

FILED

Date 8/29/12 By

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

11 In the Matter of the First Amended Accusation
12 Against:
13 **JOHN E. PENTON**
14 **1100 Willow Street**
Atwater, CA 95301
15 **Applicator License No. RA 50355**
16 Respondent.

Case No. 2011-72 (i)
FIRST AMENDED
ACCUSATION

17
18 Susan Saylor ("Complainant") alleges:

19 **PARTIES**

20 1. Complainant brings this First Amended Accusation solely in her official capacity as
21 the Assistant Executive Officer of the Structural Pest Control Board ("Board"), Department of
22 Pesticide Regulation.

23 2. On or about September 25, 2009, the Board issued Applicator License Number
24 RA 50355 to John E. Penton ("Respondent"). The license was in full force and effect at all times
25 relevant to the charges brought herein and will expire on September 25, 2012, unless renewed.

26 **STATUTORY PROVISIONS**

27 3. Business and Professions Code ("Code") section 8620 provides, in pertinent part, that
28 the Board may suspend or revoke a license when it finds that the holder, while a licensee or

1 applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu
2 of a suspension may assess a civil penalty.

3 4. Code section 8654 states:

4 Any individual who has been denied a license for any of the reasons specified
5 in Section 8568, or who has had his or her license revoked, or whose license is under
6 suspension, or who has failed to renew his or her license while it was under
7 suspension, or who has been a member, officer, director, associate, qualifying
8 manager, or responsible managing employee of any partnership, corporation, firm, or
9 association whose application for a company registration has been denied for any of
10 the reasons specified in Section 8568, or whose company registration has been
11 revoked as a result of disciplinary action, or whose company registration is under
12 suspension, and while acting as such member, officer, director, associate, qualifying
13 manager, or responsible managing employee had knowledge of or participated in any
14 of the prohibited acts for which the license or registration was denied, suspended or
15 revoked, shall be prohibited from serving as an officer, director, associate, partner,
16 qualifying manager, or responsible managing employee of a registered company, and
17 the employment, election or association of such person by a registered company is a
18 ground for disciplinary action.

12 5. Code section 8625 states:

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

16 6. Code section 8641 states:

17 Failure to comply with the provisions of this chapter, or any rule or regulation
18 adopted by the board, or the furnishing of a report of inspection without the making
19 of a bona fide inspection of the premises for wood-destroying pests or organisms, or
20 furnishing a notice of work completed prior to the completion of the work specified in
21 the contract, is a ground for disciplinary action.

20 7. Code section 8651 states:

21 The performing or soliciting of structural pest control work, the inspecting for
22 structural or household pests, or the applying of any pesticide, chemical, or allied
23 substance for the purpose of eliminating, exterminating, controlling, or preventing
24 structural pests in branches of pest control other than those for which the operator,
25 field representative, or applicator is licensed or the company is registered is a ground
26 for disciplinary action.

25 COST RECOVERY

26 8. Code section 125.3 provides, in pertinent part, that the Board may request the
27 administrative law judge to direct a licentiate found to have committed a violation or violations of
28

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **CAUSE FOR DISCIPLINE**

4 **(Unlicensed Activity)**

5 9. Respondent's applicator license is subject to discipline under Code section 8651, in
6 that in 2009 and 2010, Respondent engaged in pest control work in a branch other than that for
7 which he was licensed.

8 **OTHER MATTERS**

9 10. Code section 8620 provides, in pertinent part, that a respondent may request that a
10 civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of 1 to 19 days,
11 or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request must be made
12 at the time of the hearing and must be noted in the proposed decision. The proposed decision
13 shall not provide that a civil penalty shall be imposed in lieu of a suspension.

14 11. Pursuant to Code section 8654, if discipline is imposed on Applicator License No.
15 RA 50355, issued to Respondent, then Respondent shall be prohibited from serving as an officer,
16 director, associate, partner or responsible managing employee of a registered company, and any
17 licensee which employs, elects, or associates Respondent shall be subject to disciplinary action.

18 **PRAYER**

19 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein
20 alleged; and that following the hearing, the Structural Pest Control Board issue a decision:

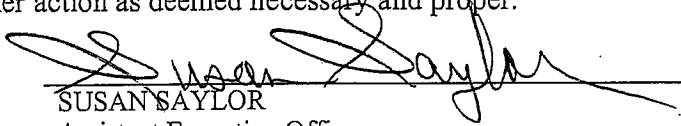
- 21 1. Revoking or suspending Applicator License Number RA 50355, issued to John E.
22 Penton;
- 23 2. Revoking or suspending any other license for which John E. Penton is furnishing the
24 qualifying experience or appearance;
- 25 3. Prohibiting John E. Penton from serving as an officer, director, associate, partner,
26 qualifying manager or responsible managing employee of any registered company during the
27 period that discipline is imposed on Applicator License Number RA 50355, issued to John E.
28 Penton;

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4. Ordering John E. Penton to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

5. Taking such other and further action as deemed necessary and proper.

DATED: 8/29/12



SUSAN SAYLOR
Assistant Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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