

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 STERLING A. SMITH
Deputy Attorney General
4 State Bar No. 84287
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-0378
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 2014-59

13
14 **MICHAEL RAND FIOLE**
15 **2733 Country Club Blvd., Unit #177**
Stockton, CA 95204
16 **Operator License No. 10327**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

17
18 Respondent.

19
20 FINDINGS OF FACT

21 1. On or about May 15, 2014, Complainant Susan Saylor, in her official capacity as the
22 Registrar/Executive Officer of the Structural Pest Control Board, filed Accusation No. 2014-59
23 against Michael Rand Fiole (Respondent) before the Structural Pest Control Board (Board). A
24 copy of the Accusation is attached as Exhibit A.

25 2. On or about October 19, 2000, the Board issued Operator License No. 10327 to
26 Respondent. The Operator License was in full force and effect at all times relevant to the charges
27 brought in Accusation No. 2014-59 and will expire on June 30, 2015, unless renewed.

1 3. On or about June 3, 2014, Respondent was served by Certified Mail and United States
2 First Class mail with copies of the Accusation No. 2014-59, Statement to Respondent, Notice of
3 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,
4 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and
5 Professions Code section 136, is required to be reported and maintained with the Board.
6 Respondent's address of record was and is: 2733 Country Club Blvd., Unit #177, Stockton, CA
7 95204.

8 4. Service of the Accusation was effective as a matter of law under the provisions of
9 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
10 124.

11 5. On or about June 11, 2014, the aforementioned documents described in Paragraph 3
12 were returned by the U.S. Postal Service marked "Forwarding Address Expired."

13 6. 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
17 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
18 may nevertheless grant a hearing.

19 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
20 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
21 2014-59.

22 8. California Government Code section 11520 states, in pertinent part:

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

27 9. Pursuant to its authority under Government Code section 11520, the Board finds
28 Respondent is in default. The Board will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
as well as taking official notice of all the investigatory reports, exhibits and statements contained
therein on file at the Board's regarding the allegations of Accusation No. 2014-59, finds that the

1 charges and allegations in Accusation No. 2014-59, are separately and severally, are true and
2 correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$1,057.50 as of June 23, 2014.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Michael Rand Fiolle has
8 subjected his Operator License No. 10327 to discipline.

9 2. The agency has jurisdiction to adjudicate this case by default.

10 3. The Board is authorized to revoke Respondent's Operator License based upon the
11 following violations alleged in the Accusation which are supported by the evidence contained in
12 the Default Decision Investigatory Evidence Packet in this case: Business & Professions Code
13 section 8593, Business & Professions Code section 8641 and section 1950, title 16, California
14 Code of Regulations by failure to verify his completion of required continuing education for the
15 period of July 1, 2009, through June 30, 2012.

16 ORDER

17 IT IS SO ORDERED that Operator License No. 10327, heretofore issued to Respondent
18 Michael Rand Fiolle, is revoked.

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

23 This Decision shall become effective on September 24, 2014.

24 It is so ORDERED August 25, 2014

25
26
27 Attachment:
Exhibit A: Accusation

28

FOR THE STRUCTURAL PEST CONTROL
BOARD
DEPARTMENT OF CONSUMER AFFAIRS