

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

**IN THE MATTER OF
JOSHUA DUNCAN**

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**FINAL DECISION
INS 24-066**

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 February 4, 2025, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of the respondent will hereby be revoked.

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 7 day of February, 2025.



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
JOSHUA DUNCAN

INS 24-066
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 February 7, 2025.

Dated this 11th day of February, 2025.



Callie A. Pospishil
Legal Counsel
South Dakota Division of Insurance
124 S. Euclid Ave., 2nd 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:

Joshua Duncan
2112 W 39th St #1
Kearney, NE 68845
joshduncan614@gmail.com

Dated this 11th day of February, 2025 in Pierre, South Dakota.



Callie A. Pospishil
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South Dakota Division of Insurance
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**STATE OF SOUTH DAKOTA
OFFICE OF HEARING EXAMINERS**

**IN THE MATTER OF
JOSHUA DUNCAN**

**INS 24-066
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on January 31, 2025, pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance (“Division”) on July 10, 2024. Callie A. Pospishil appeared as counsel for the Division. JOSHUA DUNCAN (“DUNCAN”) did not appear, either in person or through counsel. The Division admitted its Exhibits 1 through 4 into evidence, and moved that the Hearing Examiner enter these Proposed Findings of Fact, Conclusions of Law, and Proposed Decision as a default disposition to this contested case.

ISSUE

Whether the Non-Resident Insurance Producer License of DUNCAN should be revoked due to failure to pay an application fee; violating any insurance laws or rules, subpoena, or order of the director or of another state's insurance director, commissioner, or superintendent; Obtaining or attempting to obtain a license through misrepresentation or fraud; and using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere; and failing to respond to the Divisions inquiries, in violation of SDCL 58-2-29, 58-30-159(2), 58-30-167(2), (3) & (8), and 58-33-66(1).

FINDINGS OF FACT

1. DUNCAN is licensed by the Division as an insurance producer on August 31, 2023. The license is currently active. (Exhibit 1).
2. DUNCAN did not submit his application fee. (Exhibits 2).
3. The Division sent inquiries to DUNCAN on August 27, 2024, and September 27, 2024, at the address of record regarding the licensure matters. (Exhibits 3-4).
4. DUNCAN did not provide a complete response to the Division’s inquiries. (Exhibits 3-4).
5. Any additional Findings of Fact 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 conclusions of law, they are hereby redesignated and incorporated herein as conclusions of law.

REASONING

This case involves a request by the Division to revoke the South Dakota Non-Resident Insurance Producer's License of DUNCAN. 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 58-2-29 states that "the director of the Division of Insurance shall collect in advance, and persons so served shall pay to the director in advance ... fees." SDCL 58-33-66(1) requires DUNCAN to respond to the Division and supply requested documents within twenty days from the receipt of a request. Also, the Division considers SDCL 58-30-167 (shown in pertinent part) as follows:

The director may... revoke or refuse to continue, any license issued under this chapter... after a hearing... The director may... revoke... 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;
- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (8) 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 indicates that DUNCAN failed to pay an application fee; violated insurance laws or rules, subpoena, or order of the director or of another state's insurance director, commissioner, or superintendent; Obtained or attempted to obtain a license through misrepresentation or fraud; and used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere; and failed to respond to the Divisions inquiries. Applying the law to the Findings of Fact, it is clear the Non-Resident Insurance Producer License of DUNCAN is subject to revocation and should be revoked.

CONCLUSIONS OF LAW

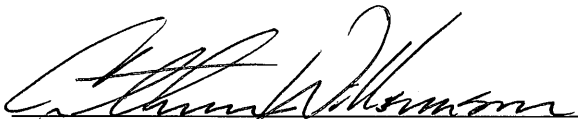
1. The Division has jurisdiction over DUNCAN and the subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to SDCL 1-26D-4.
2. The Division bears the burden of establishing the alleged statutory violations by clear and convincing evidence.
3. The Division established by clear and convincing evidence that DUNCAN violated SDCL 58-2-29.
4. The Division established by clear and convincing evidence that DUNCAN violated SDCL 58-33-66.
5. The Division established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producer License DUNCAN is subject to revocation pursuant to SDCL 58-30-167(2), (3) and (8).
6. Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.
7. 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 Non-Resident Insurance Producer License of JOSHUA DUNCAN should be revoked.


Dated this 4th day of February, 2025.



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

CERTIFICATE OF SERVICE

I certify on February 4, 2025, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.


Julie McClelland
Office of Hearing Examiners

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