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FILED

Date 1/26/15 By *Susan Saylor*

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 2015-36

12 **MICHAEL J. BARR**
13 828 Maria Avenue
14 La Verne, CA 91750

ACCUSATION

15 Field Representative's License No. FR 44788,
Branch 2;
16 Applicator's License No. RA 49350, Branch 3.

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

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

23 **Field Representative License**

24 2. On or about September 24, 2009, the Structural Pest Control Board (Board) issued
25 Field Representative's License No. FR 44788, Branch 2 to Michael J. Barr (Respondent). The
26 Field Representative's License was in full force and effect at all times relevant to the charges
27 brought herein and will expire on June 30, 2015, unless renewed.

28 //

1 Applicator's License

2 3. On or about October 15, 2008, the Board issued Applicator's License No. RA 49350,
3 Branches 2 and 3 to Respondent. The Applicator's License was cancelled on or about October
4 15, 2011.

5
6 JURISDICTION

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

9
10 STATUTORY PROVISIONS

11 5. 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 6. Section 493 states:

27 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
28 the department pursuant to law to deny an application for a license or to suspend or revoke a

1 license or otherwise take disciplinary action against a person who holds a license, upon the
2 ground that the applicant or the licensee has been convicted of a crime substantially related to the
3 qualifications, functions, and duties of the licensee in question, the record of conviction of the
4 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
5 and the board may inquire into the circumstances surrounding the commission of the crime in
6 order to fix the degree of discipline or to determine if the conviction is substantially related to the
7 qualifications, functions, and duties of the licensee in question. As used in this section, "license"
8 includes "certificate," "permit," "authority," and "registration."

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

13 8. Section 8625 states:

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

19 9. Section 8637 states:

20 "Misrepresentation of a material fact by the applicant in obtaining a license or company
21 registration is a ground for disciplinary action."

22 10. Section 8649 states:

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

26 11. Section 8654 states:

27 "Any individual who has been denied a license for any of the reasons specified in Section
28 8568, or who has had his or her license revoked, or whose license is under suspension, or who has

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

12 12. Section 8655 states:

13 “A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
14 charge substantially related to the qualifications, functions, and duties of a structural pest control
15 operator, field representative, applicator, or registered company is deemed to be a conviction
16 within the meaning of this article or Section 8568 of this chapter. The board may order the
17 license or registration suspended or revoked, or may decline to issue a license, when the time for
18 appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order
19 granting probation is made suspending the imposition of sentence, irrespective of a subsequent
20 order under the provisions of Section 1203.4 of the Penal Code allowing the individual or
21 registered company to withdraw a plea of guilty and to enter a plea of not guilty, or setting aside
22 the verdict of guilty, or dismissing the accusation, information or indictment.”

23
24 **REGULATORY PROVISIONS**

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

26 “For the purposes of denial, suspension or revocation of a license or company registration
27 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
28 considered to be substantially related to the qualifications, functions or duties of a licensee or

1 registered company under Chapter 14 of Division 3 of the code if to a substantial degree it
2 evidences present or potential unfitness of such licensee or registered company to perform the
3 functions authorized by the license or company registration in a manner consistent with the public
4 health, safety, or welfare.”

5
6 **COST RECOVERY**

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

10
11 **CONTROLLED SUBSTANCE**

12 15. “Methamphetamine,” is a Schedule II controlled substance as designated by Health
13 and Safety Code section 11055, subdivision (d)(2) and is categorized as a dangerous drug
14 pursuant to section 4022.

15
16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Convictions of Substantially Related Crimes)**

18 16. Respondent is subject to disciplinary action pursuant to sections 490 and 8649 in
19 conjunction with California Code of Regulations, Title 16, section 1937.1, in that Respondent was
20 convicted of crimes substantially related to the qualifications, functions, or duties of a licensed
21 field representative and applicator, as follows:

22 a. On or about April 30, 2014, Respondent was convicted of one felony count of
23 violating Health and Safety Code section 11364.1, subdivision (a) [possession of unlawful
24 paraphernalia], one felony count of Health and Safety Code section 11377, subdivision (a)
25 [possession of a controlled substance], one felony count of Penal Code section 22010
26 [manufacturing, selling, or possessing nanchaku], and one felony count of Penal Code section
27 29800, subdivision (a)(1) [felon or addict in possession of firearm] in the criminal proceeding
28 entitled *The People of the State of California v. Michael J. Barr* (Super Ct. Fresno County, 2014,

1 No. F14902556). The Court placed Respondent on 36 months probation, with terms and
2 conditions.

3 b. The circumstances surrounding the conviction are that on or about March 15, 2014,
4 Fresno County Sheriffs were dispatched to investigate a disturbance at 6717 E. Floral, in Selma.
5 When deputies arrived, they heard the Respondent who was speaking in a "loud and angry tone."
6 A records check of the address revealed that Respondent was on felony probation and subject to
7 search and seizure. During a probation search of Respondent's bedroom, deputies located a pink
8 bed sheet bundled up on the floor of his closet which covered a glass pipe and two partially
9 broken light bulbs with burn marks. The deputies looked into each item and saw a brown residue
10 in each of them. Based on the deputies training, the residue was believed to be methamphetamine
11 (meth) and the glass light bulbs and pipe to be instruments used for smoking meth. A further
12 search revealed a black leather rifle case on the north side of the closet with a unloaded brown
13 Remington model 1903 30-06 caliber bolt action rifle inside. In addition, the deputies located 4
14 swords of various lengths and colors in the closet. Additionally, the deputies looked underneath
15 Respondent's bed and removed a nunchaku (weapon) from the northeast portion of the bed that
16 had two 12 inch black bars and was connected by a 3 inch cloth string. The deputies located a
17 large sheathed knife a 12 inch blade in the toolbox in the southwest corner of the bedroom.

18 c. On or about February 25, 2014, Respondent was convicted of one felony count of
19 violating Health and Safety Code section 11377, subdivision (a) [possession of a controlled
20 substance] in the criminal proceeding entitled *The People of the State of California v. Michael J.*
21 *Barr* (Super Ct. Fresno County, 2014, No. F14901677). The Court placed Respondent on 24
22 months probation, with terms and conditions.

23 d. The circumstances surrounding the conviction are that on or about February 19, 2014,
24 Fresno County Sheriffs were dispatched to investigate a disturbance at 6717 E. Floral, in Selma.
25 When deputies arrived, they contacted the Respondent who appeared to be under the influence of
26 narcotics. Respondent also admitted that he possessed meth in his bedroom and thereafter
27 provided the deputies with meth that he removed from a tool box.
28

1 e. On or about January 30, 2014, Respondent was convicted of one felony count of
2 violating Health and Safety Code section 11377, subdivision (a) [possession of a controlled
3 substance] in the criminal proceeding entitled *The People of the State of California v. Michael J.*
4 *Barr* (Super Ct. Fresno County, 2014, No. F14900887). The Court placed Respondent on 24
5 months probation, with terms and conditions.

6 f. The circumstances surrounding the conviction are that on or about January 26, 2014,
7 Fresno County Sheriffs were dispatched to investigate a disturbance at 6717 E. Floral, in Selma,
8 pursuant to a 911 call. When deputies arrived, they contacted the Respondent who appeared
9 “paranoid” and had “scattered thoughts.” Believing that Respondent was under the influence of
10 drugs, deputies asked Respondent if he had used meth. Respondent admitted that he used meth
11 earlier in that day. Respondent also admitted that he possessed meth paraphernalia, to wit, a pipe.
12 During a consented search of Respondent’s bedroom, deputies located a black cloth bag (soft
13 glass case) on a shelf along the south wall of the bedroom, which contained a blue glass pipe with
14 a crystal-like residue. The recognized the pipe as a pipe used to smoke meth. Deputies also
15 located a small light bulb containing “a chunk” of meth and a plastic baggy in Respondent’s
16 dresser which also contained meth.

17 g. On or about August 8, 1994, Respondent was convicted of one misdemeanor count of
18 violating Penal Code section 484, subdivision (a) [petty theft] in the criminal proceeding entitled
19 *The People of the State of California v. Michael J. Barr* (Super Ct. L.A. County, 1994, No.
20 94M10444). The Court sentenced Respondent to serve 180 days in Los Angeles County Jail.

21 h. The circumstances surrounding the conviction are that on or about August 2, 1994,
22 Respondent stole, took, and carried away the personal property of another.

23 i. On or about June 29, 1994, Respondent was convicted of one misdemeanor count of
24 violating Health and Safety Code section 11550, subdivision (a) [under the influence of a
25 controlled substance] and one misdemeanor count of Health and Safety Code section 11377,
26 subdivision (a) [possession of a controlled substance] in the criminal proceeding entitled *The*
27 *People of the State of California v. Michael J. Barr* (Super Ct. L.A. County, 1994, No.
28

1 94M10444). The Court sentenced Respondent to serve 90 days in Los Angeles County Jail and
2 placed him on 36 months probation, with terms and conditions.

3 j. The circumstances surrounding the conviction are that on or about June 21, 1994,
4 Respondent was found to be in possession and under the influence of a controlled substance.

5 k. On or about September 2, 1987, Respondent was convicted of one misdemeanor
6 count of violating Penal Code section 594, subdivision (a) [vandalism] in the criminal proceeding
7 entitled *The People of the State of California v. Michael J. Barr* (Super Ct. L.A. County, 1987,
8 No. 87M12072). The Court sentenced Respondent to serve 1 day in Los Angeles County Jail and
9 placed him on 1 year probation, with terms and conditions.

10 l. The circumstances surrounding the conviction are that on or about August 9, 1987,
11 Respondent maliciously defaced, damaged, or destroyed the real or personal property of another.

12
13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Misrepresentation to Licensing Authority)**

15 17. Respondent is subject to disciplinary action pursuant to section 8637, in that
16 Respondent misrepresented to the Board, by failing to disclose 3 of his prior conviction cases
17 against him. Complainant refers to, and by this reference incorporates, the allegations set forth
18 above in paragraph 16, subparagraphs (d) through (f), inclusive, as though set forth fully.

19 a. On or about March 24, 2009, Respondent applied to the Board for a Field
20 Representative License. In his application, Respondent checked "yes," to question no. 9, in the
21 application which asked if he had ever been found guilty of any violation or any provision of the
22 Structural Pest Control Act. Respondent attached a print out summary of his 1997 misdemeanor
23 conviction out of Colorado, but failed to disclose 3 of his prior conviction cases against him.

24 b. On or about July 29, 2008, Respondent applied to the Board for an Applicator's
25 License. In his application, Respondent checked "yes," to question no. 11, in the application
26 which asked if he had ever been convicted of a felony or of a misdemeanor other than minor
27 traffic infractions. Respondent disclosed his 1997 misdemeanor conviction out of Colorado, but
28 failed to disclose 3 of his prior conviction cases against him.

1 DISCIPLINARY CONSIDERATIONS

2 18. In order to determine the degree of discipline, if any to be imposed on Respondent,
3 Complainant alleges that on or about June 25, 1997, Respondent was convicted of one
4 misdemeanor count of harassment via telephone – domestic violence, in the criminal proceeding
5 entitled *The People of the State of Colorado v. Michael J. Barr* (Super Ct. Boulder County, 1997,
6 No. 97M002749). The Court placed Respondent on 1 year probation and ordered him to pay
7 fines and restitution. The circumstances surrounding the conviction are that in or about May,
8 1997, Respondent harassed another via the telephone.

9
10 OTHER MATTERS

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

16 20. Pursuant to section 8654, if discipline is imposed on Field Representative License No.
17 FR 44788 issued to Respondent shall be prohibited from serving as an officer, director, associate,
18 partner, qualifying manager, or responsible managing employee for any registered company
19 during the time the discipline is imposed, and any registered company which employs, elects, or
20 associates Respondent shall be subject to disciplinary action.

21 21. Pursuant to section 8654, if discipline is imposed on Applicator's License No.
22 RA 49350 issued to Respondent shall be prohibited from serving as an officer, director, associate,
23 partner, qualifying manager, or responsible managing employee for any registered company
24 during the time the discipline is imposed, and any registered company which employs, elects, or
25 associates Respondent shall be subject to disciplinary action.

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PRAYER

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 No. FR 44788, Branch 2, issued to Michael J. Barr;

2. Revoking or suspending Applicator's License No. RA 49350, Branch 3, issued to Michael J. Barr;

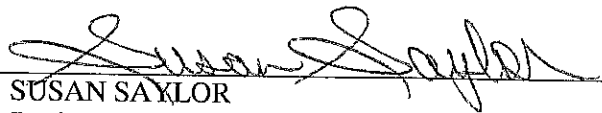
3. Prohibiting Michael J. Barr from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee of any registered company during the period that discipline is imposed on Field Representative's License No. FR 44788, Branch 2, issued to Michael J. Barr;

4. Prohibiting Michael J. Barr from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee of any registered company during the period that discipline is imposed on Applicator's License No. RA 49350, Branch 3, issued to Michael J. Barr;

5. Ordering Michael J. Barr to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 1/26/15



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

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