

FILED

AUG 07 2020

DEPT. OF REAL ESTATE

By *Zai Gan*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:)	DRE No. H-41434 LA
)	
HECTOR FLORES RODRIGUEZ,)	OAH No. 2019120660
)	
Respondent.)	

DECISION

The Proposed Decision dated June 4, 2020, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted salesperson license is granted to Respondent.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

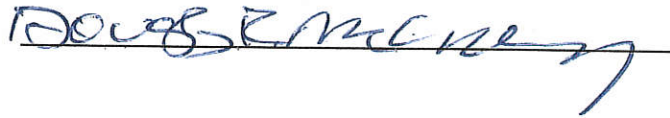
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The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on SEP 07 2020.

IT IS SO ORDERED 8:4.20

DOUGLAS R. McCAULEY
ACTING REAL ESTATE COMMISSIONER



**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation against:

HECTOR FLORES RODRIGUEZ, Respondent.

Agency Case No. H-41434 LA

OAH No. 2019120660

PROPOSED DECISION

Administrative Law Judge Chantal M. Sampogna, Office of Administrative Hearings, State of California, heard this matter telephonically on May 13, 2020.

Kevin H. Sun, Counsel, appeared by telephone and represented complainant Veronica Kilpatrick, Supervising Special Investigator II, Department of Real Estate (Department).

Respondent Hector Flores Rodriguez appeared by telephone and represented himself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on May 13, 2020.

ISSUES

1. Whether the crime for which respondent was convicted bears a substantial relationship to the qualifications, functions or duties of a real estate licensee, as defined in California Code of Regulations, title 10, (Regulations) section 2910.
2. Whether the crime for which respondent was convicted constitutes cause for discipline of respondent's real estate broker's license under Business and Professions Code, sections 490, and 10177, subdivision (b).¹
3. Whether respondent failed to report his conviction to the Department within 30 days of the conviction date, cause for discipline under section 10186.2.
4. A. Whether respondent failed to disclose his conviction on his renewal application for his real estate broker's license.

B. If so, whether respondent's failure to disclose his conviction constitutes an attempt to procure a real estate license by fraudulent means or a material misstatement on his application, grounds for discipline under section 10177, subdivision (a).
5. Whether protection of the public requires disciplinary action against respondent's real estate broker's license.

¹ Statutory references are to the Business and Professions Code unless otherwise designated.

6. Whether respondent must pay the Department reasonable costs of investigation and enforcement.

SUMMARY

On August 2, 2018, respondent was convicted of forging vehicle registration tags. Respondent failed to report his conviction to the Department within 30 days and failed to disclose the conviction on his real estate broker's renewal application. Complainant established cause to revoke respondent's real estate broker's license. Respondent's rehabilitation evidence, however, established that protection of the public would be served if respondent is granted a restricted salesperson's license for three years on terms and conditions. Respondent must pay reasonable costs for investigation and enforcement.

FACTUAL FINDINGS

Jurisdiction

1. On September 21, 1999, the Department issued respondent a salesperson license. On July 1, 2002, the Department issued respondent real estate broker's license ID 01266425. The license is scheduled to expire on January 3, 2023.
2. On January 4, 2019, respondent submitted a Broker Renewal Application to the Department.
3. On July 26, 2019, complainant filed the Accusation while acting in her official capacity as a Supervising Special Investigator of the Department. Respondent

timely submitted a Notice of Defense. On October 8, 2019, complainant filed the First Amended Accusation.

Respondent's Conviction

4. A. On August 2, 2018, in the Superior Court of California, County of Riverside, Case Number BAM1803033, respondent pled guilty to, and was convicted of, violating Vehicle Code sections 4463, subdivision (a)(1) (altering or forging a registration tag for a motor vehicle), a misdemeanor, and 12500, subdivision (a) (driving without a valid driver's license), an infraction.

B. The court suspended imposition of sentence, ordered respondent to serve one day in county jail with credit for one day served, placed respondent on summary probation for 36 months under certain terms and conditions, and ordered respondent to pay fines and fees totaling \$964. During sentencing, counsel stipulated that, if respondent had no probation violations and all terms and conditions were satisfied, "a [Penal Code section] 1203.4 may be filed and probation may be terminated after 1 year." (Exhibit 3, p. 18.) Though respondent has been compliant with his probation terms for more than one year, he has not filed a request for early termination of his probation.

C. The circumstances underlying respondent's criminal behavior are that, sometime before June 1, 2018, respondent placed his daughter's 2018 registration tags on his ex-girlfriend's 2002 BMW 530i with the intent to defraud law enforcement about the status of the vehicle's registration. On June 1, 2018, respondent parked the vehicle at the Morongo Casino Resort and Spa. Riverside County Sheriff's Deputy Wheeler conducted an unoccupied vehicle check of the vehicle, observed 2018 registration tags on the vehicle, but determined the vehicle had

not been registered since 2016. Deputy Wheeler located respondent in the casino. During his interview, respondent admitted to placing his daughter's 2018 registration tags onto the vehicle. Deputy Wheeler conducted a records check of respondent and determined his driver's license had been suspended. Deputy Wheeler arrested respondent without incident.

Respondent's Failures to Report and Disclose Conviction

5. Respondent did not report in writing to the Department his August 2, 2018, misdemeanor conviction within 30 days of the conviction date.

6. On the Department's real estate broker's renewal application, question 16, under "BACKGROUND INFORMATION," asks "WITHIN THE SIX-YEAR PERIOD PRIOR TO FILING THIS APPLICATION, HAVE YOU EVER BEEN CONVICTED (**SEE PARAGRAPH ABOVE**) OF ANY VIOLATION OF THE LAW AT THE MISDEMEANOR OR FELONY LEVEL? **IF YES, COMPLETE ITEM 22 WITH INFORMATION ON EACH CONVICTION.**" (Ex. 5, p. 30, emphasis in original.) The referenced paragraph above states that the term "conviction" includes only "Convictions within the last six-years." (*Ibid.*) On January 4, 2019, signing under penalty of perjury, respondent marked "no" and failed to disclose the misdemeanor conviction identified in Factual Finding 4.

Evidence of Rehabilitation

7. Respondent has no prior or subsequent criminal history, nor any history of license discipline during his 20 years of licensure with the Department. Since his conviction, respondent completed necessary course work for, and became registered by, the California Education Tax Council as a Registered Tax Preparer. In addition, since his conviction he has completed 27 hours of required continuing education for his real estate broker's license.

8. Respondent has been self-employed for 15 years, primarily as a real estate broker, but more recently also as a tax preparer. As a broker, respondent is responsible for negotiating and arranging real estate transactions and supervising two real estate salespersons. Respondent's business practices and familial responsibilities have remained the same since his conviction. Respondent works five to seven days per week and continues to supervise his two salespersons. Respondent supports and parents his two children, a 20-year-old daughter and 15-year-old son. Respondent expressed remorse that his conduct has placed his family, salespersons, business, standing as a broker, and career at risk, identifying the financial and employment repercussions his behavior could have on those that rely on him and acknowledging that he failed to comply with his licensing requirements. Respondent committed to improving his behavior and to complying with any restrictions placed on his license.

9. Respondent volunteers in his community, providing pro bono services to those of his income tax clients who primarily work as agricultural laborers in the East Coachella Valley and for whom English is a second language. Respondent assists these clients with tax preparation, most often waiving payment other than filing fees, and did so during the 2020 tax season. In addition, he has assisted over 50 individuals in his community with their applications for Pandemic Unemployment Assistance. Respondent regularly makes efforts to assist those in need in his community, e.g., respondent assisted his community members with loan modifications during the 2008 housing market crisis.

10. A. Respondent testified candidly about his criminal behavior, consistent with Sheriff's Incident Report, and admitted that he purposefully placed his daughter's registration tags on the vehicle he was driving to prevent law enforcement from determining the vehicle was not currently registered. However, respondent's

account of his criminal behavior in his Interview Information Statement RE 515 was inconsistent with his testimony. In his statement, respondent wrote that on the date of arrest he was driving his girlfriend's vehicle, unaware it had "2 years of unpaid registrations. When I was pulled over, [sic] police officer accused me of registration fraud and arrested me!" (Ex. 7, p. 40.) Respondent's written statement displayed a failure to take responsibility for his behavior and constitutes a false statement.

B. At hearing, respondent also addressed his infraction conviction for failing to have a valid driver's license. Respondent explained that at the time of his arrest he did not know his license had been suspended due to an unpaid traffic violation.

11. Respondent testified that he was not aware that he was required to disclose convictions to the Department within 30 days. After reviewing the broker's license renewal application (Exhibit 6, p. 33), during cross-examination, respondent acknowledged that application, which he had completed on at least three prior occasions when he renewed his license, directly advised respondent of this responsibility. Respondent then acknowledged that he had never read that portion of the renewal application, evidence of his carelessness and lack of integrity.

12. In his written statement, respondent wrote he had no excuse for failing to disclose his conviction. At hearing, respondent explained that he failed to disclose his conviction because he believed his probation would last only one year, and that once it was completed the misdemeanor would reduce to an infraction, which he was not required to disclose. The minute order found in Exhibit 4 corroborated respondent's belief that his misdemeanor would reduce to an infraction after one year, because it provided for the reduction if respondent was compliant with his probation and petitioned the court for the reduction. However, respondent's failure to report his

conviction demonstrates respondent's carelessness and lack of integrity, as only five months had passed between his conviction and the date on which he submitted his renewal application, and respondent had not yet petitioned the court for the reduction.

Costs

13. Pursuant to section 10106, complainant presented certified statements to establish the costs of investigation and enforcement in the total amount of \$1,909.75. This amount consists of investigation costs of \$783.90, as well as enforcement costs of \$1,125.85 incurred by the Department's counsel.

14. Complainant established that investigation costs in the amount of \$783.90 and enforcement costs in the amount of \$1,125.85 were reasonable based on the work conducted in this matter. Respondent did not dispute the investigation or enforcement costs, or his ability or willingness to pay.

LEGAL CONCLUSIONS

General Legal Standards

1. The Real Estate Commissioner (Commissioner) "has full power to regulate and control the issuance and revocation . . . of all licenses to be issued . . ." (§ 10071.) "Protection of the public shall be the highest priority for the Department of Real Estate in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (§ 10050.1.)

2. Administrative proceedings to revoke, suspend or impose discipline on a professional license are noncriminal and non-penal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.)

3. Complainant bears the burden of proof. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113.) The standard of proof for the Department to prevail on the First Amended Accusation is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

Causes for License Revocation

CRIMINAL CONVICTION

4. The Board may suspend or revoke a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. (§§ 490, subd. (a)(1), 10177, subd (b)(1).)

5. A crime or act is substantially related to the qualifications, functions, or duties of a real estate licensee if it involves counterfeiting, forging or altering of an instrument or the uttering of a false statement, or if it involves willfully violating or failing to comply with a statutory requirement that a license be obtained before engaging in a business or course of conduct. (Regulations, § 2910, subd. (a)(2) & (7).)

6. An infraction violation of Vehicle Code section 12500 is not grounds for suspension, revocation, or denial of license. (Pen. Code, § 19.8.)

7. Cause exists to discipline respondent's license based on his misdemeanor conviction for altering or forging a registration tag for a motor vehicle, which was substantially related to the qualifications, functions, and duties of a real estate salesperson. Respondent fraudulently placed another vehicle's registration tags onto the vehicle respondent was driving to prevent law enforcement from citing him for driving a vehicle without current registration. (Factual Finding 4.)

8. Cause does not exist to discipline respondent's license based on his infraction violation of Vehicle Code section 12500, subdivision (a). (Factual Finding 4.)

9. Liability for infractions does not require wrongful intent. (*Delfino v. Sloan* (1993) 20 Cal.App.4th 1429, 1436-1437.) Complainant did not establish that respondent's infraction was a substantially related act as defined in Regulations, section 2910, subdivision (a)(7), because complainant failed to establish that respondent willfully failed to comply with the Vehicle Code requirement that he have valid driver's license when driving a vehicle. The evidence only established that respondent did not know his license had been suspended. However, respondent's carelessness and irresponsibility may be considered as a factor in aggravation when considering license discipline.

REPORTING AND DISCLOSURE

10. A licensee's failure to report a conviction, including a plea of guilty or no contest, of any felony or misdemeanor within 30 days of the date of the conviction is cause for discipline. (§ 10186.2.)

11. The Commissioner may suspend or revoke the license of a real estate licensee who has procured, or attempted to procure, a real estate license renewal for themselves by fraud, misrepresentation, or deceit, or by making a material

misstatement of fact in an application for a real estate license renewal. (§ 10177, subd. (a).)

12. Complainant established by clear and convincing evidence that cause exists under sections 10186.2 and 10177, subdivision (a), to discipline respondent's license because respondent failed to report and disclose his conviction for violation of Vehicle Code section 4463, subdivision (a)(1). Respondent's failure to know with certainty the terms and status of his plea and probation demonstrates carelessness and lack of responsibility for his personal affairs. (Factual Findings 5 & 6.)

Discipline Considerations

13. "[T]he objective of an administrative proceeding relating to a possible license suspension is to protect the public; to determine whether a licensee has exercised his privilege in derogation of the public interest." (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.)

14. A real estate broker must exercise reasonable supervision over the activities of his or her salespersons, which includes overseeing transactions requiring a real estate license, documents which may have a material effect on the rights or obligations of a party to the transaction, and handling of trust funds. (Regulations, § 2725.)

15. "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. If appellant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson." (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402, citing *Golde v. Fox* (1979), 98 Cal.App.3d 167, 176.)

16. A conviction in which an essential element of the crime charged is an intent to defraud demonstrates a character lacking in honesty and integrity.

(Harrington v. Department of Real Estate, supra, 214 Cal.App.3d at p. 403.)

Respondent's lack of candor in completing his license application "is itself sufficient to sustain a finding that [respondent] does not yet appreciate the need to speak honestly about and to accept responsibility for one's actions." *(Id.)*

Rehabilitation

17. The Department has established criteria for assessing a licensee's rehabilitation to determine the degree of discipline to impose on the licensee. (Regulations, § 2912.) The relevant criteria for assessing respondent's rehabilitation include the following factors:

A. the time that has elapsed since commission of the act or offense, where the passage of less than two years after the most recent criminal conviction or act is inadequate to demonstrate rehabilitation; the nature and severity of the crimes and or acts committed by the licensee, and the licensee's history of substantially related criminal convictions or license discipline;

B. whether respondent has expunged the conviction; respondent's successful completion or early discharge from probation; respondent's payment of any fine imposed in connection with the criminal conviction;

C. the stability of respondent's family life and his fulfillment of parental and familial responsibilities subsequent to the criminal conviction; respondent's completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement; any significant and

conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; and

D. evidence that respondent has changed his attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by testimony or other evidence of rehabilitation submitted by the licensee, or by the absence of subsequent felony convictions, misdemeanor convictions, or other conduct that provides grounds to discipline a real estate licensee, or which reflect an inability to conform to societal rules when considered in light of the conduct in question. (Cal. Code Regs., tit. 10, § 2912, subds. (a)(1), (c), (e), (g), (j), (k), (l), (m)(1) & (5).)

18. A. At the time of hearing, less than two years had passed since respondent's criminal behavior, an inadequate amount of time to demonstrate rehabilitation. The seriousness of respondent's crime lies in its deliberate dishonesty and fraudulent behavior. However, respondent's crime did not cause physical or financial injury to others and was not committed in the professional arena. Respondent has no prior or subsequent substantially related criminal convictions or license discipline. (Factual Findings 4 & 7.)

B. Respondent has not completed probation or had the conviction expunged. Though the evidence shows respondent has been compliant with probation, good behavior while on probation is given little weight in assessing rehabilitation. Persons under the direct supervision of correctional authorities are required to behave in an exemplary fashion. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099; *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 939; *In re Menna* (1995) 11 Cal.4th 975, 989.) (Factual Findings 4 & 12.)

C. Respondent has maintained a stable family life since his conviction, including supporting his two children, now twenty and fifteen years old. Respondent has completed necessary course work for, and became registered as, a tax preparer, and has completed 27 hours of required continuing education for his real estate broker's license. Respondent has used his knowledge of real estate and tax preparation to benefit those in his community by assisting those who are financially struggling with their tax preparation, applications for unemployment benefits, and loan modifications. (Factual Findings 7-9.)

D. Respondent demonstrated a changed attitude from that which existed at the time of the commission of his criminal behavior as demonstrated by his remorse, commitment towards improving his behavior and adherence to licensing requirements, and his lack of additional criminal behavior. However, after his criminal conviction, respondent has twice committed acts which are grounds to discipline his real estate license, i.e., failing to report and failing to disclose his conviction. (Factual Findings 5, 6, & 8.) Though respondent has a changed attitude, he has not achieved the professionalism and integrity required to hold an unrestricted license.

19. Respondent bears the burden of establishing rehabilitation sufficient to warrant his continued licensure. (*In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309.) Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940), but mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991; see also *In*

re Schwartz (1982) 31 Cal.3d 395, 400-401, citing *In re Conflenti* (1981) 29 Cal.3d 120, 124-125 [where petitioner's criminal acts occurred just two years prior to his discipline hearing, evidence of rehabilitation was insufficient to demonstrate rehabilitation].)

20. A. When considering the Department's criteria for assessing rehabilitation, respondent's strengths are in his commitment to his family, work, and community, which he demonstrated by his efforts towards economic and career maintenance and self-improvement, and his genuine concern that his criminal, careless, and irresponsible behavior have placed his family, salespersons, business, standing as a broker, and career at risk. Further, respondent's fraudulent criminal behavior did not occur in the professional arena, and respondent has no other criminal or license discipline history during his 20-year career. Respondent acknowledged the wrongfulness of his criminal behavior and failures to communicate honestly with the Department.

B. However, there has not been an adequate passage of time to demonstrate rehabilitation. Respondent's fraudulent behavior and false statements, coupled with his pattern of careless and irresponsible behavior dating back to driving without a valid license, reflect unfavorably on his integrity and honesty and demonstrate that he cannot be entrusted with the duties and responsibilities bestowed upon a real estate broker. Protection of the public requires revocation of respondent's real estate broker's license.

C. The objective of the administrative hearing is not intended to punish but is intended to protect the public. Based on the strengths of respondent's rehabilitation, protection of the public will be achieved by the Department issuing respondent a restricted salesperson's license for three years subject to the terms and conditions identified in the order below.

Award of Costs

21. Under Code section 10106, the Department may recover costs "not to exceed the reasonable costs of the investigation and enforcement" of this matter. The Department is entitled to recover its reasonable costs in the amount of \$1,909.75. (Factual Findings 13 & 14.)

ORDER

All licenses and licensing rights of respondent Hector Flores Rodriguez under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent for a period of three years pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. Any restricted real estate license issued to respondent pursuant to this Decision shall be suspended for 30 days from the date of issuance of the restricted license. The restricted license issued to Respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the

Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

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

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The

Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

6. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

7. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested, and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATE: June 4, 2020

DocuSigned by:
Chantal M. Samogna
CHANTAL M. SAMPOGNA
Administrative Law Judge
Office of Administrative Hearings