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DEC 09 2022

DEPT. OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of:)	DRE No. H-42234 LA
)	
DONISE WARREN,)	OAH No. 2022030411
)	
Respondent.)	

DECISION

The Proposed Decision dated November 3, 2022, 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 application for a real estate salesperson license is denied, but the right to a restricted real estate 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.

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If and when a petition for removal of restrictions is filed, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

This Decision shall become effective at 12 o'clock noon on 12/29/2022.

IT IS SO ORDERED 12.2.22

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley

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

In the Matter of the Statement of Issues Against:

DONISE WARREN, Respondent.

Agency Case No. H-42234 LA

OAH No. 2022030411

PROPOSED DECISION

David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 20, 2022.

Steve Chu, Counsel for the Department of Real Estate (Department), represented Veronica Kilpatrick (complainant), in her official capacity as a Supervising Special Investigator of the State of California.

No appearance was made by or on behalf of Denise Warren (respondent).

The hearing proceeded as a default pursuant to Government Code section 11520. Documentary evidence was received. The record closed and the matter was submitted for decision on October 20, 2022.

SUMMARY

Respondent applied for a real estate salesperson license in February 2020. Respondent was convicted in six criminal matters from 1992 to 2000 and disclosed the criminal convictions in her application. Complainant contends the criminal convictions are grounds to deny the application. Sufficient evidence of respondent's rehabilitation was submitted to grant her a restricted salesperson license.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 27, 2020, respondent submitted an application to the Department for a real estate salesperson license.
2. Complainant filed the Statement of Issues on February 11, 2022.
3. Respondent requested an administrative hearing. All jurisdictional requirements were met.
4. A Notice of Continued Hearing for this matter was mailed to respondent on May 17, 2022, at her address of record with the Department, which was the same address shown on respondent's Notice of Defense. The Notice of Continued Hearing stated the correct date and time for the hearing and that the hearing would be conducted by telephone/videoconference through Zoom. The Notice of Continued Hearing included a telephone call-in number and instructions for accessing the hearing through Zoom.

5. Despite proper service of the Notice of Hearing on respondent, she failed to appear at the October 20, 2022 hearing and was not otherwise represented. Compliance with Government Code sections 11505 and 11509 having been established, this matter proceeded as a default against respondent pursuant to Government Code section 11520. Under section 11520, the Department may take action "based upon the respondent's express admissions or upon other evidence" and "affidavits may be used as evidence without any notice to respondent."

The Criminal Convictions

6. On May 12, 1992, in the Superior Court of California, County of Los Angeles, case number GA007842, respondent pled guilty to, and was convicted of, violating two counts of Penal Code section 487, subdivision (1) (Grand Theft of Personal Property), felonies. Respondent was ordered to serve three years in prison. The crimes occurred on May 11 and 24, 1991, when respondent was 19 years old.

7. On November 3, 1992, in the United States District Court Southern District of California, case number 91-0187-B, respondent pled guilty to, and was convicted of, violating Title 18 United States Code section 1029(a)(1) (Production of Counterfeit Access Devices), a felony. Respondent was placed on three years of supervised release and was ordered to serve 18 months in prison and pay fines and fees. On September 16, 1996, respondent admitted violating supervised release by failing to report to her probation officer and was ordered to serve 10 months in prison. The crime occurred on January 30, 1991.

8. On February 8, 1994, in the Superior Court of California, County of Los Angeles, case number KA020391, respondent pled guilty to, and was convicted of, violating Penal Code section 532a, subdivision (1), with enhancement under section

667.5, subdivision (b) (False Financial Statements), a felony, and Penal Code section 664/484f, subdivision (2) (Attempted Fraudulent Use of Counterfeit Access Card), a felony. Respondent was ordered to serve two years and four months in prison, with credit for 91 days. The crimes occurred on December 10, 1993.

9. On August 1, 1995, in the Superior Court of California, County of San Bernardino, case number FWV07855, respondent pled guilty to, and was convicted of, violating Penal Code section 484e, subdivision (f) (Fraudulent Acquisition, Use, or Transfer of Access Cards), a felony. Respondent was ordered to serve two years in prison and pay fines. The crime occurred on July 15, 1995.

10. On August 12, 1998, in the Superior Court of California, County of Orange, case number 98HF0798, respondent pled guilty to, and was convicted of, violating Penal Code section 459-460, subdivision (b) (Burglary Second Degree), Penal Code section 487, subdivision (a) (Grand Theft), Penal Code section 484f, subdivision (b) (Use of Another's Credit Card), and Penal Code section 470, subdivision (a) (Forgery of Checks), all felonies. Respondent was ordered to serve 16 months in prison. The crimes occurred on August 2, 1998.

11. On February 3, 2000, in the Superior Court of California, County of Riverside, case number RIF088822, respondent pled guilty to, and was convicted of, violating Penal Code section 182 (Conspiracy of Fraudulently Obtaining and Using Personal Information in violation of Penal Code section 530.5), a felony. Respondent was ordered to serve eight years in prison and pay restitution in the amount of \$44,734.41, fines and fees. The crime occurred from April 30 through November 18, 1999.

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12. The convictions described in Factual Findings 6 through 11 bear a substantial relationship to the qualifications, functions, or duties of a real estate licensee.

13. Another criminal conviction was established by the evidence but was not pleaded in the Statement of Issues. This subsequent conviction can be considered under the Department's criteria of rehabilitation. On December 29, 2009, in the Superior Court of California, County of Los Angeles, case number KA076119, respondent pled nolo contendere to, and was convicted of, violating Penal Code section 487, subdivision (a) (Grand Theft by Embezzlement), a felony. Respondent was sentenced to serve nine years in prison, however the execution of sentence was suspended and respondent was placed on formal probation for five years on terms and conditions including she perform community service, pay restitution of \$23,688.88, with \$5,000 paid at that time, and pay fines and fees. The crime occurred between November 1, 2005, and February 1, 2006. On January 21, 2020, the court granted respondent's motion under Penal Code section 1203.4 and the complaint was dismissed.

Evidence of Mitigation

14. A Sentencing Memorandum was filed by respondent's counsel in the United States District Court. The request for downward departure from sentencing guidelines was supported by a Report of Psychological Evaluation by Beatriz Heller, Ph.D., dated May 13, 1991. (Exhibit 4, pp. A119-A126.) Dr. Heller wrote respondent had reported a history of molestation by her father and her romantic relationship with "Bud" Lewis, nine years her elder, who fathered her child and who involved respondent in credit card fraud. Dr. Heller noted respondent's inadequate independent use of

judgment, difficulty understanding the implications and significance to her actions, passive, dependent, and conforming stance in interpersonal contacts, and a self-concept that was negative and chaotic. The Axis I diagnoses were adjustment disorder with mixed disturbance of emotions and conduct, and untreated victim of molestation. Psychosocial stressors were severe, based on respondent's then current criminal procedures and a history of a lack of support from her mother regarding the history of molestation.

Evidence of Rehabilitation

15. Respondent completed and signed an Interview Information Statement form (RE 515), dated May 29, 2020. (Exhibit 10, pp. A238-A242.) On this form, respondent disclosed the criminal convictions noted above. Respondent also submitted Conviction Detail Report forms (RE 515D) for each conviction (*id.* at pp. A243-A249), as well as her letter and statement of history and rehabilitation (*id.* at pp. A250-A254). Respondent submitted to the Department 23 letters of support, as well as certificates and a news story. (*Id.* at pp. A256-A288.) The following information is gleaned from these sources.

16. Respondent is widowed and has two stepsons and three children, ages 23 to 28. From 2004 to the present, she has been the CEO and Executive Director of Citadel Community Development Corporation (Citadel), described in more detail below. She has been individually bonded for tax preparation in the amount of \$50,000. In her remarks in the Interview Information Statement, respondent wrote she has worked hard to recover from trauma she endured, and trauma she inflicted on others through her crimes. "I have dedicated my life to others who have suffered the same path as me through founding Citadel Community Development . . . a non-profit that

assists individuals with transitioning to self-sufficiency after re-entering the community from jails, prisons, institutions, etc. We work with parole and probation and have a great recidivism reduction rate." (Exhibit 10, p. A242.) Respondent is willing to accept a restricted real estate license.

17. In her letter, respondent provides further information on the formation of Citadel. While she was incarcerated in 1999, respondent researched non-profit organizations and prepared Citadel's first business plan. Respondent worked with her church's non-profit Shield of Faith Economic Development to finance affordable housing projects. During that time she wrote grant proposals for Citadel. In 2012 office space was donated to her and she began serving clients for free, using donations, small contributions, and personal funds. After she received her first grant in 2014, respondent hired staff and later made several moves to increasingly larger offices until 2017, when a 15,000 square foot building was purchased. Citadel has more than 25 staff members and serves more than 2,000 clients annually. Respondent has passed examinations to become a certified group home administrator, adult residential facility administrator, and elderly care facility administrator.

18. In her written statement, respondent recounted details of a childhood with trauma, including an absent father, molestation by her stepfather, poverty, and other factors, all leading to her insecurity and low self-esteem. Respondent began her serious relationship with Mr. Lewis when she was 15 years old and he was 24 years old. Respondent explained that, as a high school senior working in a retail store, she manipulated the cash register and credit system and felt a high and boost in self-esteem, and she became "hooked on fraud from that point on." (Exhibit 10, p. A252.) She briefly described each of her criminal convictions, writing this pattern stemmed from her trauma as a child and being manipulated by Mr. Lewis. While in prison in

2002, respondent began attending counseling and group meetings, individual and group therapy, parenting classes, and also met the man who would later become her husband, who was medically disabled. He passed away in 2015. Respondent is involved in her church and is committed to her staff and clients. She deeply regrets her criminal behavior and was fortunate to find the resources to turn her life around. Respondent has paid all fines, fees and restitution ordered by the courts, and is seeking a certificate of rehabilitation. She provided an extensive list of references, certifications, and computer skills. (*Id.* at pp. A252-A254.)

19. Respondent provided certificates of special recognition from the state Assembly and Senate and the City of San Bernardino regarding her work with Citadel.

20. Support letters begin with attorney Nicole Lilomaiaava, who has known respondent for over 20 years. Lilomaiaava writes of respondent's rehabilitation by beginning a tax preparation business, then forming Citadel, which provides technical training and classes and various programs to help recent parolees and probationers with job training and placement, housing, and access to community resources. Respondent freely discusses her background and personal setbacks to help clients and their families. Citadel conducts annual toy drives and provides school supplies, baby supplies, and food to the community. (Exhibit 10, p. A256.)

21. Citadel's support for parolees and probationers is confirmed in numerous letters from the California Department of Corrections and Rehabilitation Division of Adult Parole Operations, and the Riverside County Probation Department. (Exhibit 10, pp. A263-A268.) These letters address various programs by Citadel for job training and placement, case management, education, equipment, and support, and note a reduction in recidivism for those participants receiving these services. The San

Bernardino Community College District wrote about Citadel's referral of program participants for several job-readiness and specific job skills classes. Mental Health Systems STOP Program has referred numerous individuals to Citadel for help in transitioning into the community. Inland Empire United Way praised Citadel's work in providing job seekers with access to employment, education, training, and support services. Newbasis, a manufacturing company, supported Citadel's grant proposal for an adult re-entry program. The Housing Authority of San Bernardino supported Citadel's grant proposal to develop a career pathways program for adults in work-release programs, and would assist Citadel with housing information. Citadel also assists residents of Valley Star Community Services to attain self-sufficiency through employment, education, housing, and other supportive services. Citadel works with Inland Empire Health Plan to improve healthcare access and services. The Riverside Unified School District supported Citadel's grant request to provide education and employment resources to adults in work-release programs. Saving Grace Homes is a sober living home that refers residents to Citadel for job training. (*Id.* at pp. A269-A277.)

22. Seven individuals wrote letters of appreciation for Citadel's efforts to provide case management, education resources, find housing and employment, and generally help them to become productive members of society. The San Bernardino Sun newspaper wrote of Citadel's first toy giveaway and community event in December 2017, when more than 50 volunteers distributed more than 3,000 presents. (Exhibit 10, pp. A278-A288.)

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LEGAL CONCLUSIONS

1. Under Government Code sections 11504.5 and 11505, a Statement of Issues is to be served on an applicant's address of record. Government Code section 11509 requires a notice of the hearing to be served on an applicant. Government Code section 11520 authorizes a licensing agency to proceed with a hearing if a respondent fails to appear for the hearing. The Department followed all required procedures to provide notice to respondent. (Factual Findings 3 through 5.)

2. The burden of proof is on the applicant to establish she is entitled to the license. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205; *Coffin v. Alcoholic Beverage Control Appeals Bd.* (2006) 139 Cal.App.4th 471, 476.) The standard of proof is a preponderance of the evidence, meaning "the evidence on one side outweighs, preponderates over, is more than, the evidence on the other side." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325, quoting from *People v. Miller* (1916) 171 Cal. 649, 652.)

3. Respondent has not met this burden for issuance of an unrestricted license but is entitled to a restricted salesperson license.

4. Under Business and Professions Code section 10177, subdivision (b)(1), an application for a real estate license may be denied if the applicant was convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee.

5. Similarly, under Business and Professions Code sections 475, subdivision (a)(2), and 480, subdivision (a)(1), an application can be denied for the applicant's

conviction of a crime that is substantially related to the qualifications, functions, or duties of a licensee.

6. Under Business and Professions Code sections 475, subdivision (a)(3), and 480, subdivision (a)(2), an application can be denied if the applicant has done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit herself.

7. Under California Code of Regulations, title 10 (Regulations), section 2910, subdivision (a), as relevant here, a crime or act is substantially related to the qualifications, functions, or duties of a real estate licensee if it involves: the fraudulent obtaining or taking of property belonging to another person (subd. (a)(1)); the alteration of an instrument (subd. (a)(2); the employment of fraud (subd. (a)(4)); or the doing of any unlawful act with the intent to confer a financial benefit upon the perpetrator or intent or threat of doing substantial injury to the property of another (subd. (a)(8)).

8. Regulation section 2910, subdivision (c), states, in part: "The nature and gravity of the offense, the number of years that have elapsed since the date of the offense, and the nature and duties of a real estate licensee shall be taken into consideration when determining whether to deem an offense to be substantially related to the qualifications, functions or duties of a licensee."

9. The crimes for which respondent was convicted include the factors of "substantial relationship" noted above and, therefore, the crimes are substantially related to the qualifications, functions, or duties of a real estate licensee under Regulations section 2910, subdivisions (a) and (c).

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10. There is cause to deny respondent's application for a real estate salesperson license under Business and Professions Code sections 10177, subdivision (b)(1), 475, subdivision (a)(2), and 480, subdivision (a)(1), because respondent was convicted of crimes that are substantially related to the qualifications, functions, or duties of a real estate licensee, as set forth in Factual Findings 6 through 12 and Legal Conclusions 7 through 9.

11. There is cause to deny respondent's application for a real estate salesperson license under Business and Professions Code sections 475, subdivision (a)(3), and 480, subdivision (a)(2), because respondent was convicted of crimes involving dishonesty, fraud, or deceit with the intent to substantially benefit herself, as set forth in Factual Findings 6 through 12 and Legal Conclusion 6.

12. Dishonesty "denotes an absence of integrity; a disposition to cheat, deceive or defraud" (*Hogg v. Real Estate Commissioner* (1942) 54 Cal.App.2d 712, 717.) "Honesty and integrity are deeply and daily involved in various aspects of [real estate] practice." (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176). Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.)

13. The Department has developed criteria to evaluate the rehabilitation of an applicant for a license who has been convicted of a crime. The relevant criteria, from Regulations section 2911, subdivision (a), are summarized below and applied to respondent as follows:

Elapsed time since commission of the acts or offense, referencing less than two years as "inadequate to demonstrate rehabilitation": The criminal convictions

occurred from 1992 to 2000 for acts that occurred from 1991 to 1999. Note that this conclusion is based on the six criminal convictions alleged in the Statement of Issues and not the criminal conviction in 2009, as it was not alleged. (Under Government Code section 11504, a statement of issues shall specify the acts authorizing denial by an agency.)

Restitution and payment of fines or penalties: Respondent paid full restitution and fines and fees.

Expungement or early discharge from parole: Expungement is most commonly a reference to proceedings in California state courts under Penal Code section 1203.4 for dismissal of charges after all sentence terms are completed. The only evidence of such a dismissal is for the conviction in Factual Finding 13 which is not alleged in the Statement of Issues.

Enrollment in or completion of educational or training courses for economic self-improvement: Respondent has completed numerous training courses for her self-improvement.

Correction of any business practices causing injury or potential injury: Respondent's creation and use of false documents, fraud, and theft crimes were in part the result of her immaturity, psychological conditions, stress and financial pressure in respondent's life, as well as the influence of her boyfriend, the father of her child. Respondent recognizes the sources of that stress and pressure, distanced herself from the people involved, made progress in her career, and has taken reasonable steps to avoid similar actions in the future.

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New and different social and business relationships from those when the conduct occurred: Respondent has developed strong social and business relationships since her release from prison. Many organizations attest to the positive relationships established with Citadel.

Change in attitude from the time of the conduct in question to the present, as demonstrated by evidence of rehabilitation from respondent or others, and the absence of subsequent convictions or other conduct which reflect an inability to conform to societal rules when considered in light of the conduct in question: Respondent provided evidence of her rehabilitation in the form of her written statements and the numerous support letters from individuals and organizations. Respondent's last conviction was in 2009 for events occurring in 2005 and 2006, and the charges were dismissed in 2020. There was no evidence respondent has engaged in any conduct since 2006 to raise concerns about her level of rehabilitation.

14. "Favorable testimony of acquaintances, neighbors, friends, associates and employers with reference to their observation of the daily conduct and mode of living" can be helpful in determining whether a person seeking licensure is rehabilitated. (See *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 317-318.) The numerous support letters submitted by respondent to the Department confirm a consistent and longstanding effort by respondent, through her non-profit entity Citadel, to assist others and her community with broad-based programs. Respondent's documentation also establishes her efforts at rehabilitation.

15. Several court opinions address significant aspects of rehabilitation. Rehabilitation is a state of mind, and the law looks with favor upon one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041,

1058.) Fully acknowledging the wrongfulness of past actions is an essential step toward rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) The evidentiary significance of 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; *In re Menna* (1995) 11 Cal.4th 975, 991.)

16. As discussed in *Singh v. Davi* (2012) 211 Cal.App.4th 141, 149, of the many rehabilitation criteria, arguably the most important in predicting future conduct is the one related to change in attitude from that which existed at the time of the conduct in question. Respondent meets most of the rehabilitation criteria, and she exhibited a change in attitude from the time of her misconduct.

17. In determining whether a real estate licensee was a threat to the public, the significant factors considered have included: (1) the likelihood of recurrence of the crime; (2) whether the person led an exemplary life before and after the incident which led to the conviction; and (3) whether the person was contrite and remorseful. (*Brandt v. Fox* (1979) 90 Cal.App.3d 737, 745-747).

18. Rehabilitation depends upon a record of conduct that convinces the Department the public would be safe in granting privileges of licensure to respondent. A respondent must establish a record of reliable, responsible, and consistently appropriate conduct.

19. The sheer number and circumstances of respondent's criminal convictions, and the rehabilitation criteria she has satisfied, are not sufficient to grant her an unrestricted license at this time in a manner consistent with protection of the public. Respondent's failure to appear at the hearing is considered in reaching this conclusion. Nevertheless, the likelihood respondent will reoffend is low. She is more

mature and has learned from her mistakes. Respondent accepts responsibility for her actions and has expressed remorse. The public will be adequately protected if respondent is issued a restricted salesperson license, as the restricted license requires respondent to be supervised in her performance of activities that require the license, and respondent's supervisor must be notified of the decision in this matter. The restricted license will be in effect for two years.

20. Under Business and Professions Code sections 10156.5 and 10156.6, the Commissioner may issue a restricted license with conditions and a limited term. Under Business and Professions Code sections 10156.7, a restricted license does not confer any property right to the holder, and it may be suspended without a hearing pending final determination after a hearing. Standard terms for a restricted license are found in Regulations section 2930 and are included in the Order below.

ORDER

The application of respondent Donise Warren for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5. The restricted license issued to respondent shall be subject to 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 restricted 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:

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

The receipt of evidence 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 the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two 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 Department of Real Estate which shall certify as follows:

The employing broker has read the Decision which is the basis for the issuance of the restricted license; and

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.

4. 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 137000, Sacramento, CA 95813-7000. 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: 11/03/2022

David Rosenman

DAVID B. ROSENMAN

Administrative Law Judge

Office of Administrative Hearing