

**TITLE 16. STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

Hearing Date: October 13, 2016

Subject Matter of Proposed Regulation: Disciplinary Guideline Revisions

Section Affected: Title 16, California Code of Regulations, Section 1937.11

PROBLEM BEING ADDRESSED

In proposing to update California Code of Regulations (CCR) Section 1937.11 and “A Manual of Disciplinary Guidelines and Model Disciplinary Orders” (Disciplinary Guidelines) the Board is amending the uniform standards that are considered when persons or businesses go through the disciplinary process. While the Disciplinary Guidelines as currently written provide consistency there are sections where they could be more thorough. With the revisions being proposed here the Board is seeking to address the problem of its Disciplinary Guidelines failing to provide enough guidance in certain areas.

NECESSITY

The Board has determined that in order to effectively address the problem identified above, it is necessary to revise its Disciplinary Guidelines.

The purpose of the Board creating Disciplinary Guidelines was to promote consistency and equity when persons or businesses go through the disciplinary process. While the Disciplinary Guidelines have largely accomplished that goal, it is now necessary to amend them in the areas that have been determined to be lacking.

In order to update existing guidelines and add new recommendations where appropriate, it is necessary for the Board to amend the Disciplinary Guidelines and Title 16, Section 1937.11 where they are incorporated by reference.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL

Amend Section 1937.11 and the Disciplinary Guidelines, which are incorporated by reference.

The proposed amendments to the Disciplinary Guidelines are extensive. Below is an examination of the specific purpose for each proposed change both to the text of Section 1937.11 and the Disciplinary Guidelines, which are incorporated by reference.

CCR 1937.11

The revision date for the Disciplinary Guidelines is amended from 2010 to 2016 to accurately reflect the time period for the amendments being proposed here.

Additionally, section 11425.50(e) of the Government Code (GC) is being removed as an authority section in order to accurately cite the authority for this regulatory proposal.

Lastly, section 11519 of the Government Code (GC) and sections 125.3 and 8666 of the Business and Professions (B&P) Code are being added as reference sections to include all the statutes that are being implemented, interpreted, or made specific by this proposal.

Disciplinary Guidelines, Page 1

The date is being changed from 2010 to 2016 in order to accurately reflect the most recent update to the Disciplinary Guidelines.

Disciplinary Guidelines, Page 2

No changes

Disciplinary Guidelines, Page 3

The index is being updated to accurately reflect the proposed changes to the Disciplinary Guidelines. The page numbers that are shown will be accurate in the final document when the items that the Board is proposing to remove are not displayed in strikethrough.

Disciplinary Guidelines, Page 4

The index is being updated to accurately reflect the proposed changes to the Disciplinary Guidelines. The page numbers that are shown will be accurate in the final document when the items that the Board is proposing to remove are not displayed in strikethrough.

Disciplinary Guidelines, Page 5

The purpose of the proposed changes to the Introduction in the Disciplinary Guidelines is to more clearly state what the Disciplinary Guidelines are and when and how it is appropriate for them to be used. GC Section 11425.50(e) provides that a guideline may not be used as a penalty unless it has been adopted as a regulation.

Disciplinary Guidelines, Page 6

Generally, the purpose of the proposed revisions to the Penalty Guidelines is to amend the recommended penalties for given violations in order to more effectively implement the statute on which the guideline is based. In all cases, the GC section 11425.50(e) mandate that a penalty may not be based on a guideline unless it has been adopted as a regulation is being implemented by the proposed amendments to the Penalty Guidelines. The purpose of each amendment is examined in more specificity below.

Section 8635 - The proposed changes to the minimum penalty recommend a probation term of 4 years rather than 3 years. In order to more effectively implement B&P Code section 8635 the Board feels that the minimum penalty for a violation of this section should include a probationary term of 4 years. A longer probationary term allows the Board to closely monitor the person or business who committed the violation for a longer period of time.

Additionally, the optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Section 8636 - The proposed changes to the minimum penalty recommend a probation term of 4 years rather than 3 years. In order to more effectively implement B&P Code section 8636 the Board feels that the minimum penalty for a violation of this section should include a probationary term of 4 years. A longer probationary term allows the Board to closely monitor the person or business who committed the violation for a longer period of time.

Additionally, the optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Section 8637 - The proposed changes to this section recommend adding that any optional probation conditions for a violation of this section be left to the Board's discretion. Currently, there are no recommended optional probation conditions for a violation of this section because both the minimum and maximum recommended penalty for a misrepresentation of a material fact in obtaining a license or registration is outright revocation. In order to more effectively implement B&P Code section 8637 the Board feels it is necessary to clearly state that any optional probation conditions are left to its discretion.

Additionally, the optional probationary conditions attached to both the minimum and maximum recommended penalties are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Section 8638 - The proposed changes to the minimum penalty recommend a probation term of 4 years rather than 3 years. In order to more effectively implement B&P Code section 8638 the Board feels that the minimum penalty for a violation of this section should include a probationary term of 4 years. A longer probationary term allows the Board to closely monitor the person or business who committed the violation for a longer period of time.

Additionally, the optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Section 8639 – The proposed changes to the minimum penalty recommend a probation term of 5 years rather than 3 years. In order to more effectively implement B&P Code section 8639 the Board feels that the minimum penalty for a violation of this section should include a probationary term of 5 years. A longer probationary term allows the Board to closely monitor the person or business who committed the violation for a longer period of time.

Additionally, the proposed changes to the minimum penalty recommend a stayed revocation rather than a stayed suspension. Because of the potential for harm to consumers when a violation of this section occurs, the Board feels that stayed revocation is a more appropriate penalty than a stayed suspension.

Additionally, the optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Section 8640 - The proposed changes to the minimum penalty recommend a probation term of 4 years rather than 3 years. In order to more effectively implement B&P Code section 8640 the Board feels that the minimum penalty for a violation of this section should include a probationary term of 4 years. A longer probationary term allows the Board to closely monitor the person or business who committed the violation for a longer period of time.

Additionally, the proposed changes to the minimum penalty recommend a stayed revocation rather than a stayed suspension. Because of the potential for harm to consumers when a violation of this section occurs, the Board feels that stayed revocation is a more appropriate penalty than a stayed suspension.

Additionally, the optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Section 8641 - The proposed changes to the minimum penalty recommend a probation term of 4 years rather than 3 years. In order to more effectively implement B&P Code section 8641 the Board feels that the minimum penalty for a violation of this section should include a probationary term of 4 years. A longer probationary term allows the Board to closely monitor the person or business who committed the violation for a longer period of time.

Additionally, the optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Section 8642 - The proposed changes to the minimum penalty recommend a probation term of 5 years rather than 3 years. In order to more effectively implement B&P Code section 8642 the Board feels that the minimum penalty for a violation of this section should include a probationary term of 5 years. A longer probationary term allows the Board to closely monitor the person or business who committed the violation for a longer period of time.

Additionally, the proposed changes to the minimum penalty recommend a stayed revocation rather than a stayed suspension. Because of the potential for harm to consumers when a violation of this section occurs, the Board feels that stayed revocation is a more appropriate penalty than a stayed suspension.

Additionally, the proposed changes to the minimum penalty recommend including optional probation condition 27. Optional probation condition 27 prohibits the person facing discipline from having an ownership stake in a structural pest control business during their disciplinary term. The specific purpose of recommending that optional probation condition 27 be included in the minimum penalty guidelines is to prevent the person facing discipline from attempting to elude the appropriate discipline by opening up another business.

Lastly, the optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Disciplinary Guidelines, Page 7

Below, the specific purpose of the revisions to the Penalty Guidelines is continued.

Section 8643 - The proposed changes to the minimum penalty recommend a probation term of 4 years. In order to more effectively implement B&P Code section 8643 the Board feels that the minimum penalty for a violation of this section should include a probationary term of 4 years. A longer probationary term allows the Board to closely monitor the person or business who committed the violation for a longer period of time.

Additionally, the optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Section 8644 - The proposed changes to the minimum penalty recommend a probation term of 5 years rather than 3 years. In order to more effectively implement B&P Code section 8644 the Board feels that the minimum penalty for a violation of this section should include a probationary term of 5 years. A longer probationary term allows the Board to closely monitor the person or business who committed the violation for a longer period of time.

Additionally, the proposed changes to the minimum penalty recommend a stayed revocation rather than a stayed suspension. Because of the potential for harm to consumers when a violation of this section occurs, the Board feels that stayed revocation is a more appropriate penalty than a stayed suspension.

Lastly, the optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Section 8645 - The proposed changes to the minimum penalty recommend a probation term of 5 years rather than 3 years. In order to more effectively implement B&P Code section 8645 the Board feels that the minimum penalty for a violation of this section should include a probationary term of 5 years. A longer probationary term allows the Board to closely monitor the person or business who committed the violation for a longer period of time.

Additionally, the proposed changes to the minimum penalty recommend a stayed revocation rather than a stayed suspension. Because of the potential for harm to consumers when a violation of this section occurs, the Board feels that stayed revocation is a more appropriate penalty than a stayed suspension.

Lastly, the optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Section 8646 - The optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommend, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Section 8646.5 - The optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended,

the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Disciplinary Guidelines, Page 8

Below, the specific purpose of the revisions to the Penalty Guidelines is continued.

Section 8647 - The optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Section 8648 - The proposed changes to the minimum penalty recommend a probation term of 4 years rather than 3 years. In order to more effectively implement B&P Code section 8648 the Board feels that the minimum penalty for a violation of this section should include a probationary term of 4 years. A longer probationary term allows the Board to closely monitor the person or business who committed the violation for a longer period of time.

Section 8649 - The proposed changes to the minimum penalty recommend a probation term of 5 years rather than 3 years. In order to more effectively implement B&P Code section 8649 the Board feels that the minimum penalty for a violation of this section should include a probationary term of 5 years. A longer probationary term allows the Board to closely monitor the person or business who committed the violation for a longer period of time.

Additionally, the optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Section 8650 - The optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Section 8651 - The optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

The proposed changes to the minimum penalty recommend a probation term of 4 years rather than 3 years. In order to more effectively implement B&P Code section 8651 the Board feels that the minimum penalty for a violation of this section should include a probationary term of 4 years. A longer probationary term allows the Board to closely monitor the person or business who committed the violation for a longer period of time.

Section 8652 - The optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Section 8653 - The proposed changes to the minimum penalty recommend a probation term of 4 years rather than 3 years. In order to more effectively implement B&P Code section 8653 the Board feels that the minimum penalty for a violation of this section should include a probationary term of 4 years. A longer probationary term allows the Board to closely monitor the person or business who committed the violation for a longer period of time.

Additionally, the optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Section 8654 - The optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Section 8655 - The proposed changes to the minimum penalty recommend a probation term of 5 years rather than 3 years. In order to more effectively implement B&P Code section 8655 the Board feels that the minimum penalty for a violation of this section should include a probationary term of 5 years. A longer probationary term allows the Board to closely monitor the person or business who committed the violation for a longer period of time.

Additionally, the optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Disciplinary Guidelines, Page 9

Below, the specific purpose of the revisions to the Penalty Guidelines is continued.

Section 8657 - The proposed changes to the minimum penalty recommend a probation term of 4 years rather than 3 years. In order to more effectively implement B&P Code section 8657 the Board feels that the minimum penalty for a violation of this section should include a probationary term of 4 years. A longer probationary term allows the Board to closely monitor the person or business who committed the violation for a longer period of time.

Additionally, the proposed changes to the minimum penalty recommend a stayed revocation rather than a stayed suspension. Because of the potential for harm to consumers when a

violation of this section occurs, the Board feels that stayed revocation is a more appropriate penalty than a stayed suspension.

Lastly, the optional probationary conditions are being renumbered. This renumbering does not reflect a change in the optional probationary conditions that are being recommended, the change is due to optional probationary conditions being added and causing all probationary conditions to be renumbered.

Section 8666 – The purpose of the proposed addition of this section to the Penalty Guidelines is to more fully implement B&P Code section 8666. This section makes the performance or recommendation of work which the licensee knows to be in excess of what is required to eliminate the condition for which the licensee was employed an unlawful public offense. The Board feels that it is appropriate to create uniform guidelines to be used in disciplinary process when a violation of this section occurs.

The proposed addition to the minimum penalty recommends a probation term of 4 years. In order to more effectively implement B&P Code section 8666 the Board feels that the minimum penalty for a violation of this section should include a probationary term of 4 years. A probationary term of this length allows the Board to closely monitor the person or business who committed the violation for an extended period of time.

The proposed addition to the optional probation conditions recommends optional probation conditions 20, 21, 22, 23, and 25. Please see below for an explanation of what these conditions are and the purpose of their recommendation.

Optional Probation Conditions 20, 21, and 22: These 3 optional probation conditions are continuing education courses specific to the branch or branches of pest control practiced by the party facing discipline. The purpose of recommending these as conditions of probation is so the person facing discipline can gain the proper education to ensure the lawful practice of structural pest control.

Optional Probation Condition 23: This optional probation condition compels the party facing discipline to reimburse the Board for the random inspections that will occur during the probationary term. The purpose of recommending this as an optional condition of probation is so that the Board does not have to absorb the cost of ensuring that the person or business is complying with the terms of their probation.

Optional Probation Condition 25: This optional probation condition compels the party facing discipline to pay restitution to the consumer who was harmed by the person or business facing discipline. The purpose of recommending this as an optional condition of probation is to fulfill the Board's primary mission of consumer protection pursuant to B&P Code section 8520(c) and to ensure that the party responsible for the violation is held responsible for making the consumer whole.

Lastly, the proposed addition to the maximum penalty recommends revocation and optional probation condition 27. The purpose of recommending revocation is to ensure that the party facing discipline can no longer practice structural pest control. Optional probation condition 27 prohibits the person facing discipline from having an ownership stake in a structural pest control business during their disciplinary term. The specific purpose of recommending that optional probation condition 27 be included in the maximum penalty guidelines is to prevent the person facing discipline from attempting to elude the appropriate discipline by opening up another business.

Violation of Probation - The proposed changes to the minimum penalty recommend an extension to the probation term of 1 to 5 years. This section of the Penalty Guidelines covers instances when probation stemming from previously imposed discipline has been violated. In order to more fully implement the code section which was violated and lead to the probationary term, the Board feels that the minimum penalty for a violation of probation should include an extension to the probationary term of 1 to 5 years. A longer probationary term allows the Board to closely monitor the person or business who committed the violation for a longer period of time.

Additionally, a proposed addition to the optional probation conditions leaves the inclusion of any optional probation conditions to the discretion of the Board. Currently, the optional probation conditions for this section are blank so the purpose of the addition is to clearly state that if a violation of probation is to occur that the Board has discretion to impose additional optional conditions of probation.

All Other Violations – The purpose of this proposed addition to the Penalty Guidelines is to create uniform standards for violations that are not otherwise covered in the Disciplinary Guidelines.

The proposed addition to the minimum penalty recommends a stayed suspension and a 3 year probationary term. The purpose of these recommendations is to more fully implement the GC section 11425.50(e) and to create, general, uniform disciplinary standards when violations occur.

Additionally, the proposed addition to the optional probation conditions leaves the inclusion of any optional probation conditions to the discretion of the Board. The purpose of the addition is to clearly state that if a violation occurs the Board has discretion to impose optional conditions of probation.

Lastly, the proposed addition to the maximum penalty recommends revocation and optional probation condition 27. The purpose of recommending revocation is to ensure that the party facing discipline can no longer practice structural pest control. Optional probation condition 27 prohibits the person facing discipline from having an ownership stake in a structural pest control business during their disciplinary term. The specific purpose of recommending that optional probation condition 27 be included in the maximum penalty guidelines is to prevent the person

facing discipline from attempting to elude the appropriate discipline by opening up another business.

Disciplinary Guidelines, Page 10

The title of this section of the Disciplinary Guidelines has been amended to accurately reflect the material that has been added.

Currently, this section of the Disciplinary Guidelines provides 11 factors to be considered when deciding on the minimum, maximum, or an intermediate penalty. The proposed changes eliminate those 11 factors and add Factors in Aggravation, Factors in Mitigation, and Matters in Extenuation that are meant to be considered when deciding on revocation, suspension, or probation. The purpose of these additions is to provide more thorough guidance on which factors should be considered when making a decision on the level of discipline a person or business should face for the violation of a section, or sections, listed in the Penalty Guidelines.

For reference, the proposed addition of factors in aggravation and mitigation are listed below as well the matters in extenuation.

Factors in Aggravation

Nature and severity under consideration.

Actual or potential harm to the public or any consumer.

Pending and final records of any cause of action from any investigation, hearing, or court of competent jurisdiction in this state or any other venue.

Conduct was knowing, willful, reckless, or negligent.

Whether financially motivated.

Involved fraud, misrepresentation and/or dishonesty.

Whether a pattern of practice.

Length of time passed since the act or omission.

Length and seriousness of the administrative, civil or criminal record.

Negative status of any administrative, civil or criminal probation, or of any criminal parole imposed, regardless of venue.

Compliance with, including but not exclusive to, restitution, fines or community service lawfully imposed in this state or any other venue.

In addition, the language regarding the Board not intending on any one of the factors to be required to justify the minimum or maximum penalty had been amended to reflect the elimination of the 11 factors and the addition of factors in aggravation and factors in mitigation. Further, the language was amended to reflect the Board's intent of not using one or a combination of the factors in aggravation and in mitigation to justify the degree of discipline to be imposed.

Factors in Mitigation

Satisfaction of any lawfully imposed sanctions or other conditions including, but not exclusive to, restitution, fines or compliance arising from any cause of action.

Participation and completion of training, counseling or rehabilitation programs.
No prior disciplinary actions.

Not a pattern of practice.

Evidence of substantial measures to prevent the occurrence of future violations.

Neither willful, reckless, or negligent.

The public or any consumer was not actually or potentially harmed.

The length of time passed since the act or omission, or completion of probation, or completion of parole.

No prior criminal record.

If applicable, evidence of expungement proceedings or dismissal pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

Other relevant evidence of rehabilitation.

Matters in Extenuation

Circumstances deemed beyond one's direction or control.

Degree of knowledge and/or participation constituting cause for discipline.

Coercion or oppression.

Incapacitation, physical or mental condition.

Disciplinary Guidelines, Page 11

Generally, the specific purpose of each of the proposed changes to the Standard Terms and Conditions of Probation is to implement GC section 11519 which provides that the Board may specify just and reasonable conditions of probation that are appropriate in light of the findings and decision. Further individual explanation of the purpose of each change to the Standard Terms and Conditions of Probation are below.

The proposed changes to item C in the Standard Terms of Probation adds that probation will be tolled should a licensee be suspended, surrender their license, fail to renew their license, or inactivate their license. The purpose of this addition is to make clear that a probationary term is to be served while the person or business is practicing structural pest control and can actively be monitored by the Board to ensure compliance.

The proposed changes to items G and H in the Standard Terms of Probation switch the order of the current terms and are not a change with any regulatory effect.

The proposed addition of item I in the Standard Terms of Probation adds cost recovery. The purpose of this change is to implement B&P Code section 125.3 which states in part that an administrative law judge may direct a licentiate to pay a sum not exceeding the reasonable costs of the investigation and enforcement of the case.

The proposed addition of item J in the Standard Terms of Probation adds that the licensee facing discipline consents to be interviewed and/or make their records available to be inspected by the Board or its designee. The purpose of this addition is to ensure the Board can properly monitor the party facing discipline.

The proposed addition of item K in the Standard Terms of Probation adds that the party facing discipline, if for some reason becomes unable to comply with the terms of their probation, may surrender their license. The purpose of this addition is to allow the Board, and the party facing discipline to avoid going through additional disciplinary proceedings should the party wish to surrender their license.

The proposed changes to the Optional Terms and Conditions of Probation consist solely of a renumbering due to the additions to the Standard Terms and Conditions of Probation section. These changes have no regulatory effect.

Disciplinary Guidelines, Page 12

The renumbering of the Optional Terms and Conditions of Probation is continued. These changes have no regulatory effect.

In the Model Disciplinary Orders section, suggested language is provided for each disciplinary order that is included in a decision. Generally, the purpose of the proposed changes to the Model Disciplinary Orders is to clearly state what each disciplinary order entails. Further individual explanation of the purpose for each change to the Model Disciplinary Orders is below.

Model Number 1, Revocation – Single Cause

Here, the Applicator license is being added to the suggested single cause revocation language. The purpose of this addition is to more fully implement B&P Code section 8620 by including suggested language for instances when Applicators face revocation for a single cause of discipline.

Model Number 2, Revocation – Multiple Causes

Here, the Applicator license is being added to the suggested multiple causes revocation language. The purpose of this addition is to more fully implement B&P Code section 8620 by including suggested language for instances when Applicators face revocation for multiple causes of discipline.

Disciplinary Guidelines, Page 13

Model Number 3, Suspension – Single Cause

Here, language is being added to make clear that when a suspension is imposed, it is to be served beginning on the effective date of the decision and also, to be served in consecutive days. The purpose of this addition is to more fully implement B&P Code section 8620 by specifying certain aspects about suspensions.

Additionally the Applicator license is being added to the suggested single cause suspension language. The purpose of this addition is to more fully implement B&P Code section 8620 by including suggested language for instances when Applicators face suspension for a single cause of discipline.

Model Number 4, Suspension – Multiple Causes

Here, language is being added to make clear that when a suspension is imposed, it is to be served beginning on the effective date of the decision and also, to be served in consecutive days. The purpose of this addition is to more fully implement B&P Code section 8620 by specifying certain aspects about suspensions.

Additionally the Applicator license is being added to the suggested multiple causes suspension language. The purpose of this addition is to more fully implement B&P Code section 8620 by including suggested language for instances when Applicators face suspension for multiple causes of discipline.

Lastly, the in the title of this section, the words “run concurrently” are being removed. This change does not affect the language in the model itself and therefore has no regulatory effect.

Model Number 5, Suspension – Multiple Causes

Here, language is being added to make clear that when a suspension is imposed, it is to be served beginning on the effective date of the decision and also, to be served in consecutive days. The purpose of this addition is to more fully implement B&P Code section 8620 by specifying certain aspects about suspensions.

Additionally the Applicator license is being added to the suggested multiple causes suspension language. The purpose of this addition is to more fully implement B&P Code section 8620 by including suggested language for instances when Applicators face suspension for multiple causes of discipline.

Lastly, the words “run consecutively” are being removed from the title of this section. This change does not affect the language in the model itself and therefore has no regulatory effect.

Model Number 6, Standard Stay Order

There are no changes to this model number.

Disciplinary Guidelines, Page 14

Specific explanations for the proposed changes to the Model Disciplinary Orders continues below.

Model Number 7, Probation

Here, language is being added for suggested use when probation is imposed after a stayed suspension or revocation. The purpose of this addition is to more fully implement GC section 11519 by specifying language to be used when probation as imposed.

Additionally, language is being added for instances when the probation term is 4, or 5 years. Currently, the suggested language in this model number only provides suggested language for probation terms of 3 years. The purpose of this addition is to more fully implement GC section 11519 by specifying language to be used when probation as imposed.

Model Number 8, Obey All Laws

Here, language is added specifying that the party facing discipline shall obey all federal, state, and local laws. The purpose of this addition is to more fully implement GC section 11519 by specifying language to be used when this term of probation as imposed.

Additionally, language is added to require that the party facing discipline has a Livescan criminal history record check performed unless they have already done so as part of the initial licensing process. The purpose of this addition is to ensure that the Board is aware of any possible criminal activity the party facing discipline has engaged in, or might subsequently engage in, in order to ensure compliance with this term of probation.

Additionally, this proposed language more fully implements GC section 11519 by specifying language to be used when this term of probation as imposed.

Model Number 9, Quarterly Reports

Here, language is added specifying that the quarterly reports that are currently required during a probationary term, be filed within 10 days after the end of each quarter. The purpose of this addition is to more fully implement GC section 11519 by specifying language to be used when this term of probation as imposed.

Model Number 10, Tolling of Probation

Here, language is added specifying that periods spent out of state that are longer than 30 days, or periods when a license has been surrendered, suspended, or placed on inactive status, shall not reduce the probationary term. The purpose of this addition is to make clear that a probationary term is to be served while the person or business is practicing structural pest control and can actively be monitored by the Board to ensure compliance.

Additionally, this addition is to more fully implement GC section 11519 by specifying language to be used when this term of probation as imposed.

Disciplinary Guidelines, Page 15

Specific explanations for the proposed changes to the Model Disciplinary Orders continues below.

Model Number 11, Notice to Employers

Here, language is added specifying the persons who must be notified to satisfy the requirement that the party on probation notify their employer. The purpose of this addition is to ensure that employers are aware of the disciplinary history of their employee.

Additionally, the purpose of this addition is to more fully implement GC section 11519 by specifying language to be used when this term of probation as imposed.

Model Number 12, Notice to Employees

Here, language is added specifying that a notice that accurately recites the terms of conditions be placed in a conspicuous place, and remain there for the term of probation, where employees can see it. The purpose of this addition is to ensure that employees are aware of the disciplinary history of their employer.

Additionally, the purpose of this addition is to more fully implement GC section 11519 by specifying language to be used when this term of probation as imposed.

Model Number 13, Posted Notice of Suspension

There are no changes to this model number.

Model Number 14, Completion of Probation

There are no changes to this model number.

Model Number 15, Violation of Probation

Here, language is added specifying that in addition to a petition to revoke probation, if the Board files an accusation, or statement of issues, or if the respondent requests a hearing to be conducted pursuant to section 11500 of the GC, that the Board shall have continuing jurisdiction until the matter is final and the [period of probation shall be extended until the matter is final.

The purpose of this addition is to more fully implement GC section 11519 by clarifying the scenarios under which the Board retains continuing jurisdiction should a violation of probation occur.

Disciplinary Guidelines, Page 16

Specific explanations for the proposed changes to the Model Disciplinary Orders continues below.

Model Number 16, Cost Recovery

Here, language is added specifying that the party facing discipline shall reimburse the Board for the enforcement and investigation costs related to the case. Additionally, language is added specifying when and how the costs shall be reimbursed.

The purpose of this change is to implement B&P Code section 125.3 which states in part that an administrative law judge may direct a licentiate to pay a sum not exceeding the reasonable costs of the investigation and enforcement of the case.

Additionally, the purpose of this addition is to more fully implement GC section 11519 by specifying language to be used when this term of probation as imposed.

Model Number 17, Interview / Records: Board Or Its Designees

Here language is added specifying that the licensee facing discipline consents to be interviewed and/or make their records available to be inspected by the Board or its designee. The purpose of this addition is to ensure the Board can properly monitor the party facing discipline.

Additionally, the purpose of this addition is to more fully implement GC section 11519 by specifying language to be used when this term of probation as imposed.

Model Number 18, License Surrender

Here, language is added specifying that the party facing discipline, if for some reason becomes unable to comply with the terms of their probation, may surrender their license. The purpose of this addition is to allow the Board, and the party facing discipline to avoid going through additional disciplinary proceedings should the party wish to surrender their license.

Additionally, the purpose of this addition is to more fully implement GC section 11519 by specifying language to be used when this term of probation as imposed.

Disciplinary Guidelines, Page 17

Specific explanations for the proposed changes to the Model Disciplinary Orders continues below.

Model Number 19, Actual Suspension

Here, language is being added to make clear that when a suspension is imposed, it is to be served beginning on the effective date of the decision and also, to be served in consecutive days. The purpose of this addition is to more fully implement B&P Code section 8620 by specifying certain aspects about suspensions.

Additionally the Applicator license is being added to the suggested actual suspension language. The purpose of this addition is to more fully implement B&P Code section 8620 by including suggested language for instances when Applicators face suspension.

Model Number 20, Continuing Education Course – Branch 1

Here, language is added specifying the time period by which continuing education mandated by probation be completed as well as a statement making clear that continuing education mandated by probation is in addition to any continuing education needed for license renewal requirements.

The purpose of this addition is to more fully implement GC section 11519 by specifying language to be used when this term of probation as imposed.

Model Number 21, Continuing Education Course – Branch 2

Here, language is added specifying the time period by which continuing education mandated by probation be completed as well as a statement making clear that continuing education mandated by probation is in addition to any continuing education needed for license renewal requirements.

The purpose of this addition is to more fully implement GC section 11519 by specifying language to be used when this term of probation as imposed.

Model Number 22, Continuing Education Course – Branch 3

Here, language is added specifying the time period by which continuing education mandated by probation be completed as well as a statement making clear that continuing education mandated by probation is in addition to any continuing education needed for license renewal requirements.

The purpose of this addition is to more fully implement GC section 11519 by specifying language to be used when this term of probation as imposed.

Model Number 23, Random Inspections

There are no changes to this model number.

Model Number 24, Inspection Fees

There are no changes to this model number.

Model Number 25, Reimbursement to Consumer

There are no changes to this model number.

Model Number 26, Prohibited From Serving as Officer, Director, Associate, Partner, or Qualifying Manager

Here, language is added prohibiting the respondent from serving as a “responsible managing employee”. This purpose of this addition is to more clearly state which positions the respondent is prohibited from serving in during probation.

Additionally, the purpose of this addition is to more fully implement GC section 11519 by specifying language to be used when this term of probation as imposed.

Model Number 27, No Interest In Any Registered Company

There are no changes to this model number.

Model Number 28, Take and Pass Licensure Examinations

Here, the Applicator license is being added to the suggested licensure examinations language. The purpose of this addition is to more fully implement GC section 11519 by specifying language to be used when this term of probation as imposed.

Additionally, language is added that specifies that if the respondent fails to pass the examination within a given time period, he or she shall notify the Board and cease practice until the examination has been passed. The purpose of this addition is to more fully implement GC section 11519 by specifying language to be used when this term of probation as imposed.

Disciplinary Guidelines, Pages 20-22

These pages of the Disciplinary Guidelines are a reference tool used to identify the proper disciplinary statutes when a violation occurs. The purpose of the changes to these pages is to update the cross references and ensure that violations are being matched correctly with the Board's disciplinary statutes.

ANTICIPATED BENEFITS OF THIS REGULATORY ACTION

The Board anticipates that the proposed regulatory action will benefit consumers, the pest control industry, as well as the Board itself. The establishment of uniform disciplinary guidelines promotes fairness and social equity and increases transparency in government. Additionally, consumers, worker safety and public health benefit when the Board clearly establishes guidelines that will be used if a violation of the law occurs.

UNDERLYING DATA

1. Structural Pest Control Board Internal Recovery Costs Memorandum, April 18, 2016
2. Structural Pest Control Board Average Number of Companies and Licensees Going Through the Disciplinary Process Memorandum, April 26, 2016

BUSINESS IMPACT

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

The Board has determined that no significant economic impact will result from the proposed regulation. The Board has made this determination because the proposed regulation contains revisions to the Board's Disciplinary Guidelines and therefore will affect only those business

who face discipline for violating the law. While it is possible that the businesses who face Board discipline will be impacted economically by some of the recommendations, the total number of such businesses is expected to very small and would therefore not be considered a significant adverse impact.

ECONOMIC IMPACT ASSESSMENT

The Board has determined that the proposed regulatory action will have no impact on the creation or elimination of jobs within the state. The Board made this determination because although the Disciplinary Guidelines suggest a framework for the level of discipline that is appropriate for a given violation, they are merely guidelines and do not bind the Board or an ALJ to decide on any particular course of action. The proposed changes are unlikely to lead to an increase in the level of discipline administered for a given violation and would therefore have no impact on the creation or elimination of jobs with the state.

The Board has determined that the proposed regulatory action will have no effect on the creation of new businesses or the elimination of existing businesses within the state. The Board made this determination because although the Disciplinary Guidelines suggest a framework for the level of discipline that is appropriate for a given violation, they are merely guidelines and do not bind the Board or an ALJ to decide on any particular course of action. The proposed changes are unlikely to lead to an increase in the level of discipline administered for a given violation and would therefore have no impact on the creation of new businesses or the elimination of existing businesses within the state.

The Board has determined that the proposed regulatory action will have no effect on the expansion of businesses currently doing business within the state. The Board made this determination because although the Disciplinary Guidelines suggest a framework for the level of discipline that is appropriate for a given violation, they are merely guidelines and do not bind the Board or an ALJ to decide on any particular course of action. The proposed changes are unlikely to lead to an increase in the level of discipline administered for a given violation and would therefore have no impact on the expansion of businesses currently doing business within the state.

The Board has determined that the proposed regulatory action will benefit the health of welfare of California's residents, worker safety, and the state's environment in the following ways:

By establishing uniform Disciplinary Guidelines the Board promotes the safe and effective practice of structural pest control. The health and welfare of California residents as well as the state's environment and worker safety benefit when the Board clearly outlines the penalties for practicing structural pest control unlawfully.

MANDATE ON SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons or businesses or equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

Alternative 1: Leave the disciplinary guidelines unchanged.

Rejected: The Disciplinary Guidelines as currently constructed have been found to be lacking in certain areas. In order to fully implement GC section 11425.50 which mandates that no penalty may be based on a guideline unless it has been adopted as a regulation, the Board has determined that it necessary to update the Disciplinary Guidelines.