

FILED

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Date 8/22/11

By *William H. Douglas*

9 **BEFORE THE**
10 **STRUCTURAL PEST CONTROL BOARD**
11 **DEPARTMENT OF PESTICIDE REGULATION**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2012-12

13 **JOSE McDANIEL**
14 **4438 Highland Avenue**
San Diego, CA 92115

ACCUSATION

15 **Applicator's License No. RA 46843**

16 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. William H. Douglas (Complainant) brings this Accusation solely in her official
22 capacity as the Interim Registrar/Executive Officer of the Structural Pest Control Board,
23 Department of Pesticide Regulation.

24 2. On or about January 17, 2007, the Structural Pest Control Board issued Applicator's
25 License Number RA 46843, Branch 2, to Jose McDaniel (Respondent). The Applicator's License
26 was in full force and effect at all times relevant to the charges brought herein and will expire on
27 January 17, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Structural Pest Control Board (Board), Department of Pesticide Regulation, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118 of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

5. Section 8620 of the Business and Professions Code provides that the Board may suspend or revoke a license when it finds that the holder, while a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty.

6. Section 8625 of the Code states:

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

STATUTORY PROVISIONS

7. Section 482 of the Code states:

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

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

(b) Considering the suspension or revocation of a license under Section 490. Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

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1 11. Section 8655 of the Code states:

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

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REGULATORY PROVISION

12. California Code of Regulations, title 16, 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.

13. California Code of Regulations, title 16, section 1937.2 states:

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

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

1 (3) The time that has elapsed since commission of the act(s) or offense(s).

2 (4) Whether the licensee or registered company has complied with any terms of
3 parole, probation, restitution or any other sanctions lawfully imposed against the
4 licensee or registered company.

5 (5) If applicable, evidence of expungement proceedings pursuant to Section
6 1203.4 of the Penal Code.

7 (6) Evidence, if any of rehabilitation submitted by the licensee or registered
8 company.

9 (c) When considering a petition for reinstatement of a structural pest control
10 license or company registration, the board shall evaluate evidence of rehabilitation
11 submitted by the petitioner, considering those criteria specified in subsection (b).

12 COST RECOVERY

13 14. Section 125.3 of the Code provides that a Board may request the administrative law
14 judge to direct a licentiate found to have committed a violation or violations of the licensing act to
15 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

16 CAUSE FOR DISCIPLINE

17 **(February 9, 2011 Conviction for Sale of Controlled Substances 18 on February 22, 2010 and February 25, 2010)**

19 15. Respondent is subject to disciplinary action under Code sections 490, and 8649 in that
20 on January 12, 2010, Respondent was convicted of crimes that are substantially related to
21 the qualifications, functions, and duties of an applicator. The circumstances are as follows:

22 a. On February 9, 2011, in a criminal proceeding entitled *The People of the State of*
23 *California v. Jose McDaniel*, in the Orange County Superior Court, Case Number CD229890,
24 Respondent was convicted by his plea of guilty to violating Health and Safety Code section
25 11379(a) (sale of controlled substances), 2 counts, felonies, with special allegations and
26 admissions by Respondent that in the commission of the above offenses, he was personally armed
27 with a firearm, to wit: a rifle, in violation of Penal Code section 12022(c).

28 b. As a result of the above convictions, the Court stayed the following counts pursuant
to Penal Code section 654: Violation of Health and Safety Code sections 11378 (possession for
sale of a controlled substance, 3 counts), and 11379(a) (sale of controlled substances, 1 count).
The Court committed Respondent to the California Department of Corrections and to the custody

1 of the Sheriff for 365 days. Respondent was given 177 days credit for time served and 176 days
2 good time credits per Penal Code section 4019, for a total of 353 days credit. The Court also
3 ordered Respondent to pay \$1,200 in fines, ordered him to register per Penal Code section 11590,
4 and placed on probation for three (3) years.

5 PRAYER

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

- 8 1. Revoking or suspending Applicator's License Number RA 26843, Branches 2, issued
9 to Jose McDaniel;
- 10 2. Ordering Jose McDaniel to pay the Structural Pest Control Board the reasonable costs
11 of the investigation and enforcement of this case, pursuant to Business and Professions Code
12 section 125.3;
- 13 3. Taking such other and further action as deemed necessary and proper.

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15 DATED: 8/22/11

William H. Douglas
16 WILLIAM H. DOUGLAS
17 Interim Registrar/Executive Officer
18 Structural Pest Control Board
19 Department of Pesticide Regulation
20 State of California
21 Complainant

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