

FILED

MAR - 9 2020

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPT. OF REAL ESTATE

By 

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In the Matter of the Accusation of:	)	DRE No. H-05049 SD
	)	
ROBERTO WILLIAM POLLORENA	)	OAH No. 2019090371
	)	
Respondent	)	

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DECISION

The Proposed Decision dated February 6, 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.

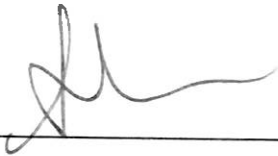
Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for 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.

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 30, 2020.

IT IS SO ORDERED 3/2/20

SANDRA KNAU  
ACTING REAL ESTATE COMMISSIONER



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

**In the Matter of the Accusation Against:**

**ROBERTO WILLIAM POLLORENA, Respondent**

**Case No. H 05049 SD**

**OAH No. 2019090371**

**PROPOSED DECISION**

Russel T. Little, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on January 9, 2020, in San Diego, California.

Steve Chu, Counsel, Department of Real Estate, State of California, represented complainant Supervising Special Investigator Veronica Kilpatrick, Department of Real Estate (department), State of California.

Adam O. Stone, Attorney at Law, represented respondent Roberto William Pollorena.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 9, 2020.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On May 16, 2014, department re-issued Real Estate Salesperson License Number 01799343 to respondent. Respondent's license will expire on May 15, 2022, unless renewed.
2. On August 2, 2017, the department approved respondent's individual mortgage loan originator license endorsement as of December 1, 2017.
3. On February 6, 2019, complainant signed the accusation seeking disciplinary action against respondent's license. The accusation alleged respondent was convicted of substantially related crimes pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b), based on a September 2016 conviction for reckless driving, a misdemeanor; and, a June 2018 conviction for criminal threats with enhancement, a felony.
4. The accusation also alleged, "in aggravation", respondent's March 2017 conviction for battery, a misdemeanor.
5. Respondent timely filed a notice of defense; this hearing ensued.

### **Convictions**

6. On September 25, 2016, in the Superior Court of California, County of San Diego, Case No. C362704, respondent pleaded guilty and was convicted of violating Vehicle Code section 23103, subdivision (a), (reckless driving), a misdemeanor.

As required by his plea agreement, respondent admitted that he "unlawfully & recklessly drive a vehicle with alcohol in my system."<sup>1</sup> The court suspended the sentence and ordered summary probation for three years with conditions that respondent enroll in and successfully complete a three-month licensed first-offender alcohol, drug education and counseling program; enroll in and complete the Mothers Against Drunk Drivers (MADD) program; perform 13 days of public service; and pay fines and fees.

7. On March 17, 2017, in the Superior Court of California, County of San Diego, Case No. M217622, respondent pleaded guilty and was convicted of violating Penal Code section 242 (battery), a misdemeanor.

On May 15, 2017, respondent's petition and order for dismissal pursuant to Penal Code section 1385, was granted. Respondent's conviction, case no. M217622, was dismissed by the Superior Court.

8. On June 4, 2018, in the Superior Court of California, County of San Diego, Case No. C362704, respondent pleaded guilty and was convicted of violating Penal Code 422, with enhancement under Penal Code sections 1192.7, subdivision (c)(23), 12022, subdivision (b)(1), and 1203, subdivision (e)(2) (criminal threats), a felony.

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<sup>1</sup> Vehicle Code section 23103.5, subdivision (a), permits a court to allow a person charged with a violation of Vehicle Code section 23152, subdivisions (a) or (b) (driving under the influence of an alcoholic beverage or driving with a blood alcohol concentration of 0.08 percent or above) to instead plead to reckless driving provided they admit they were driving with alcohol in their system at the time of their arrest.

The court ordered respondent to serve 270 days in custody of the San Diego County Sheriff's Department. The court also ordered formal probation for five years and that respondent pay fines and fees.

Respondent's conviction arose out of an incident that occurred on May 19, 2017. The San Diego Police Department responded to a call regarding a subject brandishing a knife. Upon arrival at the scene, the police officer Allen Baylor interviewed the victims. The subject had fled the scene. Later that day, respondent, understanding that police wanted to talk with him about the incident, called police dispatch and was directed to speak with Officer Baylor.

From his interviews with victims and respondent, Officer Baylor determined the incident began with the parties driving in their separate vehicles on the highway. Respondent made erratic and dangerous lane changes. The victims pulled their vehicle to the side of the road and exited their vehicle. One of the victims opened the trunk to retrieve a cell phone. At the same time, respondent pulled to the side of the road behind victims' vehicle and exited his vehicle. Respondent saw the victim open the trunk of his vehicle and believing the victim was looking for a weapon pulled a knife and threatened the victims. No one was injured and Officer Baylor found no weapons at the scene.<sup>2</sup>

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<sup>2</sup> The facts underlying respondent's conviction were obtained from law enforcement reports received in evidence under *Lake v. Reed* (1997) 16 Cal.4th 448, and from respondent's testimony both at the hearing in the present matter and in his narrative provided to the department. The *Lake* case considered the admissibility of law enforcement reports in administrative proceedings and concluded that law enforcement officers' direct observations memorialized in such a report were

## **Claude Alan Blackman, Jr.'s Testimony**

9. Claude Alan Blackman, Jr. testified at the hearing. The following is a summary of his testimony.

10. Mr. Blackman is a licensed mortgage and real estate broker. He owns and operates Tidal Realty in San Diego. Tidal Realty has about 30 salespersons, five or six permanent office staff and five loan originators.

Mr. Blackman met respondent in "late summer of 2017," when respondent applied for a salesperson position with Tidal Realty. During the interview, respondent disclosed his September 2016 and March 2017 convictions. Respondent was "up front" and "sincere" about his first two convictions. Mr. Blackman found out about the third conviction when respondent failed to "show up" to help move the office in 2018. He believed respondent was arrested that day.

Mr. Blackman did not know the date respondent went to jail or the date respondent was released from jail. After respondent's release from jail, they spoke about the details of the conviction. Mr. Blackman welcomed him back to work because

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admissible under Evidence Code section 1280, the public employee records exception to the hearsay rule, and admissions by a party memorialized in a report were admissible under Evidence Code section 1220. (*Id.* at pp. 461-462.) The *Lake* court noted that other witness statements in the report, which were not otherwise admissible under any hearsay exception, were not sufficient to establish a finding, but could be used to supplement or explain other admissible evidence, citing Government Code section 11513. (*Id.* at p. 461.) In any event, the facts contained in Finding 8 are undisputed.

the conviction was not "work related." Mr. Blackman told respondent "no more trouble," and that respondent should "keep his eye on" the important things in life.

Mr. Blackman could not remember the details of any of respondent's convictions.

Mr. Blackman spoke highly of respondent's skills and passion for real estate sales. Mr. Blackman is a Navy veteran. He likes to hire other military veterans because they embrace his philosophy to treat clients like family. Respondent treats each client with kindness and respect, "he puts the client first." Respondent has a "big-time" positive impact on the office. He has been assigned as a "team leader." Respondent guides new agents through their real estate listings and sales.

Since respondent's release from jail, Mr. Blackman has noticed a change in respondent. Respondent is even more positive and seems determined not to forget a serious life lesson and be a better person from the experience.

11. Mr. Blackman testified directly and with enthusiasm on behalf of respondent. He did not appear to know respondent personally, but realizes respondent's value as a part of Tidal Realty.

### **An Nguyen's Testimony**

12. An Nguyen testified briefly at the hearing. The following is a summary of his testimony.

13. Mr. Nguyen is 25 years old. He is a licensed real estate salesperson. He has been employed at Tidal Realty since April 2019. Mr. Nguyen served as a motor-transport operator in the U.S. Marines before Tidal Realty. He saw an ad by Tidal Realty for military veterans who wanted "to get into real estate."



Mr. Nguyen is part of a five-member team at Tidal Realty that respondent mentors on real estate sales. Respondent disclosed his 2018 conviction to the group and uses it to inspire members of the team to believe that one's past should not hold back future success.

Mr. Nguyen knew the details of respondent's 2018 conviction. He was "caught off guard" about respondent "pulling a knife." It's not like the person he knows from work. Mr. Nguyen sees respondent as an honest and compelling person, who is committed to "going the extra mile for clients."

Mr. Nguyen does not socialize with respondent. He did not know about respondent's 2016 or 2017 convictions.

### **Laura Marie Trainotti's Testimony**

14. Laura Marie Trainotti testified briefly at the hearing. The following is a summary of her testimony.

15. Ms. Trainotti is respondent's girlfriend. She has dated and/or lived with respondent for over nine years. Ms. Trainotti has three children. She is employed as a manager at Macy's in San Diego.

Ms. Trainotti knew the details of respondent's convictions. Respondent has never been physically angry with her or her children. She and the children feel very safe with respondent.

The 2018 conviction was "very hard" on her family. She was not prepared financially. When respondent went to jail, Ms. Trainotti returned to work fulltime. Over the four and one-half months respondent was in jail, she spoke to him daily and visited him twice a week.

Upon his release from jail, respondent returned to live with Ms. Trainotti and her children. She thought it would be "best for him to be back home." He was a different person after his release from jail. Respondent was more focused on work and he has tried to improve her life and home. Respondent is more open with her children. They now seek his input and advice about their young lives. Respondent has made a financial commitment to support her children's education. Presently, he pays for her daughter's rent and car while she is attending college. Ms. Trainotti believes respondent has shown great progress since his release from jail.

Ms. Trainotti acknowledged she had seen respondent drunk early in their relationship. Since his release from jail, respondent only drinks a "beer or two" every other week. Mr. Trainotti does not believe respondent has "a problem with alcohol."

Ms. Trainotti's was uncertain about respondent currently attending Alcoholics Anonymous (AA) meetings or counseling for anger management.

16. Ms. Trainotti's was direct and honest. Her testimony was credible and supportive of respondent.

### **Respondent's Testimony**

17. Respondent testified at the hearing. The following is a summary of his testimony.

18. Respondent is a realtor and loan officer at Tidal Realty. He has been working at Tidal Realty since August 2017. Respondent assists in the loan department and offers guidance to new agents as a team leader in sales.

Respondent acknowledged all convictions as alleged in the accusation. The 2016 reckless driving conviction was the result of drinking with friends. Respondent

did not realize he was speeding until he was stopped by the police. Respondent completed all terms of his probation.

The 2017 battery conviction was the result of drinking alcohol and then acting belligerent. Respondent does not remember all the details of that conviction but believes he was likely "being a jerk."

Respondent doesn't drink alcohol as often now. He doesn't go out to bars. He still drinks alcohol but he will arrange an Uber ride when he does. Respondent considers himself a "recovering alcoholic," but does not attend AA meetings regularly. He believes that solving his anger management problems is his key to sobriety.

Respondent's 2018 conviction resulted from a road-rage incident that occurred in May 2017. He fully accepted responsibility for his bad judgment. Respondent put himself in that position by following the victims and exiting his vehicle. He pulled out a "pocket knife" when he believed the victim was armed with a baseball bat. No alcohol was involved.

Respondent served four and one-half months in jail. It was tough in the beginning. He remembers calling his mother and having a "purpose in life" discussion. Respondent credits programs in jail for giving him a new perspective. He addressed his anger management and focused on rehabilitation. While in prison, respondent conducted "credit counseling" meetings. His purpose was to give fellow inmates the tools to improve their credit scores.

While the court did not require anger management classes as a term of his current probation, respondent has attended anger management group counseling. He finds no benefit in group sessions because it lacks personal interaction. He reads "lots of self-help books," and has considered individual counseling.

Since his release from jail, respondent has a “completely different mindset” that allows him to “just let go” of problems. Respondent believes that he would have avoided the 2018 conviction with his present mindset. While respondent has not eliminated his anger management problems, he now controls his emotions by meditation and drinking less alcohol.

Respondent remains on probation until June 2023 for the 2018 conviction. He is subject to random drug testing, but he has never been required to take a drug screen. Respondent has never violated probation.

Respondent is completely involved and passionate about the real estate profession. Respondent believes that he can help clients with the “biggest purchase of their lives.” He worries what would happen to him should he lose his license. His girlfriend and her children are depending on him.

19. Respondent was a self-assured and credible witness.

### **Additional Evidence**

20. Respondent also provided copies of two letters of professional recommendation from two clients. Both were aware of respondent’s convictions and this accusation.

Jacob Perez, a staff sergeant in the U.S. Marine Corps, has known respondent for about two years. Sgt. Perez wrote that respondent is a patient, dedicated and hardworking real estate professional. Looking to purchase a home, Sgt. Perez began working with respondent shortly before his 2018 conviction and jail sentence, and when respondent was released from jail he worked with respondent again. He is “a leader in the Realtor community by mentoring many aspiring realtors.”

Miguel Estrema, is a retired, disabled military veteran. He met respondent in April 2019. Mr. Estrema wrote that respondent "was always upbeat, positive and friendly." Mr. Estrema noted that respondent provides a valuable service to military veterans. Respondent understands VA and CalVet loan requirements and has the ability to guide his clients to properties that meet these requirements. Respondent's personal attributes make him "a highly exemplary professional real estate agent and invaluable resource to the real estate profession."

### **Costs of Investigation and Enforcement**

21. Complainant requested cost recovery against respondent pursuant to Business and Professions Code section 10106. Complainant certified the investigative costs in the amount of \$688.70. Complainant's counsel submitted a declaration for enforcement costs in the amount of \$823.25. The certifications complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b).

## **LEGAL CONCLUSIONS**

### **Purpose of Discipline**

1. The object of an administrative proceeding aimed at revoking a license is to protect the public. (*Small v. Weijola* (1971) 16 Cal.App.3d 450, 457.)

2. The purpose of discipline is not to punish, but to protect the public by eliminating practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

## **Burden and Standard of Proof**

3. Complainant bears the burden of proving that the charges in the accusation are true. (Evid. Code § 115.) The standard of proof in an administrative action seeking to suspend or revoke a professional license is "clear and convincing evidence." (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Sup. Ct.* (2005) 130 Cal.App.4th 586, 594.)

## **Applicable Code Sections**

4. Business and Professions Code section 490, subdivision (a) provides:

In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

5. Business and Professions Code section 10177 provides in part:

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

[¶] . . . [¶]

(b)(1) Entered a plea of guilty or no contest, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information. . . .

### **Substantial Relationship**

6. California Code of Regulations, title 10, section 2910 states in part:

When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Bureau within the meaning of Sections 480 and 490 of the Code if it involves:

[¶] . . . [¶]

- (8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with

the intent or threat of doing substantial injury to the person or property of another.

[¶] . . . [¶]

(10) Conduct which demonstrates a pattern of repeated and willful disregard of law. . . .

### **Substantial Relationship**

7. Convictions alone will not support a denial of a license unless the crime substantially relates to the qualifications, functions, or duties of the business or profession in question. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.)

8. Complainant alleged all of respondent's convictions were substantially related to the qualifications, functions or duties of a real estate licensee.

9. Respondent's three convictions are substantially related to the qualifications, functions and duties of a real estate license under the department's substantial relationship criteria because of the number of convictions and their intent or threat of doing substantial injury to the person or property of another. (Cal. Code Regs., tit. 10, § 2910, subdivision (a) (8) and (10).)

### **Cause Exists to Discipline Respondent's License**

10. Cause exists to discipline respondent's real estate salesperson license. Respondent's 2016 conviction for reckless driving and his 2018 felony conviction for criminal threats are cause to revoke or suspend respondent's license pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision



(b). In aggravation, respondent was convicted of battery in 2017. These convictions are substantially related to the qualifications, functions, or duties of a licensee. (Cal. Code Regs., tit. 10, § 2910, subds. (a)(8) & (a)(10).)

## **Rehabilitation**

11. California Code of Regulations, title 10, section 2912, establishes the criteria to consider when evaluating rehabilitation. The criteria include consideration of the nature and severity of the act or omission, the licensee's total criminal record, the time that has elapsed since the act, whether the licensee complied with the terms of criminal probation, whether the conviction has been expunged, whether the licensee has made restitution, abstinence from the use of alcohol, and whether the licensee can demonstrate significant and conscientious community involvement, stability of family life, and fulfillment of parental and familial responsibilities subsequent to the criminal conviction. These criteria were considered in this decision.

12. The amount of evidence required to establish rehabilitation varies according to the seriousness of the misconduct at issue. (*In re Menna* (1995) 11 Cal.4th 975, 987.) 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.) The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

13. Since persons under the direct supervision of judicial or correctional authorities are required to behave in an exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or

continue inappropriate behavior while under supervision. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

It has been one and one-half years since respondent's 2018 felony conviction. He is on formal probation until June 3, 2023. Respondent served his time in jail and paid the fines and restitution. Thus far, he has complied with terms of his probation and remained clear of further violations.

Respondent may have a problem with alcohol but does not regularly attend AA meetings. He has the support of his family and co-workers. Three witnesses testified that respondent's changed for the better since his 2018 conviction and that he continues to improve his anger management. While not required by his probation, respondent attends anger management group counseling and reads self-help books. There was no evidence of his participation in community service activities.

## **Evaluation**

14. Respondent had admitted and accepted responsibility for his convictions. His recovery period has only been a year and one half. However, his convictions occurred away from work. His clients, boss and co-workers speak of his passion and dedication to his profession. Respondent is taking steps toward better anger management.

As a result of his 2018 conviction, respondent spent four and one-half months in jail and is serving five years of formal probation. Respondent has been in compliance with formal probation. Three witnesses who testified on his behalf and two letters from clients provided evidence of his rehabilitation and attested to his excellent work reputation and improved character.

15. Based upon the evidence presented there is cause to impose discipline against respondent's license resulting from his 2016 and 2018 convictions. However, respondent's 2017 conviction has been dismissed and the record vacated, and he has clearly felt the impact of his failure to manage his anger by spending four and one-half months in jail. After applying the criteria of California Code of Regulations, title 10, section 2912, it is concluded that the public will be protected by permitting respondent to apply for and hold a restricted real estate salesperson license under Business and Professions Code section 10156.7.

### **Cost Recovery**

16. Complainant seeks the costs of investigation and prosecution in the amount of \$1,511.95. These costs are found reasonable under California Code of Regulations, title 1, section 1042, subdivision (b).

Respondent did not oppose the award. Costs are awarded in the amount of \$1,511.95.

### **ORDER**

All licenses and licensing rights issued to respondent Roberto William Pollorena by the department are revoked; provided, however, that a restricted real estate salesperson license shall be issued to respondent under Business and Professions Code section 10156.5, if respondent makes an application therefor and pays the appropriate fee to the Department of Real Estate for the issuance of such a restricted license and \$1,511.95 for investigation and prosecution costs within 90 days from the effective date of this Decision. The restricted license shall be subject to all 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:

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 three 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 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 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.

DATE: February 6, 2020

DocuSigned by:  
*Russel T. Little*  
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RUSSEL T. LITTLE

Administrative Law Judge  
Office of Administrative Hearings