

**SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION
DIVISION OF INSURANCE**

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|-------------------------|---|-----------------------|
| IN THE MATTER OF |) | |
| VALERIE HALL |) | FINAL DECISION |
| LICENSEE |) | INS 14-11 |

After reviewing the record and the proposed decision of the Hearing Examiner in this matter,

IT IS HEREBY ORDERED that pursuant to SDCL 1-26D-4, the Hearing Examiner's Proposed Findings of Fact, Conclusions of Law and Proposed Order, dated October 30, 2014 is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of Valerie Hall will hereby be revoked.

Parties are hereby advised of the right to further appeal the final decision to Circuit Court within (30) days of receiving such decision, pursuant to the authority of SDCL 1-26.

Dated this 3 day of November 2014



Marcia Hultman, Secretary
South Dakota Department of Labor and Regulation
700 Governors Drive
Pierre, SD 57501

**STATE OF SOUTH DAKOTA
OFFICE OF HEARING EXAMINERS**

**IN THE MATTER OF
VALERIE HALL**

**PROPOSED ORDER
DLR/INSURANCE 14-11**

An administrative hearing in the above matter was held on September 3, 2014. Valerie Hall (hereinafter sometimes referred to as "Hall" or "Licensee") did not appear. Frank Marnell appeared as counsel for the Division of Insurance (hereinafter sometimes referred to as "Division"). The matter was tape recorded. There is no written transcript of the tape; therefore no citation to page number will be included. Exhibits 1 through 3 were admitted and will be denoted by EX followed by the appropriate number and page number.

ISSUE

Whether the Non-Resident Insurance Producer License of Valerie Hall should be revoked due to her failure to report a felony criminal prosecution within thirty days of the initial pretrial hearing wherein she was the defendant in violation of SDCL §§ 58-30-194 & 58-30-167(2)

FINDINGS OF FACT

I.

Valerie Hall possesses an active Non-Resident Insurance Producer License from the State of South Dakota. Ms. Hall became licensed in the State of South Dakota on November 22, 2010. Her license is scheduled to expire on June 30, 2015. (EX 1)

II.

Amy Ondell, Compliance Specialist for the South Dakota Division of Insurance, received a fax from Valerie Hall. The fax included supporting paperwork which indicated that Ms. Hall was charged by Indictment with two felonies, Case Number CR 13000194-01 Possession with Intent to Manufacture/Sell and Case Number CR 13000194-02 Conspiracy for Possession with intent to Manufacture/Sell. The fax printed date is August 19, 2013 but the document is stamped by the Division on August 23, 2013. (EX 3)

III.

Valerie Hall is also known, or has been known, as Valerie Tuel. (EX 3)

IV.

Valerie Hall submitted a renewal application to the South Dakota Division of Insurance on June 21, 2013. On the application there is a question as follows: "Have you been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime, which not been previously reported to this insurance department?" Ms. Hall responded "no". (EX 2) (emphasis added)

V.

The arrest warrant for Ms. Hall on the two felony counts was dated April 30, 2013. (EX 3) She was arrested on the same date so she was "currently charged" at the time she submitted her application for license renewal to the Division of Insurance on June 21, 2013. (EX 2 & 3)

VI.

Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.

VII.

To the extent any of the foregoing are improperly designated and are, instead, Conclusions of Law, they are hereby redesignated and incorporated herein as Conclusions of Law.

REASONING

This case involves a request by the Division of Insurance to revoke the South Dakota Non-Resident Insurance Producer's License of Valerie Hall. As a consequence of the potential loss of Petitioner's livelihood from the lack of licensure, the burden of proof in this matter is higher than the preponderance of evidence standard, which applies in a typical administrative hearing. "In matters concerning the revocation of a professional license, we determine that the appropriate standard of proof to be utilized by an agency is clear and convincing evidence." *In re Zar*, 434 N.W.2d 598, 602 (S.D. 1989). Our Supreme Court has defined "clear and convincing evidence" as follows:

The measure of proof required by this designation falls somewhere between the rule in ordinary civil cases and the requirement of our criminal procedure, that is, it must be more than a mere preponderance but not beyond a reasonable doubt. It is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. The evidence need not be voluminous or undisputed to accomplish this.

Brown v. Warner, 78 S.D. 647, 653, 107 NW2d 1, 4 (1961).

Amy Ondell, Compliance Specialist for the South Dakota Division of Insurance, received a fax from Valerie Hall. The fax included supporting paperwork which indicated that Ms. Hall was charged by Indictment with two felonies, Case Number CR 13000194-01 Possession with Intent to Manufacture/Sell and Case Number CR 13000194-02 Conspiracy for Possession with intent to Manufacture/Sell. It appears that the Division received this information on August 23, 2013 as that is what the date stamp indicates.

It appears she was arrested on this charge on April 30, 2013. Bond papers show she was bonded on that date. It appears there were three hearings scheduled; those being on April 30, 2013, June 10, 2013 and July 10, 2013. Documents indicate she made a court appearance in this matter on July 10, 2013. The matter went before the Grand Jury on August 19, 2013.

Ms. Ondell and the Division of Insurance did not become aware of the charges until the fax on August 23, 2013. This is more than thirty days from the third scheduled court appearance.

The Division seeks to revoke Ms. Hall's license pursuant to SDCL 58-30-167(1), (2), (3), (6) and (8). That statute, in pertinent part, is set forth below:

SDCL 58-30-167 Causes for suspension, revocation, refusal to issue or renew license, or monetary penalty--Notice--Hearing--Final determination. The director may suspend for not more than twelve months, or may revoke or refuse to continue, any license issued under this chapter, or any license of a surplus lines broker after a hearing. Notice of such hearing and of the charges against the licensee shall be given to the licensee and to the insurers represented by such licensee or to the appointing agent of a producer at least twenty days before the hearing. The director may suspend, revoke, or refuse to issue or renew an insurance producer's license or may accept a monetary penalty in accordance with § 58-4-28.1 or any combination thereof, for any one or more of the following causes: ...

- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
- (2) Violating any insurance laws or rules, subpoena, or order of the director or of another state's insurance director, commissioner, or superintendent;
- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (6) Having been convicted of a felony;
- (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;

The insurance law that the Division alleges Ms. Hall violated is SDCL 58-30-194. That statute provides as follows:

SDCL 58-30-194. Report by insurance producer of any felony criminal prosecution of insurance producer. Within thirty days of the *initial pretrial hearing date*, an insurance producer shall report to the director any felony criminal prosecution of the insurance producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents. (emphasis added)

The term "initial pretrial hearing" is not defined anywhere in South Dakota Codified Law and it only appears in § 58-30-194. When interpreting statutes, the South Dakota Supreme Court has

stated that “[The Court] give[s] words their plain meaning and effect, and read[s] statutes as a whole...” *Expungement of Oliver*, 810 N.W.2d 350, 351-352 (S.D. 2012) citing *State v. Miranda*, 776 N.W.2d 77, 81 (S.D. 2009).

This license revocation hearing and SDCL § 58-30-194 involve timely reporting, and as such the word “initial” is crucial in understanding the meaning of “initial pretrial hearing.” “Initial” is defined in Merriam-Webster’s online dictionary as “1: of or relating to the beginning: incipient; and 2: placed at the beginning: first.” Merriam-Webster entry for “*initial*,” <http://www.merriam-webster.com/dictionary/initial>, retrieved November 15, 2012. From the same source, “Pre” means “prior to” and “hearing” means “...2(b)(2) a preliminary examination in criminal procedure.” *Id.*, entries for “*pre*” and “*hearing*.” If “initial pretrial hearing” means “first preliminary examination in criminal procedure prior to trial,” these definitions show that “initial pretrial hearing” means the first appearance of a defendant in court prior to trial. A hearing is necessary even in criminal proceedings which do not go to trial. The meaning of “initial pretrial hearing” as now defined in ARSD 20:06:18:21 embodies these concepts as follows:

ARSD 20:06:18:21. Definition of initial pretrial hearing. For purposes of Title 58, initial pretrial hearing means either a defendant's arraignment or the first time that a defendant accused of a crime or the defendant's attorney appears before a court in a criminal action in any jurisdiction, whichever occurs first.

Policing of the insurance industry depends heavily on self-reporting. Self-reporting is a necessity in this field where there are so many different agents, companies and states involved. The Division has statutes which require self-reporting. A licensee must agree to abide by these statutes in order to be licensed. In the statutes involved in this case and in many other Division of Insurance cases there are timelines to be followed regarding the reporting. Ms. Hall did not meet the deadline of 30 days after her initial pretrial hearing. In addition, and perhaps much more egregious, is she failed to respond honestly to the question on the provider renewal application inquiring about pending felony charges. Applying the law to the Findings of Fact the Division clearly showed that the Non-Resident Insurance Producer License of Valerie Hall should be revoked.

CONCLUSIONS OF LAW

I.

The Division of Insurance has jurisdiction over the parties and subject matter of this hearing pursuant to Title 58 of the South Dakota Codified Laws. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to the provisions of SDCL 1-26D-4.

II.

The Division of Insurance bears the burden of establishing the alleged statutory violations by clear and convincing evidence.

III.

The Division of Insurance established by clear and convincing evidence that Valerie Hall did not inform the Division that she was the subject of a felony prosecution within thirty days of the initial pretrial hearing date as is required by SDCL 58-30-194.

IV.

The Division of Insurance established by clear and convincing evidence that Valerie Hall violated SDCL 58-30-194.

V.

The Division of Insurance established by clear and convincing evidence that Valerie Hall falsely answered a question on her renewal application. She indicated she was not "currently charged" with a crime when indeed she was.

VI.

The Division of Insurance established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producers License of Valerie Hall is subject to revocation pursuant to SDCL 58-30-167(1), (2), (3) and (8).

VII.

The Division of Insurance did not establish by clear and convincing evidence that the South Dakota Non-Resident Insurance Producers License of Valerie Hall is subject to revocation pursuant to SDCL 58-30-167(6) as alleged because there was no proof of conviction of a felony provided in the exhibits admitted at the hearing.

VIII.

Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.

IX.

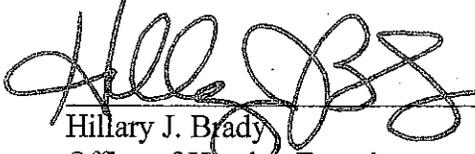
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

Based on the above Findings of Fact, Reasoning and Conclusions of Law, the Hearing Examiner enters the following:

PROPOSED ORDER

The South Dakota Non-Resident Insurance Producers License of Valerie Hall should be revoked.

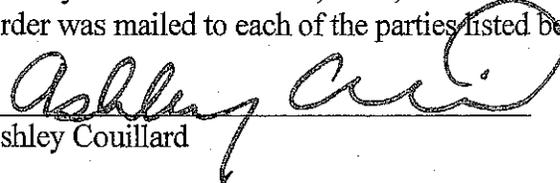
Dated this 30th day of October 2014



Hillary J. Brady
Office of Hearing Examiners
523 E. Capitol
Pierre, South Dakota 57501

CERTIFICATE OF SERVICE

I certify that on October 30, 2014, at Pierre, South Dakota, a true and correct copy of this Proposed Order was mailed to each of the parties listed below.



Ashley Couillard

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FRANK MARNELL
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DEPT OF LABOR AND REGULATION
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