE LAW

To act as an insurance agent in this state, a person must hold a license issued by the Department.² The Department may deny a license application if the applicant has been convicted of a crime directly related to the duties and responsibilities of the licensed occupation.³ For applicants with criminal convictions, the Department considers the factors specified in Texas Occupations Code (Code) sections 53.022 and .023 in determining whether to grant a license to the applicant.⁴

² Tex. Ins. Code §§ 101.102, 4001.051.

³ Tex. Ins. Code § 4005.101(b)(5), (8); Tex. Occ. Code § 53.021(a)(1); *see also* 28 Tex. Admin. Code § 1.502(d) (authorizing the Department to refuse to issue a license if it determines the applicant has committed a felony or misdemeanor or has engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation).

⁴ 28 Tex. Admin. Code § 1.502(e).

Code section 53.022 sets forth the following factors addressing whether a criminal conviction directly relates to the duties and responsibilities of the licensed occupation:

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.

In determining the fitness of a person who has been convicted of a crime to perform the duties and responsibilities of the licensed occupation, the Department must consider the following mitigating factors set out in Code section 53.023:

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 prior to and following the criminal activity;

5. evidence of the person’s rehabilitation or rehabilitative effort while incarcerated or following release;
6. evidence of the person’s compliance with any conditions of community supervision, parole, or mandatory supervision; and
7. other evidence of the person’s present fitness, including letters of recommendation.

The applicant is responsible, to the extent possible, for obtaining and providing the Department with the evidence of fitness discussed above.⁵

In accordance with the requirements of Code section 53.025, the Department has developed guidelines relating to what it will consider in determining whether to grant a license if the applicant has been convicted of a crime.⁶ The crimes the Department considers to be of such a serious nature that they are of prime importance in determining fitness for licensure include any offense involving assault and sexual assault under Texas Penal Code chapters 21 and 22 and Texas Code of Criminal Procedure articles 42A.054 and 62.001(6)(A).⁷ Additionally, any offense committed in another state that contains substantially similar elements to any crimes as provided in 28 Texas Administrative Code section 1.502 are considered crimes of prime importance.⁸

⁵ Tex. Occ. Code § 53.023(b).

⁶ 28 Tex. Admin. Code § 1.502(f).

⁷ 28 Tex. Admin. Code § 1.502(f)(4)(E)-(F), (5), (6).

⁸ 28 Tex. Admin. Code § 1.502(f)(8).

Staff has the burden of producing evidence to show that Respondent’s application should be denied because he has a criminal history that supports denial of the license.⁹ Once Staff produces such evidence, the burden shifts to Respondent to show that he is fit for a license despite his criminal history.¹⁰

III. EVIDENCE

Staff offered three exhibits, which were admitted and included Respondent’s application, information the Department obtained regarding Respondent’s criminal convictions, and letters of recommendation.¹¹ Staff also presented testimony from Lewis Wright, an Administrative Review Liaison for the Department. Respondent testified on his own behalf and offered two exhibits,¹² which were admitted without objection.

A. BACKGROUND

On November 13, 2023, Respondent filed an application for a Texas general lines agent license, with a life, accident, health, and HMO qualification, with the Department.¹³ On December 4, 2023, Respondent filed an application for an additional qualification for the license for property and casualty with the

⁹ 1 Tex. Admin. Code § 155.427.

¹⁰ Tex. Occ. Code § 53.023(b).

¹¹ TDI Exhibits 1 and 2 were admitted without objection. Respondent’s objection to a portion of TDI Exhibit 3 was sustained and pages 150-151 were excluded.

¹² Respondent Exhibit 2 consists of an article titled “License Denied: Some State Occupational Licensing Laws Might be Unconstitutional Under the Equal Protections Clause.” This article does not address any factual elements in this matter; therefore, it was not considered when making the evidentiary determination in this case.

¹³ TDI Ex. 2 at 30-37.

Department.¹⁴ On February 26, 2024, the Department proposed to deny the applications based on Respondent's criminal history.¹⁵ Respondent timely appealed the proposed denial.¹⁶

B. RESPONDENT'S CRIMINAL HISTORY¹⁷

On May 17, 2018, in Case No. 2018-CM-459, before the Circuit Court of the Sixth Judicial Circuit, Champaign County, Illinois, Respondent was charged with two counts of Class A misdemeanor criminal sexual abuse, offender less than five years older than victim. The alleged acts occurred on December 5 and December 26, 2015, and involved a 15-year-old victim.¹⁸

On July 5, 2018, Respondent pleaded guilty to one count Class A misdemeanor criminal sexual abuse, offender less than five years older than victim, under 720 Illinois Compiled Statutes 5/11-1.50(c). The second count was dismissed. Respondent was sentenced to 40 days' incarceration, 24 months' probation, completion of sex offender treatment and evaluation, and registration as a sex offender. Respondent was further ordered to pay various court costs and fines. Respondent filed several requests to extend the time to pay the relevant court costs

¹⁴ TDI Ex. 2 at 38-44.

¹⁵ TDI Ex. 2 at 45.

¹⁶ TDI Ex. 2 at 144.

¹⁷ The following is a summary of the criminal conviction evidence found at TDI Exhibit 2 at 50-89.

¹⁸ Conflicting evidence was presented regarding the victim's age. It was unclear if the victim was 14 or 15 years old at the time of the offense. Staff carries the burden of proving Respondent's application should be denied, and the ALJ was not provided with the victim's date of birth. Therefore, the ALJ will consider the victim's age to be that which is more favorable to Respondent and find that the victim was 15 years old.

and fines. Respondent was released from probation on July 6, 2020, with the notation that he had yet to meet the financial obligations of his sentence.

C. LEWIS WRIGHT TESTIMONY

Mr. Wright has worked for the Department for 17 years and is currently the Administrative Review Liaison to the Department's Enforcement Division. He reviews license applications submitted to the Department that contain concerning responses to questions for the initial application processor. One such concern would be an identified criminal history for the applicant. Mr. Wright testified that each application reviewed is done so on a case-by-case basis. He further testified that the core mission is to protect Texas consumers from harm. According to Mr. Wright, a license issued by the Department indicates to the public that the applicant has been deemed honest, trustworthy, competent, and reliable in dealing with Texas insurance consumers.

Mr. Wright testified that Respondent applied for a Texas general lines agent license with two qualifications: (1) life, accident, health, and HMO, and (2) property and casualty. With this type of license, an applicant is authorized to represent an insurance company in all aspects regarding the sale of insurance coverage to consumers. According to Mr. Wright, Respondent's applications were flagged based on his affirmative response to a question regarding misdemeanor convictions. Once the Department learned of the conviction, Respondent was requested to provide a statement regarding the conviction along with related court documents and letters of reference. Respondent provided the requested documents to the Department. Mr. Wright admitted that, during the application review process, the Department did

not reach out to any individuals regarding letters or statements provided in the paperwork the Department received in conjunction with Respondent's applications.

Mr. Lewis addressed Respondent's criminal history. He noted that there were two counts where Respondent was charged in Champaign County, Illinois, with a Class A misdemeanor for criminal sexual abuse involving the sexual penetration of a person above 13 years of age but below 17 years of age.¹⁹ Respondent pleaded guilty to one count of criminal sexual abuse, and the other count was dismissed. Per the sentencing order,²⁰ Respondent was to serve 40 days' (with credit given for two days) incarceration at the Champaign County Correctional Center, serve 24 months' probation, have no contact with the victim, and register as a sex offender. Respondent was released from probation on July 5, 2020.²¹

Mr. Wright also testified regarding additional police reports²² that the Department received from the Mahomet Police Department. According to Mr. Wright, these police reports were not provided by Respondent and were acquired by the Department during its investigation of public records. Mr. Wright testified that these police reports were not formally used in making the decision to deny Respondent's applications but provided the Department with additional information to understand the circumstances related to the criminal offense.

¹⁹ See TDI Ex. 2 at 61-62. Each count was for a single day, December 5 and December 26, 2015.

²⁰ See TDI Ex. 2 at 124-25.

²¹ See TDI Ex. 2 at 130.

²² TDI Ex. 3. This exhibit consists of seven police reports pertaining to Respondent. Only two of the reports, those found at pages 155 to 163 of the exhibit, pertain to the offense for which Respondent was convicted. Therefore, the remaining five reports will not be further discussed in this Proposal for Decision.

According to Mr. Wright, the offense for which Respondent was convicted falls within the category of offenses which the Department has determined to be of prime importance and of such a serious nature that they directly relate to the business of insurance under 28 Texas Administrative Code section 1.502(f). He testified that Respondent's offense falls under multiple categories, including assaultive offenses, crimes identified in Texas Code of Criminal Procedure article 42A.054, a sexually violent offense as described in Texas Code of Criminal Procedure 62.001, and an offense under the laws of another state, here Illinois, that contains elements similar to those of an offense listed in 28 Texas Administrative Code section 1.502(f). According to Mr. Wright, this section of the Texas Administrative Code authorizes the Department to deny a licensure application for any applicant convicted of one of the listed offenses.

Applying the factors in Code section 53.022, Mr. Wright noted that the offense for which Respondent was convicted was of such a serious nature it was identified as one being of prime importance. He expressed concern that a license could offer Respondent an opportunity to offend again as he might be in a position to be exposed to individuals of whom he could take advantage. Mr. Wright was also concerned that the nature of Respondent's offense demonstrated a disregard for a vulnerable population.

Mr. Wright then applied the factors in Code section 53.023. Mr. Wright noted the following circumstances to be considered:

- Although Respondent only had one criminal offense, it was a very serious one in that it involved the sexual assault of a minor.
- Respondent was only 18 years old with he committed the offense.
- Only a short period of time has elapsed since Respondent was released from probation.
- Based on his resume, Respondent had a steady but transient work history in that he did not stay at any one job for more than a year.
- Respondent completed rehabilitative therapy, as required by the court and was found to be a low risk to reoffend.²³
- Respondent has not paid all required court fees associated with his conviction.

On reviewing Respondent's personal statement, Mr. Wright believed that, although Respondent appeared to have described the events surrounding his conviction accurately, he downplayed the severity of the offense by claiming the victim was his girlfriend. Mr. Wright also believed that, while Respondent provided reference letters that he was a solid person, it was not clear if the people writing the letters were aware of his criminal history.

Overall, in Mr. Wright's opinion, Respondent's mitigating evidence was not sufficient to overcome the seriousness of his criminal history. For these reasons, Mr. Wright determined that the license applications should be denied.

²³ See TDI Ex. 2 at 93.

D. RESPONDENT’S EVIDENCE AND TESTIMONY²⁴

Respondent had a turbulent childhood and was subjected to abuse and neglect. As a result, he was unable to form healthy relationships and misbehaved in school.

Respondent addressed his conviction. In September or October 2015, when his relationship with the victim started, he was surprised that she knew who he was. Due to his history, he grew attached to the attention she gave him. He knew she was younger but continued in the relationship which turned into a boyfriend-girlfriend situation. He admitted to having consensual sex with her on two occasions. According to Respondent, they broke up in January 2016. It was sometime after they broke up that the victim made the allegation that Respondent had sexually assaulted her.²⁵ He pleaded guilty, served about 20 of the 40 days’ incarceration,²⁶ and was released on probation. He completed the required therapy²⁷ and was released from probation. He acknowledged that he has experienced difficulty in paying the fees associated with his conviction. According to Respondent, he is currently working with a collection agency to get his outstanding fees paid.²⁸

²⁴ The following is a summary of Respondent’s written statements provided to the Department (TDI Ex. 2 at 90-92) and testimony.

²⁵ According to the police reports, the victim reported the December 2015 assaults on January 3, 2018. TDI Ex. 3 at 158-61.

²⁶ According to Respondent, he received time off his sentence for good behavior.

²⁷ According to Respondent, his therapy continued even after the time required by the court referral.

²⁸ *See* Respondent Ex. 1.

Respondent admitted that he had a hard time adjusting to life after his release and jumped around from job to job. He also started drinking. After a while, he decided to change how he was living. He stopped drinking, went to school, and started to work more. He provided the following work history for May 2018 to October 2023:²⁹

- May 2018-February 2019: Express Employment Professionals, box truck/forklift operator
- March 2019-December 2019: Caterpillar, Inc., warehouse associate
- February 2020-October 2021: Longhorn Steakhouse, food service
- August 2021-April 2022: Cremeens Trucking, machine operator/truck driver
- July 2022-October 2023: US Xpress, truck driver

Respondent acknowledged that he needed to find more permanent employment. He learned about becoming an insurance agent and began the process of getting a license. He found a good fit at a State Farm Insurance agency in Conroe, Texas, and worked closely with the owner while waiting to see if his license application would be approved. He testified that he was honest with his employer about his past criminal history. When he got the application denial letter, he left the insurance agency and searched for new employment. He is currently employed but did not identify his employer.

²⁹ TDI Ex. 2 at 98-99.

E. LETTERS

As part of the application process, Respondent provided a letter³⁰ regarding the therapy he received and several letters of reference³¹ from individuals who are familiar with him.

According to his therapist, Michael Kleppin, Respondent began working with Mr. Kleppin for sex offender specific treatment in November 2019 and successfully completed the program in June 2020. At the conclusion of the program, Respondent was assessed and found to be at a low level of risk to reoffend.

The letters of reference generally describe Respondent as reliable, responsible, hardworking, kind, respectful of others, and an asset to the community. Most of the letters do not indicate whether the letter writer was aware of Respondent's past criminal history. However, one letter, written by a former coworker, does acknowledge Respondent's past and notes how Respondent has taken responsibility for his actions and learned from his mistakes.

IV. ANALYSIS

At the outset of the hearing, Respondent questioned the constitutionality of the Department denying his license applications based on his criminal history. While the ALJ understands Respondent's concerns regarding this issue, the ALJ gives no further consideration to this argument. The constitutionality of the laws and rules

³⁰ TDI Ex. 2 at 93.

³¹ TDI Ex. 2 at 94-97.

governing the granting or denying of a license application is not for this court to determine.³² The issue to be determined is whether the Department may deny Respondent's application based on his criminal history when considering any mitigating factors.

The Department may deny a license application if the Department determines that the applicant has committed an offense that directly relates to the duties and responsibilities of an insurance agent.³³ These include offenses with the essential elements of assault and sexual assault under Texas Penal Code chapters 21 and 22 and Texas Code of Criminal Procedure articles 42A.054 and 62.001(6)(A).³⁴ The Department may also deny a license application if the applicant is convicted of an offense in another state that has substantially similar elements as any of the offenses listed in 28 Texas Administrative Code section 1.502.³⁵ It is undisputed that Respondent has a single conviction for criminal sexual abuse arising from events that took place in Illinois. Under Illinois law, a person commits "criminal sexual abuse if that person commits an act of sexual penetration or sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the person is less than 5 years older than the victim."³⁶ The Illinois offense is substantially similar to the Texas

³² *City of Dallas v. Stewart*, 361 S.W.3d 562, 568, 578-79 (Tex. 2012) ("[T]he power of constitutional construction is inherent in, and exclusive to, the judiciary.").

³³ 28 Tex. Admin. Code § 1.502(d).

³⁴ See 28 Tex. Admin. Code § 1.502(f)(4)(E)-(F), (5), (6). These offenses include sexual assault under Texas Penal Code section 22.011, continuous sexual abuse of a young child under Texas Penal Code section 21.02, and indecency with a child under Texas Penal Code section 21.11.

³⁵ 28 Tex. Admin. Code § 1.502(f)(8).

³⁶ 720 ILCS 5/11-1.50 (2011).

offense of sexual assault under Texas Penal Code section 22.011(a)(2). In Texas, a person commits sexual assault if “. . .the person intentionally or knowingly causes the penetration of the anus or sexual organ of a child³⁷ by any means. . .”³⁸ Both offenses require the sexual penetration of a victim under the age of 17.³⁹ Therefore, pursuant to 28 Texas Administrative Code section 1.502(e), consideration must be given to the factors listed in Code sections 53.022 and .023, set out above, in determining whether to grant Respondent’s agent license applications.

Considering the factors set forth in Code section 53.022, the evidence established that Respondent was convicted of a serious offense. Respondent’s offense demonstrated a willingness to take advantage of a vulnerable population, namely children. The granting of a license could provide Respondent with an opportunity to offend again through his contact with potential insurance customers. Therefore, the crime committed by Respondent is of prime importance to the Department and directly related the occupation of an insurance agent.⁴⁰

Turning to the factors in Code section 53.023, the evidence established that Respondent’s single criminal offense, while classified as a misdemeanor, is serious. With the exception of not paying his mandated court fees, Respondent met all of his court-imposed requirements. In fact, many of the factors in Code section 53.023

³⁷ “Child” is defined as any person under 17 years of age. Tex. Penal Code § 22.011(c).

³⁸ Tex. Penal Code § 22.011(a)(2)(A).

³⁹ Additionally, the Illinois offense has elements that are similar to those found in the Texas offenses of continuous sexual abuse of a child and indecency with a child.

⁴⁰ See 28 Tex. Admin. Code § 1.502(f)(4)(F), (5), (6), (8).

work in Respondent's favor. Respondent's offense could be considered a youthful indiscretion as he was only 18 years old when he became involved in a sexual relationship with a 15-year-old girl. He was released from probation in July 2020 and has remained crime free for the past four years. He completed his court-mandated therapy and was determined to be of low risk to reoffend. He has established a good record of conduct, and while he has frequently changed employment, he has worked consistently since his conviction.

Respondent has made significant strides in making sure that he does not repeat the mistakes of the past. Additionally, the ALJ finds it of note that there is a real possibility that, had Respondent committed his offense in the State of Texas, he likely never would have faced conviction under Texas Penal Code sections 21.02, 21.11, or 22.011 (the offenses similar in nature to the one for which he was convicted), as he would have been able to avail himself of the affirmative defenses set forth for each of those offenses.⁴¹ Therefore, the ALJ finds that the mitigating factors outweigh the nature, seriousness, and extent of his criminal offense.

Accordingly, the ALJ recommends that Respondent's applications for a Texas general lines life, accident, health, and HMO agent license and an additional qualification for property and casualty be granted. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

⁴¹ See Tex. Penal Code §§ 21.02(g), .11(b); 22.011(e).

V. FINDINGS OF FACT

1. On November 13, 2023, Joseph Lee Lucas Sears (Respondent) applied for a Texas general lines agent license with a qualification for life, accident, health, and HMO with the Texas Department of Insurance (Department).
2. On December 4, 2023, Respondent filed for an additional qualification for property and casualty with the Department.
3. On February 26, 2024, the Department proposed to deny Respondent's applications.
4. Respondent requested a hearing to challenge the denial.
5. On April 23, 2024, the Department issued a notice of hearing and Original Petition on the denial of Respondent's applications.
6. On June 20, 2024, the Department issued an Amended Petition.
7. The notice of hearing, together with the Amended Petition, 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.
8. The hearing in this case was held by videoconference on August 20, 2024, before Administrative Law Judge Michelle Kallas of the State Office of Administrative Hearings (SOAH). Attorney Jeannie Ricketts represented the Department. Respondent represented himself. The hearing concluded that day, and the record closed on September 10, 2024, following the filing of the admitted exhibits and submission of the transcript to SOAH.
9. In May 2018, Respondent was charged with two counts of criminal sexual abuse, offender less than five years older than victim. The alleged abuse occurred in December 2015 and involved a 15-year-old victim. At the time, Respondent was 18 years old.

10. On July 5, 2018, in Case No. 2018-CM-459, before the Circuit Court of the Sixth Judicial Circuit, Champaign County, Illinois, Respondent pleaded guilty to one count Class A misdemeanor criminal sexual abuse, offender less than five years older than victim, under 720 Illinois Compiled Statutes 5/11-1.50(c). The second count was dismissed.
11. Respondent was sentenced to 40 days' incarceration, 24 months' probation, completion of sex offender treatment and evaluation, and registration as a sex offender. Respondent was further ordered to pay various court costs and fines.
12. Respondent filed several requests to extend the time to pay the relevant court costs and fines. He is currently working on a payment plan to pay these financial obligations.
13. Respondent was released from probation on July 6, 2020, with the notation that he had yet to meet the financial obligations of his sentence.
14. Respondent completed court-mandated sex offender therapy and was found to be a low risk for reoffending.
15. Respondent's misdemeanor conviction is for a crime of such a serious nature that the Department considers it to be of prime importance in determining whether to issue a license.
16. Respondent was 18 years old when he committed the offense.
17. Nearly nine years have elapsed since Respondent committed the offense.
18. Four years have passed since Respondent completed his sentence and was released from parole. He has not committed any other criminal offenses since that time.
19. Respondent has been consistently employed since his conviction.
20. Respondent is described as reliable, hardworking, polite, responsible, and respectful of others.
21. Respondent completed rehabilitative therapy and is at low risk to reoffend.
22. Respondent is currently fit to hold a license in Texas.

VI. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 4001.002, .015, 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 the hearing. Tex. Gov't Code §§ 2001.051-.052; Tex. Ins. Code § 4005.104(b).
4. The Department had the burden to prove by a preponderance of the evidence that grounds exist to deny Respondent's application. 1 Tex. Admin. Code § 155.427.
5. Respondent had the burden to prove by a preponderance of the evidence that he is fit to perform the duties and discharge the responsibilities of the licensed occupation despite his criminal background. Tex. Occ. Code § 53.023(b).
6. The Department may deny a license if the applicant 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).
7. The Department has determined that certain crimes are of such a serious nature that they are of prime importance in determining fitness for licensure. These crimes include any offense with the essential elements of assault and sexual assault under Texas Penal Code chapters 21 and 22 and Texas Code of Criminal Procedure articles 42A.054 and 62.001(6)(A) and any offense committed in another state that has substantially similar elements as any of the offenses listed in 28 Texas Administrative Code section 1.502(f). 28 Tex. Admin. Code § 1.502(f)(4)(F), (5), (6), (8).
8. Respondent's criminal offense directly relates to the occupation of an insurance adjuster. 28 Tex. Admin. Code § 1.502(f)(4)(F), (5), (6), (8).
9. The Department will consider the factors listed in Texas Occupations Code sections 53.022 and .023 in determining whether to issue a license to an

applicant despite a criminal offense or fraudulent or dishonest conduct and will 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(e).

10. Despite his criminal conviction, Respondent has shown the fitness required to perform the duties and discharge the responsibilities of the licensed occupation. Tex. Occ. Code §§ 53.022-.023.
11. The Department should approve Respondent's applications for a Texas general lines life, accident, health, and HMO agent license and an additional qualification for property and casualty.

Signed October 29, 2024.

ALJ Signature:



Michelle Kallas
Presiding Administrative Law Judge