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JUN 15 2023

DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

By Py dew

STATE OF CALIFORNIA

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| In the Matter of the Accusation of: |) | DRE No. H-3445 FR |
| |) | |
| MIA LA'SHA LANKFORD, |) | OAH No. 2023020211 |
| |) | |
| Respondent. |) | |

DECISION

The Proposed Decision dated April 25, 2023, 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.

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

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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 JUL 06 2023.

IT IS SO ORDERED 5.24.23

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER



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

In the Matter of the Accusation Against:

MIA LA'SHA LANKFORD, Respondent

Agency Case No. H-3445 FR

OAH Case No. 2023020211

PROPOSED DECISION

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on April 17, 2023, by videoconference from Sacramento, California.

Megan Lee Olsen, Legal Counsel, represented Brenda Smith (complainant), Supervising Special Investigator, Department of Real Estate (Department), State of California.

Mia La'Sha Lankford (respondent) represented herself.

Evidence was received and the record left open until April 19, 2023, to allow respondent to submit character letters and complainant to file objections or respond. On April 19, 2023, complainant's counsel, as a courtesy only, submitted respondent's character letters, marked as Exhibit A, and complainant's response to such character

letters, marked as Exhibit 6. Exhibit A is admitted as administrative hearsay and Exhibit 6 is admitted as argument.

On April 19, 2023, the record was closed and the matter submitted for decision.

FACTUAL FINDINGS

Jurisdiction

1. On January 6, 2017, the Department issued respondent Real Estate Salesperson License No. S/02020494 (RE license). The RE license will expire on January 5, 2025, unless renewed.

2. On August 10, 2022, complainant, in her official capacity, signed and later filed an accusation in Case No. H-3445 FR (Accusation) against respondent. Complainant alleges cause to discipline respondent's RE license based on respondent's prior discipline by another state agency. Specifically, the Board of Vocational Nursing and Psychiatric Technicians (BVNPT), Department of Consumer Affairs, State of California previously revoked respondent's psychiatric technician license (PT license). Complainant seeks revocation of respondent's RE license, as well as recovery of reasonable investigation and enforcement costs.

3. Respondent timely filed a Notice of Defense. Thereafter, the matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq. This hearing followed.

Prior BVNPT Discipline

4. On October 10, 2006, the BVNPT issued respondent a PT license. The BVNPT describes a psychiatric technician as "an entry-level health care provider who is responsible for care of mentally disordered and developmentally disabled clients." Psychiatric technicians are comparable to licensed vocational nurses; however, they primarily work with mental health patients.

5. On January 28, 2021, the BVNPT's Executive Officer, in her official capacity, signed and later filed an accusation against respondent (BVNPT Accusation). The BVNPT Accusation alleged that respondent engaged in unprofessional conduct while employed as a psychiatric technician at California City Correctional Facility (CCCCF), a prison operated by the California Department of Corrections and Rehabilitation (CDCR). The BVNPT Accusation asserted cause to discipline respondent's PT license based on gross negligence; incompetence; failure to provide basic client care; making false entries in hospital, patient, and/or other medical records; commission of dishonest acts; illegally obtaining and/or possessing controlled substances and/or dangerous drugs; and violations of the Psychiatric Technicians Act.

6. On September 20 and 21, 2021, Deena R. Ghaly, another ALJ with the OAH, heard the matter. The hearing was conducted pursuant to Government Code section 11500 et seq. Respondent presented evidence and argument in response to the BVNPT Accusation.

7. On October 21, 2021, Judge Ghaly issued a proposed decision revoking respondent's PT license and ordering respondent to pay the BVNPT \$18,127.50 in investigation and enforcement costs upon any future reinstatement of her PT license.

In the proposed decision, Judge Ghaly made the following factual findings concerning respondent's conduct:

(a) On July 17, 2018, respondent failed to complete the required medication count log at the end of her shift, instead completing it the next day.

(b) On August 2, 2018, respondent failed to provide a patient with his prescription medication at noon as scheduled. She completed the patient's chart four days later on August 6, 2018, writing that she had administered his medication at noon on August 2, 2018.

(c) On September 9, 2018, respondent removed two tablets of a controlled substance medication for a patient from the dispensary. She dispensed one tablet to the patient that morning. She kept the other tablet in her medication cart to dispense to the patient in the afternoon, which violated CCCF policies.

(d) On January 9, 2019, respondent removed a controlled substance medication tablet for a patient, failed to administer it, and kept it in her medication cart to administer during the next shift. On January 10, 2019, respondent removed another tablet of the controlled substance medication for the same patient, and failed to administer it because the patient was at a court appearance. Respondent failed to properly document waste of the controlled substance medication.

(e) On April 30, 2019, respondent charted that she had administered a prescription medication to a patient. The patient reported not receiving the medication and another CCCF employee observed an extra pill of that same medication in the medication cart.

(f) On May 1, 2019, respondent failed to administer a patient's blood pressure medication during her shift as ordered. That evening, the patient reported a severe headache. His blood pressure rose to dangerous levels. He was eventually transported to a local hospital. The next day, respondent charted that she had administered the blood pressure medication to the patient on May 1, 2019, at noon.

(g) Between mid-2018 and 2019, after ostensibly completing the required daily welfare checks of her patients, respondent wrote entries into the charts of seven patients who were either no longer housed in respondent's ward or who had left CCCF entirely. In one patient's case, respondent charted about him 21 times after he left the facility. In another patient's case, respondent charted about him 34 times after he left her ward.

Based on the foregoing factual findings, Judge Ghaly determined that clear and convincing evidence established that respondent's actions and failures constituted gross negligence; incompetence; failure to provide basic client care; making false entries in hospital, patient, and/or other medical records; commission of dishonest acts; illegally obtaining and/or possessing controlled substances and/or dangerous drugs; and violations of the Psychiatric Technicians Act. Considering the record as a whole, Judge Ghaly concluded that revocation of respondent's PT license was necessary to protect public health, safety, and welfare.

8. Effective November 10, 2021, the BVNPT adopted Judge Ghaly's proposed decision revoking respondent's PT license.¹ Respondent did not appeal the decision, which became final.

Respondent's Evidence

9. Respondent testified at hearing. She also presented three character letters, discussed below.

RESPONDENT'S TESTIMONY

10. Respondent started her nursing career as a certified nursing assistant (CNA) at Riverside County Mental Health in 1996. In August 2000, she started working for the State of California, first as a CNA and later as a psychiatric technician. She took great pride in her work and was so successful that she was often deployed as an "activator" to help start up mental health nursing units at new prisons.

11. Around 2015, respondent became partially disabled from injuries she sustained during an inmate attack at a prison in Stockton, California. At that time, CDCR transferred her to CCCF because it was a lower-security-level prison that could better accommodate her work limitations.

¹ The BVNPT's decision adopting Judge Ghaly's proposed decision was dated October 6, 2021. However, that cannot be accurate because Judge Ghaly did not issue her proposed decision until October 21, 2021. Regardless, that discrepancy is immaterial to resolution of this matter.

12. Respondent never had any work complaints or conflicts during her CDCR career until she started working at CCCF. There she encountered what she described as a "toxic work environment." Her supervisor developed personal animus against her and "wrote [her] up" for issues that were commonplace among CCCF nursing staff.

13. Respondent acknowledges she made mistakes as a psychiatric technician. Her charting was sometimes late. Additionally, it is possible she occasionally missed administering a patient's medication and failed to properly document medication waste. However, such errors were common at CCCF due to inadequate staffing and the challenging prison environment, which included frequent security incidents and other disruptions. The errors were unintentional and she never diverted medications for personal use or sale. Moreover, no patient harm resulted. In the case of the patient taken to the hospital on May 1, 2019, his blood pressure was only in the 150s, which is high but not dangerously high. He was taken to the hospital for a constellation of other symptoms, not just high blood pressure.

14. Respondent vehemently denies that she was intentionally dishonest when she documented daily welfare checks for patients that were no longer in her ward or at CCCF. That inaccurate documentation was the result of the registered nurses failing to timely update the facility's log of patients. Respondent explained that, to complete the required daily welfare checks efficiently, she went through the ward and asked whether each patient had any mental concerns. She then went back to her station to input the responses, charting for each patient that appeared on the log. Since the log included patients no longer on the ward or at CCCF, she would chart for them as well even though she could not have spoken to them.

15. In late May 2019, CCCF informed respondent that she would be dismissed if she did not resign. She agreed to resign. CCCF also filed a complaint with

the BVNPT, which ultimately resulted in respondent losing her PT license. Respondent did not further appeal the BVNPT's decision because she was exhausted and just wanted the matter "over with."

16. Following respondent's resignation from CCCF, she underwent at least six months of therapy with a psychologist to help her cope with situational depression and process the loss of the career she loved. She found the therapy helpful and was eventually able to move on with her life.

17. Respondent has held her real estate salesperson license for over six years. She primarily works with residential real estate sales although she has sold a few commercial properties. She enjoys working in real estate because she is a "social butterfly" who likes interacting with people. Respondent has had no complaints or work discipline as a real estate salesperson, and respondent's broker is very satisfied with respondent's work. Respondent has also furthered her real estate education by taking classes to become licensed as a broker. She currently only has three classes left to complete.

18. Apart from her real estate work, respondent owns a beauty supply store and works as a business consultant giving advice and mentoring to persons opening new businesses. Additionally, respondent actively volunteers in the small town of California City where she resides. She is a longtime board member and current treasurer of the California City Chamber of Commerce. She is also part of the Desert Rose Garden Club, which plants gardens and works on other beautification projects around Kern County.

19. Respondent has four adult children, three of whom work in the healthcare field. She attends church weekly. She believes she is a good and honest

person. She strongly desires to continue working in the real estate industry. She will comply with any license restrictions necessary to demonstrate her commitment to ethical and competent practice as a real estate salesperson.

RESPONDENT'S CHARACTER LETTERS

20. Tom Weil and Nataly Garcia, two of respondent's local real estate colleagues, authored March 2023 letters in support of respondent. Both authors laud respondent's performance as a real estate salesperson. They describe her as skilled, creative, hardworking, dedicated, generous, kind, and honest.

21. Brianna Young, respondent's daughter, also authored a March 2023 support letter. Ms. Young is a registered nurse. She attributes her own successful career to respondent's persistent hard work and dedication in raising four children as a single mother. Although the family faced difficult times when Ms. Young was a child, including a period of homelessness, respondent persevered and always provided the children with shelter, food, and needed resources. Ms. Young believes respondent is an asset to any organization because respondent is hardworking, task-oriented, organized, accepting, and able to connect with people from different backgrounds.

COSTS

22. In prosecuting this matter, the Department incurred \$1,407 in investigation costs, supported by a Certified Statement of Investigation Costs, and \$467.25 in enforcement costs, supported by a Certified Statement of Costs by Megan Lee Olsen. The total costs sought is \$1,874.25. The certified statements are accompanied by documents describing the general tasks performed, the time spent on each task, and the method of calculating the costs.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proving by clear and convincing evidence that respondent's license should be disciplined. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) "Clear and convincing evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind." (*In re David C.* (1984) 152 Cal.App.3d 1189, 1208.)

Cause for Discipline

2. The Commissioner may discipline the license of a real estate licensee if the licensee:

(f) Acted or conducted themselves in a manner that would have warranted the denial of their application for a real estate license, either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked, surrendered, or suspended, or received an order of debarment, for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, surrender, suspension, or debarment by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an

opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

(Bus. & Prof. Code, § 10177, subd. (f).)

3. Here, respondent's license issued by another state agency was revoked. Specifically, the BVNPT revoked her PT license.

Additionally, respondent's PT license was revoked for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license. Specifically, the BVNPT revoked respondent's PT license based on express findings that respondent had engaged in unprofessional conduct in violation of applicable law, including gross negligence, incompetence, and commission of dishonest acts. Such conduct by a real estate licensee would be grounds for discipline of a real estate license. (See, e.g., Bus. & Prof. Code, § 10177, subds. (g) (negligence or incompetence) & (j) (fraud or dishonest dealing).)

Finally, respondent's PT license was revoked only after fair notice of the charges, an opportunity for a hearing, and other due process protections. Indeed, respondent presented evidence and argument at a hearing conducted pursuant to the Administrative Procedure Act.

Thus, complainant demonstrated by clear and convincing evidence that cause for discipline exists pursuant to Business and Professions Code section 10177, subdivision (f).

Appropriate Discipline

4. The conduct that gave rise to revocation of respondent's PT license was serious. To be sure, some of respondent's conduct, though concerning for a psychiatric technician, have limited connection to the real estate industry. But other conduct, such as making false entries into records and dishonest acts, are substantially related to licensed real estate work, which requires the discharge of fiduciary duties with honesty and integrity. (*Harrington v. Dept. of Real Estate* (1989) 214 Cal.App.3d 394, 402 ["Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee."].)

5. Notwithstanding respondent's explanation at the instant hearing that she never intentionally or dishonestly made the false record entries, the BVNPT's decision concluded otherwise. Because respondent did not successfully appeal that final decision, the Department is rightfully concerned about respondent's ability to safely and competently practice as a real estate salesperson without monitoring.

6. That said, respondent also presented rehabilitation evidence. Since the loss of her career as a psychiatric technician, respondent has participated in therapy, performed volunteer work, and furthered her education in real estate. Significantly, she has practiced as a real estate agent for over six years without any complaints or discipline. Real estate colleagues laud her skill, hard work, dedication, and honesty.

7. Licensing proceedings are not intended to punish an individual but to protect the public, maintain the integrity and high standards of the profession, and

preserve public confidence in licensure. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) Considering respondent's rehabilitation evidence and her experience practicing real estate for over six years without issue, issuance of a restricted license is more appropriate than license revocation. Nevertheless, given the serious nature of the findings underlying the BVNPT's decision, a longer monitoring period of five years is warranted.

Costs

8. The Department may recover its reasonable investigation and enforcement costs of a case. (Bus. & Prof. Code, § 10106.) Based on Factual Finding 22, the Department incurred a total of \$1,874.25 in investigation and enforcement costs. Such costs are reasonable given the issues in this case.

9. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the costs should be assessed or reduced in the particular circumstances of each case. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of their position, whether the licensee has raised a colorable challenge to the proposed discipline, the licensee's financial ability to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

10. Here, the scope of the investigation was appropriate and the costs sought are low. Respondent did not present any evidence of financial inability to pay. Finally, none of the other factors strongly suggest that cost reduction is warranted. Thus, the full amount of costs sought is awarded.

ORDER

All licenses and licensing rights of respondent Mia La'Sha Lankford under the Real Estate Law are REVOKED; provided, however, a restricted real estate salesperson license shall be issued to respondent 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.

The restricted license issued to respondent shall be subject to all 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 license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:
 - (a) the conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or
 - (b) the receipt of evidence 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 this restricted license.

2. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner. 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.

3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify as follows: (a) that the employing broker has read the Decision which is the basis for the issuance of the restricted license; and (b) that the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations, or restrictions attaching to the restricted license until five years have elapsed from the date of issuance of the restricted license to respondent.

5. Pursuant to Business and Professions Code section 10106, respondent shall pay the Commissioner reasonable investigation and enforcement costs in the sum of \$1,874.25. The Commissioner may, in its sole discretion, order respondent to make payments pursuant to an approved payment plan during her probation.

6. The Commissioner may suspend respondent's license pending a hearing held in accordance with section 11500 et seq. of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondent enters into an agreement satisfactory to

the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

DATE: April 25, 2023

Wim vanRooyen

WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings