

MINUTES OF THE
SPECIAL MEETING OF THE
STRUCTURAL PEST CONTROL BOARD
JANUARY 23, 2009

The meeting was held on Friday, January 23, 2009, at the Embassy Suites Hotel Napa Valley, 1075 California Blvd., Napa, California, commencing at 9:05 AM with the following members constituting a quorum:

Cliff Utley, President
Cris Arzate, Vice President
Luis Agurto
Jean Melton
Bill Morris
Mustapha Sesay

Board member Terrel Combs-Feirrer was not present.

Board staff present:

Kelli Okuma, Executive Officer
Susan Saylor, Assistant Executive Officer
Carl Smitley, Enforcement Coordinator
Ryan Vaughn, Administration Analyst

Departmental staff present:

Kurt Heppler, Legal Counsel

Board Liaison Deputy Attorney General Christina Thomas was also in attendance.

I. **ROLL CALL**

Ms. Saylor read the roll call.

II. **FLAG SALUTE**

Mr. Morris led everyone in the flag salute.

III. **PUBLIC HEARING TO ADOPT SECTION 1950.1 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS TO PROVIDE AN EXTENSION OF TIME FOR PERSONS SERVING IN THE ARMED SERVICES TO MEET THE**

CONTINUING EDUCATION RENEWAL REQUIREMENT, AND TO AMEND SECTION 1984 TO CLARIFY THE DEFINITION OF INTEGRATED PEST MANAGEMENT

Mr. Heppler announced for the record that this hearing was to consider the proposed adoption of section 1950.1 and proposed amendment of section 1984 of Title 16 of the California Code of Regulations (CCR) relating to the practice of structural pest control. The affected sections were 1950.1, and 1984 as outlined in the public notice. This hearing was being held pursuant to section 8525 of the Business and Professions (B&P) Code as well as the provisions of the Administrative Procedures Act as set forth in the Government Code. The hearing was open to take oral testimony and/or documentary evidence by any person interested in these regulations for the record, which was being made by tape recorder. All oral testimony and documentary evidence would be considered by the Board pursuant to the requirements of the Administrative Procedures Act before the Board formally adopted the proposed amendments to the regulations, or recommended changes that may evolve as a result of the hearing.

Mr. Heppler stated that if any interested person desired to provide oral testimony, he or she should stand or come forward, giving his or her name and address, and if he or she represented an organization, the name of such organization, and that persons offering oral testimony would not be cross-examined or sworn. These steps would be followed so that the Board would have a full record of all those who offered such testimony. He stated it was the desire of the Board that the record of the hearing be clear and intelligible and that the hearing itself be orderly, thus providing all parties with fair and ample opportunity to be heard. After all interested parties, if any, had been heard, the issue would stand submitted.

Mr. Heppler asked the audience if there were any questions concerning the nature of the proceedings or the procedures to be followed in today's public hearing. As there were none, he stated they would proceed in numerical order to consider the Board's proposed amendments to the regulations.

Proposed Adoption of Regulation Section 1950.1

Mr. Heppler asked the audience if anyone would like to offer oral comments of support or objection to the proposed adoption of CCR section 1950.1.

There were no public comments.

Proposed Amendment of Regulation Section 1984

Mr. Heppler asked the audience if anyone would like to offer oral comments of support or objection to the proposed amendments to CCR section 1984.

There were no public comments.

There being no further public comments, Mr. Heppler concluded the regulatory hearing and opened up the proposals for Board discussion.

Proposed Adoption of Regulation Section 1950.1

Mr. Heppler suggested making three changes to the proposed adoption of CCR section 1950.1. He recommended replacing the two instances of “his/her” with “his or her” and adding B&P Code section 114 as a reference for the regulation. Mr. Heppler added that the changes would require a 15-day notice of modified text to be sent to the Board’s interested parties list.

Mr. Sesay moved and Ms. Melton seconded to modify the proposed language of section 1950.1 as follows and make the modifications available for a 15-day public comment period and delegate authority to the executive officer to adopt the proposed modified regulation amendments as follows, provided there are no adverse public comments:

§1950.1. Armed Services Exemption

Any licensee who permitted his/ or her license to expire while serving in any branch of the armed services of the United States during any call for action, may have one year from the date of discharge from the armed services or return to inactive status to earn the required continuing education hours necessary to reinstate his/ or her license, provided the license was valid at the time the licensee was called to action, and the application for reinstatement is accompanied by an affidavit showing the date of discharge from the armed services or return to inactive status.

NOTE: Authority cited: Section 8525, Business and Professions Code. Reference: Sections 114, 8590, 8590.1, 8593, and 8593.1, Business and Professions Code.

Passed unanimously.

Proposed Amendment of Regulation Section 1984

Ms. Melton moved and Mr. Agurto seconded to adopt the proposed amendment to section 1984 of the California Code of Regulations as follows:

§1984. Structural Integrated Pest Management.

(a)Structural integrated pest management (IPM) means a systematic decision making approach to managing pests, which focuses on long-term prevention or suppression with minimal impact on human health, property, the environment, and non-target organisms. Structural IPM incorporates all reasonable measures to prevent pest problems by properly identifying pests, monitoring population dynamics, and using ~~cultural~~

behavioral, physical, biological or chemical pest population control measures to reduce pests to acceptable levels. If a pesticide application or other intervention is determined to be necessary, the selection and application of the intervention shall be performed in a manner that minimizes risk to people, property, the environment, and non-target organisms, while providing effective pest management.

(b) For the purposes of this section, intervention means an action, device, product or practice that is intended for the prevention, control, management, elimination or abatement of a pest.

NOTE: Authority cited: Section 8525, Business and Professions Code. Reference: Section 8505, Business and Professions Code.

Passed unanimously.

IV. RESEARCH UPDATE - THE ROLE OF GENETICS AND CUTICULAR HYDROCARBONS IN ARGENTINE ANT AGGRESSION- DR. TSUTSUI

Dr. Neil Tsutsui, University of California, Berkeley (UCB), presented a research update on the role of genetics and cuticular hydrocarbons in argentine ant aggression. The project began in September 2005, and was recently completed on December 31, 2008.

The final report of the research project will be made available on the Board's website.

V. APPROVAL OF MINUTES OF THE NOVEMBER 18, 2008, BOARD MEETING

Mr. Arzate moved and Mr. Sesay seconded to approve the minutes of the annual meeting of November 18, 2008. Passed unanimously.

VI. EXECUTIVE OFFICER'S REPORT

Ms. Okuma reported on the following:

- Interviews have been completed to fill the vacant enforcement supervisor position. The position will be offered to a candidate in the next week or so.
- Pat Pendleton, of the Administration unit, will be retiring at the end of February. She has worked for the Board since 1980 and has been a significant help to Ms. Okuma and the Board over the years. Lisa Esquivel of the Licensing unit will be trained to take over for Ms. Pendleton.
- The Board could be closed on the first and third Fridays of each month as a result of the Governor's mandated furloughs. Ms. Okuma stated that the two days a month should not significantly impact the Board's workload or the monthly licensing examinations.

Ms. Thomas asked about the months that have five Fridays.

Ms. Okuma responded that the Governor's executive order specifically stated furloughs would take place on the first and third Fridays of each month.

Mr. Utley asked if the Board has considered using an alternating furlough schedule so that the office would not be closed.

Ms. Okuma responded that the closure of state buildings on the first and third Fridays has been determined to offer an additional savings to the state.

- The Department of Consumer Affairs (DCA) contacted Ms. Okuma about holding another Board summit meeting in January 2010. The Board has also been asked to consider participating in a "mini-summit" in June 2009. Ms. Okuma stated her concern with already scheduled meetings to the Director and added that other Boards have similar concerns. She stated that nothing is definitive at this point.

Mr. Morris asked if the June mini-summit meeting would replace the normally scheduled July Board meeting.

Ms. Okuma responded that the mini-summit would replace the July meeting.

Ms. Saylor reported on the following:

- Licensing statistics, survey results, and the Regulatory Action Status were reviewed with the Board members.

Mr. Morris asked Ms. Saylor if there was any concern with a negative comment that was made about the Board's examination proctors.

Mr. Utley stated that the comment could be from the fact that the December exam had issues with the normal San Bernardino proctors being snowed in. Mr. Utley added that two Board specialists as well as he proctored the examination.

Ms. Saylor stated that the complaint has been forwarded onto the Board proctors.

Ms. Okuma added that the Board has received similar complaints in the past and that the Licensing unit supervisor travels to San Bernardino regularly to monitor the testing process.

Mr. Morris asked if there was reason for concern in that under "penalties assessed" for the current fiscal year there is a figure of \$0 while at the same time the previous fiscal year, the figure was \$4000.

Ms. Okuma responded that the figure of \$4000 could have been a result of one or two cases so that there was no reason for concern.

Mr. Morris questioned the disparity of the number of applicator licenses cancelled when compared to the last fiscal year.

Ms. Saylor responded that the Board's statutes had been amended to establish a delinquency period for expired applicator licenses and the difference in numbers is as a result of the clean up of expired applicator licenses.

Mr. Morris commented on the high passing rate of some of the Board's examinations. He asked how the passing rates compared to previous years and questioned on what a ideal passing percentage would be.

Ms. Okuma responded that the high passing rates could probably be explained by the fact that the Board has developed new examinations. The branch 3 exams are the most current and the Board is in the process of developing new branch 1 examinations. Board staff will prepare detailed examination stats that will also include the previous year's results.

- Melina Ramirez was hired in December as an Office Assistant in the Licensing unit. She will act as the Board's receptionist and will assist the licensing unit.
- Dr. Vernard Lewis' research contract, conducted at the University of California, Berkeley, has been extended until June 30, 2009. The extension is for time only and does not include an increase in funds.

VII. DEPARTMENT OF PESTICIDE REGULATION UPDATE

Cliff Smith, Department of Pesticide Regulation (DPR), reported on the following:

- The annual structural enforcement training will take place on March 16-18 in Covina and April 20-22 in Dublin.

VIII. PRE-TREATMENT COMMITTEE UPDATE

Mr. Smith reported that the Pre-treatment committee met on January 5, 2009. A motion was made to recommend to the Board a notice of intent with a two-hour minimum notification to the Board. The committee also made a motion to request that the pre-treatment program be revenue generating. It is undetermined if the committee's recommendations can be achieved without legislation. Mr. Smith reported that the next committee meeting is scheduled for February 2, 2009, to discuss "lock tag" requirements, the details of the notification, and the enforcement tools needed to carry out the pre-treatment enforcement.

Mr. Utley asked if Mr. Heppler could answer the questions as to whether a legislative amendment would be required.

Mr. Heppler responded that he could not make a definite determination without the committee's final recommendations but that generally, a recommendation to have a fee-based program would require legislation.

Mr. Smith asked if the Board needs to have the committee prepare recommendations for approval.

Ms. Okuma responded that she had checked with the committee and Board staff and it was determined that the proposals were not ready to be presented to the Board.

IX. REVIEW OF ENFORCEMENT STATISTICS

Ms. Okuma discussed the Board's recent enforcement statistics relating to false and misleading advertising. The number of citations and fines was 19 for 2006, 11 for 2007, and 24 for 2008. She added that there is currently no system in place to count the number of warning or cease and desist letters but that the Board will be developing a method to track them. Ms. Okuma stated that the citations and fines could not be broken down to orange oil cases.

Mr. Morris asked if Ms. Okuma would assume that false and misleading violations would increase due to the economic times.

Ms. Okuma stated that one could assume that the violations would increase.

Martyn Hopper, Pest Control Operators of California (PCOC), asked if the statistics included cases that went to the Attorney General's office.

Ms. Okuma responded unless the cases were extremely egregious, the Attorney General cases would not be included with the provided statistics.

Mr. Heppler stated that citations are generally not considered disciplinary in nature. He added that formal actions might be taken but that they are not considered as citations and fines.

X. DISCUSSION OF RELEASE OF CRIMINAL OFFENDER RECORD INFORMATION (CORI) TO REGISTERED COMPANIES

Mr. Heppler stated that Deputy Director of DCA's Legal Affairs, Doreathea Johnson, had provided a letter to the Board to address agenda items X. and XI. The letter states that there is currently no provision of law that would allow CORI results to be released to registered companies.

Mr. Arzate asked about the issue of an operator opening a letter that was addressed to a licensee.

Mr. Heppler responded that if the Board addressed the letter to the licensee with the verbiage "to be opened only by," the operator should not open the letter.

XI. DISCUSSION OF LICENSEE EMPLOYMENT INFORMATION POSTED ON STRUCTURAL PEST CONTROL BOARD WEBSITE

Mr. Heppler stated that the letter from Ms. Johnson also concluded that there is no current provision that would allow anyone other than the licensee to update licensing records. He added that B&P Code section 8567 specifically says "he or she" must notify the Board. Mr. Heppler stated that a legislative amendment would be necessary to allow an operator or qualifying manager to change licensing information of a licensee.

Mr. Hopper suggested that simply adding "or company" to B&P Code section 8567 would be sufficient.

Mr. Heppler responded that his suggestion would be a good start but that the Board's regulations might also have to be amended.

Eric Paulsen, Clark Pest Control, stated that the same logic could be used to allow a company to renew the licenses of its employees.

Mr. Heppler responded that it would be difficult to authorize a company to renew individuals' licenses since the licensee must sign, date, and certify that he or she has completed continuing education hours on the renewal form.

Mr. Utley asked if, in the time being, the Board's website could not list employees under the companies.

Mr. Heppler responded that section 27 in the Board's B&P code requires that the Board post licensing information on its website. He added that he would have to examine the statute to determine the Board's obligation to post information.

Mr. Utley stated that the industry's concern is that individuals will continue to be incorrectly associated to former companies on the Board's website. He requested that B&P Code section 27 be further defined and that possible alternatives to remove incorrect information be discussed at the next meeting.

John Van Hooser, Van Hooser Enterprises Inc., suggested that in the short term, the industry be notified of the issue. He added that he was unaware of the issue.

Ms. Okuma stated that in the Board's last newsletter, there was an article recommending that companies include the signing of the transfer of employment form be part of the exit interview.

Mr. Arzate suggested that the Board send a direct letter to all registered companies to clarify that the responsibility of updating licensing information falls on the individual licensee.

Harvey Logan, Western Exterminator Company, asked if it is the Board's intention to seek legislation what would allow the company to update licensing information.

Ms. Okuma responded that the Board is not going to take action at this point.

XII. CONSIDERATION OF PROPOSED LEGISLATION TO ESTABLISH AUTHORITY TO CHARGE A FEE FOR THE APPLICATOR CONTINUING EDUCATION EXAMINATION

Ms. Saylor reported that the matter had been voted on by the Board at a previous Board meeting and that it was incorrectly put on this meeting's agenda.

Mr. Ennes asked what the proposed fee would be for the applicator continuing education examination.

Ms. Okuma responded that the proposed fee is \$10.

XIII. CONSIDERATION OF PROPOSED LEGISLATION TO REQUIRE RETROACTIVE FINGERPRINTING

Ms. Okuma reported that prior to the November 2008, Board meeting, DCA requested that the proposed legislation, which would require retroactive fingerprinting, be discussed at the November meeting. Unfortunately, the agenda had already been finalized and the matter was to be discussed during the current meeting. DCA has determined that statutes exist that would authorize retroactive fingerprinting and that legislations may not be required. Ms. Okuma reported that DCA is currently working with the healing arts Boards of DCA to require retroactive fingerprinting through regulation changes. She stated that Board staff will monitor the progress of the other Board's efforts and report back to the Board at a future meeting.

Mr. Van Hooser requested that the Board consider the financial impact that retroactive fingerprinting will have on the industry.

Mr. Logan asked how the healing arts Boards have reacted.

Ms. Okuma responded that she has not spoken with the Boards affected at this point. She added that the subject came out of a media issue.

Mr. Arzate asked if Ms. Okuma sees a correlation between this issue and the issue of the website listing out-of-date employment information. He understood the concern if a company has a former employee listed on the website who is convicted of a serious crime.

Ms. Okuma responded that she felt the concern of the industry but that the Board's current laws and regulations prevent the company from altering what is listed on the website.

Mr. Paulsen stated that the industry impact of requiring retroactive fingerprinting would be alleviated if there was a way for the boards under DCA to share the fingerprinting information and not require the process to be completed for the Board if it had already been done for another DCA board.

XIV. DISCUSSION AND CONSIDERATION OF BOARD POLICIES RELATING TO PROBATIONARY LICENSES

Ms. Okuma reported that effective January 1, 2009, a new law went into effect, which allows the Board to issue probationary licenses. This is not to be confused with the Board's current authority to issue probationary licenses during closed session. Currently, if Board staff denies a license, a statement of issues is filed and the individual appears before an administrative law judge or enters into a stipulation that the Board can accept. A probationary license is often one of the conditions. The new law allows the Board to issue a probationary license without a hearing or involving the attorney general's office.

Ms. Okuma stated that the Board needs to consider the procedure for issuing probationary licenses. The two options are to add the procedure to the Board's policies and procedures or to amend CCR section 1903 to add it to the Board's regulations.

Ms. Okuma stated that if the Board elected to add the procedure to the Board's policies and procedures, she would draft the proposed stipulation for the Board to vote on my mail, fax, or email. If the Board elected to amend CCR section 1903, the Board would delegate the authority to issue probationary licensed to the registrar.

Ms. Thomas suggested changing the proposed policy to read, "the Board will draft" a stipulation for probationary license.

Mr. Heppler stated that the question before the Board is how much the Board would like to be involved with issuing probationary licenses. If the Board chose to amend CCR section 1903, the registrar would have the authority whereas if the procedure was added to the Board's policies and procedures, Board members would vote and be able to modify the terms of the probationary licenses.

Ms. Thomas asked what type of cases would be considered for the immediate probationary licenses.

Ms. Okuma responded that cases where the conviction is related to the practice of structural pest control would be the most likely to be considered. Other factors that will be considered are the amount of time since the conviction and availability of other information such as from a probation officer or current employer.

Ms. Thomas asked if violations of probations would follow the same procedure as what is currently in place.

Ms. Okuma responded that the probation violations would continue to be filed with the attorney general's office.

Mr. Logan asked if probationary licenses could be granted to the individuals who are waiting for their background information to be sent to the Board.

Ms. Okuma responded that the issue had been discussed but legal counsel determined that a license could not be issued prior to receiving the background information.

Mr. Morris stated that he would not want to burden the registrar with making the decision of issuing a probationary license and would prefer to incorporate the procedure into the Board's policies and procedures..

Ms. Okuma stated that the policy needs to be fine-tuned but that the Board needs to determine on how to proceed.

Ms. Melton moved and Mr. Arzate seconded to direct staff to further develop the procedure and add it to the Board's policies and procedures. Passed unanimously.

XV. FUTURE AGENDA ITEMS

Mr. Heppler stated that the issue of the Board's obligation to post licensee information on its website will be discussed at the next meeting.

Mr. Hopper asked Mr. Heppler for recommendations for legislative changes to allow a company to remove former employees from the Board's website.

Mr. Heppler responded that he would be glad to do so if the Board directs him.

Mr. Agurto requested for clarification on continuing education hours for an individual licensed in two branches.

Ms. Okuma responded that he can speak with herself or Karen Costley and if it is determined that clarification is needed in terms of the regulation, the matter could be put on the agenda.

Mr. Morris asked if every Board funded researcher appeared before the Board updating the progress of the research projects.

Ms. Okuma responded that each project has had a presentation for the Board.

Mr. Arzate asked if the researchers are required to cite the Board in any publications that use research from Board funded projects.

Ms. Okuma responded that she believed that the research contracts do require that the Board be cited but that Mr. Heppler and she will look into it.

Jeremiah Motak, Standard Termite & Pest Control, asked if the test holes issue would be on the next agenda.

Ms. Okuma responded that the issue has been referred to a committee and the committee will meet and report to the Board at the next Board meeting.

XVI. BOARD MEETING CALENDAR

The next Board meeting will be held April 16, 2009, in San Diego. The following meeting would normally be held in July in Sacramento but the mini-summit could cause the Board to meet in June 2009 in Orange County.

Mr. Morris suggested that the Board hold a strategic planning meeting.

Ms. Okuma responded that has not been a strong emphasis on strategic planning from DCA but that the Board should consider it, possibly for the October Board meeting.

Mr. Morris asked for the issue to be discussed at the next meeting.

Mr. Utley asked Ms. Okuma where would the Board meet if the Board holds its regularly scheduled meeting in July.

Ms. Okuma responded that the Board typically meets in Sacramento mostly due to the fact that the budget is typically not signed by the time the Board meets.

Mr. Morris requested that the Board try to secure a state facility in Oakland for the July meeting.

Mr. Utley stated that the Board will leave the decision to participate in DCA's mini-summit in June at Ms. Okuma's discretion.

XVII. SUMMARY OF ALL ACTIONS TAKEN BY THE STRUCTURAL PEST CONTROL BOARD AT THIS MEETING

- The Board moved to release a 15 day modified text for CCR section 1950.1.
- The Board moved to proceed with the proposed amendment to CCR section 1984.
- The minutes of the November 18, 2008, meeting were approved.
- Mr. Heppler will be examining B&P Code section 27 to summarize the Board's obligation to post licensing information on it website.
- A mass mailing will be sent out to all companies to remind the industry that only the licensee can change his or her information.
- The decision for granting probationary licenses will be submitted to the Board members and voted on by mail.
- Mr. Heppler's review of B&P Code section 27, Mr. Agurto's request for clarification of continuing education hours, Mr. Arzate's question to whether a researcher must cite the Board in publications, discussion of whether the Board will be participating in the mini-summit, and Mr. Hopper's request for legislative recommendations to allow a company to change employment records were added as future agenda items.

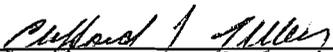
XVIII. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA

There were no public comments.

XIX. CLOSED SESSION

The Board adjourned to closed session to consider proposed disciplinary actions in accordance with subdivision (c)(3) of Section 11126 of the Government Code.

Mr. Utley adjourned the meeting at 11:34 AM.



CLIFF UTLEY, President



KELLI OKUMA, Executive Officer

4/16/09
DATE