

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

**IN THE MATTER OF  
MICHELLE WEAVER**

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**FINAL DECISION  
INS 23-25**

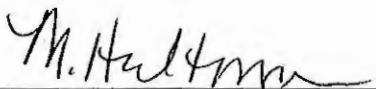
After reviewing the record and the proposed order of the Hearing Examiner in this matter,

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 20, 2023 is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Resident Insurance Producer License Application of the respondent is denied.

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 18 day of October, 2023.



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

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

**IN THE MATTER OF  
MICHELLE WEAVER**

**INS 23-25  
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on August 31, 2023 pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance ("Division") on May 17, 2023. Clayton Grueb and Frank Marnell appeared as counsel for the Division with a witness, Haelly Pease. Michelle Weaver (Weaver) appeared and testified at the hearing. She was represented by Attorney Michael Snyder. John Bosch testified on behalf of Ms. Weaver. Members of Ms. Weaver's family also appeared at the hearing to support her. The parties stipulated to Exhibits 1 through 18, which were entered into evidence.

**ISSUE**

Whether the decision by the South Dakota Division of Insurance to deny Michelle Weaver's resident insurance producer application was reasonable under SDCL §§58-30-167(1), (2), (6), &(8) and ARSD 20:06:01:03.

**FINDINGS OF FACT**

1. Weaver applied for a resident insurance producers license in South Dakota on February 10, 2023.
2. Weaver answered "Yes" to questions 1(A) and 1(B) on her application stating that she has both felony and misdemeanor convictions on her record.
3. Weaver included in her application the sentencing reports for Case No. 2015CR001641 and 2015CR002238.
4. Criminal case #2238 was a finding by a plea of guilty to possession with intent to distribute a controlled substance; a level 3 drug felony.
5. Criminal case #1641 has a finding by a plea of guilty to (1) Possession of Schedule 1 or 2 controlled substance, and (2) Possession of Schedule 3 or 4 controlled substance. The first is a level 4 drug felony, and the second is a level 1 drug misdemeanor.
6. Weaver was allowed to participate in recovery court, similar to a drug court. The sentences of both #2238 and #1641 were to run concurrently. Weaver was required to comply with all terms and conditions of probation with the recovery court.
7. Although she sent in a letter explaining her convictions and the sentence reports for each conviction, the Division determined Weaver failed to include all the required documentation regarding her criminal convictions with her application, in violation of SDCL 58-30-167(1).

8. On February 24, 2023, the Division sent a letter to Weaver requesting:
  - a. A written explanation as to why all the required documentation was not provided to the Division;
  - b. Copies of the charging documents; and
  - c. Copies of the official documents, which demonstrate the resolution of the charges or any final judgments. Including, any orders contain the terms and condition of probation.
9. In response to the Division's inquiry, Weaver immediately supplied Exhibits 5, 6, and 7. These documents were sent within 2 weeks of the inquiry by the Division.
10. Exhibits 5 and 6 contain charging documents, police reports, court minutes, and sentencing reports. Exhibit 7 is a letter from the Jefferson County Probation Department in Colorado, releasing Weaver from Recovery Court and probation. Her program included over 200 hours of outpatient treatment, 30 court reviews, and community service. Weaver graduated with over a year of sobriety and "worked an almost perfect program."
11. The application, Exhibit 1, does not indicate the requirement of an applicant to supply further documents or explanations for questions 1(A) or 1(B). The application indicates the requirement to further explain and submit documents for "YES" answers to questions 2, 3, 4, 5, 6, and 7.
12. On March 30, 2023, the Division denied Weaver's application. The Division presented evidence that Weaver had been arrested for or found guilty of 6 felonies and 2 misdemeanors, including a felony motor vehicle theft charge and charge for possession of burglary tools.
13. On April 24, 2023, Weaver appealed the Division's determination and requested a hearing on the matter of the denial of the license.
14. Weaver has been working as a customer service representative for her brother, John Bosch, since September 2022. Mr. Bosch is licensed as a non-resident insurance producer in South Dakota. He operates a "virtual agency" and is licensed in multiple states. If granted a license, Mr. Bosch would have responsibility for Ms. Weaver's work.
15. Weaver has worked consistently since being placed on probation. She has performed good work for her employers. Employers and co-workers provided letters of recommendation for her for this hearing.
16. Weaver has been sober for 5 years. She has support of family that live nearby.
17. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
18. 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 denial by the Division of an application by Michelle Weaver to be a South Dakota Insurance Producer. As this does not involve a revocation of a license, but an issuance of a license, the appropriate burden of proof is that of a preponderance of the evidence. *In re Certifiability of Jarman*, 2015 S.D. 8, ¶16, 860 N.W.2d 1, 8.

The Division is given the duty to protecting the insurance consumers or purchasers in this state by regulating the insurance industry and licensing the producers of insurance. To that end, they are given the legal requirement to enact rules to qualify and license. The administrative rule regarding licensure is found at ARSD 20:06:01:03. Which reads:

ARSD 20:06:01:03. 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.

In addition, the Division considers the factors found at SDCL 58-30-167 (shown in pertinent part) as follows:

The director may... refuse to issue ... an insurance producer's license ... for any one or more of the following causes:

- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
- (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;

It is a fact that Ms. Weaver went through a self-described dark time recently. The record indicates that she committed or was charged with crimes in 2015 culminating in her arrest and conviction in 2016. She has been sober since her arrest. She graduated from recovery court and found substantial work. After several years, she started working for her brother in his insurance business and decided she wanted to become an insurance producer and sell insurance products instead of just performing customer service.

Ms. Weaver passed the insurance test with an 83% the first time. She then applied with the Division to receive her South Dakota Insurance Producer license. The Division denied her application based upon her criminal record.

The evidence indicates that Ms. Weaver has a drug dependency issue. Her testimony is credible that has been sober for five years, but that does not mean she does not have dependency issues. Her criminal record includes convictions for drug felonies including possession and distribution. It also involves charges for motor vehicle burglary and possession of burglary tools. It is more than likely that all charges stem from the illegal drug abuse and that Ms. Weaver will never reoffend.

Ms. Weaver's initial written statement to the Division at the time of her application gave only part of the story. The statement ignored or glossed over the part of her criminal history involving theft and fraud and was incomplete. None of Ms. Weaver's criminal behavior involved work for an insurance company or was in a business setting.

There is no set timeframe for rehabilitation, within the law or the insurance industry. There is no indication when a person is fully recovered from a "dark period" or when a person's past activity no longer follows them. To that end, the Division is given the power to make the determination whether an applicant is in good standing or is capable of representing the insurance industry in an upright and legal manner.

The evidence shows that Division considered all the pertinent information and has looked at all the recommendation letters sent by Ms. Weaver's former colleagues and associates. The Division's determination in this matter was reasonable given the recentness of the completion of probation and the seriousness of the crimes.

This decision does not prevent Ms. Weaver from applying again at some point in the future.

#### CONCLUSIONS OF LAW


1. The Division has jurisdiction over the application of Ms. Weaver 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 reasonableness by a preponderance of the evidence.
3. The Division established by a preponderance that the Division was reasonable in denying the application of Michelle Weaver for a South Dakota Insurance Producer's license. SDCL 58-30-167 (1), and (6). 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 the Proposed Decision of the Office of Hearing Examiners that the determination by the Division of Insurance to deny a South Dakota Resident Insurance Producer License to Michelle Weaver be affirmed as reasonable.

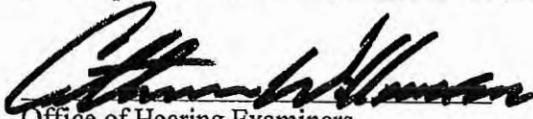
Dated this 20<sup>th</sup> day of September 2023.



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

**CERTIFICATE OF SERVICE**

I certify on September 20, 2023, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.

  
Office of Hearing Examiners

Mr. Michael L. Snyder  
Davenport, Evans, Hurwitz & Smith, LLP  
PO Box 1030  
Sioux Falls SD 57101-1030

Mr. Clayton E Grueb  
Legal Counsel  
South Dakota Division of Insurance  
2330 N. Maple Avenue, Suite 1  
Rapid City, SD 57701

Mr. Larry Dieter, Director  
South Dakota Division of Insurance  
124 S. Euclid Ave., 2<sup>nd</sup> Floor  
Pierre, SD 57501

STATE OF SOUTH DAKOTA  
DEPARTMENT OF LABOR AND REGULATION

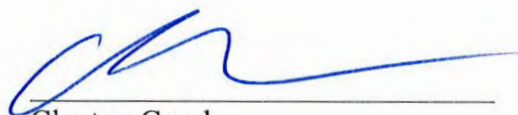
IN THE MATTER OF  
MICHELLE WEAVER

INS 23-25

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 18, 2023.

Dated this 24th day of October, 2023.



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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

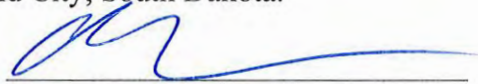
I, Clayton Grueb, the undersigned, do hereby certify that on the date shown below, a true and correct copy of the Proposed Findings of Fact, Conclusions of Law, and Decision, and Final Decision with respect to the above-entitled action was sent U.S. Certified Mail and first-class mail thereon, to the following:

Michelle Weaver  
22321 Dyess Ave,  
Rapid City, SD 57701

And via first class mail to:

Mr. Michael Snyder  
P.O. Box. 1030  
Sioux Falls, SD 57101-1030

Dated this 24th day of October, 2023 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