

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

**IN THE MATTER OF
MATTHEW BATCHELDER
LICENSEE**

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**FINAL DECISION
INS 21-22**

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 Decision, dated December 2, 2021, are adopted in full.

IT IS FURTHER ORDERED that the South Dakota resident insurance producer license of Matthew Batchelder will hereby be revoked.

Parties are hereby advised of the right to further appeal the final decision to Circuit Court within thirty days of receiving such decision, pursuant to the authority of SDCL 1-26.

Dated this 13 day of December, 2021.



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
MATTHEW BATCHELDER

INS 21-22

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 13, 2021.

Dated this 14th day of December, 2021.



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:

Matthew Batchelder
4013 Wineberry Lane
Rapid City, SD 55703

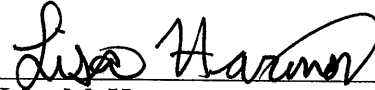
Matthew Batchelder
307 St Joseph St
Rapid City, SD 57701

Matthew Batchelder
3720 Sonora Drive
Rapid City, SD 57701

American Amicable Life Ins Co of Texas
425 Austin Ave
Waco, TX 76701

*also sent via email to: mattbatchelder@yahoo.com
ljones@aatx.com*

Dated this 14th day of December, 2021 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
MATTHEW BATCHELDER**

**INS 21-22
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on December 1, 2021, pursuant to an Amended Notice of Hearing issued by the South Dakota Division of Insurance (“Division”) on November 22, 2021. Jacob Dempsey appeared as counselor for the Division. Matthew Batchelder did not appear in person or through counsel. The Division admitted its Exhibits A through E into evidence and requested 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 nonresident insurance producer license of Matthew Batchelder should be revoked for violations of SDCL 167(2), (6), and (8), SDCL 58-30-194, and SDCL 58-33-66(1).

FINDINGS OF FACT

1. Matthew Batchelder (“Respondent”) held a resident insurance producer license in South Dakota.
2. Respondent was the subject of a November 19, 2020 indictment in Pennington County, South Dakota for three counts of Felony Fourth Degree Rape, where the grand jury charged that Respondent, being at least three years older than the victim, did commit an act of sexual penetration with a child who was at least 13 years of age but less than 16 years of age.
3. Respondent did not report this prosecution to the Division.
4. Respondent plead guilty to one count of Felony Fourth Degree Rape on August 20, 2021 and received a suspended imposition of sentence provided he complete ten years of probation, spend 90 days in the Pennington County jail, register as a sex offender, and complete Moral Recognition Therapy.
5. The Division attempted to contact Respondent about his felony prosecution by writing him on July, 14 2021. The Division never received a response to its correspondence.

6. The Division again attempted to contact Respondent about his felony prosecution by writing him on August 9, 2021. In this letter, the Division also addressed Respondent's failure to respond. The Division again never received a response.
7. Any additional findings of fact included in the Conclusions of Law 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.

STANDARD OF REVIEW

This case involves a request by the Division to revoke a South Dakota resident insurance producer's license. "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 Setliff*, 2002 S.D. 58, ¶ 13, 645 N.W.2d 601, 605. "The 'clear and convincing' standard lies somewhere between 'the rule in ordinary civil cases and requirements of our criminal procedure, that is, it must be more than a mere preponderance but not beyond a reasonable doubt.'" *Id.* (citing *Watertown Coop. Elevator Association v. S.D. Dept. of Rev.*, 2001 SD 56, ¶ 10, 627 N.W.2d 167, 171)

SDCL 58-30-194 states that "[w]ithin thirty days of the initial pretrial hearing date, an insurance producer shall report to the director any felony criminal prosecution of the insurance producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents." ARSD 20:06:18:21 states "[f]or purposes of Title 58, initial pretrial hearing means either a defendant's arraignment or the first time that a defendant accused of a crime or the defendant's attorney appears before a court in a criminal action in any jurisdiction, whichever occurs first."

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. SDCL 58-30-170 states "[t]he 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."

SDCL 58-30-167 provides:

The director may . . . revoke or refuse to continue, any license issued under this chapter . . . after a hearing . . . 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... ;
- (6) Having been convicted of a felony... ;
- (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere... ”

CONCLUSIONS OF LAW


1. The Division has jurisdiction over Matthew Batchelder 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. *In re Setliff*, 2002 S.D. at ¶ 13, 645 N.W.2d at 605.
3. The Division established by clear and convincing evidence that Matthew Batchelder violated SDCL 58-30-194 by failing to report a felony prosecution.
4. The Division established by clear and convincing evidence that Matthew Batchelder violated SDCL 58-33-66(1) by failing to respond to the Division's correspondence.
5. The Division established by clear and convincing evidence that Matthew Batchelder violated SDCL 167(2), (6), and (8) by violating the laws or rules of the Director of Insurance, having been convicted of a felony, and using dishonest practices and demonstrating incompetence and untrustworthiness in the conduct of business in this state.
6. The Division established by clear and convincing evidence that the South Dakota nonresident insurance producer license of Matthew Batchelder is subject to revocation under SDCL 58-30-167.
7. The Division established by clear and convincing evidence that the South Dakota nonresident producer license of Matthew Batchelder should be revoked under SDCL 58-30-167.
8. Any additional conclusions of law included in the Standard of Review or Findings of Fact 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 and conclusions of law, the Hearing Examiner enters the following:

PROPOSED DECISION

The South Dakota nonresident insurance producer license of Matthew Batchelder should be revoked as a default disposition to this contested case.

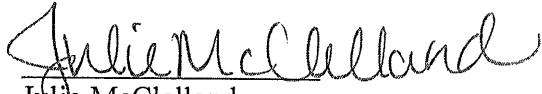
Dated this 2nd day of December, 2021.



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

CERTIFICATE OF SERVICE

I, the undersigned, do certify that on the 2nd day of the month of December, 2021, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.


Julie McClelland

Matthew Batchelder
4013 Wineberry Ln
Rapid City, SD 57703

Jacob R. Dempsey
South Dakota Division of Insurance
124 S. Euclid Ave., 2nd Floor
Pierre, SD 57501