

**A MANUAL OF  
DISCIPLINARY GUIDELINES  
AND  
MODEL DISCIPLINARY  
ORDERS**

**STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**2016**

**STRUCTURAL PEST CONTROL BOARD**

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## **DISCIPLINARY GUIDELINES**

### **INTRODUCTION**

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq), the Structural Pest Control Board and the Administrative Law Judge shall consider the uniform disciplinary guidelines as set forth herein.

The Board recognizes that these terms of discipline and conditions of probation are merely guidelines and that the Board and the Administrative Law Judge must be free to exercise their discretion in such cases. However, deviation from such guidelines is appropriate only when facts of the case warrant such a departure. As such, any departure from these guidelines should be explained and noted fully in the proposed decision or disciplinary order.

The Board desires that matters in extenuation or mitigation, as well as those in aggravation, be fully considered and noted in the proposed decision or disciplinary order. Of primary importance is the effect of the licensee's or registrant's conduct/action on the public as consumers.

### PENALTY GUIDELINES

<b>Violation</b>	<b>Minimum Penalty</b>	<b>Optional Probation Conditions</b>	<b>Maximum Penalty</b>
<b>Section 8635</b> Disregard of Specifications	Suspension, Stayed, 4 Years Probation	10, 11/12/13, 14, 15, 16, 17	Revocation and Optional Condition 18
<b>Section 8636</b> Violation of Laws	Suspension, Stayed, 4 Years Probation	10, 11/12/13, 14, 15, 16, 17	Revocation and Optional Condition 18
<b>Section 8637</b> Misrepresentation	Revocation and Optional Condition 18	Discretionary	Revocation and Optional Condition 18
<b>Section 8638</b> Violation of Contracts	Suspension, Stayed, 4 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8639</b> Aiding and Abetting	Revocation, Stayed, 5 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8640</b> Real Estate Rebates	Revocation, Stayed, 4 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8641</b> Violation of Chapter and Rules	Suspension, Stayed, 4 Years Probation	10, 11/12/13, 14, 15, 16, 17, 19	Revocation and Optional Condition 18
<b>Section 8642</b> Fraud	Revocation, Stayed, 5 Years Probation and Optional Condition 18	10, 11/12/13, 14, 15, 16, 17, 19	Revocation and Optional Condition 18

<b>Violation</b>	<b>Minimum Penalty</b>	<b>Optional Probation Condition</b>	<b>Maximum Penalty</b>
<b>Section 8643</b> Negligent Handling or Use of Poisonous Agent	Revocation, Stayed, 4 Years Probation	10, 11/12/13, 14, 15, 17, 19	Revocation and Optional Condition 18
<b>Section 8644</b> Misrepresentation After Inspection	Revocation, Stayed, 5 Years Probation	10, 11/12/13, 14, 15, 16, 17, 19	Revocation and Optional Condition 18
<b>Section 8645</b> Impersonation	Revocation, Stayed, 5 Years Probation	10, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8646</b> Disregard of Laws	Suspension, Stayed, 3 Years Probation	10, 11/12/13, 14, 15, 17, 19	Revocation and Optional Condition 18
<b>Section 8646.5</b> Cease & Desist	Suspension, Stayed, 3 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18

<b>Violation</b>	<b>Minimum Penalty</b>	<b>Optional Probation Conditions</b>	<b>Maximum Penalty</b>
<b>Section 8647</b> Violation of Laws as to Insecticides	Suspension, Stayed, 3 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8648</b> False Advertising	Suspension, Stayed, 4 Years Probation	10, 11/12/13, 14, 17	Revocation and Optional Condition 18
<b>Section 8649</b> Conviction, Evidence	Revocation, Stayed, 5 Years Probation	10, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8650</b> Name and Location as Licensed	Suspension, Stayed, 3 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8651</b> Performing or Soliciting Beyond Scope of License	Revocation, Stayed, 4 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8652</b> Failure to Make and Keep All Reports	Suspension, Stayed, 3 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8653</b> Withholding Payment	Suspension, Stayed, 4 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8654</b> Prohibition Against Association of Suspended Operator	Suspension, Stayed, 3 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18



<b>Violation</b>	<b>Minimum Penalty</b>	<b>Optional Probation Conditions</b>	<b>Maximum Penalty</b>
<b>Section 8655</b> Charge Substantially Related	Revocation, Stayed, 5 Years Probation	10, 11/12/13, 14, 15, 17	Revocation and Optional Condition 18
<b>Section 8657</b> Appointment of Receiver	Revocation, Stayed, 4 Years Probation	10, 11/12/13, 14, 17	Revocation and Optional Condition 18
<b>Section 8666</b> Excessive Work	Revocation, Stayed 4 Years Probation	10, 11/12/13, 14, 16	Revocation and Optional Condition 18
<b>Violation of Probation</b>	Extend Probation 1 to 5 years with New or Amended Conditions	Discretionary	Revoke Probation and Impose Stayed Penalty
<b>All Other Violations</b>	Suspension, Stayed 3 Years Probation	Discretionary	Revocation Optional Condition 18

## **FACTORS IN AGGRAVATION, MITIGATION AND EXTENUATION FOR CONSIDERATION IN DISCIPLINARY CASES**

In determining whether revocation, suspension, or probation is to be imposed in a given disciplinary case, factors such as the following should be considered:

- I) Factors in Aggravation: Crimes or Acts
  - a. Nature and severity of the act or crime under consideration.
  - b. Actual or potential harm to the public or any consumer.
  - c. 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.
  - d. Conduct was knowing, willful, reckless, or negligent.
  - e. Whether financially motivated.
  - f. Involved fraud, misrepresentation and/or dishonesty.
  - g. Whether a pattern of practice.
  - h. Length of time passed since the act or omission.
  - i. Length and seriousness of the administrative, civil or criminal record.
  - j. Compliance with any administrative, or criminal probation, or of any criminal parole imposed, regardless of venue.
  - k. Compliance with, including but not limited to, restitution, fines, or community service lawfully imposed in this state or any other venue.
  
- II. Factors in Mitigation: Crimes or Acts
  - a. Satisfaction of any lawfully imposed sanctions or other conditions including, but not limited to, restitution, fines or compliance arising from any cause of action.
  - b. Participation and completion of training, counseling or rehabilitation programs.
  - c. No prior disciplinary actions.
  - d. Not a pattern of practice.
  - e. Evidence of substantial measures to prevent the occurrence of future violations.
  - f. Neither willful, reckless, or negligent.
  - g. The public or any consumer was not actually or potentially harmed.
  - h. The length of time passed since the act or omission, or completion of probation, or completion of parole.
  - i. No prior criminal record.
  - j. If applicable, evidence of expungement proceedings or dismissal pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.
  - k. Other relevant evidence of rehabilitation.
  
- III. Factors in Extenuation: Crimes or Acts
  - a. Circumstances deemed beyond one's direction or control.
  - b. Degree of knowledge and/or participation constituting cause for discipline.
  - c. Coercion or oppression.

- d. Incapacitation, physical or mental condition.

The Board does not require the presence of any one or combination of the above factors to justify the degree of discipline to be imposed.

### **STANDARD TERMS AND CONDITIONS OF PROBATION**

The standard terms of probation appearing in every case are:

1. Obey all laws
2. File quarterly reports
3. Tolling of probation if respondent moves out of state, is suspended, does not renew, or inactivates license
- 4a. Notice to employers
- 4b. Notice to employees
5. Violation of probation
6. Interview / Records: Board Or Its Designee
7. License Surrender
8. Completion of Probation
9. Cost Recovery

### **OPTIONAL TERMS AND CONDITIONS OF PROBATION**

10. Actual suspension of license / registration certificate
11. Completion of appropriate continuing education course: Branch 1
12. Completion of appropriate continuing education course: Branch 2
13. Completion of appropriate continuing education course: Branch 3
14. Reimbursement to the Board for random inspections
15. Payment of inspection fee
16. Restitution to consumer
17. Prohibition from serving as officer, director, associate, partner or qualifying manager
18. No ownership of registered company
19. Take and pass licensure examination

### **DEFAULT DECISION**

The disciplinary penalty in a default decision is revocation.

### **CIVIL PENALTY IN LIEU OF SUSPENSION**

The Board has the authority to assess a civil penalty in lieu of actual suspension as follows:

- (a) not more than \$5,000 for an actual suspension of 1 to 19 days
- (b) not more than \$10,000 for an actual suspension of 20 to 45 days

The respondent may express a preference for paying a civil penalty in lieu of actual suspension, but the Board is not bound by any expression of preference. If such preference is expressed, it should be included in the proposed decision.

## **MODEL DISCIPLINARY ORDERS**

### **MODEL LANGUAGE**

#### **A. Revocation – Single Cause**

(Ex. Operator's / Field Representative's / Applicator's) License / Company Registration Certificate No. (Ex. OPR 1234) issued to Respondent (Ex. John Doe) is revoked.

#### **B. Revocation – Multiple Causes**

(Ex. Operator's / Field Representative's / Applicator's) License / Company Registration Certificate No. (Ex. OPR 1234) issued to respondent (Ex. John Doe) is revoked pursuant to Determination of Issues (Ex. I, II, and III) separately and for all of them.

#### **C. Suspension – Single Cause**

(Ex. Operator's / Field Representative's / Applicator's) License / Company Registration Certificate No. (Ex. OPR 1234, Branch(es) X) issued to Respondent (Ex. John Doe) is suspended (Ex. Thirty (30) consecutive days) beginning the effective date of the decision.

#### **D. Suspension – Multiple Causes**

(Ex. Operator's / Field Representative's/ Applicator's) License / Company Registration Certificate No. (Ex. OPR 1234, Branch(es) X) issued to respondent (Ex. John Doe) is suspended for (Ex. thirty (30) consecutive days) pursuant to Determination of Issues (Ex. I, II, and III) separately and for all of them. All suspensions shall run concurrently beginning the effective date of the decision.

#### **E. Suspension – Multiple Causes**

(Ex. Operator's / Field Representative's/ Applicator's) License / Company Registration Certificate No. (Ex. OPR 1234) issued to respondent (Ex. John Doe) is suspended (Ex. Thirty (30) consecutive days) pursuant to Determination of Issues (Ex. I, II, and III) and (Ex. Sixty (60) consecutive days) pursuant to Determination of Issues (Ex. IV and V). These suspensions shall run consecutively, for a total period of (Ex. Ninety (90) consecutive days) beginning the effective date of the decision.

**F. Standard Stay Order**

However, (revocation / suspension) is stayed and respondent is placed on probation for (Ex. \_\_\_\_\_ years) upon the following terms and conditions:

**G. Probation**

However, (revocation / suspension) is stayed and respondent is placed on probation for \_\_\_\_\_ years upon the following terms and conditions:

**STANDARD TERMS AND CONDITIONS OF PROBATION****[1] Obey All Laws**

Respondent shall obey all federal, state and local laws including all laws and rules relating to the practice of structural pest control.

Respondent shall submit a completed California Department of Justice and federal Livescan fingerprint form, unless previously submitted as part of the licensure application process. Fingerprint forms shall be submitted within thirty (30) calendar days of the effective date of the Decision and Order.

**[2] Quarterly Reports**

Respondent shall file quarterly reports with the Board during the period of probation, no later than ten (10) days after the end of the quarter.

**[3] Tolling of Probation**

In the event respondent should leave California to reside or practice outside the state, prior to departing, respondent must provide written notification to the Board of the dates of departure and anticipated return to the state. Respondent's probation is tolled if and when he or she ceases practicing in California. Periods of practice outside of California will not apply to the reduction of the probationary period. For purposes of this condition, non-practice due to Board ordered suspension, or in compliance with any other Board ordered condition of probation, shall not be considered a period of non-practice.

**[4a.] Notice to Employers (Individual Licensees)**

Respondent shall notify all present and prospective employers of the decision in case No. (Ex. 91-01) and the terms, conditions and restriction imposed on respondent by said decision. Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new employment, respondent shall cause his/her employer, owner and qualifying manager to report to the Board in writing acknowledging he/she has read the decision in case No. (Ex. 90-01).

**[4b.] Notice to Employees (Registered Companies)**

Respondent shall, upon or before the effective date of this decision, post and circulate a notice to all employees involved in structural pest control operations which accurately recite the terms and conditions of probation. Respondent shall be responsible for said notice being immediately available to said employees. "Employees" as used in this provision includes all full-time, part-time, temporary and relief employees and independent contractors employed or hired at any time during probation. The notice shall be posted in a conspicuous place where employees can see it and shall remain posted the entire term of probation.

**[5] Violation of Probation**

Should respondent violate probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an accusation or a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter has been acted upon by the Board.

**[6] Interview / Records: Board Or Its Designees**

Respondent shall be available in person upon reasonable request for interviews and the review of records either at respondent's place of business, residence, or other agreed upon location throughout the term of probation.

**[7] License Surrender**

Following the effective date of this decision, if respondent ceases practicing in the pest control industry due to retirement, health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of respondent's license/registration to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon the Board's acceptance of the surrender, respondent shall within fifteen (15) days deliver to the Board's offices his/her wall and pocket license and company registration wall certificate. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license/registration shall be deemed a disciplinary action. However, if respondent re-applies for a license or registration, the application shall be treated as a petition for reinstatement of a revoked license/registration.

**[8] Completion of Probation**

Upon successful completion of probation, respondent's license / certificate will be fully restored.

**[9] Cost Recovery**

Respondent shall reimburse the Board investigation and enforcement costs in the amount of \$\_\_\_\_\_. Respondent shall pay these costs within 90 days of the effective date of the decision or through a payment plan approved by the Board. Failure to make a timely payment,

and/or failure to complete payment of cost recovery, shall constitute a violation of probation.

Periods of non-practice by Respondent shall not relieve respondent of his or her obligation to reimburse the Board for its investigative and enforcement costs. Probation shall not be terminated until all costs are paid-in-full.

## **OPTIONAL TERMS AND CONDITIONS OF PROBATION**

### **[10] Actual Suspension**

Respondent is suspended from practicing for (Ex. ten (10) consecutive days) beginning the effective date of the decision. This period of suspension shall not apply to the reduction of the probationary time period.

Note: The following paragraph applies only to companies:

Respondent structural pest control company shall prominently post a suspension notice provided by the Board of the Board's order of suspension at its principle office and each of its branch offices in a place conspicuous and readable to the public. The notice shall remain posted during the entire period of actual suspension.

### **[11] Continuing Education Course – Branch 1**

Respondent shall complete a continuing education course for pest control in Branch 1 (fumigation) within six (6) months of the effective date of this decision in addition to the existing license renewal requirements .

### **[12] Continuing Education Course – Branch 2**

Respondent shall complete a continuing education course for pest control in Branch 2 (general pest) within six (6) months of the effective date of this decision in addition to the existing license renewal requirements.

### **[13] Continuing Education Course – Branch 3**

Respondent shall complete a continuing education course for pest control in Branch 3 (wood destroying pests and organisms) within six (6) months of the effective date of this decision in addition to the existing license renewal requirements.

### **[14] Random Inspections**

Respondent shall reimburse the Board for (Ex. one (1)) random inspection(s) per (Ex. quarter) by Board specialists during the period of probation not to exceed \$125 per inspection.

**[15] Inspection Fees**

Respondent shall pay to the registrar, or designee, an inspection fee of (Ex. \$50) within thirty (30) days from the effective date of this decision.

**[16] Restitution to Consumer**

Respondent shall submit proof to the registrar that restitution in the amount of (Ex. \$8,000) has been made to (Ex. John Smith) within (Ex. thirty (30) days) of the effective date of the decision.

**[17] Prohibited from Serving as Officer, Director, Associate, Partner, or Qualifying Manager**

Respondent is prohibited from serving as an officer, director, associate, partner, qualifying manager, branch office manager, or responsible managing employee of any registered company during the period of probation.

**[18] No Interest In Any Registered Company**

Respondent shall not have any legal or beneficial interest in any company currently or hereinafter registered by the Board.

**[19] Take And Pass Licensure Examinations**

Within (Ex. six (6) months) of the effective date of this decision, respondent shall take and pass the (Ex. Operator's/Field Representative's/Applicator's) examination currently required of new applicants for (Ex. Operator's/Field Representative's) license. The examination shall be taken on regularly scheduled dates. Respondent shall pay the established examination fee. If respondent fails to pass said examination within (Ex. Six (6) months) of the effective date of this decision it shall constitute a violation of probation.



**CROSS REFERENCE  
BUSINESS AND PROFESSIONS CODE (B&P)  
SECTIONS TO BUSINESS AND PROFESSIONS CODE SECTION  
ESTABLISHING GROUNDS FOR DISCIPLINARY ACTION**

<b>VIOLATION OF B&amp;P CODE SECTION</b>	<b>GROUNDS FOR DISCIPLINE UNDER B&amp;P CODE SECTION</b>
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**CROSS REFERENCE  
CALIFORNIA CODE OF REGULATIONS (CCR) SECTIONS  
TO BUSINESS AND PROFESSIONS CODE SECTION  
ESTABLISHING GROUNDS FOR DISCIPLINARY ACTION**

<b>VIOLATION OF CCR SECTION</b>	<b>GROUNDS FOR DISCIPLINE UNDER B&amp;P CODE</b>
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1970.4(a)(b)(c)(d)(e)(f)	8646
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1971(a)(1)(b)	8646, 8647
1971(a)(2)	8646, 8647
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