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8  
9 **BEFORE THE**  
**STRUCTURAL PEST CONTROL BOARD**  
10 **DEPARTMENT OF PESTICIDE REGULATION**  
**STATE OF CALIFORNIA**

11  
12 In the Matter of the Accusation Against:

13 **DAVE LEON PORTER**  
1809 Castle Drive  
14 Petaluma, California 94954  
Field Representative's License No.  
15 **FR 35954, Branch 2**

16  
17 Respondent.

Case No. 2010-19

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

18 FINDINGS OF FACT

19 1. On or about October 12, 2009, Complainant Kelli Okuma, in her official capacity as  
20 the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide  
21 Regulation, filed Accusation No. 2010-19 against Dave Leon Porter (Respondent) before the  
22 Structural Pest Control Board.

23 2. On or about May 19, 2003, the Structural Pest Control Board (Board) issued Field  
24 Representative's License No. FR 35954, Branch 2, to Respondent. The Field Representative's  
25 License was in full force and effect at all times relevant to the charges brought herein and will  
26 expire on June 30, 2011, unless renewed.

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1           3.    On or about July 12, 2000, the Structural Pest Control Board issued Registered  
2   Applicator's License No. RA 15403 to Respondent. On or about May 19, 2003, Registered  
3   Applicator's License No. RA 15403 was cancelled when Field Representative's License No. FR  
4   35954 was issued to Respondent in Branch 2.

5           4.    On or about October 20, 2009, Carol L. Grays, an employee of the Department of  
6   Justice, served by Certified and First Class Mail a copy of Accusation No. 2010-19, Statement to  
7   Respondent, Notice of Defense (2 copies), Request for Discovery, and Government Code sections  
8   11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and  
9   is 1809 Castle Drive, Petaluma, California 94954. (A copy of the Accusation is attached as  
10   Exhibit A, and is incorporated herein by reference.)

11           4.    Service of the Accusation was effective as a matter of law under the provisions of  
12   Government Code section 11505, subdivision (c).

13           5.    Government Code section 11506 states, in pertinent part:

14                   (c) The respondent shall be entitled to a hearing on the merits if the respondent  
15                   files a notice of defense, and the notice shall be deemed a specific denial of all parts  
16                   of the accusation not expressly admitted. Failure to file a notice of defense shall  
                  constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
                  may nevertheless grant a hearing.

17           6.    Respondent failed to file a Notice of Defense within 15 days after service upon him  
18   of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
19   2010-19.

20           7.    California Government Code section 11520 states, in pertinent part:

21                   (a) If the respondent either fails to file a notice of defense or to appear at the  
22                   hearing, the agency may take action based upon the respondent's express admissions  
23                   or upon other evidence and affidavits may be used as evidence without any notice to  
                  respondent.

24           8.    Pursuant to its authority under Government Code section 11520, the Board finds  
25   Respondent is in default. The Board will take action without further hearing and, based on the  
26   evidence on file herein, finds that the allegations in Accusation No. 2010-19 are true.

27           9.    The total costs for investigation and enforcement in connection with the Accusation  
28   are \$1,855.50 as of November 9, 2009.

DETERMINATION OF ISSUES

1  
2       1.     Based on the foregoing findings of fact, Respondent Dave Leon Porter has subjected  
3 his Field Representative's License No. FR 35954 to discipline.

4       2.     A copy of the Accusation is attached.

5       3.     The agency has jurisdiction to adjudicate this case by default.

6       4.     The Structural Pest Control Board is authorized to revoke Respondent's Field  
7 Representative's License based upon the following violations alleged in the Accusation:

8       a.     Business and Professions Code (Code) section 8641 in that Respondent failed to  
9 comply with the requirements of Title 16, California Code of Regulations, section 1950,  
10 subdivision (d) by failing to provide proof of having acquired 16 hours of continuing education,  
11 for the renewal period of July 1, 2005 through June 30, 2008, as he claimed, under penalty of  
12 perjury, on his renewal application dated August 1, 2008, after having been requested by the  
13 Board to do so in writing on December 15, 2008. On or about December 26, 2008, the Board  
14 received the certificates, however, on or about May 15, 2009, the Board sent Respondent a letter  
15 notifying him that his continuing education completion certificate number 8565.5 was not  
16 accepted because it was dated August 8, 2008, which was beyond the three-year renewal period.  
17 On or about June 2, 2009, the Board received a letter of explanation from Respondent in which he  
18 stated that he was under the impression that if he renewed his license late, he could just pay a late  
19 fee and take his continuing education after the due date. On or about June 2, 2009, the Board sent  
20 a letter to Respondent notifying him that he was out of compliance for the 2008 audit and that,  
21 accordingly, his license was subject to disciplinary action.

22       b.     Section 8637 of the Code in that Respondent obtained the renewal of his field  
23 representative's license by misrepresenting the material fact that he had acquired 16 hours of  
24 continuing education, when in fact he had not.

25       c.     Section 8642 of the Code in that Respondent committed a fraudulent act by  
26 certifying under penalty of perjury on his renewal application that he had acquired and could  
27 demonstrate 16 hours of continuing education in order to meet the license renewal requirements  
28 pursuant to Title 16, California Code of Regulations, section 1950, subdivision (d), when in fact

1 he failed to obtain 16 hours of continuing education and/or failed to demonstrate that he had done  
2 so.

3 ORDER

4 IT IS SO ORDERED that Field Representative's License No. FR 35954, heretofore issued  
5 to Respondent Dave Leon Porter, is revoked.

6 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
7 written motion requesting that the Decision be vacated and stating the grounds relied on within  
8 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
9 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

10 This Decision shall become effective on January 29, 2010.

11 It is so ORDERED December 30, 2009

12

13

Clifford J. Nelson  
FOR THE STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF PESTICIDE REGULATION

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Attachment:

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Exhibit A: Accusation No.2010-19

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**Exhibit A**

**No. 2010-19**

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10-20

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7 *Attorneys for Complainant*

**FILED**

Date 10/8/09 By *Kelli Okuma*

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:  
12 **DAVE LEON PORTER**  
1809 Castle Drive  
13 Petaluma, California 94954  
Field Representative's License No. FR  
14 35954, Branch 2  
15 Respondent.

Case No. 2010-19  
**ACCUSATION**

17 Complainant alleges:

18 PARTIES

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

22 2. On or about May 19, 2003, the Structural Pest Control Board issued Field  
23 Representative's License Number FR 35954, Branch 2 to Dave Leon Porter (Respondent). The  
24 Field Representative's License was in full force and effect at all times relevant to the charges  
25 brought herein and will expire on June 30, 2011, unless renewed.

26 PRIOR LICENSE HISTORY

27 3. On or about July 12, 2000, the Structural Pest Control Board issued Registered  
28 Applicator's License Number RA 15403, Branch 2, to Respondent. On or about May 19, 2003,

1 Registered Applicator's License Number RA 15403 was cancelled when Field Representative's  
2 License Number FR 35954 was issued to Respondent in Branch 2.

3 JURISDICTION

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

7 STATUTORY PROVISIONS

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

12 6. Section 118, subdivision (b), of the Code provides that the expiration of a license  
13 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period  
14 within which the license may be renewed, restored, reissued or reinstated.

15 7. Section 8625 of the Code states:

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

21 8. Section 8593 of the Code states, in pertinent part:

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



1 education requirements. In order to assure compliance with the continuing education  
2 requirements for the 2008 renewal period, Respondent was instructed by letter, dated December  
3 15, 2008, to submit to the Board copies of continuing education completion certificates for the  
4 renewal period of July 1, 2005 through June 30, 2008.

5 FIRST CAUSE FOR DISCIPLINARY ACTION

6 (Failure to Provide Proof of Continuing Education)

7 15. Respondent has subjected his field representative's license to disciplinary action  
8 under Section 8641 of the Code in that he failed to comply with the requirements of Title 16,  
9 California Code of Regulations, section 1950, subdivision (d) by failing to provide proof of  
10 having acquired 16 hours of continuing education, for the renewal period of July 1, 2005 through  
11 June 30, 2008, as claimed on his renewal application dated August 1, 2008, after having been  
12 requested by the Board to do so in writing on December 15, 2008. On or about December 26,  
13 2008, the Board received the certificates, however, on or about May 15, 2009, the Board sent  
14 Respondent a letter notifying him that his continuing education completion certificate number  
15 8565.5 was not accepted because it was dated August 8, 2008, which was beyond the three-year  
16 renewal period. On or about June 2, 2009, the Board received a letter of explanation from  
17 Respondent in which he stated that he was under the impression that if he renewed his license  
18 late, he could just pay a late fee and take his continuing education after the due date. On or about  
19 June 2, 2009, the Board sent a letter to Respondent notifying him that he was out of compliance  
20 for the 2008 audit and that, accordingly, his license was subject to disciplinary action.

21 SECOND CAUSE FOR DISCIPLINARY ACTION

22 (Misrepresentation)

23 16. Respondent has subjected his field representative's license to disciplinary action  
24 under Section 8637 of the Code in that he obtained the renewal of his field representative's  
25 license by misrepresenting the material fact that he had acquired 16 hours of continuing  
26 education, when in fact he had not.

27 . . .

28 . . .

