

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

**IN THE MATTER OF
AMBER MENARD
LICENSEE**

)
)
)

**FINAL DECISION
INS 20-29**

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 November 6, 2020, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of Amber Menard 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 8th day of March, 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
AMBER MENARD

INS 20-29

NOTICE OF ENTRY OF PROPOSED
FINDINGS OF FACT, CONCLUSIONS 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 March 8, 2021.

Dated this 15th day of March, 2021.



Jacob R. Dempsey
Insurance Division Legal Counsel
South Dakota Division of Insurance

CERTIFICATE OF SERVICE

I, Jacob Dempsey, the undersigned, do hereby certify that on this 15th day of March, 2021, 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:

Amber Menard
2475 Village View #200
Henderson NV, 89074

Dated this 15th day of March, 2021.



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

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

**IN THE MATTER OF
AMBER MENARD**

**INS 20-29
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on November 5, 2020, pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance ("Division") on September 17, 2020. Jacob R. Dempsey appeared as counsel for the Division. The Division had a witness, Tiffany Carr, who is a Compliance Agent. Amber Menard did not appear, either in person or through counsel. The Division admitted its Exhibits A through N into evidence through the testimony of its witness and moved that the Hearing Examiner enter these Proposed Findings of Fact, Conclusions of Law, and Proposed Decision as a summary disposition to this contested case .

ISSUE

Whether the Non-Resident Insurance Producer License of Amber Menard should be revoked for violating any insurance laws; for using fraudulent or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere; for having a license suspended in another jurisdiction; for failing to timely report administrative actions to the Division; and for failing to respond to the Division's requests; in violation of SDCL 58-30-167(2), (8), (9), 58-30-193, and 58-33-66(1).

FINDINGS OF FACT

1. Amber Menard was licensed by the Division as an insurance producer on November 26, 2018. The license is currently active. (DOI Exhibit A).
2. Amber Menard was terminated for cause from an appointment for not asking pre-qualification questions, not properly documenting, not fully developing applications, inputting answers without confirming them, inappropriately coding discounts, and not running reports where required. (DOI Exhibit B).
3. The Division sent inquiries to Amber Menard at her address of record regarding the for cause termination. (DOI Exhibit C).
4. Amber Menard was the subject of administrative actions in the State of Indiana and the State of Utah. (DOI Exhibits L and M).
5. Amber Menard did not timely report the administrative actions from the state of Indiana and the State of Utah to the Division.
6. Amber Menard did not respond to the Division's inquiries. (DOI Exhibits C, E, and K).
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 Non-Resident Insurance Producer's License of Amber Menard. 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) and 58-33-68 require Amber Menard 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 license . . . 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 illustrates that Amber Menard violated the insurance laws of another jurisdiction, used fraudulent, coercive, or dishonest practices, or demonstrated incompetence or untrustworthiness in the conduct of her business, had a license suspended in another

jurisdiction, failed to report that action, and failed to respond to Division inquiries regarding her termination for cause. Applying the law to the Findings of Fact, it is clear the Non-Resident Insurance Producer License of Amber Menard is subject to revocation and should be revoked.

CONCLUSIONS OF LAW

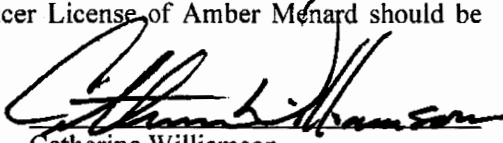
1. The Division has jurisdiction over Amber Menard and the subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to SDCL 1-26D-4.
2. The Division bears the burden of establishing the alleged statutory violations by clear and convincing evidence.
3. The Division established by clear and convincing evidence that Amber Menard violated SDCL § 58-30-193 by failing to report two administrative actions.
4. The Division established by clear and convincing evidence that Amber Menard violated SDCL § 58-33-66 by failing to respond to the Division's request for correspondence.
5. The Division established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producer License of Amber Menard is subject to revocation pursuant to SDCL § 58-30-167(2), (8), and (9).
6. 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.
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 Amber Menard should be revoked.

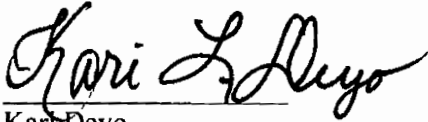
Dated this 6th day of November, 2020.


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

CERTIFICATE OF SERVICE

I certify on November ⁶~~5~~, 2020 at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.

Amber Menard
2475 Village View #200
Henderson, NV 89074



Karl Deyo
Office of Hearing Examiners
523 East Capitol
Pierre, SD 57501