

No. 2018- 5617

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

Date: **AUG 3 1 2018**

**Subject Considered:**

Texas Department of Insurance

v.

Carl G. Matthews

SOAH Docket No. 454-17-3729.C

**General remarks and official action taken:**

This order is in consideration of the application of Carl G. Matthews for an adjuster-all lines license. Following a hearing before the State Office of Administrative Hearings (SOAH), the administrative law judge (ALJ) submitted a proposal for decision containing findings of fact and conclusions of law, recommending that the Texas Department of Insurance (department) grant Mr. Matthews's application for an adjuster-all lines license.

Department staff filed exceptions to the ALJ's proposal for decision, and Mr. Matthews filed a response to department staff's exceptions. The ALJ responded to the exceptions and response, recommending no changes to the proposal for decision or the findings of fact and conclusions of law.

After consideration of the ALJ's proposal for decision, the Commissioner adopts the following findings of fact and conclusions of law with non-substantive formatting and style changes, and with additional changes as described in the discussion following the findings of fact and conclusions of law. The Commissioner's authority to modify findings of fact and conclusions of law is Tex. Gov't Code § 2001.058(e).

**FINDINGS OF FACT**

1. On March 28, 2016, Carl G. Matthews applied for an adjuster all lines license from the Department.
2. On June 2, 2016, the department proposed to deny his application.

3. Mr. Matthews requested a hearing to challenge the denial.
4. On April 25, 2017, the department issued a notice of hearing on the denial of the application.
5. 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 a short, plain statement of the factual matters asserted.
6. The hearing in this case was held on July 18, 2017, before ALJ Rebecca S. Smith at SOAH in Austin, Texas. The department was represented by staff attorney Amy L. K. Wills. Mr. Matthews represented himself. The hearing concluded and the record closed the same day.
7. On May 8, 2000, in Criminal Cause No. H-00-027-01, in the United States District Court for the Southern District of Texas, Mr. Matthews pleaded guilty to one count of aiding and abetting healthcare fraud. The underlying incident occurred on July 24, 1998.
  - a. Carl Gustavus Matthews created a scheme to defraud Medicare/Medicaid, health care benefit programs, by falsifying patients' records of treatment. Mr. Matthews set up a clinic and hired Carolyn Joyce Watson, a registered nurse. The defendants then falsified attendance and treatment records for patients and submitted claims for payment totaling approximately \$600,000. They received payments totaling approximately \$180,000.
  - b. Mr. Matthews was sentenced to 24 months' confinement to be followed by 3 years of supervised release and was ordered to pay \$186,622.08 in restitution.
  - c. Mr. Matthews failed to pay the court ordered restitution in full. Documentation provided to the department by Mr. Matthews stated he had a remaining balance of \$184,402.08 in 2005, and Mr. Matthews provided no evidence that he was discharged from paying restitution or has paid additional restitution.
  - d. Mr. Matthews does not accept responsibility for his criminal act. Mr. Matthews characterized his crime as an "administrative error" and testified that what he really owed was \$33,000, not \$186,000.
8. At the time he committed this offense, Mr. Matthews was approximately 40 years old.
9. Mr. Matthews has no criminal history other than his 2000 conviction.

10. After his conviction, Mr. Matthews worked as a loan officer from 2002 to 2006.
11. Mr. Matthews has attempted to find other employment but his felony conviction has made that difficult.
12. Mr. Matthews disclosed his criminal history on his application and did not intentionally fail to disclose his Arkansas licensure denial from 2006.
13. Mr. Matthews did not attempt to obtain a license through fraud or misrepresentation.
14. In 2003 Mr. Matthews owed unpaid child support in the amount of \$49,837.74.
15. Mr. Matthews submitted six letters of recommendation.
  - a. The letter writers expressed confidence in Mr. Matthews's trustworthiness to hold an insurance license.
  - b. None of the letters of recommendation acknowledged Mr. Matthews's criminal history.
  - c. None of the letters of recommendation identify the letter as being from the prosecutor, law enforcement, or correctional officers who prosecuted, arrested, or had custodial responsibility for Mr. Matthews or from the sheriff or chief of police in the community where the Mr. Matthews resides.
16. The preponderance of the evidence shows Mr. Matthews is not currently fit to hold a license. This finding is based on the following factors:
  - a. On May 8, 2000, Mr. Matthews pleaded guilty to one count of aiding and abetting healthcare fraud. Mr. Matthews participated in a scheme to defraud Medicare/Medicaid, health care benefit programs, by falsifying patients' records of treatment. Mr. Matthews and another party submitted claims for payment totaling approximately \$600,000 and received payments totaling approximately \$180,000.
  - b. Mr. Matthews failed to pay court ordered restitution in full. Documentation provided to the department by Mr. Matthews states he has a remaining balance of \$184,402.08.

- c. Mr. Matthews did not support his dependents. He was released from payment of unpaid child support in the amount of \$49,837.74 in 2003.
- d. Mr. Matthews offered some evidence in support of granting his license: he has no criminal history other than his 2000 conviction, and he provided letters of recommendation. However, none of the letters of recommendation provided by Mr. Matthews acknowledge his criminal history, and none of the letters identify the letter as being from the prosecutor, law enforcement, or correctional officers who prosecuted, arrested, or had custodial responsibility for Mr. Matthews or from the sheriff or chief of police in the community where the Mr. Matthews resides.

### CONCLUSIONS OF LAW

1. The department has jurisdiction over this matter. Tex. Ins. Code §§ 4001.002, 4001.105, 4005.101.
2. SOAH has authority to hear this matter and issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
3. Mr. Matthews received timely and sufficient notice of hearing. Tex. Gov't Code ch. 2001; Tex. Ins. Code § 4005.104(b).
4. The department may deny a license if an applicant commits an offense that directly relates to the duties and responsibilities of an insurance agent. Tex. Occ. Code § 53.021(a)(1).
5. The department shall not issue a license if an applicant has committed a felony or engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation unless the Commissioner finds that the matters set out in 28 Tex. Admin. Code § 1.502 outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed. 28 Tex. Admin. Code § 1.502(f).
6. Mr. Matthews's offense of healthcare fraud directly relates to the duties and responsibilities of holding an adjuster all lines license. 28 Tex. Admin. Code § 1.502(h)(1).
7. Any offense for which fraud, dishonesty, or deceit is an essential element, such as healthcare fraud, is a crime that the department considers to be of such serious nature that it is of prime importance in determining fitness for licensure. 28 Tex. Admin. Code § 1.502(e)(1).

8. The matters set out in 28 Tex. Admin. Code § 1.502(h) do not outweigh the serious nature of Mr. Matthews's healthcare fraud offense when viewed in light of holding an adjuster all lines license. 28 Tex. Admin. Code § 1.502(f).
9. Mr. Matthews has not shown the fitness required to perform the duties and discharge the responsibilities of the licensed occupation. Tex. Occ. Code §§ 53.022 – 53.023; 28 Tex. Admin. Code § 1.502(h)(1)(D).
10. The department should deny Mr. Matthews's application for a license.

### **MODIFICATIONS AND REASONS FOR THE CHANGES**

The legal authority for the changes from the proposal for decision made in this order is found in Tex. Gov't Code § 2001.058(e). The basis for the changes is that the ALJ has failed to properly apply and interpret the provisions of Tex. Occ. Code §§ 53.021, 53.022, and 53.023. The ALJ has further failed to properly apply and interpret agency rules as contained in 28 Tex. Admin. Code §1.502.

In the discussion section of the proposal for decision, the ALJ states that Mr. Matthews has a conviction for felony fraud, which is directly related to the licensed occupation. Because of this determination, the ALJ was required to consider and apply the factors in Tex. Occ. Code §§ 53.022 and 53.023 and 28 Tex. Admin. Code § 1.502 to determine fitness for licensure.

Factors under Tex. Occ. Code § 53.023 and 28 Tex. Admin. Code § 1.502 include:

- the extent and nature of the person's past criminal activity;
- evidence of the person's rehabilitation; and
- other evidence of present fitness, including letters of recommendation from:
  - prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
  - the sheriff or chief of police in the community where the person resides; and
  - any other person in contact with the convicted person.

In addition, Tex. Occ. Code § 53.023 and 28 Tex. Admin. Code § 1.502 requires that an applicant show proof that he has:

- maintained a record of steady employment;
- supported the applicant's or holder's dependents where applicable;
- otherwise maintained a record of good conduct; and
- paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which the applicant or holder has been convicted.

The department considers any offense for which fraud, dishonesty, or deceit is an essential element prime importance in determining fitness for licensure (28 Tex. Admin. Code § 1.502(e)), and the department shall not issue a license or authorization if an applicant has committed a felony or misdemeanor, or engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation unless the commissioner finds that the matters set out in 28 Tex. Admin. Code § 1.502(h) outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed.

The evidence in the record shows that Mr. Matthews has not had further criminal convictions since his 2000 conviction. In addition, Mr. Matthews provided letters of recommendation expressing confidence in his trustworthiness.

However, the evidence in the record also shows that Mr. Matthews failed to pay the court ordered restitution for his 2000 conviction in full and still owes over \$184,000. In addition, Mr. Matthews's testimony shows he does not accept responsibility for his crime, but considers it to be an "administrative error" for which he really only owed \$33,000. Evidence also shows Mr. Matthews did not support his dependents when applicable, and at one point owed over \$49,000 in unpaid child support. The failure to make restitution is strong evidence bearing on Mr. Matthews's "rehabilitation or rehabilitative effort... following release" (28 Tex. Admin. Code § 1.502(h)(2)(E)); a failure to make restitution is strong evidence of less than complete rehabilitation.

In addition, while Mr. Matthews provided letters of recommendation, nothing in them and no other evidence in the record indicates that any of the letters are from the prosecutor, law enforcement, or correctional officers who prosecuted, arrested, or had custodial responsibility for Mr. Matthews or are from the sheriff or chief of police in the community where the Mr. Matthews resides. Also, the letters do not acknowledge Mr. Matthews's criminal history. This means the persons who wrote them may not be fully appraised of Mr. Matthews's criminal background, and it calls into question whether they could make a recommendation to the department with a full comprehension of his past.

Finally, it is not clear from the evidence that Mr. Matthews maintained a record of steady employment. Evidence shows that Mr. Matthews worked as a loan officer from 2002 to 2006, and the proposal for decision states that Mr. Matthews is certified as a community health worker, attempted to find work without success, and that he testified about his ministry work. But, none of this shows a record of steady employment.

Title 28, Tex. Admin. Code § 1.502 articulates agency standards with regard to the considerations that underlie a decision to determine certain individuals fit for licensure. The ALJ failed to properly apply and interpret that rule, as well as the relevant provisions in Tex. Occ. Code § 53.023, by giving the greatest weight to the mere passage of time and the absence of other criminal conduct, rather than to highly relevant evidence regarding the seriousness of

the crime for which Mr. Matthews was convicted, his failure to pay restitution for that crime, his failure to accept responsibility for the crime, and his failure to furnish proof that he maintained a record of steady employment, his failure to support his dependents, and deficiencies with the letters of recommendation he provided to the department.

**Finding of Fact No. 7**

As submitted by the ALJ in the proposal for decision, proposed Finding of Fact No. 7 reads as follows:

On May 8, 2000, in Criminal Cause No. H-00-027-01, in the United States District Court for the Southern District of Texas, Mr. Matthews pleaded guilty to one count of aiding and abetting healthcare fraud. The underlying incident occurred on July 24, 1998. Mr. Matthews was sentenced to 24 months' confinement to be followed by 3 years of supervised release and was ordered to pay \$186,622.08 in restitution.

This finding of fact has been modified to state the details of the crime of which Mr. Matthews was convicted, to address the remaining balance of restitution Mr. Matthews owes for his conviction and his failure to pay it, and the fact that Mr. Matthews does not accept responsibility for his criminal act, shown by his characterization of the crime as "an administrative error" and his testimony that what he really owed was \$33,000, not \$186,000. It is relevant to make clear the extent of his crime, his failure to pay restitution, and his failure to accept responsibility for his crime. The fact that he failed to pay all the ordered restitution is a factor to be considered under Tex. Occ. Code § 53.023 and 28 Tex. Admin. Code § 1.502.

The modification conforms this finding to the evidence to more accurately apply and interpret the relevant provisions of the statute and rule. This change is made pursuant to Tex. Gov't Code § 2001.058(e).

**Finding of Fact No. 10**

As submitted by the ALJ in the proposal for decision, proposed Finding of Fact No. 10 reads as follows:

After his conviction, Mr. Matthews worked as a loan officer with no recurrence of criminal conduct.

This finding has been modified to state that after his conviction, Mr. Matthews worked as a loan officer from 2002 to 2004. This change is made, because it is redundant to note that Mr. Matthews had no recurrence of criminal conduct; Finding of Fact No. 9 already states that Mr. Matthews has no criminal history other than his 2000 conviction. In addition, it is necessary to

clarify the amount of time Mr. Matthews held this position, because one of the factors for consideration under Tex. Occ. Code § 53.023 and 28 Tex. Admin. Code § 1.502 is whether the applicant maintained a record of steady employment.

The modification conforms this finding to the evidence to more accurately apply and interpret the relevant provisions of the statute and rule. This change is made pursuant to Tex. Gov't Code § 2001.058(e).

#### **Finding of Fact No. 14**

The proposal for decision only briefly addresses Mr. Matthews's failure to support dependents. It notes that evidence showed that in 2003 a judgment for past due child support was entered against Mr. Matthews, but that he testified that the issue had been resolved, and it says that a 2005 report from Mr. Matthews' probation officer shows that he was paying monthly child support at that time. Mr. Matthews's failure to support his dependents, shown by the past due amount of child support owed in 2003, is not included in the proposed findings of fact.

New Finding of Fact No. 14 has been added, because it is relevant to show that Mr. Matthews has failed to support dependents, a factor to be considered under Tex. Occ. Code § 53.023 and 28 Tex. Admin. Code § 1.502. The fact that Mr. Matthews's failure to pay child support had been resolved by the time of hearing (in the hearing Mr. Matthews testified that his children are now 33 and 25, and that issues with child support were resolved when they were both 18 or 17) does not negate its consideration under Tex. Occ. Code § 53.023 and 28 Tex. Admin. Code § 1.502.

This addition of this new finding of fact conforms the findings to the evidence to more accurately apply and interpret the relevant provisions of the statute and rule. This change is made pursuant to Tex. Gov't Code § 2001.058(e).

#### **Finding of Fact No 15**

As submitted by the ALJ in the proposal for decision, proposed Finding of Fact No. 14 reads as follows:

Mr. Matthews submitted six letters of recommendation. The letter writers expressed confidence in Mr. Matthews's trustworthiness to hold an insurance license.

The ALJ does not address in this finding the fact that Mr. Matthews's letters of recommendation do not acknowledge his criminal history. Because the letters do not address Mr. Matthews's criminal history, there is no evidence the persons who wrote them were fully apprised of his

criminal background. This calls into question whether they could make a recommendation to the department with a full comprehension of his past.

Further, as proposed, the finding of fact does not address the fact that nothing in the letters and no other evidence in the record indicates that any of the letters are from the prosecutor, law enforcement, or correctional officers who prosecuted, arrested, or had custodial responsibility for Mr. Matthews or from the sheriff or chief of police in the community where Mr. Matthews resides. This information is relevant and should be addressed, because it is a factor to be considered under Tex. Occ. Code § 53.023 and 28 Tex. Admin. Code § 1.502.

As included in this order the finding of fact has been renumbered as Finding of Fact No. 15, and it has been expanded to address the fact that none of the letters of recommendation acknowledged Mr. Matthews's criminal history, and that none of the letters of recommendation identify the letter as being from the prosecutor, law enforcement, or correctional officers who prosecuted, arrested, or had custodial responsibility for Mr. Matthews or from the sheriff or chief of police in the community where the Mr. Matthews resides.

The modification of proposed Finding of Fact No. 14 is to conform this finding to the evidence to more accurately apply and interpret the relevant provisions of the statute and rule. This change is made pursuant to Tex. Gov't Code § 2001.058(e).

### **Finding of Fact No 16**

As submitted by the ALJ in the proposal for decision, proposed Finding of Fact No. 15 reads as follows:

The positive factors outweigh the serious nature of Mr. Matthews's offense.

This finding of fact has been modified, because the ALJ failed to properly apply and interpret the provisions of Tex. Occ. Code Ann. §§ 53.021, 53.022, and 53.023. The ALJ has further failed to properly apply and interpret agency rules as contained in 28 Tex. Admin. Code §1.502. As previously noted, the ALJ determined that Mr. Matthews has a conviction for felony fraud, which is directly related to the licensed occupation. Because of this determination, the Commissioner must find that the matters set out in 28 Tex. Admin. Code § 1.502(h) outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed.

In addressing this in the proposal for decision, the ALJ was required to consider the factors set forth in Tex. Occ. Code § 53.023 and 28 Tex. Admin. Code § 1.502 in determining whether Mr. Matthews was presently fit for licensure. These factors include: (1) extent and nature of the person's past criminal activity; (2) age of the person when the crime was committed; (3) 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; and (6) other evidence of the person's fitness, including letters of recommendation from prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff or chief of police in the community where the person resides; and other persons in contact with the convicted person.

In addition, Tex. Occ. Code § 53.023 and 28 Tex. Admin. Code § 1.502 state that it is the applicant's responsibility to provide proof that the applicant has maintained a record of steady employment; supported the applicant's dependents; maintained a record of good conduct; and paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

In assessing the factors to determine fitness for licensure, the ALJ noted that Mr. Matthews was convicted of felony health fraud, and acknowledged that the criminal conduct was very serious; observed that because Mr. Matthews was 40 at the time he committed the offense, it was not an act of youthful indiscretion; and referenced the fact that the entire restitution had not been paid. Nevertheless, the ALJ determined that Mr. Matthews was fit for licensure solely because of the amount of time that had passed, that he has no additional criminal history, and that he had worked in a field that would allow him to reoffend, but did not do so.

In assessing the factors, the ALJ failed to address the details of the crime for which Mr. Matthews was convicted. The ALJ failed to address the fact that none of the letters of recommendation were from prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for Mr. Matthews; or the sheriff or chief of police in the community where Mr. Matthews resides. The ALJ noted Mr. Matthews's past-due child support, but stated that the issue had been resolved. The ALJ failed to include the amount of restitution Mr. Matthews had failed to pay. The ALJ also failed to note that while Mr. Matthews worked in a field that gave him access to reoffend, he held that position from only 2002 to 2006.

Title 28, Tex. Admin. Code § 1.502 articulates the department's intent with regard to the seriousness of the considerations that must underlie the decision to determine certain individuals fit for licensure. As that rule states, "The special nature of the relationship between licensees... and the public with respect to insurance and related businesses regulated by the department requires that the public place trust in and reliance upon such persons due to the complex and varied nature of insurance ...." The rule goes on to state that the department "considers it important that license and authorization holders and applicants... be honest, trustworthy, and reliable." Because of this language, the ALJ's decision, which gave weight to the passage of time and the lack of additional criminal history, but did not consider other important factors, failed to properly apply and interpret law and agency rules.

As included in this order the finding of fact has been renumbered as Finding of Fact No. 16. It addresses the factors that show Mr. Matthews is not currently fit to hold a license. This change is made pursuant to Tex. Gov't Code § 2001.058(e).

### **New Conclusions of Law Nos. 5, 6, 7, and 8**

New conclusions of law Nos. 5, 6, 7, and 8 are included in the order as adopted to fully address application of 28 Tex. Admin. Code § 1.502 to the findings of fact.

Consistent with 28 Tex. Admin. Code § 1.502(f), new Conclusion of Law No. 5 concludes that the department shall not issue a license if an applicant has committed a felony or engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation unless the Commissioner finds that the matters set out in 28 Tex. Admin. Code § 1.502 outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed.

Consistent with 28 Tex. Admin. Code § 1.502(h)(1), new Conclusion of Law No. 6 concludes that Mr. Matthews's offense of healthcare fraud directly relates to the duties and responsibilities of holding an adjuster all lines license.

Consistent with 28 Tex. Admin. Code § 1.502(e)(1), new Conclusion of Law No. 7 concludes that any offense for which fraud, dishonesty, or deceit is an essential element, such as healthcare fraud, is a crime that the department considers to be of such serious nature that it is of prime importance in determining fitness for licensure.

New Conclusion of Law No. 8 concludes that the matters set out in 28 Tex. Admin. Code § 1.502(h) do not outweigh the serious nature of a healthcare fraud offense when viewed in light of holding an adjuster all lines license.

These changes are made pursuant to Tex. Gov't Code § 2001.058(e).

### **Conclusion of Law No. 9**

As submitted by the ALJ in the proposal for decision, proposed Conclusion of Law No. 5 reads as follows:

Mr. Matthews has shown the fitness required to perform the duties and discharge the responsibilities of the licensed occupation. Tex. Occ. Code §§ 53.022 – 53.023; 28 Tex. Admin. Code § 1.502(h)(1)(D).

As included in this order, the conclusion of law is renumbered as Conclusion of Law No. 9, and the word "not" has been inserted following the words "Mr. Matthews has...." This change is

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made to accurately reflect the correct application of law based on the adopted findings of facts, including Finding of Fact No. 16 and the discussion in this order regarding Finding of Fact No. 16. This change is made pursuant to Tex. Gov't Code § 2001.058(e).

### **Conclusion of Law No. 10**

As submitted by the ALJ in the proposal for decision, proposed Conclusion of Law No. 6 reads as follows:

The department should grant Mr. Matthews's application for a license.

As included in this order, the conclusion of law is renumbered as Conclusion of Law No. 10, and the word "grant" is changed to "deny." This change is made to accurately reflect the correct application of law based on the adopted findings of facts, including Finding of Fact No. 16 and the discussion in this order regarding Finding of Fact No. 16. This change is made pursuant to Tex. Gov't Code § 2001.058(e).

### **ORDER**

It is ordered that Carl G. Matthews's application for an adjuster-all lines license be denied.

A copy of this order will be provided to law enforcement and other appropriate administrative agencies for further investigation as may be warranted.



Kent C. Sullivan  
Commissioner of Insurance