

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

**IN THE MATTER OF
BRIAN FOSTER
LICENSEE**

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**FINAL DECISION
INS 20-17**

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 September 14, 2020, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Resident Insurance Producer License of Brian Foster 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 19 day of September, 2020.



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

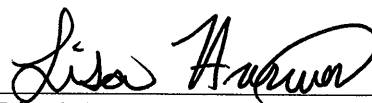
IN THE MATTER OF
BRIAN FOSTER

INS 20-17

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 September 19, 2020.

Dated this 22nd day of September, 2020.



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 thereon, to the following:

Brian Foster
1911 W. 57th St., STE 102
Sioux Falls, SD 57108-2710

Aetna Life Insurance Company
Attn: Regulatory Resolution Team
151 Farmington Ave AN34
Hartford, CT 06156-7003

American Continental Insurance Company
1021 Reams Fleming Blvd.
Franklin, TN 37064

Combined Ins.Co. of America
8750 W. Bryn Mawr Ave, 7th Floor
Triangle Plaza
Chicago, IL 60631

Continental Life Ins. Co. of Brentwood, TN
Attn: Missy Wimpelberg
1021 Reams Fleming Blvd.
Franklin, TN 37064

Coventry Health & Life Ins. Co.
Attn: Regulatory Resolution Team
151 Farmington Ave AN34
Hartford, CT 06156-7003

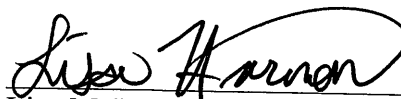
First Health Life & Health Ins. Co.
Attn: Regulatory Resolution Team
151 Farmington Ave AN34
Hartford, CT 06156-7003

Humana Insurance Company
PO Box 740026
Louisville, KY 40202

Philadelphia American Life Ins. Co.
11720 Katy Freeway #1700
Houston, TX 77079

Wellcare Prescription Insurance Inc.
8735 Henderson, Ren 2
Tampa, FL 33634

Dated this 22nd day of September, 2020 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
BRIAN FOSTER**

**INS 20-17
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on September 9, 2020, pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance (“Division”) on July 23, 2020. Lisa M. Harmon appeared as counsel for the Division. Brian Foster did not appear, either in person or through counsel. The Division admitted its Exhibits DOI 1 through DOI 5 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 Resident Insurance Producer License of Brian Foster should be revoked for violating any insurance laws; for misrepresenting the terms of an insurance contract, for using fraudulent or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere; and for failing to respond to the Division’s requests; in violation of SDCL 58-30-167(2), (5), (8), 58-33-66, and 58-33-68.

FINDINGS OF FACT

1. Brian Foster was licensed by the Division as an insurance producer on May 13, 2016. The license is currently active. (Exhibit DOI 1).
2. Brian Foster was the subject of a consumer complaint where he allegedly told the consumer the policy would reset after a claim every 5 years. (Exhibit DOI 2).
3. The complaint’s policy was a lump sum policy that would end when all of the benefit has been paid to the primary insured, unless the lump sum benefits continued under a rider. The complainant did not have a rider. (Exhibit DOI 3).
4. The Division sent inquiries to Brian Foster at his address of record regarding the complaint. (Exhibits DOI 4 and DOI 5).
5. Brian Foster did not respond to the Division’s inquiries. (Exhibits DOI 4 and DOI 5).
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 Resident Insurance Producer's License of Brian Foster. 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 58-33-66(1) and 58-33-68 require Brian Foster 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 license... 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;
- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (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 evidence indicates that Brian Foster violated the insurance laws of South Dakota, misrepresented the terms of a policy, used fraudulent, coercive, or dishonest practices, or demonstrated incompetence or untrustworthiness in the conduct of her business, and failed to respond to Division inquiries regarding the action. Applying the law to the Findings of Fact it is clear the Resident Insurance Producer License of Brian Foster is subject to revocation and should be revoked.

CONCLUSIONS OF LAW

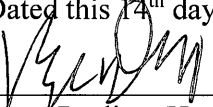
1. The Division has jurisdiction over Brian Foster and the subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to SDCL 1-26D-4.
2. The Division bears the burden of establishing the alleged statutory violations by clear and convincing evidence.
3. The Division established by clear and convincing evidence that Brian Foster violated SDCL § 58-33-66.
4. The Division established by clear and convincing evidence that the South Dakota Resident Insurance Producer License of Brian Foster is subject to revocation pursuant to SDCL § 58-33-167(2), (5), and (8).
5. Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.
6. 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 Resident Insurance Producer License of Brian Foster should be revoked.

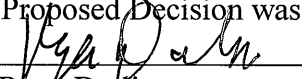
Dated this 17th day of September, 2020.



Ryan Darling, Hearing Examiner
Office of Hearing Examiners
523 East Capitol
Pierre, SD 57501

CERTIFICATE OF SERVICE

I certify on September 14, 2020, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.



Ryan Darling
Office of Hearing Examiners

BRIAN FOSTER
1911 W. 57TH ST., STE 102
SIOUX FALLS, SD 57108-2710

LISA M. HARMON
DIVISION OF INSURANCE
124 S. EUCLID AVE., 2ND FL
PIERRE, SD 57501