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DEPT OF REAL ESTATE

By [redacted]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Application of: TOMMY HERTENSTEIN, Respondent.	DRE No. H-43184 LA OAH No. 2025110716

DECISION

The Proposed Decision dated February 27, 2026, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision.

Page 8, Paragraph 5, Line 7, reads as, "…is antithetical to nature and duties of a real estate licensee…" corrected to read as, "…is antithetical to the nature and duties of a real estate licensee…"

Page 14, Paragraph 4, Line 3, reads as, "…Department or Real Estate, Post Office Box 13700, Sacramento, CA 95813-7000…" corrected to read as, "…Department of Real Estate, 651 Bannon Street, Suite 504, Sacramento, CA 95811…"

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 thirty (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.

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 5/7/26.

IT IS SO ORDERED April 10, 2026

CHIKA SUNQUIST
REAL ESTATE COMMISSIONER

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

TOMMY HERTENSTEIN,

Respondent.

Agency Case No. H-43184 LA (Statement of Issues)

OAH No. 2025110716

PROPOSED DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on February 3, 2026.

Judith A. Buranday, Counsel, Department of Real Estate (Department), represented complainant Ray Dagnino, a Supervising Special Investigator of the Department.

Respondent Tommy Hertenstein represented himself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on February 3, 2026.

After the hearing, the administrative law judge redacted several exhibits to obscure the names of crime victims and of minors. A protective order sealing a list of the names is being issued concurrently with this proposed decision.

SUMMARY

Respondent applied for a real estate salesperson license in September 2024, and a background review revealed he had a criminal history of two misdemeanor convictions in 2019 due to a domestic violence incident, and another misdemeanor conviction in 2012 for disturbing the peace. Complainant contends the Real Estate Commissioner (Commissioner) should deny the application due to the criminal convictions in 2019, while respondent contends the Commissioner should grant it given the time elapsed since the crimes and respondent's rehabilitative efforts. Considering the evidence and the Department's criteria of rehabilitation, respondent has not proven that the Commissioner should issue him an unrestricted license. However, respondent's evidence is sufficient to prove he should receive a restricted license and be eligible to apply for an unrestricted license after two years.

FACTUAL FINDINGS

Background and Procedural History

1. On September 5, 2024, the Department received respondent's application for a real estate salesperson license. The application is pending, and no license has been issued.

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2. On October 8, 2024, the Department notified respondent that it had forwarded the application to its License Background Review Unit for additional processing. A background review showed that respondent had a criminal history of three misdemeanor convictions, including two in 2019 due to a domestic violence incident, and a third in 2012 for disturbing the peace. On October 22, 2025, complainant filed a Statement of Issues in his official capacity alleging that the crimes of which respondent was convicted in 2019 were grounds for the Commissioner to deny respondent's application. Complainant also alleged the criminal conviction in 2012 was a matter "in aggravation" regarding the application. (Exhibit 1, p. A35, capitalization omitted.)

3. Respondent timely submitted a Notice of Defense on Application requesting a hearing.

Hearing

4. Complainant presented court records proving that on September 30, 2019, respondent was convicted by a jury of one misdemeanor count of willfully inflicting corporal injury resulting in a traumatic condition to a cohabitant (Pen. Code, § 273.5, subd. (a)), and one misdemeanor count of obstructing the use of a wireless communication device to summon assistance or notify law enforcement of a crime (Pen. Code, § 591.5). (*People v. Hertenstein* (Super. Ct. Los Angeles County, 2019, No. 9EM01124).) On October 2, 2019, the court suspended the imposition of sentence and placed respondent on probation for 60 months, on terms requiring him to serve 180 days in jail with credit for 13 days, to complete a 52-week domestic violence counseling program, to perform 24 hours of community service, and to pay fees and assessments totaling $745. The court also ordered respondent not to come within 100 yards of the victim and not to own, use, or possess any dangerous or deadly weapons.

5. Respondent committed the crimes on February 23, 2019. The victim was respondent's girlfriend, who lived with respondent and their two young children. Respondent was found guilty of willfully injuring her after arriving home early that morning, causing an abrasion on her lower lip and red marks on her face and neck. Respondent was also found guilty of taking the victim's cell phone to prevent her from calling 911 for assistance.

6. The court records state that respondent's probation was summarily revoked in December 2020 (for not complying with domestic violence counseling program requirements), December 2021 (for not providing proof of completion of community service or proof of payment of fines and fees), and April 2022 (for not appearing at a court hearing). In each instance, the court later reinstated respondent's probation on the same terms and conditions, with no indication of a change to its scheduled end date in October 2024. The court scheduled a restitution hearing in the case, but it was later taken off calendar without prejudice. The last event reflected in the court records is a September 2022 hearing on respondent's ability to pay fines and fees; whether the court changed respondent's payment obligation at that hearing is unclear.

7. Complainant also presented court records proving that on November 20, 2012, respondent pleaded nolo contendere and was convicted of one misdemeanor count of disturbing the peace in violation of Penal Code section 415(2). (*People v. Hertenstein* (Super. Ct. San Bernardino County, 2012, No. MWV1104355).) The criminal conviction arose from an October 2011 incident involving respondent's alleged violent behavior towards an ex-girlfriend. But this criminal conviction is not grounds for denial of respondent's application because the conviction was not "within the preceding seven years from the date of application." (Bus. & Prof. Code, § 480, subd. (a).)

Therefore, the evidence about the criminal conviction does not affect the outcome of this case.

8. Regarding the criminal convictions in 2019, respondent testified he complied with all probation requirements and learned a great deal from court-ordered domestic violence counseling. Describing the underlying incident, respondent testified the victim grabbed his arm as he was getting clothes to move into another room, after which "shoving ensued" and respondent pushed the victim against the bed. According to respondent, he may have cut the victim's lip inadvertently as he was trying to leave the room. Respondent denied he was intoxicated during the incident, although the victim reported to police that he was.

9. Respondent testified that his criminal record does not reflect his professional conduct or present character. He no longer lives with or has a romantic relationship with the victim, and he described his current family life as stable. In 2023, he was awarded full legal custody and primary physical custody of his two children, after the victim herself had a domestic violence protective order issued against her in favor of respondent and their children. Respondent testified that he and the victim have since learned how to co-parent their children successfully.

10. Respondent worked as a bank client services representative from approximately 2014 until 2023, when he was laid off. While working for the bank, he participated in its charitable events; he now volunteers as a soccer coach for his children. Since his layoff, respondent has completed associate's degree programs in real estate, business, and social and behavioral sciences at Citrus College and Mount San Antonio College, and he is in the last year of a bachelor's degree program at Cal Poly Pomona.

11. Supplementing his testimony, respondent presented a letter from the victim recommending that respondent receive a license, noting significant progress in respondent's maturity and personal development in recent years. Respondent also presented diplomas and certificates documenting his educational accomplishments and completion of court-ordered domestic violence and community service requirements. In addition, respondent presented positive performance reviews from his former employer.

LEGAL CONCLUSIONS

Legal Standards

1. In this application proceeding, respondent bears the burden of proving he should receive the requested license. (*Coffin v. Alcoholic Beverage Control Appeals Board* (2006) 139 Cal.App.4th 471, 476-477; Gov. Code, § 11504.) This burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

2. An applicant's conviction of a crime that is "substantially related to the qualifications, functions, or duties" of a real estate licensee may constitute grounds for the Commissioner to deny an application. (Bus. & Prof. Code, §§ 475, subd. (a)(2), 480, subd. (a)(1), 10177, subd. (b).) As relevant here, a crime "may be deemed to be substantially related to the qualifications, functions or duties of a licensee" if it involves the "[d]oing of any unlawful act . . . with the intent or threat of doing substantial injury to the person or property of another." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) "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." (*Id.*, subd. (c).)

3. For most crimes, the applicant's criminal conviction must have been "within the preceding seven years from the date of application . . . , regardless of whether the applicant was incarcerated," or the crime must be one "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." (Bus. & Prof. Code, § 480, subd. (a)(1).) For all crimes, the Commissioner may not deny a license due to a criminal conviction or the acts underlying it if the conviction has been dismissed, or if the applicant "has obtained a certificate of rehabilitation . . . , has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Section 482." (*Id.*, subds. (b), (c).)

Analysis

Cause for Denial

4. Respondent's criminal convictions in 2019 are for crimes that are "substantially related to the qualifications, functions, or duties" of a real estate licensee. (Bus. & Prof. Code, §§ 480, subd. (a)(1), 10177, subd. (b).) The convictions occurred within seven years of the date of respondent's application, and they were for crimes that involved the "[d]oing of . . . unlawful act[s] . . . with the intent or threat of doing substantial injury to the person or property of another." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Respondent's crime of willfully inflicting corporal injury on a cohabitant fits this description precisely, and his crime of obstructing the victim's use of her cell phone to summon assistance involved the same domestic violence incident.

Therefore, the crimes may be deemed to be substantially related to the qualifications, functions, or duties of a licensee. (*Ibid.*)

5. The nature and gravity of the crimes, the number of years that have elapsed since their commission, and the nature and duties of a real estate licensee support a conclusion that the crimes are substantially related to a licensee's qualifications, functions, or duties. Respondent committed domestic violence against the victim and obstructed her from calling for help, and the gravity of these crimes outweighs the time elapsed since their commission when assessing their relationship to licensure. In addition, respondent's violence against the victim is antithetical to nature and duties of a real estate licensee, which require professionalism and respect for the personal rights of others.

6. Accordingly, respondent's criminal convictions in 2019 are grounds for the Commissioner to deny application.

REHABILITATION

7. Respondent's criminal convictions have not been dismissed, and he has not received a certificate of rehabilitation, a grant of clemency, or a pardon. Therefore, the Commissioner must evaluate respondent's showing of rehabilitation. (Bus. & Prof. Code, § 482, subds. (a), (b); Cal. Code Regs., tit. 10, § 2911.) "The [Department] has developed 14 criteria to be used to evaluate rehabilitation of an applicant for a license who has committed a crime. (Cal. Code Regs., tit. 10, section 2911. . . .) These criteria attempt to gauge whether the applicant has changed so that a repeat of his criminal behavior is unlikely." (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.)

8. The evidence presented about the criteria of rehabilitation is as follows:

(1) The time that has elapsed since commission of the acts(s) or offense(s). Over six years have elapsed since respondent committed the offenses underlying the criminal convictions in October 2019. This period is much longer than the two-year period that the Department considers "inadequate to demonstrate rehabilitation." (Cal. Code Regs., tit. 10, § 2911, subd. (a)(1)(A).) The two-year period may be extended based on the nature and severity of the crimes and an applicant's history of criminal convictions that are substantially related to the qualifications, functions, or duties of a real estate licensee. (*Id.*, subd. (a)(1)(B).) Those considerations do not warrant extending the two-year period in this case.

(2) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant, or escheat to the State of these monies or other properties if the victim(s) cannot be located. The court records state that a restitution hearing was scheduled, but it was later taken off calendar without prejudice. Therefore, this criterion is inapplicable.

(3) Expungement of criminal convictions. The Penal Code authorizes the dismissal (i.e., expungement) of criminal convictions under certain circumstances. (See, e.g., Pen. Code, § 1203.4.) Upon proof of the dismissal, a person shall not be denied a license due to the conviction or the acts underlying it. (Bus. & Prof. Code, § 480, subd. (c).) The criminal convictions at issue have not been dismissed.

(4) Expungement or discontinuance of a requirement of registration pursuant to the provisions of section 290 of the Penal Code. This criterion pertains to a sex offender registration requirement, which is inapplicable in this case.

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(5) Successful completion or early discharge from probation or parole. Respondent completed the 60-month period of summary probation, although not without several probation violations during that period.

(6) Abstinence from the use of controlled substances and/or alcohol for not less than two years if the conduct which is the basis to deny the Department action sought is attributable in part to the use of controlled substances and/or alcohol. Respondent denied he was intoxicated during the incident, although the victim reported to police that he was. The evidence is insufficient to determine which account is correct. Furthermore, respondent's criminal convictions and probation do not involve charges or terms related to alcohol abuse. Therefore, this criterion is inapplicable.

(7) Payment of the fine and/or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment. The last event reflected in the court records is a September 2022 hearing on respondent's ability to pay fines and fees. The outcome of that hearing is unclear from the record.

(8) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the Department action sought. Respondent's testimony supports a finding that his family life is currently stable, and that he fulfills parental and familial responsibilities to his children.

(9) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement. Respondent has completed a variety of formal educational courses for economic self-improvement, earning several certificates and degrees. He is also in the final year of a bachelor's degree program.

(10) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others. No evidence was presented of adjudicated debts or monetary obligations of respondent to others, apart from the criminal case monetary obligations discussed above.

(11) Correction of business practices resulting in injury to others or with the potential to cause such injury. Respondent's crimes did not relate to business practices.

(12) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. Respondent volunteers as a coach with a youth soccer program, and he participated in charitable program of his former employer.

(13) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the Department action sought. Respondent is no longer cohabiting or in a romantic relationship with the victim.

(14) Change in attitude from that which existed at the time of the conduct in question. Of the many criteria, change in attitude is "arguably the most important in predicting future conduct . . . ." (*Singh v. Davi, supra,* 211 Cal.App.4th at p. 149.) Respondent testified he has a changed attitude, and the letter of support from the victim tends to support that testimony. The absence of subsequent misconduct also supports respondent's testimony, although it is accorded little weight during the period when respondent was on probation because a person under the direct supervision of correctional authorities is "required to behave in exemplary fashion." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

Weighing against a change in attitude, respondent contended that he only inadvertently injured the victim, despite his criminal conviction for willfully injuring her. Respondent's attempt to minimize the gravity of his conduct weakens his showing as to this criterion.

9. Considering the above, respondent's showing of rehabilitation satisfies most of the relevant criteria. Significant time has elapsed since the criminal convictions in 2019. Respondent has completed probation, has a stable family life, and has completed domestic violence counseling. He has also completed various formal educational programs for economic self-improvement.

10. Not all relevant criteria favor respondent; his criminal convictions have not been expunged, and respondent's attempt to minimize the gravity of his crimes weakens his showing of a change in attitude. But with most of the relevant criteria satisfied, outright denial of licensure is not warranted. Instead, a restricted real estate salesperson license under Business and Professions Code section 10156.5 is the appropriate result.

ORDER

Respondent Tommy Hertenstein's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of said Code:

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) 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

(b) The 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 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:

(a) That the employing broker has read the Decision which 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.

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: 02/27/2026

[redacted]

Thomas Heller (Feb 27, 2026 16:50:23 PST)

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings