

STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION

IN THE MATTER OF
BRIAN HORNER

INS 21-15

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 9, 2021.

Dated this 9th day of September, 2021.



Jacob R. Dempsey
Insurance Division Legal Counsel

CERTIFICATE OF SERVICE

I, Jacob Dempsey, the undersigned, do hereby certify that on this 9th day of September, 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:

Brian Horner
1073 Landeco Ln Apt 6
Grand Forks, ND 58201

also sent via email to: vonhorns@yahoo.com

Dated this 9th day of September, 2021.



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

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

**IN THE MATTER OF
BRIAN HORNER
LICENSEE**

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**FINAL DECISION
INS 21-15**

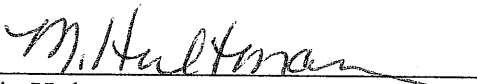
After reviewing the record and the Proposed Decision of the Hearing Examiner in this matter,

IT IS HEREBY ORDERED that pursuant to SDCL 1-26D-4, the Hearing Examiner's Proposed Findings of Fact, Conclusions of Law and Proposed Decision, dated August 27, 2021, are adopted in full.

IT IS FURTHER ORDERED that the South Dakota nonresident insurance producer license of Brian Horner will hereby be revoked.

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

Dated this 9 day of September, 2021.



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

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

**IN THE MATTER OF
BRIAN HORNER**

**INS 21-15
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on August 25, 2021, pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance (“Division”) on July 8, 2021. Jacob Dempsey appeared as counselor for the Division. Brian Horner did not appear in person or through counsel. The Division admitted its Exhibits A through E into evidence and requested that the Hearing Examiner enter these Proposed Findings of Fact, Conclusions of Law, and Proposed Decision as a disposition in this contested case.

ISSUE

Whether the nonresident insurance producer license of Brian Horner should be revoked for violations of SDCL 167(2), (8), and (9), SDCL 58-30-193, and SDCL 58-33-66(1).

FINDINGS OF FACT

1. Brian Horner (“Respondent”) holds a nonresident insurance producer license in South Dakota.
2. Respondent was the subject of a August 11, 2020 administrative action in North Dakota that resulted in the denial of his license application and the issuance of a conditional license. Respondent did not report this action to the Division.
3. The Division attempted to contact Respondent about his unreported administrative action by writing him on September 21, 2020. The Division never received a response to its correspondence.
4. The Division again attempted to contact Respondent about his unreported administrative action by writing him on October 22, 2020. In this letter, the Division also addressed Respondent’s failure to respond. The Division again never received a response.
5. Any additional findings of fact included in the Conclusions of Law section of this decision are incorporated herein by reference.
6. 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 nonresident 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 Setliff*, 2002 S.D. 58, ¶ 13, 645 N.W.2d 601, 605. "The 'clear and convincing' standard lies somewhere between 'the rule in ordinary civil cases and requirements of our criminal procedure, that is, it must be more than a mere preponderance but not beyond a reasonable doubt.'" *Id.* (citing *Watertown Coop. Elevator Association v. S.D. Dept. of Rev.*, 2001 SD 56, ¶ 10, 627 N.W.2d 167, 171)

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:

- (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;
- (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 Brian Horner 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 Setliff*, 2002 S.D. at ¶ 13, 645 N.W.2d at 605.
3. The Division established by clear and convincing evidence that Brian Horner violated SDCL 58-30-193 by failing to report a North Dakota administrative action.


4. The Division established by clear and convincing evidence that Brian Horner violated SDCL 58-33-66(1) by failing to respond to the Division's correspondence.
5. The Division established by clear and convincing evidence Brian Horner violated SDCL 167(2), (8), and (9) by violating the rules of the Director of Insurance, violating insurance laws of another state, using dishonest practices, demonstrating incompetence and untrustworthiness in the conduct of business, and having a producer license denied in another state.
6. The Division established by clear and convincing evidence that the South Dakota nonresident insurance producer license of Brian Horner is subject to revocation under SDCL 58-30-167.
7. The Division established by clear and convincing evidence that the South Dakota nonresident producer license of Brian Horner should be revoked under SDCL 58-30-167.
8. Any additional conclusions of law included in the Standard of Review or Findings of Fact 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 and conclusions of law, the Hearing Examiner enters the following:

PROPOSED DECISION

The South Dakota nonresident insurance producer license of Brian Horner should be revoked as a disposition to this case.

Dated this 27th day of August, 2021.



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