

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 M. TRAVIS PEERY
Deputy Attorney General
4 State Bar No. 261887
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-0962
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

FILED

Date 5/10/13 By 

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

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

Case No. 2013-45

13 **AARON JOHN ESSERT**
3400 Unicorn Road, Unit 106
14 Bakersfield, CA 93308

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

15 and

16 5009 Summerwind Way
17 Bakersfield, CA 93308

18 Applicator License No. RA 52425

19 Respondent.

20 Complainant alleges:

21 **PARTIES**

22 1. Susan Saylor (Complainant) brings this Accusation and Petition to Revoke Probation
23 solely in her official capacity as the Interim Registrar/Executive Officer of the Structural Pest
24 Control Board, Department of Pesticide Regulation.

25 2. On or about August 17, 2011, the Structural Pest Control Board (Board) issued
26 Probationary Applicator License No. RA 52425 in branch 2 and 3 to Aaron John Essert
27 (Respondent), as an employee of S T O Pests Pest Control Inc. On or about January 14, 2012, the

28 ///

1 license was suspended, pursuant to Family Code section 17520. The license is renewed through
2 August 17, 2014.

3 3. In a prior matter entitled, "In the Matter of the Application of: Aaron John Essert,"
4 the Board issued a Stipulation for a Probationary License and Order, effective August 17, 2011,
5 in which Respondent's applicator license was placed on probation for a period of 5 years with
6 certain terms and conditions. A copy of the stipulation is attached as exhibit A and is
7 incorporated herein by reference.

8 JURISDICTION

9 4. This Accusation and Petition to Revoke Probation is brought before the Board under
10 the authority of the following laws. All section references are to the Business and Professions
11 Code unless otherwise indicated.

12 5. At all times after the effective date of Respondent's probation, Probation Condition
13 No. 7 stated:

14 "Should Applicant violate probation in any respect, the Board, after giving Applicant notice
15 and an opportunity to be heard, may revoke the probationary license through an administrative
16 hearing process."

17 STATUTORY PROVISIONS

18 6. Section 8620 provides, in pertinent part, that the Board may suspend or revoke a
19 license when it finds that the holder, while a licensee or applicant, has committed any acts or
20 omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil
21 penalty.

22 7. Section 8625 states:

23 The lapsing or suspension of a license or company registration by operation of law or by
24 order or decision of the board or a court of law, or the voluntary surrender of a license or
25 company registration shall not deprive the board of jurisdiction to proceed with any investigation
26 of or action or disciplinary proceeding against such licensee or company, or to render a decision
27 suspending or revoking such license or registration.

28 ///

1 8. Section 8649 states:

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

5 9. Section 8654 states:

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

19 **REGULATORY PROVISIONS**

20 10. California Code of Regulations, title 16, section 1937.1 states, in pertinent part:

21 "For the purposes of denial, suspension or revocation of a license or company registration
22 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
23 considered to be substantially related to the qualifications, functions or duties of a licensee or
24 registered company under Chapter 14 of Division 3 of the code if to a substantial degree it
25 evidences present or potential unfitness of such licensee or registered company to perform the
26 functions authorized by the license or company registration in a manner consistent with the public
27 health, safety, or welfare."

28 ///

1 **COST RECOVERY**

2 11. Section 125.3 provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **ACCUSATION**

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Conviction of Substantially Related Crime)**

9 12. Respondent is subject to disciplinary action under Business and Professions Code
10 section 8649, in conjunction with California Code of Regulations, title 16, section 1937.1, in that
11 Respondent was convicted of a crime substantially related to the qualifications, function or duties
12 of an applicator as follows:

13 a. On or about August 23, 2012, after pleading nolo contendere, Respondent was
14 convicted of one felony count of violating Health and Safety Code section 11350, subdivision (a)
15 [possession of a controlled substance] in the criminal proceeding entitled *The People of the State*
16 *of California v. Aaron John Essert* (Super. Ct. Kern County, 2012, No. BF143480A). The Court
17 sentenced Respondent to serve 2 years in the Kern County Jail and denied probation. The
18 circumstances surrounding the conviction are that on or about August 10, 2012, while conducting
19 a probation search at Parkside Apartments, in Bakersfield CA, by the Kern County Sheriff's
20 Department, Respondent was contacted. During a search of Respondent's backpack, the officer
21 located numerous prescription pills that Respondent did not have a prescription for, several
22 hypodermic needles, a blue Medal notebook that had a list of amounts and prescription pills and
23 prices, and two pieces of suspected heroin wrapped in tin foil. When asked why he had so many
24 pills inside his backpack, Respondent stated, "I'm an addict." When asked what pills he was
25 addicted to, Respondent admitted that he uses Heroin, Xanax, Soma, and other prescription pills.
26 When asked about the notebook that listed people's names, prescription pills, and dollar amounts,
27 Respondent admitted that he occasionally sells pills to other addicts so that he can get money to
28 buy Heroin. When asked how he ingested Heroin, Respondent indicated that he "shoots" Heroin.

1 Based on the officer's training and experience, the officer understood "shoot" to mean that
2 Respondent injects Heroin directly into his veins using a hypodermic needle. While speaking to
3 Respondent, the officer noticed that he was extremely lethargic and spoke very slowly. When
4 asked when he had last used Heroin, Respondent admitted that he had last used Heroin on August
5 10, 2012 at about 1300 hours. Respondent was subsequently arrested for violating Health and
6 Safety Code section 11350, subdivision (a) [possession of a narcotic controlled substance], Health
7 and Safety Code section 11351 [possession/purchase for sale of a narcotic controlled substance],
8 Health and Safety Code section 11364 [possession of a controlled substance paraphernalia],
9 Business and Professions Code section 4060 [possession of a controlled substance without a
10 prescription], and Health and Safety Code section 11550, subdivision (a) [use/under the influence
11 of a controlled substance].

12 **PETITION TO REVOKE PROBATION**

13 13. Grounds exist to revoke Respondent's probationary Applicator License No. RA
14 52425, in that Respondent failed to comply with his probation terms and conditions, as follows:

15 **FIRST CAUSE TO REVOKE PROBATION**

16 **(Failure to Obey all Laws)**

17 14. At all times after the effective date of Respondent's probation, Probation Condition
18 No. 2 stated:

19 "Obey all Local, State and Federal laws."

20 15. Respondent's probation is subject to revocation because he failed to comply with
21 Probation Condition No. 2 referenced above, by failing to obey all laws. Complainant hereby
22 incorporates paragraph 12, subparagraph (a), above, as though set forth fully.

23 **OTHER MATTERS**

24 16. Section 8620 provides, in pertinent part, that Respondent may request a civil penalty
25 of not more than \$5,000 be assessed in lieu of an actual suspension of 1 to 19 days, or not more
26 than \$10,000 for an actual suspension of 20 to 45 days. Such request must be made at the time of
27 the hearing and must be noted in the proposed decision. The proposed decision shall not provide
28 that a civil penalty be imposed in lieu of a suspension.

1 17. Pursuant to section 8654 of the Code, if discipline is imposed on Applicator License
2 No. RA 52425 issued to Respondent Aaron John Essert, Respondent shall be prohibited from
3 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
4 employee for any registered company during the time the discipline is imposed, and any
5 registered company which employs, elects, or associates Aaron John Essert shall be subject to
6 disciplinary action.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board issue a decision:

- 10 1. Revoking the probation that was granted by the Board and thereby revoking
11 Probationary Applicator License No. RA 52425 issued to Respondent;
- 12 2. Revoking or suspending Probationary Applicator License No. RA 52425, issued to
13 Respondent;
- 14 3. Prohibiting Respondent from serving as an officer, director, associate, partner,
15 qualifying manager, or responsible managing employee for any registered company during the
16 time the discipline is imposed pursuant to Business and Professions Code section 8654;
- 17 4. Ordering Aaron John Essert to pay the Structural Pest Control Board the reasonable
18 costs of the investigation and enforcement of this case, pursuant to Business and Professions
19 Code section 125.3; and
- 20 5. Taking such other and further action as deemed necessary and proper.

21
22
23 DATED: 5/10/13

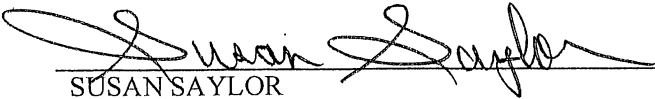

SUSAN SAYLOR
Interim Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

Exhibit A

Decision and Order

Structural Pest Control Board Case No. 2012-11