

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA

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

ANGEL SUAREZ,

Registered Applicator's License No. RA
49913, Branches 2 and 3

Respondent.

Case No. 2011-5

OAH No. 2011031153

DECISION

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

This Decision shall become effective on November 12, 2011.

IT IS SO ORDERED October 13, 2011.



A handwritten signature in black ink, appearing to be 'C. G.', is written over a horizontal line.

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PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on August 29, 2011.

Deputy Attorney General Carol Romeo represented complainant Kelli Okuma, Registrar/Executive Officer of the Structural Pest Control Board., Department of Pesticide Regulation.

Respondent Angel Suarez was present and self-represented.

The matter was submitted on August 29, 2011.

FACTUAL FINDINGS

1. Following a disciplinary hearing in Case No. 2009-28, the Structural Pest Control Board issued a decision effective May 20, 2009, in which it denied the application of respondent Angel Suarez for an applicator's license, but issued him a probationary license. On May 20, 2009, the board issued to respondent Registered Applicator's License Number RA 49913, Branches 2 and 3. The license was in full force and effect at all times relevant to these proceedings. The license is current to May 20, 2012.

2. The prior disciplinary decision in Case No. 2009-28 was based on findings that respondent had sustained two felony convictions on June 8, 2006, for offenses which were substantially related to the qualifications, functions, or duties of the licensed activity. The first offense was a violation of Health and Safety Code section 11360, subdivision (a) (transporting or sale of marijuana), with a sentencing enhancement for use of a firearm

pursuant to Penal Code section 12022, subdivision (a)(i). The second offense was a violation of Health and Safety Code section 11351 (possession of a controlled substance for sale). The underlying events to these crimes occurred on separate days.

Amendments to the Accusation

3. At hearing, complainant withdrew the two causes for discipline alleged pursuant to Business and Professions Code section 8642 (grossly negligent or fraudulent conduct).

Accusation

4. On January 28, 2010, respondent was convicted in the Superior Court of California, County of Monterey, on his plea of no contest to a felony violation of Vehicle Code section 2800.2, subdivision (a) (evading a police officer), and a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08 percent or higher). Imposition of sentence was suspended, and respondent was placed on formal probation for three years on stated terms and conditions which included 365 days in jail, a fine (with assessments) of \$1,768, abstaining from alcohol, and completing an approved Driving Under the Influence Treatment Program.

5. The underlying events occurred on March 29, 2009. While intoxicated, respondent drove his motorcycle at a high rate of speed through a red light in the City of Salinas. A police officer turned on his lights and siren and attempted to effect a traffic stop. Respondent did not stop, but crossed over a double yellow line (passing four cars) and sped onto the highway. The pursuing officer accelerated his vehicle to 135 miles per hour to catch up to respondent. Respondent abandoned his motorcycle at a road block, and ran, ignoring another officer's commands to stop. The officer eventually caught respondent, but was required to pull his gun in order to get respondent to comply with his orders.

6. On March 16, 2010, respondent was convicted in the Superior Court of California, County of Monterey, on his plea of no contest to a misdemeanor violation of Penal Code section 415, subdivision (1) (disturbing the peace, fighting). The court denied probation and sentenced respondent to seven days in jail, concurrent to the jail sentence imposed for the convictions set forth in Finding 4.

7. The underlying events for this offense occurred on November 8, 2009. The police responded to a report of fighting and gunshots in Monterey. Respondent and others were in a parked vehicle near the area of the alleged fight and were ordered out of the vehicle. Respondent refused to get out the vehicle and was verbally abusive to the officers. He had to be physically pulled out of the vehicle by the police officers.

Petition to Revoke Probation

8. Condition 1 of respondent's probation to the board required him to do the following:

Respondent shall obey all laws of the United States; the State of California; all laws, rules and regulations relating to the practice of structural pest control; and the terms and conditions of probation in Monterey County Superior Court case numbers SS053213A and SS061045A.

9. Respondent violated Condition 1 of his probation by committing two new criminal offenses.

Other Matters

10. Respondent was candid and forthcoming at hearing. He fully admitted his conduct in connection with his two new criminal offenses. He also disclosed them to the board in his quarterly reports.

11. Respondent was incarcerated for two months, and then placed on electronic monitoring. He has completed his drinking driver program, and is staying out of trouble. He remains on criminal probation until 2015.

12. Respondent worked on and off for Casner Exterminating at sites within Santa Cruz County until his incarceration. He liked the work, and they found him to be an honest and hardworking technician. Because of the travel limitations of his probation, respondent cannot work in Santa Cruz County, so there has not been any work available for him at Casner Exterminating. Respondent realizes that by his criminal conduct he has put his license in jeopardy.

13. Respondent is currently unemployed and receiving unemployment insurance. He has four children, and lives with the mother of his three youngest children. His unemployment insurance is garnished to pay part of his child support obligation for his oldest child.

Costs

14. The board has incurred legal fees of \$3,015 in the prosecution of this matter. These costs, representing 1.75 hours of paralegal services and 16.50 hours of attorney services, are found to be reasonable.

LEGAL CONCLUSIONS

1. The standard of proof applied in this proceeding is clear and convincing evidence.

Accusation

2. Pursuant to Business and Professions Code sections 490 and 8649, the board may discipline a licensee who been convicted of a crime substantially related to the qualifications, functions, or duties of the licensed activity. A conviction is substantially related if, to a substantial degree, it evidences present or potential unfitness to perform the duties authorized by the license in a manner consistent with the public health, safety, or welfare. (Cal. Code Regs., tit. 16, § 1937.1) There is a substantial relationship between the crimes committed by respondent and the work performed by an applicator. Cause therefore exists to suspend or revoke respondent's license by reason of the convictions set forth in Findings 4 and 6.

Petition to Revoke Probation

3. By reason of the matters set forth in Finding 4, 6, 8 and 9, it was established that respondent violated Condition 1 of his probation to the board. This violation provides cause to revoke respondent's probation.

Disciplinary Consideration

4. The board granted respondent's application on May 20, 2009, based on its conclusion that respondent had demonstrated sufficient efforts towards rehabilitation from his 2006 felony convictions at his January 2009 administrative hearing. Within his first year on probation to the board, respondent suffered two additional criminal convictions, based on separate and unrelated offenses. The first offense was serious, and his conduct put both the police and the public at great risk of harm. For these reasons, it is not in the public interest for respondent to remain licensed as an applicator.

Costs

5. Business and Professions Code section 125.3 provides that a licentiate found to have violated the licensing laws may be ordered to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Pursuant to that section, cause exists to order respondent to reimburse the board the sum of \$3,015.

6. In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court has directed that licensing boards must exercise their discretion to reduce or eliminate cost awards to ensure that they do not deter licensees with potentially meritorious claims from exercising their right to an administrative hearing. Among the many factors to be considered, *Zuckerman* instructs that the board must consider whether a licensee

will be financially able to make cost payments. The evidence here suggests that respondent would have difficulty making cost payments at this time. For this reason, it is appropriate to reduce the imposed costs by one-half to \$1,500.

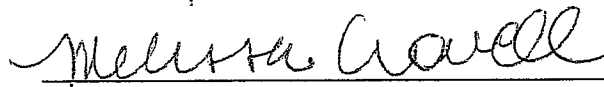
ORDER

1. Registered Applicator's License No. RA 49913, Branches 2 and 3, issued to respondent Angel Suarez is revoked.

2. The petition to revoke probation is granted. Respondent's probation in Case No. 2009-28 is revoked.

3. Respondent shall pay to the board \$1,500 as reimbursement for its costs of investigation and prosecution.

DATED: September 16, 2011



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

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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:

12 **ANGEL SUAREZ**
13 **746 Alvarado Drive**
14 **Salinas, California 93907**

15 **Registered Applicator's License No. RA**
16 **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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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 MCSD Sergeant. told the MCSD officer that he would be setting up at the intersection
5 of West Market Street and Highway 183 to assist with the pursuit. The MCSD 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 MCSD Sergeant immediately apprehended the male passenger. The MCSD
10 officer gave Respondent several verbal commands to stop but Respondent kept running. The
11 MCSD officer caught up with Respondent. The MCSD 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 MCSD deputy arrived and assisted in taking Respondent
17 into custody.

18 c. While the MCSD officer was speaking with Respondent, the officer detected the
19 odor of an alcoholic beverage emanating from Respondent. The MCSD 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 MCSD 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 MCSD 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 MCSD
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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