

FILED

MAR - 9 2015

BUREAU OF REAL ESTATE

By *[Signature]*

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

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In the Matter of the Application of BRADLEY RONALD FOX, Respondent.	}	CalBRE No. H-39573 LA OAH No. 2014100532
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DECISION

The Proposed Decision dated January 16, 2015 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.

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 Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

MAR 30 2015

This Decision shall become effective at 12 o'clock noon on _____

IT IS SO ORDERED 3/2/2015

REAL ESTATE COMMISSIONER

[Signature]
WAYNE S. BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

BRADLEY RONALD FOX,

Respondent.

Case No. H-39573 LA

OAH No. 2014100532

PROPOSED DECISION

This matter came on regularly for hearing before Eileen Cohn, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on December 18, 2014, at Los Angeles, California.

Diane Lee and Judith Vason, Counsel for the Bureau of Real Estate (the Bureau),¹ represented complainant Robin Trujillo, a Deputy Real Estate Commissioner of the State of California (complainant). Respondent Bradley Ronald Fox (respondent) represented himself.

Oral and documentary evidence was received, the record closed and the matter submitted for decision at the conclusion of the hearing.

FINDINGS OF FACT

1. On March 5, 2013, respondent filed an application with the Bureau for a real estate salesperson license. That application is now pending.

2. The complainant, in her official capacity, filed a statement of issues in the above-referenced matter, citing respondent's prior convictions. The Bureau does not allege that respondent failed to disclose any of his convictions in his application. Respondent timely filed a request for hearing, and this action ensued.

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¹ Effective July 1, 2013, the Department of Real Estate became the Bureau of Real Estate as part of the Department of Consumer Affairs.

Respondent's three criminal convictions

3. On November 27, 2002, respondent was convicted in the Superior Court of the State of California, County of San Bernardino, in Case No. FVI015596, upon a plea of guilty, of violating California Penal Code sections 524, attempted extortion, a felony.

4. The facts and circumstances surrounding the conviction occurred after respondent, then 19 years' old, having just exited a bus, approached the victim's car to ask for change to use the phone booth. He needed to contact his friend who had agreed to meet him and transport him by car to his next destination. He approached the victim because her car was close to the phone booth. When the victim refused, and as she was rolling up her window and driving away with her minor son, respondent remarked, "you don't have to be scared, I am not going to jack your ass," which was interpreted by her minor son as a threat to steal her car. The victim's spouse returned to where respondent was waiting for his friend, grabbed him, announced he was making a "citizen's arrest," and detained him until the police arrived. Respondent did not attempt to leave or break away from the victim's spouse. The police arrived at the same time his friend did and arrested him.

5. The Court ordered 58 days of incarceration in county jail, with credit for 58 days as time served, supervised probation for 36 months, and fees, and suspended judgment as a felony pending completion of probation. On August 9, 2007, the court vacated the sentence and found respondent guilty upon his plea of nolo contendere, for an incidentally-related offense in violation of Penal Code section 524, a felony. The court denied probation and imposed a prison sentence of 8 months, which had been served during respondent's incarceration for the second felony described below. Respondent has paid all fees.

6. On November 17, 2005, respondent was convicted in the Superior Court of the State of California, County of San Diego, in Case No. S197630, on a plea of guilty, of driving under the influence, in violation California Vehicle Code section 23152, subdivision (a), a misdemeanor.

7. The facts and circumstances surrounding the conviction occurred after respondent, then 22 years' old, was driving at excessive speed while openly drinking alcohol which elevated his blood alcohol level to 0.18.

8. The Court placed respondent on summary probation for a period of five years, pursuant to terms and conditions, including that respondent enroll and attend a three-month first conviction program, and pay fines, including \$1700 dollars in restitution, and \$100 dollars assessment fee. Respondent paid the fine and assessment fee. However, he failed to timely enroll and complete the first conviction program. As a result, on June 22, 2006, the Court revoked his probation and one day later issued a bench warrant. At the time of the bench warrant, respondent was incarcerated for his felony conviction, set forth below. Respondent completed the classes in 2007. On August 28, 2007, the court recalled the bench warrant and ordered the probation revocation fine satisfied by credit for time served for the below felony conviction.

9. On April 11, 2006, respondent was convicted in the Superior Court of the State of California, County of San Bernardino, Case No. FVI023097, upon a plea of guilty, for having sex with a minor more than three years younger, in violation of Penal Code section 261.5, subdivision (c), a felony.

10. The facts and circumstances surrounding the conviction occurred on or about December 2, 2005, at a house party and involved sexual relations between Respondent, then 22 years' old, and a female minor no more than 17 years old, after they consumed a large volume of alcohol. Another similarly-aged male was charged with the same offense. The party was at the home respondent shared with another male, also in his early 20's, who was in attendance, along with several other females, who were all drinking heavily.

11. The Court imposed the upper term sentence of three years in state prison, and granted a total of 189 days credit for time served with the remaining sentence to run concurrent with any other sentence. Respondent began serving his sentence immediately and served 18 months. He was released on or about July 15, 2007 and was placed on parole for 18 months, which he completed.

Mitigation / Rehabilitation

12. Respondent is not on probation or parole and has satisfied all court fees and assessments. Respondent's convictions have not been expunged. He was firm in his desire to expunge his convictions, but was informed that he cannot do so until ten years have passed from his release from prison.

13. Respondent provided credible and convincing testimony that he made mistakes, learned from them, and dramatically changed his life after his last conviction. Respondent did not admit to the commission of the two felonies, but otherwise was contrite and insightful about his past, and was forthcoming about the circumstances of his life at the time of the convictions. Respondent demonstrated at the hearing through his demeanor and testimony that he was respectful of the process, understood the obligations of a real estate salesperson licensee, and was committed to following high professional standards. He spoke with pride and love for his son, and maintained that his fitness as a father be considered as critical evidence of his rehabilitation.

14. Respondent was forthcoming about his convictions. As to his first conviction, respondent acknowledged that he "looked like an idiot" with his shaved head and nonconforming attire, and generally had a "bad attitude." He insisted that he never threatened to steal the victim's car, and that he only approached the woman in the car because she was the closest to the phone booth. The statement he made when she refused to give him money for a phone call was admittedly offensive, but was not a threat to steal her car. As to his second conviction for driving under the influence, he considered himself a "jerk" for openly drinking while driving, and was thankful that the police officer stopped him before he reached Mexico, where he would have surely ended up in prison. He regretted his

hard partying ways which resulted in his third conviction, and second felony, and credited his incarceration with turning his life around. He did not admit to committing the act charged, but acknowledged he was engaged in unacceptable conduct.

15. Respondent provided details of the efforts he made to dramatically change his life. During prison for his second felony, he completed his general education high school diploma, and also learned that he fathered a son. He committed to being an active participant in his son's life and securing a future for his son far better than the one he had known. After his release from prison in July 2007, he became an involved parent, and in 2009 the Superior Court of the State of California, County of San Bernardino, awarded him temporary sole custody of his son. Respondent continues to be responsible for all aspects of his son's care. On November 7, 2014, the court issued a final juvenile custody judgment, terminating its jurisdiction, and awarding respondent sole legal and physical custody of his son, with visitation rights to his son's mother. (Exhibit A.)

16. Respondent kept his commitment to better his life and provide for his son. While raising his son and working, respondent enrolled in college, earning a Bachelor of Arts in December 2013 from California State University, San Bernardino. Recognizing his need to understand his past mistakes he participated in the psychological counseling services offered at the state university. During college, respondent discovered his passion for business, marketing, and real estate, majored in business administration and marketing, and enrolled in correspondence courses outside the university to prepare for his real estate license.

17. After his release from prison, respondent became actively involved in his church. He still attends at least one meeting a week, including an accountability group, where he reviews his conduct and reaffirms his goals. He also participates with other church members in charitable activities, including feeding needy families. Respondent has created a new life, surrounding himself with responsible people who, like him, are working and raising their families. He does not abuse alcohol, never drinks when driving, and rarely socializes outside his church or son's recreational activities. He remained friends with the individual who owned the house he shared when he was convicted of his second felony offense, but this individual evolved into a responsible adult, raising several children and working. This individual was not charged or convicted of respondent's crime. Respondent has no relationship with the other young man who was charged with engaging in felonious conduct similar to respondent.

18. Respondent's transformation and testimony were confirmed in letters written by individuals who have known him or worked with him since his release from prison, and who know of his convictions. Respondent credibly explained his relationship with each individual and the circumstances examined in each letter, and given his testimony corroborating the details of the letters and his rehabilitation, and the consistency of the supporting letters, they were given great weight in determining his rehabilitation.

19. Respondent has made great efforts to secure employment in real estate, and to support his son while awaiting his license, he secured a warehouse job. The state university's internship coordinator shared her admiration of respondent's passion for a career in real estate, persistence, attention to deadlines, and professionalism. She acknowledged his difficult past and felony convictions and his commitment to work harder than other students given the obstacles presented by his past. She credited him with finding an internship for himself, and not waiting for it to be "handed to him." She valued the time she worked with him, and thought of him when encouraging other students, who do not exhibit his drive, to work harder and not give up. (Exhibit G.) The department manager of the state university's college of business and public administration, where respondent received credits for his major, followed respondent's progress from the time he first enrolled at the state university. She reported that respondent displayed a "very enthusiastic," and "cheerful demeanor," was an "extraordinary and valued student," "systematic in his work habits," "organized" and "creative in devising new solutions to old problems." (Exhibit H.)

20. John R. Bibeau, a real estate broker at the Ontario offices of Cushman & Wakefield, a commercial real estate firm wrote in support of respondent's real estate license application. Mr. Bibeau has known respondent for three years and developed a close relationship with him. He reported his observations of respondent in their church's weekly bible study and accountability group, where respondent was candid about his past and discussed what he learned from these experiences. He observed respondent's "positive changes," and "daily commitment" to conducting his life and business "in a way that reflects the highest moral standards and ethics." (Exhibit B.)

21. Respondent received other endorsements from professionals in the real estate industry who recently worked with him. Respondent worked for a short period of time as a broker's assistant with Richard John, a real estate broker, from Daum Commercial Real Estate Services. Mr. John reported that respondent was professional and "always displayed a high level of integrity in his dealings with other professionals." (Exhibit C). Respondent worked as a broker's assistant with Kip Hamilton, a development manager, on a business center project in San Bernardino. Mr. Hamilton reported that respondent was "professional and always displayed a high level of integrity in his dealings with other peer professionals and the public." (Exhibit E.) Raoul Amescua, Director, KW Commercial, the Hanover Group, and a real estate broker with a master's of real estate development from the University of Southern California, endorsed respondent's licensure, considering him a "model professional" who "will hold up the code of ethics and standards as required by law." Mr. Amescua reported that respondent demonstrated a strong work ethic and ability to communicate. He observed him to be conscientious, enthusiastic about learning, passionate about the real estate business, and an open and honest "team player" with a high level of personal and professional integrity. Respondent worked for Mr. Amescua as an independent contractor providing marketing, data base management and transaction coordination services for his team. In that capacity he helped process paperwork associated with commercial real estate purchase, sale and leasing transactions, assisted with creating marketing materials, and organized the company's client data base. (Exhibit F.)

22. Respondent's commitment to his family and personal integrity were also confirmed by Cynthia Vander Linden, the owner of a daycare center attended by Respondent's son, who has known respondent for over two-and-a-half years, first as his son's caretaker and, over time, as a personal friend. Ms. Vander Linden reported that Respondent is honest, takes his responsibilities seriously, and is able to "juggle multiple responsibilities effectively," by being "punctual, reliable and friendly." She witnessed Respondent looking for work with "remarkable persistence," and "unmatching perseverance." (Exhibit D.) Respondent developed a close relationship with Ms. Vander Linden and her family. Their sons still play together, and he also gets along well with her spouse, a retired police officer. Ms. Vander Linden recently loaned respondent \$500 dollars for his rent, which he repaid. Ms. Vander Linden's comments about respondent's sense of responsibility were demonstrated at hearing when he requested a break to make arrangements for his son's care as the hearing was going longer than he anticipated.

23. Respondent's work ethic and integrity were challenged by a letter from his former internship sponsor, John Galaxidas, broker of record, CEO and President of Synergy Real Estate Group, Corporate Advisory LLC. Respondent worked with Synergy for about 15 months. Respondent volunteered to the BRE's special investigator "more than once" that he worked for Synergy, which was the reason the investigator contacted Mr. Galaxidas. Mr. Galaxidas recommended against awarding respondent a real estate license reporting that he was "reprimanded on multiple occasions until finally released for not following directions as to his strict role as a runner." Mr. Galaxidas referred to respondent's employment relationship with Synergy as an "apprenticeship." According to Mr. Galaxidas, respondent did not "yet understand the difference between wrong and right." Mr. Galaxidas mentioned that on "multiple occasions" respondent ignored directions to avoid making representations to clients, including representations about the conditions of the building, or quoting lease rates to clients." (Exhibit 8.)

24. Respondent credibly and persuasively responded to Mr. Glaxidas's written objection to his licensure, and respondent's testimony was given more weight than Mr. Glaxidas's letter, which was contradicted by respondent, and other character references, and not independently corroborated by other evidence. Mr. Galaxidas told respondent that he would do everything he could to make sure respondent was denied a real estate license. Mr. Galaxidas was not respondent's direct supervisor, and did not observe his work directly. Respondent reported to another individual, who was often unavailable. Regardless of whether he was adequately supervised, respondent admitted to making mistakes during his apprenticeship with Synergy. Respondent spoke of one transaction which he believed inspired Mr. Galaxidas's ire. Respondent had been sent to a commercial property when his supervisor was on vacation and unavailable. The property contained some office units with air conditioning and others without. Instead of pointing to the brochure, and saying nothing, which he was required to do, he stated that some units in the building had air conditioning units. Respondent insisted that he did not state to the lessees that the unit they were going to lease had air conditioning. However, the lessees claimed that they leased the property with the understanding that it had air conditioning, mistaking the heating units for air conditioning units. As a result respondent believed the company had to compensate the lessee by possibly

subsidizing a month's rent and providing an air conditioning unit. Respondent conceded he was fired, but he was never directly told he was fired. Instead, he understood he was fired when his supervisor did not return his calls. In his interview information statement (Exhibit 7), respondent explained that he was terminated because he could not obtain a real estate license in a timely manner. His failure to fully disclose other possible bases for his firing would be troubling if Synergy had fired him directly and told him of its reasons, or if he had not volunteered to the BRE investigator, "more than once" that he worked for Synergy, demonstrating that he was not hiding his work record.

25. Overall, respondent demonstrated maturity, contrition, remorse, and responsibility for his past actions. He convincingly established that since his last incarceration he has conducted his life in a manner consistent with his stated commitment to redeem his past, "walk" with honesty and integrity, and build a future for his son. By continually seeking employment in his chosen profession and, while awaiting his license, accepting temporary unskilled warehouse employment, he demonstrated his continued commitment and responsibility to his son. While he did not admit to the conduct underlying his felony convictions, he readily acknowledged that he made mistakes, partied too much and lived in a way that was socially unacceptable and irresponsible.

LEGAL CONCLUSIONS

1. Complainant's sole basis for denying respondent's real estate salespersons license was his three criminal convictions. Criminal convictions are grounds for denying a real estate license. Business and Professions Code section 475, subdivision (a) (2), provides that "notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of a license on the grounds of . . . conviction of a crime." Business and Professions Code section 480, subdivision (a) (1), defines conviction of a crime as a plea or verdict of guilty or a conviction following a plea of nolo contendere. Business and Professions Code section 10177, subdivision (b), provides that the Board may deny the issuance of a license to an applicant who has entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee.

2. Under California Code of Regulations, title 10, section 2910, subdivision (a), in considering whether an application should be denied, a crime shall be deemed "substantially related to the qualifications, functions, or duties of the licensee of the Bureau within the meaning of Sections 480 and 490 of the [Business and Professions] Code if it involves: subdivision (a)(8), any unlawful act with the intent or threat of doing substantial injury to the person or property of another; and subdivision (a)(10) conduct which demonstrates a pattern of repeated and willful disregard of law.

3. Cause exists to deny Respondent's real estate salesperson license application pursuant to Business and Professions Code sections 475, subdivision (a) (2), 480, subdivision (a)(1), and 10177, subdivision (b), as set forth in Factual Findings 3 through 6, and 9 through

11, inclusive, on the basis of respondent's two felony convictions, and as set forth in Factual Findings 3 through 11, on the basis of the three convictions which occurred within a narrow period of time.

4. Under Business and Professions Code section 482, subdivision (b), and California Code of Regulations, title 10, section 2911, the Bureau has adopted criteria for the purpose of evaluating the rehabilitation of an applicant who has been convicted of a crime. The relevant criteria are summarized as follows (using the subdivision letters from the regulation for reference):

a. The passage of not less than two years from the most recent criminal conviction, with a longer period if there is a history of such acts or conduct substantially related to the qualifications, functions or duties of a licensee;

c. Expungement of criminal convictions resulting from immoral or antisocial acts;

e. Successful completion or early discharge from probation or parole;

g. Payment of any fine or other monetary penalty imposed in connection with the criminal conviction;

h. Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction;

i. Completion of, or sustained enrollment in, formal education 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. New and different social and business relationships from those which existed at the time of the acts leading to the conviction;

n. 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;

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.

5. Respondent's character, alone, or his unwillingness to concede that he committed felonious acts, are not grounds for denying a license. Business and Professions Code section 475, subdivision (c), provides that a license shall not be denied on "the grounds of a lack of good moral character, or any similar ground relating to an applicant's character, reputation, personality, or habits." Further, it is not necessary for respondent to admit the specific acts of which he was convicted. Such admissions are often considered as an element of rehabilitation. However, the law recognizes that a party need not make a false act of contrition regarding alleged past conduct in order to obtain a professional license, if the person firmly believes in his innocence. (See, *Hall v. Committee of State Bar Examiners* (1979) 25 Cal. 3rd 730, 744-45.) Here, respondent conceded that he engaged in antisocial acts, but either depicted his conduct as non-criminal or more limited than suggested by the conviction. Nevertheless, respondent was sincere in accepting responsibility for his convictions and using that acceptance as a basis to make critical changes in his life and attitude.

6. Rehabilitation is a state of mind and the law looks with favor upon one who has achieved reformation and regeneration with the reward of the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards 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.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

7. Respondent bears the particular burden of establishing rehabilitation sufficient to compel his licensure. (*In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309.) Respondent met his burden of proof that he is sufficiently rehabilitated from his history of convictions to justify the issuance of a restricted salesperson license.

8. Respondent satisfied the majority of the Bureau's Criteria for Rehabilitation set forth in California Code of Regulations, title 10, section 2911 and Factual Findings 12 through 24, inclusive. Respondent met the requirements of subdivision (a) in that the first felony conviction is over 12 years old, and the last of the three convictions is almost nine years old. Further, the three convictions all occurred when respondent was young, between 19 and 22 years old, and within a narrow window of time. The term of his probation was complicated by the proximity of his convictions, and prison term, but he satisfied his probation, and his parole, and paid all necessary fines, fulfilling the requirements of subdivisions (e), (f) and (g). Respondent meets the requirements of subdivisions (i), (j), (k) and (l), in that respondent has changed his life situation since his release from prison in 2007. Respondent abandoned his socially deviant ways of his youth and is now a responsible father, obtaining by court-order sole custodianship of his son. He steadfastly progressed through the educational system, completing his Bachelor's degree and taking additional courses for his real estate license. He earned the respect of educators, business professionals and the community for his honesty, integrity and work ethic. After he was released from prison he became involved in his church and through his church, the community,

volunteering time to distribute food. All these factors also substantiate respondent's change in attitude, as required by subdivision (m), as does his new relationships with church members, business professionals, and stable families, like his son's childcare provider. Based upon his persuasive testimony, his education, work and community service, and his endorsements from his friends, business professionals and educators, who worked with him directly, or observed him at work, with his son, or at church, respondent met his burden of showing a changed attitude from the time of the commission of the criminal acts in question. Notably, the single opposition to his licensure came from a business professional who declared that he would do everything in his power to block respondent's license. This individual did not supervise him directly, but hired him as an apprentice, where direct supervision and strong guidance were required, but questionably provided. Respondent did not fulfill the requirements of (c) but intends to, and criteria (b), (d) and (h) are not applicable.

ORDER

The application of respondent for issuance of 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 all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

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

a. 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, after the effective date of the restricted salesperson license, respondent 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.

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

a. That the employing broker has read the Decision 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 Bureau 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: January 16, 2015



Eileen Cohn
Administrative Law Judge
Office of Administrative Hearings