

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF ELECTRONIC AND APPLIANCE REPAIR,
HOME FURNISHINGS AND THERMAL INSULATION
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:)

MICHAEL QUINTANA, aka)
MICHAEL FLORENTINO QUINTANA,)
dba QUALITY APPLIANCE & A.C.)
REPAIR,)

Case No. AN-2011-692

OAH No. 2012120178


Respondent.)
_____)

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective **JUN 17 2013**.

IT IS SO ORDERED this 17th day of May, 2013.


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF ELECTRONIC AND APPLIANCE REPAIR,
HOME FURNISHINGS AND THERMAL INSULATION
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

MICHAEL QUINTANA, A.K.A.
MICHAEL FLORENTINO QUINTANA,
DBA QUALITY APPLIANCE & A.C.
REPAIR,

Respondent.

Case No. AN-2011-692

OAH No. 2012120178

PROPOSED DECISION

Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Los Angeles, California on March 13, 2013.

Cristina Felix, Deputy Attorney General, represented Complainant Tcnya Blood, Bureau Chief of the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation, Department of Consumer Affairs (Bureau).

Respondent Michael Quintana appeared and represented himself.

Complainant alleges that Respondent has suffered misdemeanor convictions that are substantially related to the qualifications, functions, and duties of a registrant thereby disqualifying him from registration. Respondent presented evidence in favor of his registration.

The matter was submitted for decision on March 13, 2013. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

FACTUAL FINDINGS

1. Complainant filed the Statement of Issues in the above-captioned matter on August 29, 2012. Complainant acted in her official capacity when she filed the Statement of Issues in this case.

2. On July 15, 2011, Respondent filed an application with the Bureau for registration as an Appliance Service Dealer. The Bureau denied the application on March 12, 2012. In the Statement of Issues, the Bureau sets forth grounds for a denial of the application. Respondent filed a Notice of Defense, thereby requesting a hearing on the matter. This proceeding ensued. All jurisdictional requirements have been met.

Cause to Deny Registration

3. On August 3, 2005, in the Superior Court of California, Los Angeles County, in case number 5AT04945, Respondent was convicted upon his plea of nolo contendere of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content of 0.08% or more), a misdemeanor. The court sentenced Respondent to serve three days in jail, placed him on probation for three years, ordered him to complete a three-month first-offender alcohol education and counseling program, and ordered him to pay fines.

4. The facts and circumstances surrounding the August 2005 conviction are that on June 22, 2005, Respondent drove a vehicle with a blood-alcohol content of approximately 0.09 percent. He had been out at a club and had consumed four beers.

5. On December 29, 2005, in the Superior Court of California, Los Angeles County, in case number 5AT06390, Respondent was convicted upon his plea of nolo contendere of violating Vehicle Code section 14601.5, subdivision (a) (driving with a suspended or revoked license with knowledge), a misdemeanor. The court placed Respondent on summary probation for 36 months.

6. The facts and circumstances surrounding the December 2005 conviction are that on August 4, 2005, Respondent drove a vehicle, knowing that his driving privileges were suspended or revoked.

7. On November 19, 2008, in the Superior Court of California, Los Angeles County, in case number 8NW04365, Respondent was convicted upon his plea of nolo contendere of violating Vehicle Code section 14601.1, subdivision (a) (driving while driving privileges are suspended or revoked, with priors), a misdemeanor. The court sentenced Respondent to serve five days in jail and placed him on summary probation for 36 months.

8. The facts and circumstances surrounding the November 2008 conviction are that on September 18, 2008, Respondent drove a vehicle while his driving privileges were suspended or revoked.

9. On September 21, 2010, in the Superior Court of California, Los Angeles County, in case number 9AV10506, Respondent was convicted upon his plea of nolo contendere of violating Vehicle Code section 14601.1, subdivision (a) (driving while driving

privileges are suspended or revoked, with priors), a misdemeanor. The court sentenced Respondent to serve 10 days in jail and placed him on summary probation for 36 months.

10. The facts and circumstances surrounding the September 2010 conviction are that on November 12, 2009, Respondent was stopped at a check-point and was discovered to be driving a vehicle while his driving privileges were suspended.

Factors in Mitigation and Rehabilitation

11. Respondent appeared sincere in his demeanor while testifying and he was respectful of the proceedings. He showed remorse for his actions. His conviction for driving while intoxicated occurred nearly eight years ago. Following that conviction, Respondent attended court-ordered classes for driving while intoxicated and also attended Alcoholics Anonymous meetings for four months, as ordered by the court. The events which led to his most recent conviction occurred nearly three-and-a-half years ago. He has had no further interactions with the law since then. His driver's license was restored to him on April 21, 2011.

12. Respondent appeared motivated to work hard and set a good example for his four-year-old son, with whom he has a close relationship. He pays child-support for his son and his son spends weekends with him.

13. Respondent stated that he has some difficulty reading and writing, but is "good with his hands." Respondent attended classes at a trade school for 16 months and obtained certification as an air-conditioning technician. He passed an examination and has obtained an EPA license to work with freon gas. His employment goal is to fix in-home appliances, provide customer service, and prepare estimates for work to be done. At each of his jobs, he has always been on-time and polite. Respondent submitted two letters¹ spontaneously provided by satisfied customers, who wrote to his employer to praise Respondent's professionalism, his repair skills, and the excellent level of customer service he provided to them in repairing their appliances.

¹ The two letters were admitted as administrative hearsay. The term "administrative hearsay" is a shorthand reference to the provisions of Government Code section 11513, subdivision (d), to the effect that hearsay evidence that is objected to, and is not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a finding. It may be combined with other evidence to provide substantial evidence sufficient to support a finding. (*Komizu v. Gourley* (2002) 103 Cal.App.4th 1001.)

LEGAL CONCLUSIONS

1. Business and Professions Code² section 480 provides that a board may deny a license if the applicant has done any act that would be grounds for revocation or suspension if done by a licensee, or if the applicant has been convicted of a crime, including a conviction following a plea of nolo contendere, which is substantially related to the qualifications, functions, or duties of the business.

2. Section 9841 provides that the Bureau may deny the registration of a service dealer for conviction of a crime that has a substantial relationship to the qualifications, functions and duties of a registrant or if the applicant has committed crimes constituting grounds for denial of licensure under Section 480.

3. Section 9853 provides that a conviction following a plea of nolo contendere is deemed to be a conviction.

4. Title 16, California Code of Regulations, section 2767 provides that a crime is considered to be substantially related to the qualifications, functions or duties of a service dealer if, to a substantial degree, it evidences present or potential unfitness to perform the functions authorized by his registration, in a manner consistent with the public health, safety, or welfare.

5. By reason of their registration and the employment arising out of that registration, service dealers will inevitably find themselves in the homes of consumers under stressful circumstances. A service dealer must be honest, of good moral character, and capable of exercising good judgment in dealing with the public. Respondent has had multiple misdemeanor convictions, three of which occurred while he was still on probation for the preceding ones. Respondent's multiple convictions demonstrate a pattern of repeated and willful disregard for the law and evidence present or potential unfitness to perform the functions authorized by a service dealer registration in a manner consistent with the public health, safety, or welfare, and for that reason the convictions are substantially related to the qualifications, functions and duties of a registrant, pursuant to California Code of Regulations, title 16, section 2767.

6. Cause exists to deny Respondent's application for registration pursuant to sections 480 and 9841 in that Respondent has suffered misdemeanor convictions which are substantially related to the qualifications, functions, and duties of a service dealer, as set forth in Factual Findings 3 through 10.

² All section references are to the Business and Professions Code, unless otherwise indicated.

Disciplinary Guidelines

7. The statutes relating to licensing of professions generally are designed to protect the public from dishonest, untruthful and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) Such proceedings are not for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, in issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Ibid*; see also *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.)

8. The Bureau may consider evidence to determine whether the applicant is sufficiently rehabilitated from the wrongful act such that he is fit for registration. Respondent bears the burden of establishing his rehabilitation. (Evid. Code, §§ 115 and 500.) California Code of Regulations, title 16, section 2768 sets forth the Bureau's criteria for evaluating rehabilitation. Factors in aggravation include Respondent's multiple convictions for driving with a suspended license, which are evidence that the unlawful acts were part of a pattern or practice, the fact that Respondent is currently still on probation (subd. (b)(5)), and Respondent's commission of additional misdemeanors before successfully completing his prior periods of probation, as set out in Factual Findings 3-10. However, as set forth in Factual Findings 11 through 13, the nature and severity of the convictions for driving with a suspended license were relatively minor (subd. (b)(1)); nearly eight years have elapsed since commission of the more serious crime of driving while intoxicated and nearly three-and-a-half years have passed since commission of the most recent, more minor crime (subd. (b)(4)); and Respondent enrolled in and completed a vocational training program, passed his examination, and has performed in an exemplary manner on the job (subd. (b)(6)).

9. Rehabilitation is a qualitative, not quantitative determination and must be evaluated on the basis of two different scales. One is an internal, attitudinal scale and the other is an external, objective scale. In other words, Respondent must present evidence both of a state of mind and a state of facts showing he has been rehabilitated. The state of mind demonstrating rehabilitation is one that has a mature, measured appreciation of the gravity of his misconduct and his remorse for the harm caused. Acceptance of responsibility is a necessary prerequisite to establishing rehabilitation. "Rehabilitation is a state of mind." (*In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 317; see also *Resner v. State Bar* (1967) 67 Cal.2d 799, 811.)

10. Respondent has established his rehabilitation, as established by Factual Findings 11 through 13. Respondent is remorseful and has taken responsibility for his misconduct. He shows insight into his misconduct, evincing personal and professional maturity. Under the applicable criteria, Respondent has established sufficient rehabilitation for issuance of a probationary registration.

11. The Bureau has established disciplinary guidelines which are intended to protect the public from continued illegal behavior and to facilitate the rehabilitation of a registrant without being unduly burdensome or anti-competitive. The facts and circumstances of this case warrant the issuance of a probationary appliance service dealer registration, with a three-year period of probation and sufficient terms and conditions to protect the public.

ORDER

Michael Quintana's application for issuance of an unrestricted appliance service dealer registration is denied. However, Respondent shall be issued an appliance service dealer registration, that registration shall be immediately revoked, the revocation shall be stayed, and Respondent's registration shall be placed on probation for a period of three years, subject to the following terms and conditions:

A. Obey all laws

During the period of probation, Respondent shall comply with all statutes, regulations and rules governing electronic and appliance repair.

B. Comply with probation program

During the period of probation, Respondent shall fully comply with the probation established by the Bureau and shall cooperate with the representatives of the Bureau.

C. Submit quarterly reports

During the period of probation, Respondent shall submit quarterly reports, under penalty of perjury, certifying and documenting his compliance with all the terms and conditions of probation.

D. Maintain valid registration

Respondent shall, at all times while on probation, maintain an active current registration with the Bureau, including any period during which probation is tolled.

Should Respondent's registration, by operation of law or otherwise, expire, upon renewal or reinstatement that registration shall be subject to any and all terms of his probation not previously satisfied.

E. Personal Appearance at Bureau Office

Respondent shall personally appear at the Bureau's office on a schedule set by the Bureau, but no more frequently than each quarter, to explain and provide evidence of the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

F. Cooperation with Bureau inspections

Respondent shall provide Bureau representatives unrestricted access to inspect all of his business locations, including all business records that are required to be maintained in accordance with Section 9847 and 9847.5 of the Business and Professions Code.

G. Notification of Arrest

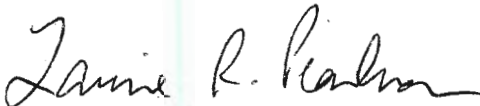
If Respondent is arrested during the period he is on probation, he shall, within 72 hours of his arrest, notify the Bureau in writing of the fact of his arrest which shall include date of arrest, the name of the arresting agency, the crime for which he was arrested, the date(s) on which he is scheduled to appear in court, and the name and address of the court where he is required to appear.

H. Violation of Probation

If Respondent violates the conditions of his probation, the Bureau, after giving him notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline of Respondent's registration.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's registration or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against that registration, the probationary period shall automatically be extended and it shall not expire until the accusation or petition has been acted upon by the Bureau. Upon successful completion of probation, Respondent's registration will be fully restored.

DATED: April 12, 2013


LAURIE R. PEARLMAN
Administrative Law Judge
Office of Administrative Hearings

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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF ELECTRONIC AND APPLIANCE REPAIR, HOME**
11 **FURNISHINGS AND THERMAL INSULATION**
12 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
Against:

Case No. AN 2011-692

13 **MICHAEL QUINTANA a.k.a., MICHAEL**
14 **FLORENTINO QUINTANA**
15 **d.b.a., QUALITY APPLIANCE & A.C.**
16 **REPAIR**

STATEMENT OF ISSUES

Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Tonya Blood (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Bureau Chief of the Bureau of Electronic and Appliance Repair, Home
22 Furnishings and Thermal Insulation, Department of Consumer Affairs.

23 2. On or about July 15, 2011, the Bureau of Electronic and Appliance Repair, Home
24 Furnishings and Thermal Insulation (Bureau) received an application for registration as an
25 Appliance Service Dealer from Michael Quintana, also known as Michael Florentino Quintana,
26 doing business as Quality Appliance & A.C. Repair (Respondent). On or about June 14, 2011,
27 Michael Quintana certified under penalty of perjury to the truthfulness of all statements, answers,
28 and representations in the application. The Bureau denied the application on March 12, 2012.

1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Bureau under the authority of the
3 following laws. All section references are to the Business and Professions Code unless otherwise
4 indicated.

5 **STATUTORY PROVISIONS**

6 4. Section 480 states, in pertinent part:

7 "(a) A board may deny a license regulated by this code on the grounds that the applicant
8 has one of the following:

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

15

16 (3) (A) Done any act that if done by a licentiate of the business or profession in
17 question, would be grounds for suspension or revocation of license.

18 (B) The board may deny a license pursuant to this subdivision only if the crime or
19 act is substantially related to the qualifications, functions, or duties of the business or profession
20 for which application is made."

21 5. Section 490 states, in pertinent part:

22 "(a) In addition to any other action that a board is permitted to take against a licensee, a
23 board may suspend or revoke a license on the ground that the licensee has been convicted of a
24 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
25 or profession for which the license was issued.

26 (b) Notwithstanding any other provision of law, a board may exercise any authority to
27 discipline a licensee for conviction of a crime that is independent of the authority granted under

28 ///

1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
2 of the business or profession for which the licensee's license was issued.

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

9 6. Section 9841 states, in pertinent part:

10 "(a) The director may deny, suspend, revoke, or place on probation the registration of a
11 service dealer for any of the following acts or omissions done by himself or herself or any
12 employee, partner, officer, or member of the service dealer and related to the conduct of his or her
13 business:

14 ...

15 (7) Conviction of a crime that has a substantial relationship to the qualifications,
16 functions and duties of a registrant under this chapter, in which event the record of the conviction
17 shall be conclusive evidence thereof.

18 ...

19 (b) The director may also deny, or may suspend, revoke, or place on probation, the
20 registration of a service dealer if the applicant or registrant, as the case may be, has committed
21 acts or crimes constituting grounds for denial of licensure under Section 480."

22 7. Section 9853 states, in pertinent part:

23 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
24 charge substantially related to the qualifications, functions, and duties of a service dealer or
25 service contractor is deemed to be a conviction within the meaning of this article. The director
26 may suspend, revoke, or place on probation a registration, or may deny registration, when the
27 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when
28 an order granting probation is made suspending the imposition of sentence, irrespective of a

1 subsequent order under Section 1203.4 of the Penal Code, allowing that person to withdraw his or
2 her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
3 dismissing the accusation, information, or indictment."

4 REGULATORY PROVISIONS

5 8. California Code of Regulations, title 16, section 2767 provides, in pertinent part:

6 "For the purposes of denial, suspension, or revocation of the registration of a repair service
7 dealer pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
8 Code, a crime or act shall be considered to be substantially related to the qualifications, functions
9 or duties of a service dealer if to a substantial degree it evidences present or potential unfitness of
10 a service dealer to perform the functions authorized by his registration in a manner consistent
11 with the public health, safety, or welfare."

12 FIRST CAUSE FOR DENIAL OF APPLICATION

13 (Convictions of Crimes)

14 9. Respondent's application is subject to denial under sections 9841, subdivision (a)(7)
15 and 480, subdivision (a)(1), in that Respondent was convicted of crimes, as follows:

16 a. On or about September 21, 2010, after pleading nolo contendere, Respondent was
17 convicted of one misdemeanor count of violating Vehicle Code section 14601.1, subdivision (a)
18 [driving while driving privileges are suspended or revoked] in the criminal proceeding entitled
19 *The People of the State of California v. Michael Florentino Quintana* (Super. Ct. Los Angeles
20 County, 2010, No. 9AV10506). The Court sentenced Respondent to serve 10 days in Los
21 Angeles County Jail and placed him on 36 months probation, with terms and conditions. The
22 circumstances surrounding the conviction are that on or about November 12, 2009, Respondent
23 drove a vehicle while his driving privilege was suspended or revoked.

24 b. On or about November 19, 2008, after pleading nolo contendere, Respondent was
25 convicted of one misdemeanor count of violating Vehicle Code section 14601.1, subdivision (a)
26 [driving while driving privileges are suspended or revoked] in the criminal proceeding entitled
27 *The People of the State of California v. Michael Florentino Quintana* (Super. Ct. Los Angeles
28 County, 2008, No. 8NW04365). The Court sentenced Respondent to serve 5 days in Los

1 Angeles County Jail and placed him on 36 months probation, with terms and conditions. The
2 circumstances surrounding the conviction are that on or about September 18, 2008, Respondent
3 drove a vehicle while his driving privilege was suspended or revoked.

4 c. On or about December 29, 2005, after pleading nolo contendere, Respondent was
5 convicted of one misdemeanor count of violating Vehicle Code section 14601.5, subdivision (a)
6 [driving while driving privileges are suspended or revoked with knowledge] in the criminal
7 proceeding entitled *The People of the State of California v. Michael Florentino Quintana* (Super.
8 Ct. Los Angeles County, 2005, No. 5AT06390). The Court placed Respondent on 36 months
9 probation, with terms and conditions. The circumstances surrounding the conviction are that on
10 or about August 4, 2005, Respondent drove a vehicle while knowing his driving privileges were
11 suspended or revoked.

12 d. On or about August 3, 2005, after pleading nolo contendere, Respondent was
13 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
14 [driving while having 0.08% or more, by weight, of alcohol in his blood] in the criminal in the
15 criminal proceeding entitled *The People of the State of California v. Michael Florentino Quintana*
16 (Super. Ct. Los Angeles County, 2005, No. 5AT04945). The Court sentenced Respondent to
17 serve 3 days in Los Angeles County Jail and placed him on 3 years probation, with terms and
18 conditions. The circumstances surrounding the conviction are that on or about June 22, 2005,
19 Respondent drove a vehicle while having a blood-alcohol content level of approximately 0.09%.

20 SECOND CAUSE FOR DENIAL OF APPLICATION

21 (Acts Warranting Denial of Licensure)

22 10. Respondent's application is subject to denial under sections 9841, subdivision (b) and
23 480, subdivisions (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if done by a
24 licentiate of the business and profession in question, would be grounds for suspension or
25 revocation of his license. Respondent was convicted of crimes substantially related to the
26 qualifications, functions, or duties of a licensed service dealer which to a substantial degree
27 evidences his present or potential unfitness to perform the functions authorized by his license in a
28 manner consistent with the public health, safety, or welfare, in violation of sections 9841,

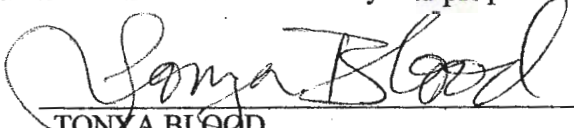
1 subdivision (a)(7) and 490, in conjunction with California Code of Regulations, title 16, section
2 2767. Complainant refers to, and by this reference incorporates, the allegations set forth above in
3 paragraph 9, as though set forth fully.

4 **PRAYER**

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6 and that following the hearing, the Bureau issue a decision:

- 7 1. Denying the application of Respondent for registration as an Appliance Service
8 Dealer; and
9 2. Taking such other and further action as deemed necessary and proper.

10 DATED: 08/29/2012



11 TONYA BLOOD
12 Bureau Chief
13 Bureau of Electronic and Appliance Repair, Home
14 Furnishings and Thermal Insulation
15 Department of Consumer Affairs
16 State of California
17 *Complainant*

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