

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

**IN THE MATTER OF  
JOSE LUIS GOMEZ  
LICENSEE**

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**FINAL DECISION  
INS 20-32**

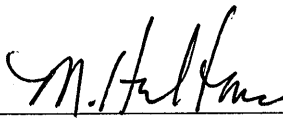
After reviewing the record and the proposed order of the Hearing Examiner in this matter,

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 February 2, 2021, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-Resident Insurance Producer License of Jose Luis Gomez 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 22 day of February, 2021.



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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  
JOSE LUIS GOMEZ

INS 20-32

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 February 22, 2021.

Dated this 25<sup>th</sup> day of February, 2021.



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Jacob R. Dempsey  
Insurance Division Legal Counsel  
South Dakota Division of Insurance

**CERTIFICATE OF SERVICE**

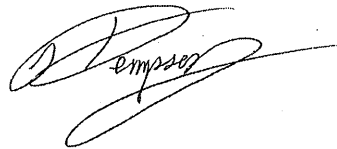
I, Jacob Dempsey, the undersigned, do hereby certify that on this 25<sup>th</sup> day of February, 2021 a true and correct copy of the Proposed Findings of Fact, Conclusions of Law, and Decision, and Final Decision with respect to the above-entitled action was sent U.S. Certified Mail thereon, to the following:

Jose Luis Gomez  
966 Dartmouth Dr.  
Wheaton, IL 60189-6126

Jose Luis Gomez  
35 E. Ash St.  
Lombard, IL 60148

Jose Luis Gomez  
445 State St.  
Fremont, MI 49413

Dated this 25<sup>th</sup> day of February, 2021.



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Jacob R. Dempsey  
Insurance Division Legal Counsel  
South Dakota Division of Insurance  
124 S. Euclid Ave., 2<sup>nd</sup> Floor  
Pierre, SD 57501

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

**IN THE MATTER OF  
JOSE LUIS GOMEZ**

**INS 20-32  
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on January 29, 2021, pursuant to an Amended Notice of Hearing issued by the South Dakota Division of Insurance (“Division”) on January 20, 2021. Jacob Dempsey appeared as counselor for the Division. Jose Luis Gomez did not appear in person or through counsel. The Division admitted its Exhibits A through L into evidence and moved that the Hearing Examiner enter these Proposed Findings of Fact, Conclusions of Law, and Proposed Decision as a default disposition in this contested case.

**ISSUE**

Whether the Non-Resident Insurance Producer License of Jose Luis Gomez should be revoked for violations of SDCL 167(1), (2), (3), (8), and (9), SDCL 58-30-193, and SDCL 58-30-66(1) SDCL

**FINDINGS OF FACT**

1. Jose Luis Gomez (“Respondent”) holds a non-resident insurance producer license (“license”) in South Dakota.
2. On April 19, 2019, the Division issued a Warning Letter to Respondent for violating SDCL 58-30-167(1) and (3) by providing incorrect information on a licensing application and trying to obtain a license through misrepresentation. The Division warned that the violations were grounds for a revocation of Respondent’s license, but that it would be issuing a warning instead of pursuing revocation.
3. The Division advised Gomez that it would consider the violations that gave rise to the April 19, 2020 Warning Letter at any future revocation proceedings.
4. On November 7, 2019, Respondent was the subject of a Louisiana administrative action regarding his insurance license in that state. The result of that action was Respondent’s Louisiana license was suspended.
5. Respondent reported the 2019 Louisiana action to the Division, but did so after the 30 day deadline required by SDCL 58-30-193 had passed. The Division therefore issued a second Warning Letter to Respondent on January 29, 2020.
6. The Division’s second Warning Letter explained that the untimely reporting was grounds for revocation of Respondent’s license, but that it would issue a warning

instead of pursuing revocation. The Division advised that any further untimely reporting would result in revocation being pursued.

7. Respondent was the subject of a November 26, 2019 administrative action in Virginia that resulted in the revocation of his Virginia license. Respondent did not report this action to the Division.
8. Respondent was the subject of a January 2, 2020 administrative action in Washington that resulted in the revocation of his Washington license. Respondent did not report this action to the Division.
9. Respondent was the subject of an April 1, 2020 administrative action in California that resulted in the revocation of his California license. Respondent did not report this action to the Division.
10. Respondent was the subject of an April 9, 2020 administrative action in Indiana that resulted in the suspension of his Indiana license. Respondent did not report this action to the Division.
11. Respondent was the subject of a November 26, 2019 administrative action in Wisconsin that resulted in a fine. Respondent did not report this action to the Division.
12. The Division attempted to contact Respondent about his administrative actions by writing him on March 6, 2020. The Division never received a response to its correspondence.
13. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
14. 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.

### **STANDARD OF REVIEW**

This case involves a request by the Division to revoke a South Dakota Non-Resident Insurance Producer's License. "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). The South Dakota 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 licensees to respond to the Division and supply requested documents within twenty days from the receipt of a request. SDCL 58-30-167 provides:

The director may . . . revoke or refuse to continue, any license issued under this chapter . . . after a hearing . . . 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 . . .
- (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;
- (9) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory . . .

### CONCLUSIONS OF LAW

1. The Division has jurisdiction over Jose Luis Gomez 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. *In re Zar*, 434 N.W.2d at 602.
3. The Division established by clear and convincing evidence that Jose Luis Gomez violated SDCL 58-30-193 by failing to report various administrative actions.

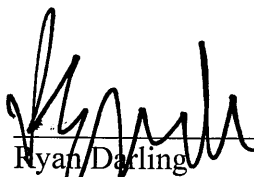
4. The Division established by clear and convincing evidence that Jose Luis Gomez violated SDCL 58-33-66(1) by failing to respond to the Division's inquiries.
5. The Division established by clear and convincing evidence that Jose Luis Gomez violated SDCL 167(1), (2), (3), (8), and (9) by providing incorrect information in a licensing application, violating the insurance laws of another state, attempting to obtain a license through misrepresentation, using dishonest practices, demonstrating incompetence and untrustworthiness in the conduct of business in this state or elsewhere, and having a producer license revoked or suspended in another state.
6. The Division established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producer License of Jose Luis Gomez is subject to revocation under SDCL 58-30-167.
7. The Division established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producer License of Jose Luis Gomez should be revoked under SDCL 58-30-167.
8. Any additional Conclusions of Law included in the Standard of Review section of this decision are incorporated herein by reference.
9. 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 Jose Luis Gomez should be revoked as a default disposition to this case.

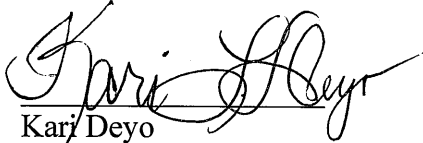
Dated this 7 day of February, 2021.

  
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Ryan Darling

Office of Hearing Examiners  
523 East Capitol Ave  
Pierre, SD 57501

**CERTIFICATE OF SERVICE**

I, the undersigned, do certify that on the 2nd day of the month of February, 2021, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.

  
Kari Deyo

Jose Luis Gomez  
966 Dartmouth Dr.  
Wheaton, IL 60189-6126

Jacob R. Dempsey  
South Dakota Division of Insurance  
124 S. Euclid Ave., 2<sup>nd</sup> Floor  
Pierre, SD 57501