

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

MAY 22 2024

DEPARTMENT OF REAL ESTATE
By *[Signature]*

* * *

In the Matter of the Accusation of:)
) DRE No. H-3526 FR
)
IBRAHIM MAHER GARAS,)
) OAH No. 2023120318
)
Respondent.)

DECISION

The Proposed Decision dated April 17, 2024, 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 (the Department) 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 JUN 12 2024.

IT IS SO ORDERED 5/17/2024

Chika Sunquist
REAL ESTATE COMMISSIONER



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

FILED

MAY 16 2024

DEPARTMENT OF REAL ESTATE
By B. Nicholas

In the Matter of the Accusation Against:

IBRAHIM MAHER GARAS, Respondent

Case No. H-3526 FR

OAH No. 2023120318

PROPOSED DECISION

Administrative Law Judge Wilbert E. Bennett, State of California, Office of Administrative Hearings, heard this matter on March 27, 2024, by videoconference.

Kyle T. Jones, Real Estate Counsel, represented complainant Ruben Coronado, Supervising Special Investigator, Department of Real Estate (Department).

Respondent represented himself at the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on March 27, 2024.

FACTUAL FINDINGS

1. Respondent is presently licensed and/or has licensing rights under the real estate law as a real estate salesperson under License No. 02051004. Respondent

was issued this license on April 14, 2018. The license will expire on July 10, 2026, unless renewed or revoked.

2. On November 22, 2023, complainant, acting in his official capacity, filed an accusation against respondent. The accusation alleged cause for discipline of respondent's license based on his misdemeanor conviction for possession of a controlled substance. Respondent timely filed a notice of defense and this hearing followed.

Criminal Conviction

3. On January 19, 2022, in the Superior Court of California, County of Kern, Case No. BF181901A, respondent was convicted, by nolo contendere plea, of violating Business and Professions Code section 4060 (possession of a controlled substance without a prescription), a misdemeanor. Pursuant to this conviction, respondent was placed on probation for one year on certain terms and conditions, including that he pay applicable fines and fees, obey all laws, make restitution for damages in the amount of \$1,585.97, and serve two days in jail, with credits of one day for time served and one day for good behavior and work time.

4. The facts and circumstances underlying respondent's conviction involved his activity as a licensed pharmacist. In that capacity, on March 20, 2020, he forged three prescriptions for Plaquenil 200 milligrams for three separate patients, while employed at Rite Aid Pharmacy. The generic name for Plaquenil is hydroxychloroquine. Respondent wrote the prescriptions, had the prescriptions filled and the insurance billed for the medication. Respondent then left the store with the bag of prescription drugs. The identified patients had never previously been prescribed the medication. The physician identified on the prescriptions as the prescribing physician denied

prescribing the medication when contacted by pharmacy staff. Pharmacy employees had observed respondent writing the prescriptions on a blank prescription pad, without talking on the telephone to a physician. Subsequently, the incident was reported to Rite Aid management and an investigation ensued. Respondent admitted that he wrote the prescriptions without authorization from a physician because he had heard that the medication was approved for Covid-19 and he had elderly family members with medical issues. Respondent returned the full unused medications to the store. Thereafter, respondent was initially criminally charged with prescription forgery, and with unlawful possession of a drug secured by a forged prescription. The criminal charges included six forgery-related felony counts and three felony counts of unlawful possession of a drug secured by a forged prescription.

Respondent's Evidence

5. Respondent is 48 years old, and has three children ranging in age from five years to college age. His wife is also a pharmacist. He works as a full-time pharmacist at a community pharmacy four days per week, and devotes the rest of his work time to real estate. He has held a license as a real estate salesperson since April 14, 2018. Respondent testified that he regularly participates in career days at his local middle school, and has served as a high school mentor and Sunday School teacher at his church for the last 18 years.

6. As a result of the prescription forgery incident, the Board of Pharmacy imposed a three-year disciplinary probation on respondent's pharmacist license, with no restrictions other than not being allowed to serve as a pharmacist in charge or to supervise pharmacy interns. He is required to submit quarterly compliance reports and to take continuing education in ethics. Respondent stated that his criminal conviction

was expunged after successful completion of his one-year probation on January 19, 2023.

7. Respondent testified that he knows his role as a pharmacist is "not to prescribe medications for patients," and that he stepped outside that role in forging the prescriptions and then obtaining the medications pursuant to that forgery. That testimony is consistent with respondent's written statement, to Rite Aid management, that he wrote prescriptions that were not authorized by a physician. Respondent further stated that he was motivated by concern for the health of family members, specifically his elderly in-laws, 75 and 73 years old, and a younger brother-in-law who was diabetic with a heart condition. Respondent conceded that, because none of those persons had been diagnosed with Covid-19, he was obtaining previously unprescribed medications for a medical condition that did not exist. He stated that, in retrospect, he should have advised his family members to obtain legitimate prescriptions from their physicians, if medically indicated. Respondent averred that, at the time, he lacked "clear judgment." He further stated: "I know I have done something wrong [and] I would never do it again."

8. Respondent submitted ten character reference letters, at the hearing, from persons who know him personally and professionally. Each of the letters had been sent to the local district attorney during the pendency of the criminal proceeding, and addressed the devastating effect that a felony conviction would have on respondent and his family. The letter writers uniformly described respondent as an "honest, hardworking and trustworthy person," who is an active and generous participant in church, social, and charitable activities. His parish priest, Fr. Daniel Azer Sous, commented: "[Respondent] has dedicated his time to teaching the church children in our Sunday School for about 17 years ... [and] he is dedicated to his

community and has donated charitably to those in need.” Another parish priest, Fr. Beshoy Dawod, mentioned respondent’s active involvement and participation in various church activities, such as teaching Sunday School and organizing annual church festivals, children’s camping trips and retreats, and local charitable activities. The authors of these letters mirrored respondent’s testimony regarding the nature and extent of his church and community involvement. None of the authors addressed the relationship between respondent’s criminal conduct and the qualifications and duties of a real estate salesperson. In fact, none of the authors indicated knowledge of respondent’s status as a real estate licensee.

9. Respondent acknowledged the need to establish appropriate boundaries between his personal and professional life. He is attending sessions, two to four times per month, with a psychologist and life coach, Irene Bexnam, to effectuate this goal. He conceded that he lacked “clear judgment” when he forged prescriptions, and that he stepped outside his professional boundary as a pharmacist because of his concern for the welfare of family members.

Analysis

10. The Department has adopted criteria to be considered in evaluating whether a licensee who has been convicted of a crime is rehabilitated. The relevant rehabilitation criteria include: (1) the passage of at least two years from the most recent conviction, which may be increased depending on the nature and severity of the crime; (2) expungement of the criminal conviction; (3) successful completion of or early discharge from probation; (4) payment of any fine or other monetary penalty imposed in connection with the criminal conviction; (5) significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; and (6) change in attitude

from that which existed at the time of the commission of the criminal acts. (Cal. Code Regs., tit. 10, § 2912.) All of the relevant criteria have been considered and applied in this case.

11. The application of these criteria indicates that respondent is on the road to rehabilitation, but is not fully rehabilitated. In acknowledging his wrongful conduct, respondent has demonstrated the "change in attitude" required for a showing of rehabilitation. However, a showing of rehabilitation also requires sustained exemplary conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) In assessing respondent's rehabilitation, it is apparent that insufficient time has passed for him to establish complete rehabilitation. Respondent's criminal conviction is of recent vintage and was sustained only two years and three months ago. He successfully completed his criminal probation in January 2023, and has obtained an expungement of his conviction. He is still serving a disciplinary probation as a pharmacist based on his criminal conviction. Although respondent complied with his criminal probation requirements, such compliance is discounted because of the expectation of good behavior associated with probation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099 [little weight is given to person's good behavior while on probation because such conduct is expected].) While respondent demonstrated significant and conscientious involvement in community and church programs designed to promote social benefits, such laudable involvement preceded his criminal conduct.

12. Moreover, the nature of respondent's crime of possession of a controlled substance without a prescription is concerning, because it involved obtaining a drug for three family members through fraud and deception, in derogation of his responsibility as a pharmacist. Respondent's criminal conduct is antithetical to the honesty and integrity required of a real estate licensee. By his own admission,

respondent stepped outside his professional boundary as a pharmacist because of his concern for the welfare of family members. His prescription forgery is somewhat mitigated because it was not in furtherance of monetary gain or self-administration, but it nevertheless reflected a breach of professional duty. While respondent has sought counseling to assist him in establishing an appropriate boundary between his personal and professional life, the fact that he committed this offense in the first place is concerning. Complainant, in closing argument, acknowledged and amplified that concern by analogizing respondent's forgery of prescriptions for well-intentioned reasons to forging or manufacturing documents relating to a real estate transaction out of concern for the welfare of a client. Complainant recommended that, at minimum, respondent not be allowed to retain an unrestricted license.

13. As discussed below, cause exists to discipline respondent's license. Based on the totality of the evidence presented, however, while respondent's rehabilitation may not be complete, he established that he has been sufficiently rehabilitated from a serious offense so that he may be allowed to retain licensure on a restricted basis. Therefore, respondent's unrestricted license should be revoked, and he should be issued a restricted license with the restrictions specified in the Order below, in order to assure public protection.

Costs

14. Complainant submitted a Certified Statement of Costs, requesting that respondent be ordered to pay the reasonable costs of investigation and enforcement in this case, totaling \$2,724.45, pursuant to Business and Professions Code section 10106. Complainant's Certified Statement of Costs asserts \$456 in enforcement (prosecution) costs incurred prior to the hearing date. Complainant also submitted a Certified Statement of Investigative Costs in the amount of \$2,268.45. Complainant's

request and the reasonableness of these costs are addressed in the Legal Conclusions, below. The reasonableness of the claimed costs was not challenged by respondent.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving the grounds for discipline alleged in the accusation by clear and convincing evidence to a reasonable certainty. (*Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. The Department may discipline a real estate licensee who has been convicted of a crime substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 490, subd. (a); 10177, subd. (b).) The Department deems a crime to be substantially related to the qualifications, functions, or duties of a licensee, if it involves the "counterfeiting, forging or altering of an instrument or the uttering of a false statement." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(2).) The nature and gravity of the offense are also taken into consideration when determining whether to deem an offense to be substantially related to the qualifications, functions or duties of a licensee. (Cal. Code Regs., tit.10, § 2910, subd. (c).)

3. Based on the aforementioned considerations, respondent's unlawful possession of a controlled substance, under circumstances involving obtaining that substance by means of prescription forgery, is substantially related to the qualifications, functions or duties of a real estate licensee. Therefore, cause exists to

discipline his real estate license pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b).

4. The Department has developed criteria for evaluating whether a licensee has been rehabilitated. (Cal. Code Regs., tit. 10, § 2912.) All of the relevant criteria have been considered and applied, as set forth in Factual Findings 10 through 13.

5. Based on the Factual Findings and Legal Conclusions as a whole, it would be consistent with the public interest, safety, and welfare to allow respondent to retain licensure on a restricted basis. Therefore, respondent's unrestricted license should be revoked and he should be issued a restricted license with the restrictions specified in the Order below in order to assure public protection.

6. Business and Professions Code section 10106 authorizes the Real Estate Commissioner to request an order directing a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered when determining the reasonableness of costs sought pursuant to statutory provisions like Business and Professions Code section 10106. These factors include: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate in light of the alleged misconduct.

7. As set forth in Factual Finding 14, complainant seeks \$2,724.45 for investigation and enforcement costs. When all of the *Zuckerman* factors are considered, it is reasonable and appropriate to assess the requested costs.

ORDER

All licenses and licensing rights of respondent Ibrahim Maher Garas, 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 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. Prehearing Suspension

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.

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 Real Estate Law, the Subdivided Lands Law, regulations of the Commissioner, or conditions attaching to the restricted license.

2. Term of Restriction

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 three years have elapsed from the effective date of this Decision.

3. Employing Broker Statement

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 which is the basis for the issuance of the restricted license; and
- (b) That the employing broker will exercise close supervision over the performance by the restricted licensee of any acts for which a real estate license is required.

4. Continuing Education

Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the 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 respondent presents such evidence. The Commissioner shall afford respondent the

opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Reporting

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 187000, Sacramento, CA 95818-7000. 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. Respondent also must comply with the reporting requirements of Business and Professions Code section 10186.2, subdivision (a).

6. Costs

Pursuant to Business and Professions Code section 10106, respondent shall pay \$2,724.45 to the Department of Real Estate, as its reasonable investigation and enforcement costs, no later than two years after the issuance of the restricted license and according to a payment plan approved by the Commissioner.

DATE: April 17, 2024

Wilbert E. Bennett
Wilbert E. Bennett / Apr 17, 2024 15:49 PDT
WILBERT E. BENNETT
Administrative Law Judge
Office of Administrative Hearings