

TEXT OF PROPOSED REGULATIONS

Current wording is indicated by regular type.
Proposed deletions are indicated by ~~strikeout~~.
Proposed additions are indicated by underline.

TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 19. STRUCTURAL PEST CONTROL BOARD
ARTICLE 2. ADMINISTRATION

Amend section 1920 to read:

§1920. Citations and Fines.

(a) Authority to Issue Citations and Fines:

(1) The Registrar or Deputy Registrar of the Board is authorized to issue citations which may contain an order of abatement or an administrative fine ("fine") for violations of the statutes contained in the Structural Pest Control Act (commencing with Business and Professions Code Section 8500) or the regulations adopted by the Board.

(2) Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute(s) or regulation(s) alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

(b) Citation; Assessment of Fine:

(1) Citations may be issued without the assessment of a fine. The amount of any fine to be levied by the Registrar or Deputy Registrar shall be no more than \$5,000. ~~For the issuance of a citation that includes an administrative fine in excess of \$2,500, the Registrar or Deputy Registrar shall determine that at least one of the following circumstances apply:~~

~~(A) the citation involves a violation that has an immediate relationship to the health and safety of another person;~~

~~(B) the cited person has a history of two or more prior citations of the same or similar violations;~~

~~(C) the citation involves multiple violations of the Act or these regulations that demonstrate a willful disregard of the law; or,~~

~~(D) the citation involves a violation or violations perpetrated against a senior citizen or person with disability.~~

(2) In determining whether a citation shall contain an order of abatement or a fine and if a fine is to be imposed, the Registrar or Deputy Registrar shall consider the following factors:

(A) Gravity of the violation.

(B) History of previous violations of the same or similar nature.

(C) The good or bad faith exhibited by the cited person.

(D) Evidence that the violation was willful.

(E) The extent to which the cited person cooperated with the Board's investigation.

(F) The extent to which the cited person has mitigated or attempted to mitigate any damage caused by his or her violation.

(G) Such other factors as the Registrar or Deputy Registrar considers relevant.

(c) Citations for Unlicensed Practice:

The Registrar or Deputy Registrar of the Board is authorized to issue citations which may contain order of abatement or a fine against persons who are performing or who have performed services for which a structural pest control license is required under the Structural Pest Control Act. The citation issued under this section shall be separate from and in addition to any other civil or criminal remedies.

(d) Compliance with Orders of Abatement:

When a citation is not contested or if the citation is appealed and the person cited does not prevail, failure to comply with the order of abatement or to pay the fine in the citation within the time allowed by a licensee may result in disciplinary action being taken by the Board against the person cited, or where the cited person is unlicensed in appropriate judicial relief being taken against the person cited.

(e) Contest of Citations:

(1) In addition to requesting a hearing provided for in subdivision (b)(4) of section 125.9 of the code (hereinafter "administrative hearing"), the person cited may, within ten (10) days after service or receipt of the citation, notify the Registrar or Deputy Registrar, as designated, in writing of his or her request for an informal conference with the designated Registrar or Deputy Registrar. The informal conference shall include at least one, but no more than two, industry members of the Board, as designated by the Registrar.

(2) The informal conference shall be held within 60 days from the receipt of the request of the person cited. At the conclusion of the informal conference, the Registrar or Deputy Registrar may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The decision shall state in writing the reasons for the action and shall be served or mailed to the person within ten (10) days from the date of the informal conference.

(3) The person cited does not waive his or her request for an administrative hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the Registrar or Deputy Registrar. If the citation is dismissed after the informal conference, the request for an administrative hearing on the matter of the citation shall be deemed to be withdrawn. If the informal conference results in the modification of the findings of violation(s), the amount of the fine or the order of abatement, the citation shall be considered modified, but not withdrawn. The cited person shall be entitled to an administrative hearing to contest the modified citation if he or she made a request in accordance with subdivision (b)(4) of section 125.9 of the code for an administrative hearing, within thirty (30) days after service of the original citation. The cited person shall not be entitled to an informal conference to contest a modified citation. If the cited person did not make a request for an administrative hearing after service of the original citation, the decision in the modified citation shall be considered a final order.

NOTE: Authority cited: Section 8525, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 19. STRUCTURAL PEST CONTROL BOARD
ARTICLE 3. LICENSING

Amend the Manual of Disciplinary Guidelines and Model Disciplinary Orders as incorporated by reference in section 1937.11 of Division 19 of Title 16 of the California Code of Regulations to read as follows:

** Note: Proposed new language within the Manual of Disciplinary Guidelines and Model Disciplinary Orders is double underlined.*

§1937.11. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the board shall consider the disciplinary guidelines entitled “A Manual of Disciplinary Guidelines and Model Disciplinary Orders” [~~1991~~ Rev. 2010] which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board and/or administrative law judges in its/his or her discretion determines that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating factors; the age of the case; evidentiary problems.

NOTE: Authority cited: Section 8525, Business and Professions Code, Section 11425.50(e), Government Code. Reference: Section 11425.50(e), Government Code, and Sections 8620, 8635, 8636, 8637, 8638, 8639, 8640, 8641, 8642, 8643, 8644, 8645, 8646, 8646.5, 8647, 8648, 8649, 8650, 8651, 8652, 8653, 8654, 8655 and 8657, Business and Professions Code.

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

STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA

2010

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DISCIPLINARY GUIDELINES

INTRODUCTION

To establish consistency in disciplinary penalties for similar offenses, the Structural Pest Control Board establishes these uniform disciplinary guidelines.

The Board recognizes that these penalties and conditions of probation are merely guidelines and that administrative law judges must be free to exercise their discretion in such cases. However, the Board desires that these guidelines be followed to the extent possible and requests that the administrative law judge hearing the case include some explanation of any departure or omissions from the guidelines in the proposed decision so that the circumstances can be better understood by the Board during its review of the case for ultimate action.

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

PENALTY GUIDELINES

VIOLATION	MINIMUM PENALTY	OPTIONAL PROBATION CONDITIONS	MAXIMUM PENALTY
Section 8635 Disregard of specifications	Suspension, stayed, 3 years probation	16, 17/18/19, 20, 21, 22, 23	Revocation and optional condition 24
Section 8636 Violation of Laws	Suspension, stayed, 3 years probation	16, 17/18/19, 20, 21, 22, 23	Revocation and optional condition 24
Section 8637 Misrepresentation	Revocation and optional condition 24		Revocation and optional condition 24
Section 8638 Violation of Contracts	Suspension, stayed, 3 years probation	16, 17/18/19, 20, 21, 23	Revocation and optional condition 24
Section 8639 Aiding and Abetting	Suspension, stayed, 3 years probation	16, 17/18/19, 20, 21, 23	Revocation and optional condition 24
Section 8640 Real Estate Rebates	Suspension, stayed, 3 years probation	16, 17/18/19, 20, 21, 23	Revocation and optional condition 24
Section 8641 Violation of Chapter and Rules	Suspension, stayed, 3 years probation	16, 17/18/19, 20, 21, 22, 23, 25	Revocation and optional condition 24
Section 8642 Fraud	Revocation, stayed, 3 years probation	16, 17/18/19, 20, 21, 22, 23, 25	Revocation and optional condition 24
Section 8643 Negligent Handling or Use of Poisonous Agent	Revocation, stayed	16, 17/18/19, 20, 21, 23, 25	Revocation and optional condition 24
Section 8644 Misrepresentation After Inspection	Revocation, stayed, 3 years probation	16, 17/18/19, 20, 21, 22, 23, 25	Revocation and optional condition 24
Section 8645 Impersonation	Suspension, stayed, 3 years probation	16, 20, 21, 23	Revocation and optional condition 24
Section 8646 Disregard of Laws	Suspension, stayed, 3 years probation	16, 17/18/19, 20, 21, 23, 25	Revocation and optional condition 24
Section 8646.5 Cease & Desist	Revocation, stayed, 3 years probation	16, 17/18/19, 20, 21, 23	

VIOLATION	MINIMUM PENALTY	OPTIONAL PROBATION CONDITIONS	MAXIMUM PENALTY
Section 8647 Violation of Laws as to Insecticides	Suspension, stayed, 3 years probation	16, 17/18/19, 20, 21, 23	Revocation and optional condition 24
Section 8648 False Advertising	Suspension, stayed, 3 years probation	16, 17/18/19, 20, 23	Revocation and optional condition 24
Section 8649 Conviction, Evidence	Revocation, stayed, 3 years probation	16, 20, 21, 23	Revocation and optional condition 24
Section 8650 Name and Location as Licensed	Suspension, stayed, 3 years probation	16, 17/18/19, 20, 21, 23	Revocation and optional condition 24
Section 8651 Performing or Soliciting Beyond Scope of License	Revocation, stayed, 3 years probation	16, 17/18/19, 20, 21, 23	Revocation and optional condition 24
Section 8652 Failure to Make and Keep All Reports	Suspension, stayed, 3 years probation	16, 17/18/19, 20, 21, 23	Revocation and optional condition 24
Section 8653 Withholding Payment	Suspension, stayed, 3 years probation	16, 17/18/19, 20, 21, 23	Revocation and optional condition 24
Section 8654 Prohibition Against Association of Suspended Operator	Suspension, stayed, 3 years probation	16, 17/18/19, 20, 21, 23	Revocation and optional condition 24
Section 8655 Charge Substantially Related	Revocation, stayed, 3 years probation	16, 17/18/19, 20, 21, 23	Revocation and optional condition 24
Section 8657 Appointment of Receiver	Suspension, stayed, 3 years probation	16, 17/18/19, 20, 23	Revocation and optional condition 24
Violation of Probation	Extend probation with appropriate new conditions		Revoke probation and impose stayed penalty

FACTORS TO BE CONSIDERED

In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

1. Actual or potential harm to the public.
2. Actual or potential harm to any consumer.
3. Prior disciplinary record.
4. Number and/or variety of current violations.
5. Mitigation evidence.
6. In case of a criminal conviction, compliance with terms of sentence.
7. Overall criminal record.
8. Whether the conduct was knowing, willful, reckless or inadvertent.
9. The financial benefit to the respondent.
10. Evidence that the unlawful act was part of a pattern of practice.
11. Currently on probation.

The Board does not intend that any one of the above factors be required to justify the minimum or maximum penalty as opposed to an intermediate one.

STANDARD TERMS AND CONDITIONS OF PROBATION

The standard conditions of probation generally appearing in every case are:

- A. Obey All Laws [8] *
- B. File quarterly reports [9]
- C. Tolling of probation if respondent moves out of state [10]
- D. Notice to employers [11]
- E. Notice to employees [12]
- F. Posting of suspension sign [13]
- G. Violation of probation [14]
- H. Completion of probation [15]

OPTIONAL TERMS AND CONDITIONS OF PROBATION

- A. Actual suspension of license/registration certificate [16]
- B. Completion of ~~University of California Extension, Berkeley, correspondence~~ continuing education course appropriate Branch 1 [17], Branch 2 [18] or Branch 3 [19]
- C. Reimbursement to the Board for random inspections [20]
- D. Payment of inspection fee [21]
- E. Restitution to consumer [22]
- F. Prohibition from serving as officer, director, associate, partner or qualifying manager [23]
- G. No ownership of registered company [24]
- H. Take and pass licensure examination [25]

*The bracket number [8] refers to the number of the model condition spelled out in full in the Model Disciplinary Orders.

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 one 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 NUMBERS

[1] Revocation

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

[2] Revocation - Multiple Causes

(Ex. Operator's/Field Representative'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.

[3] Suspension - Single Cause

(Ex. Operator's/Field Representative's) License/Company Registration Certificate No. (Ex. OPR 1234) issued to respondent (Ex. John Doe) is suspended (Ex. thirty (30) days).

[4] Suspension - Multiple Causes (run concurrently)

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

[5] Suspension - Multiple Causes (run consecutively)

(Ex. Operator's/Field Representative's) License/Company Registration Certificate No. (Ex. OPR 1234) issued to respondent (Ex. John Doe) is suspended (Ex. thirty (30) days) pursuant to Determination of Issues (Ex. I, II and III) and (Ex. sixty (60) days) pursuant to Determination of Issues (Ex. IV and V). These suspensions shall run consecutively, for a total period of (Ex. ninety (90) days).

[6] Standard Stay Order

However, (revocation/suspension) is stayed and respondent is placed on probation for (Ex. three (3) years) upon the following terms and conditions:

[7] Probation

Respondent is placed on probation for a period of three years.

STANDARD CONDITIONS

[8] Obey All Laws

Respondent shall obey all laws and rules relating to the practice of structural pest control.

[9] Quarterly Reports

Respondent shall file quarterly reports with the Board during the period of probation.

[10] Tolling of Probation

Should respondent leave California to reside outside this state, respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

[11] Notice to Employers

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 to report to the Board in writing acknowledging the employer has read the decision in case No. (Ex. 90-01).

[12] Notice to Employees

Respondent shall, upon or before the effective date of this decision, post or 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.

[13] Posted Notice of Suspension

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

[14] Completion of Probation

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

[15] 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 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 is final.

OPTIONAL CONDITIONS

[16] Actual Suspension

(Ex. Operator's/Field Representative's) License/Company Registration No. (Ex. OPR 1234) issued to (Ex. John Doe) serves an actual suspension of (Ex. ten (10) days).

[17] ~~Correspondence~~ Continuing Education Course - Branch 1

Respondent (Ex. John Doe) shall complete ~~with a final grade of C Minus (C-) or better~~ a continuing education course for pest control in Branch 1 (fumigation) within eighteen (18) months of the effective date of this decision ~~the correspondence course, Pest Control, Branch 1: Fumigation, offered by the University of California Extension, Berkeley.~~

[18] ~~Correspondence~~ Continuing Education Course - Branch 2

Respondent (Ex. John Doe) shall complete ~~with a final grade of C Minus (C-) or better~~ a continuing education course for pest control in Branch 2 (general pest) within eighteen (18) months of the effective date of this decision ~~the correspondence course, Pest Control, Branch 2: General Pest, offered by the University of California Extension, Berkeley.~~

[19] ~~Correspondence~~ Continuing Education Course - Branch 3

Respondent (Ex. John Doe) shall complete ~~with a final grade of C Minus (C-) or better~~ a continuing education course for pest control in Branch 3 (wood destroying pests and organisms) within eighteen (18) months of the effective date of this decision ~~the correspondence course, Pest Control, Branch 3: Wood Destroying Pests and Organisms, Repairs and Corrections, offered by the University of California Extension, Berkeley.~~

[20] Random Inspections

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

[21] 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.

[22] Reimbursement 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.

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

Respondent is prohibited from serving as an officer, director, associate, partner, qualifying manager or branch office manager of any registered company during the period that discipline is imposed on (Ex. Operator's/Field Representative's) License No. (Ex. OPR 1234).

[24] 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.

[25] Take And Pass Licensure Examinations

Within (Ex. six (6) months), respondent shall take and pass the (Ex. Operator's/Field Representative'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.

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

<u>VIOLATION OF B & P CODE SECTION</u>	<u>GROUNDS FOR DISCIPLINE UNDER B & P CODE</u>
8505	8651
8505.2	8646
8505.3	8646
8505.4	8646
8505.5	8646
8505.6	8646
8505.7	8646
8505.8	8646
8505.9	8646
8505.10	8646
8505.11	8646
8505.12	8646
8505.13	8646
8505.14	8646
8505.15	8646
8505.16	8646
8506(c)	8641
8506.2	8641
8507	8651
8513	8641
8514	8641
8516	8641
8516.1	8641
8516.2	8641
8516.5	8641
8517	8641
8518	8641
8519	8644
8538	8646
8567	8641
8571	8641
8610	8641
8611	8641
8612	8650
8613	8641, 8651
8622	8641
8691	8641
8697.4	8641

**VIOLATION OF
CCR SECTION**

1911
1912
1914
1916
1917
1937
1937.13
1937.14
1937.16
1970(a) (b)
1970.3
1970.4(a)(b)(c)(d)(e)(f)
1971(a) (1) (A) (C) (D)
1971(a) (1) (B)
1971(a) (2)
1983
1990
1991
1992
1993
1994
1996
1996.1
1998
1998(f)

**GROUNDS FOR
DISCIPLINE UNDER
B & P CODE**

8641
8650
8650
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8635, 8636
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TITLE 16. CALIFORNIA CODE OF REGULATIONS
DIVISION 19. STRUCTURAL PEST CONTROL BOARD
ARTICLE 4. FUMIGATION AND PESTICIDE USE

Repeal section 1970.5:

1970.5. Commencing Aeration.

~~“The time ventilation is commenced” as used in section 8505.3 of the Code means the period of time beginning when the seal is broken and ending when all seals/tarps are removed. A licensed Branch 1 operator or field representative is required to be present during this entire period of time.~~

~~Note: Authority Cited: Section 8525, Business and Professions Code. Reference: Section 8505.3, Business and Professions Code.~~