

**FILED** April 6, 2017 (Date)

BEFORE THE IOWA REAL ESTATE COMMISSION

IREC  
Board / Commission

[Signature]  
Executive Officer

IN THE MATTER OF: )  
 )  
TONYA ADAMS, )  
 )  
281 15<sup>th</sup> Street NW )  
Cedar Rapids, IA 52405 )  
 )  
Applicant. )

DIA No. 17REC002  
Case No. 16-296

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
DECISION & ORDER**

**STATEMENT OF THE CASE**

On November 3, 2016, the Iowa Real Estate Commission (the Commission) filed a Notice of Intent to Deny License to Tonya Adams pursuant to Iowa Code section 543B.15. Adams appealed the Commission’s denial. The Commission set a hearing to address the denial of Adams’ license application pursuant to Iowa Code section 543B.15 and 193E Iowa Administrative Code 4.1(7).

An in-person hearing was held on March 2, 2017 at the offices of the Iowa Real Estate Commission in Des Moines, Iowa. Assistant attorney general John Lundquist represented the state of Iowa. Applicant Tonya Adams appeared and was self-represented. Pursuant to 193 Iowa Administrative Code 7.39(3), the hearing was open to the public.

The following members of the Commission were present for the hearing: Terry Duggan, chairperson; John Goede; Helen Kimes; Dennis Stolk; Janet DeMott; and Michael Telford. Administrative Law Judge Laura Lockard assisted the Commission in conducting the hearing. After hearing all the evidence, the Commission convened in closed session, pursuant to Iowa Code section 21.5(1)(f), to deliberate its decision. The administrative law judge was instructed to prepare the Commission’s written decision in accordance with its deliberations.

**THE RECORD**

The record includes the Notice of Intent to Deny License; Notice of Hearing; Order to Continue Formal Hearing; State’s Exhibits 1 through 13; and Applicant’s Exhibits A through Z and A1 through A3. The record also includes testimony from Sandy Malek, Commission investigator, and Applicant Tonya Adams.

## FINDINGS OF FACT

On September 14, 2016, Tonya Adams submitted an Application for an Individual License as a real estate salesperson to the Commission. In response to a question on the application, Adams disclosed that she had been convicted of a felony or misdemeanor criminal offense. With her application, Adams submitted a copy of an FBI report detailing her criminal history. The FBI report included a 2014 conviction for prohibited act by registrant, pursuant to Iowa Code section 124.403, among other convictions. (Exh. 3; Malek testimony).

The Commission also requested a criminal history report from the Division of Criminal Investigation (DCI) in conjunction with Adams' application. Two convictions appeared on the DCI report that had not been included on the FBI report that Adams submitted: 1) a 2006 theft 5<sup>th</sup> conviction; and 2) a 2006 interference with official acts conviction. (Exh. 9, 10; Malek testimony).

During the processing of Adams' application, the Commission investigator obtained police records related to the 2014 conviction for prohibited act by registrant, including the Cedar Rapids Police Incident/Investigation Report. The report reflects that on April 25, 2013, Adams obtained a handwritten prescription from Dr. Yodfat at Linn Community Care Center for 10 tablets of 5-325 mg Percocet. A pharmacist from Hy-Vee pharmacy contacted Linn Community Care Center later that day and it was discovered that the prescription had been presented at the pharmacy and altered to reflect a prescription for 7.5-325 mg, a higher dosage than Dr. Yodfat prescribed. Adams admitted to police that she had altered the prescription that Dr. Yodfat gave her before attempting to have it filled. (Exh. 6, 7; Malek testimony).

Adams' sentence for the 2014 prohibited act conviction included 2 days jail and a fine in the amount of \$315. Adams was permitted to perform community service in lieu of the fine. Records the Commission obtained from Iowa Courts Online reflect that the judgment was satisfied on August 19, 2014. (Exh. 4; Malek testimony).

After reviewing Adams' application, the Commission issued a Notice of Intent to Deny License on November 3, 2016. The notice states, in part:

4. The criminal history checks conducted by the Iowa Division of Criminal Investigations ("DCI") and the Federal Bureau of Investigation ("FBI") pursuant to Iowa Code 543B.15(9) (2016) and a search of Iowa Courts Online established that the APPLICANT failed to accurately and/or completely disclose her criminal history as requested by question 10a on the application. The APPLICANT's failure to accurately and completely disclose her criminal history constitutes a false statement of material fact upon which the COMMISSION may deny her license application.

5. Additionally, review of the APPLICANT's criminal history establishes that the APPLICANT stands convicted of a criminal offense including or involving forgery, fraud, and/or moral turpitude. Because less than five

years have elapsed since the entry of this conviction and/or the fulfillment of all applicable sentencing terms, the APPLICANT is disqualified from applying for and/or should otherwise be denied a new Iowa real estate salesperson license pursuant to Iowa Code section 543B.15(3)(a)(2).

6. In recognition of the material false statements submitted to the COMMISSION as detailed above in Paragraph 4 and entry of the criminal conviction detailed above in Paragraph 5, the COMMISSION finds grounds exist to deny the APPLICANT's application for an Iowa Real Estate Salesperson license.

At hearing, Adams testified that she included the FBI criminal history report with her application to the Commission as she believed that it contained all of her criminal convictions. She did not intend to omit the two charges that the subsequent DCI check uncovered; rather, she was unaware that the FBI report was incomplete. (Adams testimony).

### CONCLUSIONS OF LAW

Iowa law provides that an applicant for a real estate salesperson's license who has been convicted of an offense including or involving forgery shall not be considered for licensure until at least five years has elapsed following completion of any applicable period of incarceration, or payment of a fine or fulfillment of any other type of sentence.<sup>1</sup> In license denial cases, the applicant has the ultimate burden of persuasion as to the applicant's qualification for licensure.<sup>2</sup>

The relevant portion of the statute under which Adams was convicted in 2014 provides:

1. It is unlawful for any person knowingly or intentionally:

...

c. To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.<sup>3</sup>

Adams does not dispute the existence of the prohibited acts conviction, nor does she dispute that she fulfilled all of her obligations with regard to her sentence for this conviction on August 19, 2014. Adams' application, submitted in September 2016, was made less than five years following August 19, 2014, the date on which she ultimately fulfilled all of the terms of her criminal sentence. Based on a preponderance of the evidence presented, the Commission concludes that Adams' conviction involved forgery, as Adams altered a prescription written by her physician to obtain a more potent

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<sup>1</sup> Iowa Code § 543B.15(3)(a)(2) (2016).

<sup>2</sup> 193 Iowa Administrative Code (IAC) 7.39(3).

<sup>3</sup> Iowa Code § 124.403(1) (2013).

narcotic without her physician's permission.<sup>4</sup> Under these circumstances, the Commission's November 3, 2016 decision denying Adams' application to be licensed as a real estate salesperson was correct.

The Commission has no discretion to consider Adams' application until at least five years have passed since the fulfillment of her criminal sentence; in Adams' case, that date would be August 19, 2019. At that time, Adams may submit a new application and the Commission may consider whether she meets all of the requirements for licensure.

**ORDER**

IT IS THEREFORE ORDERED that the Commission's November 3, 2016 decision denying Applicant Tonya Adams' application for licensure as a real estate salesperson was correct and must be affirmed.

Dated this 6<sup>th</sup> day of April, 2017.



Terry Duggan  
Chairperson, Iowa Real Estate Commission

cc: Tonya Adams, Applicant  
John Lundquist, AAG

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<sup>4</sup> Under Iowa law, the criminal offense of forgery is defined to include altering the writing of another without the other's permission. Iowa Code § 715A.2(1)(a).

Judicial review of the commission's action may be sought in accordance with the Iowa administrative procedure act, from and after the date of the commission's order. Any judicial review petition must be filed with the district court within 30 days after the issuance of the commission's final decision. 193 IAC 7.37.

FILED

December 15, 2016

(Date)

IAEL

Board / Commission

Signature, Executive Officer

BEFORE THE IOWA REAL ESTATE COMMISSION  
200 EAST GRAND, SUITE 350  
DES MOINES, IOWA 50309

IN THE MATTER OF:	)	
	)	CASE NUMBER: 16-296
Tonya Adams	)	
	)	NOTICE OF HEARING
281 15 <sup>th</sup> Street NW	)	
Cedar Rapids, IA 52405	)	
	)	
APPLICANT	)	

The Iowa Real Estate Commission ("Commission") issues this Notice of Hearing ("Notice") pursuant to Iowa Code Section 17A.12(2). The Commission has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 543B and 272C (2016). The hearing shall address whether Applicant Tonya Adam's application for a new real estate salesperson license should be denied for the reasons cited in the attached Notice of Intent to Deny License issued by the Commission on November 3, 2016. See Exhibit A.

**NOTICE OF HEARING**

1. **HEARING.** Pursuant to Iowa Code sections 543B.19 and 543B.35, a contested case hearing on the Applicant's appeal of the Notice of Intent to Deny her application for a new real estate salesperson license will be held before the Iowa Real Estate Commission on the 2<sup>nd</sup> day of February, 2017, at 9:30 o'clock AM, at 200 East Grand, Suite 350, Des Moines, Iowa.

2. **ACKNOWLEDGMENT.** The Commission requests that you file a statement to acknowledge receipt of the notice of hearing within 10 days of the date you are served with this Notice.

3. **PREHEARING CONFERENCE.** A prehearing conference will be held by telephone on the 26<sup>th</sup> day of January, 2017 at 9:30 o'clock AM before an Administrative Law Judge from the Iowa Department of Inspections and Appeals ("ALJ"). You are responsible for notifying the Commission office of the telephone number at which you or your counsel can be reached. Commission rules on prehearing conferences may be found at 193 Iowa Administrative Code 7.21.

4. **PRESIDING OFFICER.** The full Commission shall serve as presiding officer at hearing, pursuant to Iowa Code section 272C.6(1) and 193 Iowa Administrative Code 7.10(2). The Commission may request that an ALJ make initial rulings on prehearing matters, and be present to assist and advise the Board at hearing, as described in 193 Iowa Administrative Code 7.10(4).

5. **HEARING PROCEDURES.** Commission rules on hearing procedures may be found at 193 Iowa Administrative Code chapter 7. You have the right to respond to the reasons cited for your license denial, produce evidence on your behalf, cross-examine witnesses and examine any documents introduced at hearing. You may appear personally and be represented by counsel at your own expense. Consult rule 193 Iowa Administrative Code 7.22 if you need to request an alternative time or date. License denial hearings are contested cases that are open to the public.

6. **DEFAULT.** If you fail to appear at hearing, the Commission may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 193 Iowa Administrative Code 7.27.

7. **STATE'S COUNSEL.** Licensee denial decisions are defended by an Assistant Attorney General acting on behalf of the public interest (the State). Copies of all pleadings shall be filed with the Commission, with copies mailed to:

John R. Lundquist  
Assistant Attorney General  
Iowa Department of Justice  
2<sup>nd</sup> Floor, Hoover State Office Building  
Des Moines, Iowa 50319

Phone: 515-281-3658  
Fax: 515-281-4209  
John.Lundquist@iowa.gov

8. **RESPONDENT'S COUNSEL.** Copies of all pleadings filed with the Commission shall also be provided to Respondent's counsel of record:

NONE

9. **SETTLEMENT.** The procedural rules governing the Commission's settlement process are found at 193 Iowa Administrative Code 7.42. If you are interested in pursuing settlement of this matter, please contact Assistant Attorney General John R. Lundquist.

10. **COMMUNICATIONS.** You may not contact Commission members by phone, letter, facsimile, e-mail or in person about this Notice of Hearing or your real estate salesperson license application. Commission members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Commission office and serve upon all parties in the case. You should direct any questions to Assistant Attorney General John R. Lundquist at 515-281-3658, or the Commission's Executive Officer at 515-725-9026, or Fax 515-725-9032.

*In re:* Tonya Adams; IREC Case No. 16-296

Notice of Hearing

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11. **ADA NOTICE.** If you require the assistance of auxiliary aids or services to participate in this matter because of a disability, immediately call or e-mail the Commission's Executive Officer at 515-725-9026. If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

**This Notice of Hearing is filed and issued on the 15<sup>th</sup> day of December, 2016.**



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Jeffrey M. Evans, Executive Officer  
Iowa Real Estate Commission

Copies to:

Assistant Attorney General, John Lundquist

Department of Inspections and Appeals, assigned Administrative Law Judge



BEFORE THE IOWA REAL ESTATE COMMISSION **FILED**  
200 EAST GRAND, SUITE 350  
DES MOINES, IA 50309

November 3, 2016 (Date)  
JR&L  
Board / Commission  
[Signature]  
Signature Executive Officer

IN RE:	)	
	)	CASE NUMBER: 16-296
Tonya Adams	)	
	)	NOTICE OF INTENT TO
281 15 <sup>th</sup> Street NW	)	DENY LICENSE
Cedar Rapids, IA 52405	)	
	)	
APPLICANT - SALESPERSON	)	

**PURSUANT TO IOWA CODE SECTIONS 543B.19 AND 543B.35, THE IOWA REAL ESTATE COMMISSION ISSUES THE FOLLOWING NOTICE:**

1. On or about September 14, 2016, Tonya Adams (APPLICANT) submitted an Application for Individual License to the Iowa Real Estate Commission (COMMISSION) for a new Iowa real estate salesperson license. Following its review of the APPLICANT's application at its November 3, 2016 meeting, the COMMISSION authorized the issuance of this Notice of Intent to Deny License.

2. Truthful and complete disclosure of one's criminal history is essential to the COMMISSION's determination of whether an applicant meets all requirements for obtaining an Iowa real estate salesperson license. See Iowa Code § 543B.15(3) (2016). A person who makes a false statement of material fact on an application for an Iowa real estate salesperson license may be denied a license by the COMMISSION solely on the grounds of the false statement. See Iowa Code § 543B.15(5) (2016).

3. Furthermore, an applicant for a real estate salesperson's license who has been convicted of any criminal offense including or involving "forgery, embezzlement, obtaining money under false pretenses, theft, arson, extortion, conspiracy to defraud, or other similar offense, any offense involving moral turpitude, or other offense involving a criminal breach of fiduciary duty" shall be ineligible for licensure for a period of five years following completion of any applicable period of incarceration, payment of fines, or fulfillment of any other term of sentencing. See Iowa Code § 543B.15(3).

4. The criminal history checks conducted by the Iowa Division of Criminal Investigations ("DCI") and the Federal Bureau of Investigation ("FBI") pursuant to Iowa Code 543B.15(9) (2016) and a search of Iowa Courts Online established that the APPLICANT failed to accurately and/or completely disclose her criminal history as requested by question 10a on the application. The APPLICANT's failure to accurately and completely disclose her criminal history constitutes a false statement of material fact upon which the COMMISSION may deny her license application.

5. Additionally, review of the APPLICANT's criminal history establishes that the APPLICANT stands convicted of a criminal offense including or involving forgery, fraud, and/or moral turpitude. Because less than five years have elapsed since the entry of this conviction and/or the fulfillment of all applicable sentencing terms, the APPLICANT is disqualified from applying for and/or should otherwise be denied a new Iowa real estate salesperson license pursuant to Iowa Code section 543B.15(3)(a)(2).

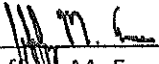
6. In recognition of the material false statements submitted to the COMMISSION as detailed above in Paragraph 4 and entry of the criminal conviction detailed above in Paragraph 5, the COMMISSION finds grounds exist to deny the APPLICANT's application for an Iowa Real Estate Salesperson license.

7. The APPLICANT is hereby notified that her application for an Iowa Real Estate License shall be **DENIED** unless a timely appeal is filed pursuant to Iowa Code § 543B.19. The notice of appeal shall be in writing and must be filed with the offices of the Iowa Real Estate Commission, 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309, no later than **December 5, 2016**. See Iowa Code §§ 543B.19, 543B.35.

8. Upon receipt of a timely notice of appeal, the COMMISSION shall set a hearing to address the issues cited by the COMMISSION for the denial of the APPLICANT's real estate salesperson license application. The Applicant shall have the right to respond to the reasons cited for the license denial, produce evidence on her behalf, cross-examine witnesses and examine any documents introduced at hearing. The Applicant may appear personally and be represented by counsel at her own expense at any such hearing.

9. In the event that the COMMISSION does not receive a timely written notice of appeal, a final order confirming the denial of APPLICANT's real estate salesperson license application shall be issued forthwith and there will be no further opportunities for appeal.

Notice issued this 3<sup>rd</sup> day of November 2016, to Tonya Adams via restricted, certified mail, return receipt requested, to resident address 281 15<sup>th</sup> ST NW, Cedar Rapids, IA 52406.

  
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Jeffrey M. Evans, Executive Officer  
Iowa Real Estate Commission

November 3, 2016  
\_\_\_\_\_  
Date

Copies to:  
Assistant Attorney General, John Lundquist

**FILED** January 19, 2017 (Date)

JRE  
Board / Commission  
J.M.E.  
Signature, Executive Officer

BEFORE THE IOWA REAL ESTATE COMMISSION  
200 EAST GRAND, SUITE 350  
DES MOINES, IOWA 50309

IN RE:	)	
	)	CASE NUMBER: 16-296
Tonya Adams	)	
	)	ORDER TO CONTINUE
281 15 <sup>th</sup> Street NW	)	FORMAL HEARING
Cedar Rapids, IA 52405	)	
	)	
APPLICANT	)	

Come now before the Real Estate Commission for the State of Iowa [Commission], a motion to continue the contested action between the Commission and Tonya Adams [Applicant]. This motion is at the request of the Applicant, who stated that she was unwilling to waive the requirements set forth in Iowa Code § 17A.12(1) and was unwilling to accept notice via electronic mail; and therefore asked for a continuance of the hearing scheduled on February 2, 2017. The Commission hereby grants the continuance with the hearing rescheduled on the 2<sup>nd</sup> day of **March, 2017** at **1:30 o'clock PM**, at 200 East Grand, Suite 350, Des Moines, Iowa. A prehearing conference will be held by telephone on the **23<sup>rd</sup> day of February, 2017** at **10:00 o'clock AM** before an Administrative Law Judge from the Iowa Department of Inspections and Appeals.

Dated this 19<sup>th</sup> day of January 2017.

J.M.E.  
Jeffrey M. Evans, Executive Officer  
Iowa Real Estate Commission