

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

**IN THE MATTER OF
EMILY GADELHA
LICENSEE**

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**FINAL DECISION
INS 20-16**

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 September 24, 2020, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of Emily Gadelha 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 October, 2020.



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
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INS 20-16

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 October 5, 2020.

Dated this 6th day of October, 2020.



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 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:


Emily Gadelha
218 W. 400 N., Apt 11
Salt Lake City, UT 84103-1267

Emily Gadelha
1001 E Playa Del Norte Dr., Unit 1419
Tempe, AZ 85281-2184

Emily Gadelha
1124 Lancelot Ln
West Haven, UT 84401

Silverscript Insurance Company
Caitlin Gould
9501 E. Shea Blvd.
Scottsdale, AZ 85260-6719

Dated this 6th day of October, 2020 in Pierre, South Dakota.



Lisa M. Harmon
Legal Counsel
South Dakota Division of Insurance
124 S. Euclid Ave., 2nd Floor
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STATE OF SOUTH DAKOTA OFFICE OF HEARING EXAMINERS

IN THE MATTER OF

**INS 20-16
PROPOSED DECISION**

EMILY GADELHA

This matter came for hearing before the Office of Hearing Examiners on September 9, 2020 pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance (Division). Attorney, Lisa M. Harmon, appeared as a representative for the Division. The Division had a witness, Letisha Pederson. Emily Gadelha (Gadelha) appeared and testified at the hearing. The Hearing Examiner enters these Proposed Findings of Fact, Conclusions of Law, and Proposed Decision.

ISSUE

Whether the Non-Resident Insurance Producer License of Emily Gadelha should be revoked?

FINDINGS OF FACT

1. Gadelha was licensed by the Division as an insurance producer on November 16, 2018. The license is currently active.
2. On or about March 11, 2020, AFLAC (an insurance company) cancelled Gadelha's agreement and appointment to represent AFLAC.
3. The reasons for cancellation were misrepresentation of policy benefits, knowingly submitting an application with false information, and refusing to cooperate with the fraud investigation.
4. Gadelha did not report the termination to the Division.
5. On March 24, 2020, the Division sent a letter to Gadelha asking for an explanation on the termination within 20 days. The letter was sent to Gadelha's address of record.
6. On March 24, 2020, the Division sent an email to Gadelha asking for an explanation on the termination within 20 days.
7. On April 13, 2020, Gadelha sent an email to the Division that explained the events of the termination. It included a chronological list of events pertaining to the termination and the termination letter.

8. On May 7, 2020, the Division sent an email acknowledging the communication provided by Gadelha on April 13, 2020. The email also requested further information on why the investigation took place. The email stated a response was required within 20 days.
9. On May 28, 2020, the Division sent a certified letter to Gadelha asking for a response to the May 7, 2020 correspondence.
10. On May 28, 2020, Gadelha sent an email to the Division which explained she was in the process of appealing to reopen her investigation.
11. A hearing on this matter was scheduled for September 9, 2020.
12. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
13. 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 Emily Gadelha. 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 Gadelha 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:

- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;

Gadelha did respond to the Division’s inquiries at the very end of the 20-day time frame. However, the evidence indicates that Gadelha was terminated for misrepresenting policy benefits by AFLAC. She also submitted an application with false information. Finally, Gadelha did not cooperate with the investigation. These are reasons to revoke Gadelha’s insurance producers license.

Gadelha violated the insurance laws of another jurisdiction and had her license terminated. Applying the law to the Findings of Fact, it is clear the Non-Resident Insurance Producer License of Gadelha is subject to revocation and should be revoked.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over Gadelha 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 the South Dakota Nonresident Insurance Producer License of Gadelha is subject to revocation pursuant to SDCL§ 58-33-167(5) and (8).

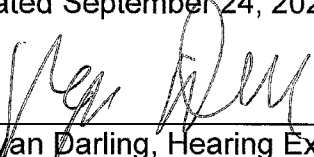
4. Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.
5. To the extent any of the foregoing are improperly designated and are instead findings of fact, they are hereby redesignated and incorporated herein as Findings of Fact.

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 Emily Gadelha should be revoked.

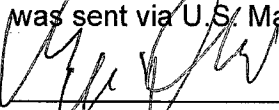
Dated September 24, 2020.



Ryan Darling, Hearing Examiner
Office of Hearing Examiners
523 East Capitol
Pierre, SD 57501

CERTIFICATE OF SERVICE

I certify that on September 24, 2020, at Pierre, South Dakota, a true and correct copy of the Findings of Fact, Conclusions of Law and Order in the above-entitled matter was sent via U.S. Mail or Inter-Office Mail to each party listed below.



Ryan Darling

EMILY GADELHA
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