

FILED

FEB 12 2015

Docketed by MC



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

IN THE MATTER OF

CASE NO.: 154165-14-AG

DAVID MATHERLY

FINAL ORDER

THIS CAUSE came on for consideration of and for final agency action on the Written Report and Recommended Order issued by Hearing Officer Kim M. Fluharty-Denson on January 7, 2015, and attached as Exhibit A.

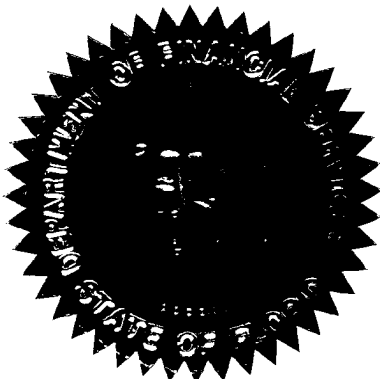
Pursuant to section 120.57(2), Florida Statutes, a telephonic hearing was conducted by Hearing Officer Fluharty-Denson on November 20, 2014.


After a review of the record, including admitted exhibits, and considering applicable law, and otherwise being fully apprised in all material premises:

IT IS HEREBY ORDERED that the hearing officer's findings of fact and conclusions of law are adopted in full as the Department's findings of fact and conclusions of law.

IT IS HEREBY FURTHER ORDERED that the hearing officer's recommendation is adopted by the Department, and David Matherly's health insurance agent license is revoked.

DONE and ORDERED this 12th day of February, 2015.




Robert C. Kneip
Chief of Staff

NOTICE OF RIGHT TO APPEAL

A party adversely affected by this final order may seek judicial review as provided in section 120.68, Florida Statutes, and Florida Rule of Appellate Procedure 9.190. Judicial review is initiated by filing a notice of appeal with the Agency Clerk, and a copy of the notice of appeal, accompanied by the filing fee, with the appropriate district court of appeal. The notice of appeal must conform to the requirements of Florida Rule of Appellate Procedure 9.110(d), and must be filed (i.e., received by the Agency Clerk) within thirty days of rendition of this final order.

Filing with the Department's Agency Clerk may be accomplished via U.S. Mail, express overnight delivery, hand delivery, facsimile transmission, or electronic mail. The address for overnight delivery or hand delivery is Julie Jones, DFS Agency Clerk, Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0390. The facsimile number is (850) 488-0697. The email address is Julie.Jones@myfloridacfo.com.

Copies furnished to:

William R. Waters, Jr., Attorney for Petitioner
Kim M. Fluharty-Denson, Hearing Officer
April Harrell, Attorney for Respondent

IN THE MATTER OF:

CASE NO.: 154165-14-AG

DAVID MATHERLY
_____ /

WRITTEN REPORT AND RECOMMENDED ORDER

Pursuant to notice and section 120.57(2), Florida Statutes, this proceeding was conducted on November 20, 2014, in Tallahassee, Florida, before Hearing Officer Kim M. Fluharty-Denson.

APPEARANCES

For Petitioner: April Harrell
Assistant General Counsel
Department of Financial Services
Division of Legal Services
200 East Gaines Street
Tallahassee, Florida 32399-0333
Attorney for Petitioner

For Respondent: William R. Waters, Jr.
117 South Gadsden Street
Tallahassee, Florida 32301
Attorney for Respondent

BACKGROUND

On July 9, 2014, Petitioner, the Department of Financial Services (the "Department") filed an Administrative Complaint seeking revocation of the Respondent, David Matherly's ("Matherly") health insurance agent license based

on his criminal record. On April 7, 2014, Matherly pled guilty to the felony offense of Driving with License Revoked (Felony-Habitual) in the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida, Case No. CRC 13-21444CFANO-B. On July 24, 2014, Matherly indicated on the Election of Proceeding that he did not dispute any of the Department's factual allegations and chose to elect a proceeding be conducted in accordance with section 120.57(2), Florida Statutes. On November 20, 2014, an informal hearing was convened at approximately 1:30 p.m., and held in the Larson Building, Room 142, in Tallahassee, Florida. Both parties were given an opportunity to file post-hearing pleadings which were submitted on December 5, 2014, and considered timely.

The issue in the case is whether Matherly's health insurance agent license is subject to revocation by the Department based on Matherly's guilty plea to a felony and section 626.621(8), Florida Statutes, and Rule 69B-231, *Florida Administrative Code*.

EXHIBITS AND WITNESSES

Matherly submitted no exhibits and testified on his own behalf.

The Department presented no witnesses and submitted four (4) exhibits which were admitted without objection:

1. The Department's Automated Licensing Information System (ALIS) Printout.
2. Matherly's criminal and administrative licensing documents.

3. Administrative complaint dated July 9, 2014.
4. Matherly's election of proceeding form.

FINDINGS OF FACT

1. On July 9, 2014, the Department filed an Administrative Complaint seeking revocation of Matherly's health insurance agent license based on his criminal record.

2. On April 7, 2014, Matherly entered a plea of guilty to the felony offense of Driving with License Revoked (Felony-Habitual), in the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida, Case No. CRC 13-21444CFANO-B, adjudication withheld.

3. Matherly asserts that he was advised by his criminal attorney that his health agent license would not be affected by his 2014 guilty plea to a felony criminal offense as long as the court withheld adjudication.

4. Matherly testified that he has a prior criminal history which includes previous charges of driving while license suspended or revoked, marijuana possession and driving under the influence.

5. Matherly asserts that he has worked for Humana for over 9 years, loves his job and if his Florida license is revoked he will also lose his non-resident health licenses. He testified that he has finished his probation and requested that he be given a second chance.

CONCLUSIONS OF LAW

6. The Department has jurisdiction of the parties to and subject matter of this proceeding pursuant to Chapters 120, and 626, Florida Statutes.

7. Section 626.621(8), Florida Statutes (2013), provides in relevant part:

626.621 The department may, in its discretion, ... revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

* * * *

(8) Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

8. Rule 69B-231.150(1), *Florida Administrative Code* (2013), provides in relevant part:

While licensed by the Department, if a licensee is convicted of, or been found guilty of or has pled guilty or nolo contendere (no contest) to, a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America ... regardless of adjudication, the penalty shall be revocation of all licenses and appointments held by the licensee. The terms of revocation and the conditions for reapplying are contained in subsection 626.641(2) and Section 626.207, F.S.

9. By electing to proceed pursuant to section 120.57(2), Florida Statutes, Matherly admits that no material facts are in dispute.

10. The Department has the burden of proving by clear and convincing evidence that Matherly committed the violation alleged in the Administrative Complaint. *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987).

11. The Department is seeking revocation of Matherly's health insurance agent license and revocation of an insurance license is a substantial penalty. Based on Matherly's prior criminal history and prior licensing issues, he knew or should have known about the consequences of his actions when he chose to drive with a revoked license on December 31, 2013, and when he pled guilty to a felony on April 7, 2014. The law governing his insurance license was in effect prior to December 31, 2013.

12. It is concluded that the Department met its burden and nothing in the record supports the imposition of a lesser penalty than revocation of Matherly's health insurance agent license.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is
RECOMMENDED that the Department enter a final order revoking
Matherly's health insurance agent license.

Respectfully submitted this 7th day of January, 2015, Tallahassee, Leon
County, Florida.



Kim M. Fluharty-Denson
Hearing Officer
612 Larson Building
Tallahassee, Florida 32399-0333
Phone: (850) 413-4282
Fax: (850) 488-0697

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was
furnished to the following on the 7th day of January, 2015:

By Electronic Mail:

William R. Waters, Jr., Esquire
bill@bwaterslaw.com

April Harrell
Assistant General Counsel
April.Harrell@myfloridacfo.com



Kim M. Fluharty-Denson
Hearing Officer