

BEFORE THE  
STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues and  
Amended Accusation Against:

BRYAN EDWARD KAYE,

Respondent.

Case Nos. 2009-33, 2009-34

OAH No. 2009010239

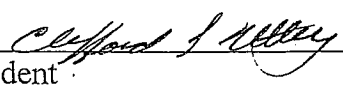
**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by  
the Structural Pest Control Board as it's Decision in the above-entitled matter.

This Decision shall become effective August 30, 2009.

IT IS SO ORDERED.

Date: July 31, 2009

  
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President  
Structural Pest Control Board

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**PROPOSED DECISION**

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter at San Diego, California on May 14, 2009.

Ben Johnson, Deputy Attorney General, represented complainant Kelli Okuma, Registrar/Executive Officer of the Structural Pest Control Board, Department Of Consumer Affairs, State of California.

Bryan Edward Kaye, respondent, represented himself and was present throughout the administrative proceeding.

The matter was submitted on May 14, 2009.

**FACTUAL FINDINGS**

*Jurisdictional Matters*

1. On December 15, 2008, complainant Kelli Okuma, signed the statement of issues in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department Of Consumer Affairs, State of California State of California (Board).

The statement of issues alleged that respondent was convicted in 2004 of making a criminal threat and annoying telephone call (first cause for denial of application), and that this act, if done by a licensee would be grounds for revocation (second cause for denial of application).

On March 24, 2009, complainant Susan Taylor signed the amended accusation in her official capacity on behalf of Kelli Okuma, Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer Affairs, State of California State of California (Board).

The amended accusation alleged that respondent was convicted in 2004 of making a criminal threat and annoying telephone call (first cause for discipline), that respondent was convicted in 1992 of having unlawful intercourse with a minor (second cause for discipline), and that respondent failed to disclose those convictions on his 2004 application for licensure (third cause for discipline).

Respondent was served with the amended accusation, statement of issues and other required jurisdictional documents. He timely filed a notice of defense.

On May 14, 2009, the record in the administrative action was opened. Jurisdictional documents were presented, documentary evidence and sworn testimony were received, and closing arguments were given. The record remained open until May 22, 2009, to allow respondent additional time to submit letters of reference.<sup>1</sup> Thereafter, the record was closed and the matter was submitted.<sup>2</sup>

### *License History*

#### Certified Applicator License

2. On May 5, 1993, Certified Applicator No. RA 32448 was issued to respondent as an employee of Effective Termite, Inc.

On May 5, 1996, Certified Applicator No. RA 32448 expired and was cancelled by the Board.

#### Field Representative License

3. On May 13, 1996, Field Representative License No. FR 26415 was issued to respondent, an employee of Effective Termite, Inc. Respondent's Field Representative license was registered with several pest control companies between 1996 and 2002.

On June 26, 2004, Field Representative License No. FR 26415 was cancelled by the Board due to the issuance of an Operator License.

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<sup>1</sup> The letters of reference and psychiatric report conducted as part of the 2004 conviction were received into evidence collectively as Exhibit 11.

<sup>2</sup> Respondent also attached a written argument to the letters of reference he submitted. However, as the record was left open only to allow respondent to submit letters of reference, his additional argument was not considered, although it was marked for identification as Exhibit 12.

### Operator's License

4. On June 26, 2004, Operator's License No. OPR 10930 was issued to respondent, an employee of J R Holmes Inc., dba Bugmasters of Buena Park. Respondent also was employed by another service, but later left that employment.

On June 30, 2008, Operator's License No. OPR 10930 was placed on inactive status. Operator's License No. OPR 10930 is currently in effect and renewed through June 30, 2009.

### *Respondent's Applications*

5. On February 23, 1995, respondent signed an Application for Structural Pest Control Field Representative License. Question 18 on the application asked, "Have you ever been convicted of a felony within the last five years or of a misdemeanor other than minor traffic infractions? If YES explain."

In response to that question, respondent checked the box marked "No."

Respondent signed the application under penalty of perjury, certifying that the information he had provided was true and correct.

Respondent's answer on his application was false because at the time he submitted his application, respondent had been convicted of having unlawful intercourse with a minor in 1992.

On October 4, 1995, the Board received a letter from respondent enclosing fingerprint cards and stating,

"At the time of the other application I was under the impression that the offense would be expunged from my record to the extent of the Board's search. I have since found out that this is not the case. I apologize, I meant no deception."

6. On March 30, 1996, respondent submitted an Application for Field Representative's License. Question 8 on the application asked, "Have you been convicted of a felony within the previous five years or misdemeanor other than violation of traffic laws? If YES attach signed detailed statement."

In response to that question, respondent did not check the box marked "Yes" or "No." Instead, respondent wrote, "What - I already did this" and drew an arrow to that portion of the question requesting him to attach a signed detailed statement to the application.

Respondent signed the application under penalty of perjury, certifying that the information he had provided was true and correct.

7. On September 2, 2003, respondent submitted an Application for Structural Pest Control Operator's Examination. Question 17 on the application asked, "Have you been

convicted of a felony or of a misdemeanor other than violation of traffic laws? If YES, contact the Structural Pest Control Board for fingerprint cards. Fingerprint cards must accompany this application. Please provide a brief explanation.”

In response to that question, respondent checked the box marked “No.” He did not provide a brief explanation.

Respondent signed the application under penalty of perjury, certifying that the information he had provided was true and correct.

Respondent’s answer on his application was false because at the time he submitted his application, respondent had been convicted of having unlawful intercourse with a minor in 1992.

8. On May 24, 2004, respondent submitted an Application for Operator’s License. Question 6 on the application asked, “Have you been convicted of a felony or misdemeanor other than violation of traffic laws? If so, attach detailed statement.”

In response to that question, respondent checked the box marked “No.” He did not provide a detailed statement.

Respondent signed the application under penalty of perjury, certifying that the information he had provided was true and correct.

Respondent’s answer on his application was false because at the time he submitted his application, respondent had been convicted in 1992 of having unlawful intercourse with a minor.

9. On July 1, 2008, respondent submitted an Application for Registration of Company License. Question 11 on the application asked, “Have you, or any of you, ever been convicted of a felony or misdemeanor other than minor traffic infractions? If yes, attach signed detailed statement.”

In response to that question, respondent checked the box marked “Yes.” His detailed statement identified a misdemeanor conviction in February 1992 for unlawful sexual intercourse with a minor, a misdemeanor conviction in June 1992, for failure to appear, and one felony and two misdemeanor convictions in 2004 for violating “Criminal 422.”

Respondent signed the application under penalty of perjury, certifying that the information he had provided was true and correct.

On July 18, 2008, respondent sent a letter to the Board disagreeing with its interpretation of the rule requiring a Livescan for a company registration. Respondent requested his field representative number be issued and wrote, “I am sure homeland security appreciated this whistle being blown. You are helping to make America stronger by keeping the working poor down.”

On August 4, 2008, the Board sent respondent a letter inquiring as to why on his 2003 Application for Structural Pest Control Operator's Examination and on his 2004 Application for Operator's License respondent had not disclosed his convictions. On August 7, 2008, respondent sent a letter to the Board with "apologies for providing the wrong information." Respondent wrote:

"Regarding the September 2003 application, I thought the request was for new felonies or misdemeanors. My field rep license request (1994 approx) includes the criminal records for the first two misdemeanors . . .

...

Regarding the June 2004 application, I likely superimposed the information to the new application without consideration of the event (the conviction date) occurring between the test dates . . . .

My deepest of apologies to the state, the board, my employers, my fellow licensees who honestly and properly answered the questions, that I went around the guidelines and failed to properly represent my past, and to the customers whose faith in the system was compromised by my failure to adhere to, follow and respect the rules. . . ."

#### *Department of Real Estate License Application*

10. Respondent introduced his January 19, 2007, application for a Salesperson License submitted to the Department of Real Estate. In that application respondent identified his prior convictions and provided the same detailed statement with that application that he had sent to the Board with his July 1, 2008, Application for Registration of Company License.

#### *Respondent's 2004 Conviction*

11. On January 16, 2004, respondent was convicted upon his plea of guilty of violating Penal Code section 422 (criminal threats), a felony, and two counts of violating Penal Code section 653m, subdivision (a) (annoying telephone calls), misdemeanors, in *People v. Bryan Edward Kaye*, Superior Court of California, County of Orange, North Justice Center, Case No. 02224176.

As a result of that conviction, the court placed respondent on three years formal probation, with the following terms and conditions: serve 180 days in custody, with credit for 90 days served, submit to chemical testing, to pay fines, fees and penalties of \$250, obey a protective order involving the victims of respondent's threats, court employees, directing him to stay away from the Fullerton court where the employees worked, ordered respondent to successfully complete the Batterer's Treatment Program and directing him to provide eight hours of community service.

In his guilty plea form, respondent admitted that on October 17, 2002, he “willfully and unlawfully and with specific intent it be taken as a threat for great bodily injury, threatened a North Court clerk by stating, ‘I’m going bring [sic] a bomb in, and when I blow up the building you can look from my pieces and she had sustained fear as a result.’ . . . On October 31, 2002, in Orange County I willfully and unlawfully threatened to kill my ex-girlfriend and her new boyfriend. . . .”<sup>3</sup>

The Orange County Sheriff’s report<sup>4</sup> indicated that on October 17, 2002, respondent called the Fullerton court Traffic Division approximately 20 times when he was angry about having to pay traffic fines. Respondent placed calls to the Traffic Division several times a day over the course of several weeks, making annoying and threatening remarks. The Traffic Division admitted it made a mistake in processing one of respondent’s tickets, but fixed the mistake. However, that did not appease respondent and he repeatedly called, threatening to shoot people, using his stun gun, smashing things with a bat, and striking “the judge’s head.” Respondent complained that no judges would help him as they were all having sex and having dinner together. Previously, on March 8, 2000, a Judicial Protection Bulletin had been issued against respondent and a March 7, 2000, court order required respondent to be escorted by a deputy every time he was in the courthouse. On October 17, 2002, respondent left a message on Sergeant Lucio’s<sup>5</sup> voicemail claiming that the judges were engaging in “inappropriate behavior” and that he would like them disbarred. Respondent claimed no one would help him. Respondent also advised another court employee that he was trying to get psychiatric help but no psychologist would help him, and “because no one will help me, it’s time to start playing God. I’m gonna get a gun, come down, and start shooting people.” Respondent also claimed that he was “going to bring a bomb in and when I blow up the building, you can look for my pieces.” The court staff took respondent’s threats seriously.

According to the Orange Police Department report,<sup>6</sup> on October 31, 2002, respondent telephoned the police department and threatened to kill his former girlfriend (who lived next door to respondent) and her boyfriend. Respondent was upset by his recent arrest for making threatening calls to his ex-girlfriend. Respondent was observed pacing outside his ex-

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<sup>3</sup> Respondent’s admission continues on another page, but that page was not provided during this hearing.

<sup>4</sup> The report was received under *Lake v. Reed* (1997) 16 Cal.4th 448, which considered what kinds of hearsay evidence are admissible under the Government Code section 11513 in an administrative proceeding. That opinion concluded that a law enforcement officer’s direct observations memorialized in the officer’s report were admissible under Evidence Code section 1280, the public employee records exception to the hearsay rule, and were sufficient to support a factual finding. The opinion concluded that admissions by a party memorialized in such a report were also admissible under Evidence Code section 1220 and were sufficient to support a factual finding. Citing Government Code section 11513, the Supreme Court concluded that other hearsay statements set forth in the officer’s report could be used for the purpose of supplementing or explaining other evidence, but that they were not sufficient by themselves to support a factual finding unless – as with the public employees records exception to the hearsay rule and the party admission exception to the hearsay rule – such hearsay would be admissible over objection in civil actions.

<sup>5</sup> It was unclear from the sheriff’s report which department employed Sgt. Lucio.

<sup>6</sup> See footnote 4, above.

girlfriend's door, yelling and screaming. He also admitted to smashing her window and stealing her personal property. Respondent called the Orange Police Department several times, admitted that he was angry, and threatened to kill his ex-girlfriend, her boyfriend, and any police officer who responded to his residence. Respondent claimed he knew where his ex's new boyfriend lived and threatened to drive there and kill them both. Respondent made several threatening comments, including, "looks like I'm just going to be killing people," "I'll start with [my ex]," "Oh wow, gee, it's a crime to steal somebody's life from them but you guys don't seem to mind, you just keep f---ing passing on me," "I need my crank, I need a f---ing attorney, and um, I'm f--- it I'm killing her!" "Ya, I'm going out to Long Beach to [new boyfriend's] house, and I am killing [ex] and [boyfriend]. Put that in your pipe and smoke it." The police convinced respondent to come to headquarters where he was arrested by three officers after a struggle. The report also indicated that Orange Police were called to respondent's residence on several prior occasions and that an Emergency Protective Order was issued against respondent for the ex and her boyfriend.

### *Respondent's Testimony*

12. Respondent began his testimony by agreeing that he was not "prepared to be an operator" for a pest control company. Respondent credibly explained his failure to disclose his convictions as being due to his boss's filing of his applications. He testified that he filled out his applications and gave them to his boss to file because there is a section on the application requiring his employer to provide information. Respondent demonstrated that portions of the application were in his handwriting, while other portions were completed by his employer. Respondent testified that he did disclose his conviction on the applications he prepared and did not know why his boss submitted applications without that information.

Respondent is currently married and owns his own condominium. He has been working as a gardener at homes where he previously provided pest control services and he has also worked construction jobs for former clients. Respondent testified that his customers have always been so satisfied with his work that they have followed him to new places of employment whenever he switched jobs. Respondent testified about the skills he possesses and the good work he does for his clients. His testimony was supported by numerous letters of reference from satisfied consumers attesting to his workmanship and skills. There was no doubt that respondent was good at the pest control work he performed. Respondent also explained that his work helps keep him focused and provides good therapy for him and helps him manage his physical conditions which include Epstein-Barr Syndrome<sup>7</sup> and Tourette's syndrome.

Respondent explained that his 1992 conviction arose out of a "flirtation" relationship with a girl who was almost 18 who wanted to engage in sexual intercourse. Respondent

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<sup>7</sup> Included among respondent's letters of reference was a June 26, 2006, lab report which appeared to indicate a positive finding for the Epstein-Barr virus antigen.



testified that his refusal to have sex with the girl due to her being underage "came back to bite me."<sup>8</sup>

Respondent testified that he was extremely upset about the number of traffic tickets he received and he made threats to the traffic court. Respondent had so many tickets and that after he tried to pay them all he concluded the issue was resolved, only to receive another notice from the court regarding a warrant for his arrest, and that this repeating process was very upsetting. Respondent testified that his ex-girlfriend was threatening to kill him and that she kept pressing charges against him because he was no longer around to take her abuse. As a result of his conviction, respondent was required to attend an anger management program and he "never missed a class." Respondent explained that the program helped him to "grow and change and address a lot of these problems" and to get a "better life."

Respondent hoped that his license would not be revoked and he "hoped there was some rehabilitative process" the Board could provide to him. He was willing to accept any terms of probation and wanted the "hope of rehabilitation."

### *Psychiatric Evaluation*

13. Along with his letters of reference, respondent also produced the psychiatric evaluation performed by John M. Diermenjian, M.D., on May 6, 2003, which was conducted as part of the 2002 prosecution which led to respondent's 2004 conviction. At the time of the evaluation, respondent was 33 years old. Dr. Diermenjian noted a medical history that included "Tourette's Disorder with vocal tics, such as repetitive cursing, and repeating statements such as 'bomb threat' or 'help, help, help.'" In the Legal History section of the report, Dr. Diermenjian noted that respondent reported that he was "charged with unlawful sexual intercourse at age 21 after having sexual relations with a 15-year-old girl who had told him she was 18 years old." Respondent had had five to ten girlfriends in the past, the longest relationship lasting eight years with a woman who passed away. Respondent had been sexually abused between the ages of three and five by older male and female children. He had a history of alcohol and cannabis abuse, and had smoked crystal meth from May to October 2002. Respondent treated with a psychiatrist at age 15 because he was disruptive in school and attended a 60-day rehabilitation program, New Beginnings, while in high school. Respondent never graduated from high school.

Dr. Diermenjian noted that respondent was anxious throughout the evaluation, with "evidence of abnormal mannerisms as manifested by vocal tics and abnormal movements of his head. His speech was pressured and disjointed at times. His mood was 'sad.' His affect was anxious."

Dr. Diermenjian's psychiatric diagnosis was: Major Depressive Disorder, with anxious features; Alcohol Abuse, by history; Cannabis Abuse, by history; and Amphetamine Abuse, by history.

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<sup>8</sup> No other testimony regarding that conviction was elicited at this hearing.

Dr. Diermenjian recommended that respondent "can benefit from psychiatric treatment and pharmacotherapy," "can benefit from individual psychotherapy on a weekly basis," "should participate in an Alcoholics Anonymous and/or Narcotics Anonymous program with a sponsor," and "can benefit from anger management classes to control his impulsive behavior."

### *Letters of Reference*

14. Respondent submitted letters of reference from extremely satisfied customers, most of whom have been clients between ten and 20 years. However, most of those letters did not mention respondent's convictions, thus raising questions whether or not the customers were aware of the convictions. Moreover, respondent's skills were not at issue in this proceeding; rather, his convictions and his purported failure to disclose them were the issues being litigated.

Included with the letters from customers was an August 29, 2003, letter from respondent's ex-girlfriend, the one respondent had threatened, requesting the criminal charges against him be dropped. She wrote that the anger management courses were sufficient and "for the record, [respondent] is of no threat to me." There was also a February 6, 2004, letter from respondent's Orange County Public Defender written to the Orange County Probation department recommending that respondent be granted participation in the supervised electronic surveillance program as opposed to being incarcerated. The Public Defender noted that respondent had been in counseling for several months and incarceration would be "disruptive to the progress he has made." The Public Defender also wrote that respondent enjoyed his parents' full support and had always been gainfully employed as an exterminator and "appears to take great pride in his work and his service to his clients which should be recognized as demonstrating that he is a responsible person."

### *Cost Recovery*

15. Business and Professions Code section 125.3, permits the Board to seek the reasonable costs of its investigation and enforcement in these matters.

The certification of costs submitted in matter number 2009-33 indicated that the Department of Justice had billed \$3,120.50 to the Board for 19.75 hours worked on the case, as documented by a May 14, 2009, "Matter Time Activity By Professional Type" print-out from the Department of Justice (DOJ).

The certification of costs submitted in matter number 2009-34 indicated that the Department of Justice had billed \$10,100.75 to the Board for 69.25 hours worked on the case, as documented by a May 14, 2009, "Matter Time Activity By Professional Type" print-out from the Department of Justice (DOJ).

The costs incurred as documented by the DOJ printouts appeared reasonable in both work performed and time spent on each task.

16. As noted, respondent has been providing odd jobs for clients and he lacks a steady source of income. Requiring him to reimburse the Board would impose an undue financial hardship on him, especially if his license is revoked.

## LEGAL CONCLUSIONS

### *Burdens and Standards of Proof*

#### Application/Statement of Issues:

1. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that he or she is qualified to hold the license. The standard of proof is a preponderance of the evidence. (*California Administrative Hearing Practice* (Cont. Ed. Bar 2d ed. 1997) The Hearing Process, §§ 7.51-7.53 at 365-367.)

#### Existing License/Accusation:

2. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) "Clear and convincing evidence" requires a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. Evidence of a charge is clear and convincing as long as there is a high probability that the charge is true. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

### *Relevant Statutory Provisions*

3. Business and Professions Code section 480 provides in part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one or more of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea . . . of guilty or a conviction following a plea of nolo contendere . . .

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another or substantially injure another.

(3) Done any act which if done by a licentiate . . . would be grounds for suspension or revocation of license.

The board may deny a license . . . only if the crime . . . is substantially related to the qualifications, functions or duties of the business or profession for which application is made. . .

...

(c) A board may deny a license . . . on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application. . . .”

4. Business and Professions Code section 8637 provides that a misrepresentation of a material fact by the applicant in obtaining a license or company registration is a ground for disciplinary action.

5. Business and Professions Code section 8649 provides:

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

6. Business and Professions Code section 8655 provides in part:

“A plea . . . of guilty . . . to a charge substantially related to the qualifications, functions, and duties of a structural pest control operator, field representative, applicator, or registered company is deemed to be a conviction within the meaning of this article or Section 8568 of this chapter. The board may order the license or registration suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed . . . .”

### *Substantial Relationship*

7. A conviction alone will not support a denial of a license unless the crime substantially relates to the qualifications, functions, or duties of the business or profession in question. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.)

8. Where the Legislature delegates to an administrative agency the responsibility to implement a statutory scheme through rules and regulations, the courts will interfere only when the agency has clearly overstepped its statutory authority or violated a constitutional mandate (*Ford Dealers Association v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 356), and deference should be given to an administrative agency’s interpretation of a statute or regulation involving its area of expertise. (*Communities for a Better Environment v. State Water Resources Control Board* (2005) 132 Cal.App.4th 1313, 1330.)

### *Regulatory Authority*

9. Title 16, California Code of Regulations, section 1937.11, authorizes the Board to consider its disciplinary guidelines when reaching a decision.

## *Disciplinary Guidelines*

10. In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, the Board is to consider the following factors:

- “1. Actual or potential harm to the public;
2. Actual or potential harm to any consumer;
3. Prior disciplinary record;
4. Number and/or variety of current violations;
5. Mitigation evidence;
6. In case of a criminal conviction, compliance with terms of sentence;
7. Overall criminal record;
8. Whether the conduct was knowing, willful, reckless or inadvertent;
9. The financial benefit to the respondent;
10. Evidence that the unlawful act was part of a pattern of practice;
11. Whether the respondent is currently on probation.”

## *Rehabilitation*

11. Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented by sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

12. The evidentiary significance of an applicant’s misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

13. Since persons under the direct supervision of judicial or correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue inappropriate behavior while under supervision. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

14. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

As Chief Justice Lucas observed, “The amount of evidence of rehabilitation required to justify admission varies according to the seriousness of the misconduct at issue.” (*Kwasnik v. State Bar, supra*, at 1070.)

## *Evaluation*

15. Respondent appeared truly surprised that his convictions had not been disclosed on his applications. His testimony that his employer had filled out the applications was supported by the different handwriting on the applications, as well as by respondent's March 30, 1996, Application for Field Representative's License wherein respondent stated - "What - I already did this" - in response to the request for a detailed statement (Factual Finding No. 6), indicating that respondent believed the Board had already received such a statement from him. Although respondent's testimony was contradicted by his October 1995 letter to the Board stating that he failed to disclose his 1992 conviction because he thought it had been expunged (Factual Finding No. 5), the overall weight of the evidence did not support a finding that respondent had failed to disclose his convictions to the Board.

There were very few facts provided at this hearing regarding respondent's 1992 conviction for unlawful intercourse. The evidence that was presented, that the girl was respondent's girlfriend at the time and had lied about her age, made it difficult to determine whether or not this conviction was substantially related to the duties, functions and qualifications of a licensee. As such, the Board did not meet its burden of proof on this issue.

By far, the most serious issues were respondent's actions on 2002, which resulted in his 2004 conviction. Grave concerns regarding respondent's ability to control his anger and how he responds when he perceives that his requests are not being met. Although respondent produced a copy of Dr. Diermenjian's psychiatric evaluation, he presented no evidence that he had ever followed any of the recommendations contained in that report, nor did he provide any evidence that he had been rehabilitated sufficient to warrant granting him a license, even on a probationary status. Respondent repeatedly stated that he was seeking the "hope of rehabilitation," and wanted probation as a way to rehabilitate himself, but he failed to understand that it was his burden to produce evidence that he had already been rehabilitated and was no longer a danger to the public. The purpose of probation is not to begin the rehabilitation process, but rather to allow the Board to monitor a licensee who has demonstrated sufficient rehabilitation while at the same time meeting the Board's obligation to ensure public protection. Quite simply, respondent failed to demonstrate that level of rehabilitation sufficient to allow him to either be issued or retain his license.

### *Cause Did Not Exist to Revoke Respondent's License for the 1992 Conviction*

16. Extremely scant evidence was provided at the hearing regarding respondent's 1992 conviction for unlawful sexual intercourse. Almost no testimony about that conviction was obtained. Accordingly, the Board failed to meet its clear and convincing burden of proof on this charge.

### *Cause Did Not Exist to Revoke the License for Failure to Disclose*

17. The clear and convincing evidence did not demonstrate that respondent misrepresented a material fact when applying for a license. While some of the applications

received by the Board were checked “no” in regards to prior convictions, and respondent’s 1995 letter to the Board explained that he did not disclose the 1992 conviction as he thought it had been expunged, other evidence indicated that respondent had provided information about the convictions to the Board. Accordingly, given the state of the evidence presented at hearing, the Board failed to meet its clear and convincing burden of proof on this charge.

*Cause Exists to Revoke Respondent’s License for the 2004 Conviction*

18. By far, the most disconcerting evidence related to the 2004 conviction. That conviction was substantially related to the duties, qualifications and functions of a licensee, who must be able to control his anger and not make bomb and gun threats when upset. Respondent failed to provide sufficient evidence of rehabilitation to warrant being granted a license or to justify the retention of his existing licenses, even on a probationary status. While respondent appears headed in the right direction and by all accounts provides excellent service to his clients, there are just too many concerns about his current emotional and mental state at this juncture to justify the retention of his licenses. Respondent is encouraged to re-apply for a license when he can provide sufficient evidence of rehabilitation.

*The Award of Reasonable Costs*

19. Business and Professions Code section 125.3 provides in part:

“(a) . . . in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

...  
(d) The administrative law judge shall make a proposed finding of the amount of the reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a) . . .”

*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 held that the imposition of costs for investigation and enforcement under Title 16, California Code of Regulations, section 317.5 did not violate due process. However, the court held that it was incumbent on the Board to exercise its discretion to reduce or eliminate cost awards in such a manner that it did not “deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing.” The Court set forth four factors required to be considered when deciding whether to reduce or eliminate costs: (1) Whether the chiropractor used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the chiropractor had a “subjective” good faith belief in the merits of his position; (3) whether the chiropractor raised a “colorable challenge” to the proposed discipline; and (4) whether the chiropractor had the financial ability to make payments.

Since the Board of Chiropractic Examiner's cost recovery provision and Business and Professions Code section 125.3 have substantially the same language, *Zuckerman's* reasoning applies to Business and Professions Code section 125.3. Under section 125.3, the Board may request the Administrative Law Judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

In this case, the Board's legal representatives billed \$3,120.50 in matter number 2009-33 and \$10,100.75 in matter number 2009-34. The Board's costs are reasonable.

However, the *Zuckerman* criteria permit an administrative law judge to award no costs if it is determined that the respondent does not have the ability to pay the costs. Here, respondent testified he has been providing odd jobs for clients and did not seem to have a steady source of income. Requiring him to reimburse the Board would impose an undue financial hardship on him, especially in light of the fact his license is being revoked. The Board's request for cost recovery is denied.

This conclusion is based on Factual Findings 2-9, 12-16 and Legal Conclusion 19.


#### ORDER

Any and all licenses issued by the Board to respondent Bryan Edward Kaye are hereby revoked.

The Board's decisions to deny Bryan Edward Kaye's applications for licensure and company registration are upheld.

The Board's request for cost recovery is denied.

DATED: 6-4-2009

  
\_\_\_\_\_  
MARY AGNES MATYSZEWSKI  
Administrative Law Judge  
Office of Administrative Hearings



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**FILED**

Date 12/15/08 By *Kelli Okuma*

8 Attorneys for Complainant

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

12 In the Matter of the Statement of Issues Against:

Case No. 2009-33

13 BRYAN EDWARD KAYE  
14 660 South Glassell Road #67  
Orange, CA 92866

**STATEMENT OF ISSUES**

15 ~~Operator's License No. OPR 10930~~

16 Respondent.

17  
18 Complainant alleges:

19 PARTIES

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

23 2. On or about July 8, 2008, the Structural Pest Control Board, Department  
24 of Consumer Affairs received an application for a company registration (Clean Termite Control)  
25 from Bryan Edward Kaye (Respondent). On or about July 1, 2008, Bryan Edward Kaye certified  
26 under penalty of perjury to the truthfulness of all statements, answers, and representations in the  
27 application. The Board denied the application for a company registration on August 22, 2008.

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1 (3) Done any act which if done by a licentiate of the business or  
2 profession in question, would be grounds for suspension or revocation of license.

3 The board may deny a license pursuant to this subdivision only if the  
4 crime or act is substantially related to the qualifications, functions or duties of the  
5 business or profession for which application is made.

6 (c) A board may deny a license regulated by this code on the ground that  
7 the applicant knowingly made a false statement of fact required to be revealed in  
8 the application for such license.

9 7. Section 482 of the Code states:

10 Each board under the provisions of this code shall develop criteria to  
11 evaluate the rehabilitation of a person when:

12 (a) Considering the denial of a license by the board under Section 480; or

13 (b) Considering suspension or revocation of a license under Section 490.

14 Each board shall take into account all competent evidence of  
15 rehabilitation furnished by the applicant or licensee.

16 8. Section 493 of the Code states:

17 Notwithstanding any other provision of law, in a proceeding conducted by  
18 a board within the department pursuant to law to deny an application for a license  
19 or to suspend or revoke a license or otherwise take disciplinary action against a  
20 person who holds a license, upon the ground that the applicant or the licensee has  
21 been convicted of a crime substantially related to the qualifications, functions,  
22 and duties of the licensee in question, the record of conviction of the crime shall  
23 be conclusive evidence of the fact that the conviction occurred, but only of that  
24 fact, and the board may inquire into the circumstances surrounding the  
25 commission of the crime in order to fix the degree of discipline or to determine if  
26 the conviction is substantially related to the qualifications, functions, and duties  
27 of the licensee in question.

28 As used in this section, "license" includes "certificate," "permit,"  
"authority," and "registration."

9. Section 8568 of the Business and Professions Code (Code) provides, in  
pertinent part, that the Board may deny a license or registration if the applicant, while unlicensed  
or not registered, knowingly committed or aided or abetted the commission of any act for which  
a license or company registration is required, or has committed any act or omissions constituting  
grounds for discipline under section 480 of that code.

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10. Section 8610 of the Code states:

(a) Every company that engages in the practice of structural pest control, as a sole proprietorship, partnership, corporation, or other organization or any combination thereof, shall be registered with the Structural Pest Control Board. Each application for a company registration shall include the name of the company's owner if it is a sole proprietorship, the names of the partners, if it is a partnership, or the names of its officers and shareholders with 10 percent or more ownership interest, if it is a corporation, and the address of the company's principal office in this state.

(b)(1) A company registration shall not be issued to an applicant that has an officer, director, qualifying manager, responsible managing employee, or an individual who otherwise exercises dominion or control over the company, whose license or registration is revoked or suspended at the time of the application as the result of disciplinary action pursuant to this chapter.

....

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

12. Title 16, California Code of Regulations section 1937.1, states:

~~For the purposes of denial, suspension or revocation of a license or company registration pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensee or registered company under Chapter 14 of Division 3 of the code if to a substantial degree it evidences present or potential unfitness of such licensee or registered company to perform the functions authorized by the license or company registration in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, the following:~~

(a) Any violation of the provisions of Chapter 14 of Division 3 of the code.

(b) Commission of any of the following in connection with the practice of structural pest control:

- (1) Fiscal dishonesty
- (2) Fraud
- (3) Theft
- (4) Violations relating to the misuse of pesticides.

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1 13. Title 16, California Code of Regulations section 1020, states:

2 (a) When considering the denial of a license under Section 480 of the  
3 Code, the board in evaluating the rehabilitation of the applicant and his present  
4 eligibility for a license, will consider the following criteria:

5 (1) The nature and severity of the act(s) or crime(s) under consideration as  
6 grounds for denial.

7 (2) Evidence of any act(s) committed subsequent to the act(s) or  
8 crime(s) under consideration as grounds for denial which also could be  
9 considered as grounds for denial under Section 480 of the Code.

10 (3) The time that has elapsed since commission of the act(s) or  
11 crime(s) referred to in subdivision (1) or (2).

12 (4) The extent to which the applicant has complied with any terms  
13 of parole, probation, restitution, or any other sanctions lawfully imposed against  
14 the applicant.

15 (5) Evidence, if any, of rehabilitation submitted by the  
16 applicant.

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**FIRST CAUSE FOR DENIAL OF COMPANY REGISTRATION APPLICATION**

**(January 6, 2004 Criminal Conviction for Criminal Threats & Annoying Telephone Calls)**

14 14. Respondent's application is subject to denial pursuant to sections  
15 8568 and 480, subdivision (a)(1) of the Code, in that Respondent committed a crime that is  
16 substantially related to the functions, duties, and qualifications of a licensee. The circumstances  
17 are as follows:

18 a. On or about January 6, 2004, in a criminal proceeding entitled  
19 *People of the State of California v. Bryan Edward Kaye*, Orange County Superior Court (North  
20 Justice Center), case number 03NF2289, which consolidated charges made in case numbers  
21 02CF2287 and 02NM15199, Respondent was convicted on his plea of guilty of violating Penal  
22 Code section 422, making criminal threats, a felony; and two counts of violating Penal Code  
23 section 653m, subdivision (a), making annoying telephone calls, a misdemeanor.

24 b. As a result of the conviction, on or about January 6, 2004,  
25 Respondent was sentenced to 180 days in the county jail (with credit for 90 days), three years  
26 formal probation, including requirements to use no unauthorized drugs and submit to random  
27  
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1 chemical tests, attend and complete a 52-week Batterer's Treatment Program, complete eight  
2 hours community service, submit to Fourth Amendment waiver, and payment of \$300 in fees,  
3 fines, and restitution. Protective orders were issued ordering Respondent stay away from his  
4 various victims.

5 c. The facts that led to the conviction for making criminal threats  
6 were that in or about the afternoon of October 31, 2002, Respondent telephoned the Orange  
7 Police Department and announced that he was going to kill his ex-girlfriend and her new  
8 boyfriend. Officers responded to Respondent's apartment, but found it to be abandoned.  
9 Respondent made additional calls to the Orange Police Department; Respondent stated he was  
10 angry about the handling of a prior arrest and would kill any police officer who responded to his  
11 residence in an attempt to talk to him or arrest him. The police were able to convince  
12 Respondent to come directly to the department, where he was arrested after a brief struggle.  
13 Respondent admitted breaking into and stealing personal items from his ex-girlfriend's  
14 apartment. Respondent also told the detective that he felt like killing people and he was going to  
15 start with his ex-girlfriend and her new boyfriend. Respondent's ex-girlfriend and her boyfriend  
16 both stated that they were in fear and believed Respondent had the ability to carry out his threats  
17 based on his past and present behavior. An emergency protective order was issued and served  
18 on Respondent.

19 d. Additional facts that led to the conviction were that on or about October  
20 17, 2002, employees of the Orange County Superior Court contacted the Orange County  
21 Sheriff's Department to report annoying and threatening telephone calls made by Respondent to  
22 the court's traffic office. On or between September 26, 2002 and October 17, 2002, Respondent  
23 called the traffic office numerous times a day, often using profanities and making threats of  
24 physical violence. Charges were referred to the district attorney and this matter was originally  
25 filed under case number 02NM15199.

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1                    SECOND CAUSE FOR DENIAL OF COMPANY REGISTRATION APPLICATION

2                    (Commission of an Act Which If Done by a Licentiate Would Be Grounds  
3                    for Suspension or Revocation of License)


4                    15.        Respondent's application is subject to denial pursuant to section 480,  
5 subdivision (a)(3) of the Code, in that on or about January 6, 2004, Respondent was convicted on  
6 his plea of guilty of violating Penal Code section 422, making criminal threats, a felony; and two  
7 counts of violating Penal Code section 653m, subdivision (a), making annoying telephone calls,  
8 a misdemeanor, as detailed in paragraph 14, above. Such conduct, if committed by a licensee of  
9 the Board, would be grounds for suspension or revocation of the license.

10                    PRAYER

11                    WHEREFORE, Complainant requests that a hearing be held on the matters herein  
12 alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

- 13                    1.        Denying the application of Bryan Edward Kaye to register a company;  
14                    2.        Taking such other and further action as deemed necessary and proper.

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16 DATED: 12/15/08

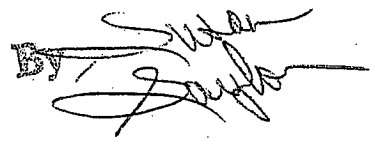
17  
18   
19 KELLI OKUMA  
20 Registrar/Executive Officer  
21 Structural Pest Control Board  
22 Department of Consumer Affairs  
23 State of California  
24 Complainant

23 SD2008802511

24 80291471.wpd

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**FILED**

Date 3/24/09 By 

8 Attorneys for Complainant

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

12 In the Matter of the Amended Accusation  
Against:

Case No. 2009-34

13 BRYAN EDWARD KAYE  
14 660 South Glassell Road #67  
Orange, CA 92866

**AMENDED ACCUSATION**

15 Operator's License No. OPR 10930

16 Respondent.

18 Complainant alleges:

19 PARTIES

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

23 2. On or about June 26, 2004, the Structural Pest Control Board issued  
24 Operator's License Number OPR 10930 to Bryan Edward Kaye (Respondent). The Operator'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, 2009, unless renewed. The Operator's License was placed on inactive status  
27 on or about June 30, 2008.

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1 The performance by any partnership, corporation, firm, association, or  
2 registered company of any act or omission constituting a cause for disciplinary  
3 action, likewise constitutes a cause for disciplinary action against any licensee  
4 who, at the time the act or omission occurred, was the qualifying manager, a  
partner, responsible officer, or owner of the partnership, corporation, firm,  
association, or registered company whether or not he or she had knowledge of, or  
participated in, the prohibited act or omission.

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

7 11. Section 8649 of the Code states:

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

11 12. Section 8655 of the Code states:

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

19 13. Title 16, California Code of Regulations section 1937.1, states:

20 For the purposes of denial, suspension or revocation of a license or  
21 company registration pursuant to Division 1.5 (commencing with Section 475) of  
the code, a crime or act shall be considered to be substantially related to the  
22 qualifications, functions or duties of a licensee or registered company under  
Chapter 14 of Division 3 of the code if to a substantial degree it evidences present  
23 or potential unfitness of such licensee or registered company to perform the  
functions authorized by the license or company registration in a manner consistent  
24 with the public health, safety, or welfare. Such crimes or acts shall include, but not  
be limited to, the following:

25 (a) Any violation of the provisions of Chapter 14 of Division 3 of the code.

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1 (b) Commission of any of the following in connection with the practice of  
2 structural pest control:

- 3 (1) Fiscal dishonesty  
4 (2) Fraud  
5 (3) Theft  
6 (4) Violations relating to the misuse of pesticides.

7 14. Title 16, California Code of Regulations section 1020, states:  
8

9 (b) When considering the suspension or revocation of a structural pest  
10 control license or company registration on the grounds that the licensee or  
11 registered company has been convicted of a crime, the board, in evaluating the  
12 rehabilitation of such person or company and his or her or its present eligibility for  
13 a license or company registration will consider the following:

- 14 (1) Nature and severity of the act(s) or offense(s).  
15 (2) Total criminal record.  
16 (3) The time that has elapsed since commission of the act(s) or  
17 offense(s).  
18 (4) Whether the licensee or registered company has complied with  
19 any terms of parole, probation, restitution or any other sanctions  
20 lawfully imposed against the licensee or registered company.  
21 (5) If applicable, evidence of expungement proceedings pursuant to  
22 Section 1203.4 of the Penal Code.  
23 (6) Evidence, if any of rehabilitation submitted by the licensee or  
24 registered company.

25 .....  
26 15. Section 125.3 of the Code states, in pertinent part, that a Board may request  
27 the administrative law judge to direct a licentiate found to have committed a violation or  
28 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
and enforcement of the case.

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**FIRST CAUSE FOR DISCIPLINE**

**(January 6, 2004 Criminal Conviction for Criminal Threats & Annoying Telephone Calls)**

16. Respondent has subjected his license to disciplinary action under sections 490 and 8649 of the Code, in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of an operator. The circumstances are as follows:

a. On or about January 6, 2004, in a criminal proceeding entitled *People of the State of California v. Bryan Edward Kaye*, Orange County Superior Court (North Justice Center), case number 03NF2289, which consolidated charges made in case numbers 02CF2287 and 02NM15199, Respondent was convicted on his plea of guilty of violating Penal Code section 422, making criminal threats, a felony; and two counts of violating Penal Code section 653m, subdivision (a), making annoying telephone calls, a misdemeanor.

b. As a result of the conviction, on or about January 6, 2004, Respondent was sentenced to 180 days in the county jail (with credit for 90 days), three years formal probation, use no unauthorized drugs and submit to random chemical tests, attend and complete a 52-week Batterer's Treatment Program, complete eight hours community service, submit to Fourth Amendment waiver, and payment of \$300 in fees, fines, and restitution. Protective orders were issued ordering Respondent stay away from his various victims.

c. The first set of facts that led to the conviction were that in or about the afternoon of October 31, 2002, Respondent telephoned the Orange Police Department and announced that he was going to kill his ex-girlfriend and her new boyfriend. According to a police interview with Respondent's ex-girlfriend, they had lived together from December 2001 to March 2002. The victim was inside her apartment (next door to Respondent), while Respondent was outside pacing and screaming. The victim reported that Respondent had smashed her kitchen window earlier in the day. Officers responded to Respondent's apartment, but found it to be abandoned. The victim had also left her apartment. The officers noted the smashed kitchen window. Respondent made additional calls to the Orange Police Department, which were answered by the Watch Commander. The conversations were also recorded. In one conversation,

1 Respondent stated he was angry about the handling of a prior arrest and would kill any police  
2 officer who responded to his residence in an attempt to talk to him or arrest him. Respondent  
3 further stated that he intended to kill his ex-girlfriend and her new boyfriend; he knew where they  
4 lived and he was going to drive to their house and kill them that day. The police were able to  
5 notify the new boyfriend and warn him of Respondent's threats. Eventually, the police were able  
6 to convince Respondent to come directly to the department. When Respondent arrived at the  
7 police department, he was approached by the Watch Commander and another officer. Respondent  
8 ignored the officers' commands; a struggle ensued and Respondent had to be placed in a choke  
9 hold and taken to the ground in order to be hand-cuffed. A detective assigned to investigate a  
10 prior burglary at the ex-girlfriend's house, arrived and interviewed Respondent. Respondent  
11 admitted breaking into and stealing personal items from his ex-girlfriend's apartment.  
12 Respondent also told the detective that he felt like killing people and he was going to start with  
13 his ex-girlfriend and her new boyfriend. Respondent's ex-girlfriend and her boyfriend both stated  
14 that they were in fear and believed Respondent had the ability to carry out his threats based on his  
15 past and present behavior. An emergency protective order was issued and served on Respondent.

16 d. The second set of facts that led to the conviction were that on or about  
17 October 17, 2002, employees of the Orange County Superior Court (Harbor Justice Center)  
18 contacted the Orange County Sheriff's Department to report annoying and threatening telephone  
19 calls made by Respondent to the court's traffic office. On or between September 26, 2002 and  
20 October 17, 2002, Respondent called the traffic office numerous times a day, the calls lasting 15-  
21 20 minutes each. Respondent often used profanities and made threats of physical violence.  
22 Immediately following a court appearance on October 17, 2002, Respondent called the traffic  
23 office at least 10 times. Respondent told a court employee "I intend to get my point across by  
24 shooting someone." On October 31, 2002, Respondent again called the court. Respondent was  
25 upset about how he was treated by the court concerning a traffic ticket in 1998. He spoke to an  
26 employee at the court and identified himself as Bryan Kaye. Respondent told the employee that  
27 he was going to get a gun and come to the court and start shooting people. Respondent told the  
28 employee that he had tried to get psychiatric help, but no one wanted to help him. He further

1 stated "I'm gonna bring a bomb in, and when I blow up the building, you can look for my pieces."  
2 Charges were referred to the district attorney and this matter was originally filed under case  
3 number 02NM15199.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(January 13, 1992 Criminal Conviction for Unlawful Intercourse With a Minor)**

6 17. Respondent has subjected his license to disciplinary action under sections  
7 490 and 8649 of the Code, in that Respondent was convicted of a crime that is substantially  
8 related to the qualifications, functions, and duties of an operator. The circumstances are as  
9 follows:

10 a. On or about January 13, 1992, in a criminal proceeding entitled  
11 *People of the State of California v. Bryan Edward Kaye*, Orange County Superior Court (North  
12 Justice Center), case number NM9110675, Respondent was convicted of violating Penal Code  
13 section 261.5, unlawful sexual intercourse with a minor, a misdemeanor.

14 b. As a result of the conviction, on or about January 13, 1992,  
15 Respondent was sentenced to 36 months probation, 150 hours community service, and payment of  
16 fees and fines.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Misrepresentation of a Material Fact in Obtaining a License)**

19 18. Respondent is subject to disciplinary action under section 8637 of the Code  
20 in that on or about May 24, 2004, in Respondent's application for an Operator's License, question  
21 6 of the application asked: "Have you been convicted of a felony or misdemeanor other than  
22 violation of traffic laws?" Respondent's checked the answer "No."

23 a. On or about January 13, 1992, in a prior criminal proceeding  
24 entitled *People of the State of California v. Bryan Edward Kaye*, in Orange County Superior  
25 Court, case number NM0110675, Respondent was convicted on his plea of guilty of violating  
26 Penal Code section 261.5, unlawful intercourse with a minor, a misdemeanor.

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1                   b.       In or around June of 1992, in a prior criminal proceeding  
2 entitled *People of the State of California v. Bryan Edward Kaye*, in Orange County Superior  
3 Court, case number NM0110675, Respondent was convicted for failure to appear and failure to  
4 pay a fine.

5                   c.       On or about January 6, 2004, in a criminal proceeding entitled  
6 *People of the State of California v. Bryan Edward Kaye*, Orange County Superior Court, case  
7 number 03NF2289, Respondent was convicted on his plea of guilty of violating Penal Code  
8 section 422, making criminal threats, a felony; and two counts of violating Penal Code section  
9 653m, subdivision (a), making annoying telephone calls, a misdemeanor.

10                  d.       Respondent was required to declare all misdemeanor and  
11 felony convictions on his application for an operator's license. Respondent certified with his  
12 signature, under penalty of perjury under the laws of the State of California, to the truth and  
13 accuracy of all statements and representations made in the application. Respondent further  
14 certified that he understood that falsifying information on the application may result in the denial  
15 of the application. Respondent failed to disclose the above convictions and obtained an operator's  
16 license by fraud.

17                  19.       Respondent is subject to disciplinary action under section 8637 of the Code  
18 in that on or about September 2, 2003, in Respondent's application for an Operator's  
19 Examination, question 17 of the application asked: "Have you been convicted of a felony or  
20 misdemeanor other than violation of traffic laws?" Respondent's checked the answer "No."

21                  a.       On or about January 13, 1992, in a prior criminal proceeding  
22 entitled *People of the State of California v. Bryan Edward Kaye*, in Orange County Superior  
23 Court, case number NM0110675, Respondent was convicted on his plea of guilty of violating  
24 Penal Code section 261.5, unlawful intercourse with a minor, a misdemeanor.

25                  b.       In or around June of 1992, in a prior criminal proceeding  
26 entitled *People of the State of California v. Bryan Edward Kaye*, in Orange County Superior  
27 Court, case number NM0110675, Respondent was convicted for failure to appear and failure to  
28 pay a fine.

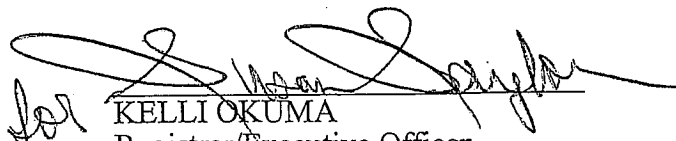
1 c. Respondent was required to declare all misdemeanor and  
2 felony convictions on his application for an operator's examination. Respondent certified with his  
3 signature, under penalty of perjury under the laws of the State of California, to the truth and  
4 accuracy of all statements and representations made in the application. Respondent further  
5 certified that he understood that falsifying information on the application may result in the denial  
6 of the application. Respondent failed to disclose the above convictions and obtained an operator's  
7 license by fraud.

8 PRAYER

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

- 11 1. Revoking or suspending Operator's License Number OPR 10930, issued to  
12 Bryan Edward Kaye;
- 13 2. Ordering Bryan Edward Kaye to pay the Structural Pest Control Board the  
14 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
15 Professions Code section 125.3;
- 16 3. Taking such other and further action as deemed necessary and proper.

17  
18 DATED: 3/24/09

19  
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21   
22 KELLI OKUMA  
23 Registrar/Executive Officer  
24 Structural Pest Control Board  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant

28 SD2008802511

Kaye.Amended Accusation.wpd