

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

**IN THE MATTER OF  
CAPITAL GUARDIAN LLC  
LICENSEE**

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**FINAL DECISION  
INS 18-39**

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 November 30, 2018, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Business Entity License of Capital Guardian LLC 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 5 day of December, 2018.



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

STATE OF SOUTH DAKOTA  
DEPARTMENT OF LABOR AND REGULATION

IN THE MATTER OF  
CAPITAL GUARDIAN LLC  
CORP.

INS 18-39

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 December 5, 2018.

Dated this 6th day of December, 2018.



Lisa M. Harmon  
Legal Counsel  
South Dakota Division of Insurance  
124 S. Euclid Ave., 2<sup>nd</sup> Floor  
Pierre, SD 57501  
(605) 773-3563

## CERTIFICATE OF SERVICE

I, Lisa Harmon, the undersigned, do hereby certify that on the date shown below, 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:

Capital Guardian LLC  
1355 Greenwood Cliff  
Suite 250  
Charlotte, NC 28204

Jackson National Life Ins. Co.  
PO Box 24068  
Lansing, MI 48951

Dated this 6th day of December, 2018 in Pierre, South Dakota.



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Lisa M. Harmon  
Legal Counsel  
South Dakota Division of Insurance  
124 S. Euclid Ave., 2<sup>nd</sup> Floor  
Pierre, SD 57501  
(605) 773-3563

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

**IN THE MATTER OF  
CAPITAL GUARDIAN LLC**

**INS 18-39  
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on November 30, 2018, pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance ("Division") on October 23, 2018. Lisa M. Harmon appeared as counselor for the Division. CAPITAL GUARDIAN LLC (hereinafter referred to as "CAPITAL GUARDIAN") did not appear, either in person or through counsel. The Division admitted its Exhibits 1 through 5 into evidence and moved that the Hearing Examiner enter these Proposed Findings of Fact, Conclusions of Law, and Proposed Decision as a default disposition to this contested case.

**ISSUE**

Whether the Business Entity License of CAPITAL GUARDIAN should be revoked due to failing to timely respond to the Division; failing to timely report an administrative action(s) to the Division; having its license revoked in another jurisdiction, and for violating the insurance laws of South Dakota, in violation of SDCL 58-30-167(2) and (9), 58-30-193, 58-33-66, and 58-33-68.

**FINDINGS OF FACT**

1. CAPITAL GUARDIAN was licensed by the Division as business entity on October 15, 2013. The license is currently inactive. (Exhibit 1).
2. CAPITAL GUARDIAN was the subject of administrative action in Virginia. (Exhibit 2).
3. CAPITAL GUARDIAN failed to report the administrative action to the Division within 30 days. (Exhibit 2).
4. The Division sent inquiries to CAPITAL GUARDIAN at its mailing address of record on March 16, 2018 and April 20, 2018. (Exhibits 3-4).
5. CAPITAL GUARDIAN did not respond to the Division's inquiries. (Exhibits 3-4).
6. CAPITAL GUARDIAN dissolved as a corporation on December 1, 2017. (Exhibit 5).
7. Any additional Findings of Fact 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 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 Business Entity License of CAPITAL GUARDIAN. 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 CAPITAL GUARDIAN 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;
- (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 CAPITAL GUARDIAN 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 Business Entity License of CAPITAL GUARDIAN is subject to revocation and should be revoked.

## CONCLUSIONS OF LAW

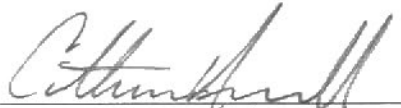
1. The Division has jurisdiction over CAPITAL GUARDIAN and the subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to SDCL 1-26D-4.
2. The Division bears the burden of establishing the alleged statutory violations by clear and convincing evidence.
3. The Division established by clear and convincing evidence that CAPITAL GUARDIAN violated SDCL § 58-30-193.
4. The Division established by clear and convincing evidence that CAPITAL GUARDIAN violated SDCL § 58-33-66.
5. The Division established by clear and convincing evidence that CAPITAL GUARDIAN violated SDCL §§ SDCL 58-30-167 (2) and (9).
6. The Division established by clear and convincing evidence that the South Dakota Business Entity License of CAPITAL GUARDIAN is subject to revocation.
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 Business Entity License of CAPITAL GUARDIAN should be revoked.

Dated this 30<sup>th</sup> day of November, 2018.

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

**CERTIFICATE OF SERVICE**

I certify on ~~November~~ <sup>December</sup> 3, 2018, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.



Ashley Parsons  
Office of Hearing Examiners

Capital Guardian LLC  
1355 Greenwood Cliff  
Suite 250  
Charlotte, NC 28204

Lisa M. Harmon  
Division of Insurance  
124 S. Euclid Ave., 2<sup>nd</sup> Floor  
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