

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

**IN THE MATTER OF  
JACOB WORTHLEY,  
LICENSEE**

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**FINAL DECISION  
INS 13-32**

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 June 5, 2014, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of Jacob Worthley 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 11<sup>th</sup> day of June, 2014.



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Marcia Hultman, Secretary  
South Dakota Department of Labor and Regulation  
700 Governors Drive  
Pierre, SD 57501

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

**IN THE MATTER OF  
JACOB WORTHLEY**

**PROPOSED DECISION  
DLR/INSURANCE 13-32**

An administrative hearing in the above matter was held on November 25, 2013. Jacob Worthley (hereinafter sometimes referred to as "Worthley" or "Licensee") failed to appear. Frank Marnell appeared as counsel for the South Dakota Department of Labor, Division of Insurance (hereinafter sometimes referred to as "Division"). The matter was tape recorded. There is no written transcript of the tape; therefore no citation to page number will be included. Exhibits 1 through 7 were admitted and will be denoted by EX followed by the appropriate number.

**ISSUE**

Whether the Non-Resident Insurance Producer License of Jacob Worthley should be revoked due to his failure to respond in a timely manner to the South Dakota Division of Insurance inquiries dated April 22, 2013 and May 22, 2013 and due to his failure to update his address with the Division within thirty days of the change. (SDCL 58-33-66, SDCL 58-33-68, SDCL 58-30-157, SDCL 58-30-167(2) and (8), 58-33-66 and 58-33-68.

**FINDINGS OF FACT**

I.

At the time of the hearing Jacob Worthley possessed an active Non-Resident Insurance Producer License from the State of South Dakota. Worthley became licensed in the State of South Dakota on May 10, 2012. His license will expire on December 31, 2014. (EX 1)

II.

Heather Lang, Compliance Agent for the South Dakota Division of Insurance obtained information from the Insurance Fraud Unit of the South Dakota Division of Criminal Investigation that Jacob Worthley had sold the reporting party a health insurance policy. The reporting party stated that she had paid him with a check in the amount of \$1561.00. She had later found out that the insurance company had never received the payment nor had the reporting party received a policy. (EX 2)

III.

Ms. Lang wrote Worthley a letter on April 22, 2013 requesting he provide the Division a copy of the reporting party's file with all documents pertaining to her Washington National Life Insurance Policy. He was to further explain if a personal check was given to him for the health policy and if he ever deposited the check. In addition he was to provide a copy of the bank records from all the insurance business he transacted in South Dakota. (EX 3) He was given twenty days upon receipt to respond. The April 22, 2013 letter was mailed via first class mail to

Worthley at 1912 W. 22<sup>nd</sup> Street, Sioux Falls, SD 57105. This was the address Ms. Lang obtained from Worthley's individual information inquiry. (EX 1 & 3) Ms. Lang did not receive a response.

#### IV.

Ms. Lang also sent a letter to the Washington National Insurance Company on April 22, 2013 requesting a copy of Donna Meyer's file. The insurance company was to include a copy of all bank transactions between Worthley and Washington National. They were also to provide a list of South Dakota business written by the insurance producer in the past year. The list was to include the policyholder name, address, type of policy, policy effective/inception date and policy termination/cancellation date. (EX 4)

#### V.

Ms. Lang sent another letter to Worthley on May 22, 2013 requesting he provide the Division the previously requested documents. He was given twenty days upon receipt to respond. He was also informed that the letter served as official notice pursuant to SDCL 58-33-68 that he was in violation of SDCL 58-33-66(1). The May 22, 2013 letter was mailed via first class mail and first class certified mail to Worthley at 1912 W. 22<sup>nd</sup> Street, Sioux Falls, SD 57105. (EX 6 & 7) The letter was accepted in Akron, PA on May 22, 2013. Ms. Lang did not receive a response.

#### V.

Notification from the United States Postal Service in a Form 3547 indicated that Worthley had a new address of 1808, S. Duluth Avenue, Sioux Falls, SD 57105-2807. (EX 8) Worthley had never notified the Division of this address.

#### VI.

The reports provided regarding Worthley showed that he took the money from the reporting party and never turned it in to the insurance company.

#### VII.

Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.

#### VIII.

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 of Insurance to revoke the South Dakota Nonresident Insurance Producer's License of Jacob Worthley. As a consequence of the potential

loss of Petitioner'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). Mr. Worthley did not appear at the hearing.

Heather Lang, Compliance Agent for the South Dakota Division of Insurance obtained information from the Insurance Fraud Unit of the South Dakota Division of Criminal Investigation that Jacob Worthley had sold the reporting party a health insurance policy. The reporting party stated that she had paid him with a check in the amount of \$1561.00. She had later found out that the insurance company had never received the payment nor had the reporting party received a policy

Worthley failed to respond in a timely fashion to inquiries made by the Division (see Findings of Fact) regarding his alleged fraudulent behavior. This failure to respond constitutes a violation of SDCL 58-33-66(1) which states in pertinent part as follows:

**SDCL 58-33-66. Unfair or deceptive insurance practices.** Unfair or deceptive acts or practices in the business of insurance include the following:

- (1) Failing to respond to an inquiry from or failing to supply documents requested by the Division of Insurance within twenty days of receipt of such inquiry or request;...

Furthermore, Worthley did not inform the Division of his address change. SDCL 58-30-157 states that "[A] licensee shall inform the director in a form or format prescribed by the director of a change of address within thirty days of the change."

In deciding to revoke an insurance producer's license the Division looks to SDCL 58-33-68 for guidance as follows:

**SDCL 58-33-68.** The Division of Insurance, in interpreting and enforcing §§ 58-33-66 and 58-33-67, shall consider all pertinent facts and circumstances to determine the severity and appropriateness of action to be taken in regard to any violation of §§ 58-33-66 to 58-33-69, inclusive, including but not limited to, the following:

- (1) The magnitude of the harm to the claimant or insured;
- (2) Any actions by the insured, claimant, or insurer that mitigate or exacerbate the impact of the violation;
- (3) Actions of the claimant or insured which impeded the insurer in processing or settling the claim;
- (4) Actions of the insurer which increase the detriment to the claimant or insured. The director need not show a general business practice in taking administrative action for these violations.

However, no administrative action may be taken by the director for a violation of this section unless the insurer has been notified of the violation and refuses to take corrective action to remedy the situation. (emphasis added)

Any administrative action taken by the director shall be pursuant to the provisions of chapter 1- 26.

The Division also considers SDCL 58-30-167 for causes for revocation, refusal or renewal of license. The Division has alleged violations of subsection (2) & (8) of SDCL 58-30-167. Those subsections are as follows:

**58-30-167. Causes for revocation, refusal to issue or renew license, or for monetary penalty-- Hearing--Notice.** The director may suspend for not more than twelve months, or may revoke or refuse to continue, any license issued under this chapter, or any license of a surplus lines broker after a hearing. Notice of such hearing and of the charges against the licensee shall be given to the licensee and to the insurers represented by such licensee or to the appointing agent of a producer at least twenty days before the hearing. The director may suspend, revoke, or 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;...

The Division proved by clear and convincing evidence that Worthley violated SDCL 58-30-157, 58-30-167 (2) & (8) and 58-33-66(1). Applying the law to the Findings of Fact it is clear that the Non-Resident Insurance Producer License of Jacob Worthley should be revoked.

## CONCLUSIONS OF LAW

### I.

The Division of Insurance has jurisdiction over the parties and subject matter of this hearing pursuant to Title 58 of the South Dakota Codified Laws. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to the provisions of SDCL 1-26D-4.

### II.

The Division of Insurance bears the burden of establishing the alleged statutory violations by clear and convincing evidence.

### III.

Pursuant to SDCL 58-30-170 the "...director retains the authority to enforce the provisions of and impose any penalty or remedy authorized by §§ 58-30-141 to 58-30-195, inclusive, and Title 58 against any person who is under investigation for or charged with any violation of §§ 58-30-141 to 58-30-195, inclusive, or Title 58 even if the person's license or registration has been surrendered or has lapsed by operation of law."

### IV.

The Division of Insurance established by clear and convincing evidence that Jacob Worthley violated SDCL 58-30-157.

### V.

The Division of Insurance established by clear and convincing evidence that Jacob Worthley violated SDCL 58-30-167(2) and (8).

### VI.

The Division of Insurance established by clear and convincing evidence that Jacob Worthley violated SDCL 58-33-66(1).

### VII.

The Division of Insurance established by clear and convincing evidence that the South Dakota Nonresident Insurance Producers License of Jacob Worthley is subject to revocation.

VIII.

The Division of Insurance established by clear and convincing evidence that the South Dakota Nonresident Insurance Producers License of Jacob Worthley should be revoked.

IX.

Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.

X.

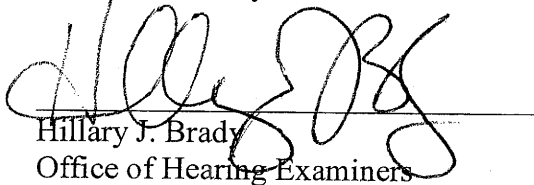
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

Based on the above Findings of Fact, Reasoning and Conclusions of Law, the Hearing Examiner enters the following:

**PROPOSED ORDER**

The South Dakota Nonresident Insurance Producers License of Jacob Worthley should be revoked.

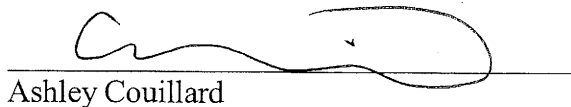
Dated this 5<sup>th</sup> day of June 2014



Hillary J. Brady  
Office of Hearing Examiners  
523 E. Capitol Avenue  
Pierre, South Dakota 57501

**CERTIFICATE OF SERVICE**

I certify that on June 6, 2014 at Pierre, South Dakota, a true and correct copy of this Proposed Order was mailed to each of the parties listed below.



Ashley Couillard

JACOB WORTHLEY  
1808 S DULUTH AVENUE  
SIOUX FALLS SD 57105

FRANK MARNELL  
ATTORNEY FOR THE DIVISION  
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PIERRE SD 57501