

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

**IN THE MATTER OF
NADINE PETRARCA**

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)

**FINAL DECISION
INS 16-12**

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 Decision, dated December 19, 2016 is adopted in full.

IT IS FURTHER ORDERED the South Dakota nonresident insurance producer license of Nadine Petrarca is hereby 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 28 day of December, 2016.



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
NADINE PETRARCA**

**INS 16-18
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on December 16, 2016, pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance (“Division”) on November 22, 2016. Frank Marnell and Benjamin Eirikson appeared as counselors for the Division. Nadine Patrarca did not appear, either in person or through counsel. The Division admitted its Exhibits 1 through 7 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 Nadine Petrarca should be revoked due to failing to timely respond to the Division; failing to timely report an administrative action(s) to the Division; for demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere; and for having a revocation or suspension action(s) in another state(s) in violation of SDCL 58-30-167(2), (8), and (9), 58-30-193, 58-33-66, and 58-33-68.

FINDINGS OF FACT

1. Nadine Patrarca was licensed by the Division as an insurance producer on April 10, 2014. The license is currently active. (Exhibit 1).
2. Nadine Patrarca’s appointment was terminated by an insurer for cause, which the Division investigated. (Exhibit 2).
3. The Division sent inquiries to Nadine Patrarca at the address of record regarding licensure matters. (Exhibit 3).
4. Nadine Patrarca did not respond to the Division’s inquiries. (Exhibit 3).
5. Nadine Patrarca was the subject of administrative actions in other jurisdictions. (Exhibits 4 through 7).
6. Nadine Patrarca had her insurance license revoked in January 2016 by the State of Washington. (Exhibit 4).
7. Nadine Patrarca had her insurance license revoked and a fine imposed in December 2015 by the State of Minnesota. (Exhibit 5).

8. Nadine Patrarca had her insurance license suspended in November 2015 by the State of Indiana. (Exhibit 6).
9. Nadine Patrarca had her insurance license revoked in July 2015 by the State of Kentucky. (Exhibit 7).
10. Nadine Patrarca did not report the administrative actions to the Division.
11. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
12. 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 to revoke the South Dakota Non-Resident Insurance Producer's License of Nadine Patrarca. As a consequence of the potential loss of Respondent'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).

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. In addition, the Division considers SDCL 58-30-167 (shown in pertinent part) as follows:

The director may... revoke or refuse to continue, any license issued under this chapter... after a hearing... The director may... revoke... an insurance producer's... 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;

The evidence indicates that Nadine Patrarca violated the insurance laws of another jurisdiction, failed to report that action, and failed to respond to Division inquiries regarding the action. Applying the law to the Findings of Fact it is clear the Non-Resident Insurance Producer License of Nadine Patrarca is subject to revocation and should be revoked.

CONCLUSIONS OF LAW

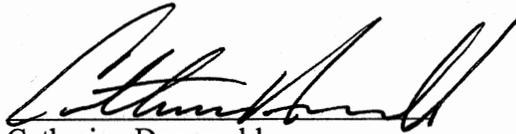
1. The Division has jurisdiction over Nadine Patrarca and the subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to SDCL 1-26D-4.
2. The Division bears the burden of establishing the alleged statutory violations by clear and convincing evidence.
3. The Division established by clear and convincing evidence that Nadine Patrarca violated SDCL § 58-30-193 by failing to report various administrative actions.
4. The Division established by clear and convincing evidence that Nadine Patrarca violated SDCL § 58-33-66 by failing to respond to the Division's inquiries.
5. The Division established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producer License of Nadine Patrarca is subject to revocation.
6. The Division established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producer License of Nadine Patrarca should be revoked.
7. Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.
8. 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 Nadine Patrarca should be revoked.

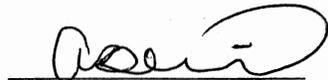
Dated this 19th day of December, 2016.



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

CERTIFICATE OF SERVICE

I certify on December 20, 2016, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.



Ashley Couillard

Nadine Patrarca
1140 Main Ave.
Warwick, RI 02886

Frank A. Marnell
South Dakota Division of Insurance
124 S. Euclid Ave., 2nd Floor
Pierre, SD 57501