

No. 2022-7347

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

Date: 06/22/2022

Subject Considered:

Texas Department of Insurance

v.

Jomo Kenyatta Sanders

SOAH Docket No. 454-21-2519.C

General remarks and official action taken:

The subject of this order is Jomo Kenyatta Sanders's applications for a general-lines agent license and an adjuster license. This order denies Mr. Sanders's applications.

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) deny Mr. Sanders's applications. 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 Finding of Fact No. 15.

Legal Authority for Changes to the 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)(3), which provide 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 a technical error in a finding of fact should be changed."

COMMISSIONER'S ORDER
TDI v. Jomo Kenyatta Sanders
SOAH Docket No. 454-21-2519.C
Page 2 of 3

Finding of Fact No. 15

In Finding of Fact No. 15, the administrative law judge made a typographical error with the inclusion of the word "the":

Delivery of a controlled substance and possession of a controlled substance with intent to deliver are serious crimes which implicate Mr. Sanders's the trustworthiness and reliability.

This order corrects the technical error.

Findings of Fact

1. Except for Finding of Fact No. 15, the findings of fact contained in Exhibit A are adopted by TDI and incorporated by reference into this order.
2. In place of Finding of Fact No. 15 as contained in Exhibit A, the following finding of fact is adopted:

Delivery of a controlled substance and possession of a controlled substance with intent to deliver are serious crimes which implicate Mr. Sanders's trustworthiness and reliability.


Conclusions of Law

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


COMMISSIONER'S ORDER
TDI v. Jomo Kenyatta Sanders
SOAH Docket No. 454-21-2519.C
Page 3 of 3

Order

It is ordered that Jomo Kenyatta Sanders' applications for a general-lines agent license and an adjuster license are denied.

DocuSigned by:

FC5D7EDDFFB84F8...
Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

75578E954EFC48A...

James Person, General Counsel

DocuSigned by:

CF3CE368D09A43A...

James Kelly, Staff Attorney



**TEXAS DEPARTMENT
OF INSURANCE,
Petitioner**

v.

**JOMO KENYATTA SANDERS,
Applicant**

§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) seeks to deny the applications of Jomo Kenyatta Sanders for a general-lines-agent license and an adjuster license on grounds related to his criminal history. Mr. Sanders requested a hearing. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends the Department deny Mr. Sanders’s license applications.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing was held on August 23, 2021, before ALJ Linda Brite of the State Office of Administrative Hearings in Austin, Texas. Staff was represented by staff attorney Kaycee Crisp. Mr. Sanders represented himself. The hearing concluded and the record closed on that same day. Notice and jurisdiction were not disputed and are set out solely in the Findings of Fact and Conclusions of Law below.

II. DISCUSSION

A. Applicable Law

The Department may deny a license application if the Department determines that, among other grounds, the applicant “has engaged in fraudulent or dishonest acts or practices,” “has been convicted of a felony,” or “has been convicted of . . . an offense that directly relates to the duties and responsibilities of the licensed occupation.”¹ In determining whether to deny a license application based on a person’s criminal history, the Department “will consider the factors specified in Texas Occupations Code §§ 53.022 and 53.023.”² Texas Occupations Code § 53.022 sets forth factors to be considered by a licensing authority (such as the Department) when determining “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.³

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

¹ Tex. Ins. Code § 4005.101(b)(5), (8); Tex. Occ. Code § 53.021(a)(1).

² 28 Tex. Admin. Code § 1.502(h).

³ Tex. Occ. Code § 53.022.

determining fitness for licensure.”⁴ These crimes include “an offense relating to the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance or dangerous drug.”⁵ The Department’s rules also emphasize more generally that it “considers it very important that license holders and applicants . . . be honest, trustworthy, and reliable.”⁶

If the Department determines that an offense directly relates to the duties and responsibilities of the licensed occupation, it then considers the following factors prescribed by Texas Occupations Code § 53.023, which bear upon a person’s fitness for licensure despite criminal history, in making its ultimate licensing determination:

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

Respondent has the responsibility, to the extent possible, to obtain and provide the letters of recommendation to the Department.⁸

⁴ 28 Tex. Admin. Code § 1.502(e); *see* Tex. Occ. Code § 53.025.

⁵ 28 Tex. Admin. Code § 1.502(e)(4)(G).

⁶ 28 Tex. Admin. Code § 1.502(c).

⁷ Tex. Occ. Code § 53.023(a).

⁸ Tex. Occ. Code § 53.023(b).

In this proceeding, Staff has the burden of proving any grounds for denying the applications, while Respondent has the burden to present any favorable evidence of his fitness to be licensed despite his criminal history.⁹ The standard of proof is by a preponderance of the evidence.¹⁰

B. Evidence

Staff offered 31 exhibits, each of which was admitted without objection. Staff's exhibits included the two license applications at issue (an application for a general-lines-agent license submitted on December 20, 2019, and an application for an adjuster license submitted on February 1, 2020),¹¹ records reflecting Respondent's criminal history, and various documents submitted by Mr. Sanders, including recommendation letters. Staff called one witness, Mr. Lewis Weldon Wright IV, an employee and representative of the Department. Mr. Sanders did not offer any additional exhibits and testified on his own behalf.

1. Criminal History

Although Mr. Sanders alluded to his disagreement with some of the underlying allegations, he acknowledged having six felony convictions and three misdemeanor convictions.

a. First Michigan Felony

On March 7, 1997, in Cause No. 97-00235-FH in Genesee County, Michigan, Mr. Sanders was charged with a felony offense of unlawfully carrying a weapon on or about November 11, 1996.¹² Pursuant to a plea bargain, Mr. Sanders pleaded guilty to the charge and, by judgment signed on September 24, 1997, was sentenced to six months in jail followed by

⁹ 1 Tex. Admin. Code § 155.427.

¹⁰ *Granek v. Tex. St. Bd. of Med. Examin'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

¹¹ Staff Ex. 3 at 62-72.

¹² Staff Ex. 4.

48 months of probation.¹³ The sentencing court further ordered that Mr. Sanders was to be remanded to county jail until he “takes care of the bench warrants in district court,” and was then to complete a boot camp, after which the remainder of his jail sentence was to be deferred.¹⁴ Mr. Sanders was also ordered to pay \$480 in supervision fees and complete 75 hours of community service.¹⁵

On December 11, 1998, a bench warrant was issued for Mr. Sanders’s arrest. The warrant was based on allegations that Mr. Sanders had failed to comply with terms of his probation requiring him to make a truthful report to his probation officer monthly and that he not use or possess any controlled substance.¹⁶

Mr. Sanders ultimately pleaded guilty to the probation violation and, on March 8, 2000, a new Judgment of Sentence was rendered in Cause No. 97-00235-FH committing him to a term of 30 months to 5 years of incarceration in the Michigan Department of Corrections.¹⁷

b. California Felony

In 1999, Mr. Sanders was convicted of felony trafficking and distribution of a controlled substance, cocaine, in San Diego, California and was sentenced to 90 days in jail followed by three years of probation.¹⁸

¹³ Staff Ex. 5, 6.

¹⁴ Staff Ex. 6.

¹⁵ Staff Ex. 6.

¹⁶ Staff Ex. 7.

¹⁷ Staff Ex. 8.

¹⁸ Although no criminal records were submitted regarding the California felony listed in Factual Allegation No. 9 of the Notice of Hearing, Mr. Sanders admitted in his written statements that he received 90 days in jail and three years’ probation for trafficking and distribution of a controlled substance. Staff Ex. 3 at 51-52.

c. Second Michigan Felony

On September 20, 2002, in Cause No. 02-010550-FH in Genesee County, Michigan, Mr. Sanders was charged with the felony offense of fleeing a police officer¹⁹ A jury found him guilty of the charge.²⁰ By judgment signed on February 20, 2003, Mr. Sanders was sentenced— with an enhancement for being a “habitual offender”—to 24 to 120 months of incarceration in the Michigan Department of Corrections.²¹

d. Two Michigan Misdemeanors

On June 20, 2006, in Cause No. 06-1226 in Genesee County, Michigan, Mr. Sanders was charged with the misdemeanor offenses of operating a motor vehicle while intoxicated and driving with a suspended license, which allegedly occurred on May 27, 2006.²² On September 26, 2006, pursuant to a guilty plea, Mr. Sanders was sentenced to 85 days in the “New Paths” program and ordered to pay \$95 in fees and costs and to attend a victim-impact panel.²³ On December 22, 2006, a bench warrant was issued for Mr. Sanders’s arrest based on his alleged failure to timely pay the \$95 in fees and costs.²⁴

e. First Felony in Harris County, Texas

On July 11, 2008, in Cause No. 1174328 in Harris County, Texas, Mr. Sanders was charged with felony delivery of a controlled substance more than one gram and less than four grams.²⁵ The offense allegedly occurred on July 10, 2008.²⁶ On August 11, 2008, pursuant to a plea bargain,

¹⁹ Staff Ex. 9.

²⁰ Staff Ex. 10.

²¹ Staff Ex. 10.

²² Staff Ex. 11 at 94.

²³ Staff Ex. 11 at 98.

²⁴ Staff Ex. 11 at 99.

²⁵ Staff Ex. 15.

²⁶ Staff Ex. 15.

Mr. Sanders pleaded guilty to a reduced felony charge of delivery of a controlled substance less than one gram, was sentenced to two years in the state jail division of the Texas Department of Criminal Justice, probated to four years of community supervision, and a \$500 fine.²⁷

On July 19, 2012, Mr. Sanders's community supervision under Cause No. 1174328 was revoked and a warrant was issued for his arrest. The State's motion for revocation of Mr. Sanders's community supervision alleged multiple violations of the terms of his community supervision, including failure to report to the community supervision officer, failure to obtain suitable employment, failure to notify the community supervision officer of a change in residence, failure to pay the supervision fee, failure to pay a fine and court costs, and failure to pay a laboratory processing fee.²⁸ On October 9, 2015, Mr. Sanders filed a Stipulation of Evidence, admitting that every alleged violation of his community supervision terms in Cause No. 1174328 was true.²⁹ On the same day, a Judgment Revoking Community Supervision was entered in Cause No. 1174328 in Harris County, Texas, sentencing Mr. Sanders to one year of confinement in the State Jail Division of the Texas Department of Criminal Justice.³⁰

f. Misdemeanor in Harris County, Texas

On February 12, 2009, in Case No. 1191145 in Harris County, Texas, Mr. Sanders pleaded guilty to a Class A misdemeanor charge of deadly conduct and was sentenced to six months' confinement in county jail and \$280 in court costs.³¹

²⁷ Staff Ex. 16, 17.

²⁸ Staff Ex. 18.

²⁹ Staff Ex. 19.

³⁰ Staff Ex. 20.

³¹ Staff Ex 14.

g. Two More Felonies in Harris County, Texas

In June 2015, Mr. Sanders was charged with felony possession of marijuana, felony possession of a controlled substance with intent to deliver one to four grams, and felon in possess of a firearm in Cause Nos. 1470229, 1470223, and 1470224, respectively, in Harris County.³² The alleged date of the offenses was June 1, 2015. On October 20, 2015, pursuant to a plea bargain, Mr. Sanders pleaded guilty to a reduced charge of felony possession of a controlled substance with intent to deliver one to four grams in Cause No. 1470223 and also felon in possession of firearm in Cause No. 1470224 in Harris County, Texas.³³ As a result, Mr. Sanders was sentenced to two concurrent two-year terms of incarceration with the Institutional Division of the Texas Department of Criminal Justice.³⁴ On October 23, 2015, the felony possession of marijuana charge in Cause No. 1470229 was dismissed due to his convictions in Cause Nos. 1470223 and 1470224.³⁵

Mr. Sanders was released on parole on May 2, 2016 and was discharged from parole on May 31, 2017.³⁶

2. Other Evidence

a. Testimony of Mr. Wright

Mr. Wright testified that he currently serves in the Department's Agent and Adjustor Licensing Office as the Administrative Review Liaison to the Department's Enforcement Division, where he oversees the processing of applications.³⁷ Mr. Wright opined that due to the complex nature of insurance transactions, the consumers need protection, and that holding an insurance

³² Staff Exs. 21, 22, 24, 25.

³³ Staff Exs. 26, 27, 30, 31.

³⁴ Staff Exs. 27, 31.

³⁵ Staff Ex. 23.

³⁶ Staff Ex. 3 at 42.

³⁷ Hearing Transcript (Tr.) at 16.

license conveys trust that the Department has deemed the individual to be honest, trustworthy, reliable, and worthy of the privilege of holding that license.³⁸ Mr. Wright testified that Mr. Sanders's applications were referred to him because of criminal history disclosed in the applications and revealed in a background check.³⁹ He explained that the Department ultimately proposed to deny both of Mr. Sanders's applications for licensure.⁴⁰

Mr. Wright discussed the criminal history detailed above and how it weighed in the Department's licensing recommendations.⁴¹ He observed that it had been approximately four years since Mr. Sanders was released from community supervision.⁴² Mr. Wright attested that he had considered the frequency and length of time implicated by Mr. Sanders's criminal history, as well as the seriousness of the offenses and their relationship to the business of insurance.⁴³

Mr. Wright acknowledged that Mr. Sanders had submitted to the Department recommendation letters from a friend, a current colleague, his wife, and his mother.⁴⁴ However, with the exception of the letter from Mr. Sanders's mother, which he deemed "compelling" and "credible," Mr. Wright maintained that the authors tended to be based merely on personal relationships and did not acknowledge Mr. Sanders's complete criminal history.⁴⁵

Mr. Wright also addressed statements provided by Mr. Sanders in which had had attempted to explain numerous offenses.⁴⁶ Mr. Wright stated that Mr. Sanders's characterization of the offense of fleeing a police officer did not match the information Mr. Wright had reviewed online,

³⁸ Tr. at 22-23.

³⁹ Tr. at 26.

⁴⁰ Tr. at 55.

⁴¹ Tr. at 27-47

⁴² Tr. at 45-46.

⁴³ Tr. at 46.

⁴⁴ Tr. at 45-49.

⁴⁵ Tr. at 50.

⁴⁶ Tr. at 51; *see* Staff Ex. 3 at 51-56.

as Mr. Sanders had indicated that another individual had control of the car instead of him.⁴⁷ Thus, Mr. Wright stated, Mr. Sanders only “partially” took responsibility for his past actions.⁴⁸

Mr. Wright further testified that on both applications, Mr. Sanders had answered a question dishonestly by denying having any misdemeanor convictions aside from the types (such as DWIs) that he was not required to disclose.⁴⁹

b. Testimony and Statements of Mr. Sanders

At the time of his first offense in 1996, Mr. Sanders was approximately 19 years old.⁵⁰ Mr. Sanders was approximately 37 or 38 years old at the time of his most recent offense in 2015.⁵¹

With regard to the two different license applications, Mr. Sanders explained that he initially took the test to become an insurance agent but concluded that he was better suited to be an adjuster because he works on cars and is an electrician.⁵² Thus, Mr. Sanders took the adjuster test, and passed.⁵³

As noted previously, Mr. Sanders submitted statements to the Department pertaining to his criminal history. With regard to the Michigan offense of carrying a concealed weapon, Mr. Sanders wrote that his father had died and left the guns to him, and that he would carry one of the guns on the weekends when he would go “clubbing.”⁵⁴ Mr. Sanders stated he had a drug problem in 1999 in California and did cocaine with someone he met at the library, was charged with trafficking and

⁴⁷ Tr. at 51-52.

⁴⁸ Tr. at 51-52.

⁴⁹ Tr. at 52-54; *see* Staff Ex. 3 at 63, 69. In both applications, however, Mr. Sanders admitted to having felony convictions.

⁵⁰ Staff Ex. 3 at 51 (Mr. Sanders stating that he was 17 years old in 1994).

⁵¹ Tr. at 61.

⁵² Tr. at 57.

⁵³ Tr. at 57.

⁵⁴ Staff Ex. 3 at 51.

distribution of a controlled substance, and received 90 days in jail and three years' probation.⁵⁵ In February 2000, Mr. Sanders added, he returned to Michigan and turned himself in for his Michigan probation violations.⁵⁶

With regard to the Michigan offense of fleeing a police officer, Mr. Sanders wrote that his car was stolen and was involved in a car chase that same day. According to Mr. Sanders, when he reported the car stolen to the police the next week, he was arrested. Mr. Sanders maintained that he did not flee the police; it was someone else.⁵⁷

Mr. Sanders moved to Texas in 2006.⁵⁸ With regard to the 2012 probation violation, Mr. Sanders testified he did not mean to violate in the last month of probation, but “[i]t was a problem that I did not go see the judge to get off of probation.”⁵⁹ Mr. Sanders stated that all his court fees have been paid for the last five years.⁶⁰

Mr. Sanders testified that the 2015 offense was his fault because he was spending time with the wrong people, but that he no longer associates with these individuals.⁶¹ In his written statements to the Department, Mr. Sanders elaborated that he was at his friend's apartment with three other people when the police raided the apartment. According to his statement, his friend did not “own up to it being all his stuff,” so they were all charged with gun and drug offenses. Mr. Sanders wrote that he “knew better than to hang around anyone that could put [his] freedom on the line” and “learned from [his] mistakes.”⁶²

⁵⁵ Staff Ex. 3 at 51-52.

⁵⁶ Staff Ex. 3 at 52.

⁵⁷ Staff Ex. 3 at 52.

⁵⁸ Staff Ex. 3 at 53.

⁵⁹ Tr. at 58-59.

⁶⁰ Tr. at 60.

⁶¹ Tr. at 58.

⁶² Staff Ex. 3 at 55.

Mr. Sanders acknowledged that he had a drug problem when he was younger and attributed most of his criminal offenses to that problem.⁶³ Mr. Sanders said he had used cocaine in the past but did not partake in marijuana much. Mr. Sanders explained that when he was incarcerated, he sought help through drug classes that were offered and 12-step programs. Mr. Sanders testified that he overcame his drug problems in 2008.⁶⁴

Mr. Sanders testified he went through a similar application process with the Texas Department of Licensing and Regulation (TDLR) to obtain an electrician license, and that TDLR “gave [him] a chance.”⁶⁵ While TDLR revoked Mr. Sanders’s electrician license after the 2015 offenses, Mr. Sanders explained that he thereafter reapplied and was granted his license back.⁶⁶ Since being released from prison in 2016, Mr. Sanders continued, he has been working as an electrician under various contracts and currently was doing electrician work in a hospital in Temple under contract for the past approximately three months.⁶⁷ He explained that most of his projects last approximately three months to a year, that the electrician work is consistent, and that a skilled tradesmen can pick up work within a couple of days.⁶⁸

With regard to the misdemeanor questions on his applications with the Department, Mr. Sanders stated that he had misunderstood the question to refer to currently active misdemeanor cases.⁶⁹ Mr. Sanders pointed out that he disclosed his felonies.⁷⁰

⁶³ Tr. at 58.

⁶⁴ Tr. at 60. In his written statement to the Department, Mr. Sanders also stated he has been “clean from using drugs since 2000.” *See* Staff Ex. 3 at 53.

⁶⁵ Tr. at 60.

⁶⁶ Tr. at 62-64.

⁶⁷ Tr. at 60-63

⁶⁸ Tr. at 62-64.

⁶⁹ Tr. at 64-65.

⁷⁰ Tr. at 64.

c. Letters of Recommendation

As noted previously, Mr. Sanders submitted four letters of recommendation. Jasmine Aubrey wrote that she has known Mr. Sanders for seven years and attested that she had seen a “tremendous change in him” since his 2015 offense and subsequent period of incarceration.⁷¹ She described Mr. Sanders as an “honest hardworking man who made an honest mistake and now is seeking career opportunities to better his life and his family.”⁷²

Another a letter of recommendation was from a supervisor at Rod Home Improvement who stated that he has known Mr. Sanders for 10 years.⁷³ The author alluded to Mr. Sanders’s criminal history in saying that his “past is behind him” and that “we full[y] trust his hard work and personal behavior with our customers and staff to be excellent.”⁷⁴ The letter further praised Mr. Sanders’s “great attitude.”⁷⁵

Mr. Sanders’s wife of seven years, Cierra Tate, also wrote a recommendation letter on his behalf. Ms. Tate acknowledged that Mr. Sanders had gotten in trouble, but insisted that he thereafter grew, and became a better man. She described him as “very responsible, reliable, trustworthy, and very determined,” and also “very loving, caring, and super passionate about everything he may be involved in.”⁷⁶

Mr. Sanders’s mother, Ethel L. Sanders, also wrote a recommendation letter, which described troubling events in Mr. Sanders’s youth. She described Mr. Sanders as a great son, caring

⁷¹ Staff Ex. 3 at 45.

⁷² Staff Ex. 3 at 45.

⁷³ Staff Ex. 3 at 46. The name of the author is not printed in the letter, and the signature is illegible. Although not explicitly stated, the letter suggests the author had a supervisory role with respect to Mr. Sanders.

⁷⁴ Staff Ex. 3 at 46.

⁷⁵ Staff Ex. 3 at 46.

⁷⁶ Staff Ex. 3 at 47.

sibling, and a leader. She stated that Mr. Sanders is still trying to be better and add value to his life.⁷⁷

C. Analysis and Recommendation

Under Texas Insurance Code § 4005.101(b)(8), the Department may deny a license application if the Department determines that the applicant “has been convicted of a felony,” and Texas Occupations Code § 53.021(a) further authorizes denial based on a conviction of “an offense that directly relates to the duties and responsibilities of the licensed occupation.”⁷⁸ In determining whether to deny a license application based on a person’s criminal history, the Department will consider the factors specified in Texas Occupations Code §§ 53.022 and 53.023,⁷⁹ as set out above. Further, the Department considers an offense relating to possession of a controlled substance with intent to deliver to be a “guideline” crime that is “of prime importance” in determining fitness for licensure.⁸⁰

Mr. Sanders has six felony convictions and three misdemeanor convictions over approximately 19 years. The felony convictions involved unlawfully carrying a weapon, fleeing a police officer, delivery of a controlled substance, possession of marijuana, and possession of cocaine with intent to deliver. The misdemeanor convictions involved operating a motor vehicle while intoxicated, driving while Mr. Sanders’s license was suspended, and deadly conduct. Two of the offenses, delivery of a controlled substance and possession of a controlled substance with intent to deliver, are directly related to the duties and of prime importance to the general-lines-agent and adjuster occupations because they are serious crimes which implicate the trustworthiness and reliability of the applicant.

⁷⁷ Staff Ex. 3 at 49.

⁷⁸ Tex. Ins. Code § 4005.101(b)(8); Tex. Occ. Code § 53.021(a)(1).

⁷⁹ 28 Tex. Admin. Code § 1.502(h).

⁸⁰ 28 Tex. Admin. Code § 1.502(e)(4)(G).

Although Mr. Sanders was convicted of felonies and offenses considered to be directly related to the occupations, he may still qualify for licensure if there is sufficient evidence to demonstrate his fitness to perform the duties of a licensee despite his criminal history. In order to determine whether Mr. Sanders qualifies despite his criminal history, the Department must consider the factors listed in § 53.023.

Mr. Sanders was approximately 19 years old at the time of his first offense, and approximately 38 years old at the time of his most recent conviction. Approximately six years has passed since the commission of the most recent offense, and Respondent has been released from parole for approximately four years. Mr. Sanders's rehabilitative efforts include participation in drug classes during imprisonment and 12-step programs.

Mr. Sanders has paid outstanding court fees and completed all requirements of his sentences. Since his release from incarceration, Mr. Sanders has been working under contracts as a licensed electrician. The letters of recommendation from his friend, coworker, wife, and mother praise Mr. Sanders for his work ethic, attitude, and desire to improve himself and his family.

The ALJ commends Mr. Sanders for his work history and lack of additional convictions since his prison release in 2016. However, the past five years without criminal activity has been a relatively short time compared to the preceding approximately 19 years over which Mr. Sanders accrued numerous criminal convictions. Additionally, Mr. Sanders's most recent criminal offense is an offense that the Department considers to be of prime importance in determining fitness for licensure. On balance, the evidence of Mr. Sanders's current fitness for licensure is outweighed by the serious and extensive nature of his criminal history and its implications for his performance of the duties and responsibilities of a Department licensee. Accordingly, the ALJ concludes that Mr. Sanders is not currently fit to hold a general-lines-agent license or adjuster license.

As noted previously, the Department may deny a license application if the Department determines that the applicant has engaged in "dishonest acts or practices."⁸¹ Staff argues that

⁸¹ Tex. Ins. Code § 4005.101(b)(5).

Mr. Sanders's violations of the terms of his community supervision constitute "dishonest acts or practices" within the meaning of this authorization. The ALJ declines to determine whether Mr. Sanders's community supervision violations constitute dishonest acts under Texas Insurance Code § 4001.101(b)(5), as alleged by Staff. The ALJ makes her recommendation for denial of the applications on the basis of Mr. Sanders's fitness under Chapter 53 of the Texas Occupations Code, his felony convictions, commission of offenses that directly relate to the duties and responsibilities of the licensed occupation.

Therefore, the ALJ concludes the Department should deny Mr. Sanders's applications for a general-lines-agent license and adjuster license at this time.

III. FINDINGS OF FACT

1. On December 20, 2019, Jomo Kenyatta Sanders applied for a general-lines-agent license from the Texas Department of Insurance (Department).
2. On February 1, 2020, Mr. Sanders applied to the Department for an adjuster license.
3. On April 17, 2020, the Department proposed to deny both of Mr. Sanders's applications. On May 14, 2020, Mr. Sanders timely requested a hearing to challenge the proposed denial.
4. On June 2, 2021, the Department issued to Mr. Sanders a notice of hearing on the proposed denial of his applications. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.
5. On August 23, 2021, the hearing was held via Zoom videoconferencing platform before Administrative Law Judge Linda H. Brite of the State Office of Administrative Hearings (SOAH). Staff was represented by attorney Kaycee Crisp. Mr. Sanders appeared and represented himself. The hearing concluded and the record closed on that same day.
6. On September 24, 1997, in Cause No. 97-00235-FH in Genesee County, Michigan, Mr. Sanders pleaded guilty to the felony charge of unlawfully carrying a weapon and was sentenced to six months in jail followed by 48 months of probation. The date of the offense was November 11, 1996.

7. On December 11, 1998, a bench warrant was issued for Mr. Sanders's arrest, based on allegations that Mr. Sanders failed to follow the terms of his probation, requiring that he make a truthful report to his probation officer monthly and that he not use or possess any controlled substance. On March 8, 2000, a new Judgment of Sentence was entered under which Mr. Sanders pleaded guilty to the probation violation. The order sentenced Mr. Sanders to a term of 30 months to 5 years of incarceration.
8. In 1999, Mr. Sanders was convicted of felony trafficking and distribution of a controlled substance, cocaine, in San Diego, California and was sentenced to 90 days in jail followed by three years of probation.
9. On February 20, 2003, Mr. Sanders was convicted of felony fleeing a police officer with an enhancement for being a "habitual offender," in Cause No. 02-010550-FH in Genesee County, Michigan. He was sentenced to 24 months to 120 months of incarceration.
10. On September 26, 2006, Mr. Sanders pleaded guilty to misdemeanor operating while intoxicated and misdemeanor driving with a suspended license in Cause No. 05-1226 in Genesee County, Michigan. The date of the offenses was May 27, 2006. Mr. Sanders was sentenced to 85 days at the "New Paths" program and to pay \$95 in fees and costs. On December 22, 2006, a bench warrant was issued for Mr. Sanders's arrest for failure to timely pay the \$95 in fees and costs.
11. On August 11, 2008, in Cause No. 1174328 in Harris County, Texas, Mr. Sanders pleaded guilty to felony delivery of controlled substance less than one gram and was sentenced to two years in state jail and a \$500 fine. Per the terms of the plea agreement, Mr. Sanders's two-year sentence was probated to four years of community supervision and a \$500 fine.
12. On February 12, 2009, in Cause No. 1191145 in Harris County, Texas, Mr. Sanders pleaded guilty to misdemeanor deadly conduct. Mr. Sanders was sentenced to six months' imprisonment in county jail and \$280 in court costs.
13. On July 19, 2012, Mr. Sanders's community supervision under Cause No. 1174328 was revoked and a warrant was issued for his arrest. Mr. Sanders stipulated to multiple violations of his community supervision, including failure to report to the community supervision officer, failure to obtain suitable employment, failure to notify the community supervision officer of a change in residence, failure to pay the supervision fee, failure to pay a fine and court costs, and failure to pay a laboratory. On October 9, 2015, a Judgment Revoking Community Supervision was entered in Cause No. 1174328 in Harris County, Texas, and sentenced Mr. Sanders to one year of confinement in state jail.
14. On October 20, 2015, Mr. Sanders pleaded guilty to the charges of felony possession of a controlled substance with intent to deliver one to four grams in Cause No. 1470223 and felon in possession of a firearm in Cause No. 1470224 in Harris County, Texas. The date of the offenses was June 1, 2015. Mr. Sanders was sentenced to two concurrent two-year terms of incarceration.

15. Delivery of a controlled substance and possession of a controlled substance with intent to deliver are serious crimes which implicate Mr. Sanders's trustworthiness and reliability.
16. Mr. Sanders was released on parole on May 2, 2016 and was discharged from parole on May 31, 2017.
17. Mr. Sanders was approximately 19 years old at the time of his first offense and approximately 38 years old at the time of his most recent offense.
18. Mr. Sanders took drug classes that were offered while he was incarcerated and participated in a 12-step program.
19. Since his release from incarceration in 2016, Mr. Sanders has been doing contract work as a licensed electrician.
20. The letters of recommendation from Mr. Sanders's friend, supervisor, wife, and mother commend his work ethic, attitude, and desire to improve himself.

IV. 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. Sanders 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 asserted grounds for denying the license applications, while Mr. Sanders had the burden to present any favorable evidence of his fitness to be licensed despite his criminal history. 1 Tex. Admin. Code § 155.427. The standard of proof is by a preponderance of the evidence. *Granek v. Tex. St. Bd. of Med. Examn'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).
5. The Department may deny a license application if the Department determines that the applicant has engaged in "dishonest acts or practices." Tex. Ins. Code § 4005.101(b)(5).
6. The Department may deny a license application if the Department determines that the applicant has been convicted of a felony. Tex. Ins. Code § 4005.101(b)(8).
7. 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).

8. An offense relating to the manufacture, delivery, or possession with intent to manufacture, or deliver, a controlled substance or dangerous drug, is a “guideline” offense that the Department considers to be of prime importance in determining fitness for licensure. 28 Tex. Admin. Code § 1.502(e)(4)(G).
9. An offense relating to the manufacture, delivery, or possession with intent to manufacture, or deliver, a controlled substance is an offense that directly relates to the duties and responsibilities of a general agent and adjuster. Tex. Occ. Code § 53.022.
10. The preponderance of the evidence shows that Mr. Sanders is not currently fit to perform the duties and discharge the responsibilities of a licensed insurance agent or adjuster. Tex. Occ. Code § 53.023.
11. The Department should deny Mr. Sanders’s applications.

SIGNED October 5, 2021.



**LINDA H. BRITE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**