

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

IN THE MATTER OF THE INSURANCE)	FINAL DECISION
PRODUCER LICENSE APPLICATION)	INS 23-049¹
OF DANIELLE GODSCHALK)	

An administrative hearing on this matter was held in person at the Office of Hearing Examiners in the Foss Building in Pierre, SD on February 8, 2024 pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance (“Division”). Attorney, Lisa M. Harmon, appeared as a representative for the Division of Insurance (Division). The Division had a witness, Haelly Pease. Danielle Godschalk (Godschalk) appeared and testified at the hearing.

The Office of Hearing Examiners, through Hearing Examiner Ryan Darling, entered and served a Proposed Decision regarding the parties on March 15, 2024. 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 the Hearing Examiner’s Proposed Decision 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 Godschalk a resident insurance producer license was reasonable?

FINDINGS OF FACT²

1. On or about August 10, 2023, Godschalk applied for a resident insurance producer license in South Dakota. (Exhibit 1).
2. On the application, Godschalk indicated "yes" when asked if she had ever been convicted of a misdemeanor or felony. (Exhibit 1).
3. On August 11, 2023, the Division sent an email to Godschalk to provide information, documentation, and explanation on the misdemeanor and felony question because Godchalk did not provide attachments with her application as required.³ (Exhibit 2).
4. On August 14, 2023, the Division sent an email to Godschalk requesting copies of official documents regarding her criminal history. (Exhibit 5).⁴

¹ The case number in the Proposed Decision is incorrect, corrected in this Final Decision.

² These Findings contain references to the administrative record and are modified to include additional relevant facts.

³ When a person submits an application for licensure, they are required to send required documentation with the application. The record in this case shows that the required information was not initially supplied by Godschalk, prompting the Division’s inquiry.

5. Godschalk did provide information on her past criminal history. (Exhibits 3, 4, 6, & 7).

6. Godschalk has been charged or found guilty of the following crimes:⁵

1994 Misdemeanor use or possession of drug paraphernalia
1994 Felony keep place for use or sale of controlled substance
1995 Misdemeanor use or possession of drug paraphernalia
1995 Misdemeanor possession of marijuana less ½ lb (x 2) [convicted]
1995 Felony possession of controlled substance [convicted]
2005 Misdemeanor simple assault
2007 Misdemeanor taking away unmarried minor
2007 Misdemeanor use or possession of drug paraphernalia [convicted]
2007 Misdemeanor intentional damage to property [convicted]
2007 Misdemeanor simple assault, 6 counts
2013 Felony manufacture/distribute/possess drugs schedules I or II [convicted]
2014 Felony possession controlled substances schedules III or IV
2014 Misdemeanor possession 2 oz of marijuana of less (x 2)
2014 Misdemeanor use or possession of drug paraphernalia (x 2)
2014 Felony possession of controlled substances schedules I or II (x 3) [convicted]

(Exhibits 4 & 6).

7. On September 12, 2023,⁶ the Division sent a certified letter to Godschalk denying her application for a producer license. The reasons for denial were because she was not in good standing under ARSD 20:06:01:03 and based upon SDCL 58-30-167(1), (2), (6), & (8).⁷ (Exhibit 8).

8. Godschalk filed a timely appeal of the determination.

9. A hearing on this matter was scheduled for February 8, 2024.

10. During and after the hearing, Godschalk submitted character references made on her behalf.⁸ (Exhibit A).

11. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.

⁴ Godschalk provided some documents with this request; however, no official criminal documentation was provided by Godschalk until the August 14, 2023 request.

⁵ Although Godschalk's criminal history does include some convictions, Godschalk was not found guilty of all the crimes listed in the Proposed Decision. Convictions are marked in this Final Decision.

⁶ As a part of the administrative record, the denial letter was sent to Godschalk on September 12, 2023, not November 7, 2023 as indicated in the Proposed Decision.

⁷ The grounds to determine whether a person is in good standing are listed in ARSD 20:06:01:03. The grounds for denying a license application are listed in SDCL 58-30-167.

⁸ All character references written by other individuals were made a part of the administrative record.

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.

REASONING⁹

This case involves a request by Godschalk to determine the reasonableness of the Division's decision to deny her 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 Godschalk's 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 must look to SDCL 58-30-167, providing, in pertinent part that SDCL 58-30-167(1) states that "[t]he director may... refuse to issue... an insurance producer's license... for providing incorrect, misleading, incomplete, or materially untrue information in the license application." Here, Godschalk did not provide the required information when she submitted her application. Upon request by the Division, Godschalk provided additional information on the events that occurred.¹⁰

SDCL 58-30-167(6) provides that "[t]he director may... refuse to issue... an insurance producer's license... for having been convicted of a felony." Here, Godschalk was convicted of multiple felonies which is grounds to deny a license.

SDCL 58-30-167(8) provides that "[t]he director may... refuse to issue... an insurance producer's license 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 Godschalk was deceptive with the Division. She answered "yes" to the misdemeanor and felony questions. A subsequent letter via email was sent to Godschalk requesting additional documentation. Godschalk did provide additional information on the events that occurred.¹¹

⁹ 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. Statutory references that were not alleged or not made a part of the administrative record are removed here, and statutory references that were alleged and made a part of the administrative record are included here.

¹⁰ The Division alleged SDCL 58-30-167(1) as grounds to deny Godschalk's license. This was not included in the Proposed Decision.

¹¹ The Division never alleged any violations of SDCL 58-33-66 and the related analysis is removed here.

ARSD 20:06:01:03 states that “[i]n 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.”

Godschalk was convicted of multiple felonies which is grounds for the denial of a license and for her to not be in good standing¹². There is a pattern of criminal behavior that lasted for many years. Godschalk claims to be rehabilitated, however, there still can be consequences to past behavior. Here, the felonies included drug violations of drug possession and drug distribution.¹³ It is not unreasonable for the Division to deny a license in this case. The events that occurred are very serious and the Division’s responsibility is to protect the public. A license may be denied because of a felony, therefore, the license should be denied.¹⁴

CONCLUSIONS OF LAW¹⁵

1. The Division has jurisdiction over Godschalk 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 Godschalk insurance application was reasonable by a preponderance of the evidence.

¹² The Division alleged Godschalk was not in good standing under ARSD 20:06:01:03. ARSD 20:06:01:03 was mentioned in the Reasoning of the Proposed Decision but was never analyzed.

¹³ There is no evidence that Godschalk was ever charged or convicted of any felony level assault crimes. Any reference to Godschalk having felony assault criminal activity has been removed.

¹⁴ A felony conviction alone does not necessarily require denial of the license nor is it outright bar to licensure, as applications are reviewed on a case-by-case basis under the facts and circumstances of each submitted application.

¹⁵ The Conclusions of Law section was updated to match the additional law in the Reasoning section and reflect the standards for license denial.

4. The Division did not meet its burden that SDCL 58-30-167(1) provide reasonable grounds to deny Godschalk's license application.
5. The Division established by a preponderance of the evidence that SDCL 58-30-167(6) provide grounds for the denial of Godschalk's license application.
6. 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).
7. Godschalk should be denied a license because of multiple felonies. SDCL 58-30-167(6).
8. The Division established by preponderance of the evidence that Godschalk had engaged in conduct that was unlawful and dishonest, and thus was not in good standing pursuant to the provisions of ARSD 20:06:01:03.
9. The Division established by a preponderance of the evidence that its denial of Godschalk's resident insurance producer license was reasonable.
10. 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:

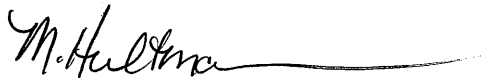
FINAL DECISION

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

THEREFORE IT IS HEREBY ORDERED that Danielle Godschalk's 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 20 day of March, 2024.



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
THE INSURANCE PRODUCER
LICENSE APPLICATION OF
DANIELLE GODSCHALK

INS 23-049

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 March 28, 2024.

Dated this 2nd day of April, 2024.




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 and Electronic Mail thereon, to the following:

Danielle Godschalk
4520 E 53rd ST
APT # 204
Sioux Falls, SD 57110
danig2369@yahoo.com
Danielle.Godschalk23@gmail.com

Dated this 2nd day of April, 2024 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
DANIELLE GODSCHALK**

**INS 21-24
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on February 8, 2024. Attorney, Lisa Harmon, appeared as a representative for the Division of Insurance (Division). The Division had a witness, Haelly Pease. Danielle Godschalk (Godschalk) appeared and testified at the hearing. The Hearing Examiner enters these Proposed Findings of Fact, Conclusions of Law, and Proposed Order.

ISSUE

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

FINDINGS OF FACT

1. On or about August 10, 2023, Godschalk applied for a resident insurance producer license in South Dakota.
2. On the application, Godschalk indicated "yes" when asked if she had ever been convicted of a misdemeanor or felony.
3. On August 11, 2023, the Division sent an email to Godschalk to provide information and documentation on the misdemeanor and felony question.
4. Godschalk did provide information on her past criminal history.
5. Godschalk has been found guilty of the following crimes:

- 1994 Misdemeanor use or possession of drug paraphernalia
- 1994 Felony keep place for use or sale of controlled substance
- 1995 Misdemeanor use or possession of drug paraphernalia
- 1995 Misdemeanor possession of marijuana less ½ lb (x 2)
- 1995 Felony possession of controlled substance
- 2005 Misdemeanor simple assault
- 2007 Misdemeanor taking away unmarried minor
- 2007 Misdemeanor intentional damage to property
- 2007 Misdemeanor simple assault, 6 counts
- 2013 Felony manufacture/distribute/posess drugs schedules I or II
- 2014 Felony possession controlled substances schedules III or IV
- 2014 Misdemeanor possession 2 oz of marijuana of less (x 2)
- 2014 Misdemeanor use or possession of drug paraphernalia (x 2)
- 2014 Felony possession of controlled substances scheduled I or II (x 2)

6. On November 7, 2023, the Division sent a certified letter to Godschalk denying her application for a producer license. The reasons for denial were because she was not in good standing under ARSD 20:06:01:03 and SDCL 58-30-167(1), (2), (6), & (8).
7. Godschalk filed a timely appeal of the determination.
8. A hearing on this matter was scheduled for February 8, 2024.
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 Danielle Godschalk. 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, Godschalk was convicted of multiple felonies 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 Godschalk was deceptive with the Division. She answered yes to the misdemeanor and felony questions. A subsequent letter via email was to Godschalk requesting additional documentation. Godschalk did provide additional 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.

Godschalk was convicted of multiple felonies which is grounds for the denial of a license. There is a pattern of criminal behavior that lasted for many years. Godschalk claims to be rehabilitated, however there still can be consequences to

past behavior. Here, the felonies included drug violations and assault. It is not unreasonable for the Division to deny a license in this case. The events that occurred are very serious and the Division's responsibility is to protect the public. A license may be denied because of a felony, therefore, the license should be denied.

CONCLUSIONS OF LAW

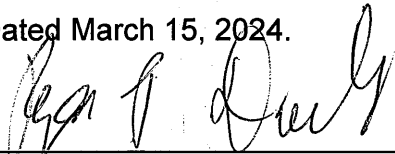
1. The Division has jurisdiction over Godschalk and the subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to SDCL 1-26D-4.
2. The Division bears the burden of establishing the alleged statutory violations by clear and convincing evidence.
3. Godschalk should be denied a license because of multiple felonies. SDCL 58-30-167.6.
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

The South Dakota Resident Insurance Producer License application of Danielle Rene Godschalk should be denied.

Dated March 15, 2024.



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

CERTIFICATE OF SERVICE

I certify that on March 15, 2024, 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
Julie McClelland
Legal Secretary

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