

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

**IN THE MATTER OF
VALERIE DIAMOND
LICENSEE**

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**FINAL DECISION
INS 14-19**

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 Order, dated January 6, 2015 is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of Valerie Diamond 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 8th day of January 2015



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
VALERIE DIAMOND**

**PROPOSED ORDER
DLR/INSURANCE 14-19**

An administrative hearing in the above matter was held on December 10, 2014. Valerie Diamond (hereinafter sometimes referred to as "Diamond" or "Licensee") failed to appear. Mr. Brendan Stratton appeared as counsel for the 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 3 were admitted and will be denoted by EX followed by the appropriate number.

ISSUE

Whether the Non-Resident Insurance Producer License of Valerie Diamond should be revoked because she sold a health insurance policy to a South Dakota resident without a license to sell this type of policy in South Dakota. SDCL 58-30-143; 58-30-167(2) and (8)

FINDINGS OF FACT

I.

Valerie Diamond possesses an active Non-Resident Insurance Producer License from the State of South Dakota. Ms. Diamond was originally licensed in the State of South Dakota on December 11, 2013. Her license is scheduled to expire on August 31, 2016. (EX 1)

II.

On December 4, 2013 Ms. Diamond sold health insurance coverage to applicants in Sioux Falls, SD. (EX 2) This application was signed and dated December 4, 2013 by both the applicants and Ms. Diamond. (EX 2)

III.

Ms. Diamond was not licensed to sell insurance in the state of South Dakota on December 4, 2013. She submitted her non-resident producer's application on December 11, 2013. (EX 3)

IV.

The investigation by the Division was originally undertaken by Christy Schilling who has since left the Division. Mr. Tony Dorschner, compliance agent for the Division, investigated the matter upon the departure of Schilling and he testified at the hearing.

V.

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

VI.

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 Non-Resident Insurance Producer's License of Valerie Diamond. 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). Ms. Diamond did not appear at the hearing.

Pursuant to SDCL 58-30-143 the sale of insurance is limited to licensed lines as follows:

SDCL 58-30-143. Sale, solicitation or negotiation limited to licensed line of insurance only. No person may sell, solicit, or negotiate insurance in this state for any line of insurance unless the person is licensed for that line of authority in accordance with §§ 58-30-141 to 58-30-195, inclusive.

The Division considers SDCL 58-30-167 in reviewing causes for revocation. Ms. Diamond violated subsections (2) and (8) of SDCL 58-30-167 which are set forth in pertinent part below:

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;

Applying the law to the Findings of Fact set forth above, it is clear that the Non-Resident Insurance Producer License of Valerie Diamond 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 Notice of Hearing was issued on October 29, 2014 by the South Dakota Division of Insurance.

III.

Neither Valerie Diamond nor anyone on her behalf appeared at the scheduled and noticed time of the hearing.

IV.

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

V.

The Division of Insurance established by clear and convincing evidence that Valerie Diamond violated SDCL 58-30-143.

VI.

The Division of Insurance established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producers License of Valerie Diamond is subject to revocation pursuant to SDCL 58-30-167(2) and (8).

VII.

The Division of Insurance established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producers License of Valerie Diamond should be revoked.

VIII.

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

IX.

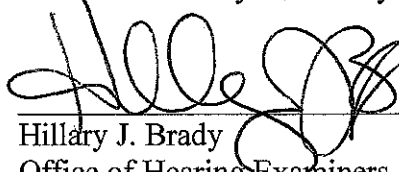
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

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

PROPOSED ORDER

The South Dakota Non-Resident Insurance Producers License of Valerie Diamond should be revoked.

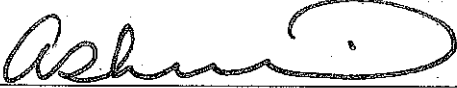
Dated this 6th day of January 2015



Hillary J. Brady
Office of Hearing Examiners
523 E. Capitol Avenue
Pierre, South Dakota 57501-1538

CERTIFICATE OF SERVICE

I certify that on January 6, 2015, at Pierre, South Dakota, a true and correct copy of this Proposed Order was mailed to each of the parties listed below.



Ashley Couillard

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