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DEPARTMENT OF REAL ESTATE

BY: [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of) No. H-35101 LA
MAHENDRA MAHESH,)
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On January 7, 2009, a Decision was rendered herein revoking the real estate broker license of Respondent.

On or about October 4, 2010, Respondent petitioned for reinstatement of said real estate broker license. The Attorney General of the State of California has been given notice of the filing of Respondent's petition.

I have considered Respondent's petition and the evidence and arguments submitted in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate broker license and that it would not be against the public interest to issue said license to Respondent.

1 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
2 reinstatement is granted and that a real estate broker license be issued to Respondent, if
3 Respondent satisfies the following requirements:

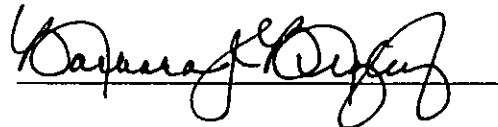
4 1. Submits a completed application and pays the fee for a real estate broker
5 license within the 12 month period following the date of this Order; and

6 2. Submits proof that Respondent has completed the continuing education
7 requirements for renewal of the license sought. The continuing education courses must be
8 completed either (i) within the 12 month period preceding the filing of the completed
9 application, or (ii) within the 12 month period following the date of this Order.
10

11
12 This Order shall be effective immediately.

13 Dated: 12/14/11
14

15 BARBARA J. BIGBY
16 Acting Real Estate Commissioner

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By Ca

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

MAHENDRA MAHESH,

Respondent.

Case No. H-35101 LA

OAH No. L2008080817

PROPOSED DECISION

This matter came on regularly for hearing on October 22, 2008, in Los Angeles, California, before Susan L. Formaker, Administrative Law Judge, Office of Administrative Hearings, State of California.

Lisette Garcia, Counsel for the California Department of Real Estate (Department) represented Complainant, Robin Trujillo, Deputy Real Estate Commissioner of the State of California (Complainant).

Mahendra Mahesh (Respondent) represented himself.

Following the hearing, the record remained open until November 12, 2008, to permit each of the parties to submit certain documentary evidence and to allow the opposing party the opportunity to object thereto.

Complainant timely filed a one-page cover letter, a one-page declaration of custodian of business records, and a four-page blank copy of the Broker Application identified as Department form RE 208 (Rev. 6/04) (collectively marked as Complainant's Exhibit 6). Complainant's cover letter indicated that Respondent was provided with a copy of this supplemental submission in accordance with the Administrative Law Judge's order. Respondent made no objection to the supplemental submission. Exhibit 6 is admitted.

Respondent timely filed and faxed to Complainant the following four documents: 1) a one-page fax cover sheet (marked solely for identification purposes as Respondent's Exhibit A); 2) a one-page document entitled "Progress Report Domestic Violence Batterer's Program," dated September 12, 2008 (marked as Respondent's Exhibit B); 3) a one-page Cal Trans Certificate of Completion dated April 11, 2008 (marked as Respondent's Exhibit C); and 4) a one-page computer print-out entitled Part B Medical Insurance - Assigned Claims, dated August 15, 2008 (marked for identification as Respondent's Exhibit D). Exhibit D included handwritten comments, apparently from Respondent, indicating that Exhibit D pertained to

medical care for Respondent's daughter. Complainant timely filed objections to the documents marked as Respondent's Exhibits B, C, and D. (Complainant's letter setting forth the objections is marked for identification as Complainant's Exhibit 7.) Complainant timely objected to Exhibits B and C on the ground that they are hearsay statements that should only be admitted as administrative hearsay. Complainant's objection is sustained, and Exhibits B and C are admitted only as administrative hearsay under Government Code §11513, subdivision (d). Complainant also objected to the document marked as Exhibit D on the grounds that it is hearsay, it is irrelevant, and it lacks proper foundation or authentication. The Administrative Law Judge sustains the objections as to foundation and authentication and further notes that to the extent Exhibit D appears to be a medically-related document pertaining to another adult, that adult did not provide authorization for the release of that document. Exhibit D will not be admitted into evidence. In order to protect respondent's daughter's right of privacy, Exhibit D is additionally ordered sealed and is not to be opened except by a duly designated and authorized representative of the Department, the Administrative Law Judge (ALJ) or another ALJ assigned to preside over further proceedings in this matter, or by a reviewing court of competent jurisdiction.

Respondent also submitted, one day late, a one-page document (marked for identification as Respondent's Exhibit E) that appears to be a copy of a certificate issued by the Safety Education Center, Inc., to Respondent signifying completion of 52 sessions of domestic violence training. There is no indication that Respondent provided a copy of the document marked as Exhibit E to Complainant, as was required. Because the information contained in Exhibit E is duplicative of that contained in Exhibit B, there is no need to address the procedural issues raised by the submission of this document, and the document will not be admitted.

Oral and documentary evidence having been received, and the matter having been deemed submitted as of November 12, 2008, the Administrative Law Judge makes the following Proposed Decision:

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Respondent has been a licensed real estate broker with the Department since 1995. He operates his own business and does not work for another broker. Respondent's real estate broker's license is set to expire on November 20, 2011. He has no prior record of discipline.

3. On or about November 14, 2007, Respondent submitted his broker renewal application to the Department. When Respondent submitted his renewal application, Respondent gave false and misleading information when he checked a box signifying a "no" response to the following question:

"WITHIN THE PAST FOUR YEAR PERIOD, HAVE YOU BEEN CONVICTED OF ANY VIOLATION OF LAW? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY ONLY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSITUTE A MISDEMEANOR OR FELONY OFFENSE. [Emphasis in original.]"

Respondent also did not complete another portion of the form that required that all criminal convictions be listed. The term "convicted," as used and explained in that portion of the renewal application, included any conviction arising out of a guilty verdict, a plea of guilty or nolo contendere, or a forfeiture of bail in municipal, superior, or federal court. That portion of the renewal application form instructed that all convictions were to be disclosed, even those where a plea or verdict had been set aside, the conviction had been dismissed or expunged (including through any expungement under Section 1203.4 of the California Penal Code), or the applicant had been pardoned. When Respondent submitted his broker renewal application, he certified under penalty of perjury that the answers and statements given in the renewal application were true and correct.

4. On May 21, 2007, in Los Angeles County Superior Court Case No. 7JB04245, Respondent was convicted, on a plea of nolo contendere, of a misdemeanor violation of Penal Code section 273.5, subdivision (a) (willful infliction of corporal injury resulting in a traumatic condition upon a spouse). The court suspended imposition of a sentence and placed Respondent on three years' summary probation subject to various terms, including 30 days in the county jail (less credit for two days served), payment of \$520 in fines and/or fees, five days of Caltrans community service, and completion of a 52-week domestic violence counseling program. The court also issued a protective order in favor of Respondent's wife.

5. Respondent testified that he served a total of eight days in jail. He completed the community service requirement and most of a 52-week domestic violence program.¹ The record from the criminal proceedings was inconclusive as to whether Respondent paid the fines and/or fees imposed by the court, although Respondent testified that he did pay them. The protective order was later modified at Respondent's wife's request based on a family medical emergency. The record was unclear as to the terms of that modification. Respondent remains on probation until May 21, 2010.

6. Respondent's 2007 conviction arose out of an incident that occurred while Respondent and his wife of 28 years were driving home at close to midnight after a wedding reception. According to Respondent, his wife had become intoxicated at the reception and had used derogatory language towards him. He contended that he was not intoxicated during the incident, although he admitted consuming some alcohol. Respondent testified that he verbally scolded his wife after the reception, during the drive home, for having embarrassed him. In response, according to Respondent, his wife became very aggressive and starting

¹ Respondent testified that there were still some final components of the domestic violence program to be completed.

hitting, clawing at, and scratching him. Respondent contended that he needed to subdue her in order to be able to drive and avoid getting into a car accident. Respondent testified that the only way he could subdue her was by hitting her hard enough for her to stop. He admitted that while he was driving with one hand on the steering wheel of their car, he struck his wife with the side of his other hand, which was closed into a fist. Respondent testified that after he struck his wife's chest three to four times with the side of his fist, she quieted down and stopped attacking him. Respondent testified that when they arrived home, he went to sleep. Later, he awakened when the police arrived to question him. Respondent understood that his daughter had summoned the police.

7. The police report from the incident showed that Respondent's wife "had a bump on the left side of her face above her eyebrow approximately one to two inches in diameter" and "swelling and redness under her left eye."² When the police interviewed Respondent, he stated he did not remember what occurred and admitted that he had consumed alcoholic beverages. There is no mention in the report of Respondent's having contended that his wife had attacked him in their car. Instead, Respondent stated to the police that if his wife said he had hit her with his fist, "then that is what happened." He then said to the officer, "I am a bad motherfucker man. I could do a lot worse." The officer noted that Respondent's speech was slurred and indicated that Respondent was intoxicated. No scratches or other injuries were noted on Respondent.

8. Respondent's testimony reflected a lack of remorse for, or acceptance of responsibility for, his crime. Respondent sought to portray himself as a victim, repeatedly stating that his wife had attacked him in the car. Yet, there was no objective evidence that he had been physically attacked, and he did not tell the police about his wife's alleged attack at the time of his arrest. Respondent contended that the only way his wife could have been hit in the face was through his wife's having deflected Respondent's blows with her arms. He sought during the hearing to depict his wife as unstable and blamed her for the events, stating that she was bipolar and had been hospitalized for her mental illness a number of times. Respondent also testified that, during his domestic violence training, he had discussed the fact that an alternative to having tried to subdue his wife while driving was simply to have pulled his car over to the curb. However, Respondent justified his acts by indicating that they were reasonable because his night vision was poor, he was driving in a strange neighborhood late at night, and he did not know where the freeway was located in order to get home.

² The incident report was admitted as a record of a public employee under California Evidence Code §1280; the hearsay statements of Respondent's wife and daughter recorded in the report are only considered as "administrative hearsay" for purposes of supplementing the police officers' observations and Respondent's admissions recorded in the report and Respondent's testimony in the hearing. See California Government Code §11513(d) and *Lake v. Reed* (1997) 16 Cal.4th 448, 460-462.

9. Respondent's attitudes towards domestic violence have not significantly changed since the incident. During the hearing, when Respondent testified about the fact that his daughter had called the police, he stated that his daughter "believes in a utopian world" where a man cannot strike a woman. Although Respondent testified that he had learned that one needs to be careful in this country because the law is "pretty tough now," he felt that people were making a "big deal" out of the incident giving rise to his conviction when he had not intended to hurt his wife. Respondent admitted that he "may have touched her [his wife] forcefully" before. Respondent sought to distance his acts from his real estate practice, stating that the only people he would get that upset about would be his wife and children if they were to "degrade" him in front of family and friends. However, Respondent also admitted at one point that his wife has a real estate broker's license and that she has an office in his office. In the progress report from Respondent's domestic violence program, the program director stated (under penalty of perjury) that Respondent's "level of progress toward program objectives continues marginal, due to his long held attitudes regarding male privileges as well as his ingrained habits of control."

10. In the conviction detail report Respondent provided to the Department (contained in Exhibit 5), Respondent explained that he failed to report his 2007 conviction "because [he] thought it was not a 'very serious charge.'" Respondent reiterated this point in his testimony, when he stated that he did not believe the offense was "serious enough" to report. Respondent also offered alternative explanations for his failure to report his conviction. Respondent indicated that he was confused by the language of the renewal application and the reference to a Penal Code section. He testified that he read the renewal application more quickly than he should have and was in a rush to complete it because his continuing education results had been received on the last day for his renewal to be processed by its due date. Respondent additionally testified that 2007 was a traumatic year for him, as his mother had died at the end of 2006, he was required to perform a number of Hindu rituals over the course of the year as a result of her death, and his daughter was suffering from severe health problems. Respondent also noted that he was under stress because his wife could not work and the real estate market was "tough." Respondent's inconsistent answers lacked credibility.

11. Respondent did not provide any declarations or letters of recommendation from any third parties regarding his rehabilitation or good character. No third parties testified on his behalf. Respondent testified that he is not involved in any community activities and that his social relationships have not changed since his conviction. The only self-improvement books he reads are those discussing how to improve his performance as a real estate broker. Respondent does not regularly attend religious services. Although Respondent testified that he meditates almost every day, he also testified that he has always done that. In the confidential interview information statement that Respondent provided to the Department earlier this year (Exhibit 5), Respondent noted that his rehabilitative efforts (aside from attending the domestic violence training required by the court) consisted of "[r]educing [his] drinking." Respondent also stated in the confidential interview information statement that he has a drinking problem but that he is "self mainting [sic] [his] drinking habit at this time."

LEGAL CONCLUSIONS

1. "The basic reason for disciplinary action in matters of this kind . . . is the protection of the public against unethical and dishonest conduct on the part of those engaged in the real estate business." (*Small v. Smith* (1971) 16 Cal.App.3d 450, 456, quoting from *Marks v. Watson* (1952) 112 Cal.App.2d 196, 200.) The purpose of an administrative proceeding concerning licensure is not to punish the Respondent, but rather is "to protect the public from dishonest, immoral, disreputable or incompetent practitioners [citations omitted]." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. Business and Professions Code section 490 provides as follows:

"(a) 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.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

"(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not constitute a change to, but rather are declaratory of, existing law."

3. Prior to January 1, 2008, Business and Professions Code section 10177 provided as follows with respect to disciplinary proceedings based on prior convictions:

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

“¶ . . . ¶

“(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, 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.

¶ . . . ¶”

4. Under former section 10177, subdivision (b), as it was interpreted by the court in *Petropoulos v. Department of Real Estate, supra*, the Department could not deny an application for a real estate license on the basis of a misdemeanor conviction unless the offense involved moral turpitude. Former section 10177, subdivision (b), would apply here because Respondent submitted his renewal application on November 14, 2007, and the legislature did not express any intent that the amendments to section 10177 should be given retroactive effect. (*Aetna Cas. & Surety Co. v. Industrial Acc. Commission* (1947) 30 Cal.2d 388, 393-394; *Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control* (1966) 65 Cal.2d 349, 371-372.)

5. Moral turpitude has been defined as “an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.” (*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 trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the . . . conduct would be likely to undermine public confidence in and respect for the . . . profession. (*In re Lesansky* (2001) 25 Cal.4th 11, 16 [citations omitted].”

In deciding whether a conviction necessarily involves moral turpitude, a court must look to the statutory definition of the particular crime; only if the least adjudicated elements of the crime necessarily involve moral turpitude does the conviction involve moral turpitude. (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1756-7.) However, in disciplinary matters, a prior conviction may involve moral turpitude by the manner of its commission, and a board may look beyond the least adjudicated elements of a misdemeanor offense to determine whether it involved moral turpitude. (*Padilla v. State Personnel Board* (1992) 8 Cal.App.4th 1136, 1141-1142.)

6. California Code of Regulations, title 10, section 2910, provides as follows:

“(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, . . . the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department 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.

“¶ . . . ¶

“(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.”

7. Applying the standards set forth in Legal Conclusions 1 through 6, cause exists to discipline Respondent's real estate broker's license under Business and Professions Code section 490, subdivision (a), and Business and Professions Code section 10177, subdivision (b), severally, based upon his conviction for violating Penal Code section 273.5, as set forth in Findings 4 through 7. Penal Code section 273.5, as it read at the time of Respondent's conviction, involved a person's "willfully inflict[ing] upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition" A violation of Penal Code section 273.5 has been held to constitute a crime of moral turpitude. (*People v. Rodriguez* (1992) 5 Cal.App.4th 1398.) As the *Rodriguez* court cogently explained:

“To violate Penal Code section 273.5 the assailant must, at the very least, have set out, successfully, to injure a person of the opposite sex in a special relationship for which society rationally demands, and the victim may reasonably expect, stability and safety, and in which the victim, for these reasons among others, may be especially vulnerable. To have joined in, and thus necessarily to be aware of, that special relationship, and then to violate it wilfully and with intent to injure, necessarily connotes the general readiness to do evil that has been held to define moral turpitude. [Citations omitted.]” (*Id.*, at 1402.)

The circumstances of Respondent's misdemeanor conviction, as set forth in Findings 6 and 7, show that Respondent committed a crime of moral turpitude. Even under Respondent's version of the underlying events, Respondent intended to hit his wife hard enough to subdue her. Such blows by their nature reflected an intent or threat of doing substantial injury. Respondent's criminal conviction was also thereby substantially related to the qualifications, functions or duties of a licensee under California Code of Regulations,

title 10, section 2910, subdivision (a) (8). Respondent's attempt to compartmentalize and separate his conviction from his real estate business was unavailing in light of the fact that he admitted that his wife is also a real estate broker and has an office in his office. If Respondent felt that his wife "degraded" him in front of others, third parties could be caught up in future acts of domestic violence.

8. Business and Professions Code section 498 provides that:

"A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact."

9. Prior to January 1, 2008, Business and Professions Code section 10177 provided in pertinent part that:

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

"(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or any salesperson, by fraud, misrepresentation, or deceit, or by making any material misstatement of fact in an application for a real estate license, license renewal, or reinstatement."

10. Applying the standards set forth in Legal Conclusions 8 and 9 to the facts set forth in Findings 2, 3, 4, and 10, cause exists to discipline Respondent's real estate broker's license under Business and Professions Code section 498 and Business and Professions Code section 10177, subdivision (a). Respondent made a knowing and material misrepresentation regarding his prior conviction. See *Brown v. State Department of Health, et al.* (1978) 86 Cal.App.3d 548 [physician was properly disciplined where there was no intent to defraud in charging for services performed by others and where doctor believed he was entitled to charge for such services because he knew he had not performed them; physician "knowingly" signed a false certificate because he knew of the underlying facts, even if he was wrong about the law]; Penal Code section 7, subdivision 5 (defining "knowingly" as requiring only knowledge that the facts exist which bring the act or omission within the provisions of the code).

11. California Code of Regulations, title 10, section 2912 provides criteria for the purpose of evaluating the rehabilitation of a real estate licensee subject to discipline based on a criminal conviction as follows:

"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 licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)

"(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.

"(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

"(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

"(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 that is the basis for revocation or suspension of the license.

"(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

"(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 or convictions in question.

"(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 in question 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.

"(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question."

12. Applying the standards set forth in Legal Conclusion 11 above, to Findings 4, 5, 8, 9, 10, and 11, Respondent has failed to demonstrate rehabilitation from his criminal activity. Less than two years have passed since Respondent's conviction (California Code of Regulations, title 10, section 2912, subdivision (a).) His conviction has not been expunged. (*Id.*, at subdivision (c).) Respondent has not completed his probation. (*Id.*, at subdivision (e).) To the extent that Respondent admitted that alcohol may have played a part in the facts giving rise to his conviction, Respondent has only admitted to reducing his drinking. (*Id.*, at subdivision (f).) Respondent did not provide objective evidence that he paid his fine. (*Id.*, at subdivision (g).) Respondent has not changed his social relationships, and his family life is characterized by stress. (*Id.*, at subdivision (j).) Respondent is not involved in community activities and does not regularly attend religious services. (*Id.*, at subdivision (l).) Perhaps most importantly, Respondent's testimony and the assessment from the program director for Respondent's domestic violence program reflect that Respondent's attitudes regarding domestic violence have not changed since the time of his criminal conviction. (*Id.*, at subdivision (m).) Indeed, as noted in Findings 8 through 10, Respondent continues to blame others for the crime and does not perceive its gravity. Respondent continues to believe he acted properly, and his explanation of events reflects an inability to admit the truth.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's license to act as a real estate broker is revoked.

DATED: December 12, 2008


SUSAN L. FORMAKER
Administrative Law Judge
Office of Administrative Hearings

1 LISSETE GARCIA, Counsel (SBN 211552)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6914

FILED
JULY 10, 2008
DEPARTMENT OF REAL ESTATE

By

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-35101 LA
12)
13 MAHENDRA MAHESH,) A C C U S A T I O N
14) Respondent.)
15)

16 The Complainant, Robin Trujillo, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against MAHENDRA MAHESH ("Respondent"), is informed and alleges
19 in her official capacity as follows:

20 I

21 At all times herein mentioned, Respondent was and is
22 presently licensed by the Department of Real Estate of the State
23 of California ("Department") as a real estate broker under the
24 Real Estate Law, Part 1 of Division 4 of the California Business
25 and Professions Code ("Code").

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1 II

2 Respondent, pursuant to the provisions of Code Section
3 10153.3, was originally licensed as a broker with the Department
4 on or about November 21, 1995.

5 III

6 On or about November 14, 2007, Respondent made
7 application for renewal of his real estate broker license with
8 the Department. In response to Question No. 3 on Respondent's
9 broker renewal application, to wit: "WITHIN THE PAST FOUR YEAR
10 PERIOD, HAVE YOU BEEN CONVICTED OF ANY VIOLATION OF LAW?
11 CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE
12 DISCLOSED, HOWEVER, YOU MAY ONLY OMIT MINOR TRAFFIC CITATIONS
13 WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE",
14 Respondent marked the answer box denoting "No", and thereafter
15 failed to reveal to following conviction described in Paragraph
16 IV below.

17 IV

18 On or about May 21, 2007, in the Superior of
19 California, County of Los Angeles, West Covina Courthouse
20 Judicial District, Case No. 7JB04245, as part of a plea
21 agreement, Respondent pled nolo contendere to and was convicted
22 of violating Penal Code Section 273.5(A) (inflict corporal
23 injury on spouse), a misdemeanor. The underlying facts of said
24 crime involve moral turpitude and bear a substantial
25 relationship under Section 2910, Title 10, Chapter 6, California
26 Code of Regulations, to the qualifications, functions or duties
27 of a real estate licensee.

V

Respondent's failure to reveal the conviction against him, as set forth in Paragraph IV above, constitutes the procurement of a real estate license by fraud, misrepresentation or deceit, or by making a material misstatement of fact, knowing misrepresentation of a material fact, or by knowingly omitting to state a material fact, in his application, which constitutes cause under Code Sections 498 and/or 10177(a) for the suspension or revocation of Respondent's license and license rights of under the Real Estate Law.

VI

The crime of which Respondent was convicted, as alleged in Paragraph IV above, constitutes cause under Code Sections 490 and/or 10177(b) for the suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and, that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of Respondent,
5 MAHENDRA MAHESH, under the Real Estate Law (Part 1 of Division 4
6 of the Business and Professions Code) and for such other and
7 further relief as may be proper under other applicable
8 provisions of law.

9 Dated at Los Angeles, California

10 this 8 day of July, 2008.

11
12 
13 Deputy Real Estate Commissioner
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24 cc: Mahendra Mahesh
25 Robin Trujillo
26 Sacto.
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