

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

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

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**FINAL DECISION
INS 24-35**


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 22nd, 2024 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 11 day of December, 2024.



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

STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION

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

INS 24-35

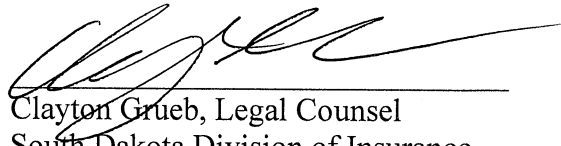
NOTICE OF ENTRY OF PROPOSED
FINDINGS OF FACT, CONCLUSION OF LAW,
AND DECISION AND FINAL DECISION

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 12th day of December, 2024.



Frank Marnell, Senior Legal Counsel
South Dakota Division of Insurance
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Pierre, SD 57501
(605) 773-3563



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

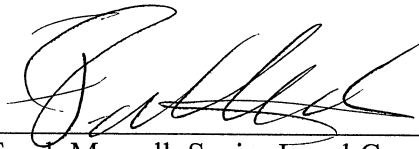
I, Clayton Grueb, the undersigned, do hereby certify that on the date shown below, a true and correct copy of the Proposed Findings of Fact, Conclusions of Law, and Decision, and Final Decision with respect to the above-entitled action was sent U.S. First Class and Certified Mail thereon, to the following:

Jacob Hubbs
606 Goeden Dr.
Yankton, SD 57078

Jacob Hubbs
1105 E 39th Street
Yankton, SD 57078

Nick Moser
P.O. Box 667
Yankton, SD 57078

Dated this 12th day of December, 2024 in Rapid City, South Dakota.



Frank Marnell, Senior Legal Counsel
South Dakota Division of Insurance
124 S. Euclid Ave., 2nd Floor
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**STATE OF SOUTH DAKOTA
OFFICE OF HEARING EXAMINERS**

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

**INS 24-35
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on September 16, 2024, pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance (“Division”). Frank Marnell appeared as counsel for the Division with a witness, Amy Ondell. Nick Moser appeared as counsel for the applicant, Jacob Hubbs (Hubbs). Mr. Hubbs appeared and testified at the hearing. Davin Hubbs testified on behalf of Jacob Hubbs. The parties stipulated to Exhibits A through H, which were entered into evidence.

ISSUE

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

FINDINGS OF FACT

1. Hubbs applied for a resident insurance producers license on April 2, 2020, July 29, 2021, May 1, 2023, and March 6, 2024.
2. This was the fourth attempt for Hubbs to obtain his resident insurance producer license. A prior determination following an administrative hearing was made by the Division of Insurance and the Secretary of Labor & Regulation on his 2nd and 3rd attempts to apply. These prior determinations were issued on June 24, 2022 and November 7, 2023.
3. Hubbs answered “Yes” to questions 1(A), 1(B), and 2 on his most recent application. This indicates that he has both felony and misdemeanor convictions on his criminal record and has been a part of an insurance administrative hearing.
4. Hubbs attempted to upload all the information in March 2024, but a few documents were missing regarding his previous administrative actions. A compliance agent with the Division let Hubbs know that he forgot a couple of the documents. These documents were immediately supplied to the agent.
5. Hubbs has been working as a full-time processor for his father, Dave Hubbs, since he was released from prison.
6. Dave Hubbs is licensed as a resident insurance producer in South Dakota. He sells crop/hail insurance in the Southeast part of the state, as well as in Nebraska. The firm has

about 900 clients. Dave has a portfolio of about 250 clients. If granted a license, Dave Hubbs would have responsibility for Jacob Hubbs' work.

7. Hubbs has worked consistently since being placed on probation. The clients in his father's portfolio have all be informed of Jacob Hubbs' convictions and work towards rehabilitation. Some clients and community members provided letters of recommendation for him for a previous hearing.
8. In his current work, Hubbs is able to see all information for all the clients of Hubbs Agency. Currently he assists Dave in the insurance work. He cannot be listed as the agent in charge or write the policy, or collect commission from sales of policies.
9. Hubbs has been sober for about 5 years. He has support of family and church members.
10. The Division of Insurance denied Hubbs most recent application on May 15, 2024.
11. Hubbs filed a timely appeal on May 24, 2024
12. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
13. 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 Jacob Hubbs 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:

- (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

Mr. Jacob Hubbs went off to college in 2015. He found himself in a situation at or about 2016. He ended up purchasing some fentanyl pills from the dark web and started selling them. He was caught with about 1000 illegal pills and faced felony drug charges. He was sentenced to 70 months in jail and 3 years of probation. He ended up attending a 9-month drug program and was released from probation early. He finished his probation about 3 and a half years ago.

Since his release from prison, he's held a steady job, gotten married, and has become a father. He attends church and has friends and family nearby. He does not attend any drug counseling or similar program. His testimony is that his off-work activities are centered more around family and fishing.

His work for the Hubbs Agency is that of paperwork and processing. He works with his father's portfolio of clients and has done so since 2021. He works as an intermediary between the Agency and the clients. He cannot be agent in charge for the policies and cannot write the insurance policies. He does, however, have access to all information contained within the confidential portfolios of the clients.

Hubbs' father would like to retire and give his portfolio of crop insurance clients to his son to work. Dave Hubbs believes his son has fully rehabilitated and should be given a chance to earn commission from his work with the insurance industry. SDCL §58-30-144.

Jacob Hubbs' legal troubles were not against the insurance industry. He did not violate any insurance laws or rules, subpoena, or order of any state's insurance industry. SDCL 58-30-167(2). His felony was not a use of fraudulent, coercive, or dishonest practices, or similar, in the conduct of business in this state or elsewhere. SDCL 58-30-167(8). He purchased drugs, Fentanyl, from the dark web and sold it to college kids and was convicted of a felony. SDCL 58-30-167(6), ARSD 20:06:01:03(6).

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, 11th 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.

The evidence shows that Division considered all the pertinent information and has looked at all the recommendation letters. The law allows the decision of the Division to rest solely on one felony in a person's history.

CONCLUSIONS OF LAW

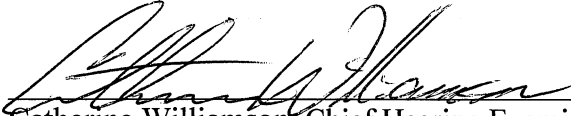
1. The Division has jurisdiction over the application of Mr. Hubbs and the subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to SDCL 1-26D-4.
2. The Division bears the burden of establishing the reasonableness of denying a license application by a preponderance of the evidence.
3. Hubbs applied to be an insurance producer of crop insurance under SDCL §58-30-142.
4. The Division established by a preponderance that the Division was reasonable in denying the application of Jacob Hubbs for a South Dakota Insurance Producer's license. SDCL 58-30-167(6). 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

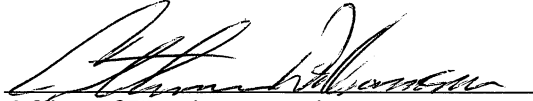
It is the Proposed Decision of the Office of Hearing Examiners that the determination by the Division of Insurance to deny a South Dakota Resident Insurance Producer License to Jacob Hubbs be affirmed as reasonable.

Dated this 22nd 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 20th, 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
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