

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

**IN THE MATTER OF
JOANY INC
LICENSEE**

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**FINAL DECISION
INS 19-35**

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 August 30, 2019, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Business Entity License of Joany Inc 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 12TH day of September, 2019.



Marcia Hultman, Secretary
South Dakota Department of Labor and Regulation
123 W. Missouri Ave.
Pierre, SD 57501

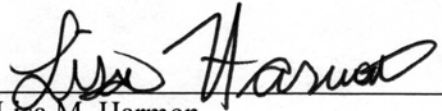
STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION

IN THE MATTER OF
JOANY INC

INS 19-35
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 September 12, 2019.

Dated this 13th day of September, 2019.



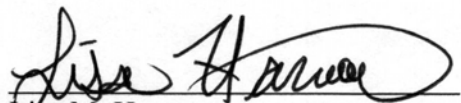
Lisa M. Harmon
Legal Counsel
South Dakota Division of Insurance
124 S. Euclid Ave., 2nd Floor
Pierre, SD 57501
(605) 773-3563

CERTIFICATE OF SERVICE

I, Lisa M. 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:

Joany Inc
177 E. Colorado Blvd., 2nd Floor #3039
Pasadena, CA 91105

Dated this 13th day of September, 2019 in Pierre, South Dakota.


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

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

**IN THE MATTER OF
JOANY INC**

**INS 19-35
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on August 29, 2019, pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance ("Division") on July 1, 2019. Lisa M. Harmon appeared as counsel for the Division. Joany Inc did not appear, either in person or through counsel. The Division admitted its Exhibits 1 through 12 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 Joany Inc should be revoked for offering as inducement to a health insurance contract any valuable consideration or inducement that is not specified within the contract; for offering money or a cash equivalent, instead of an article of merchandise; for failing to be appointed with insurance companies; and for using fraudulent or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere, in violation of SDCL 58-30-167(8), 58-30-175, 58-33-14, and 58-33-175.

FINDINGS OF FACT

1. Joany Inc was licensed by the Division as an insurance producer on October 15, 2015. The license is currently inactive. (Exhibit 1).
2. The Division was notified of Joany Inc's insurance related activities from another state insurance department. (Exhibit 2).
3. The Division sent inquiries to Joany Inc at its address of record and e-mail regarding Joany Inc's insurance business activities in South Dakota. (Exhibits 4, 6, 8 and 10).
4. Joany Inc responded to all Division inquiries. (Exhibits 5A, 7A, 9A, and 11A).
5. Joany Inc offered services that are not specified in consumers' insurance contracts. (Exhibits 3, 5A, 5C, 5D, and 7B).
6. Joany Inc conducted a research study or survey and referral program that offered to compensate \$50 and \$25, respectively, to 170 South Dakota consumers. (Exhibits 3, 5C, 5D, 9A, and 9D).
7. Joany Inc is not appointed as an agent with 2 insurance companies. (Exhibits 1, 7C, 11D, and 11E).

8. Joany Inc became an agent or record on consumer policies without the knowledge of consumers and submitted numerous Agent of Record forms to 2 insurance companies. (Exhibits 5B, 9A, 9B, 9C, 11A, 11B, 11C, 11D, and 11E).
9. On May 28, 2019, Joany Inc voluntarily surrendered its business entity license. (Exhibit 12).
10. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
11. 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 Joany Inc. 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 58-30-175 states that "No insurance producer or business entity may act as an agent of an insurer unless the insurance producer becomes an appointed insurance producer of that insurer..." SDCL 58-33-14 prohibits a person to offer, pay, give or offer to pay, allow, or give as inducement to a health insurance contract any valuable consideration or inducement that is not specified within the contract. SDCL 55-33-74 states that an insurance producer cannot give "to insureds, prospective insured, or others for advertising purposes or promotional programs, any article of merchandise having an invoice value of not more than twenty-five dollars."¹ 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 license... for any one or more of the following causes:

¹ SDCL 55-33-74 was amended to limit the article of merchandise of having an invoice value of not more than one hundred dollars, effective July 1, 2019.

- (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 evidence indicates that Joany Inc used fraudulent, coercive, or dishonest practices, or demonstrated incompetence or untrustworthiness in the conduct of its business. The evidence also indicates that Joany Inc induced South Dakota consumers to receive Joany Inc services that were not a part of consumers' insurance contracts, offered to give South Dakota consumers money, or cash equivalent, instead of the allotted gift amount for an article of merchandise, and failed to be appointed with 2 insurance companies. Applying the law to the Findings of Fact it is clear the Business Entity License of Joany Inc is subject to revocation and should be revoked.

CONCLUSIONS OF LAW

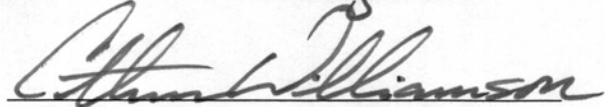
1. The Division has jurisdiction over Joany Inc and the subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to SDCL 1-26D-4.
2. The Division bears the burden of establishing the alleged statutory violations by clear and convincing evidence.
3. The Division established by clear and convincing evidence that Joany Inc violated SDCL § 58-30-175.
4. The Division established by clear and convincing evidence that Joany Inc violated SDCL § 58-33-14.
5. The Division established by clear and convincing evidence that Joany Inc violated SDCL § 58-33-74
6. The Division established by clear and convincing evidence that the South Dakota Business Entity License of Joany Inc is subject to revocation pursuant to SDCL § 58-30-167(8).
7. The Division may revoke or impose any penalty against a person who violates Title 58, even if the person's license or registration has been surrendered or has lapsed by operation of law pursuant to SDCL § 58-30-170.
8. Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.
9. 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 Joany Inc should be revoked.

Dated this 30th day of August, 2019.



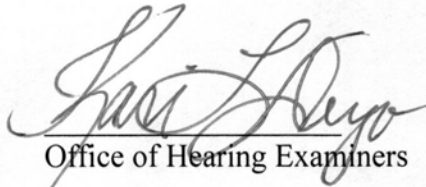
Catherine Williamson, Chief Hearing Examiner
Office of Hearing Examiners
523 East Capitol
Pierre, SD 57501

CERTIFICATE OF SERVICE

I certify on August 30th, 2019, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.

Joany Inc
177 E. Colorado Blvd., 2nd Floor #3039
Pasadena, CA 91105

Lisa M. Harmon
Division of Insurance
124 S. Euclid Ave., 2nd Floor
Pierre, SD 57501


Office of Hearing Examiners