

FILED

FEB 13 2025

DEPT. OF REAL ESTATE

By—

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:)	DRE No. H-03535 FR
)	
JAMIE LYNN MORGAN,)	OAH No. 2024030660
)	
Respondent.)	

AMENDED DECISION

The Decision filed on January 23, 2025 is hereby amended as follows:

The Proposed Decision dated November 20, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following correction is made to the Proposed Decision.

Page 11, first paragraph, "Real estate salesperson license no. 01393688 issued to respondent Jamie Lynn Morgan is REVOKED. However, a RESTRICTED LICENSE SHALL BE ISSUED to respondent subject to the following limitations, conditions, and restrictions" is amended to read "Real estate salesperson license no. 01393688 issued to respondent Jamie Lynn Morgan is REVOKED. However, a RESTRICTED LICENSE SHALL BE ISSUED to respondent under Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the issuance of such a restricted license and \$1,633.35 in investigation and enforcement costs within ninety (90) days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all the provisions of Business and Professions Code section 10156.7 and shall be subject to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6."

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted broker 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 thirty (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 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 March 5, 2025.

IT IS SO ORDERED 2/12/2025

Chika Sunquist
REAL ESTATE COMMISSIONER



By: Marcus L. McCarther
Chief Deputy Real Estate Commissioner

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

JAN 23 2025

DEPT. OF REAL ESTATE

* * *

In the Matter of the Accusation of:

JAMIE LYNN MORGAN,

Respondent.

DRE No. H-03535 FR

OAH No. 2024030660

By

DECISION

The Proposed Decision dated November 20, 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 thirty (30) days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first.

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This Decision shall become effective at 12 o'clock noon on FEB 24 2025.

IT IS SO ORDERED

1/13/2025
Chika Sunquist
REAL ESTATE COMMISSIONER


By: Marcus L. McCarther
Chief Deputy Real Estate Commissioner

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

In the Matter of the Accusation Against:

JAMIE LYNN MORGAN, Respondent

Agency Case No. H-3535 FR

OAH No. 2024030660

PROPOSED DECISION

Patrice De Guzman Huber, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 17, 2024, from Sacramento, California.

Julie L. To, Staff Counsel, represented complainant Ruben Coronado, Supervising Special Investigator of the Department of Real Estate (Department), State of California.

Michael Borkowski, Esq., represented respondent Jamie Lynn Morgan, who appeared.

Evidence was received on October 17, 2024. The record was held open for submission of closing briefs. On October 25, 2024, the parties submitted their closing briefs, the record was closed, and the matter was submitted for decision.

FACTUAL FINDINGS

Jurisdictional Matters

1. On July 15, 2003, the Department issued respondent real estate salesperson license no. 01393688 (license). The license expired on November 13, 2024. The Department retains jurisdiction over expired licenses. (Bus. & Prof. Code, § 10103.) Respondent also holds a Mortgage Loan Originator (MLO) endorsement, Nationwide Mortgage License System (NMLS) No. 352925.

2. On January 29, 2024, complainant, in his official capacity, signed and thereafter filed an Accusation seeking to discipline respondent's license. The Accusation alleged cause for discipline based on respondent's convictions for driving under the influence of alcohol and child endangerment. The Accusation also alleged cause for discipline based on respondent's failure to provide to the Department written notification of her convictions.

3. Respondent timely filed a Notice of Defense. The matter was set for an evidentiary hearing before an ALJ with the OAH pursuant to Government Code section 11500 et seq.

Criminal Convictions and Failure to Provide Written Notification

4. On September 9, 2022, in Stanislaus County Superior Court, Case No. CR-22-003297, respondent was convicted on a no contest plea of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol (DUI), and Penal Code section 273a, subdivision (a), child endangerment likely to produce great bodily harm or death, misdemeanors. The court suspended imposition of sentence and placed respondent on informal probation for two years. As a condition of probation,

the court ordered respondent to complete a 52-week parenting class and pay fines, fees, and restitution.

5. The circumstances underlying these convictions occurred on November 5, 2021. A witness observed respondent speeding, taking turns quickly, hitting curbs, and driving partially on a front lawn of a residence. Respondent's twin six-year-old children were in the vehicle with her. The witness called the police, followed respondent, and asked her to stop the vehicle. When the police arrived, she admitted she consumed wine before driving. Her blood alcohol content (BAC) was 0.282 percent.

6. On March 9, 2023, respondent submitted to the Department form RE 515, Interview Information Statement, and form RE 515D, Conviction Detail Report. With these forms, respondent provided written notification to the Department of her September 9, 2022, convictions. She noted in these forms that on the date she was convicted, she called Rebecca Malekian (Malekian), a Department analyst, to inform her of the convictions.

7. On August 3, 2024, Heather DeYoung, Staff Services Manager, certified she searched the Department's records and found no written notice from respondent within 30 days of any of her convictions, as required by Business and Professions Code section 10186.2.

Respondent's Evidence

8. Respondent testified at hearing regarding the circumstances underlying her conviction and her rehabilitation efforts. She admitted she consumed alcohol prior to driving with her minor children on November 5, 2021. Respondent explained she had dinner with her son at a restaurant while they waited for her daughter's ballet

class to finish. During dinner, respondent consumed wine. At hearing, she could not recall how much wine she consumed. When her daughter's class ended, respondent and her two children attended a birthday party at a nearby trampoline park. After the birthday party, respondent and her children drove home.

9. Respondent admitted her poor judgment. In her March 9, 2023, letter to the Department, respondent wrote:

I made the most horrific mistake of my life, which is that I drank and drove with my children in the car on November 5, 2021. I will have to live with this for the rest of my life. I take full responsibility for my actions. . . . I am perfectly aware of and stand in agreeance of what brought me to this case. I abused alcohol on November 5th, 2021, and endangered the lives of my children[] and everyone in the world around me.

10. Respondent decided to become sober and joined Alcoholics Anonymous (AA) the next day, November 6, 2021. She has completed all 12 steps in AA, with the support of her sponsor, Erin Hieb (Hieb). Respondent continues to participate in AA and is her group's secretary. She also voluntarily participated in a six-month outpatient rehabilitation program at Nirvana Drug and Alcohol Program (Nirvana), which she completed in July 2022.

11. Respondent has paid the court-ordered fines, fees, and restitution and completed the court-ordered parenting classes. She also voluntarily sought additional therapy and counseling. Respondent sees her psychologist, Tamara L. Elkins, Ph.D., once a week and a psychiatrist once a month. During her recovery, respondent has

learned she is a "trigger drinker," which she described as self-medicating with alcohol when she feels triggered. At hearing, she explained she was triggered on November 5, 2021, which led to her decision to drink and drive. When asked to describe the trigger, respondent refused. She did not articulate if or how she now responds differently to her triggers.

12. Respondent stated in her March 9, 2023, letter to the Department that she will continue attending AA, meeting with her sponsor, and participating in therapy. She further wrote, to remain sober, she is working on "establishing new goals, including creating healthy boundaries and taking the best care of [her]self, so that [she] can take the best care of [her] children." At hearing, she did not elaborate on her goals, boundaries, or self-care.

13. Respondent explained she believed she complied with the Department's notification requirements by speaking with Malekian. Prior to respondent's convictions, she spoke to Malekian by phone to discuss a separate matter. During that phone conversation, respondent and Malekian talked about her arrest in November 2021. When respondent was convicted, she immediately told Malekian by phone. At hearing, respondent admitted she did not know a written notification was required.

CHARACTER EVIDENCE

14. Jay Briggs (Briggs), respondent's friend of 20 years, testified. Briggs has been a mortgage broker since 2003. Respondent helps Briggs with marketing and social media. Occasionally, respondent processes real estate contracts for Briggs. He believes the "drunk driving" incident was a "one-off kind of situation."

15. Hieb wrote a letter in support of respondent. Hieb became respondent's AA sponsor in December 2021, and they meet weekly. She described respondent as

"present" and "engaged," showing "tremendous growth and progress" in "accountability, awareness, responsibility, and honesty."

16. Taylor Heinemann (Heinemann), an outpatient counselor at Nirvana, wrote a letter in support of respondent. Heinemann described respondent as "open and honest." Heinemann praised respondent's willingness to change her behavior and grow.

17. Dr. Elkins wrote a letter in support of respondent. According to Dr. Elkins, respondent was suffering from "severe anxiety from a traumatic event," which resulted in her decision to drink and drive. Dr. Elkins believes respondent "poses a very limited risk of relapse to alcohol abuse if she continues with her current treatment plan of weekly psychotherapy, continuation with Alcoholics Anonymous, and meetings with her Sponsor [*sic*]."

Costs

18. In prosecuting this matter, the Department incurred \$1,435.35 in investigation costs, supported by a Certified Statement of Investigation Costs, and \$198 in enforcement costs, supported by a Certified Statement of Costs by Julie L. To. The total costs sought are \$1,633.35. 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 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 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.) If complainant meets this burden, rehabilitation is akin to an affirmative defense; consequently, the burden of proof of establishing an affirmative defense is on respondent. (*Whetstone v. Bd. of Dental Examiners* (1927) 87 Cal.App. 156, 164.)

Causes for Discipline

SUBSTANTIALLY RELATED CONVICTION

2. The Commissioner may discipline a licensee for a conviction of a crime substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 490, 10177, subd. (b)(1).) A conviction is substantially related to the qualifications, functions, or duties of a real estate licensee if it involves an unlawful act with the threat of substantial injury to the person or property of another. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

3. Driving under the influence of alcohol is an extremely dangerous activity. The purpose of Vehicle Code section 23152 is to protect the public and "guard against the threat of injury to others." (*People v. Eribarne* (2004) 124 Cal.App.4th 1463, 1467, internal citations omitted.) Respondent's DUI conviction involved the threat of

substantial injury to the person or property of another. Thus, this conviction is substantially related to the qualifications, functions, and duties of a licensee.

4. Child endangerment is also extremely dangerous conduct. The elements of Penal Code section 273a, subdivision (a), include the likelihood of "great bodily harm or death" and permitting a child to be "placed in situation where his or her person or health is endangered." Respondent's child endangerment convictions involved the threat of substantial injury to her children. Thus, these convictions are substantially related to the qualifications, functions, and duties of a licensee.

5. Respondent's convictions are substantially related to the qualifications, functions, and duties of a licensee because they involve the threat of substantial injury to the person or property of another. Thus, cause exists to discipline respondent's license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b)(1).

FAILURE TO PROVIDE WRITTEN NOTIFICATION

6. The Commissioner may discipline a licensee for a willful disregard or violation of the rules and regulations governing real estate licenses, including a licensee's failure to provide written notification to the Department, within 30 days, of a criminal complaint or conviction. (Bus. & Prof. Code, §§ 10177, subd. (d), 10186.2.)

7. Respondent discussed with Malekian by phone her arrest in November 2021 and immediately called Malekian to inform her of the convictions. However, respondent failed to provide written notification to the Department. The Department must be updated on whether a licensee is facing criminal charges, which allows the Department to monitor licensee activity and conduct and ensure licensees are held to standards that protect the public. At hearing, respondent explained she believed her

oral notification to Malekian was enough and she did not know she was required to make a written notification. Her explanation is given little weight, in light of her affirmative duty to practice under her license in compliance with the law and 21 years of licensure.

8. Respondent willfully violated the rules and regulations governing real estate licensees by failing to provide written notification to the Department, within 30 days, of her criminal complaint or convictions. Thus, cause exists to discipline respondent's license pursuant to Business and Professions Code section 10177, subdivision (d).

Appropriate Discipline

9. The Department has adopted criteria to determine the rehabilitation of a licensee who has been convicted of a crime or engaged in conduct substantially related to the qualifications, functions, and duties of a licensee. (Cal. Code Regs., tit. 10, § 2912.) The relevant criteria are: (1) the time elapsed since conviction, the crimes, or the acts; (2) the nature and severity of the crimes or acts; (3) abstinence from alcohol for at least two years, if a conviction was attributable to the use of alcohol; (4) payment of fines connected with the conviction; (5) significant and conscientious involvement in community programs designed to provide social benefits or ameliorate social problems; and (6) a change in attitude from that which existed at the time of conviction or commission of the crime(s) or act(s). (*Id.* at subds. (a), (f), (g), (l), & (m).)

10. Respondent's failure to provide written notification to the Department is serious. She should have known written notification was required, given over two decades of licensure. Respondent's convictions are also serious, and only two years have passed since. Although she has paid the fines, fees, and restitution relating to her

convictions, she remains on informal probation. A period during which her conduct is unsupervised is necessary to assess rehabilitation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099 [a full and accurate analysis of one's rehabilitation requires a period during which he is not on probation]; *In re Giddens* (1981) 30 Cal.3d 110, 116 [requiring further proof of rehabilitation during an unsupervised period].)

11. Moreover, respondent was evasive at hearing, and her refusal to describe the trigger that resulted in her decision to drink and drive is concerning. She also failed to articulate a relapse plan or how she now responds differently to her triggers. Without this evidence, it is difficult to determine or measure her insight. However, respondent's sobriety for three years demonstrates a stride toward a lawful, sober life. She continues to participate in AA and meets with her AA sponsor weekly. She regularly engages in therapy and, notably, Dr. Elkins believes respondent poses a low risk for relapse.

12. The objective of license discipline is to protect the public, not to punish the licensee. (See *Fahmy v. Medical Bd. of Cal.* (1995) 38 Cal.App.4th 810, 817.) Respondent's continued sobriety is encouraging. However, in light of her remaining time on informal probation, the recency of her convictions, and her lack of candor, respondent has not shown she can practice as a licensee, without restriction, in a manner consistent with public protection. When all the evidence is considered, a three-year period of monitoring through a restricted license would adequately protect the public.

Costs

13. The Department may recover its reasonable investigation and enforcement costs of a case. (Bus. & Prof. Code, § 10106.) Here, the Department

incurred a total of \$1,633.35 in investigation and enforcement costs. Such costs are reasonable given the issues in this case.

14. 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 her 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.

15. Here, the scope of the investigation was appropriate and the overall 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

Real estate salesperson license no. 01393688 issued to respondent Jamie Lynn Morgan is REVOKED. However, a RESTRICTED LICENSE SHALL BE ISSUED to respondent subject to the following limitations, conditions, and restrictions.

As a CONDITION PRECEDENT to the issuance of the restricted license, respondent shall comply with the Department's requirements to renew an expired license, including payment of any applicable fees and completion of applicable continuing education courses. Upon satisfaction of the Department's renewal requirements, the restricted license shall issue.

1. The restricted license shall not confer any property right in the privileges to be exercised, and the Commissioner may by appropriate order suspend prior to hearing 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 by a certified letter within 72 hours of any arrest. 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. Pursuant to Business and Professions Code section 10106, respondent shall pay the Commissioner reasonable investigation and enforcement costs in the sum of \$1,633.35. The Commissioner may, in its sole discretion, order respondent to make payments pursuant to an approved payment plan during probation.

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4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or the removal of any of the conditions, limitations, or restrictions attaching to the restricted license until three years have elapsed from the date of issuance of the restricted license to respondent.

DATE: November 20, 2024



PATRICE DE GUZMAN HUBER
Administrative Law Judge
Office of Administrative Hearings