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FILED

Date 6/26/15 By

Susan Saylor

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 **JOSE L. PENA**
44122 Hardwood Ave.
13 Lancaster, CA 93534
14 Field Representative's License No. FR 42197,
15 Branches 2 and 3
16 Respondent.

Case No. 2015-68
ACCUSATION

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about August 23, 2007, the Board issued Field Representative's License No.
23 FR 42197 to Jose L. Pena (Respondent). The Field Representative's License was in full force and
24 effect at all times relevant to the charges brought herein and will expire on June 30, 2016, unless
25 renewed.

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1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

6 4. Section 490 of the Code states, in pertinent part:

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

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

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

21 "(d) The Legislature hereby finds and declares that the application of this section has been
22 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
23 554, and that the holding in that case has placed a significant number of statutes and regulations
24 in question, resulting in potential harm to the consumers of California from licensees who have
25 been convicted of crimes. Therefore, the Legislature finds and declares that this section
26 establishes an independent basis for a board to impose discipline upon a licensee, and that the
27 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
28 constitute a change to, but rather are declaratory of, existing law."

1 5. Section 493 of the Code states, in pertinent:

2 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
3 the department pursuant to law to deny an application for a license or to suspend or revoke a
4 license or otherwise take disciplinary action against a person who holds a license, upon the
5 ground that the applicant or the licensee has been convicted of a crime substantially related to the
6 qualifications, functions, and duties of the licensee in question, the record of conviction of the
7 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
8 and the board may inquire into the circumstances surrounding the commission of the crime in
9 order to fix the degree of discipline or to determine if the conviction is substantially related to the
10 qualifications, functions, and duties of the licensee in question.

11 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
12 'registration.'"

13 6. Section 8620 of the Code provides that the Board may suspend or revoke a license
14 when it finds that the holder, while a licensee or applicant, has committed any acts or omissions
15 constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty.

16 7. Code section 8593 states, in pertinent part:

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

24 “(b) The board shall develop a correspondence course or courses with any educational
25 institution or institutions as it deems appropriate. This course may be used to fulfill the
26 requirements of this section. The institution may charge a reasonable fee for each course.

27 “(c) The board may charge a fee for the taking of an examination in each branch of pest
28 control pursuant to this section in an amount sufficient to cover the reasonable regulatory cost of

1 administering each examination.

2 8. Section 8637 of the Code states, in pertinent part, that "[m]isrepresentation of a
3 material fact by the applicant in obtaining a license or company registration is a ground for
4 disciplinary action."

5 9. Section 8641 of the Code states, in pertinent part:

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

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

11 "Any individual who has been denied a license for any of the reasons specified in Section
12 8568, or who has had his or her license revoked, or whose license is under suspension, or who has
13 failed to renew his or her license while it was under suspension, or who has been a member,
14 officer, director, associate, qualifying manager, or responsible managing employee of any
15 partnership, corporation, firm, or association whose application for a company registration has
16 been denied for any of the reasons specified in Section 8568, or whose company registration has
17 been revoked as a result of disciplinary action, or whose company registration is under
18 suspension, and while acting as such member, officer, director, associate, qualifying manager, or
19 responsible managing employee had knowledge of or participated in any of the prohibited acts for
20 which the license or registration was denied, suspended or revoked, shall be prohibited from
21 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
22 employee of a registered company, and the employment, election or association of such person by
23 a registered company is a ground for disciplinary action."

24 11. Section 8625 of the Code states, in pertinent part:

25 "The lapsing or suspension of a license or company registration by operation of law or by
26 order or decision of the board or a court of law, or the voluntary surrender of a license or
27 company registration shall not deprive the board of jurisdiction to proceed with any investigation
28 of or action or disciplinary proceeding against such licensee or company, or to render a decision

1 suspending or revoking such license or registration."

2 12. Section 8649 of the Code states, in pertinent part:

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

6 **REGULATORY PROVISION**

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

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

15 14. California Code of Regulations, title 16, section 1950 states, in pertinent part:

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

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

27

28 "(d) Field representatives licensed in one branch of pest control shall have completed 16

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

9 **COST RECOVERY**

10 15. Section 125.3 of the Code provides that the Board may request the administrative law
11 judge to direct a licentiate found to have committed a violation or violations of the licensing act
12 to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case,
13 with failure of the licentiate to comply subjecting the license to not being renewed or reinstated.
14 If a case settles, recovery of investigation and enforcement costs may be included in a stipulated
15 settlement.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Conviction of a Substantially Related Crime)**

18 16. Respondent is subject to disciplinary action under sections 490 and 8649, in
19 conjunction with California Code of Regulations, title 16, section 1937.1, in that Respondent has
20 been convicted of a crime substantially related to the qualifications, functions or duties of a
21 licensed applicator, as follows:

22 a. On or about October 17, 2014, after pleading nolo contendere, Respondent was
23 convicted of ten felony counts of violating Penal Code section 288, subdivision (a) [lewd or
24 lascivious acts with a child under the age of 14], in the criminal proceeding entitled *The People of*
25 *the State of California v. Jose Luis Pena* (Super. Ct. L.A. County, 2014, No. MA064227). On or
26 about November 21, 2014, the Court sentenced Respondent to 21 years in state prison and
27 ordered him to register as a convicted sex offender.

28 b. The circumstances surrounding the conviction are that on or between August 19,

1 2014 and September 2014, Respondent committed lewd and lascivious acts with a victim who is
2 under the age of 14 and Respondent admitted to the acts.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Failure to Provide Proof of Continuing Education)**

5 17. Respondent is subject to disciplinary action pursuant to Code sections 8641 and 8593
6 in conjunction with California Code of Regulations, title 16, section 1950 subdivision (a), in that
7 Respondent failed to provide the Board with verifiable documentation to demonstrate that he
8 completed all of his continuing education requirements as a condition of renewal of his Field
9 Representative License. Specifically, Respondent failed to produce copies documenting
10 completion of sixteen (16) hours of continuing education for the renewal period of July 1, 2010,
11 through June 30, 2013, upon request by the Board. The circumstances are as follows:

12 a. On or about June 19, 2013, Respondent submitted a Field Representative license
13 renewal application to the Board wherein Respondent certified under penalty of perjury that he
14 successfully completed all required continuing education coursework during his last renewal
15 period. Specifically, Respondent signed a License Renewal Application, which provided in
16 pertinent part:

17 Continuing Education Certification – I have completed “16” hours of
18 continuing education required for renewal of my license. I DECLARE UNDER
19 PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

20 Respondent filled in the “16” for the number of hours, signed his name below the
21 above certification, and dated his signature “6/19/2013.”

22 b. On or about January 3, 2014, Respondent was notified that he had been selected for a
23 continuing education (CE) audit by the Board. Respondent was informed that he needed to
24 submit to the Board, copies of his certificates of completion that verify the CE hours for the
25 renewal period July 1, 2010, through June 30, 2013. Respondent was given 14 days to respond to
26 the Board’s request or risk disciplinary action being taken against his license. Respondent failed
27 to provide the Board with any certificates of completion of CE requirements for the renewal
28 period indicated.

1 c. Thereafter, on March 21, 2014 and again on August 1, 2014, Respondent was notified
2 by "SECOND REQUEST" and "FINAL REQUEST" (respectively), that he had been selected for
3 the 2013 CE audit. Each time, Respondent was given 14 days to respond to the Board's request.
4 Respondent was advised that his failure to verify his CE hours or to supply the requested
5 information could subject his field representative's license to disciplinary action. Respondent has
6 not responded to any of the Board' notices.

7 d. On or about September 10, 2014, a representative of the Board called Respondent's
8 employer, Pacific Coast Termite, who stated that Respondent was still employed. The
9 representative called and left a voicemail with Respondent, and resent the "FINAL NOTICE" via
10 Certified and First Class Mail.

11 e. On or about October 7, 2014, a representative of the Board called Respondent's
12 employer, Pacific Coast Termite, and was informed that Respondent no longer works there.

13 f. On or about October 9, 2014, the Board sent Respondent another letter indicating that
14 the Board has not received proof of completion of Respondent's CE requirements for the renewal
15 period of July 1, 2010, through June 30, 2013 and that based upon Respondent's non-compliance,
16 that the matter would be forwarded for disciplinary action against Respondent's license.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Misrepresentation of Material Fact)**

19 18. Respondent is subject to disciplinary action pursuant to Code section 8637, in that on
20 or about June 19, 2013, Respondent misrepresented to the Board that he had completed sixteen
21 (16) hours of continuing education coursework in his license renewal application, when in fact he
22 had failed to do so. Complainant refers to and by this reference incorporates, the allegations set
23 forth above in paragraph 17, as though set forth fully.

24 **OTHER MATTERS**

25 19. Section 8620 provides, in pertinent part, that a respondent may request that a civil
26 penalty of not more than \$5,000 be assessed in lieu of an actual suspension of 1 to 19 days, or not
27 more than \$10,000 for an actual suspension of 20 to 45 days. Such request must be made at the
28 time of the hearing and must be noted in the proposed decision. The proposed decision shall not

1 provide that a civil penalty shall be imposed in lieu of a suspension.

2 20. Pursuant to 8654 of the Code, if discipline is imposed on Field Representative
3 License No. FR 42197 issued to Respondent, Respondent shall be prohibited from serving as an
4 officer, director, associate, partner, qualifying manager, or responsible managing employee for
5 any registered company during the time the discipline is imposed, and any registered company
6 which employs elects, or associate Respondent, shall be subject to disciplinary action.

7 **PRAYER**

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

10 1. Revoking or suspending Field Representative's License No. FR 42197, issued to Jose
11 L. Pena;

12 2. Prohibiting Jose L. Pena from serving as an officer, director, associate, partner,
13 qualifying manager, or responsible managing employee of any registered company during the
14 period that discipline is imposed on Field Representative License No. FR 42197, issued to Jose L.
15 Pena.

16 3. Ordering Jose L. Pena to pay the Board the reasonable costs of the investigation and
17 enforcement of this case, pursuant to section 125.3 of the Code; and

18 4. Taking such other and further action as deemed necessary and proper.

19
20
21 DATED: 6/26/15


SUSAN SAYLOR

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

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