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FILED

Date 8/13/13 By 

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

12 In the Matter of the Accusation Against:

Case No. 2014-11

13 **SHAWN PATRICK GORMLEY**
14 4446 Manhattan Beach Boulevard
Lawndale, CA 90260

A C C U S A T I O N

15 Field Representative's License No. FR 39053
16 Applicator License No. RA 41814

Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about August 04, 2005, the Structural Pest Control Board (Board) issued Field
24 Representative's License No. FR 39053, to Shawn Patrick Gormley (Respondent). The Field
25 Representative's License was in full force and effect at all times relevant to the charges brought
26 herein and will expire on June 30, 2014, unless renewed.

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1 3. On or about April 14, 2004, the Board issued Applicator License No. RA 41814, to
2 Respondent. The Applicator License expired on April 14, 2013, and has not been renewed.

3 **JURISDICTION**

4 4. This Accusation is brought before the Board under the authority of the following
5 laws. All section references are to the Business and Professions Code unless otherwise indicated.

6 **STATUTORY PROVISIONS**

7 5. Section 118, subdivision (b), provides that the suspension, expiration, surrender, or
8 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
9 action during the period within which the license may be renewed, restored, reissued or
10 reinstated.

11 6. Section 490 states, in pertinent part:

12 "(a) In addition to any other action that a board is permitted to take against a licensee, a
13 board may suspend or revoke a license on the ground that the licensee has been convicted of a
14 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
15 or profession for which the license was issued.

16 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
17 discipline a licensee for conviction of a crime that is independent of the authority granted under
18 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
19 of the business or profession for which the licensee's license was issued.

20 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
21 conviction following a plea of nolo contendere. Any action that a board is permitted to take
22 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
23 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
24 made suspending the imposition of sentence, irrespective of a subsequent order under the
25 provisions of Section 1203.4 of the Penal Code."

26 7. Section 8620 states, in pertinent part, that the Board may suspend or revoke a license
27 when it finds that the holder, while a licensee or applicant, has committed one or more acts or
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1 omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil
2 penalty.

3 8. Section 8625 states:

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

9 9. Section 8637 states that "[m]isrepresentation of a material fact by the applicant in
10 obtaining a license or company registration is a ground for disciplinary action."

11 10. Section 8649 states:

12 "Conviction of a crime substantially related to the qualifications, functions, and duties of a
13 structural pest control operator, field representative, applicator, or registered company is a ground
14 for disciplinary action. The certified record of conviction shall be conclusive evidence thereof."

15 11. Section 8654 states:

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

1 12. Section 8655 states:

2 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
3 charge substantially related to the qualifications, functions, and duties of a structural pest control
4 operator, field representative, applicator, or registered company is deemed to be a conviction
5 within the meaning of this article or Section 8568 of this chapter. The board may order the
6 license or registration suspended or revoked, or may decline to issue a license, when the time for
7 appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order
8 granting probation is made suspending the imposition of sentence, irrespective of a subsequent
9 order under the provisions of Section 1203.4 of the Penal Code allowing the individual or
10 registered company to withdraw a plea of guilty and to enter a plea of not guilty, or setting aside
11 the verdict of guilty, or dismissing the accusation, information or indictment."

12 **REGULATORY PROVISIONS**

13 13. California Code of Regulations, title 16, section 1937.1 states, in pertinent part:

14 "For purposes of denial, suspension, or revocation of a license or company registration
15 pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be
16 considered to be substantially related to the qualifications, functions, or duties of a licensee or
17 registered company under Chapter 14 of Division 3 of the code if to a substantial degree it
18 evidences present or potential unfitness of such licensee or registered company to perform the
19 functions authorized by the license or company registration in a manner consistent with the public
20 health, safety, and welfare."

21 **COST RECOVERY**

22 14. Section 125.3 provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licentiate found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Convictions of Substantially-Related Crimes)**

3 15. Respondent is subject to disciplinary action under Sections 490, and 8649, in
4 conjunction with California Code of Regulations, title 16, Section 1937.1, in that Respondent was
5 convicted of crimes substantially related to the qualifications, functions, or duties of a licensed
6 field representative and applicator, as follows:

7 a. On or about September 28, 2012, after pleading guilty, Respondent was convicted of
8 one misdemeanor count of violating Penal Code section 459-460 [second degree commercial
9 burglary], in the criminal proceeding entitled *The People of the State of California v. Shawn*
10 *Patrick Gormley* (Super. Ct. Orange County, 2012, No. 12HM10941). The Court ordered
11 Respondent to pay a fine. In addition, on or about September 28, 2012, Respondent admitted in a
12 statement in the "Sentence Recommendation for Terminal Disposition" that he had unlawfully
13 gone to the K-Mart on August 27, 2012 with T.T./T.M., with the sole purpose of having her enter
14 K-Mart and steal property, and that he had agreed to be the "getaway driver." The circumstances
15 underlying the conviction are as follows:

16 b. On or about August 27, 2012, a female associate of Respondent, T.M. was seen by a
17 Loss Prevention Officer (LPO) for the K-Mart Department store, in Costa Mesa, California (K-
18 Mart), with three children, pushing a shopping cart. The LPO recognized the female associate
19 because she had been spotted shoplifting there before. On August 27, 2012, the LPO observed
20 the female associate via surveillance video roll up seven items of clothing, and place them in her
21 personal bag. She went to the return desk, and then fled from the store without paying for the
22 merchandise, leaving two of the children behind, who had gone to the restroom. The LPO
23 followed her out of the store, identified himself, and requested that she return to the store to pay
24 for the merchandise, but she refused. She got into a black Honda Prelude with a driver who was
25 later identified as Respondent, placed her toddler daughter in the car and her handbag with the
26 stolen merchandise, and yelled at Respondent to start the car and go. Respondent sped away in
27 his vehicle with the toddler not restrained in a car seat, and without two of the girls, for whom she
28 was the legal guardian. When Respondent returned to the store to pick up the two girls, a police

1 officer from the Costa Mesa Police Department attempted to speak with him, but he was
2 uncooperative. On August 27, 2012, Respondent was arrested and booked into the Costa Mesa
3 jail on charges of burglary, conspiracy to commit a crime and willful cruelty to a child.

4 c. On or about August 22, 2011, Respondent was convicted of one misdemeanor count
5 of violating Vehicle Code section 23152, subdivision (a) [driving while under the influence of
6 drugs and/or alcohol]; one misdemeanor count of violating Vehicle Code section 23152,
7 subdivision (b) [driving while having 0.08% and more, by weight, of alcohol in the blood]; and
8 one misdemeanor count of violating Penal Code section 148, subdivision (a)(1) [obstruct a public
9 officer, etc.], in the criminal proceeding entitled *The People of the State of California v. Shawn*
10 *Patrick Gormley* (Super. Ct. Orange County, 2010, No. 10NM15033). The Court sentenced
11 Respondent to serve 20 days in jail, placed him on informal probation for a period of three years,
12 ordered him to complete a three month Level 1 First Offender alcohol program and a Mothers
13 Against Drunk Driving (MADD) program, and pay fines and fees. On September 28, 2012 and
14 April 4, 2013, the court found that Respondent had violated the terms of his probation. On the
15 latter date, the court ordered him to serve six days in the Orange County jail. The circumstances
16 underlying the conviction are as follows:

17 d. On or about July 24, 2010, Respondent was stopped in his vehicle for traffic
18 violations by an officer of the Buena Park Police Department. An officer observed him make a
19 hand gesture towards them, as if he was holding a pistol at him. Such movement is a violation of
20 Vehicle Code section 22111, and also made the officer suspicious that he might be in possession
21 of a concealed firearm. The officer followed Respondent's black Honda Prelude, and noticed him
22 flick the end of his cigarette to remove ash out of his driver's side window, a violation of Vehicle
23 Code section 23111. The officer also noticed Respondent's vehicle was swerving left to right,
24 and he was slightly straddling the Nos. 1 and No. 2 lanes of northbound Valley View. This
25 caused the officer to form the opinion that Respondent might be driving while under the influence
26 of alcohol and/or drugs, and the officer stopped Respondent's vehicle. When the officer asked
27 Respondent to step out of his vehicle, he screamed "Why the f___ are you stopping me". Due to
28 Respondent's behavior, the officer handcuffed Respondent for officer safety reasons, and called

1 for additional officers to assist him. Officers smelled the odor of an alcoholic beverage/beverages
2 emanating from Respondent's breath and person, and observed that he had bloodshot, watery
3 eyes. Respondent admitted to consuming alcoholic beverages earlier that day, and stated he had
4 "two shots of tequila". He was somewhat aggressive and uncooperative. Based upon
5 Respondent's actions, officers believed that he was either too intoxicated or too uncooperative to
6 complete the field sobriety tests. Respondent refused to submit to a Preliminary Alcohol
7 Screening (PAS) test, to field sobriety tests, and to a breathalyzer or blood test. An officer spoke
8 to the passenger in Respondent's vehicle, T.M., who said that she knew Respondent had
9 consumed alcohol earlier in the day. An officer located an approximate gallon bottle of "Jose
10 Cuervo" tequila that was half full in Respondent's vehicle. Respondent was arrested for a
11 violation of Vehicle Code section 23152(a), driving under the influence of alcohol, and was
12 transported to the Buena Park Police Department. While there, Respondent again refused to
13 submit to any field sobriety tests, a breathalyzer or a blood test, was advised of his implied
14 consent, but still refused. A blood technician arrived at the police station and on July 24, 2010, a
15 forced blood sample was taken from Respondent, during which he was cooperative. On July 26,
16 2010, the lab test results showed that Respondent's blood alcohol level was between 0.144 and
17 0.145.

18 OTHER MATTERS

19 16. Section 8620, states, in pertinent part, that a Respondent may request prior to an
20 administrative hearing that a civil penalty of not more than \$5,000 be assess in lieu of an actual
21 suspension of one to 19 days, or not more than \$10,000 for an actual suspension of 20 to 45 days.
22 The civil penalty shall not be more than \$10,000 for an actual suspension of 20 to 45 days. If the
23 licensee is assessed a civil penalty in lieu of actual suspension, the penalty shall be paid before
24 the effective date of the suspension, and if not paid, the license shall be suspended until the
25 penalty is paid or until the actual suspension is served. The Board is not bound by any expression
26 by a licensee of a preference for a form of discipline.

27 17. Pursuant to Section 8654, if discipline is imposed on Field Representative's License
28 No. FR 39053, issued to Shawn Patrick Gormley and Applicator License No. RA 41814, issued

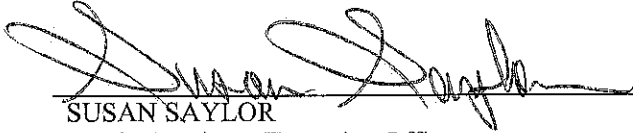
1 to Shawn Patrick Gormley, then Respondent shall be prohibited from serving as an officer,
2 director, associate, partner, qualifying manager, or responsible managing employee for any
3 registered company, and any registered company which employees, elects, or associates.
4 Respondent shall be subject to disciplinary action.

5 **PRAYER**

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

- 8 1. Revoking Field Representative's License No. FR 39053, issued to Shawn Patrick
9 Gormley;
- 10 2. Revoking Applicator License No. RA 41814, issued to Shawn Patrick Gormley; and
- 11 3. Ordering Shawn Patrick Gormley to pay the Board the reasonable costs of the
12 investigation and enforcement of this case, pursuant to section 125.3; and
- 13 4. Taking such other and further action as deemed necessary and proper.

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15 DATED: 8/13/13


16 SUSAN SAYLOR
17 Interim Registrar/Executive Officer
18 Structural Pest Control Board
19 Department of Consumer Affairs
20 State of California
21 *Complainant*

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