

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

IN THE MATTER OF)	
CHRISTINA JARAMILLO)	FINAL DECISION
LICENSEE)	INS 14-20

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 Christina Jaramillo 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
CHRISTINA JARAMILLO**

**PROPOSED DECISION
DLR/INSURANCE 14-20**

An administrative hearing in the above matter was held on December 10, 2014. Christina Jaramillo (hereinafter sometimes referred to as "Jaramillo" or "Licensee") failed to appear. Benjamin Eirikson 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 5 were admitted and will be denoted by EX followed by the appropriate number.

ISSUE

Whether the Non-Resident Insurance Producer License of Christina Jaramillo should be revoked due to her failure to respond in a timely manner to the South Dakota Division of Insurance inquiries dated June 2, 2014 and July 8, 2014. (SDCL 58-33-66(1) and SDCL 58-30-167(2) & (9), 58-30-157, 58-30-193, 58-30-170)

FINDINGS OF FACT

I.

Ms. Jaramillo originally became licensed in the State of South Dakota on November 5, 2013. (EX 1) Her license expired on September 30, 2014 prior to this hearing being scheduled. (EX 1)

II.

Christy Schilling, a compliance agent for the South Dakota Division of Insurance, obtained information that Jaramillo had been terminated for cause by Golden Rule, a United-Healthcare Company for deliberately omitting essential health history on an application for insurance. In addition, Golden Rule sent a letter dated March 11, 2014 notifying the Division. (EX 2)

III.

Ms. Schilling wrote Jaramillo a letter dated June 2, 2014 requesting she provide the Division, among other things, an explanation regarding why her appointment with Golden Rule Insurance Company was terminated for cause. She was also asked to include in her explanation whether any South Dakota consumers were subject to the acts related to the "for cause" termination. (EX 3) Jaramillo was given twenty days upon receipt to respond. (EX 3) This letter was mailed June 2, 2014 to Jaramillo at 508 N. Nevada St., C, Oceanside, CA, 92054. This was the address Ms. Schilling obtained from Jaramillo's individual information inquiry. (EX 1 & 3)

IV.

The June 2, 2014 letter was returned to the Division with notification that Jaramillo had a new address of 1522 Enchantment Ave., Vista, CA, 92081-5476

V.

Matthew Ballard, current Market Coordinator, prior Compliance Agent, for the South Dakota Division of Insurance, took over the matter as Ms. Schilling left the Division. Mr. Ballard sent a second letter to Jaramillo on July 8, 2014 wherein Jaramillo was given notice that she failed to respond to Schilling's June 2, 2014 letter and that she was in violation of SDCL 58-33-66(1) (failing to respond to the Division within twenty days of receipt). She once again was given twenty days to respond. (EX 4) She was also given notice that if she failed to provide the requested information an administrative action would be pursued which may include the revocation of her license. (EX 4) The letter was sent via first class mail and certified mail to Jaramillo at the address listed on her Individual Information Inquiry on file with the Division. (EX 1) That address is 508 N. Nevada St., C, Oceanside, CA, 92054. (EX 1 & 4) The letter sent via certified mail was returned to the Division by the postal service with the forwarding address the Division was earlier provided from the Post Office. (EX 4)

VI.

Mr. Ballard received no response to the attempts to contact Jaramillo in June and/or July of 2014.

VII.

A Summary Order from Kansas dated April 15, 2014 showed that Ms. Jaramillo's non-resident insurance agent's license from that state was revoked. (EX 5) This final order was to be entered on May 5, 2014. A copy of the Final Order was not submitted as an exhibit.

VIII.

Any additional Findings of Fact 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, 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 Christina Jaramillo. 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. Jaramillo did not appear at the hearing.

Even though Jaramillo's license expired on September 30, 2014, 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."

Christy Schilling, a compliance agent for the South Dakota Division of Insurance, obtained information that Jaramillo had been terminated for cause by Golden Rule, a United-Healthcare Company for deliberately omitting essential health history on an application for insurance. In addition, Golden Rule sent a letter dated March 11, 2014 notifying the Division. (EX 2)

In addition to the termination for cause, Jaramillo then failed to respond in a timely fashion to inquiries made by the Division (letters dated June 2, 2014 and July 8, 2014) regarding the Golden Rule termination for cause. 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;...

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.

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

Jaramillo was notified of the violation and refused to respond to the Division's letter of inquiry.

While not listed as a violation on the Notice of Hearing Jaramillo did not notify the Division of her change of address as is required by SDCL 58-30-157 which 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."

The Division also considers SDCL 58-30-167 for causes for revocation, refusal or renewal of license. The Division has alleged violations of subsections (2) and (9) 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;
- (9) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or

territory;

The Division proved by clear and convincing evidence that Jaramillo violated SDCL 58-30-167(2) & (9) and 58-33-66(1).

Applying the law to the Findings of Fact it is clear that the Non-Resident Insurance Producer License of Christina Jaramillo 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.

The Division of Insurance established by clear and convincing evidence that Christina Jaramillo violated SDCL 58-30-167 (2) & (9).

IV.

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

V.

The Division of Insurance established by clear and convincing evidence that Christina Jaramillo was involved in an administrative action in Kansas.

VI.

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

VII.

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

VIII.

Pursuant to SDCL 58-30-170 the director of the Division of Insurance retains the authority to enforce the provisions of Title 58 even if the person's license or registration has been surrendered or has lapsed by operation of law.

IX.

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

X.

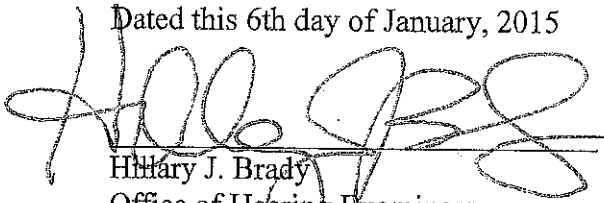
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

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 Christina Marie Jaramillo should be revoked.

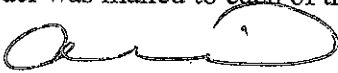
Dated this 6th day of January, 2015



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

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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OCEANSIDE CA 92054

CHRISTINA JARAMILLO
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VISTA CA 92081-5476

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