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5 **BEFORE THE**  
6 **STRUCTURAL PEST CONTROL BOARD**  
7 **DEPARTMENT OF PESTICIDE REGULATION**  
8 **STATE OF CALIFORNIA**

9 In the Matter of the Accusation Against:

Case No. 2011-42

10 **BARRY RONALD HERRON**

**DEFAULT DECISION AND ORDER**

11 1386 Linhere Street  
12 Carpinteria, CA 93013

[Gov. Code, §11520]

13 **Applicator's License No. RA 50560**

14 Respondent.

15  
16 **FINDINGS OF FACT**

17 1. On or about March 10, 2011, Complainant Kelli Okuma, in her official capacity as  
18 the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide  
19 Regulation, filed Accusation No. 2011-42 against Barry Ronald Herron (Respondent) before the  
20 Structural Pest Control Board. (Accusation attached as Exhibit A.)

21 2. On or about December 28, 2009, the Structural Pest Control Board (Board) issued  
22 Applicator's License No. RA 50560 to Respondent. The Applicator's License was in full force  
23 and effect at all times relevant to the charges brought in Accusation No. 2011-42 and will expire  
24 on December 28, 2012, unless renewed.

25 3. On or about March 30, 2011, Respondent was served by Certified and First Class  
26 Mail copies of the Accusation No. 2011-42, Statement to Respondent, Notice of Defense, Request  
27 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and  
28

1 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code  
2 section 136, is required to be reported and maintained with the Board, which was and is:

3 1386 Linhere Street  
4 Carpinteria, CA 93013.

5 4. Service of the Accusation was effective as a matter of law under the provisions of  
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
7 124.

8 5. Government Code section 11506 states, in pertinent part:

9 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
10 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
11 of the accusation not expressly admitted. Failure to file a notice of defense shall  
12 constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
13 may nevertheless grant a hearing.

14 6. Respondent failed to file a Notice of Defense within 15 days after service upon him  
15 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
16 2011-42.

17 7. California Government Code section 11520 states, in pertinent part:

18 (a) If the respondent either fails to file a notice of defense or to appear at the  
19 hearing, the agency may take action based upon the respondent's express admissions  
20 or upon other evidence and affidavits may be used as evidence without any notice to  
21 respondent.

22 8. Pursuant to its authority under Government Code section 11520, the Board finds  
23 Respondent is in default. The Board will take action without further hearing and, based on the  
24 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
25 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
26 file at the Board's offices regarding the allegations contained in Accusation No. 2011-42, finds  
27 that the charges and allegations in Accusation No. 2011-42, are separately and severally, found to  
28 be true and correct by clear and convincing evidence.

9. Taking official notice of its own internal records, pursuant to Business and  
Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
and Enforcement is \$ 1,572.50 as of July 18, 2011.

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Barry Ronald Herron has  
3 subjected his Applicator's License No. RA 50560 to discipline.

4 2. The agency has jurisdiction to adjudicate this case by default.

5 3. The Structural Pest Control Board is authorized to revoke Respondent's Applicator's  
6 License based upon the following violations alleged in the Accusation which are supported by the  
7 evidence contained in the Default Decision Evidence Packet in this case.:

8 a. Violation of Business and Professions Code section 8649 for his conviction in June  
9 2010 for violating Health and Safety Code section 11358 (cultivation of marijuana); and

10 b. Violation of Business and Professions Code section 490 for the same conviction.  
11


12 ORDER

13 IT IS SO ORDERED that Applicator's License No. RA 50560, heretofore issued to  
14 Respondent Barry Ronald Herron, is revoked.

15 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
16 written motion requesting that the Decision be vacated and stating the grounds relied on within  
17 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
18 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

19 This Decision shall become effective on October 29, 2011.

20 It is so ORDERED September 29, 2011  
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24 FOR THE STRUCTURAL PEST CONTROL  
25 BOARD  
26 DEPARTMENT OF PESTICIDE REGULATION

25 50938599.DOC  
26 DOJ Matter ID:LA2010600904

27 Attachment:  
28 Exhibit A: Accusation

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6 Attorneys for Complainant.

FILED

Date 3/10/11 By Kelli Okuma

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

10 In the Matter of the Accusation Against:

Case No. 2011-42

11 BARRY RONALD HERRON

12 1386 Linhere Street  
13 Carpinteria, CA 93013

ACCUSATION

14 Applicator's License No. RA 50560, Branches 2  
and 3

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

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

22 Applicator's License

23 2. On or about December 28, 2009, the Board issued Applicator's License Number RA  
24 50560 in Branches 2 and 3 to Barry Ronald Herron ("Respondent"). The applicator's license was  
25 in full force and effect at all times relevant to the charges brought herein and will expire on  
26 December 28, 2012, unless renewed.

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## JURISDICTION AND RELEVANT STATUTES

3. This Accusation is brought before the Board under the authority of the following laws:

4. Section 8620 of the Business and Professions Code ("Code") and Code section 8623 provide, 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.

5. Code Section 8620 also provides that the Board may assess a civil penalty in lieu of a suspension:

In addition to its authority to suspend or revoke a license, the board may assess a civil penalty as follows:

(a) Upon the conclusion of a hearing held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, if the proposed decision of the hearing officer is that the licensee is guilty of or has committed any one of the acts or omissions constituting grounds for disciplinary action, the proposed decision shall provide for the imposition of a suspension or for the revocation of the license. In this case, the board may impose the suspension or revocation. The board may also, in lieu of a suspension, assess a civil penalty. The licensee may express a preference for a form of discipline, but the board shall not be bound by any expression of preference.

If a licensee elects to stipulate to a disciplinary action prior to an administrative hearing, the board may impose a civil penalty, in accordance with this section, in lieu of suspension. If a proposed stipulation is rejected by the board, it is null and void and does not constitute an admission of any violation charged.

(b) The civil penalty shall not be more than five thousand dollars (\$5,000) for an actual suspension of one to 19 days.

(c) The civil penalty shall not be more than ten thousand dollars (\$10,000) for an actual suspension of 20 to 45 days.

(d) If a licensee is assessed the civil penalty in lieu of an actual suspension, the penalty shall be paid before the effective date of the decision.

(e) If the civil penalty is not paid before the effective date of the suspension, the license shall be suspended until the penalty is paid or until the actual suspension is served.

No civil penalty shall be assessed in lieu of any suspension which exceeds 45 days. With the exception of the proceedings on suspensions undertaken or on fines levied pursuant to Section 8617, the proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

1 In any order of suspension or revocation, the board may authorize the completion  
2 of any contract or work contracted for under terms and conditions set forth in the  
3 order.

4 6. Code section 8625 grants the Board jurisdiction over lapsed, suspended, or  
5 surrendered licenses:

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

12 7. Code section 8649 provides that substantially related convictions are grounds for  
13 discipline:

14 Conviction of a crime substantially related to the qualifications, functions,  
15 and duties of a structural pest control operator, field representative, applicator, or  
16 company is a ground for disciplinary action. The certified record of conviction shall  
17 be conclusive evidence thereof.

18 8. Code section 490 provides in relevant part an independent basis for discipline for  
19 substantially related convictions:

20 (a) In addition to any other action that a board is permitted to take against  
21 a licensee, a board may suspend or revoke a license on the ground that the licensee  
22 has been convicted of a crime, if the crime is substantially related to the  
23 qualifications, functions, or duties of the business or profession for which the license  
24 was issued.

25 (b) Notwithstanding any other provision of law, a board may exercise  
26 any authority to discipline a licensee for conviction of a crime that is independent of  
27 the authority granted under subdivision (a) only if the crime is substantially related to  
28 the qualifications, functions, or duties of the business or profession for which the  
29 licensee's license was issued.

30 (c) A conviction within the meaning of this section means a plea or  
31 verdict of guilty or a conviction following a plea of nolo contendere. An action that a  
32 board is permitted to take following the establishment of a conviction may be taken  
33 when the time for appeal has elapsed, or the judgment of conviction has been  
34 affirmed on appeal, or when an order granting probation is made suspending the  
35 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the  
36 Penal Code.

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1           12. Respondent's conduct is substantially related to the qualifications, functions, and  
2 duties of a licensed applicator, because during working hours he sold marijuana he cultivated and  
3 used work equipment to do so.

4                                   SECOND CAUSE FOR DISCIPLINE

5           (Business and Professions Code Section 490 - Substantially Related Criminal Conviction)

6           13. By committing the acts alleged in paragraphs 10 through 12 above, realleged herein  
7 and incorporated as though set forth in full, Respondent's license is subject to disciplinary action  
8 under Code section 490 because Respondent's conviction for a violation of Health and Safety  
9 Code section 11358 is substantially related to the qualifications, functions, and duties of a  
10 licensed applicator, because during work hours he sold marijuana he cultivated and used work  
11 equipment to do so.

12                                   OTHER MATTERS

13           14. Pursuant to Code section 8654, if discipline is imposed on Applicator's License  
14 Number RA 50560, issued to Respondent, then Barry Ronald Herron, shall be prohibited from  
15 serving as an officer, director, associate, partner or responsible managing employee of a Board  
16 licensee, and any licensee which employs, elects, or associates him shall be subject to disciplinary  
17 action.

18                                   PRAYER

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

21           1. Revoking or suspending Applicator's License Number RA 50560, issued to Barry  
22 Ronald Herron;

23           2. Ordering Barry Ronald Herron to pay the Structural Pest Control Board the  
24 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
25 Professions Code section 125.3; and,

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

DATED: 3/10/11

Kelli Okuma

KELLI OKUMA  
Registrar/Executive Officer  
Structural Pest Control Board  
Department of Pesticide Regulation  
State of California  
*Complainant*

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