

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

**IN THE MATTER OF
BRETT KAMERUD**

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**FINAL DECISION
INS 20-11**

An administrative hearing via teleconference was held on this matter on July 23, 2020. Brett Kamerud appeared and testified at the hearing. The Division of Insurance ("Division") was represented by Frank Marnell. The Division had a witness, Letisha Pederson, who testified at the hearing.

The Office of Hearing Examiners, through Hearing Examiner Ryan Darling, entered and served a Proposed Decision regarding the parties on September 25, 2020. 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 Division's denial of a resident insurance producer license for Brett Kamerud was reasonable.

FINDINGS OF FACT¹

1. On or about March 31, 1992, Brett Kamerud pled guilty to a felony drug offense. (Exhibit 1)
2. On October 24, 2001 a Grand Jury indicted Brett Kamerud for possessing and distributing methamphetamine.² Brett Kamerud was later found guilty and the offense was a felony. (Exhibits 2 and 3)
3. Brett Kamerud was sent to prison for the offense in May 2002. (Exhibits 3 through 6)
4. After being released from prison in 2018, Brett Kamerud applied for a South Dakota insurance producer license on March 2, 2020. (Exhibit 1)
5. Brett Kamerud remains on probation for the offense until 2021. (Exhibit 8)³

¹ These Findings contain references to the administrative record and correct the numbering.

² Correcting a typo in the Proposed Decision.

³ As presented at hearing and present in the administrative record.

6. Brett Kamerud did answer "yes" to the questions on whether he has been convicted of a felony or misdemeanor. (Exhibit 1)
7. Brett Kamerud did provide additional information to the Division. (Exhibits 2, 3, and 8)
8. On April 22, 2020, the Division denied Brett Kamerud's request for a South Dakota insurance producer license. (Exhibit 9)
9. The basis for the denial was that Brett Kamerud had been convicted of a felony and for using dishonest practices. (Exhibit 9)
10. On or about May 11, 2020, Brett Kamerud filed an appeal of the determination. (Exhibit 10)
11. Any additional findings included in the Reasoning section of this decision are incorporated herein by this reference. 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.

REASONING⁴

This case involves a request by Brett Kamerud to determine the reasonableness of the Division's decision to deny his 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 Selliff*, 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 Brett Kamerud'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:

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

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(6) Having been convicted of a felony;
. . . .

⁴ The Reasoning section was modified to include applicable legal standards for reviewing the denial of an insurance producer license.

(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 Director may suspend, revoke, or refuse to issue or renew an insurance producer license or may accept a monetary penalty in accordance with SDCL 58-4-28.1 or any combination thereof, for having been convicted of a felony or for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

In this case, Brett Kamerud was convicted of two felonies which is a reason to refuse to issue a South Dakota insurance producer's license. Brett Kamerud's offenses involved the sale of illegal drugs. This would be considered a dishonest practice. Consequently, there are two provisions of the law that indicate Brett Kamerud's request for a license may be denied.

Brett Kamerud argues that ARSD 20:06:01:03 should apply because of the recentness of the act. ARSD 20:06:01:03 provides:

Determination of good standing. 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.

Additionally, ARSD 20:06:01:04 provides:

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 ARSD 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.⁵

However, the administrative rules state that the Director may consider other factors. It does not say the Director has to consider other factors. Considering that Brett Kamerud had felony drug possession offenses, it cannot be said that the Director's refusal to issue a license is unreasonable.

Applying the law to the Findings of Fact, the Division has shown that the it was reasonable in denying Brett Kamerud's resident insurance producer application.

CONCLUSIONS OF LAW⁶

1. The Division has jurisdiction over the parties and subject matter of this contested case. The Office of Hearing Examiners has authority to conduct the appeal and issue a Proposed Decision pursuant to the provisions of SDCL Chapter 1-26D.
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 SDCL 1-26D-8.
3. The Division bears the burden of establishing that its denial of Brett Kamerud's insurance application was reasonable by a preponderance of the evidence.
4. Brett Kamerud was convicted of felony drug offenses.
5. The Division established by a preponderance of the evidence that SDCL 58-30-167(6) and (8) provide grounds for the denial of Brett Kamerud's 2020 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) and (8).

⁵ ARSD 20:06:01:04 is added as a pertinent administrative rule.

⁶ The Conclusions of Law section was updated to match the additional law in the Reasoning section.

7. The Division established by a preponderance of the evidence that its denial of Brett Kamerud's resident insurance producer license renewal was reasonable.
8. 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 Brett Kamerud's insurance producer license application was reasonable by a preponderance of the evidence. Brett Kamerud's resident insurance producer application should be denied.

THEREFORE IT IS HEREBY ORDERED that Brett Kamerud'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 8th day of October, 2020.



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
DIVISION OF INSURANCE**

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**NOTICE OF ENTRY OF
FINAL DECISION**

INS 20-11

NOTICE IS HEREBY GIVEN, that attached hereto, is a true and correct copy of the Findings of Fact, Reasoning, Conclusions of Law, and Final Decision entered by Marcia Hultman, Secretary of the South Dakota Department of Labor and Regulation, on October 8, 2020.

Dated this 13th day of October, 2020.



Frank A. Marnell, Senior Legal Counsel
South Dakota Division of Insurance


CERTIFICATE OF SERVICE

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

Brett Kamerud
1124 N. 2nd Street
Aberdeen, SD 57401

Brett Kamerud
614 South Main
Aberdeen, SD 57401

Dated this 13th day of October, 2020.



Frank A. Marnell, Senior Legal Counsel
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Department of Labor and Regulation
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