

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED

JUL 29 2009

DEPARTMENT OF REAL ESTATE

By K. Max

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In the Matter of the Accusation of

ALLISON E. WISLAR,

Respondent.

NO. H-5165 SAC

OAH NO. 2009030776

DECISION

The Proposed Decision dated June 26, 2009, 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 on grounds of conviction of crimes.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 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

AUG 19 2009

IT IS SO ORDERED 7-27-09

JEFF DAVI  
Real Estate Commissioner

Barbara J. Bigby  
BY: Barbara J. Bigby  
Chief Deputy Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ALLISON E. WISLAR,

Case No. H-5165 SAC

OAH No. 2009030776

Respondent.

**- PROPOSED DECISION**

Judith A. Kopec, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 29, 2009, in Sacramento, California.

Trevor Carson, Law Student, and Richard Uno, Attorney at Law, Department of Real Estate (department) represented the complainant.

Respondent Allison E. Wislar appeared on her own behalf.

Evidence was received, the record was closed, and the matter was submitted for decision on May 29, 2009.

**FACTUAL FINDINGS**

1. On February 18, 2009, Joe M. Carillo, Deputy Real Estate Commissioner of the State of California, made the accusation in his official capacity.

2. Respondent is licensed by the department as a real estate broker. Her license expires on September 26, 2009. The date that respondent was first licensed is not in the record, but she has been licensed since at least January 1, 2006.

*Criminal Convictions*

3. On November 17, 2006, respondent pled nolo contendere to and was convicted of violating Vehicle Code section 23152, subdivision (b), driving a car with a blood alcohol level of .08 percent or more, a misdemeanor (2006 conviction). Respondent was sentenced to a work release program and a first offender program for six months. She was placed on three years of conditional, revocable, community release and was required to obey all laws

and not drive with any measurable amount of alcohol in her system. She was also ordered to pay various fines and fees.

4. The circumstances of the offense follow: On August 6, 2006, respondent went to pick up a friend from a bar who was too intoxicated to drive. Respondent drank two beers and was driving her friend home when a Redding Police Officer observed her driving 55 miles per hour in a 35 miles per hour zone; weaving from side to side; and going through a stop sign at about 10 miles per hour. When stopped by the officer, respondent's eyes were red, blood shot, and watery; she slurred her words and was unsteady on her feet; and there was a moderate odor of alcohol. Respondent's blood alcohol content was .16 percent.

5. Three Redding Police Officers were on the scene. While one administered field sobriety tests to respondent, another officer attempted to control respondent's friend, who was extremely intoxicated and belligerent. Eventually all three officers were required to subdue respondent's friend, who was also arrested. Respondent contends that the officers were extremely aggressive with her. She contends that she did not feel intoxicated, she drank two beers quickly on an empty stomach, and she was taking medications at the time.

6. On May 11, 2007, respondent pled nolo contendere to and was convicted of violating Penal Code section 148, resisting or obstructing a peace officer, a misdemeanor (2007 conviction). Respondent was sentenced to a work release program and was placed on three years of conditional, revocable, community release, and was required to obey all laws and not drive with any measurable amount of alcohol in her system. She was also ordered to pay various fines and fees.

7. The circumstances of the offense follow: On December 7, 2006, respondent was driving to a store to buy cigarettes and soda although her driver's license had been suspended. She slowed down to about seven miles per hour, but failed to stop at a stop sign. After respondent went through the stop sign, a Redding Police Officer observed her driving 50 miles per hour in a 40 miles per hour zone. After the officer activated the overhead lights on the car, respondent was slow to yield and eventually pulled into a parking lot of a bar. Respondent immediately got out of her car. The officer ordered her to get back into her car. Respondent continued to walk towards the police car at a fast rate of speed. The officer repeated his order for her to stop. Respondent walked toward the front entrance of the bar. The officer again ordered her to stop. Respondent continued walking and said she was going to call her attorney. The officer then chased respondent and placed her in a rear wrist lock. Respondent continued to pull and resist in spite of repeated orders to comply. The officer eventually placed respondent into handcuffs and called for assistance. The officer escorted respondent to the patrol car and attempted to place her into the back seat. She resisted, said she did not want to go to jail, and fell to the ground. She was then picked up and placed into the back seat of the patrol car. Respondent's driver's license had been suspended and she was on probation for the 2006 conviction.

8. According to respondent, she was having a bad day and was anxious as she drove to buy cigarettes and soda. When she saw the police car, she became very anxious and began crying because she did not want to get into trouble. Respondent claims that she became anxious because she remembered how she had been "roughed up" during her prior arrest, did not want to go to jail, and was concerned because her 16-year-old son was alone at home. She contends that she was handcuffed immediately, but at some point sat on the ground.

9. On October 29, 2008, respondent pled guilty to and was convicted of violating Health and Safety Code section 11366, maintaining a place for unlawfully selling or using a controlled substance, a felony (2008 conviction). Imposition of the sentence was suspended for three years and respondent was placed on conditional, revocable, community release and required to obey all laws, serve 30 days in county jail, and pay various fines and fees, among other requirements.

10. The circumstances of this offense follow: On June 6, 2008, members of the Shasta Interagency Narcotic Task Force conducted a probation search at respondent's home. During the search, officers found 132.2 grams of marijuana, six small marijuana plants, one used methamphetamine pipe, several bongs and marijuana pipes, a balance scale with marijuana residue, and plastic bags. Respondent admitted to the officers that she recently began selling marijuana to make some money and sold about \$40 per week. At the time of this offense, respondent was on probation for her two prior convictions.

11. According to respondent, her tenant was growing marijuana plants. Respondent believed that the tenant had a license to grow the plants for his own use. She claimed that she was held responsible because she owned the house, which was in foreclosure. Respondent claimed that she told the officers that the marijuana pipes were hers because she did not want her son, who was entering Chico State, to get into trouble. While respondent admitted she was selling marijuana to the police officer, she denied any knowledge of or involvement in the sale of marijuana during her testimony.

#### *Respondent's Testimony and Other Evidence*

12. Respondent holds a bachelor's degree from Lehigh University and a master's degree in business administration from Arizona State University. She has three children, ages 16, 18 and 22. Respondent last worked from March to August 2008 for a real estate broker. Since then she has worked "odds and ends."

13. She submitted a confidential interview information statement that was signed under penalty of perjury on the date of the hearing that she has helped the homeless, children, and animals, and is a founding member of Junction Educational Foundation, a school in Palo Cedro, California. There is no evidence that a confidential interview statement was previously submitted to the department. However, respondent did not provide any testimony or corroboration about any community involvement.

14. Respondent attended a six-month first offender program after her first conviction. She liked the class because they worked with her when she was late on her payments. According to respondent, she learned a lot regarding alcohol, and she liked listening to other people. She believed the program "did a fine job." Respondent expressed no awareness of having any problem with the use of alcohol or drugs.

15. Respondent pays \$70 a month toward her consolidated fines and fees for all three convictions. About \$900 remains to be paid. She may participate in community service in lieu of paying the rest of the fines.

#### *Appropriate Penalty*

16. There is little evidence that respondent meets any of the department's criteria for rehabilitation as set forth in Legal Conclusion 18. She provided no testimony about or corroboration of statements on the confidential interview statement concerning her involvement in community activities. Nor did she provide testimony concerning the stability of her family life and fulfillment of parental responsibilities. Less than one year has passed since her last conviction and respondent remains on probation for all three offenses. She has made payments toward paying the fines she owes, but a significant amount remains unpaid. There is no evidence that respondent abstains from the use of alcohol or participates in any ongoing recovery support program. There is no evidence that respondent has engaged in any activities for economic self-improvement. And finally, there is no evidence that respondent has changed her attitude or outlook from that which existed at the time of her criminal conduct. Respondent's story about her drug-related conviction is without corroboration and defies common sense. As a result, the public interest cannot be adequately protected by permitting respondent to remain licensed.

### LEGAL CONCLUSIONS

#### *Applicable Law*

1. The department 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. (Bus. & Prof. Code, § 490, subd. (a).)

2. After January 1, 2008, the department may suspend or revoke a license if the licensee has been convicted of any felony or a crime substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, § 10177, subd. (b).) Prior to January 1, 2008, Business and Professions Code section 10177, subdivision (b), authorized the department to suspend or revoke a license if the licensee had been convicted of a felony or a crime of moral turpitude. (Stats. 2006, ch. 199, § 2, ch. 578, § 2.5.)

3. Complainant did not allege in the accusation that respondent's 2006 and 2007 misdemeanor convictions involved moral turpitude. However, at the hearing, complainant argued that they involved moral turpitude. Since respondent did not object, the accusation is deemed amended consistent with proof. (See Gov. Code, §§ 11507, 11516.)

4. The legislative history does not indicate whether the amendment to section 10177, subdivision (b) was to apply to offenses or convictions occurring, or disciplinary actions taken, on or after January 1, 2008. (*Californians for Disability Rights v. Mervyn's LLC* (2006) 39 Cal.4th 223, 230 (cited as *Californians for Disability Rights*); Assem. Com. on Business and Professions, Rep. on Assem. Bill No. 840 (2007-2008 Reg. Sess.) as amended Mar. 29, 2007; Sen. Com. on Business, Professions and Economic Development; Rep. on Assem. Bill No. 840 (2007-2008 Reg. Sess.), as amended June 19, 2007; Sen. Rules Com., Off. Of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 840 (2007-2008 Reg. Sess.) as amended June 19, 2007.) According to *Californians for Disability Rights*, the function of a law determines whether a statute is prospective or retroactive. (39 Cal.4th at pp. 230-231.) Since the amendment provided grounds to suspend or revoke a license that did not exist before, namely for conviction of a misdemeanor that is not a crime involving moral turpitude, the conventional analysis of retroactive versus prospective application of a statute holds that the revised statute would apply only to crimes occurring after January 1, 2008, the effective date of the enactment. (See *Fox v. Alexis* (1985) 38 Cal.3d 621, 630-631; *Johnson v. Alexis* (1983) 143 Cal.App.3d 82, 85-86.)

5. However, this view, which is based primarily on the application of criminal statutes, does not further the public policy underlying professional licensing schemes. (See *Stuck v. Board of Medical Examiners* (1949) 94 Cal.App.2d 751, 757.) The purpose of professional licensing requirements is to protect the public. (*Robertson v. California* (1946) 328 U.S. 440, 447 [66 S.Ct. 1160].) The laws governing the discipline of professional licensees is directed at protecting the public, not punishing the offending licensee. (*Handeland v. Department of Real Estate* (1976) 58 Cal.App.3d 513, 518; *Ready v. Grady* (1966) 243 Cal.App.2d 113, 117.) Once a license is issued, a licensee must comply with all licensing requirements, and, as a result, is aware that his or her conduct may result in discipline of his or her license. The licensing scheme both before and after January 1, 2008, provided that the department could discipline a license for some, but not all, convictions. It is reasonable to apply the disciplinary standard in existence at the time of a conviction, rather than at the time of either the conduct underlying the conviction, or the filing of the disciplinary action. This furthers the policy of adequately protecting the public, while also providing notice to a licensee of the consequences a conviction may have for licensure. Accordingly, the version of Business and Professions Code section 11077, subdivision (b) in effect at the time of each conviction governs. Respondent's 2006 and 2007 misdemeanor convictions must involve moral turpitude in order to provide a basis to discipline respondent's license.

### *Moral Turpitude*

6. A crime involves moral turpitude if the elements necessary for conviction show moral turpitude. (*Lorenz v. Medical Examiners* (1956) 46 Cal.2d 684, 687.) Moral turpitude has been defined as “an act of baseness, vileness or depravity” in a duty owed to others or society which is “contrary to the accepted and customary rule of right and duty” between persons. (*In re Higbie* (1972) 6 Cal.3d 562, 569, citing *In re Craig* (1938) 12 Cal.2d 93, 97.) Acts showing “bad character” and “the general readiness to do evil” involve moral turpitude. (*People v. Castro* (1985) 38 Cal.3d 301, 314.) Criminal conduct reveals moral turpitude for the purpose of professional licensure if it shows a deficiency in any character trait necessary for the practice of the profession, such as honesty, candor, and fidelity to fiduciary duties, involves a serious breach of a duty owed to another or society, or shows flagrant disrespect for the law or societal norms, so that knowledge of the conduct would undermine public confidence in, and respect for, the profession. (*In re Lesansky* (2001) 25 Cal.4th 11, 16.)

### *2006 Conviction for Driving under the Influence of Alcohol*

7. Generally, a violation of Vehicle Code section 23152 is not a crime involving moral turpitude. (*In re Kelley* (1990) 52 Cal.3d 487, 494.) However, there are circumstances in which a drunk driving conviction was found to involve moral turpitude. In *People v. Forster* (1994) 29 Cal.App.4th 1746, 1757, moral turpitude was found to exist in a felony conviction for drunk driving under Vehicle Code section 23152 when the offense occurred within seven years of three prior violations of drunk driving.

8. Respondent did not have any prior drunk driving convictions. Complainant argued that this conviction involved dishonesty and a disregard for human life. Neither claim is supported by either the elements or circumstances of the offense. This conviction does not involve a serious breach of duty owed another or society, or a flagrant disrespect for the law or norms so that knowledge of the conduct would undermine public confidence in or respect for the real estate profession. Therefore, there is insufficient evidence that respondent’s 2006 conviction for drunk driving involved moral turpitude.

### *2007 Conviction for Resisting or Obstruction a Police Officer*

9. Offenses involving the threat or use of force against a police officer involve moral turpitude. (*People v. Williams* (1999) 72 Cal.App.4th 1460, 1465.) Respondent’s 2007 conviction was for a violation of Penal Code section 148, which does not involve the use of threat or force against a police officer. Nor do the circumstances of the offense indicate the use of threat or force. While respondent did not respond to the officer’s commands, the officer did not draw his weapon or act in a manner that shows that respondent’s conduct was threatening. Complainant argued, without basis, that respondent’s conduct shows a lack of honesty. The evidence does not establish that this conviction involves a serious breach of a duty or flagrant disrespect of the law so that knowledge of the

conduct would undermine public confidence in the real estate profession. As a result, respondent's 2007 conviction does not involve moral turpitude.

*Substantial Relationship to the Qualifications, Functions, or Duties of Real Estate Licensee*

10. A crime has a substantial relationship to the qualifications, functions, or duties of a real estate licensee when it involves the doing of an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8)), conduct that demonstrates a pattern of repeated and willful disregard of law (*id.* at subd. (a)(10)), or two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs (*id.* at subd. (a)(11)).

*2006 Conviction for Driving under the Influence of Alcohol*

11. Respondent's 2006 conviction was a single incident of drunk driving. Without more, this does not establish any of the criteria for a substantial relationship to the qualifications, functions, or duties of a real estate licensee set forth in California Code of Regulations, title 10, section 2910. By itself, this conviction does not have a substantial relationship to the qualifications, functions or duties of a real estate licensee. But in connection with either or both of respondent's 2007 and 2008 convictions, her 2006 conviction establishes respondent's willful disregard of the law. In addition, in connection with her 2008 conviction, respondent has two convictions involving the use of alcohol or drugs and the 2006 conviction involves driving and the consumption of alcohol. As a result, respondent's 2006 conviction is substantially related to the qualifications, functions, or duties of a real estate licensee.

*2007 Conviction for Resisting or Obstruction a Police Officer*

12. Respondent's 2007 conviction illustrates respondent's willful disregard of the law. Since respondent's second offense occurred less than one month after she was convicted and placed on three years' probation for driving under the influence of alcohol, respondent's conviction demonstrates a pattern of repeated and willful disregard of the law. As a result, it bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee.

*2008 Conviction for Unlawfully Selling or Using a Controlled Substance*

13. Respondent's 2008 conviction occurred less than one year after she was convicted of resisting or obstruction a peace officer and while she was on probation for her two prior convictions. Respondent's third conviction in two years demonstrates a pattern of repeated and willful disregard of the law. In addition, the offense involved the sale of marijuana, which is an unlawful act with the intent of conferring a financial gain. As a result of this conviction, in connection with her first conviction for driving under the influence, respondent has two convictions involving the consumption or use of alcohol or drugs and one

of them involves driving and the consumption of alcohol. Therefore, this offense bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee.

#### *Basis for Discipline*

14. As determined in Legal Conclusions 8 and 11, respondent's 2006 conviction, which is substantially related to the qualifications, functions, and duties of a real estate licensee, does not involve moral turpitude. As a result, it does not provide grounds to suspend or revoke respondent's license under Business and Professions Code sections 490, subdivision (a) or 10177, subdivision (b).

15. As Legal Conclusions 9 and 12, respondent's 2007 conviction, which is substantially related to the qualifications, functions, and duties of a real estate licensee, does not involve moral turpitude. As a result, it does not provide grounds to suspend or revoke respondent's license under Business and Professions Code sections 490, subdivision (a) or 10177, subdivision (b).

16. As determined in Legal Conclusions and 13, clear and convincing evidence shows that respondent has been convicted of violating Health and Safety Code section 11366, which is a felony substantially related to the qualifications, function, and duties of a real estate licensee. As a result, grounds exist to suspend or revoke respondent's license under Business and Professions Code sections 490, subdivision (a) or 10177, subdivision (b).

#### *Appropriate Penalty*

17. The following criteria shall be used to evaluate the rehabilitation of a licensee when the department initiates a disciplinary proceeding as a result of a crime committed by the licensee: (a) the passage of not less than two years from the most recent criminal conviction that is substantially related to the qualifications, functions or duties of a real estate licensee; (b) restitution to any person who has suffered monetary losses through substantially related acts or omissions of the licensee; (c) expungement of the conviction at issue; (d) expungement or discontinuance of a requirement of registration under Penal Code section 290; (e) successful completion or early discharge from probation or parole; (f) abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol; (g) payment of any fine imposed in connection with the criminal conviction; (h) correction of business practices responsible in some degree for the crime; (i) new and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction; (j) stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction; (k) completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement; (l) significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; (m) change in attitude from that which existed at the time of the commission of the criminal acts as evidenced by any or all of the following: (1) testimony of

applicant; (2) evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns; (3) evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments; (4) evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances; and (5) absence of subsequent felony or misdemeanor convictions that reflect an inability to conform to societal rules when considered in light of the conduct in question. (Cal. Code Regs., tit. 10, § 2912.)

18. The overwhelming weight of the evidence shows that revocation of respondent's license is the only manner in which the public interest can be adequately protected.

#### ORDER

The license of respondent Allison E. Wislar to act as a real estate broker is revoked.

Dated: June 26, 2009

  
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JUDITH A. KOPEC  
Administrative Law Judge  
Office of Administrative Hearings

1 RICHARD K. UNO, Counsel (SBN 98275)  
2 Department of Real Estate  
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FILED

FEB 25 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

6  
7 BEFORE THE DEPARTMENT OF REAL ESTATE  
8 STATE OF CALIFORNIA

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10 In the Matter of the Accusation of )  
11 ALLISON E. WISLAR, ) H-5165 SAC  
12 Respondent. ) ACCUSATION  
13 )

14 The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner of  
15 the State of California, for cause of Accusation against ALLISON E. WISLAR also known as  
16 "Allison E. Marcy" and "Allison E. Krochmalney", (hereinafter "Respondent"), is informed and  
17 alleges as follows:

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19 Complainant makes this Accusation against Respondent in his official capacity.

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21 Respondent is presently licensed and/or has license rights under the Real Estate  
22 Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "the Code") as a  
23 real estate broker.

24 3

25 On or about November 17, 2006, in the Superior Court of the State of California,  
26 County of Shasta, Case No. 06TR7389, Respondent was convicted of violating Section 23152(b)  
27 of the California Vehicle Code (Driving Under the Influence of Alcohol or a Drug), a

1 misdemeanor and a crime which bears a substantial relationship under Section 2910, Title 10,  
2 California Code of Regulations (herein Regulations) to the qualifications, functions or duties of  
3 a real estate licensee.

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6 On or about May 11, 2007, in the Superior Court of the State of California,  
7 County of Shasta, Case No. 06CTR11269, Respondent was convicted of violating Section  
8 148(a) (1) of the California Penal Code (Resisting Arrest), a misdemeanor and a crime which  
9 bears a substantial relationship under Section 2910 of the Regulations to the qualifications,  
10 functions or duties of a real estate licensee.

11 5

12 On or about October 29, 2008, in the Superior Court of the State of California,  
13 County of Shasta, Case No. 08F0005973, Respondent was convicted of violating Section 11366  
14 of the California Health and Safety Code (Maintaining a Place for Selling/Using Controlled  
15 Substances), a felony and a crime which bears a substantial relationship under Section 2910 of  
16 the Regulations to the qualifications, functions or duties of a real estate licensee.

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18 The facts alleged in Paragraph 3 through 5, above, constitute cause under Section  
19 10177(b) and Section 490 of the Code for suspension or revocation of Respondent's license  
20 under the Real Estate Law.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a Decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Code, and for such other and further relief as may be proper under provisions of law.

  
JOE M. CARRILLO  
Deputy Real Estate Commissioner

Dated at Sacramento, California

this 18 day of February, 2009.