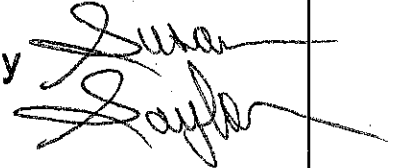


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**FILED**

Date 4/22/14 By



8 **BEFORE THE**  
**STRUCTURAL PEST CONTROL BOARD**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation and Petition to  
11 Revoke Probation Against:

Case No. 2014-54

12 **GERALD WAYNE FINLEY, II**  
13 **4219 Shadow Crest Drive**  
14 **Santa Maria, CA 93455**  
**Field Representative License No. FR 32663**

**ACCUSATION AND PETITION TO  
REVOKE PROBATION**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Susan Saylor (Complainant) brings this Accusation and Petition to Revoke Probation  
20 solely in her official capacity as the Registrar/Executive Officer of the Structural Pest Control  
21 Board, Department of Consumer Affairs.

22 2. On or about August 22, 2000, the Structural Pest Control Board issued Field  
23 Representative License Number FR 32663 to Gerald Wayne Finley, II (Respondent). The Field  
24 Representative License was in effect at all times relevant to the charges brought herein and will  
25 expire on June 30, 2015, unless renewed.

26 3. In a disciplinary action entitled "In the Matter of Accusation Against Gerald Wayne  
27 Finley, II," Case No. 2011-31, the Structural Pest Control Board, issued a decision, effective  
28 August 17, 2012, in which Respondent's Field Representative License Number FR 32663 was

1 revoked. However, the revocation was stayed and Respondent's Field Representative License  
2 was placed on probation for a period of three (3) years with certain terms and conditions. A copy  
3 of that decision is attached as Exhibit A and is incorporated by reference.

#### 4 JURISDICTION

5 4. This Accusation and Petition to Revoke Probation is brought before the Structural  
6 Pest Control Board (Board), Department of Consumer Affairs, under the authority of the  
7 following laws. All section references are to the Business and Professions Code unless otherwise  
8 indicated.

#### 9 STATUTORY PROVISIONS

10 5. Section 8620 of the Business and Professions Code (Code) provides, in pertinent part,  
11 that the Board may suspend or revoke a license when it finds that the holder, while a licensee or  
12 applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu  
13 of a suspension may assess a civil penalty.

14 6. Section 8625 of the Code states:

15 The lapsing or suspension of a license or company registration by  
16 operation of law or by order or decision of the board or a court of law, or the  
17 voluntary surrender of a license or company registration shall not deprive the board of  
18 jurisdiction to proceed with any investigation of or action or disciplinary proceeding  
against such licensee or company, or to render a decision suspending or revoking such  
license or registration.

19 7. Section 8637 of the Code states that misrepresentation of a material fact by an  
20 applicant in obtaining a license or company registration is a ground for disciplinary action.

21 8. Section 8641 of the Code states:

22 Failure to comply with the provisions of this chapter, or any rule or  
23 regulation adopted by the board, or the furnishing of a report of inspection without the  
24 making of a bona fide inspection of the premises for wood-destroying pests or  
organisms, or furnishing a notice of work completed prior to the completion of the  
work specified in the contract, is a ground for disciplinary action.

25 9. Section 8654 of the Code states, in pertinent part:

26 Any individual who has been denied a license for any of the reasons  
27 specified in Section 8568, or who has had his or her license revoked, or whose license  
28 is under suspension, or who has failed to renew his or her license while it was under  
suspension, or who has been a member, officer, director, associate, qualifying  
manager, or responsible managing employee of any partnership, corporation, firm, or

1 association whose application for a company registration has been denied for any of  
2 the reasons specified in Section 8568, or whose company registration has been  
3 revoked as a result of disciplinary action, or whose company registration is under  
4 suspension, and while acting as such member, officer, director, associate, qualifying  
5 manager, or responsible managing employee had knowledge of or participated in any  
6 of the prohibited acts for which the license or registration was denied, suspended or  
7 revoked, shall be prohibited from serving as an officer, director, associate, partner,  
8 qualifying manager, or responsible managing employee of a registered company, and  
9 the employment, election or association of such person by a registered company is a  
10 ground for disciplinary action.

11 10. Section 8593 of the Code states, in pertinent part:

12 The board shall require as a condition to the renewal of each operator's and  
13 field representative's license that the holder submit proof satisfactory to the board that  
14 he or she has informed himself or herself of developments in the field of pest control  
15 either by completion of courses of continuing education in pest control approved by  
16 the board or equivalent activity approved by the board. In lieu of submitting that  
17 proof, the licenseholder, if he or she so desires, may take and successfully complete  
18 an examination given by the board, designed to test his or her knowledge of  
19 developments in the field of pest control since the issuance of his or her license.

### 20 REGULATORY PROVISIONS

21 11. California Code of Regulations, title 16, section 1950, states, in pertinent  
22 part:

23 (a) Except as provided in section 1951, every licensee is required, as a  
24 condition to renewal of a license, to certify that he or she has completed the  
25 continuing education requirements set forth in this article. A licensee who cannot  
26 verify completion of continuing education by producing certificates of activity  
27 completion, whenever requested to do so by the Board, may be subject to disciplinary  
28 action under section 8641 of the code.

(b) Each licensee is required to gain a certain number of continuing  
education hours during the three year renewal period. The number of hours required  
depends on the number of branches of pest control in which licenses are held. The  
subject matter covered by each activity shall be designated as "technical" or "general"  
by the Board when the activity is approved. Hour values shall be assigned by the  
Board to each approved educational activity, in accordance with the provisions of  
section 1950.5.

(d) Field representatives licensed in one branch of pest control shall have  
completed 16 continuing education hours, field representatives licensed in two  
branches of pest control shall have completed 20 continuing education hours, field  
representatives licensed in three branches of pest control shall have completed 24  
continuing education hours during each three year renewal period. In each case, a  
minimum of four continuing education hours in a technical subject directly related to  
each branch of pest control held by the licensee must be gained for each branch of  
pest control licensed and a minimum of eight hours must be gained from Board  
approved courses on the Structural Pest Control Act, the Rules and Regulations, or  
structural pest control related agencies' rules and regulations.

1 **COSTS**

2 12. Section 125.3 of the Code states, in pertinent part, that a Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 **BACKGROUND INFORMATION**

7 13. In or about June 2012, Respondent submitted a license renewal application to the  
8 Board. On or about June 30, 2012, Respondent certified under penalty of perjury on the  
9 application form that he successfully completed 20 hours of continuing education during the  
10 renewal period of July 1, 2009, through June 30, 2012.

11 14. On or about November 28, 2012, the Board sent Respondent a letter indicating he  
12 had been selected for the 2012 continuing education audit. On or about July 19, 2013, the Board  
13 received continuing education certificates from Respondent. On or about October 30, 2013, the  
14 Board sent Respondent a letter informing him that he was 8 hours short of the required 20 hours  
15 and requesting that he submit any additional certificates within 14 days. The Board did not  
16 receive any additional certificates from Respondent.

17 **ACCUSATION**

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Failure to Verify Completion of Continuing Education)**

20 15. Respondent is subject to discipline under Code section 8641, for failure to comply  
21 with California Code of Regulation, title 16, section 1950, by failing to verify that he had  
22 completed 20 hours of continuing education. Complainant hereby incorporates paragraphs 13 and  
23 14, above, as though set forth fully.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Misrepresentation of Material Fact)**

26 16. Respondent is subject to discipline under Code section 8637, for misrepresenting a  
27 material fact in that he signed his license renewal application under penalty of perjury indicating  
28

1 that he had met the continuing education requirement when an audit revealed that he had not.  
2 Complainant hereby incorporates paragraphs 13 and 14, above, as though set forth fully.

3 **PETITION TO REVOKE PROBATION**

4 **FIRST CAUSE TO REVOKE PROBATION**

5 **(Quarterly Reports)**

6 17. At all times after the effective date of Respondent's probation, Condition 2 stated:

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

9 18. Respondent Gerald Wayne Finley's probation is subject to revocation because he  
10 failed to comply with Probation Condition 2, referenced above, in that he failed to submit a  
11 quarterly report for August 2013 as required.

12 **SECOND CAUSE TO REVOKE PROBATION**

13 **(Written Notice From Employer)**

14 19. At all times after the effective date of Respondent's probation, Condition 4 stated:

15 Respondent shall notify all present and prospective employers of the  
16 decision in case no. 2011-31 and the terms, conditions and restrictions imposed on  
Respondent by said decision.

17 Within 30 days of the effective date of this decision, and within 15 days  
18 of Respondent undertaking new employment, Respondent shall cause his/her  
19 employer to report to the Board in writing acknowledging the employer has read the  
decision in case No. 2011-31.

20 20. Respondent Gerald Wayne Finley's probation is subject to revocation because he  
21 failed to comply with Probation Condition 4, referenced above, in that he failed to cause his  
22 employer to submit a written notice acknowledging the terms and conditions of Respondent's  
23 probation.

24 **THIRD CAUSE TO REVOKE PROBATION**

25 **(Cost Recovery)**

26 21. At all times after the effective date of Respondent's probation, Condition 8 stated:

27 Respondent shall reimburse the Board for their costs of investigation and  
28 enforcement in this matter pursuant to Business and Professions Code section 125.3  
in the amount of \$2,500.00. Respondent shall be permitted to pay these costs in a

1 payment plan approved by the Board. Any order for payment of cost recovery shall  
2 remain in effect whether or not probation is tolled. Probation shall not terminate until  
3 full payment has been made. Should any part of cost recovery not be paid in  
4 accordance with the agreed upon payment schedule, Respondent shall be considered  
5 to be in violation of probation. A period of non-practice by Respondent shall not  
6 relieve Respondent of his obligation to reimburse the board for its costs.

7 22. Respondent Gerald Wayne Finley's probation is subject to revocation because he  
8 failed to comply with Probation Condition 8, referenced above, in that he has not submitted any  
9 portion of his cost recovery obligation to the Board.

### 10 OTHER MATTERS

11 23. Code section 8620 provides, in pertinent part, that a respondent may request that a  
12 civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of 1 to 19 days, or  
13 not more than \$10,000 for an actual suspension of 20 to 45 days. Such request must be made at  
14 the time of the hearing and must be noted in the proposed decision. The proposed decision shall  
15 not provide that a civil penalty shall be imposed in lieu of a suspension.

16 24. Pursuant to Code section 8654, if discipline is imposed on Field Representative's  
17 License Number FR 32663, issued to Gerald W. Finley, II, then Gerald W. Finley, II shall be  
18 prohibited from serving as an officer, director, associate, partner, qualifying manager, or  
19 responsible managing employee for any registered company during the time the discipline is  
20 imposed, and any registered company which employs, elects, or associates him shall be subject to  
21 disciplinary action.

### 22 PRAYER

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
24 and that following the hearing, the Structural Pest Control Board issue a decision:

25 1. Revoking or suspending Field Representative License No. FR 32663, issued to Gerald  
26 Wayne Finley, II;

27 2. Revoking the probation that was granted by the Structural Pest Control Board in Case  
28 No. 2011-31 and imposing the disciplinary order that was stayed thereby revoking Field  
Representative License No. FR 32663 issued to Gerald Wayne Finley, II;

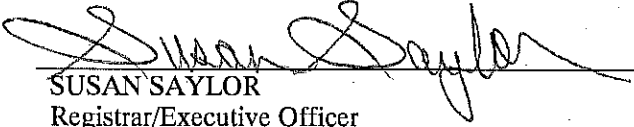
3. Prohibiting Gerald W. Finley, II from serving as an officer, director, associate,  
partner, qualifying manager or responsible managing employee of any registered company during

1 the period that discipline is imposed on Field Representative's License Number FR 32663, issued  
2 to Gerald W. Finley, II;

3 4. Ordering Gerald Wayne Finley to pay the Structural Pest Control Board the  
4 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
5 Professions Code section 125.3; and

6 5. Taking such other and further action as deemed necessary and proper.

7  
8  
9 DATED: 4/22/14

  
SUSAN SAYLOR  
Registrar/Executive Officer  
Structural Pest Control Board  
Department of Consumer Affairs  
State of California  
*Complainant*

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