

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

In the Matter of the Accusation and Petition
to Revoke Probation Against:

THOMAS JEROME MURPHY
also known as THOMAS MURPHY,

Respondent.

Case No. 2009-41

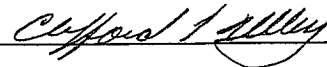
OAH No. 2009031312

DECISION

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

This Decision shall become effective on August 28, 2009.

IT IS SO ORDERED July 29, 2009.



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

In the Matter of the Accusation and Petition
to Revoke Probation Against:

THOMAS JEROME MURPHY
also known as THOMAS MURPHY,

Respondent.

Case No. 2009-41

OAH No. 2009031312

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on June 1, 2009. The matter was consolidated for hearing with a related statement of issues against respondent, OAH No. 2009031310.

Carol S. Romeo, Deputy Attorney General, represented complainant Kelli Okuma, Registrar/Executive Officer, Structural Pest Control Board.

Respondent Thomas Jerome Murphy was present and represented himself.

The matter was submitted on June 1, 2009.

FACTUAL FINDINGS

1. Complainant Kelli Okuma, Registrar/Executive Officer, Structural Pest Control Board, issued the accusation and petition to revoke probation in her official capacity.
2. The board issued Operator's License Number OPR 8137 in Branch 3 (termite) to respondent Thomas Jerome Murphy, also known as Thomas Murphy, on May 17, 1988. The license was suspended on January 16, 2003, for failure to maintain general liability insurance. In a decision that took effect July 15, 2004, the board found that respondent had failed to provide proof of required continuing education and had misrepresented a material fact and/or committed a fraudulent act. The board revoked respondent's license. (OAH No. N2004020465.) Effective March 2, 2008, the board granted respondent's petition for reinstatement of his license, immediately revoked the license, and placed it on probation for three years under certain terms and conditions. (OAH No. 2008010028.) One of the terms and conditions of his probation was that he would obey all laws and rules relating to the

practice of structural pest control. The license is currently in effect and renewed through June 30, 2010.

3. On September 2, 2008, in the Superior Court of California, County of Santa Clara, respondent was convicted, on his plea of nolo contendere, of a violation of Penal Code section 146 (impersonating a public officer), a misdemeanor substantially related to the qualifications, functions and duties of a board licensee. Imposition of sentence was suspended and respondent was placed on court probation for three years under terms and conditions that included payment of fines and fees and performance of 40 hours of volunteer work. Respondent remained on probation at the time of the hearing in this matter.

4. Respondent's conviction stemmed from conduct that occurred between March 1 and March 31, 2007, in Santa Clara County. He made unauthorized traffic stops while impersonating a peace officer and while wearing a uniform and using a flashing red light that he had installed on his personal vehicle.

5. The conduct that resulted in respondent's conviction was part of a larger pattern of conduct. Respondent was employed by the U.S. Department of Homeland Security as a Customs and Border Protection (CBP) officer. Having purchased and installed a red emergency light on his personal vehicle (a dark colored Suburban, according to the California Highway Patrol), respondent made numerous traffic stops between October 2006 and September 2007, without legal authority, often while wearing his Customs and Border Protection uniform.

6. In September 2007, Homeland Security Special Agents interviewed respondent regarding the traffic stops. Respondent admitted that he used his personal vehicle and a red LED dash light to make unauthorized vehicle stops. He admitted that he had no authority to make any vehicle stops. Regarding an early 2007 traffic stop of four Hispanic young people, respondent admitted that he had lied to the California Highway Patrol when he told the CHP officers that his CBP-issued personal radiation detector went off as the young people's vehicle went by. Regarding a February or March 2007 traffic stop of a Hispanic male, respondent said he allowed the driver to continue driving but kept the driver's Mexican identification and a work receipt or W-2. Regarding an August 28 or 29, 2007 traffic stop, respondent took the driver's vehicle keys and drove off leaving the driver stranded on the side of the road. Respondent admitted that when he returned home he threw the driver's keys in the garbage. Respondent described the driver as a Latino or Middle Eastern male.

7. In a September 9, 2007 written statement to the Department of Homeland Security regarding his vehicle stops, respondent wrote:

I now realize that these practices were wrong, and I did not have the specific authority to do so.

I would like to emphasize that my motive was only for the safety of other drivers on the road, as of this date this practice will stop.

8. At hearing, respondent asserted that he took a "greater view" of law enforcement, that as a CBP officer he was authorized to uphold federal law, that he made the vehicle stops in what he considered extreme situations, and that he had the authority to question anyone within 25 miles of any border or port of entry. He did not express remorse about his conduct.

LEGAL CONCLUSIONS

1. Respondent's September 2, 2008 conviction was for a crime substantially related to the qualifications, functions and duties of a board licensee. The conviction occurred while respondent was under probationary terms that required him to obey all laws. Cause exists to revoke respondent's probation and to revoke his operator's license. (Bus. & Prof. Code, §§ 490 and 8649.)

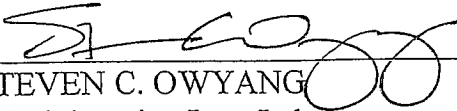
2. At hearing, respondent did not express remorse or demonstrate insight into his criminal conduct. Instead he sought to rationalize and justify his conduct. He remained on probation for his conviction.

ORDER

1. The probation granted to respondent Thomas Jerome Murphy by the board on March 2, 2008, is revoked.

2. Operator's license number OPR 8137 issued to respondent Thomas Jerome Murphy is revoked.

DATED: June 26, 2009



STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 WILBERT E. BENNETT
Supervising Deputy Attorney General
3 CAROL S. ROMEO, State Bar No. 124910
Deputy Attorney General
4 1515 Clay Street, 20th Floor
P.O. Box 70550
5 Oakland, CA 94612-0550
Telephone: (510) 622-2141
6 Facsimile: (510) 622-2270

FILED

Date 2/4/09 By *[Signature]*
[Signature]

7 Attorneys for Complainant

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

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against:

Case No. 2009-41

13 THOMAS JEROME MURPHY
14 A.K.A. THOMAS MURPHY
1015 Wilsham Drive
14 San Jose, California 95132
Operator's License No. OPR 8137

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

15 Respondent.

16
17
18 Complainant alleges:

19 PARTIES

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

23 2. On or about May 17, 1988, the Structural Pest Control Board issued
24 Operator's License Number OPR 8137 in Branch 3 to Thomas Jerome Murphy, also known as
25 Thomas Murphy (Respondent). On or about January 16, 2003, the license was suspended for
26 failing to maintain general liability insurance. On or about July 15, 2004, said license was
27 revoked in Case No. 2004-15 based upon Respondent's falsely certifying that he had completed
28 the continuing education courses required to renew his license. (A copy of that decision is

1 attached as Exhibit A and is herein incorporated by reference.) Operator's License Number OPR
2 8137 has been reinstated and is currently in effect and renewed through June 30, 2010.

3 3. In a disciplinary action entitled "In the Matter of the Petition for
4 Reinstatement of THOMAS MURPHY," OAH Case No. 200810028, the Structural Pest Control
5 Board, issued a decision, effective March 2, 2008, in which Respondent's petition for
6 reinstatement of Operator's License Number OPR 8137, in Branch 3, was granted. However,
7 upon reinstatement, Respondent's Operator's License was immediately revoked, and Respondent's
8 license was placed on probation for a period of three years, with certain terms and conditions. (A
9 copy of that decision is attached as Exhibit B and is herein incorporated by reference.)

10 JURISDICTION

11 4. This Accusation and Petition to Revoke Probation is brought before the
12 Structural Pest Control Board (Board), Department of Consumer Affairs, under the authority of
13 the following laws. All section references are to the Business and Professions Code unless
14 otherwise indicated.

15 STATUTORY PROVISIONS

16 5. Section 490 of the Code provides, in pertinent part, that the Board may
17 suspend or revoke a license when it finds that the licensee has been convicted of a crime
18 substantially related to the qualifications, functions, or duties of the business or profession for
19 which the license was issued.

20 6. Section 8649 of the Code states:

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

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

1 FIRST CAUSE FOR DISCIPLINARY ACTION

2 (Criminal Conviction)

3 8. Respondent has subjected his Operator's License to disciplinary action
4 under sections 490 and 8649 of the Code in that he was convicted of a crime substantially related
5 to the qualifications, functions or duties of an operator, in that on or about September 2, 2008, in
6 the Superior Court of California, County of Santa Clara, Case No. CC789546, entitled *The*
7 *People of the State of California vs Thomas Jerome Murphy*, Respondent was convicted by his
8 plea of nolo contendere of violating Section 146 of the Penal Code (impersonating a public
9 officer), a misdemeanor. The factual circumstances surrounding the conviction are as follows:

10 a. On or about and between March 1, 2007 and March 31, 2007, in Santa
11 Clara County, Respondent made unauthorized traffic stops, as part of a pattern and practice, while
12 impersonating a peace officer by wearing a uniform, badge, and handgun, and using a flashing
13 police type red light on his personally owned vehicle. On one particular occasion, Respondent
14 performed an unauthorized traffic stop of an Hispanic male. Once pulled over, Respondent asked
15 the Hispanic driver for identification, but the driver spoke very poor English and did not have a
16 driver's license; whereupon, Respondent obtained his Mexican identification and a type of work
17 receipt or W-2 from the driver. Respondent allowed the driver to continue driving, but kept the
18 driver's identification and work receipt. Respondent claimed he turned over the two documents
19 to an Immigration and Customs Enforcement (ICE) office in San Jose, California.

20 PETITION TO REVOKE PROBATION

21 FIRST CAUSE TO REVOKE PROBATION

22 (Obey All Laws)

23 9. At all times after the effective date of Respondent's probation, Condition 1
24 stated:

25 Obey all Laws - Petitioner shall obey all laws and rules relating to the
26 practice of structural pest control.

27 ///

28 ///

