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

In the Matter of the Accusation Against: MARK STEVEN PATERSON P.O. Box 880 Parker, Arizona 85344 Operator's License No. OPR 11082 and POINTMAN PEST CONTROL P.O. Box 968 Parker, Arizona 85344 Company Registration No. PR 4808 Respondents.	Case No. 2014-24 OAH No. 2013101020 ORDER OF DECISION

DECISION

The Proposed Decision of Jonathan Lew, Administrative Law Judge, dated December 27, 2013, in San Diego, is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c) (2) (c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. On page 2, paragraph 3, "The Company Registration Certificate expired on June 30, 2013" is stricken and replaced with "The Company Registration Certificate is currently suspended for failure to maintain a surety bond and general liability insurance".

The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order by the Structural Pest Control Board, Department of Consumer Affairs, State of California.

This Decision shall become effective on February 27, 2014.

IT IS SO ORDERED January 28, 2014.

FOR THE STRUCUTRAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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STATE OF CALIFORNIA

In the Matter of the Accusation Against: MARK STEVEN PATERSON Parker, Arizona Operator's License No. OPR 11082 and POINTMAN PEST CONTROL P.O. Box 968 Parker, Arizona 85344 Company Registration Certificate No. PR 4808 Respondents.	Case No. 2014-24 OAH No. 2013101020

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, Office of Administrative Hearings, on December 5, 2013, in San Diego, California.

Antoinette B. Cincotta, Deputy Attorney General, represented Susan Saylor, Registrar and Executive Officer (complainant), Structural Pest Control Board (Board), Department of Consumer Affairs, State of California.

Mark Steven Paterson (respondent) represented himself and his company, Pointman Pest Control.

Evidence was received, the record was closed, and the matter was submitted for decision on December 5, 2013.

FACTUAL FINDINGS

1. Complainant made and filed the Accusation in her official capacity.

2. On April 25, 2005, the Board issued Operator's License number OPR 11082 in Branch 2 and 3 to respondent. The Operator's License expired on June 30, 2013, and has not been renewed.

3. On July 1, 2005, the Board issued Company Registration Certificate Number PR 4808 in Branch 2 and 3 to Pointman Pest Control, with respondent as the Owner and Qualifying Manager. The Company Registration Certificate expired on June 30, 2013. It was suspended on July 9, 2013, for failure to maintain a surety bond, and it was further suspended on July 23, 2013, for failure to maintain general liability insurance.

4. Complainant contends that disciplinary action should be taken against respondent's Operator's License and Registration Certificate as a result of his conviction for a criminal offense that is substantially related to the qualifications, functions and duties of a licensee. The facts and circumstances of his offense are described below.

Possession of Controlled Substances While Armed

5. On November 8, 2012, in the Riverside County Superior Court, Case Number BLF1200278, respondent was convicted on his plea of guilty of violating Health and Safety Code section 11370.1, possession of a controlled substance while armed, a felony. As a result of the conviction, respondent was committed to the custody of the Riverside County Sheriff for 90 days, with credit for 32 days. Respondent was placed on formal probation for 36 months, the terms of which included that he abstain from the use and possession of controlled substances, refrain from associating with known controlled substance users/possessors or those on probation or parole, submit to chemical testing, submit to a Fourth Amendment waiver, register as a drug offender, complete a drug treatment program, and pay fines, fees and restitution.

6. The facts and circumstances underlying this conviction were that on October 24, 2012, a Blythe Police Department officer conducted an enforcement stop of respondent's vehicle after determining that his vehicle license had been expired since May 2011. The officer also determined that respondent's driver license was suspended for not having mandatory insurance. After respondent exited the vehicle the officer observed him reach into his back pocket and attempt to conceal something in his closed fist. After several attempts, the officer was able to get respondent to release the contents of his fist. The officer recovered a crystalline substance which was subsequently determined to be methamphetamine. Respondent was arrested.

A second police officer conducted an inventory search of respondent's vehicle. The officer recovered a magazine loaded with .22 caliber rounds in the backseat, and additional rounds in the front center console. When asked if there were other firearms in the vehicle, respondent indicated that there was a loaded .45 caliber pistol inside a black bag behind the passenger seat. The .45 caliber pistol was recovered. It had one round in the chamber and was readily accessible – within arm's reach – of the vehicle's driver. Respondent provided a

urine sample during booking. He tested positive for amphetamines greater than 1,000 ng/ml.

Respondent's Testimony

7. Respondent gives October 25, 2012, as his sobriety date. As part of his sentence, respondent entered and completed an eight-hour Substance Abuse Education program. This involved one-to-one counseling sessions, one hour each session, over eight months. He has also been subject to 23 separate random drug tests and he has not tested positive for drugs. Respondent does not attend Narcotics Anonymous or any other drug treatment/ rehabilitation program at this time. He denies current use of any narcotics, and noted that he has no urgings or inclination to do so. Respondent does not view himself as a drug addict and he noted that if he "felt weak" in the future, he would consider participating in a drug rehabilitation program.

Regarding his history of methamphetamine use, respondent averred that he started taking this drug approximately two months prior to his arrest. He decided to try it and "that's how it happened." He was age 47 at that time. He found that methamphetamine provided him with added energy at first, but he suffered from sleep deprivation after a couple of weeks. He ingested crystalline methamphetamine in the mornings with his coffee. He acknowledged being "functionally addicted" to methamphetamine, and to working under its influence.

8. Respondent acknowledged taking methamphetamine on October 24, 2012, the day prior to his arrest. He worked on a pest control job at a gas station on the morning of October 25, 2012, that ended around 1:00 p.m. He was arrested around 2:00 p.m. He admitted to being under the influence of methamphetamine during the time that he worked that day.

9. Respondent explained that the weapons element of his offense was inadvertent. He resides in Arizona where he indicated it is lawful to have a loaded weapon in a vehicle without the need for a permit. He explained that he was hunting on October 23, 2012, when quail season opened. He had a .22 caliber rifle and a shotgun in his vehicle, in addition to the .45 caliber handgun, when he went hunting. He left the .45 caliber handgun in a black bag with his binoculars, and forgot to remove the bag from the vehicle prior to entering California. He characterized his actions as a mistake.

10. Respondent expressed remorse for his conduct. He noted that he made a "huge mistake" and that he is now aware that he put customers at risk each day that he worked while he was under the influence of methamphetamine. Respondent noted that he has been in the industry since 1991, with no prior complaints by consumers. He is willing to have his Company Registration suspended, but would like to retain the ability to work under his Operator's License.

11. Respondent has not engaged in any structural pest control work since October 24, 2012. He is doing handyman work, all in Arizona. He is barely getting by and described

himself as "financially impoverished." This may have contributed to his driving with an expired license and with no insurance. Respondent indicated that he has no ability to pay any fines, and presumably any costs associated with the investigation and prosecution of this case.

12. Respondent has 12-year-old daughter over whom he has joint custody.

Discussion

13. The Board has developed criteria for evaluating whether a licensee has been rehabilitated since committing the act(s) or suffering the conviction(s) constituting grounds for disciplinary action. (Cal. Code of Regs., tit. 16, § 1937.2.) The criteria relevant here are: (1) the nature and severity of the act(s) or offense(s); (2) total criminal record; (3) the time that has elapsed since commission of the act(s) or offense(s); (4) whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee; (5) evidence of expungement proceedings pursuant to Penal Code section 1203.4; and (6) evidence of rehabilitation submitted by the licensee. (Cal. Code of Regs., tit. 16, § 1937.2, subd. (b)(1) through (b)(6).)

14. Respondent's offense occurred just over one year ago. He remains on criminal probation through November 2015. He acknowledged wrongdoing, thereby taking an essential step towards rehabilitation. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation."].) Thus, respondent has shown that he is on the road to rehabilitation, and that he has complied with the terms of his criminal probation, including completion of a substance abuse education program.

Although respondent has no significant criminal record, this offense is significant for several reasons. He operated as a pest control licensee over a period when he acknowledged being under the influence of methamphetamine. And he worked as a pest control operator using a vehicle with an expired license and with no liability insurance. He did this for over a year. He further failed to comply with California laws related to possession of loaded firearms. A loaded .45 caliber handgun was in his vehicle when he was working as a pest control operator on October 25, 2012.

15. Respondent is to be commended for his efforts to date in maintaining sobriety. But his prior drug use continued over a significant period and at a time when he was aware that he was placing customers and others at risk each day that he was using methamphetamines. Given the nature of his criminal offense, which related to the qualifications, functions and duties of a licensee, respondent bears a heavy burden in demonstrating rehabilitation. The amount of evidence required to establish rehabilitation varies according to the seriousness of the conduct at issue. (*In re Menna* (1955) 11 Cal.4th 975, 987.) Rehabilitative efforts require more than simply complying with criminal probation. (See, *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [little weight is given to person's good behavior while on probation or compliance with terms of probation because

such conduct is expected.].) Respondent's testimony and the above matters have been considered in determining that additional time is needed before the Board can be assured that respondent's rehabilitation is complete and that he is safe to work as a licensed pest control operator. It would therefore be contrary to the public health, safety and welfare to allow respondent to continue working as a licensed pest control operator at this time, even on a probationary basis.

Costs

16. Pursuant to Business and Professions Code section 125.3, complainant submitted a Certification of Costs of Prosecution and a Declaration of the Deputy Attorney General, which requests costs in the total amount of $1,915. This includes costs for investigative and prosecutorial services provided by the Attorney General's Office, which includes 6.5 hours of attorney time billed at $170 an hour, and 6.75 hours of paralegal time billed at $120 an hour. The work performed by the Deputy Attorney General included pleading preparation, case management, client communication and trial preparation. The work performed by the paralegal included pleading preparation and case management. The amount sought by way of cost recovery is reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 490 provides that the Board may discipline a licensee who has be convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

2. Business and Professions Code section 8649 states in pertinent part:

> 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.

3. Business and Professions Code section 8624 provides, in part:

> If the board suspends or revokes an operator's license and one or more branch offices are registered in the name of the operator, the suspension or revocation may be applied to each branch office.
>
> If the operator is the qualifying manager, a partner, responsible officer, or owner of a registered structural pest control company,

the suspension or revocation may be applied to the company registration.

4. Cause exists for disciplinary action against respondent under Business and Professions Code sections 490 and 8649, by reason of the matters set forth in Findings 5 and 6. Respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a structural pest control operator, field representative, applicator, or registered company.

5. Cause exists for disciplinary action against Pointman Pest Control, with Mark Steven Paterson as the Owner and Qualifying Manager, under Business and Professions Code section 8624, by reason of the matters set forth in Findings 5 and 6.

6. The matters set forth in Findings 7 through 15 have been considered. Respondent acknowledged wrongdoing and appears committed to his rehabilitation, although no current rehabilitation program is in place. His methamphetamine use occurred at a time when he was working as a pest control operator, demanding that respondent now present strong and persuasive evidence that he is rehabilitated, and has addressed all concerns raised in this case. He has not done so. Additional time is needed before the Board can be assured that respondent's rehabilitation is complete and that he is safe to work as a licensed pest control operator. Accordingly, when all the evidence presented in this case is weighed and balanced, protection of the public can be achieved only through revocation of respondent's license.

7. Cost Recovery. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated the licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

As set forth in Finding 16, complainant is seeking $1,915 in costs, an amount that is reasonable and consistent with the work necessary to investigate and present this case for hearing.

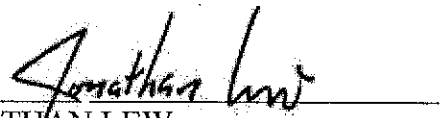
ORDER

1. Operator's License Number OPR 11082, issued to Mark Steven Paterson is revoked pursuant to Legal Conclusion 4.

2. Company Registration Certificate Number PR 4808, issued to Pointman Pest Control, with Mark Steven Paterson as the Owner and Qualifying Manager, is revoked pursuant to Legal Conclusion 5.

3. Mark Steven Paterson and/or Pointman Pest Control shall pay the Structural Pest Control Board $1,915 as the reasonable costs of investigation and prosecution of this case.

DATED: December 27, 2013



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings