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FILED

Date 7/27/10 By Kelli Okuma

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

11 In the Matter of the Petition to Revoke
12 Probation Against:
13 **ANGEL SUAREZ**
14 **746 Alvarado Drive**
Salinas, California 93907
15 **Registered Applicator's License No. RA**
49913, Branches 2 and 3
16 Respondent.

Case No.: 2011-5

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

18 Complainant alleges:

19 PARTIES

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

23 1. On or about May 20, 2009, the Structural Pest Control Board issued Registered
24 Applicator's License Number RA 49913, Branches 2 and 3, to Angel Suarez (Respondent). The
25 Registered Applicator's License was in effect at all times relevant to the charges brought here and
26 will expire on May 20, 2012, unless renewed.

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JURISDICTION

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3. This Accusation and Petition to Revoke Probation 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 unless otherwise indicated.

JURISDICTIONAL PROVISIONS

4. Section 8620 of the Code provides, in pertinent part, 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.

5. 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."

6. Section 118, subdivision (b) of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

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

8. Section 8642 of the Code states:

"The commission of any grossly negligent or fraudulent act by the licensee as a pest control operator, field representative, or applicator or by a registered company is a ground for disciplinary action."

1 9. Section 8649 of the Code states:

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

6 COST RECOVERY

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

11 ACCUSATION

12 FIRST CAUSE FOR DISCIPLINARY ACTION
13 (Grossly Negligent or Fraudulent Conduct)
14 (Bus. & Prof. Code § 8642)

15 11. Respondent has subjected his Registered Applicator's License to disciplinary
16 action for grossly negligent or fraudulent conduct under Code sections 8642. The circumstances
17 are as follows:

18 a. On August 29, 2009, in Salinas, California, a Monterey County Sheriff's
19 Department (MCSD) officer driving a marked patrol vehicle observed a motorcycle traveling
20 southbound on Merritt Street at a high rate of speed. The MCSPD officer saw the driver (later
21 identified as Respondent) wearing a black colored jacket and a dark colored helmet. As the
22 officer got behind the motorcycle, it accelerated at a high rate of speed and ran the red light at
23 Merritt Street and Blackie Road. The MCSD officer activated his overhead emergency lights and
24 siren in an attempt to conduct a traffic stop on the motorcycle for the red light violation. The
25 motorcycle then crossed over a double yellow line and passed approximately four vehicles at a
26 high rate of speed on the left side and began traveling southbound on Highway 183. The MCSD
27 officer advised County Communications that he was attempting to stop a motorcycle traveling in
28 excess of 100 miles per hour. The MCSD officer accelerated his vehicle to approximately 135
M.P.H. to try and catch up to the motorcycle. The motorcycle continued to accelerate and create

1 more distance between their vehicle and the police vehicle. The motorcycle continued
2 southbound on Highway 183 at over 135 M.P.H. towards the city of Salinas. The motorcycle was
3 approximately a quarter of a mile ahead of the marked patrol vehicle. After being advised of the
4 pursuit, a MCS D Sergeant. told the MCS D officer that he would be setting up at the intersection
5 of West Market Street and Highway 183 to assist with the pursuit. The MCS D Sergeant was in
6 that intersection with his overhead emergency lights on. As the motorcycle approached the
7 intersection of Hwy. 183 and West Market Street, it slowed down and came to an abrupt stop.
8 Respondent dumped the motorcycle and he and his male passenger attempted to flee on foot.

9 b. The MCS D Sergeant immediately apprehended the male passenger. The MCS D
10 officer gave Respondent several verbal commands to stop but Respondent kept running. The
11 MCS D officer caught up with Respondent. The MCS D officer drew his duty issued firearm and
12 ordered Respondent to get down on his knees and place his hands on his head. Respondent
13 placed his hands in the air and placed his left knee on the ground but would not place his right
14 knee on the ground. The officer again ordered Respondent to place both knees on the ground but
15 he refused and kept telling the officer to shoot him. When the officer attempted to handcuff
16 Respondent, he pulled away. Another MCS D deputy arrived and assisted in taking Respondent
17 into custody.

18 c. While the MCS D officer was speaking with Respondent, the officer detected the
19 odor of an alcoholic beverage emanating from Respondent. The MCS D officer requested that the
20 California Highway Patrol (CHP) respond to his location for a DUI investigation. The CHP
21 officer determined that Respondent was driving under the influence. Another MCS D deputy
22 arrived on the scene and conducted a sweep of the area to ensure that no weapons or contraband
23 was left. The initial MCS D officer transported Respondent to the CHP station so the CHP officer
24 could complete a DUI investigation. After the DUI investigation was finished by the CHP
25 officer, and it was determined that Respondent was driving under the influence, the MCS D
26 officer transported Respondent to county jail for booking and lodging.

27 d. The District Attorney's Office charged Respondent with violating Vehicle Code
28 section 2800.2(a) (evading an officer, willful disregard), a felony; Vehicle Code sections

1 23152(a) (driving under the influence of alcohol) and 23152(b) (driving with a blood alcohol
2 content of .08% and more), both misdemeanors; and Penal Code section 148(a)(1)
3 (resist/obstruct/delay peace officer). Respondent was later convicted of violating Vehicle Code
4 sections 2800.2(a) and 23152(b) (see below).

5 SECOND CAUSE FOR DISCIPLINARY ACTION

6 (Substantially Related Convictions)
7 (Bus. & Prof. Code §§ 490 and 8649)

8 12. Respondent has subjected his Registered Applicator's License to disciplinary
9 action under Sections 490 and 8649 of the Code in that he was convicted of crimes substantially
10 related to the qualifications, functions, or duties of a registered applicant. Specifically, on or
11 about January 28, 2010, in the Superior Court of California, County of Monterey, Case No.
12 SS092181A, entitled *People of the State of California vs. Angel Suarez*, Respondent was
13 convicted by his plea of nolo contendere of violating Vehicle Code section 2800.2(a) (evade
14 peace officer - safety), a felony, and of violating Vehicle Code section 23152(b) (driving with a
15 blood alcohol content of .08% and more), a misdemeanor.

16 13. On or about March 4, 2010, after receipt of Respondent's probation report, the
17 imposition of sentence was suspended and Respondent was placed on formal probation for three
18 years upon terms and conditions, which included, but were not limited to: obey all law; totally
19 abstain from the use of alcoholic beverages, not purchase or possess alcoholic beverages, and stay
20 out of locations where alcoholic beverages are the main items of sale; serve 365 days in county
21 jail as to one count, with credit for time served of 1 day; voluntarily submit person, vehicle, place
22 of residence or area over which he has control to search and seizure at any time of day or night
23 with or without a search warrant with or without probable cause as directed by the probation
24 officer or peace officer; not possess, receive, or transport any firearm, ammunition or any deadly
25 or dangerous weapon; and not associate with any individuals he knows to be gang members, drug
26 users, or on any form of probation or parole supervision.

27 14. On or about April 6, 2010, Respondent was resentenced and placed on conditional
28 probation for five years upon terms and conditions, which included, but were not limited to: obey
all laws; pay a fine including penalty assessments of \$1,768.00; totally abstain from the use of

1 alcoholic beverages, not purchase or possess alcoholic beverages, and stay out of locations where
2 alcoholic beverages are the main items of sale; voluntarily submit person, vehicle, place of
3 residence or area over which he has control to search and seizure at any time of day or night with
4 or without a search warrant with or without probable cause as directed by the probation officer or
5 peace officer; serve 1 day in custody for violating Vehicle Code section 23152(b), with time to be
6 served concurrent with time to be served for violating Penal Code section 2800.2(a); not operate a
7 vehicle with any measurable amount of alcohol/drugs in his blood; and complete an approved
8 DUI Treatment Program within 2 weeks of release from custody.

9 THIRD CAUSE FOR DISCIPLINARY ACTION
10 (Grossly Negligent or Fraudulent Conduct)
11 (Bus. & Prof. Code § 8642)

12 15. Respondent has subjected his Registered Applicator's License to disciplinary action
13 for grossly negligent or fraudulent conduct under Code section 8642. The circumstances are as
14 follows:

15 a. On November 8, 2009, officers from the Monterey Police Department (MPD) were
16 dispatched to reports of 15 people fighting in the 300 block of Alvarado, Monterey and hearing
17 two gunshots. The responding MPD officer exited his police vehicle and began to walk south on
18 Alvarado from Del Monte. The MPD officer did not observe a fight or disturbance. There was a
19 gray Chevy Silverado truck (occupied by five individuals) in the number one northbound lane of
20 Alvarado. As the MPD officer walked along the driver's side of the vehicle, he observed another
21 person (later identified as the victim and caller) running up from behind waving his arms and
22 pointing to the vehicle indicating that it was involved in the disturbance.

23 b. The officer detained the vehicle and instructed all of the occupants to place their
24 hands above their head where he could see them. They immediately began to yell at the officer
25 stating that they were not involved and did not speak English and had nothing to do with it. They
26 used profanity and were not cooperative. The officer instructed the driver to turn the vehicle off
27 and he complied.

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1 c. Three other MPD officers arrived on the scene shortly thereafter. Respondent was
2 seated in a rear seat behind the driver's side. While the first responding MPD officer opened the
3 truck's door and grasped Respondent's left hand, Respondent began to reach across his waist in
4 what appeared to be a motion to release the seat belt. The officer immediately instructed
5 Respondent not to do that and grasped his arm. The officer was able to release the seat belt and
6 remove it from around his shoulder. The officer maintained a grasp of his left arm and instructed
7 Respondent to exit the vehicle while pulling on his left arm. Respondent immediately grasped the
8 back of the headrest of the driver's seat and did not let go. Another MPD officer assisted as they
9 both physically had to pull Respondent from the vehicle as he resisted. During this entire time,
10 all of the other people in the vehicle were yelling and using profanities.

11 d. The victim, H. G.,¹ and the person who called the police, told the MPD officer that
12 Respondent had created a disturbance by walking up and down in front of his (H. G.'s) business
13 located at 301 Alvarado. H. G. reported that Respondent was challenging people by saying words
14 to the effect "do you want to go?" "or "do you want some?" H. G. also reported that Respondent
15 was clearly agitated and had challenged him (H. G.) by asking him if he "wanted some." H. G.
16 took that as challenge to fight and told the officer that he wished to sign a citation placing
17 Respondent under arrest. Respondent was arrested and transported to the police station. After his
18 arrest, Respondent waived his Miranda rights and stated that he consumed approximately four
19 beers before the incident.

20 e. The District Attorney's Office charged Respondent was charged with violating Penal
21 Code sections 148(a)(1) (obstruct/etc public officer/etc.) and 415(1) (disturbing the peace -
22 fighting), both misdemeanors. Respondent was later convicted of violating Penal Code section
23 415(1) (see below).

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28 ¹ The name of the victim will be referred to by initials only.

1 FOURTH CAUSE FOR DISCIPLINARY ACTION

2 (Substantially Related Conviction)
3 (Bus. & Prof. Code §§ 490 and 8649)

4 16. Respondent has subjected his Registered Applicator's License to disciplinary
5 action under Sections 490 and 8649 of the Code in that he was convicted of a crime substantially
6 related to the qualifications, functions, or duties of a registered applicant. Specifically, on or
7 about March 16, 2010, in the Superior Court of California, County of Monterey, Case No.
8 MS282985A, entitled *People of the State of California vs. Angel Suarez*, Respondent was
9 convicted by his plea of nolo contendere of violating Penal Code section 415(1) (disturbing the
10 peace - fighting), a misdemeanor. Probation was denied and Respondent was ordered to serve
11 seven days, concurrently with Case No. SS092181A.

12 DISCIPLINARY CONSIDERATIONS

13 17. In a disciplinary action entitled "In the Matter of the Statement of Issues Against
14 Angel Suarez," Case No. 2009-28, the Structural Pest Control Board, issued a decision, effective
15 May 20, 2009, in which Respondent's application for a Registered Applicator's License was
16 denied. However, a probationary license was issued for a period of five (5) years with certain
17 terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by
18 reference.

19 PETITION TO REVOKE PROBATION

20 FIRST CAUSE TO REVOKE PROBATION

21 (Obey All Laws)

22 18. Grounds exist for revoking the probation and reimposing the order of revocation of
23 of Respondent's Registered Applicator's License No. RA 49913, Branches 2 and 3. Condition 1
24 of the Stipulated Settlement and Disciplinary Order states:

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

27 19. Respondent's probation is subject to revocation because he failed to comply with
28 Probation Condition 1, referenced above, by sustaining two convictions substantially related to

1 the qualifications, functions or duties of a registered applicator, as set forth above in Paragraphs
2 12 through 16.

3 PRAYER

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

6 1. Revoking the probation that was granted by the Structural Pest Control Board in Case
7 No. 2009-28 and imposing the disciplinary order that was stayed, thereby revoking Registered
8 Applicator's License Number RA 49913, Branches 2 and 3, issued to Angel Suarez; and

9 2. Revoking or suspending Registered Applicator's License Number RA 49913,
10 Branches 2 and 3, issued to Angel Suarez; and

11 3. Ordering Angel Suarez to pay the Structural Pest Control Board the reasonable costs
12 of the investigation and enforcement of this case, pursuant to Business and Professions Code
13 section 125.3.

14 DATED: 7/27/10



15 KELLI OKUMA
16 Registrar/Executive Officer
17 Structural Pest Control Board
18 Department of Pesticide Regulation
19 State of California
20 Complainant

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