

**FILED**

Date 12/10/12 By

*Susan Saylor*

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15 **BEFORE THE**  
16 **STRUCTURAL PEST CONTROL BOARD**  
17 **DEPARTMENT OF PESTICIDE REGULATION**  
18 **STATE OF CALIFORNIA**

19 In the Matter of the Accusation Against:

Case No. 2013-25

20 **RICHARD J. SPERRY**  
21 **1202 Morena Boulevard, Suite 400**  
22 **San Diego, CA 92110**

**A C C U S A T I O N**

23 **Applicator License No. RA 52879**

24 Respondent.

25 Complainant alleges:

26 **PARTIES**

27 1. Susan Saylor (Complainant) brings this Accusation solely in her official capacity  
28 as the Interim Registrar/Executive Officer of the Structural Pest Control Board, Department of  
Pesticide Regulation.

2. On March 8, 2012, the Structural Pest Control Board (Board) issued Applicator  
License Number RA 52879 (License) to Richard J. Sperry (Respondent). Respondent has also  
been known as Richard Julian Sperry. The License was in full force and effect at all times  
relevant to the charges brought herein and will expire on March 8, 2015, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

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.

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## STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground 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 8649 of the Code states:

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

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1           9.     Section 8654 of the Code states:

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

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20           10.    Section 8655 of the Code states:

21           A plea or verdict of guilty or a conviction following a plea of nolo  
22 contendere made to a charge substantially related to the qualifications, functions,  
23 and duties of a structural pest control operator, field representative, applicator, or  
24 registered company is deemed to be a conviction within the meaning of this  
25 article or Section 8568 of this chapter. The board may order the license or  
26 registration suspended or revoked, or may decline to issue a license, when the  
27 time for appeal has elapsed, or the judgment of conviction has been affirmed on  
28 appeal or when an order granting probation is made suspending the imposition of  
sentence, irrespective of a subsequent order under the provisions of Section  
1203.4 of the Penal Code allowing the individual or registered company to  
withdraw a plea of guilty and to enter a plea of not guilty, or setting aside the  
verdict of guilty, or dismissing the accusation, information or indictment.

### REGULATORY PROVISIONS

11.    California Code of Regulations, title 16, section 1937.1 states:

For the purposes of denial, suspension or revocation of a license or  
company registration pursuant to Division 1.5 (commencing with Section 475) of  
the code, a crime or act shall be considered to be substantially related to the  
qualifications, functions or duties of a licensee or registered company under  
Chapter 14 of Division 3 of the code if to a substantial degree it evidences present  
or potential unfitness of such licensee or registered company to perform the  
functions authorized by the license or company registration in a manner consistent  
with the public health, safety, or welfare. Such crimes or acts shall include, but  
not be limited to, the following:

(a) Any violation of the provisions of Chapter 14 of Division 3 of the  
code.

(b) Commission of any of the following in connection with the practice of  
structural pest control:

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- (1) Fiscal dishonesty
- (2) Fraud
- (3) Theft
- (4) Violations relating to the misuse of pesticides.

12. California Code of Regulations, title 16, section 1937.2 states:

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(b) When considering the suspension or revocation of a structural pest control license or company registration on the grounds that the licensee or registered company has been convicted of a crime, the board, in evaluating the rehabilitation of such person or company and his or her or its present eligibility for a license or company registration will consider the following:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee or registered company has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee or registered company.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any of rehabilitation submitted by the licensee or registered company.

(c) When considering a petition for reinstatement of a structural pest control license or company registration, the board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in subsection (b).

**COST RECOVERY**

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

**CAUSE FOR DISCIPLINE**

**(June 8, 2012 Criminal Conviction for Petty Theft On January 21, 2012)**

14. Respondent has subjected his license to disciplinary action under Code sections 490 and 8649 in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a licensed applicator. The circumstances are as follows:

1 a. On June 8, 2012, in a criminal proceeding entitled *The People of the State*  
2 *of California v. Richard Julian Sperry*, in San Diego County Superior Court, East County  
3 Division, Case Number C317915, Respondent was convicted of violating Penal Code (PC)  
4 sections 484, petty theft, a misdemeanor.

5 b. As a result of the conviction, Respondent was granted three years  
6 summary probation and sentenced to serve one day in the Central Detention Facility. Respondent  
7 was also ordered to pay fines and fees and to stay 100 yards away from the Walmart Store at  
8 Fletcher Parkway in El Cajon, California.

9 c. The circumstances that led to the conviction are that on January 21, 2012,  
10 Respondent was shopping at the electronics department of a Walmart Store in El Cajon,  
11 California. Respondent raised the asset protection associate's suspicion when he made a quick  
12 selection of multiple Blu-ray discs (discs) without regard to price and placed them in a shopping  
13 cart. Respondent then made his way downstairs where he rearranged the discs and covered them  
14 with bags of cat litter. Thereafter, Respondent returned upstairs, purchased all other items at the  
15 cash register with cash, and then left the store without paying for the concealed discs.

#### 16 OTHER MATTERS

17 15. Pursuant to section 8654 of the Code, if discipline is imposed on Applicator  
18 License Number RA 52879 issued to Respondent, Richard J. Sperry shall be prohibited from  
19 serving as an officer, director, associate, partner, qualifying manager, or responsible managing  
20 employee for any registered company during the time the discipline is imposed, and any  
21 registered company which employs, elects, or associates Richard J. Sperry shall be subject to  
22 disciplinary action.

#### 23 PRAYER

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

26 1. Revoking or suspending Applicator License Number RA 52879, issued to Richard  
27 J. Sperry;


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2. Ordering Richard J. Sperry 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;

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

DATED: 12/10/12

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

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