

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

In the Matter of the Statement of Issues Against:

JORGE CABRAL

Respondent.

OAH No. 2007100368

Case No. 2009-8

DECISION

The Proposed Decision of Mary Agnes Matyszewski, Administrative Law Judge, dated February 6, 2009, in Los Angeles, 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. Page 1 – under heading, Case No. “2008-8” is stricken and replaced with “2009-8”.
2. Page 13 – under Order, Term No. 4, line 5, “2008-43” is stricken and replaced with “2009-8”.

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

The Decision shall become effective on May 20, 2009.

IT IS SO ORDERED April 20, 2009.



FOR THE STRUCTURAL PEST CONTROL BOARD

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

In the Matter of the Statement of Issues
Against:

JORGE CABRAL,

Respondent.

Case No. 2008-8

OAH No. 2008100794

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter at Los Angeles, California on February 3, 2009.

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

Jorge Cabral, respondent, represented himself and was present throughout the administrative proceeding.

The matter was submitted on February 3, 2009.

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 8, 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 between 2000 and 2005, respondent was convicted nine times of crimes substantially related to the qualifications, functions and duties of an applicator and that he failed to disclose all of those convictions on his application for an applicator's license.

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

On February 3, 2009, the record in the administrative action was opened. Jurisdictional documents were presented, documentary evidence and sworn testimony were received, closing arguments were given, the record was closed, and the matter was submitted.

Respondent's Application

2. On March 1, 2007, respondent completed an Application for Structural Pest Control Applicator Examination and License. Question 11 on the application asked, "**Have you ever been convicted of a felony or of a misdemeanor other than minor traffic infractions?** If YES explain."

In response to that question, respondent checked the box marked "Yes" and wrote, "Was drunk was caught [sic] taking a bottle [sic] of wine got into a verbal dispute." Respondent signed the application under penalty of perjury, certifying that the information he provided was true and correct.

Respondent's August 11, 2000, Conviction and Facts Surrounding the Conviction

3. On August 11, 2000¹, respondent was convicted upon his plea of nolo contendere of violating Health and Safety Code section 11364, possession of a smoking device, a misdemeanor, in *People v. Jorge Cabral*, in the Municipal Court of California, County of Los Angeles, Case No. OSE03628.

As a result of that conviction, the court placed respondent on summary probation for one year, ordered him not to possess drug paraphernalia and directed him to pay fines, fees and penalties of \$469, less \$30 credit, to be paid in monthly installments. Respondent made his first monthly payment but no payments thereafter. A bench warrant was issued and respondent's probation was revoked on April 4, 2001, respondent was sentenced to serve 10 days in county jail (with credit for 10 days served), and he was released from custody.

The facts underlying this conviction involved respondent being pulled over while driving in the City of Vernon on July 12, 2000, , after which a search of his vehicle resulted in the discovery of controlled substance paraphernalia and respondent's citation for possession of a smoking device.

¹ Respondent failed to appear at court on August 1, 2000, and a bench warrant was issued for his arrest. Respondent appeared in court on August 11, 2000.

Respondent's April 5, 2001, Conviction and Facts Surrounding the Conviction

4. On April 5, 2001, respondent was convicted upon his plea of nolo contendere of violating Health and Safety Code section 11377, subdivision (a), possession of a controlled substance, a misdemeanor, in *People v. Jorge Cabral*, in the Superior Court of California, County of Los Angeles, Case No. 1AL00880.

As a result of that conviction, the court placed respondent on summary probation for 24 months, ordered him to serve seven days in custody (with credit given for seven days served), and directed respondent to pay restitution of \$100, to not use or possess any narcotics, dangerous or restricted drugs or associated paraphernalia, to stay away from places where users, buyers or sellers congregate, to not associate with persons believed to be or known to be narcotic or drug users, sellers or buyers, to attend one Narcotics Anonymous (NA) meeting per week for 90 days, and to obey all laws. On April 23, 2001, respondent admitted he violated probation², after which probation was reinstated and respondent was remanded to custody for 13 days (with nine days credit for time served). The court vacated the NA counseling requirement.

The facts underlying this conviction involved the Los Angeles County sheriff's department responded to a complaint of drinking in public on March 30, 2001. The sheriff's deputy³ observed five males were sitting outside drinking in public.⁴ The deputy asked for identification and discovered there was an outstanding warrant for respondent's arrest for possession for drug paraphernalia. The deputy searched respondent and found a small baggie containing a white powdery substance resembling cocaine and a glass smoking device with burnt residue. As the deputy removed the items, respondent exclaimed, "Hey, man, it's just a little coke. Can't you cut me a break?" Respondent was arrested and transported to the Temple Station for booking.

² The court documents did not specify which term of probation respondent violated.

³ The deputy's 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.

⁴ Respondent testified that he and some friends were drinking in the front stoop of an apartment building and a neighbor called the police.

Respondent's April 23, 2002, Conviction and Facts Surrounding the Conviction

5. On April 23, 2002⁵, respondent was convicted upon his plea of guilty of violating Health and Safety Code section 11550, subdivision (a), being under the influence of a controlled substance, a misdemeanor, in *People v. Jorge Cabral*, in the Superior Court of California, County of Los Angeles, Case No. 1AL01446.

As a result of that conviction, the court suspended imposition of sentence and placed respondent on three years of formal probation, ordered him to serve 14 days in custody with credit for 14 days served, and directed him to report to the community assessment service center, to not use or possess any narcotics, dangerous or restricted drugs or associated paraphernalia, to stay away from places where users, buyers or sellers congregate, to not associate with persons believed to be or known to be narcotic or drug users, sellers or buyers, to submit to periodic anti-narcotic and alcohol testing, to register as a narcotics offender, to make restitution, and to seek substance abuse counseling.

Respondent initially complied with the terms of probation, but on June 25, 2002, he failed to appear in court and his probation was revoked. On April 6, 2004, respondent was remanded to custody. On April 14, 2004, respondent was released and was ordered to attend at least three AA/NA meetings per week. On May 3, 2004, the court found respondent in violation of probation, reinstated probation, placed respondent on summary probation, and ordered him to serve 90 days in custody (credit was given for 20 days served). All remaining court costs and fees were waived.

The facts underlying this conviction involved the Los Angeles County sheriff's department responded to a complaint of a disturbance caused by four males drinking and possibly using drugs in public on April 12, 2001. The sheriff's deputy⁶ observed respondent rapidly talking and sweating his pupils were constricted and his pulse rate was rapid, all of which were consistent with respondent being under the influence of methamphetamine. Respondent was arrested and read his rights. Respondent admitted he used methamphetamine two days before ago and had used methamphetamine consistently for approximately 10 years, usually on Saturdays. Respondent was booked at the Temple Station, where he gave a urine sample which tested positive for the presence of amphetamines.

⁵ Respondent's Notice to Appear required him to appear at court on May 31, 2001. However, he failed to do so and a bench warrant was issued for his arrest and the case heard on April 23, 2002.

⁶ The deputy's report was received under *Lake v. Reed* (1997) 16 Cal.4th 448.

Respondent's April 25, 2003, Conviction and Facts Surrounding the Conviction

6. On April 25, 2003⁷, respondent was convicted upon his plea of nolo contendere of violating Vehicle Code section 14601.1, subdivision (a), driving when privilege suspended or revoked, a misdemeanor, in *People v. Jorge Cabral*, in the Superior Court of California, County of Los Angeles, Case No. 2SE07443.

As a result of that conviction, the court suspended imposition of sentence and placed respondent on three years of summary probation, ordered him to serve 10 days in custody, directed him to not drive a motor vehicle until properly licensed and to pay \$100 in fines. The remaining charge against respondent, failure to stop at a stop sign at a railroad crossing, was dismissed as part of the plea bargain. Respondent failed to pay the fine and on October 27, 2003, an additional \$250 was assessed. Respondent failed to appear at a follow up hearing and the court issued a bench warrant. On April 29, 2004, respondent admitted a probation violation. The court terminated probation, modified respondent's sentence to include total credit for seven days in custody (five days actual custody and two days for good behavior) and released respondent.

Respondent's April 2, 2004, Conviction and Facts Surrounding the Conviction

7. On April 2, 2004⁸, respondent was convicted upon his plea of nolo contendere of violating Vehicle Code section 14601.1, subdivision (a), driving when privilege suspended or revoked, a misdemeanor, in *People v. Jorge Cabral*, in the Superior Court of California, County of Los Angeles, Case No. 3CM08199.

As a result of that conviction, the court suspended imposition of sentence and placed respondent on 24 months summary probation. Respondent was ordered to serve five days in custody (with credit given for five days served), to pay fines, fees and restitution of \$630, and to not drive without a valid license. Respondent failed to pay the fines and a notice of delinquency was mailed to him. On March 24, 2006, the court added a civil assessment of \$300 and referred the matter to collections.

The facts underlying this conviction involved respondent being pulled over for driving without headlights on September 12, 2003. Respondent was driving on a suspended license at the time and was cited.

⁷ On December 26 2002, respondent did not appear at his arraignment and a bench warrant was issued. Respondent appeared on January 22, 2003, and the matter was continued until March 25, 2003. Respondent failed to appear on that date, a bench warrant was issued, and on April 25, 2003, respondent appeared.

⁸ On November 12, 2003, respondent did not appear at his arraignment and a bench warrant was issued. Respondent appeared on April 1, 2004, and the matter was continued until April 2, 2004.

Respondent's April 29, 2004, Conviction and Facts Surrounding the Conviction

8. On April 29, 2004⁹, respondent was convicted upon his plea of nolo contendere of violating Health and Safety Code section 11377, subdivision (a), possession of a controlled substance, a misdemeanor, in *People v. Jorge Cabral*, in the Superior Court of California, County of Los Angeles, Case No. 4SE02045.

As a result of that conviction, the court suspended imposition of sentence and placed respondent on three years summary probation. Respondent was ordered to serve seven days in custody (with credit for seven days served), and was directed to pay restitution of \$100, to not use or possess any narcotics, and to stay away from drug users. Respondent failed to pay the fee and on October 29, 2004, the court added a civil assessment of \$250 and referred the matter to collections.

The complaint underlying this conviction alleged that on March 29, 2004, respondent possessed a controlled substance. No other facts about this conviction were elicited at the hearing.

Respondent's August 18, 2004, Conviction and Facts Surrounding the Conviction

9. On August 18, 2004¹⁰, respondent was convicted upon his plea of nolo contendere of violating Penal Code section 415, disturbing the peace, an infraction, in *People v. Jorge Cabral*, in the Superior Court of California, County of Los Angeles, Case No. 42201071.

As a result of that conviction, the court ordered respondent to pay a \$100 fine, which it suspended in light of respondent's custody credits, and dismissed the remaining count of possessing paraphernalia used for smoking a controlled substance.

The complaint underlying this conviction alleged that on June 5, 2004, respondent was in possession of a device used to smoke controlled substances. No other facts about this conviction were elicited at the hearing.

Respondent's April 1, 2005, Conviction and Facts Surrounding the Conviction

10. On April 1, 2005, respondent was convicted upon his plea of nolo contendere of violating Penal Code section 484, subdivision (a), petty theft, a misdemeanor, in *People v. Jorge Cabral*, in the Superior Court of California, County of Los Angeles, Case No. 5EL02933.

⁹ Respondent failed to appear on April 19, 2004, and a bench warrant was issued.

¹⁰ Respondent failed to appear on August 11, 2004, and a bench warrant was issued.

As a result of that conviction, the court placed respondent on 12 months summary suspension remanded him to custody for three days (with credit for three days served), and directed him to pay fines and restitution of \$120 and to stay away from Thrifty Gas Station. The remaining count in the complaint, second degree commercial burglary, was dismissed as part of the plea bargain. Respondent failed to pay the fines and the case was sent to collections on August 18, 2005.

The facts underlying this conviction involved the investigation of a burglary complaint at a Thrifty Gas Station by an officer with the Maywood-Cudahy Police Department on March 17, 2005. The officer¹¹ obtained the store video tape which showed respondent forcing the security gate open. . Potato chips, sunflower seeds, peanuts and soda were stolen. On March 29, 2005, and officer with the Maywood-Cudahy Police Department apprehend respondent. The gas station clerk positively identified respondent as the person seen on the video tape committing the crime. After he was arrested, respondent apologized for the theft, stating he was hungry at the time.

Respondent's September 21, 2005, Conviction and Facts Surrounding the Conviction

11. On September 21, 2005, respondent was convicted upon his plea of guilty of violating Penal Code section 422, criminal threats, a felony, and Penal Code section 666, petty theft with priors, a felony, in *People v. Jorge Cabral*, in the Superior Court of California, County of Los Angeles, Case No. VA089259.

As a result of that conviction, respondent was ordered to serve two years custody in state prison, with credit given for 172 days (115 actual days in custody and 57 days good behavior), and was directed to pay restitution of \$400(which was stayed upon successful completion of parole), to provide DNA specimens, and to pay a \$20 court security fee.

The facts underlying this conviction involved respondent's theft of several items at Jiffy Market on May 29, 2005, and threatening a clerk at that store on May 30, 2005. Respondent testified he stole a bottle of wine from the market and the clerk followed him outside, grabbed the wine bottle from respondent, and called him a "crack head." Respondent testified he made no threatening gestures towards the clerk, merely stating that he was going to kill the clerk in response to the clerk's "crack head" comment, after which he walked away.

Respondent's Testimony

12. Respondent testified that being sentenced to prison for two years was a blessing for him because he finally got his life on track. He believes his last arrest and conviction were positive events that turned his life around. While he was in prison, respondent became involved with the drug rehabilitation programs. When respondent was

¹¹ The investigating officer's report was received under *Lake v. Reed* (1997) 16 Cal.4th 448.

released from prison on July 4, 2006, he began treatment at the Walden House, a nationally recognized drug treatment facility. Respondent successfully completed both a one year inpatient treatment program and the three month outpatient treatment program at Walden House. Respondent has been clean and sober since June 29, 2005. He continues participating in Walden House's outreach programs.

Respondent embraced the sober lifestyle and participated in community activities and career training opportunities. Through his efforts at Walden House, respondent reestablished relationships with his family. He made new friends, and he no longer associates with his former drug using associates.. Respondent currently holds two jobs, one of which entails driving a truck for his father's company, a job that requires respondent to deliver goods and transport payments for those goods. Respondent has absolutely no desire to return to his previous life style. He has a 12-step sponsor and he still seeks counseling to help him remain sober. He described the many ways he approaches life's problems differently and all that he has learned which helps him remain drug free. He very much enjoys his new sober life.

Respondent's testimony was sincere, and the changes he made in his life are profound. He expressed remorse for his past actions. Respondent was shocked to review the Board's list of prior convictions. It was apparent that he had no idea of the number and kinds of crimes he had committed. He expressed credible remorse for those crimes. It was evident from respondent's testimony that the one crime that he clearly recalled was the last one which altered his life in a positive way. There was no showing that respondent intended to deceive the Board by not disclosing all of his convictions; rather, he was obviously unable to recall the convictions as a result of his addiction and being under the influence of a variety of substances.. Respondent's testimony about his drug use and life on the streets, coupled with his reactions upon reading about the convictions, made his testimony regarding his unwitting failure to disclose plausible.

With regard to his substance abuse, respondent testified that when he and his common-law wife were ending their relationship, he had nowhere to live, and that he turned to methamphetamine and began living on the streets. Respondent explained that while he was living on the streets he stole to feed himself.. Respondent was ashamed of his past lifestyle and deeply regretted that he failed to "step up," "be a man" and care for his daughter, who was only four years old when he began his dissolute lifestyle. . Respondent explained that caring for his daughter is a priority in his life now and he has reestablished a relationship with her, as well as one with her mother and her new husband. Respondent desires to be licensed to improve his financial condition. His brother is a licensee with the Board and respondent most likely would work for him. Respondent has worked for other licensees and believes that he has been "trained by the best." Respondent humbly asked for a chance to demonstrate to the Board that he has turned his life around and that he can be a productive member of society. Respondent's testimony was heartfelt.

Respondent's Documents

13. Respondent's letter from the Department of Corrections and Rehabilitation indicated he was discharged from probation on July 15, 2008.

14. Respondent has participated in community activities and provided a photograph of one such activity attended by Los Angeles Mayor, Antonio Villaraigosa.

15. Respondent successfully completed Employment Preparation Training conducted by Goodwill of Southern California on August 18, 2006.

16. Respondent successfully completed the Computer Training Program conducted by Crossing the Digital Divide CDD on August 29, 2006.

17. Respondent received a Certificate of Recognition from Walden House on June 12, 2007, acknowledging he was dedicated to his recovery and his family.

18. Respondent received a Certificate of Appreciation on July 29, 2006, from Familia Unida for his dedication and contribution during the 3rd Annual Unida Wheelchair wash.

LEGAL CONCLUSIONS

Burden and Standard of Proof

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.)

Relevant Statutory Provisions

2. 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..."

3. 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."

4. 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

5. 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.)

6. 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

7. California Code of Regulations, title 16, section 1937.11, sets forth disciplinary guidelines that should be considered in reaching a disciplinary decision.

Disciplinary Guidelines

8. 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

9. 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.)

10. 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.)

11. 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.)

12. 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.)

Alcoholism and other forms of substance abuse are treatable diseases. Through continued abstinence, a substance abuser may arrest the deleterious manifestations of the disease. Hundreds of thousands of Americans are recovering alcoholics, completely abstinent from alcohol or other mind-altering chemicals. Rehabilitation is almost universally predicated on a substance abuser's choice to confront his or her problem, followed by abstinence sustained through ongoing participation in a supportive program, such as Alcoholics Anonymous. As the California Supreme Court has recognized, "the requisite length of time to show 'meaningful and sustained' rehabilitation will vary from case to case. (*In re Billings* (1990) 50 Cal.3d 358, 368.

Evaluation

13. The Board's denial of respondent's application was warranted in the absence of any showing of rehabilitation. However, when respondent's convictions are measured against the profound changes respondent has made in his life and his sincere and credible testimony, public protection does not mandate an outright denial of his application; indeed, denying him a license in light of this record would be punitive.¹²

During a five year period in his life, respondent was convicted of a series of crimes which were substantially related to the duties, qualifications and functions of an applicator when considered in their entirety, because a licensed applicator is given access to homes and businesses and must, therefore, be responsible and of good moral. Respondent has been sober since 2005 and clearly has turned his life around. He accepted full responsibility for his actions and made no excuses for his misconduct. While he was in prison, he sought help for his drug problem and he credibly testified that he will do whatever it takes to never return to "the hell of prison." Respondent has committed no crimes since 2005. He has made amends with those he harmed and his shame at his past actions was palpable. It seemed doubtful that respondent will use drugs or engage in criminal misconduct in the future given all the very positive things that have happened to respondent since becoming sober. Under all the circumstances, it is concluded that respondent has undergone a meaningful and sustained rehabilitation.

Cause Exists to Grant Respondent a Probationary License

14. Cause exists to deny respondent's application for an unrestricted license as an applicator pursuant to Business and Professions Code sections 480 and 8649 in that respondent committed acts which if done by a licentiate would constitute grounds for discipline. Many of respondent's crimes were substantially related to the qualifications, functions and duties of a licensed applicator.

¹² Administrative proceedings seeking to impose discipline on a professional license are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.)

15. Cause was not established to deny respondent's application for a license as an applicator pursuant to Business and Professions Code sections 480 and 8568 in that there was insufficient evidence that respondent knowingly made a false statement on his application or committed a dishonest act to benefit himself.

16. In light of the persuasive evidence of the mitigating and extenuating circumstances surrounding the criminal convictions and respondent's rehabilitation, it would not be against the public interest to grant respondent a probationary license, subject to strict conditions of probation.

ORDER

Respondent Jorge Cabral's application for an unrestricted applicator's license is denied; provided, however, that the order of denial is stayed and respondent shall be entitled to the issuance of a probationary Applicator's License, which shall be subject to the following terms and conditions:

1. Respondent is placed on probation for a period of three years.
2. Respondent shall obey all laws and rules relating to the practice of structural pest control.
3. Respondent shall file quarterly reports with the Board during the period of probation.
4. Respondent shall notify all present and prospective employers of this decision and the terms, conditions, and restrictions imposed on respondent by the decision.

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new employment, respondent shall cause his employer to report to the Board in writing acknowledging the employer has read the decision in case No. 2008-43 and with written assurances that the employer will exercise strict supervision over respondent's activities.

The Board has the authority to approve respondent's employer, and that reasonable approval shall be given and that permission to work for a specific employer may not be withheld in the absence of good cause.


5. Respondent is prohibited from serving as an officer, director, associate, partner, qualifying manager of branch office manager of any registered company during the period that respondent is on probation.
6. Respondent shall not have any legal or beneficial interest in any company currently or hereinafter registered by the Board.

7. Should respondent leave California to reside outside this state, respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

8. Should respondent violate probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke respondent's probationary license. If a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

9. Upon successful completion of probation, respondent shall be entitled to the issuance of an unrestricted license.

DATED: 2-6-09


MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

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FILED

Date 8/6/08 By Kelli Okuma

5 Attorneys for Complainant

6
7 **BEFORE THE**
8 **STRUCTURAL PEST CONTROL BOARD**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the State of Issues Against:

Case No. 2009-8

12 JORGE CABRAL
13 5717 East Beverly Boulevard
Los Angeles, CA 90022

STATEMENT OF ISSUES

Respondent.

14 Complainant alleges:

15 **PARTIES**

16 1. Kelli Okuma ("Complainant") brings this Statement of Issues solely in her
17 official capacity as the Registrar of the Structural Pest Control Board ("Board"), Department of
18 Consumer Affairs.

19 2. On March 26, 2007, the Board received an Application for Structural Pest
20 Control Applicator Examination and License from Jorge Cabral ("Respondent"). On March 1,
21 2007, Respondent certified under penalty of perjury to the truth and accuracy of all statements
22 and representations made in the application, including all statements attached thereto, and
23 acknowledged that falsifying information on the application may result in the denial or the
24 revocation of the license. The Board denied Respondent's application on May 23, 2007.

25 **STATUTORY PROVISIONS**

26 3. Business and Professions Code ("Code") section 8568 provides, in
27 pertinent part, that the Board may deny a license or registration if the applicant has committed
28 any act or omission constituting grounds for discipline under Code section 480.

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4. Code section 480 states, in pertinent part, as follows:

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

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(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 of the business or profession in question, would be grounds for suspension or revocation of license.

....

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

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

5. Code section 8649 states:

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. Code section 8654 states:

Any individual who has been denied a license for any of the reasons specified in Section 8568, or who has had his or her license revoked, or whose license is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a member, officer, director, associate, qualifying manager, or responsible managing employee of any partnership, corporation, firm, or association whose application for a company registration has been denied for any of the reasons specified in Section 8568, or whose company registration has been revoked as a result of disciplinary action, or whose company registration is under suspension, and while acting as such member, officer, director, associate, qualifying manager, or responsible managing employee had knowledge of or participated in any of the prohibited acts for which the license or registration was denied, suspended or revoked, shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible

1 managing employee of a registered company, and the employment, election or
2 association of such person by a registered company is a ground for disciplinary
action.

3 7. Code section 8655 states:

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

16
17 **FIRST CAUSE FOR DENIAL**

18 **(Criminal Convictions)**

19 8. Respondent's application is subject to denial pursuant to Code sections
20 8568, 480, subdivision (a)(1), and 480, subdivision (a)(3), in that he was convicted of crimes
21 substantially related to the qualifications, functions, and duties of an applicator, as follows:

22 a. On or about August 11, 2000, in the criminal proceeding titled *People v.*
23 *Jorge Cabral* (Super. Ct. Los Angeles County, 2000, 0SE03628), Respondent plead nolo
24 contendere to a violation of Health & Safety ("H&S") Code section 11364 (possession of a
25 smoking device, a misdemeanor). The incident upon which the conviction is based occurred on
26 July 12, 2000.

27 b. On or about April 5, 2001, in the criminal proceeding titled *People v.*
28 *Jorge Cabral* (Super. Ct. Los Angeles County, 2001, Case No. 1AL00880), Respondent plead
nolo contendere to a violation of H&S Code section 11377, subdivision (a) (possession of a
controlled substance, a misdemeanor). The incident upon which the conviction is based occurred
on approximately March 30, 2001.

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1 c. On or about April 23, 2002, in the criminal proceeding titled *People v.*
2 *Jorge Cabral* (Super. Ct. Los Angeles County, 2002, Case No. 1AL01446), Respondent plead
3 guilty to a violation of H&S Code section 11550, subdivision (a) (under influence of a controlled
4 substance, a misdemeanor). The incident upon which the conviction is based occurred on
5 approximately April 12, 2001.

6 d. On or about April 25, 2003, in the criminal proceeding titled *People v.*
7 *Jorge Cabral* (Super. Ct. Los Angeles County, 2003, Case No. 2SE07443), Respondent plead
8 nolo contendere to a violation of Vehicle Code ("VC") section 14601.1, subdivision (a) (driving
9 when privilege suspended or revoked, a misdemeanor). The incident upon which the conviction
10 is based occurred on approximately November 19, 2002.

11 e. On or about April 2, 2004, in the criminal proceeding titled *People v.*
12 *Jorge Cabral* (Super. Ct. Los Angeles County, 2004, Case No. 3CM08199), Respondent plead
13 nolo contendere to a violation of VC section 14601.1, subdivision (a) (driving when privilege
14 suspended or revoked with prior(s), a misdemeanor). The incident upon which the conviction is
15 based occurred on approximately September 12, 2003.

16 f. On or about April 29, 2004, in the criminal proceeding titled *People v.*
17 *Jorge Cabral* (Super. Ct. Los Angeles County, 2004, Case No. 4SE02045), Respondent plead
18 nolo contendere to a violation of H&S Code section 11377, subdivision (a) (possession of a
19 controlled substance, a misdemeanor). The incident upon which the conviction is based occurred
20 on approximately March 29, 2004.

21 g. On or about August 18, 2004, in the criminal proceeding titled *People v.*
22 *Jorge Cabral* (Super Ct. Los Angeles County, 2004, 4ZZ01071), Respondent plead nolo
23 contendere to a violation of Penal Code ("PC") section 415 (disturbing the peace, a
24 misdemeanor)¹. The incident upon which the conviction is based occurred on approximately
25 June 5, 2004.

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27 _____
28 1. Respondent was originally charged with a violation of H&S Code section 11364 (possession of a
smoking device, a misdemeanor); however, this charge was dismissed in light of the plea agreement.

1 h. On or about April 1, 2005, in the criminal proceeding titled *People v.*
2 *Jorge Cabral* (Super. Ct. Los Angeles County, 2005, Case No. 05EL02933, Respondent plead
3 nolo contendere to a violation of PC section 484, subdivision (a) (petty theft, a misdemeanor)².
4 The incident upon which the conviction is based occurred on approximately March 17, 2005.

5 i. On or about September 21, 2005, in the criminal proceeding titled *People*
6 *v. Jorge Cabral* (Super. Ct. Los Angeles County, 2005, Case No. VA089259), Respondent plead
7 guilty to a violation of PC section 666 (petty theft with a prior jail term, a felony) and PC section
8 422 (making a criminal threat, a felony). The incidents upon which the convictions are based
9 occurred on approximately May 29, 2005, and May 30, 2005, respectively. Respondent was
10 sentenced to serve two years in state prison.

11 9. Respondent's convictions, as set forth in paragraphs 8(a) through (i)
12 above, would constitute grounds for disciplinary action against his applicator's license, pursuant
13 to Code section 8649, were he a licentiate of the Board.

14 **SECOND CAUSE FOR DENIAL OF APPLICATION**

15 **(False Statement in Respondent's Application for Licensure)**

16 10. Respondent's application is subject to denial pursuant to Code sections
17 8568 and 480, subdivision (c), in that on or about March 1, 2007, he knowingly made a false
18 statement of fact required to be revealed in his application for a structural pest control
19 applicator's license. Respondent certified in his answer to question 11³ that he had been
20 convicted of "was drunk was caut taking a bottel of wine got into a verbal dispute [sic]," in order
21 to conceal the true number and extent of his convictions as set forth above in subparagraphs 8(a)
22 through (i).

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24 ///

25 _____
26 2. Respondent was also charged with a violation of PC section 459 (second degree commercial burglary;
27 however, this charge was dismissed in light of the plea agreement.

28 3. The text of question 11 is as follows: "Have you ever been convicted of a felony or of a misdemeanor
other than a violation of traffic laws? If yes, explain..."

1 THIRD CAUSE FOR DENIAL OF APPLICATION

2 (Dishonesty, Fraud or Deceit)

3 11. Respondent's application is subject to denial pursuant to Code sections
4 8568 and 480, subdivision (a)(2), in that on or about March 1, 2007, he committed an act
5 involving dishonesty, fraud or deceit with the intent to substantially benefit himself, or
6 substantially injure another, as set forth in paragraph 10 above.

7 OTHER MATTERS


8 12. Pursuant to Code section 8654, if Respondent Jorge Cabral's application
9 for an applicator's license is denied, Jorge Cabral shall be prohibited from serving as an officer,
10 director, associate, partner, qualifying manager, or responsible managing employee for any
11 registered company during the time the discipline is imposed, and any registered company which
12 employs, elects, or associates Jorge Cabral, shall be subject to disciplinary action.

13 PRAYER

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

- 16 1. Denying the application of Jorge Cabral for an applicator's license;
17 2. Prohibiting Jorge Cabral from serving as an officer, director, associate,
18 partner, qualifying manager, or responsible managing employee of any registered company; and
19 3. Taking such other and further action as deemed necessary and proper.

20
21 DATED: 8/6/08

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