

**BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA**

In the Matter of the Accusation Against)	
)	Case No. 2009-24
TODD J. STECK)	
1840 Silvio Way)	OAH No. 2009070525
Oakdale, California 95361)	
)	
Field Representative's License)	
No. FR 34691, Branch 2)	
Respondent.)	
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DECISION AFTER NON-ADOPTION

Marilyn A. Woollard, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in Modesto, California on November 23, 2009.

Deputy Attorney General Art Taggart appeared on behalf of complainant, Kelli Okuma, Registrar/Executive Officer, Structural Pest Control Board (Board), Department of Consumer Affairs.¹

Respondent Todd Steck appeared and represented himself.

The Proposed Decision of the Administrative Law Judge was submitted to the Board, and after due consideration, the Board declined to adopt the Proposed Decision. On April 27, 2010, the Board issued a Notice of Non-Adoption of Proposed Decision. On July 1, 2010, the Board issued an Order Fixing Date for Submission of Written Argument. No written argument was received from Complainant or Respondent, and the time for filing written argument in this matter has expired. The entire record, including the transcript of the hearing, having been read and considered pursuant to Government Code Section 11517, the Board makes the following decision and order:

FACTUAL FINDINGS

1. A "structural pest control field representative" (field representative) is defined as "any individual who is licensed by the board to secure structural pest control work, identify infestations or infections, make inspections, apply pesticides, submit bids for or otherwise contract, on behalf of a registered company." (Bus. & Prof. Code section

¹ After the administrative hearing of this matter, the Board was statutorily transferred from the jurisdiction of the Department of Consumer Affairs to the jurisdiction of the Department of Pesticide Regulation.

8507.)² On May 15, 2002, Respondent applied for a Branch 2 (general pest) field representative's license.

2. On May 21, 2002, the Board issued Field Representative's License Number FR 34691 to Respondent. At the time of hearing, Respondent's license was in effect but scheduled to expire on July 1, 2010.³

3. At the time of his licensure, Respondent was employed by Clark Pest Control (Clark) in Lodi, California. Respondent stopped working for Clark on October 1, 2007.

4. *Accusation/First Amended Accusation:* On October 24, 2008, Complainant made and signed an Accusation against Respondent. On January 26, 2009, Complainant made and signed a First Amended Accusation against Respondent.

The Board alleged that Respondent's license is subject to discipline based upon his failure to provide the Board with verifiable documentation to demonstrate that he had completed continuing education units required to renew his license. This conduct was alleged to violate sections 8620, 8593, and 8641, and California Code of Regulations, title 16, section 1950, subdivision (a). Complainant requested orders revoking or suspending Respondent's Field Representative's license, prohibiting Respondent from serving as an officer, director, associate, partner, or qualifying individual of any licensee, and requiring Respondent to pay the reasonable costs for the investigation and enforcement of its case.

Complainant did not allege that Respondent falsely certified that he had completed the necessary continuing education units.⁴

5. On June 12, 2009, the Board issued a Default Decision and Order, revoking Respondent's license, effective July 12, 2009, after Respondent failed to respond to the Accusation or First Amended Accusation.

6. On June 23, 2009, the Board granted Respondent's motion to set aside the default decision and to set the matter for hearing. Thereafter, the matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et.seq. The hearing convened and concluded on November 23, 2009.

² All statutory references are to the California Business and Professions Code unless otherwise indicated.

³ Respondent's license was renewed on August 17, 2010, and is current at the signing of this Decision.

⁴ Complainant offered Respondent's completed License Renewal Application Field Representative form, which appears to be dated June 18, 2004. The year of Respondent's signature is difficult to discern; however the application was for a license set to expire June 30, 2004. On this application, Respondent certified under penalty of perjury that he had "successfully completed the hours of continuing education required for renewal." A similar renewal form for the time period in dispute (July 1, 2004 and June 30, 2007) was not offered by Complainant.

7. On November 27, 2007, Board employee Viki Whitaker wrote to Respondent, regarding his selection for a continuing education (CE) audit, as follows:

When you renewed your license in 2007, you certified that you had obtained the CE hours required to renew in accordance with California Code of Regulations section 1950 of the Structural Pest Control Act.

Please submit copies of the certificates of course completion that verify your CE hours for the renewal period of July 1, 2004, through June 30, 2007, to the Board. . .

Respondent was advised that failure to verify his CE hours could result in discipline.

9. The Board made several attempts to communicate with Respondent regarding this matter. On December 3, 2007, Ms. Whitaker's letter was returned to the Board, with a note that Respondent was no longer a Clark employee and that his address was unknown. On January 15, 2008 and February 5, 2008, Ms. Whitaker sent "Second Request" letters to Respondent at an address in Henderson, Nevada. These letters were "returned to sender," with no forwarding address. On May 1, 2008, Board employee Jamie Jones, sent Respondent a certified letter delineated as a "Final Request" to provide the CE verification for the renewal period from July 1, 2004, through June 30, 2007. Respondent was advised that failure to verify his CE hours could result in discipline. The letter was sent to Henderson, Nevada and to a new address in Las Vegas, Nevada.

10. On June 4, 2008, the Board received Respondent's letter to Mr. Jones and certificates of completion for 16 hours of continuing education through Clark which were completed on June 10, 11, 16, 18, and 28, 2004.

11. On August 15, 2008, Respondent provided Mr. Jones with a letter and certificates of completion for 16 hours of continuing education for his "pre-operator course this year." These courses were taken on June 4, 2008, through the Advanced Institute of Pest Technology. Respondent advised the Board that he had lost his certificates during his move to Las Vegas, was reluctant to contact his former employer as the relationship ended "on a sour note," but recently contacted them and was provided the 2004 certificates.

12. Respondent never provided any proof that he completed the required CE units for the period between July 1, 2004, and June 30, 2007. Respondent testified that he does not dispute that he failed to complete the required continuing education courses during this period. As set forth in Factual Finding 13, Respondent explained that he mistakenly believed that courses he completed for the previous renewal period were for the July 1, 2004, through June 30, 2007 renewal period.

13. *Respondent's Testimony:* Respondent's testimony is paraphrased as follows:

Respondent was hired by Clark in 2002 as a seasonal employee when he was in college. He later became a full-time employee. Respondent's position with Clark never involved applying pesticides; he obtained his field representative's license to

further his general knowledge of the pest control field. From 2003 through 2007, Respondent worked for Clark in Utah, where he recruited students and trained them as sales representatives for Clark's services. Respondent was the only one of Clark's employees who did not work in California; as a result, he was isolated from other employees who might have discussed their CE courses. In 2005, Respondent purchased a home in California, but continued to work in Utah.

As a Clark employee, Respondent never kept track of when his continuing education hours were due. Clark employees would notify Respondent when he needed to renew his license. Respondent would come to California, take classes at Clark, and get his CE hours. In June 2004, Respondent completed 16 continuing education hours, which he certified to the Board for his license renewal in June 2004. (See footnote 3.) Respondent's next renewal period began July 1, 2004 and extended through June 30, 2007. During this period, no one at Clark told Respondent that he had to complete continuing education courses. As a result, Respondent incorrectly believed that the 16 continuing education hours he completed in June 2004 (Finding 10) fulfilled the requirements for the July 1, 2004, through June 30, 2007 period.

Respondent admitted that he was negligent and failed to take responsibility for understanding and complying with his licensing requirements. Respondent had no intention to deceive the Board, but made an "honest mistake." He also acknowledged that his "negligence does not make it [his conduct] ok." When the Board tried to contact him in late 2007, Respondent was no longer employed by Clark. Respondent believed Clark's managers were not happy with him because he left to start his own pest control company. Respondent did not initially want to contact Clark to locate the documents regarding his CE courses. He eventually gathered the documents from his storage unit and then requested Clark to send their records. Respondent spoke to his former Clark manager who verbally assured him his license was good through 2010; Respondent erroneously assumed this meant he was compliant with his CE requirements.

Respondent completed another four hours of CE in 2009.

14. Since leaving Clark's employment, Respondent developed a pest control business in Utah. Respondent is currently licensed in pest control in Nevada, where he owns and operates a business with a business partner. The partners' business plan was for Respondent to open a branch of the business in California.

In 2008, as part of this plan, Respondent moved his family to California. Respondent applied to the Board for a company business registration. He studied for and passed his operator's examination, so he would be qualified to operate the branch office in California. The Board denied Respondent's operator license and company registration, based upon the pending Accusation. Respondent is now an employee of the company he helped create and requires his license to earn a living. Respondent desires to take whatever action the Board believes is necessary to rectify his error, but requests that his license not be revoked.

15. Respondent has taken steps to ensure that he does not repeat his negligent conduct. Specifically, Respondent set up a "pest web account" for use by both himself and his co-workers. This account "allows us to jump online anytime and at no cost, complete all the continuing education requirements we need." He has also made

arrangement with his company's chemical supplier, Univar, to provide continuing education instruction as needed. As a business owner in Utah, Respondent now appreciates the need to ensure compliance with applicable laws and regulations.

16. Respondent's conduct demonstrates a failure of responsibility that is concerning. The continuing education requirement is designed to ensure that licensees maintain accurate knowledge and understanding of the use of potentially dangerous chemicals. These requirements are designed to protect the public.

During the time period Respondent failed to complete his CE units, he was licensed but did not engage in the application of pesticides. The Board did not offer evidence that Respondent's failure to meet his continuing education obligation resulted in actual harm to the public. However, Respondent's past and continued reliance on others to remind him of his obligations, and failure to take affirmative steps to ensure his compliance with the continuing education requirement while not proven to be willful at the very least would be considered to be reckless. There have been no previous or subsequent actions in violation of licensing requirements. Respondent has completed 20 hours of continuing education units since 2008. He has taken proactive steps to ensure no future failure to comply with licensing requirements. Under these circumstances, subject to the conditions outlined in the Order below, it would not be contrary to the public interest to allow him to retain his license on a probationary basis.

17. *Costs*: In support of its request for costs, Complainant submitted a Certification of Prosecution Costs: Declaration of Arthur D. Taggart (Certification) signed November 19, 2009. The Certification established that the Board was billed a total of \$623.50 in legal costs for this matter. The Certification was supported by itemized time sheets from the Department of Justice. The Board's request that Respondent reimburse it \$623.50 for its legal costs is reasonable.

Respondent does not dispute his obligation to pay the Board's costs in this matter.

LEGAL CONCLUSIONS

1. Business and Professions Code section 8620 gives the Board the power to suspend or revoke a license when it finds that the licensee has committed any acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty. The civil penalty shall not be more than five thousand dollars (\$5,000) for an actual suspension of one to 19 days.

2. It is unlawful for a person to engage in or offer to engage in the business of structural pest control unless he or she is licensed to do so. (Bus. & Prof. Code, § 8550, subd. (a).) Section 8641 provides that failure to comply with the provisions of this chapter is grounds for disciplinary action.

3. As a condition to the renewal of a field representative's license, the holder must submit proof that he or she has informed himself or herself of developments in the field of pest control either by completion of courses of continuing education in pest control approved by the Board or equivalent activity approved by the Board. (Section 8593.)

4. The Board's regulations outline continuing education requirements. California Code of Regulation, title 16, section 1950, subdivision (a), provides that every licensee is required, as a condition to renewal of a license, to certify that he or she has completed the continuing education requirements. A licensee who cannot verify completion of continuing education by producing certificates of activity completion, whenever requested to do so by the Board, may be subject to disciplinary action under section 8641 of the code.

5. As set forth in Factual Findings No. 12, Respondent does not dispute that he failed to comply with continuing education requirements during the July 1, 2004, through June 30, 2007 reporting period. Complainant has met its burden that Respondent's license is subject to discipline.

6. As set forth in Factual Findings 12 through 15, Respondent admitted and expressed remorse for his errors. Respondent's failure to complete required continuing education credits is substantially related to the qualifications, functions or duties of a licensee. Respondent's conduct evidences his present or potential unfitness to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare. (Cal. Code Regs., title 16, section 1937.1)

7. California Code of Regulation, title 16, section 1937.11 provides that in reaching a decision on a disciplinary action under the Administrative Procedure Act, the Board shall consider the disciplinary guidelines entitled "a Manual of Disciplinary Guidelines and Model Disciplinary Orders", incorporated by reference to the regulation. The minimum recommended discipline for violation of section 8641 is suspension, stayed with a three-year probation; the maximum penalty is revocation with a condition prohibiting Respondent having "any legal or beneficial interest in any company currently or hereinafter registered by the Boards." There are no specific guidelines for violations of sections 8620 or 8593. For matters not involving criminal convictions, factors to be considered in determining whether the minimum, maximum, or an intermediate penalty should be imposed include the actual or potential harm to the public and/or any consumer; prior disciplinary record; number and/or variety of current violations; mitigation evidence; whether the conduct was knowing, willful, reckless or inadvertent; the conduct financial benefit to the Respondent; and evidence that the unlawful act was part of a pattern of practice.

8. As set forth in the Factual Findings and Legal Conclusions as a whole, and particularly Factual Findings 13 through 16, Respondent's conduct does not warrant the maximum penalty. The evidence establishes that the interest and welfare of the public would be adequately protected by Respondent's continued licensure, subject to the terms and conditions set forth below.

9. *Costs*: Pursuant to section 125.3, subdivision (a), the Board may request an order directing a licensee found to have committed a violation to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. As set forth in Factual Finding No. 17, the reasonable cost for prosecuting this matter is \$623.50. The Board's costs were not disproportionate to the action and Respondent did not challenge his obligation or ability to pay. Respondent will be ordered to pay the Board \$623.50 in costs, subject to a time-payment plan if he requests.

ORDER

Field Representative's License Number FR 34691 issued to Respondent Todd J. Steck is revoked; however revocation is stayed and Respondent is placed upon probation for a period of three (3) years from the effective date of this Decision; subject to compliance with the following terms and conditions:

1. Field Representative's License Number FR 34691 issued to Respondent Todd J. Steck is actually suspended for nineteen (19) days, commencing on the effective date of this Decision.

2. A civil penalty in lieu of actual suspension, in the amount of \$1,000, is imposed. Respondent shall pay the civil penalty before the effective date of this decision. If the civil penalty is not paid before the effective date of the suspension, the license shall be suspended until the actual suspension is served.

3. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a structural pest control field representative in the State of California.

4. Within eight (8) months of the effective date of this Decision, or other time period agreed to by the Board, Respondent shall complete with a final grade of C Minus (C-) or better the correspondence course, Pest Control, Branch 2: General Pest, offered by the University of California Extension, Berkeley, or other Board-approved course.

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

6. 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.

7. Respondent shall notify all present and prospective employers of the decision in this case, including terms, conditions and restriction imposed on Respondent by this Decision.

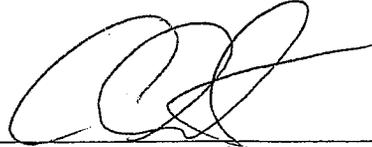
Within 30 days of the effective date of this Decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause his employer to report to the Board in writing acknowledging the employer has read the Decision in OAH Case No. 2009070525.

8. 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.

9. Upon successful completion of probation, Respondent's license shall be fully restored.

This decision shall become effective on October 2, 2010.

IT IS SO ORDERED this 2nd day of September, 2010.



CRIS ARZATE, President
STRUCTURAL PEST CONTROL BOARD

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 ARTHUR D. TAGGART, State Bar No. 083047
Supervising Deputy Attorney General
4 1300 I Street, Suite 125
P.O. Box 944255
5 Sacramento, CA 94244-2550
Telephone: (916) 324-5339
6 Facsimile: (916) 327-8643

FILED

Date 10/24/08 By Kelli Okuma

7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 2009-24

12 **TODD J. STECK**
13 1500 North 4th Street
San Jose, California 96112

ACCUSATION

14 Field Representative's License
15 No. FR 38246, Branch 2

Respondent.

17 Kelli Okuma ("Complainant") alleges:

18 **PARTIES**

19 1. Complainant brings this Accusation solely in her official capacity as the
20 Registrar/Executive Officer of the Structural Pest Control Board ("Board"), Department of
21 Consumer Affairs.

22 **Field Representative License**

23 2. On or about May 21, 2002, the Structural Pest Control Board issued Field
24 Representative's License Number FR 38246, Branch 2, to Todd J. Steck (Respondent). The
25 license will expire on June 30, 2010, unless renewed.

26 **JURISDICTION**

27 3. Section 8620 of the Business and Professions Code (Code) provides, in
28 pertinent part, that the Board may suspend or revoke a license when it finds that the holder, while

1 a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary
2 action or in lieu of a suspension may assess a civil penalty.

3 4. Code section 8624 states:

4 "If the board suspends or revokes an operator's license and one or more branch
5 offices are registered under the name of the operator, the suspension or revocation may be
6 applied to each branch office."

7 5. Code section 8625 states:

8 The lapsing or suspension of a license or company
9 registration by operation of law or by order or decision of the board
10 or a court of law, or the voluntary surrender of a license or
11 company registration shall not deprive the board of jurisdiction to
12 proceed with any investigation of or action or disciplinary
13 proceeding against such licensee or company, or to render a
14 decision suspending or revoking such license or registration.

12 6. Section 8654 of the Code states:

13 Any individual who has been denied a license for any of the
14 reasons specified in Section 8568, or who has had his or her license
15 revoked, or whose license is under suspension, or who has failed to
16 renew his or her license while it was under suspension, or who has
17 been a member, officer, director, associate, qualifying manager, or
18 responsible managing employee of any partnership, corporation,
19 firm, or association whose application for a company registration
20 has been denied for any of the reasons specified in Section 8568, or
21 whose company registration has been revoked as a result of
22 disciplinary action, or whose company registration is under
23 suspension, and while acting as such member, officer, director,
24 associate, qualifying manager, or responsible managing employee
25 had knowledge of or participated in any of the prohibited acts for
26 which the license or registration was denied, suspended or revoked,
27 shall be prohibited from serving as an officer, director, associate,
28 partner, qualifying manager, or responsible managing employee of
a registered company, and the employment, election or association
of such person by a registered company is a ground for disciplinary
action.

23 7. Code section 8593 states:

24 The board shall require as a condition to the renewal of
25 each operator's and field representative's license that the holder
26 thereof submit proof satisfactory to the board that he or she has
27 informed himself or herself of developments in the field of pest
28 control by completion of courses of continuing education in pest
control approved by the board or equivalent activity approved by
the board.

PRAYER

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

1. Revoking or suspending Field Representative's License Number FR 38246, Branch 2, issued to Todd J. Steck;
2. Prohibiting Todd J. Steck from serving as an officer, director, associate, partner, or qualifying individual of any licensee;
3. Ordering Todd J. Steck to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
4. Taking such other and further action as deemed necessary and proper.

DATED: 10/24/08



KELLI OKUMA
Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant