

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

IN THE MATTER OF)	FINAL DECISION
THE INSURANCE PRODUCER)	INS 21-24
LICENSE APPLICATION OF)	
JACOB HUBBS)	

An administrative hearing was held in person at the Foss Building in Pierre, SD on this matter on March 11, 2022 pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance ("Division"). Attorney, Clayton Grueb, appeared as a representative for the Division of Insurance (Division). The Division had a witness, Tiffany Carr. Jacob Hubbs (Hubbs) appeared and testified at the hearing. Hubbs was represented by Attorney, Nick Moser. Hubbs had a witness, David Hubbs.

The Office of Hearing Examiners, through Hearing Examiner Ryan Darling, entered and served a Proposed Decision regarding the parties on June 3, 2022. After reviewing the record and the Proposed Decision, this Final Decision follows and includes Findings of Fact, Reasoning, Conclusions of Law, and the Order. I adopt and restate the Hearing Examiner's Proposed Decision here with modifications, the reasons for which are noted in footnotes relating to those areas pursuant to SDCL 1-26D-8. Documentary evidence will be cited as "(Exhibit ___)".

ISSUE

Whether the decision by the Division to deny Hubbs a resident insurance producer license was reasonable pursuant to SDCL 58-30-168?¹

FINDINGS OF FACT²

1. On or about July 29, 2021, Hubbs applied for a resident insurance producer license in South Dakota. He wants to be a part of his multi-generational family crop insurance business. (Exhibit 1).
2. On the application, Hubbs indicated "yes" when asked if he had ever been convicted of a misdemeanor or felony. (Exhibit 1).
3. On June 13, 2017, Hubbs was convicted of entering or refusing to leave property after notice. This was the misdemeanor offense. (Exhibits 2 and 3).

¹ The standard for review in denying an insurance producer license is contained in SDCL 58-30-168, which differs from the standards for revoking an existing license.

² These Findings contain references to the administrative record.

4. Hubbs was convicted on April 20, 2018 of a felony for conspiracy to distribute a controlled substance (fentanyl). Hubbs spent time in prison as a result of the incident. Hubbs is therefore a convicted felon. (Exhibits 4 and 5).
5. Hubbs provided documentation for the felony conviction for conspiracy to distribute a controlled substance and the misdemeanor conviction for entering or refusing to leave property. (Exhibits 1 through 5).
6. On October 20, 2021, the Division sent a certified letter to Hubbs denying his application for a producer license. The reasons for denial were because he was not in good standing under ARSD 20:06:01 :03 and for violating any insurance laws or rules, subpoena, or order of the director; and for having a felony conviction; and for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility. (Exhibit 7).
7. Hubbs filed a timely appeal of the determination.
8. A hearing on this matter was scheduled for March 11, 2022.
9. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
10. 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.

REASONING³

This case involves a request by Hubbs to determine the reasonableness of the Division's decision to deny his application for an insurance producer license. As this matter deals with the denial of a professional license, rather than revocation of an existing license, the general burden of proof for administrative hearings, preponderance of the evidence, will apply. *In re Jarman*, 2015 S.D. 8, ¶ 15, 860 N.W.2d 1, 7-8; *In re Setliff*, 2002 S.D. 58, ¶ 13, 645 N.W.2d 601, 605 (other citations omitted). "Preponderance of the evidence" is defined as "the greater weight of evidence." *Pieper v. Pieper*, 2013 S.D. 98, ¶ 22, 841 N.W.2d 781, 787 (quoting *L.S. v. C.T.*, 2009 S.D. 2, ¶ 23, 760 N.W.2d 145, 151). Pursuant to SDCL 58-30-168, the review is to "determine the reasonableness of the director's action." Therefore, it is the Division's burden to show by the preponderance of the evidence that the agency was reasonable in its decision to deny Hubbs' license application. *Id.*; *Jarman*, 2015 S.D. at ¶ 15, 860 N.W.2d at 7-8 (other citations omitted).

In deciding to deny a license, the Division looks to SDCL 58-30-167, providing in pertinent part:

³ The Reasoning section was modified to include applicable legal standards for reviewing the denial of an insurance producer license rather than the standard for revoking a license, and to remove statutory references that were not alleged or not made a part of the administrative record.

The director may suspend for not more than twelve months, or may revoke or refuse to continue, any license issued under this chapter, or any license of a surplus lines broker after a hearing. Notice of such hearing and of the charges against the licensee shall be given to the licensee and to the insurers represented by such licensee or to the appointing agent of a producer at least twenty days before the hearing. The director may suspend, revoke, or refuse to issue or renew an insurance producer's license or may accept a monetary penalty in accordance with § 58-4-28.1 or any combination thereof, for any one or more of the following causes:

- ...
- (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;
- ...

SDCL 58-30-167(6) provides that the Division may deny a license if one has been convicted of a felony. Here, Hubbs was convicted of a felony which is grounds to deny a license.

As regards SDCL 58-30-167(8), the evidence does not show Hubbs was deceptive with the Division. He answered "yes" to the misdemeanor and felony questions on his July 29, 2021, application. Hubbs also provided information on the events that had occurred.⁴ ARSD 20:06:01:03 states that in determining whether a person is in good standing, the director may consider, but is not limited to, the following factors:

- (1) Suspension, revocation, or denial of license by a state;
- (2) Administrative or judicial action pending in any state and the nature of that action;
- (3) Complaints, nature and number, against the person;
- (4) False statements, oral or written, to the division, including omissions;
- (5) Neglect of financial or fiduciary responsibilities;
- (6) Conduct which is unlawful, dishonest, deceitful, or fraudulent;
- (7) Evidence of drug or alcohol abuse or dependency; and
- (8) Acting as an agent without being licensed.

In reviewing these factors the director may consider the recentness of the action or conduct overall, any mitigating circumstances, evidence of rehabilitation, and the person's cooperation.

Hubbs was convicted of a felony that involved distribution of fentanyl. This is unlawful and dishonest conduct. Hubbs made a mistake and there were consequences. He did spend time in

⁴ The Division never alleged any violations of SDCL 58-33-66 nor was the section mentioned at hearing and therefore its reference and related analysis is removed.

prison. Conversely, there is strong evidence of rehabilitation in this case. Since the incident, Hubbs has abstained from drugs or alcohol. He has started his own family and has been working in the family insurance business doing office paperwork. It was also demonstrated that Hubbs has a strong family support network. He has also cooperated with the Division. The conduct he engaged in was very serious and should carry consequences. The fear is that if Hubbs decides to go back to his old behavior, it would be detrimental to the insurance-buying public.⁵

Consequently, there are two provisions of the law that indicate Hubbs' request for a license may be denied. Applying the law to the Findings of Fact, it is not unreasonable for the Division to deny Hubb's resident insurance producer application based on these past events.⁶

CONCLUSIONS OF LAW⁷

1. The Division has jurisdiction over Hubbs 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 may modify the Hearing Examiner's Proposed Decision by giving reasons for doing so in writing pursuant to SDCL 1-26D-6 and 1-26D-8.
3. The Division bears the burden of establishing that its denial of Hubbs insurance application was reasonable by a preponderance of the evidence.
4. The Division established by a preponderance of the evidence that SDCL 58-30-167(6) and (8) provide grounds for the denial of Hubbs' license application.
5. These violations permit the Director of the Division of Insurance to refuse to issue an insurance producer license pursuant to the provisions of SDCL 58-30-167(6) and (8).
6. The Division established by preponderance of the evidence that Hubbs had engaged in conduct that was unlawful and dishonest as well as evidence of prior drug and alcohol dependency and thus was not in good standing pursuant to the provisions of ARSD 20:06:01:03.⁸

⁵ The Hearing Examiner wrote about lifetime bans and future applications. The Division does not have the lawful authority to deny a license until a date certain or at any point in the future. After an application denial is final, an applicant is free to re-apply the next day. Thus, all references to a lifetime ban and a date certain on when Mr. Hubbs should re-apply for a license have been stricken. If Mr. Hubbs decides to re-apply, his future application will be reviewed anew considering the totality of the circumstances that exist at that time.

⁶ In his June 3, 2022 decision, the Hearing Examiner concluded that the current license application should be denied based on a stricter standard than what is required in the law. Using the correct standard, the license denial was reasonable.

⁷ The Conclusions of Law section was updated to match the additional law in the Reasoning section and reflect the correct standards for reviewing a license denial.

⁸ The Hearing Examiner concluded that Hubbs was in good standing under ARSD 20:06:01:03 as of an arbitrary future date, but that the current application should be denied. As noted previously, the Division does not have the

7. The Division established by a preponderance of the evidence that its denial of Hubbs' resident insurance producer license renewal was reasonable.
8. Any Conclusions of Law in the Reasoning section of this decision are incorporated herein by reference. 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 Secretary of the Department of Labor and Regulation enters the following:


FINAL DECISION

The decision by the Director of the Division of Insurance to deny Hubbs' insurance producer license application was reasonable and supported by the preponderance of the evidence.

THEREFORE IT IS HEREBY ORDERED that Jacob Hubbs' resident insurance producer license application is denied.

Parties are hereby advised of the right to further appeal this Final Decision to Circuit Court within 30 days, pursuant to the authority of SDCL Ch. 1-26.

Dated this 24 day of June, 2022.



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

lawful authority to deny or grant future license applications but must consider the applications on a case-by-case basis at that time.

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

**IN THE MATTER OF
THE INSURANCE PRODUCER
LICENSE APPLICATION OF
JACOB HUBBS**

**INS 21-24
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on March 11, 2022. Attorney, Clayton Grueb, appeared as a representative for the Division of Insurance (Division). The Division had a witness, Tiffany Carr. Jacob Hubbs (Hubbs) appeared and testified at the hearing. Hubbs was represented by Attorney, Nick Moser. Hubbs had a witness, Davin Hubbs. The Hearing Examiner enters these Proposed Findings of Fact, Conclusions of Law, and Proposed Order.

ISSUE

Whether the decision by the Division to deny Hubbs a resident insurance producer license was reasonable?

FINDINGS OF FACT

1. On or about July 29, 2021, Hubbs applied for a resident insurance producer license in South Dakota. He wants to be a part of his multi-generational family crop insurance business.
2. On the application, Hubbs indicated "yes" when asked if he had ever been convicted of a misdemeanor or felony.
3. On June 13, 2017, Hubbs was convicted of entering or refusing to leave property after notice. This was the misdemeanor offense.
4. Hubbs was convicted on April 20, 18 of a felony for conspiracy to distribute a controlled substance (fentanyl). Hubbs spent time in prison as a result of the incident.
5. Hubbs provided documentation for the felony conviction for conspiracy to distribute a controlled substance and the misdemeanor conviction for entering or refusing to leave property.
6. On October 20, 2021, the Division sent a certified letter to Hubbs denying his application for a producer license. The reasons for denial were because he was not in good standing under ARSD 20:06:01:03 and for violating any insurance laws or rules, subpoena, or order of the director; for having a felony conviction; and for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility.
7. Hubbs filed a timely appeal of the determination.
8. A hearing on this matter was scheduled for March 11, 2022.

9. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
10. 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 determination by the Division to deny a South Dakota Resident Insurance Producer's License for Jacob Hubbs. 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 58-30-167(6) provides that the director may suspend for not more than twelve months, or may revoke or refuse to continue, any license issued under this chapter, or any license of a surplus lines broker after a hearing. Notice of such hearing and of the charges against the licensee shall be given to the licensee and to the insurers represented by such licensee or to the appointing agent of a producer at least twenty days before the hearing. The director may suspend, revoke, or refuse to issue or renew an insurance producer's license or may accept a monetary penalty in accordance with § 58-4-28.1 or any combination thereof, for having been convicted of a felony. Here, Hubbs was convicted of a felony which is grounds to deny a license.

SDCL 58-30-167(8) provides that the director may suspend for not more than twelve months, or may revoke or refuse to continue, any license issued under this chapter, or any license of a surplus lines broker after a hearing. Notice of such hearing and of the charges against the licensee shall be given to the licensee and to the insurers represented by such licensee or to the appointing agent of a producer at least twenty days before the hearing. The director may suspend, revoke, or refuse to issue or renew an insurance producer's license or may accept a monetary penalty in accordance with § 58-4-28.1 or any combination thereof, for 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 does not show Hubbs was deceptive with the Division. He answered "yes" to the misdemeanor and felony questions on his July 29, 2021, application. Hubbs also provided information on the events that had occurred. Unfair or deceptive acts or practices in the business of insurance include failing to respond to an inquiry from or failing to supply documents requested by the Division of Insurance within twenty days of receipt of such inquiry or request. SDCL 58-33-66(1).

ARSD 20:06:01:03 states that in determining whether a person is in good standing, the director may consider, but is not limited to, the following factors:

- (1) Suspension, revocation, or denial of license by a state;
- (2) Administrative or judicial action pending in any state and the nature of that action;
- (3) Complaints, nature and number, against the person;
- (4) False statements, oral or written, to the division, including omissions;
- (5) Neglect of financial or fiduciary responsibilities;
- (6) Conduct which is unlawful, dishonest, deceitful, or fraudulent;
- (7) Evidence of drug or alcohol abuse or dependency; and
- (8) Acting as an agent without being licensed.

In reviewing these factors the director may consider the recentness of the action or conduct overall, any mitigating circumstances, evidence of rehabilitation, and the person's cooperation.

Hubbs was convicted of a felony that involved distribution of fentanyl. This is unlawful and dishonest conduct. Hubbs made a mistake and there were consequences. He did spend time in prison. Conversely, there is strong evidence of rehabilitation in this case. Since the incident, Hubbs has abstained from drugs or alcohol. He has started his own family and has been working in the family insurance business doing office paperwork. It was also demonstrated that Hubbs has a strong family support network.

The question here is whether a mistake back in college should follow Hubbs for the rest of his life. The conduct he engaged in was very serious and should carry consequences. The fear is that if Hubbs decides to go back to his old behavior, it would be detrimental to the insurance buying public. On the other hand, there is evidence that Hubbs has rehabilitated. He has also cooperated with the Division.

Consequently, Hubbs should not have a lifetime ban on an insurance producers license. Hubbs was convicted of the felony on April 30, 2018. April 30, 2023, will be five years after his conviction. This would be a reasonable time to reassess his efforts at rehabilitation. If it is shown that Hubbs has learned from his mistake, he should be allowed to obtain an insurance producers license.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over Hubbs 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. If Hubbs is in good standing on April 30, 2023, he should be able to reapply for an insurance producers license. ARSD 20:06:01:03
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

It is my Proposed Decision that the South Dakota Resident Insurance Producer License application of Jacob Hubbs should be denied until April 30, 2023 and then reevaluated.

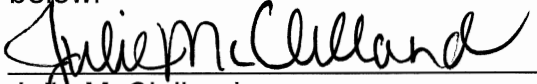
Dated June 3, 2022.



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

CERTIFICATE OF SERVICE

I certify that on June 3, 2022, at Pierre, South Dakota, a true and correct copy of the Findings of Fact, Conclusions of Law and Proposed Order in the above-entitled matter was sent via U.S. Mail or Inter-Office Mail to each party listed below.



Julie McClelland
Administrative Assistant

JACOB HUBBS
3080 PENINAH ST
YANKTON SD 57078

CLAYTON GRUEB
2330 N MAPLE STE 1
RAPID CITY SD 57701

NICK MOSER
200 W 3rd ST
YANKTON SD 57078

STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION

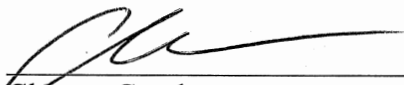
IN THE MATTER OF
THE INSURANCE PRODUCER
LICENSE APPLICATION OF
JACOB HUBBS

INS 21-24

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 June 24, 2022.

Dated this 29th day of June, 2022.



Clayton Grueb
Legal Counsel
South Dakota Division of Insurance
2330 N. Maple Ave. Suite 1
Rapid City, SD 57701
(605) 394-3396

CERTIFICATE OF SERVICE

I, Clayton Grueb, 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:

Jacob Hubbs
3080 Peninah St.
Yankton, SD 57078

Nick Moser
200 W. 3rd St.
Yankton, SD 57078

Dated this 29th day of June, 2022 in Rapid City, South Dakota.



Clayton Grueb
Legal Counsel
South Dakota Division of Insurance
2330 N. Maple Ave. Suite 1
Rapid City, SD 57701
(605) 394-3396