

STATE OF SOUTH DAKOTA  
DEPARTMENT OF LABOR AND REGULATION

IN THE MATTER OF  
JUSTIN GAWELL

INS 24-40

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 11, 2024.

Dated this 13<sup>th</sup> day of December, 2024.



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Callie A. Pospishil  
Legal Counsel  
South Dakota Division of Insurance  
124 S. Euclid Ave., 2<sup>nd</sup> Floor  
Pierre, SD 57501  
(605) 773-3563

## CERTIFICATE OF SERVICE

I, Callie Pospishil, 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, U.S. First Class Mail, and electronic mail thereon, to the following:

Justin Gawell  
2309 W. 2nd Street  
Sioux Falls, SD 57104  
JGAWELL12@GMAIL.COM

Dated this 13<sup>th</sup> day of December, 2024 in Pierre, South Dakota.



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Callie A. Pospishil  
Legal Counsel  
South Dakota Division of Insurance  
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**SOUTH DAKOTA  
DEPARTMENT OF LABOR AND REGULATION  
DIVISION OF INSURANCE**

**IN THE MATTER OF  
JUSTIN GAWELL**

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**FINAL DECISION  
INS 24-40**

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 November 22, 2024, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota resident Insurance Producer License of the respondent will hereby be 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 11 day of December 2024.



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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 THE  
INSURANCE PRODUCER  
LICENSE APPLICATION OF  
JUSTIN GAWELL**

**INS 24-40  
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on October 15, 2024, pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance ("Division"). Frank Marnell and Callie Pospishil appeared as counsel for the Division with a witness, Haely Pease. Applicant, Justin Gawill (Gawill) appeared and testified pro se. Exhibits A through M, which were entered into evidence.

**ISSUE**

Whether the decision by the South Dakota Division of Insurance to deny Justin Gawell's resident insurance producer application was reasonable under SDCL §§58-30-167 and ARSD 20:06:01:03?

**FINDINGS OF FACT**

1. Gawell applied for a resident insurance producers license on May 28, 2024.
2. Gawell has an extensive criminal history including two felony and multiple misdemeanor convictions. Between January 2013 and December 2017, Gawell had 15 misdemeanor convictions for crimes such as petty theft, ingestion, and theft by insufficient funds. In July 2015, Gawell was convicted of possession of controlled substance. In 2017, while on probation, Gawell was convicted of possessing a firearm while having a prior drug conviction.
3. When applying for the producer license, Gawell failed to submit paperwork regarding a number of convictions. Gawell presumed his misdemeanors that were committed more than 10 years ago were expunged, but they were not. The paperwork was just not on the UJS court site. Gawell was able to find the paperwork and submit it to the Division.
4. Gawell testified that some of the crimes were committed because he was on the verge of being homeless and was responsible for taking care of his brother and household. He has been clean from meth since his convictions.
5. Gawell's most recent jobs resulted in injuries that are covered under workers' compensation. He has recently qualified for social security disability. He is working with a vocational rehabilitation counselor.
6. Gawell obtained an associate degree with SouthEast Technical Institute for Risk and Investment Management. He is looking at four-year universities and is considering going for degree in marketing or similar.

7. If approved as a resident producer, there is a company which has offered him a job and approved him to sell their insurance products.
8. The Division of Insurance denied Gawell's application on June 27, 2024.
9. Gawell filed a timely appeal on July 9, 2024.
10. While this application process was pending, Gawell received a DUI – First offense in September. He went to the Carroll Institute for treatment for a 12-week program. He's in aftercare and attends AA Meetings.
11. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
12. 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 Justin Gawell 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 and 20:06:01:04. The Rules are set out below:

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.

ARSD 20:06:01:04. Determination of denial of license. In determining whether a license application should be denied or why a prior revocation or refusal to renew a license should not bar licensure, the director may, in addition to the factors in § 20:06:01:03, consider the following factors:

- (1) Restitution made;
- (2) Any unresolved complaints;
- (3) Employment record during interim; and
- (4) Length of time since revocation or refusal.

In addition, in their refusal to issue a license, the Division set out these three causes, found at SDCL 58-30-167 (shown in pertinent part):

The director may... refuse to issue ... an insurance producer's license ... 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

Mr. Gawell has an extensive criminal history that includes the sale, possession, and consumption of illegal drugs. He was convicted of a number of petty thefts against retail establishments and crimes of dishonesty by writing and passing insufficient funds checks. These crimes do not just go away but remain on a person's record forever.

As stated in a prior decision, 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 decision of the Division is required to be reasonable. "Reasonable" is defined generally as "Fair, proper, or moderate under the circumstances; sensible, according to reason." Black's Law Dictionary, 11<sup>th</sup> edition, 2019.

Reason would dictate that the Insurance Division is there to protect the consumers from unlawful activity on the part of licensed agents or producers. That is the purpose of these regulatory hurdles to obtain licensure. The Division need only prove by a preponderance of the evidence that denial of a license is reasonable. In this case, the Division met their burden.

#### **CONCLUSIONS OF LAW**

1. The Division has jurisdiction over the application of Mr. Gawell 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 of denying a license application by a preponderance of the evidence.


3. Gawell applied to be a resident insurance producer of health and life insurance under SDCL §58-30-142.
4. The Division established by a preponderance that the Division was reasonable in denying the application of Justin Gawell for a South Dakota Insurance Producer's license. SDCL 58-30-167(6) and (8). ARSD 20:06:01:03.
5. Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.
6. 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 Justin Gawell be affirmed as reasonable.

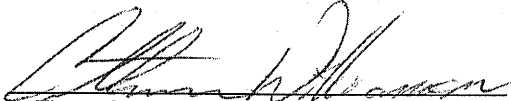
Dated this 20<sup>th</sup> day of November, 2024.



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

**CERTIFICATE OF SERVICE**

I certify on November 22, 2024, 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

Secretary Marcia Hultman  
Department of Labor and Regulation  
217 West Missouri Avenue  
Pierre, SD 57501

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

Mr. Justin Gawell  
2309 West 2<sup>nd</sup> street  
Sioux Falls, SD 57104

Mr. Frank Marnell  
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