

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

**IN THE MATTER OF  
BRADFORD VONWELSER**

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**FINAL DECISION  
INS 20-18**

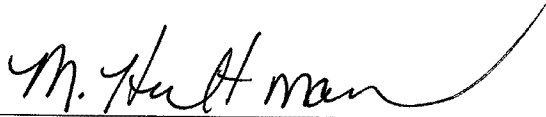
After reviewing the record and the proposed order of the Hearing Examiner in this matter,

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 23, 2020, is adopted in full.

IT IS FURTHER ORDERED that the denial of BRADFORD VONWELSER's application by the Division of Insurance on June 19, 2020.

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   1   day of October, 2020.



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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

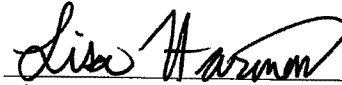
IN THE MATTER OF  
BRADFORD VONWELSER

INS 20-18

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 October 1, 2020.

Dated this 5<sup>th</sup> day of October, 2020.




\_\_\_\_\_  
Lisa M. Harmon  
Legal Counsel  
South Dakota Division of Insurance  
124 S. Euclid Ave., 2<sup>nd</sup> 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:

Bradford VonWelser  
2934 N Wiscomb St.  
Spokane, WA 99207-2066

Dated this 5<sup>th</sup> pday of October, 2020 in Pierre, South Dakota.

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

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

**IN THE MATTER OF**

**INS 20-01/8**

**BRADFORD VONWELSER**

**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 Harmon appeared as counsel for the Division. Bradford VonWelser (VonWelser) appeared pro se and presented his testimony and argument. The Division admitted its Exhibits 1 through 10 into evidence. Appearing as witness for the Division was Compliance Agent Letisha Pederson.

**ISSUE**

Whether the application for Non-Resident Insurance Producer License for Bradford VonWelser should be denied due to: using fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere, (SDCL §58-30-167(8)); not being in good standing to receive an insurance license (ARSD 20:06:01:03); having a criminal history of misdemeanor convictions and crimes of dishonesty (SDCL §58-30-167(8))?

**FINDINGS OF FACT**

1. On January 17, 2020, VonWelser applied to the South Dakota Division of Insurance for a Non-Resident Insurance Producer’s License.
2. On his application to the Division, acknowledged that he had been convicted of a misdemeanor and a felony. He noted that he was attaching documents to the application.
3. On November 9, 2017, VonWelser pled guilty to and was convicted in Idaho of “Controlled Substance – Manufacture or Deliver or Possess with Intent to Manufacture or Deliver”. This is a felony drug conviction for which VonWelser received 30-days in the County Jail, 3-years Unsupervised Probation and 150 hours of Community Service. VonWelser was released early from this probation on September 20, 2019.
4. On July 25, 2014, 19-year old VonWelser received misdemeanor citations for battery-domestic violence without injury against a household member, underage consumption of alcohol, possession of marijuana, and possession of drug paraphernalia. These charges were dismissed.

5. On August 9, 2014, 19-year old VonWelser, received misdemeanor citations for violating a no-contact order, underage possession or use of alcohol, and using a fake identification card. These charges were dismissed.
6. On February 18, 2020, just after the application was processed by the Division, Compliance Agent Pederson contacted VonWelser and requested a written explanation of the charges and convictions.
7. VonWelser misunderstood what Pederson wanted from him and responded that he was unable to get the paperwork due to CoVid. VonWelser now lives in Washington and he thought he had to travel to Idaho to get paperwork from the court system.
8. Pederson explained to VonWelser in several e-mails and letters that she wanted an explanation from VonWelser as to what happened in both 2014 and 2017 that led to the charges and the respective dismissals and conviction.
9. VonWelser prepared and sent hand-written notes regarding each of the charges and conviction. These notes were perfunctory and contained little or no detail. Each of these notes relayed the same message that that time of his life is behind him and that the charges were a wake-up call to the mistakes he was making in his life.
10. Pederson requested more detail from VonWelser as the initial explanations were insubstantial.
11. On April 2, 2020, VonWelser handwrote more detailed explanations regarding each of the charges and the events surrounding them.
12. The felony charge in 2017 was the result of VonWelser selling drugs to an undercover law enforcement informant. VonWelser had been "occasionally" selling drugs to support his personal drug habit. He indicated this "eye-opener" changed his life.
13. On June 19, 2020, the Division of Insurance denied VonWelser's application for a producer license. They cited ARSD 20:06:01:03 and SDCL §§58-30-167(2) &(8).
14. On June 26, 2020, VonWelser appealed the denial of his license and requested a hearing to determine the reasonableness of the decision of the Division.
15. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
16. 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 hearing was requested by VonWelser under SDCL §58-30-168. Because VonWelser does not currently have a license through the Division, the Division only need prove the Division's decision to deny was reasonable. The standard of reasonableness is similar to the preponderance of the evidence standard of proof. "An administrative board "must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" Id. (quoting Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168, 83 S. Ct. 239, 245-46, 9 L. Ed. 2d 207 (1962))." State v. Troy Twp., 2017 S.D. 50, ¶133. The standard is less stringent than a finding by clear and convincing evidence, which is required when a license is revoked or taken away.

The Division argues that due to VonWelser's prior criminal and drug history, it is reasonable for the Division to deny him a license, at this time. They have denied VonWelser's license application pursuant to SDCL 58-30-167 (shown in pertinent part):

The director may ... 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:

(2) Violating any insurance laws or rules, subpoena, or order of the director or of another state's insurance director, commissioner, or superintendent; ...

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere; ...

SDCL §§ 58-30-167 (2) and (8). They have also denied VonWelser's application pursuant to the guidance and the factors listed in the Administrative Rules. These rules regarding "good standing" apply to not only license holders, but also to license applicants. ARSD 20:06:01:03, 20:06:01:04.

20:06:01:03. In determining whether a person is in good standing, the director may consider, but is not limited to, the following factors:

- (1) Suspension, revocation, or denial of license by a state;
- (2) Administrative or judicial action pending in any state and the nature of that action;
- (3) Complaints, nature and number, against the person;
- (4) False statements, oral or written, to the division, including omissions;
- (5) Neglect of financial or fiduciary responsibilities;
- (6) Conduct which is unlawful, dishonest, deceitful, or fraudulent;

- (7) Evidence of drug or alcohol abuse or dependency; and
- (8) Acting as an agent without being licensed.

In reviewing these factors the director may consider the recentness of the action or conduct overall, any mitigating circumstances, evidence of rehabilitation, and the person's cooperation.

ARSD § 20:06:01:03

20:06:01:04. Determination of denial of license. In determining whether a license application should be denied or why a prior revocation or refusal to renew a license should not bar licensure, the director may, in addition to the factors in § 20:06:01:03, consider the following factors:

- (1) Restitution made;
- (2) Any unresolved complaints;
- (3) Employment record during interim; and
- (4) Length of time since revocation or refusal.

ARSD 20:06:01:04.

I do not find that VonWelser's application for the license to the Division was missing items, however, I do find his initial explanation to the Division regarding his prior criminal history to be deficient. It took a number of e-mails and letters from the Division for VonWelser to be more complete in his explanations. Each state has different requirements for license holders to meet and South Dakota's requirements are likely different than other states'. An initial denial of licensure does not mean that VonWelser will never be able to receive a South Dakota license.

The factors listed in ARSD 20:06:01:03 are supported by the evidence moreso than those listed in SDCL 58-30-167. VonWelser is not a license holder in this state and there was no evidence that he committed any insurance crimes in other states. Furthermore, there is no evidence that VonWelser used dishonest practices in his business practices in this state or elsewhere. There is sufficient evidence to find that VonWelser has a history of drug or alcohol abuse, deceitful actions (fake ID), and relatively recent convictions. VonWelser is not "in good standing" under the South Dakota Division of Insurance Administrative Rules.

The actions taken by the Division were based upon the facts of the situation and the factors set out in rule and law. The Division's decision was reasonable and will not be overturned.

#### **CONCLUSIONS OF LAW**

1. The Division has jurisdiction over the license requested of VonWelser 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, 58-30-168.

2. The Division bears the burden of establishing reasonableness of their decision.
3. The Division established that their denial of the license to VonWelser was reasonable in light of VonWelser's prior criminal activity.
4. Under ARSD 20:06:01:03 and 20:06:01:04, the Division may deny a license if certain factors are taken into consideration.
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 Division has proven that their decision to deny a non-resident producer's license to Bradford VonWelser was reasonable under the factors set out in statute and law. It is my recommended Decision that the denial of licensure to Bradford VonWelser by the Insurance Division be affirmed.

Dated this 23<sup>rd</sup> day of September, 2020.



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



**CERTIFICATE OF SERVICE**

I certify on September 23, 2020 at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.



Office of Hearing Examiners

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