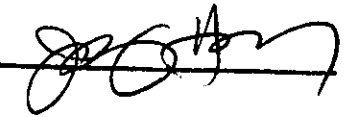


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**FILED**  
FEB 23 2006

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No. H-31789 LA
SUSAN C. M. MATHEWS,	)	L-2005050099
Respondent.	)	<u>STIPULATION AND</u>
	)	<u>AGREEMENT AND</u>
	)	<u>DECISION AFTER</u>
	)	<u>REJECTION</u>

I, SUSAN C. M. MATHEWS, Respondent herein, acknowledge that I have received and read the Accusation filed by the Department of Real Estate ("Department") on March 28, 2005, and the Statement to Respondent sent to me in connection with the Accusation. Furthermore, I have received and read the Notice of Rejection filed on October 24, 2005.

I hereby admit that the allegations contained in the Accusation filed against me on March 28, 2005, constitute a basis for the discipline of my real estate broker license.

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///

1 I further acknowledge that the Real Estate  
2 Commissioner held a hearing on the Accusation on July 1, 2005,  
3 before the Office of Administrative Hearings for the purpose  
4 of proving the allegations therein. I was present at the  
5 hearing and was represented by Frank Buda, Attorney at Law.  
6 Further, I have had an opportunity to read and review the  
7 Proposed Decision of the Administrative Law Judge dated  
8 September 26, 2005.

9 I understand that pursuant to Government Code  
10 Section 11517(c), the Real Estate Commissioner has rejected  
11 the Proposed Decision of the Administrative Law Judge. I  
12 further understand that pursuant to the same Section 11517(c),  
13 the Real Estate Commissioner may decide this case upon the  
14 record, including the transcript, without taking any  
15 additional evidence, after affording me the opportunity to  
16 present written argument to the Real Estate Commissioner.

17 I further understand that by signing this  
18 Stipulation and Agreement and Decision After Rejection  
19 ("Stipulation"), I am waiving my right to obtain a dismissal  
20 of the Accusation filed March 28, 2005, through proceedings  
21 under Government Code Section 11517(c) if this Stipulation is  
22 accepted by the Real Estate Commissioner. However, I also  
23 understand that I am not waiving my rights to further  
24 proceedings to obtain a dismissal of the Accusation if this  
25 Stipulation is not accepted by the Real Estate Commissioner.

26 ///

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1 IT IS HEREBY STIPULATED by and between Respondent,  
2 represented by Frank Buda, Attorney at Law, and the  
3 Complainant, acting by and through Darlene Averetta, Counsel  
4 for the Department of Real Estate, as follows for the purpose  
5 of settling and disposing of the Accusation.

6 A. It is understood by the parties that the Real  
7 Estate Commissioner may adopt the Stipulation as his decision  
8 in this matter, thereby revoking Respondent's license but  
9 granting a right to apply for a restricted real estate broker  
10 license, as set forth in the below Decision and "Order".  
11 In the event the Commissioner in his discretion does not adopt  
12 the Stipulation, the Stipulation shall be void and of no effect;  
13 and the Commissioner will review the transcript and the evidence  
14 in the case, and will issue his Decision After Rejection as his  
15 decision in this matter.

16 B. By reason of the foregoing and solely for the  
17 purpose of settlement of the Accusation without further  
18 administrative proceedings, it is stipulated and agreed  
19 that the Commissioner shall adopt the following Order:  
20

21 ORDER

22 All licenses and licensing rights of Respondent,  
23 SUSAN C. M. MATHEWS under the Real Estate Law are revoked;  
24 provided, however, a restricted real estate broker license  
25 shall be issued to Respondent SUSAN C. M. MATHEWS pursuant  
26 to Section 10156.5 of the Business and Professions Code if  
27

1 Respondent makes application therefor and pays to the Department  
2 of Real Estate ("Department") the appropriate fee for the  
3 restricted license within ninety (90) days from the effective  
4 date of this Decision.

5 The restricted license issued to Respondent shall be  
6 subject to all of the provisions of Section 10156.7 of the  
7 Business and Professions Code and to the following limitations,  
8 conditions and restrictions imposed under authority of Section  
9 10156.6 of that Code:

10 1. The restricted license issued to Respondent may  
11 be suspended prior to hearing by Order of the Real Estate  
12 Commissioner in the event of Respondent's conviction or plea  
13 of nolo contendere to a crime which is substantially related  
14 to Respondent's fitness or capacity as a real estate licensee.

15 2. The restricted license issued to Respondent may  
16 be suspended prior to hearing by Order of the Real Estate  
17 Commissioner on evidence satisfactory to the Commissioner that  
18 Respondent has violated provisions of the California Real Estate  
19 Law, the Subdivided Lands Law, or Regulations of the Real Estate  
20 Commissioner or conditions attaching to the restricted license.

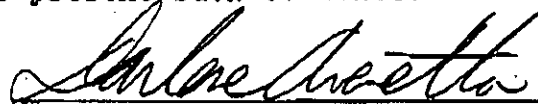
21 3. Respondent shall not be eligible to apply for the  
22 issuance of an unrestricted real estate license nor for the  
23 removal of any of the conditions, limitations or restrictions  
24 of a restricted license until two (2) years have elapsed from  
25 the effective date of this Decision.  
26

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1                   4. Respondent shall, within nine (9) months from the  
2 effective date of this Decision, present evidence satisfactory to  
3 the Real Estate Commissioner that Respondent has, since the most  
4 recent issuance of an original or renewal real estate license,  
5 taken and successfully completed the continuing education  
6 requirements of Article 2.5 of Chapter 3 of the Real Estate Law  
7 for renewal of a real estate license. If Respondent fails to  
8 satisfy this condition, the Commissioner may order the  
9 suspension of the restricted license until the Respondent  
10 presents such evidence. The Commissioner shall afford  
11 Respondent the opportunity for a hearing pursuant to the  
12 Administrative Procedure Act to present such evidence.

13  
14 Dated:

February 9, 2006



DARLENE AVERETTA  
Counsel for Complainant

15  
16 \* \* \*

17                   I have read the Stipulation and Agreement and Decision  
18 After Rejection and discussed it with my attorney. Its terms  
19 are understood by me and are agreeable and acceptable to me.  
20 I understand that I am waiving my rights given to me by the  
21 California Administrative Procedure Act (including but not  
22 limited to Section 11506, 11508, 11509 and 11513 of the  
23 Government Code), and I willing, intelligently, and voluntarily  
24 waive those rights to enter into this Stipulation.

25  
26 Dated: \_\_\_\_\_

\_\_\_\_\_  
SUSAN C. M. MATHEWS, Respondent.

27 ///

1 4. Respondent shall, within nine (9) months from the  
 2 effective date of this Decision, present evidence satisfactory to  
 3 the Real Estate Commissioner that Respondent has, since the most  
 4 recent issuance of an original or renewal real estate license,  
 5 taken and successfully completed the continuing education  
 6 requirements of Article 2.5 of Chapter 3 of the Real Estate Law  
 7 for renewal of a real estate license. If Respondent fails to  
 8 satisfy this condition, the Commissioner may order the  
 9 suspension of the restricted license until the Respondent  
 10 presents such evidence. The Commissioner shall afford  
 11 Respondent the opportunity for a hearing pursuant to the  
 12 Administrative Procedure Act to present such evidence.  
 13

14 Dated: \_\_\_\_\_  
 15 DARLENE AVERETTA  
 16 Counsel for Complainant

17 \* \* \*

18 I have read the Stipulation and Agreement and Decision  
 19 After Rejection and discussed it with my attorney. Its terms  
 20 are understood by me and are agreeable and acceptable to me.  
 21 I understand that I am waiving my rights given to me by the  
 22 California Administrative Procedure Act (including but not  
 23 limited to Section 11506, 11508, 11509 and 11513 of the  
 24 Government Code), and I willing, intelligently, and voluntarily  
 25 waive those rights to enter into this Stipulation.

26 Dated: 2/7/06 \_\_\_\_\_  
 27 SUSAN C. M. MATHEWS, Respondent.

///

Dated:

2 - 3 - 06

Frank Buda

FRANK BUDA, Respondent's Counsel  
Approved as to Form and Content

\* \* \*

I have read the Accusation filed herein, the Proposed Decision of the Administrative Law Judge dated September 26, 2005 and the foregoing Stipulation and Agreement and Decision After Rejection signed by Respondent. I am satisfied that it will not be inimical to the public interest to issue a restricted real estate broker license to Respondent.

Therefore, IT IS HEREBY ORDERED that Respondent's real estate broker license is revoked, but a restricted real estate broker license be issued to Respondent SUSAN C. M. MATHEWS if Respondent has otherwise fulfilled all of the requirements for licensure. The restricted license shall be limited, conditioned and restricted as specified in the foregoing Stipulation and Agreement and Decision After Rejection.

This Order shall become effective at 12 o'clock noon on \_\_\_\_\_, 2006.

IT IS SO ORDERED \_\_\_\_\_, 2006.

JEFF DAVI  
Real Estate Commissioner

\_\_\_\_\_

1 Dated: \_\_\_\_\_

FRANK BUDA, Respondent's Counsel  
Approved as to Form and Content

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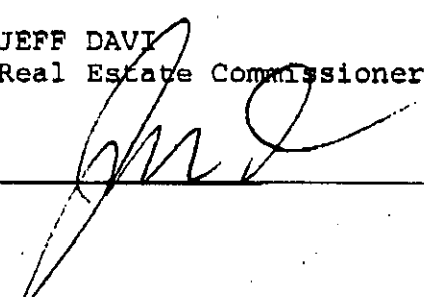
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4 I have read the Accusation filed herein, the Proposed  
5 Decision of the Administrative Law Judge dated September 26,  
6 2005 and the foregoing Stipulation and Agreement and Decision  
7 After Rejection signed by Respondent. I am satisfied that it  
8 will not be inimical to the public interest to issue a  
9 restricted real estate broker license to Respondent.

10 Therefore, IT IS HEREBY ORDERED that Respondent's real  
11 estate broker license is revoked, but a restricted real estate  
12 broker license be issued to Respondent SUSAN C. M. MATHEWS if  
13 Respondent has otherwise fulfilled all of the requirements for  
14 licensure. The restricted license shall be limited, conditioned  
15 and restricted as specified in the foregoing Stipulation and  
16 Agreement and Decision After Rejection.

17  
18 This Order shall become effective at 12 o'clock noon  
19 on March 15 \_\_\_\_\_, 2006.

20 IT IS SO ORDERED \_\_\_\_\_ 2.23, 2006.

21 JEFF DAVIS  
22 Real Estate Commissioner

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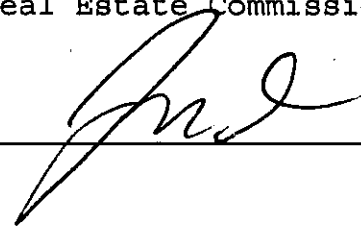
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Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of July 1, 2005, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of Complainant to be considered by me must be submitted within 15 days after receipt of the argument of Respondent at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: 10-18-05, 2005

JEFF DAVI  
Real Estate Commissioner



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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	Agency No. H-31789
	)	
SUSAN C. M. MATHEWS,	)	OAH No. L2005050099
	)	
Respondent.	)	
_____	)	

PROPOSED DECISION

This matter came on regularly for hearing before Carolyn D. Magnuson, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on July 1, 2005.

Darlene Avaretta, Assistant Chief Counsel, represented Complainant.

Frank Buda, Attorney at Law, represented Respondent, who was present at the hearing.

Testimonial and documentary evidence was received, and the record was left open for Respondent to submit additional evidence. Respondent's attorney notified the court that no further evidence would be submitted, and the matter was submitted on August 1, 2005.

FACTUAL FINDINGS

1. Maria Suarez (Complainant) made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Susan C. M. Mathews (Respondent) holds real estate broker license number 00949235 issued to her by the Department of Real Estate (Department). The license was in full force and effect at all relevant times.

3. On April 21, 1004, in the Superior Court of the State of California, Los Angeles County, Respondent was convicted on her plea of nolo contendere of violating Business and Professions Code section 2052, subdivision (a) (practicing medicine without a license), a crime not necessarily involving moral turpitude nor per se substantially related to the duties, functions, and qualifications of a departmental licensee.<sup>1</sup>

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<sup>1</sup> On February 16, 2005, the information filed in this case was deemed by the court to allege Respondent's violation of Business and Professions Code section 2052, subdivision (a), as a misdemeanor.

4. Imposition of sentence was suspended, and Respondent was placed on formal probation for five years on the condition that she pay \$12,956.84 in restitution, pay a fine, and perform 120 days of community service. Respondent has paid the fine and restitution ordered and has performed the community service. She is in full compliance with the remaining terms of her probation.

5. The facts and circumstances of the crime are that Respondent, who was licensed as a cosmetologist in California, owned a skin care clinic. As one of the services provided to her customers, Respondent cauterized warts.

6. Respondent credibly testified that she was unaware that removing warts was a procedure for which a medical license was required and did not intentionally break the law.

7. Respondent has held a real estate license since 1983 without any prior discipline having been imposed. At present, she is engaged full time in brokering mortgages and real estate sales.

8. Respondent has been married for twelve years. She and her husband have a good relationship. Respondent is active in her church and in the community.

9. Respondent no longer practices cosmetology and no longer owns the skin care clinic. She does not plan to resume such work, although she has kept her license active.

#### LEGAL CONCLUSIONS

10. Business and Professions Code section 490 provides:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

11. Business and Professions Code section 10177, subdivision (b) provides:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following . . . .

[¶ . . . . ¶]

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal . . . .

12. Therefore, grounds would exist for the Department to discipline Respondent's license because of her criminal conviction if she had been convicted of a felony or if she had been convicted of a misdemeanor offense which involved moral turpitude (Bus. & Prof. Code § 10177), provided that the crime had been substantially related to licensed activities and responsibilities (Bus. & Prof. Code § 490).

13. Business and Professions Code section 2052, subdivision (a), provides:

Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment.

14. In deciding whether a conviction necessarily involves moral turpitude, a court must look to the statutory definition of the particular crime and only if the least adjudicated elements of the crime necessarily involved moral turpitude does the conviction involve moral turpitude as a matter of law. (See, *People v. Forster* (1994) 29 Cal.App.4th 1746.) When a criminal conviction does not necessarily involve moral turpitude, proof of specific facts underlying the conviction may be introduced to establish that the conduct underlying the conviction involved moral turpitude. (See, *Adams v. Commission on Judicial Performance* (1994) 8 Cal.4th 630.) "Moral turpitude" involves conduct which demonstrates a general readiness to do evil. (*People v. Rivera* (2003) 107 Cal.App.4th 1374.)

15. The scope of the language used in Business and Professions Code section 2052, subdivision a, is so all-encompassing that it would encompass a parent's bandaging an offspring's scraped knee or wrapping a child's strained ankle, because the parent would be treating the injury of a person, which is conduct prohibited by the statute.<sup>2</sup> Since such conduct does not demonstrate a readiness to do evil, one who has been convicted of violating that provision has not necessarily engaged in moral turpitude.

16. The evidence did not establish facts and circumstances attendant on Respondent's conviction which demonstrated that Respondent's culpable conduct did, in fact, involve moral turpitude. Indeed, the unrefuted evidence on the point was that Respondent was unaware she was breaking the law and had no intention to do so.

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<sup>2</sup> In fact, strictly read, the section would prohibit an individual from bandaging himself since the prohibition covers any person.

17. Thus, because Respondent was convicted of a misdemeanor, under Business and Professions Code section 10177, subdivision (b), that conviction could only be the basis for license discipline if the Respondent's criminal conduct involved moral turpitude. Since the evidence failed to establish that Respondent engaged in that type of conduct, the conviction is not a basis for discipline.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Accusation is dismissed.

Dated:

September 26, 2005

*Carolyn D. Magnuson*  
CAROLYN D. MAGNUSON  
Administrative Law Judge  
Office of Administrative Hearings

*not adopted*

*Jack Jay*

**FILED**  
MAR 28 2005  
DEPARTMENT OF REAL ESTATE

1 CHRIS LEONG, Counsel (SBN 141079)  
Department of Real Estate  
2 320 West Fourth Street, Suite 350  
Los Angeles, CA 90013-1105  
3  
4 Telephone: (213) 576-6982  
-or- (213) 576-6910 (Direct)

By *Laura B. Stone*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

11	In the Matter of the Accusation of	)	No. H-31789 LA
12	SUSAN C. M. MATHEWS,	)	<u>A C C U S A T I O N</u>
13	Respondent.	)	

15 The Complainant, Maria Suarez, a Deputy Real Estate  
16 Commissioner of the State of California, for cause of Accusation  
17 against SUSAN C. M. MATHEWS (hereinafter "Respondent"), is  
18 informed and alleges as follows:

I

20 Respondent is presently licensed and/or has license  
21 rights under the Real Estate Law, Part 1 of Division 4 of the  
22 Business and Professions Code (hereinafter "Code"), as a real  
23 estate broker.

24 ///  
25 ///  
26 ///





1 WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against all licenses and license rights of Respondent,  
5 SUSAN C. M. MATHEWS, under the Real Estate Law (Part 1 of  
6 Division 4 of the Business and Professions Code), and for such  
7 other and further relief as may be proper under other  
8 applicable provisions of law.

9 Dated at Los Angeles, California  
10 this 24<sup>th</sup> day of March, 2005.

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12   
13 Deputy Real Estate Commissioner  
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25 cc: Susan C. M. Mathews  
26 Maria Suarez  
27 Sacto.  
LF