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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

| | | |
|-------------------------------|---|----------------------------|
| In the Matter of |) | Docket No. 12-0341 |
| |) | |
| DAVID PATRICK DUNNING, |) | FINDINGS OF FACT, |
| |) | CONCLUSIONS OF LAW, |
| Licnscc. |) | AND FINAL ORDER |
| _____ |) | |

TO: David P. Dunning
1114 West 21st Avenue
Spokane, WA 99203

COPY TO: Mike Kreidler, Insurance Commissioner
Deborah McCurley, Acting Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Marcia Stickler, Staff Attorney, Legal Affairs Division
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PO Box 40255
Olympia, WA 98504-0255

Pursuant to RCW 34.05.434, 34.05.461, 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons the above-entitled matter came on regularly for hearing before the Washington State Insurance Commissioner commencing at 2:00 p.m. on March 4, 2013. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The Insurance Commissioner appeared pro se, by and through Marcia Stickler, Esq., Staff Attorney in his Legal Affairs Division. David Patrick Dunning appeared pro se.



NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the Insurance Commissioner's Order Revoking License, No. 12-0341, entered December 19, 2012, revoking the Washington resident insurance producer's license of David Patrick Dunning ("Licensee") should be confirmed, set aside or modified. Said Order Revoking License is based on the Insurance Commissioner's ("OIC") allegations that the Licensee 1) violated RCW 48.17.090 by not providing a legible fingerprint card for the purposes of a background check; and 2) violated RCW 48.17.475 for failing to respond to the OIC's numerous attempts to communicate with him to request that he obtain and send a new fingerprint card to the OIC. On January 11, 2013, the Licensee filed a Demand for Hearing to contest the OIC's Order Revoking License.

FINDINGS OF FACT

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04; Title 34 RCW; and regulations pursuant thereto.
2. David Patrick Dunning ("Licensee") is an approximately 53 year old individual who is a resident of Spokane, Washington. The Licensee first obtained his Washington insurance producer's license on August 7, 2012. Along with his application, the Licensee submitted a fingerprint card as is routinely required. On August 7, 2012 the OIC sent the fingerprint card to the Washington State Patrol to conduct the background check which is routine with all applications for producer licenses in Washington. On August 17, the Washington State Patrol rejected the Licensee's fingerprint cards because they were not clear enough to be read, and notified the OIC. [OIC Ex. 1, attached to OIC Hearing Memorandum.]
3. On Monday, August 20, 2012, Ms. Janet Sutherland of the OIC notified the Licensee by email that his fingerprint card had been rejected by the Washington State patrol, including the reason for the rejection, and requested that he send a replacement fingerprint card within 30 days. [OIC Ex. 2.] The Licensee failed to respond to this written inquiry of the OIC.
4. Because the Licensee did not respond to the OIC's above August 20, 2012 request within 30 days, on October 9, pursuant to established OIC procedure, Ms. Sutherland forwarded the Licensee's information to her OIC supervisor Mr. Joe Mendoza for further follow-up. On

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October 9, Mr. Mendoza mailed a hardcopy letter to the Licensee, again requesting that the Licensee provide a replacement card. [OIC Ex. 3.] In addition, on October 15 the OIC resent its August 20 email to the Licensee. [OIC Ex. 4.] On October 17, the Licensee responded to the OIC and on October 17 and 18 the Licensee and Ms. Sutherland exchanged several emails regarding the fingerprint resubmission process. [Ex. 1, Licensee's Request for Hearing, Attach. 2.] Still, the Licensee did not submit a new fingerprint card to the OIC.

5. On November 13, 2012, after determining that the Licensee had still not provided a replacement fingerprint card, Mr. Mendoza followed established OIC procedure by mailing a Final Request letter to the mailing address provided by the Licensee in his application. This letter, entitled Final Request, Subject: Failure to Respond, Impending Administrative Action License, WAOIC#814227, was sent by certified mail as a final request to provide a replacement fingerprint card. This Final Request letter included a form that gave the Licensee the option to cancel his license, and also informed the Licensee that if he did not provide a replacement fingerprint card to the OIC by December 13, the OIC would proceed with revoking his insurance producer's license. [OIC Ex. 5.] Although the U.S. Post Office certified that this Final Request letter was delivered (signature required) to the Licensee on November 16, 2012 at 1:05 PST, the Licensee failed to respond to this written inquiry of the OIC.

6. On December 13, 2012, when he had confirmed that the Licensee had received the Final Request letter on November 16, Mr. Mendoza attempted to contact the Licensee by telephone but was not able to reach him. Because the Licensee's producer's license had already been issued more than 90 days earlier without the required background check being completed, and because the Licensee was not cooperating with the OIC's request to replace his rejected fingerprint card, Mr. Mendoza prepared the revocation order on December 13. [OIC Ex. 6.] Said Order Revoking License No. 12-0341, revoking the insurance producer's license of the Licensee for the reasons stated above, was mailed to the Licensee on December 19 (with an effective of January 4, 2013). [OIC Ex. 7.]

7. The Licensee did respond to the OIC's December 19, 2012 Order revoking his producer's license: specifically, on December 27 the Licensee telephoned Mr. Mendoza, assuring him that he would submit a replacement fingerprint card on December 28. [OIC Ex. 8, p.1.] The Licensee obtained his replacement fingerprint card on December 28 but at that time still failed to provide it to the OIC. On January 3, 2013, the Licensee left a voicemail for Mr. Mendoza, stating that the replacement fingerprint card would be provided to the OIC on January 3, 2013. [OIC Ex. 8, p.2.] On January 4, Jeff Baughman, Manager of the OIC's Licensing & Education Program, sent an email response to the Licensee regarding the Licensee's January 3 voicemail. This January 4 email letter explained to the Licensee that upon delivery of the Order Revoking License on December 19, 2012, the Licensee had the options of 1) paying a fine of \$500; 2) requesting a hearing; or 3) having his license revoked. The letter further explained that the Licensee no longer had the option of just sending in his replacement fingerprint card to the OIC and that therefore his insurance producer's license was revoked on January 4, 2013, the effective date stated in the Order Revoking License. [OIC Ex. 9.] However, the OIC's January 4 email

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letter went on to advise the Licensee that if he wished to restore his insurance producer's license, he would need to provide a written statement to the OIC agreeing to pay a fine of \$500 and provide the required replacement fingerprint card.

8. In response to the OIC's January 4, 2013 email letter, the Licensee chose not to pay the \$500 proposed fine and submit his replacement fingerprint card, but instead chose to request a hearing to contest the OIC's Order Revoking License. In this proceeding, the Licensee states that initially he was unsure if he would remain in the insurance business (and so apparently did not respond to the OIC's request for a replacement fingerprint card for this reason) and then made three attempts to acquire his replacement card at the vendor Pearson Vue which is specified in the OIC's website, but that Pearson Vue was closed all three times he went to that office. However, as the OIC argues, if the Licensee had read the OIC's website concerning obtaining fingerprint cards as part of the application process, he would have been informed that he must make an appointment with Pearson Vue either over the telephone (number provided) or online (link provided) to have his fingerprint card prepared. [OIC Ex. 11.]

9. The Licensee further states that following delivery of the OIC's Final Request letter (which was November 16, 2012) he was offered an opportunity to work in an agency which required him to have his producer's license, and so decided that he would need to resolve this matter by obtaining the replacement fingerprint card. [OIC Ex. 10, Licensee's Request for Hearing filed January 11, 2013.] However, even though the Licensee received the OIC's Final Request letter on November 16, 2012, he still did not obtain his replacement fingerprint card until December 27. Further, even though he had promised the OIC he would submit the replacement card on December 28, and then promised to submit it on January 3, 2013, he failed to submit it on either of those dates. [Ex. 8, pp. 1-2.] [If the Licensee meant to state it was following delivery of the OIC's Order Revoking License on December 19, 2012 (rather than delivery of the OIC's earlier Final Request letter) that he was offered an opportunity to work in an agency and so determined to obtain the replacement card, still the Licensee failed to obtain the card until December 28 and still failed to submit it to the OIC on either of the December 28, 2012 or January 3, 2013 dates he had promised the OIC.]

10. The Licensee failed to submit his replacement fingerprint card until January 11, 2013. At that time, he submitted it as an attachment to his Request for Hearing dated January 9 and filed with the undersigned on January 11. [Ex. 1, Request for Hearing, Attach. 1.]

11. The OIC did not present any witnesses during its case-in-chief, but rather presented its case based on the documentary evidence submitted with its hearing memorandum. Said documentary evidence, OIC Exs. 1-11, are clear on their face and were admitted into evidence without objection.

12. David Patrick Dunning, the Licensee, appeared as the sole witness on his own behalf. Mr. Dunning presented his testimony in a detailed and credible manner.

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13. During hearing, the OIC advises that it no longer seeks revocation as the penalty against the Licensee in this matter, but rather seeks a monetary fine based upon the violations which have occurred. The OIC asserts, and it is here found, that the OIC did incur significant costs, particularly in staff time, due to the Licensee's activities found above.

14. Based upon the above Findings of Facts, it is reasonable to impose a \$500 fine upon the Licensee in lieu of revocation of his Washington insurance producer's license.

CONCLUSIONS OF LAW

Based upon the above Findings of Facts, it is hereby concluded:

1. The adjudicative proceeding herein was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW; Title 34 RCW; and regulations pursuant thereto.

2. Pursuant to RCW 48.17.530(1)(b), the OIC may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license, or may levy a civil penalty in accordance with RCW 48.17.560 or any combination of actions, for any one or more of numerous specific causes including violation of RCW 48.17.090 and/or violation of RCW 48.17.475.

3. RCW 48.17.090 requires that as part of the application process, an applicant for a resident producer's license must submit a legible fingerprint card for a criminal background check. In failing to provide a legible fingerprint card at the OIC's request, even in spite of the OIC's repeated requests, the Licensee violated RCW 48.17.090.

4. RCW 48.17.475 requires that the Licensee respond promptly in writing to an inquiry of the OIC relating to the business of insurance. A timely response is one that is received by the OIC within fifteen business days. The OIC sent the Licensee written inquiries dated August 20, 2012, and a certified letter dated November 13 which was delivered to the Licensee on November 16, both relating to the business of insurance. The Licensee failed to respond to these inquiries as required, and thereby on both occasions violated RCW 48.17.475.

5. RCW 48.17.560 permits the OIC to impose a fine in lieu of or in addition to the revocation of an insurance producer's license in an amount up to \$1,000 per offense. As found above, the Licensee violated RCW 48.17.090 by failing to submit a replacement fingerprint card as requested several times by the OIC, and violated RCW 48.17.475 on at least two occasions by failing to respond promptly in writing to an inquiry of the OIC relating to the business of insurance. While the Licensee's activities could be considered at least three separate violations of these statutes, and therefore the maximum fine would be at least \$3,000, it is reasonable -- particularly since the Licensee has already had his Washington insurance producer's license

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revoked pursuant to RCW 48.04 from January 4, 2013 until the date of entry of this Order, pending the hearing herein and entry of this Final Order -- that a \$500 fine should be imposed upon the Licensee in lieu of revocation of his Washington insurance producer license.

6. It is further concluded that the OIC may take the above Findings of Facts and Conclusions of Law into consideration should the OIC conduct any future investigations or disciplinary actions involving the Licensee in the future.

FINAL ORDER

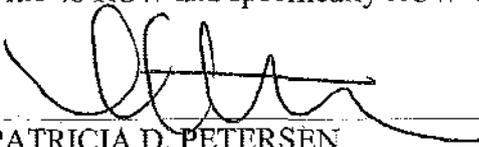
On the basis of the foregoing Findings of Facts and Conclusions of Law,

IT IS HEREBY ORDERED that the Washington State Insurance Commissioner's Order Revoking License, No. 12-0341, revoking the Washington insurance producer license of David P. Dunning, is amended to instead impose a fine of \$500.

IT IS FURTHER ORDERED that the Washington State Insurance Commissioner may take the above Findings of Facts and Conclusions of Law into consideration should the OIC conduct any future investigations or disciplinary actions involving the Licensee in the future.

IT IS FURTHER ORDERED that the Licensee shall pay said fine of \$500, in full, to be received within 60 days of the date of this Final Order, mailed or delivered to P.O. Box 40255, Olympia, WA 98504-0255 or 5000 Capitol Blvd., Tumwater, WA 98501. Should said fine not be received by that date, the insurance producer's license of the Licensee shall automatically be revoked without further appeal.

ENTERED AT TUMWATER, WASHINGTON, this 3rd day of June, 2013, pursuant to Title 48 RCW and specifically RCW 48.04 and Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN
Chief Presiding Officer

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to

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the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General.

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: David P. Dunning, Mike Kreidler, James T. Odiome, John F. Hamje, Esq., Marcia Stickler, Esq., and Charles Brown, Esq.

DATED this 4th day of June, 2013.


KELLY A. CARNES