

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

**IN THE MATTER OF
JOHN KELLY
LICENSEE**

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**FINAL DECISION
INS 19-10**

After reviewing the record and the proposed order 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 April 5, 2019, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of John Kelly 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 10th day of April, 2019.



Marcia Hultman, Secretary
South Dakota Department of Labor and Regulation
123 W. Missouri Ave.
Pierre, SD 57501

STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION

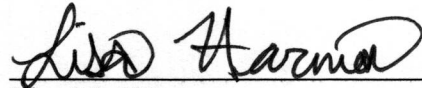
IN THE MATTER OF
JOHN KELLY

INS 19-10

NOTICE OF ENTRY OF PROPOSED
FINDINGS OF FACT, CONCLUSION OF LAW,
AND DECISION AND FINAL DECISION

NOTICE IS HEREBY GIVEN, that attached hereto, is a true and correct copy of the Proposed Findings of Fact, Conclusions of Law, and Decision, and Final Decision entered by Marcia Hultman, Secretary of the South Dakota Department of Labor and Regulation, on April 10, 2019.

Dated this 10th day of April, 2019.



Lisa M. Harmon
Legal Counsel
South Dakota Division of Insurance
124 S. Euclid Ave., 2nd Floor
Pierre, SD 57501
(605) 773-3563

CERTIFICATE OF SERVICE

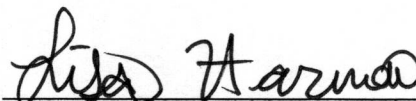
I, Lisa Harmon, the undersigned, do hereby certify that on the date shown below, a true and correct copy of the Proposed Findings of Fact, Conclusions of Law, and Decision, and Final Decision with respect to the above-entitled action was sent U.S. Certified Mail and First-Class Mail thereon, to the following:

John Kelly
4625 Lange Ave.
Saint Michael, MN 55376

Metropolitan Life Insurance Company
200 Park Ave.
New York, NY 10165

Reliance Standard Life Insurance Company
2001 Market St., STE 1500
Philadelphia, PA 19103

Dated this 10th April, 2019 in Pierre, South Dakota.



Lisa M. Harmon
Legal Counsel
South Dakota Division of Insurance
124 S. Euclid Ave., 2nd Floor
Pierre, SD 57501
(605) 773-3563

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

**IN THE MATTER OF
JOHN KELLY**

**INS 19-10
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on April 3, 2019 pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance ("Division") on February 27, 2019. Lisa M. Harmon appeared as counselor for the Division. John Kelly did not appear, either in person or through counsel. The Division admitted its Exhibits DOI 1 through DOI 4 into evidence and moved that the Hearing Examiner enter these Proposed Findings of Fact, Conclusions of Law, and Proposed Decision as a default disposition to this contested case.

ISSUE

Whether the Non-Resident Insurance Producer License of John Kelly should be revoked due to failing to timely respond to the Division; failing to timely report an administrative action to the Division; and for having a suspension action in another state in violation of SDCL §§ 58-30-167(2) and (9), 58-30-193, 58-33-66, and 58-33-68.

FINDINGS OF FACT

1. John Kelly was licensed by the Division as an insurance producer on May 28, 2010. The license is currently active. (Exhibit DOI 1).
2. John Kelly was the subject of an administrative action in a different jurisdiction. (Exhibit DOI 2).
3. John Kelly did not report the administrative action to the Division.
4. The Division sent inquiries to John Kelly at the address of record regarding licensure matters. (Exhibits DOI 3 and DOI 4).
5. John Kelly did not respond to the Division's inquiries. (Exhibits DOI 3 and DOI 4).
6. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
7. 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 to revoke the South Dakota Non-Resident Insurance Producer's License of John Kelly. As a consequence of the potential loss of Respondent'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).

SDCL 58-30-193 states that "[A]n insurance producer shall report to the director any administrative action taken against the insurance producer in another jurisdiction... within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent order, or other relevant legal documents." SDCL 58-33-66(1) requires John Kelly to respond to the Division and supply requested documents within twenty days from the receipt of a request. In addition, the Division considers SDCL 58-30-167 (shown in pertinent part) as follows:

The director may... revoke or refuse to continue, any license issued under this chapter... after a hearing... The director may... revoke... an insurance producer's... for any one or more of the following causes:

- (2) Violating any insurance laws or rules, subpoena, or order of the director or of another state's insurance director, commissioner, or superintendent;
- (9) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

The evidence indicates that John Kelly violated the insurance laws of another jurisdiction, failed to report that action, had a license suspended in another jurisdiction, and failed to respond to Division inquiries regarding the action. Applying the law to the Findings of Fact it is clear the Non-Resident Insurance Producer License of John Kelly is subject to revocation and should be revoked.

CONCLUSIONS OF LAW

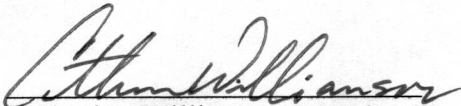
1. The Division has jurisdiction over John Kelly and the subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to SDCL 1-26D-4.
2. The Division bears the burden of establishing the alleged statutory violations by clear and convincing evidence.
3. The Division established by clear and convincing evidence that John Kelly violated SDCL § 58-30-193.
4. The Division established by clear and convincing evidence that John Kelly violated SDCL § 58-33-66.
5. The Division established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producer License of John Kelly is subject to revocation pursuant to SDCL § 58-33-167(2) and (9).
6. Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.
7. 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 DECISION

The South Dakota Non-Resident Insurance Producer License of John Kelly should be revoked.

Dated this 5th day of April, 2019.



Catherine Williamson, Hearing Examiner
Office of Hearing Examiners
523 East Capitol
Pierre, SD 57501

CERTIFICATE OF SERVICE

I certify on April 5, 2019, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.



Ashley Parsons
Office of Hearing Examiners

John Kelly
4625 Lange Ave.
Saint Michael, MN 55376

Reliance Standard Life Insurance
Company
2001 Market St., STE 1500
Philadelphia, PA 19103

Metropolitan Life Insurance Company
200 Park Ave.
New York, NY 10165

Lisa M. Harmon
Division of Insurance
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