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FILED

APR 15 2025

DEPT. OF REAL ESTATE

By—

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	No. H-43033 LA
)	
NOELLE JEANETTE POLHERT,)	<u>First Amended</u>
)	<u>Statement of Issues</u>
)	Real Estate Salesperson Application
Respondent.)	
)	

The Statement of Issues filed on February 21, 2025 is amended in its entirety as follows:

The Complainant, Ray Dagnino, a Supervising Special Investigator of the State of California, makes this Statement of Issues against NOELLE JEANETTE POLHERT a.k.a. Noelle Jeanette Pelhert a.k.a. Noel Polhert a.k.a. Noelle Polhert (Respondent) in his official capacity and alleges as follows:

1.

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title Chapter 6, California Code of Regulations.

DRE First Amended Statement of Issues on Application: Noelle Jeanette Polhert, H-43033 LA

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1 5.

2 (Aggravation)

3 **12-02-15 Misdemeanor Conviction for Violation of Vehicle Code Section 23153(B)**

4 (Santa Barbara County Case No. 1491903)

5 According to certified court records (certified on June 11, 2024), on or about
6 December 2, 2015, in the Superior Court of the State of California, County of Santa Barbara, in
7 The People of the State of California vs. Noelle Jeanette Polhert a.k.a. Noelle Jeanette Pelhert,
8 Case No. 1491903, a Misdemeanor Complaint was filed that charged Respondent with
9 violation of Vehicle Code (VC) Section 23152(A) (driving under the influence of alcohol)
10 (Count 1) and VC Section 23152(B) (driving while having a 0.08% or higher blood alcohol)
11 (Count 2), both with special allegations pursuant to VC Section 23546 that Respondent suffered
12 prior convictions within the last ten (10) years in Los Angeles County.

13 6.

14 According to the aforementioned certified court records described in Paragraph
15 5 above, on December 2, 2015, Respondent pled no contest to Count 2 and admitted the prior
16 convictions. On the same day, the court sentenced Respondent to supervised probation for five
17 (5) years and 120 days in Santa Barbara County Jail. In addition, the court ordered
18 Respondent to pay court fines in the amount of \$1,690.00 and victim restitution in an amount to
19 be determined.

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7.

(Aggravation)

08-18-09 Misdemeanor Conviction for Violation of Vehicle Code Section 23153(B)

(Los Angeles County Case No. 9NW01698)

According to certified court records (certified on June 4, 2024), on or about April 14, 2009, in the Superior Court of the State of California, County of Los Angeles, in The People of the State of California vs. Noelle Jeanette Polhert, Case No. 9NW01698, a Misdemeanor Complaint was filed that charged Respondent with violation of: VC Section 23153A) (driving under the influence of alcohol causing bodily injury (Count 1) and VC Section 23153(B) (driving under the influence of alcohol with 0.08% or higher blood alcohol causing bodily injury (Count 2), both with special allegations that Respondent suffered prior convictions for violation of VC 23103 (reckless driving) and VC Section 23152(A).

8.

According to the aforementioned certified court records described in Paragraph 7 above, on August 18, 2009, Respondent pled no contest to Count 2 and admitted the prior convictions. On the same day, the court sentenced Respondent to summary probation for 60 months and 180 days in Los Angeles County Jail. In addition, the court ordered Respondent to pay court fines in the amount of \$4,059.00 (or jail time in lieu of payment) and victim restitution in an amount to be determined. The court also ordered Respondent to enroll in an SB-38 program.

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9.

(Aggravation)

06-02-08 Misdemeanor Conviction for Violation of Vehicle Code Section 23103

(Los Angeles County Case No. 7NW04334)

According to certified court records (certified on June 4, 2024), on or about November 13, 2007, in the Superior Court of the State of California, County of Los Angeles, in The People of the State of California vs. Noelle Jeanette Polhert, Case No. 7NW04334, a Misdemeanor Complaint was filed that charged Respondent with violation of: VC Section 23152(A) (Count 1) and VC Section 23152(B) (Count 2).

10.

According to the aforementioned certified court records described in Paragraph 9 above, on June 2, 2008, upon plaintiff People's motion, the court ordered that the complaint be amended by interlineation to add a violation of VC 23103 as Count 3. On the same day, Respondent pled no contest to Count 3 and the court sentenced Respondent to summary probation for 24 months and ordered Respondent to pay court fines in the amount \$698.00. The court also ordered Respondent to complete a three-month licensed first-offender alcohol and other drug education and counseling program.

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11.

(Aggravation)

01-12-04 Misdemeanor Conviction for Violation of Vehicle Code Section 23152(A)

(Santa Barbara County Case No. 113711)

According to certified court records (certified on June 11, 2024), on or about December 19, 2003, in the Superior Court of the State of California, County of Santa Barbara, in The People of the State of California vs. Noelle Jeanette Polhert, Case No. 1133711, a Misdemeanor Complaint was filed that charged Respondent with violation of: VC Section 23152(A) (Count 1) and VC Section 23152(B) (Count 2).

12.

According to the aforementioned certified court records described in Paragraph 9 above, on January 12, 2004, Respondent pled no contest to Count 1 and the court sentenced Respondent to probation for three (3) years and 120 days in Santa Barbara County Jail. In addition, the court ordered Respondent to pay court fines in the amount \$1,475.00 and victim restitution in the amount of \$125.00.

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1 **SECTIONS OF THE REAL ESTATE LAW**
2 **APPLICABLE TO LICENSE APPLICATIONS**

3 13.

4 Grounds for Denial of a License

5 (Code Section 475)

6 Pursuant to Code Section 475 *Grounds for Denial of a License*:

7 “(a) Notwithstanding any other provisions of this code, the provisions of this
8 division shall govern the denial of licenses on the grounds of: (1) Knowingly making a false
9 statement of material fact, or knowingly omitting to state a material fact, in an application for a
10 license. (2) Conviction of a crime. (3) Commission of any act involving dishonesty, fraud or
11 deceit with the intent to substantially benefit himself or another, or substantially injure another.
12 (4) Commission of any act which, if done by a licentiate of the business or profession in
13 question, would be grounds for suspension or revocation of license. (b) Notwithstanding any
14 other provisions of this code, the provisions of this division shall govern the suspension and
15 revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a). (c) A
16 license shall not be denied, suspended, or revoked on the grounds of a lack of good moral
17 character or any similar ground relating to an applicant’s character, reputation, personality, or
18 habits.”

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14.

Denial of License by Board

(Code Section 480)

Pursuant to Code Section 480 *Denial of License by Board*:

“(a) Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application. However, the preceding seven-year limitation shall not apply in either of the following situations:

(A) The applicant was convicted of a serious felony, as defined in Section 1192.7 of the Penal Code or a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.

(B) The applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of the business or

profession for which the application is made, pursuant to regulations adopted by the board, and for which the applicant is seeking licensure under any of the following:

(i) Chapter 1 (commencing with Section 5000) of Division 3.

(ii) Chapter 6 (commencing with Section 6500) of Division 3.

(iii) Chapter 9 (commencing with Section 7000) of Division 3.

(iv) Chapter 11.3 (commencing with Section 7512) of

Division 3.

(v) Licensure as a funeral director or cemetery manager under Chapter 12 (commencing with Section 7600) of Division 3.

(vi) Division 4 (commencing with Section 10000).

(2) The applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years from the date of application based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code or a comparable dismissal or expungement.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis that the person has been convicted of a crime, or on the basis of

1 acts underlying a conviction for a crime, if that person has obtained a certificate of
2 rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the
3 Penal Code, has been granted clemency or a pardon by a state or federal executive, or has made
4 a showing of rehabilitation pursuant to Section 482.

5 (c) Notwithstanding any other provision of this code, a person shall not be
6 denied a license on the basis of any conviction, or on the basis of the acts underlying the
7 conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or
8 1203.425 of the Penal Code, or a comparable dismissal or expungement. An applicant who has
9 a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42
10 of the Penal Code shall provide proof of the dismissal if it is not reflected on the report
11 furnished by the Department of Justice.

12 (d) Notwithstanding any other provision of this code, a board shall not deny a
13 license on the basis of an arrest that resulted in a disposition other than a conviction, including
14 an arrest that resulted in an infraction, citation, or a juvenile adjudication.

15 (e) A board may deny a license regulated by this code on the ground that the
16 applicant knowingly made a false statement of fact that is required to be revealed in the
17 application for the license. A board shall not deny a license based solely on an applicant's
18 failure to disclose a fact that would not have been cause for denial of the license had it been
19 disclosed.

20 (f) A board shall follow the following procedures in requesting or acting on an
21 applicant's criminal history information:

22 (1) A board issuing a license pursuant to Chapter 3 (commencing with
23 Section 5500), Chapter 3.5 (commencing with Section 5615), Chapter 10
24 (commencing with Section 7301), Chapter 20 (commencing with Section 9800),
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1 or Chapter 20.3 (commencing with Section 9880), of Division 3, or Chapter 3
2 (commencing with Section 19000) or Chapter 3.1 (commencing with Section
3 19225) of Division 8 may require applicants for licensure under those chapters
4 to disclose criminal conviction history on an application for licensure.

5 (2) Except as provided in paragraph (1), a board shall not require an
6 applicant for licensure to disclose any information or documentation regarding
7 the applicant's criminal history. However, a board may request mitigating
8 information from an applicant regarding the applicant's criminal history for
9 purposes of determining substantial relation or demonstrating evidence of
10 rehabilitation, provided that the applicant is informed that disclosure is
11 voluntary and that the applicant's decision not to disclose any information shall
12 not be a factor in a board's decision to grant or deny an application for licensure.

13 (3) If a board decides to deny an application for licensure based solely or
14 in part on the applicant's conviction history, the board shall notify the applicant
15 in writing of all of the following:

16 (A) The denial or disqualification of licensure.

17 (B) Any existing procedure the board has for the applicant to
18 challenge the decision or to request reconsideration.

19 (C) That the applicant has the right to appeal the board's
20 decision. (D) The processes for the applicant to request a copy of
21 the applicant's complete conviction history and question the
22 accuracy or completeness of the record pursuant to Sections
23 11122 to 11127 of the Penal Code.

1 (g) (1) For a minimum of three years, each board under this code shall retain
2 application forms and other documents submitted by an applicant, any notice provided to an
3 applicant, all other communications received from and provided to an applicant, and criminal
4 history reports of an applicant.

5 (2) Each board under this code shall retain the number of applications
6 received for each license and the number of applications requiring inquiries regarding criminal
7 history. In addition, each licensing authority shall retain all of the following information:

8 (A) The number of applicants with a criminal record who
9 received notice of denial or disqualification of licensure.

10 (B) The number of applicants with a criminal record who
11 provided evidence of mitigation or rehabilitation.

12 (C) The number of applicants with a criminal record who
13 appealed any denial or disqualification of licensure.

14 (D) The final disposition and demographic information,
15 consisting of voluntarily provided information on race or gender,
16 of any applicant described in subparagraph (A), (B), or (C).

17 (3) (A) Each board under this code shall annually make available to the
18 public through the board's internet website and through a report submitted to the appropriate
19 policy committees of the Legislature identified information collected pursuant to this
20 subdivision. Each board shall ensure confidentiality of the individual applicants.

21 (B) A report pursuant to subparagraph (A) shall be submitted in
22 compliance with Section 9795 of the Government Code.

23 (h) "Conviction" as used in this section shall have the same meaning as defined
24 in Section 7.5.

1 (i) This section does not in any way modify or otherwise affect the existing
2 authority of the following entities in regard to licensure:

3 (1) The State Athletic Commission.

4 (2) The Bureau for Private Postsecondary Education.

5 (3) The California Horse Racing Board.

6 (j) This section shall become operative on July 1, 2020.”

7 15.

8 Criteria of Substantial Relationship

9 (Regulation 2910)

10 Pursuant to Regulation 2910 *Criteria of Substantial Relationship*:

11 “(a) When considering whether a license should be denied, suspended or
12 revoked on the basis of the
13 conviction of a crime, or on the basis of an act described in Section 480(a)(2) of the Code, the
14 crime or act may be deemed to be substantially related to the qualifications, functions or duties
15 of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it
16 involves any of the following characteristics:

17 (1) The fraudulent taking, obtaining, appropriating or retaining of funds
18 or property belonging to another person.

19 (2) Counterfeiting, forging or altering of an instrument or the uttering of
20 a false statement.

21 (3) Willfully attempting to derive a personal financial benefit through the
22 nonpayment or underpayment of taxes, assessments or levies duly
23 imposed upon the licensee or applicant by federal, state, or local
24 government.

1 (4) The employment of bribery, fraud, deceit, falsehood or
2 misrepresentation to achieve an end.

3 (5) Sexually related conduct affecting a person who is an observer or
4 non-consenting participant in the conduct or convictions which require
5 registration pursuant to the provisions of Section 290 of the Penal Code.

6 (6) Willfully violating or failing to comply with a provision of Division 4
7 of the Business and Professions Code of the State of California.

8 (7) Willfully violating or failing to comply with a statutory requirement
9 that a license, permit or other entitlement be obtained from a duly
10 constituted public authority before engaging in a business or course of
11 conduct.

12 (8) Doing of any unlawful act with the intent of conferring a financial or
13 economic benefit upon the perpetrator or with the intent or threat of
14 doing substantial injury to the person or property of another.

15 (9) Contempt of court or willful failure to comply with a court order.

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

18 (11) Two or more convictions involving the consumption or use of
19 alcohol or drugs when at least one of the convictions involve driving and
20 the use or consumption of alcohol or drugs.

21 (b) The conviction of a crime constituting an attempt, solicitation or conspiracy
22 to commit any of the above enumerated acts or omissions may also be deemed to be
23 substantially related to the qualifications, functions or duties of a licensee of the Department.
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1 (c) The nature and gravity of the offense, the number of years that have elapsed
2 since the date of the offense, and the nature and duties of a real estate licensee shall be taken
3 into consideration when determining whether to deem an offense to be substantially related to
4 the qualifications, functions or duties of a licensee. The Department's consideration of these
5 factors in assessing the substantial relationship of an offense does not alter, or act in place of,
6 consideration of these same factors in the Criteria for Rehabilitation."

7 16.

8 Further Grounds for Disciplinary Action

9 (Code Section 10177, selected portions)

10 Pursuant to Code Section 10177 *Further Grounds for Disciplinary Action*:

11 "The commissioner may suspend or revoke the license of a real estate licensee,
12 delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an
13 applicant, who has done any of the following, or may suspend or revoke the license of a
14 corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to
15 a corporation, if an officer, director, or person owning or controlling 10 percent or more of the
16 corporation's stock has done any of the following:

17 (a) Procured, or attempted to procure, a real estate license or license
18 renewal, for themselves or a salesperson, by fraud, misrepresentation, or
19 deceit, or by making a material misstatement of fact in an application for
20 a real estate license, license renewal, or reinstatement.

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

6 (2) Notwithstanding paragraph (1), and with the recognition that
7 sentencing may not occur for months or years following the entry
8 of a guilty plea, the commissioner may suspend the license of a
9 real estate licensee upon the entry by the licensee of a guilty plea
10 to any of the crimes described in paragraph (1). If the guilty plea
11 is withdrawn, the suspension shall be rescinded, and the license
12 reinstated to its status prior to the suspension. The department
13 shall notify a person whose license is subject to suspension
14 pursuant to this paragraph of that person's right to have the issue
15 of the suspension heard in accordance with Section 10100..."

16 **CAUSE FOR DENIAL**

17 17.

18 The crime of which Respondent was convicted, as described above in
19 Paragraphs 3 through 5, by its facts and circumstances, bears a substantial relationship to the
20 qualifications, functions or duties of a real estate licensee pursuant to **Section 2910, Title 10,**
21 **Chapter 6, California Code of Regulations.**

22 18.

23 The crime of which Respondent was convicted, as described above in
24 Paragraphs 3 through 5, constitutes cause for denial of Respondent's application for a real
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1 estate salesperson license pursuant to **California Business and Professions Code Sections**
2 **475(a)(2), 480(a)(1), and 10177(b).**

3 19.

4 These proceedings are brought under the provisions of Section 10100, Division
5 4 of the Business and Professions Code of the State of California and Sections 11500 through
6 11528 of the California Government Code.

7 WHEREFORE, the Complainant prays that the above-entitled matter be set for
8 hearing and, upon proof of the charges contained herein, that the Commissioner refuse to
9 authorize the issuance of, and deny the issuance of, a real estate salesperson license to
10 Respondent, **NOELLE JEANETTE POLHERT**, and for such other and further relief as may
11 be proper under other applicable provisions of law.

12 Dated at Los Angeles, California: April 14, 2025.

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16 Ray Dagnino
17 Supervising Special Investigator
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20 cc: Noelle Jeanette Polhert
21 Steven Corl Decker
22 Enforcement – R. Dagnino
23 Sacto.
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27 DRE First Amended Statement of Issues on Application: Noelle Jeanette Polhert, H-43033 LA