

FILED

MAY 31 2023

DEPARTMENT OF REAL ESTATE

By By dew

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)	No. H-12597 SF
)	
HILLARY ANNE WICKEN,)	OAH No. 2022091012
)	
Respondent.)	
)	

**STIPULATION AND WAIVER AND
DECISION AFTER REJECTION**

On September 21, 2022, the California Department of Real Estate (“Department”) filed a Statement of Issues against HILLARY ANNE WICKEN (“Respondent”), seeking to deny her application for a real estate salesperson license.

On December 6, 2022, a remote hearing was held before Administrative Law Judge (“ALJ”) Juliet E. Cox with the Oakland Office of Administrative Hearings. Evidence was received, the record was closed, and the matter was submitted for decision.

On December 12, 2022, the ALJ issued a Proposed Decision wherein she denied Respondent’s application for a real estate salesperson license. However, a restricted real estate salesperson license shall be used to Respondent in accordance with Business and Professions Code (“Code”) section 10156.5.

On March 27, 2023, the Commissioner rejected the Proposed Decision dated December 12, 2022.

The parties wish to settle this matter without further proceedings.

1 IT IS HEREBY STIPULATED by and between Respondent and the Department,
2 acting by and through Adriana Z. Badilas, Counsel for the Department, as follows for the purpose
3 of settling and disposing of the Statement of Issues filed by the Department.

4 1. It is understood by the parties that the Real Estate Commissioner may
5 adopt the Stipulation and Waiver as his Decision in this matter, thereby imposing the penalty and
6 sanctions on Respondent's application for a real estate license as set forth in the below "Decision
7 and Order". In the event the Commissioner in his discretion does not adopt the Stipulation and
8 Waiver, the Stipulation shall be void and of no effect; the Commissioner will review the
9 transcript and the evidence in the case, and will then issue his Decision after Rejection as his
10 Decision in this matter.

11 2. By reason of the foregoing and solely for the purpose of settlement of the
12 Statement of Issues without further administrative proceedings, it is stipulated and agreed that
13 the following shall be adopted as the Commissioner's Decision and Order:

14 DETERMINATION OF ISSUES

15 By reason of the foregoing stipulations, admissions, and waivers, and solely for
16 the purpose of settlement of the Statement of Issues without further proceedings, it is stipulated
17 and agreed that the revocation of Respondent's Vocational Nursing License, as described in the
18 Statement of Issues, constitutes cause for denial of Respondent's application for a real estate
19 salesperson license pursuant to sections 10177 (f) (revocation of a license by another agency for
20 gross professional negligence or professional incompetence), 10177(g) (negligence or
21 incompetence in performing an act for which a license is required), and 10177(j) (dishonest
22 dealings and/or record keeping) of the Code.

23 ORDER

24 Respondent HILLARY ANN WICKEN'S application for a real estate salesperson
25 is denied; provided, however, a restricted real estate salesperson license shall be issued to
26 Respondent pursuant to Section 10156.5 of the Code. The restricted license issued to the
27 Respondent shall be subject to all of the provisions of Section 10156.7 of the Code and to the


1 following limitations, conditions and restrictions imposed under Section 10156.6 of said Code:

- 2 1. The license shall not confer any property rights in the privileges to be exercised,
3 and the Commissioner may by appropriate order suspend the right to exercise any
4 privileges granted under this the restricted license in the event of:
 - 5 a. The conviction of Respondent (including a plea of nolo contendere) of a
6 crime which is substantially related to Respondent's fitness or capacity as
7 a real estate licensee; or
 - 8 b. The receipt of evidence that Respondent has violated provisions of the
9 California Real Estate Law, the Subdivided Lands Law, Regulations of the
10 Commissioner, or conditions attaching to this restricted license.
- 11 2. Respondent shall not be eligible to apply for the issuance of an unrestricted real
12 estate license nor the removal of any of the conditions, limitations or restrictions
13 attaching to the restricted license until four (4) years have elapsed from the date of
14 issuance of the restricted license to Respondent.
- 15 3. With the application for license, or with the application for transfer to a new
16 employing real estate broker, Respondent shall submit a statement signed by the
17 prospective employing broker on a form RE 552 (Rev. 4/88) approved by the
18 Department which shall certify as follows:
 - 19 a. That the employing broker has read the Decision, which is the basis for the
20 issuance of the restricted license; and
 - 21 b. That the employing broker will carefully review all transaction documents
22 prepared by the restricted licensee and otherwise exercise close
23 supervision over the licensee's performance of acts for which a license is
24 required.
- 25 4. Respondent shall notify the Commissioner in writing within seventy-two (72)
26 hours of any arrest by sending a certified letter to the Commissioner at the
27 Department of Real Estate, P.O. Box 137000, Sacramento, CA 95813-7000. The

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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.

5/8/23
DATED


ADRIANA Z. BADILAS, Counsel
DEPARTMENT OF REAL ESTATE

I have read the Stipulation and Waiver and Decision After Rejection, and its terms are understood by me and are agreeable and acceptable to me. I willingly and voluntarily agree to enter into this Stipulation.

5/5/2023
DATED


HILLARY ANNE WICKEN
Respondent

DECISION AND ORDER

The foregoing Stipulation and Waiver and Decision After Rejection is hereby adopted by the Real Estate Commissioner as his Decision and Order.

This Decision and Order shall become effective at 12 o'clock noon on
JUN 21 2023

IT IS SO ORDERED 5.24.23

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER



FILED

MAR 17 2023

DEPARTMENT OF REAL ESTATE

By By dew

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)	DRE No. H-12597 SF
)	
HILLARY ANNE WICKEN,)	OAH No. 2022091012
)	
Respondent.)	

NOTICE

TO: HILLARY ANNE WICKEN, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated December 12, 2022, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated December 12, 2022, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein, which may include the transcript of the proceedings held on Tuesday, December 06, 2022, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of Tuesday, December 06, 2022, at the

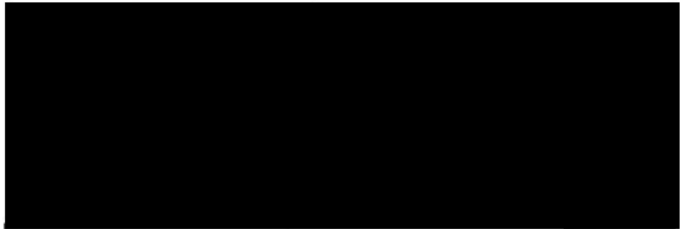
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1 Sacramento office of the Department of Real Estate unless an extension of the time is granted for
2 good cause shown.

3 Written argument of complainant to be considered by me must be submitted within
4 15 days after receipt of the argument of respondent at the Sacramento Office of the Department of
5 Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 3.17.23.

7 DOUGLAS R. McCAULEY
8 REAL ESTATE COMMISSIONER



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

In the Matter of the Application of:

HILLARY ANNE WICKEN, Respondent.

Agency Case No. H-12597 SF

OAH No. 2022091012

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on December 6, 2022, by videoconference.

Real Estate Counsel Adriana Z. Badilas represented complainant Stephanie Yee, Supervising Special Investigator for the Department of Real Estate.

Respondent Hillary Anne Wicken represented herself.

The matter was submitted for decision on December 6, 2022.

FACTUAL FINDINGS

1. In September 2020, respondent Hillary Anne Wicken submitted an application to the Department of Real Estate (the Department) for licensure as a real estate salesperson.

2. After investigation, the Department denied respondent's application. Respondent appealed.

3. Acting in her official capacity as a Supervising Special Investigator for the Department, complainant Stephanie Yee filed a statement of issues on September 21, 2022. As grounds for denying respondent's application, complainant alleges that respondent formerly held a license to practice in California as a vocational nurse, but lost that license because of misconduct that also would have been grounds to suspend or revoke a real estate license.¹ Respondent requested a hearing.

Nursing License History

4. Respondent studied nursing at Santa Rosa Junior College. She received a Vocational Nurse License on July 1, 2016.

5. Respondent's first and only nursing employment was at Creekside Rehabilitation and Behavioral Health in Sonoma. She worked a night shift, caring for patients with serious mental illness in a locked ward. Respondent testified credibly that the facility was chronically short-staffed, and that her work there was very stressful.

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¹ As filed, the statement of issues also alleged other grounds to deny respondent's application for a real estate license. Complainant moved at the hearing to amend the statement of issues by striking those allegations. Respondent did not oppose this motion and it was granted.

6. During her first month as a Creekside employee, respondent missed several days of work, without advance notice to her supervisors, because she was in a short-term inpatient alcohol detoxification treatment facility.

7. In November 2016, respondent administered Restoril (a benzodiazepine medication) to a patient about five hours after a physician had ordered its administration. The delay occurred because the facility's pharmacy did not make the medication available to respondent for administration in a timely manner. When the medication finally arrived, however, respondent did not consult the prescribing physician for a special order confirming that she still should administer it despite the delay. Moreover, respondent did not document in the patient's record that she had administered the medication, or when, until her next shift.

8. In December 2016, respondent obtained a tablet of oxycodone (an opioid medication) for a patient, but did not administer it. Instead, she destroyed ("wasted") the tablet.

9. Creekside's policy required respondent to document that she had wasted rather than administered the tablet, and to have another nurse both witness the waste and document having witnessed it. No nurse contemporaneously documented having seen respondent waste the oxycodone tablet. Respondent testified credibly, however, that her supervisor, the charge nurse on that shift, saw her waste the tablet but failed to document having seen her waste the tablet because the shift was so busy.

10. On respondent's next shift, another nurse alerted respondent that her records from the prior shift did not include documentation that anyone had seen her waste the oxycodone tablet. The supervisor from respondent's prior shift was not on

duty. Respondent telephoned this supervisor, who advised her to find someone else to document in his place having witnessed the oxycodone waste.

11. Respondent asked another novice nurse to document having witnessed respondent waste the oxycodone tablet the previous evening, and the other novice nurse did so. Respondent reassured the other nurse, incorrectly, that this false documentation would not be unprofessional. Because respondent did not understand that her supervisor had asked her and another nurse to act unprofessionally, she did not report the other nurse's false documentation to the Board of Vocational Nursing and Psychiatric Technicians (Board).

12. Creekside reported respondent's unprofessional conduct, as summarized in Findings 6 through 11, to the Board. The Board's executive officer filed an accusation against respondent in March 2018. Respondent did not file any notice of defense.

13. Effective July 12, 2018, the Board revoked respondent's Vocational Nurse License. The Board found that respondent had committed several acts constituting unprofessional conduct and warranting license revocation:

a. Gross negligence and professional incompetence, because of the matters summarized in Finding 7 (Bus. & Prof. Code, § 2878, subd. (a)(1); Cal. Code Regs., tit. 16, §§ 2519, 2520);

b. Falsifying or incorrectly making a record regarding a dangerous drug, because of the matters summarized in Findings 8 through 11 (Bus. & Prof. Code, §§ 2878, subd. (a), 2878.5, subd. (e));

///

c. Dishonesty, because of the matters summarized in Findings 8 through 11 (Bus. & Prof. Code, § 2878, subd. (j));

d. Failing to report another nurse's unprofessional conduct to the Board; because of the matters summarized in Finding 11 (Bus. & Prof. Code, §§ 2878, subds. (a), (d), 2878.1, subd. (a); Cal. Code Regs., tit. 16, § 2520.4); and

e. Using alcohol in a dangerous manner, because of the matters summarized in Finding 6 (Bus. & Prof. Code, §§ 2878, subd. (a), 2878.5, subd. (b)).

Additional Evidence

14. Respondent lost her job at Creekside in early 2017, because of the false documentation described above in Findings 8 through 11.² Since that time she has worked intermittently in California in sales positions, including at a mattress retailer and at a winery. Respondent also spent several months during 2021 on "sabbatical" in Tennessee. She currently works in Sonoma County as a salesperson for a business that sells solar electricity-generating systems.

15. By the time the Board's executive director filed an accusation against her, respondent's Vocational Nurse License had expired without renewal. Respondent testified credibly that she had allowed the license to expire because she did not intend to continue her nursing career.

16. Although the Board served the accusation to respondent's address of record with the Board, she did not receive it timely because in March 2018 she was in the middle of a six-month stay in a residential "rehabilitation" facility. Respondent

² The other novice nurse received a reprimand but did not lose her job.

testified that she overused alcohol during 2016 and 2017, yet testified further that she has never considered herself to have a drinking "problem." Overall, respondent's testimony about her past and current use or abuse of alcohol was inconsistent, evasive, and minimally credible. No evidence suggested that respondent currently misuses or overuses alcohol, however.

17. In her application to the Department, respondent disclosed that she formerly held a Vocational Nurse License, and described the circumstances under which the Board revoked it. Respondent also cooperated fully and frankly in the Department's effort to obtain other documentation and information about respondent's background.

18. When respondent was a novice nurse and committed the professional misconduct summarized above in Findings 7 through 11, she believed that she should rely on and defer to her supervisors' instructions about professionally responsible nursing practice. Because her supervisors tolerated and (on at least the occasion described in Finding 10) advised shortcuts or falsehoods in nursing documentation, respondent assumed these shortcuts and falsehoods were acceptable. She testified credibly that she now has, in part because of her disciplinary experience as a nurse, a clearer understanding of her own independent responsibility to conform her conduct to professional norms. She also noted that in preparing for real estate licensure, she has consciously chosen mentors and potential supervisors whom she respects.

19. Respondent provided five written character references to support her application.

a. William Dardon, a Department licensee, has advised respondent about her interest in a real estate career. Dardon believes that respondent "understands what

her fiduciary duties will be with her future clients," and that she "will be exemplary in real estate."

b. Charlotte Jones is respondent's longtime family friend. Jones and respondent first met when respondent was a volunteer swimming lifeguard and equestrian instructor, as a teen, at the Sonoma Developmental Center. Jones considers respondent "trustworthy, honest and sincere."

c. Hannah Ercolini met respondent through a dog-training program. Ercolini describes respondent as compassionate, curious, and reliable, and notes that she has trusted respondent "in my home and with my animals."

d. Douglas Stuart and Carrie Hatfield are respondent's personal friends, who live in Tennessee. In 2021, Stuart hosted respondent in his home for a few months. Both Stuart and Hatfield emphasize that they trust respondent fully and consider her responsible.

20. If she receives a salesperson license, respondent hopes to affiliate with W Real Estate, a Northern California brokerage. Her immediate supervisor would be Department licensee Timothy Murray, in W Real Estate's Sonoma office. Murray provided a letter³ stating that he and W Real Estate's broker of record, Randall Waller, are willing to supervise respondent even if she initially receives a restricted license. Murray believes that respondent "will be an asset to our firm and to the real estate industry."

³ Respondent testified credibly that Murray was not available to attend the hearing to testify about their prospective working relationship.

LEGAL CONCLUSIONS

1. The Department may deny an application for licensure as a real estate salesperson if the applicant formerly held a different professional license, and if the agency that issued that license has revoked it for reasons that would have justified revocation of a real estate license. (Bus. & Prof. Code, § 10177, subd. (f).) Gross professional negligence or professional incompetence and dishonest record-keeping constitute cause to suspend or revoke a real estate license. (*Id.*, § 10177, subds. (g), (j); Cal. Code Regs., tit. 10, § 2910, subd. (a)(2).) The matters stated in Findings 4 through 13 constitute cause under subdivision (f) of Business and Professions Code section 10177 to deny respondent's application.

2. The Department may deny an application for licensure as a real estate salesperson if the applicant has demonstrated "negligence or incompetence in performing an act for which the [applicant] is required to hold a license." (Bus. & Prof. Code, § 10177, subd. (g).) The matters stated in Findings 7 through 11 constitute cause to deny respondent's application under this subdivision.

3. The Department may deny an application for licensure as a real estate salesperson if the applicant has engaged in dishonest acts. (Bus. & Prof. Code, § 10177, subd. (j).) The matters stated in Findings 8 through 11 constitute cause under this subdivision to deny respondent's application under this subdivision.

4. The Department has adopted a regulation identifying circumstances that show rehabilitation sufficient to justify issuing a license despite the applicant's misconduct history. (Cal. Code Regs., tit. 10, § 2911.) Respondent meets many of the Department's relevant tests.

a. The matters stated in Findings 6 through 11 show that more than six years have passed since respondent's professional misconduct. The matters stated in Findings 14 through 20 do not suggest repetition of similar conduct. (Cal. Code Regs., tit. 10, § 2911, subds. (a)(1), (a)(14)(E).)

b. The matters stated in Findings 14 through 20 show new and different business and social relationships from those that factored into respondent's professional misconduct. (Cal. Code Regs., tit. 10, § 2911, subd. (a)(13).)

c. Most important, the matters stated in Findings 14 through 20 show that respondent acknowledges her prior professional misconduct, and has learned from her experience in a manner that is likely to help her avoid similar conduct in the future. (Cal. Code Regs., tit. 10, § 2911, subds. (a)(14)(A), (B).)

5. Respondent's rehabilitation is not complete, however. Her nursing misconduct was of a type that relates directly and materially to a real estate salesperson's key duties of transparency and honesty. Respondent has identified an employing broker who will train and supervise her, as described in Finding 20. An initial period of restricted licensure will permit the Department to supervise respondent closely as well, to ensure that her practice conforms to all laws governing real estate transactions in California.

ORDER

The application by respondent Hillary Anne Wicken for a real estate salesperson license is denied. A restricted real estate salesperson license shall be issued to respondent, however, in accordance with Business and Professions Code section 10156.5. The restricted license issued to respondent shall be subject to all of the

provisions of Business and Professions Code section 10156.7, and to the following limitations, conditions, and restrictions imposed under authority of Business and Professions Code section 10156.6.

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

a. Respondent's conviction (including by plea of nolo contendere) of a crime that is substantially related to respondent's fitness or capacity as a real estate licensee; or

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

3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Bureau of Real Estate, which shall certify as follows:

a. That the employing broker has read the decision that is the basis for the issuance of the restricted license; and

b. That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

DATE: **12/12/2022**

Juliet E. Cox

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings