

BEFORE THE  
STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for Reinstatement of  
Revoked License of:

BARRY RONALD HERRON,

Applicator License No. RA 50560

Petitioner.

OAH No. 2014120993

**DECISION**

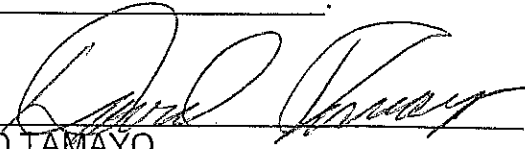
The Proposed Decision of Susan J. Boyle, Administrative Law Judge, in San Diego, is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c)(2)(c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. On page 3, paragraph number 7, "San Barbara Sheriff's Department" is stricken and replaced with "Santa Barbara Sheriff's Department".

The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order by the Structural Pest Control Board, Department of Consumer Affairs, State of California.

The Decision shall become effective on April 10, 2015.

IT IS SO ORDERED March 11, 2015

  
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DAVID TAMAYO  
President, Structural Pest Control Board

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**DECISION**

On January 14, 2015, in San Diego, California, the Structural Pest Control Board (Board) heard this matter. A quorum of board members was present. Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, conducted the hearing.

Deputy Attorney General Langston Edwards represented the Department of Justice, Office of the Attorney General, State of California, pursuant to Business and Professions Code section 11522.

Petitioner, Barry Ronald Herron, represented himself.

The record remained open for the submission of additional documents<sup>1</sup>, and the matter was submitted on January 22, 2015.

**FACTUAL FINDINGS**

*License Histories*

1. On December 28, 2009, the Board issued Applicator's License No. RA 50560 in Branches 2 and 3 to Petitioner.

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<sup>1</sup> Petitioner timely submitted a signed copy of a character letter and an Account Summary showing payments made to the Probation Department in his criminal case. The submission was marked as Exhibit "B" and received into evidence as administrative hearsay.

2. On October 29, 2011, Petitioner's license was revoked by a Default Decision and Order of the Board.

*Disciplinary Action*

3. On March 10, 2011, the Registrar/Executive Officer of the Board filed Accusation, Case No. 2011-42, against Petitioner seeking revocation of Petitioner's Applicator's License. The Accusation alleged that Petitioner, while working as an exterminator, posted a Craigslist advertisement offering to sell marijuana clippings. Undercover sheriff's deputies, posing as potential buyers, arranged a meeting with Petitioner. Petitioner drove to the meeting with the undercover deputies during his work hours and in his employer's truck. Petitioner was arrested after selling clippings to the undercover deputies. The deputies executed a search warrant of Petitioner's house and discovered marijuana plants in the back yard and garage. Petitioner was convicted of one felony count of cultivating marijuana in violation of Health and Safety Code section 11358.

4. The Accusation and other documents were properly served on Petitioner at his address of record with the Board. Petitioner failed to file a Notice of Defense and waived his right to a hearing on the Accusation. His license was revoked by Default Decision and Order. The Board determined that the reasonable cost for investigation and enforcement of the Accusation was \$1,572.50.

*Evidence in Support of the Petition for Reinstatement*

5. On December 12, 2014, Petitioner signed a Petition for Reinstatement of Revoked Applicator's License No. 50560.

6. Petitioner provided documents at the hearing including a letter he wrote. In the letter Petitioner stated: "First, I take full responsibility for my actions. Everything I was accused of and arrested for, I was guilty of. I disrespected the company I worked for, the profession of pest control, my co-workers, friends, family, and myself." Respondent wrote that he lost his career, home and freedom, and he felt it was the worst thing that ever happened to him. Petitioner now views his arrest and conviction as "a huge blessing in disguise."

Petitioner wrote that he was incarcerated after his conviction and that he immediately began a course of recovery and rehabilitation. He enrolled in treatment in prison that continued upon his release. Petitioner successfully completed criminal probation in October 2014.

Petitioner regularly attends 12 step meetings, has a sponsor, and is involved in a recovery fellowship in Santa Barbara, California where he lives. He wrote:

I have numerous mentors and after years of recovery under my belt I myself have become a mentor to other men with the same problem. I'm very proud of my accomplishments since the arrest that day.

I want to apologize to my beautiful State of California, the Structural Pest Control Board and Profession. *I made a huge mistake, I corrected it, and now I'm asking for one more chance.* I have goals to continue my education in the Pest Control Field. (Emphasis in original.)

7. Petitioner's testimony was consistent with his letter. He admitted all of the underlying facts of his conviction and added that he had more than 100 marijuana plants at his home when he was arrested. He stated that his employer learned of his arrest when the employer's truck was towed away.

Petitioner's candor extended beyond the facts of his conviction. Petitioner disclosed that his last arrest was in August 2011. He admitted that he was guilty of more illegal conduct during that time in his life, but he was not caught. He stated that he engaged in dangerous conduct including driving while intoxicated. He described being in a downward spiral that stopped only when he was incarcerated and accepted treatment. While he was in jail, some men from the outside came to the jail and held 12 step meetings for the inmates. Petitioner met his sponsor in this program. He stated that his sobriety date is July 17, 2012. Petitioner feels that "the sky's the limit" now that he is clean.

Petitioner testified that he was "in and out" of jail and institutions his entire life. He was married for five years and doing well, but then started to get in trouble. Realizing that he did not want to talk to his children through a jail telephone became a catalyst for his determination to get and stay clean.

Petitioner submitted certificates showing that he completed four rehabilitation programs: a certificate dated February 28, 2012, for completing 180 days of substance abuse treatment from the San Barbara Sheriff's Department; a certificate dated May 8, 2013, for completing the Clean and Sober Program from the Santa Barbara Superior Court; a certificate dated February 16, 2012, for completing the Reasoning and Rehabilitation 2 program from the County of Santa Barbara Probation Reporting and Resource Center; and a certificate dated February 23, 2012, for participating in the "Wage\$\$, Work and Gain Economic Self Sufficiency" class from the Santa Barbara Probation Reporting and Resource Center.

Petitioner also submitted a letter from "Joanne" dated February 28, 2012, on Office of the Sheriff, Santa Barbara County letterhead. Petitioner represented that the letter was a personal note to him, but he was uncertain of Joanne's position with the Sheriff's Office other than she presented a recovery class that he attended. The note commended Petitioner

for his progress and provided encouragement to Petitioner to continue on the path to recovery.

8. Petitioner realized that he “burned bridges” with the company he worked for when he was arrested. His daughter’s godfather is in the pest control business, and he has friends that work in the industry. As part of his recovery, Petitioner “made amends” to his daughter’s godfather and to the owner of the company where he worked. He is confident he could obtain employment in the pest control industry with someone willing to give him a chance.

Petitioner has commitments to his fellowship group (a group of men in recovery) to hold 12 step meetings with patients or residents of rehabilitation programs and share with those in treatment what worked for him. He is scheduled by his fellowship and he shows up where they send him. His network of friends do not use drugs or alcohol. Petitioner meditates, prays and works towards a healthier life. Petitioner said that he is having fun in his life (“I did not get clean to not have fun.”). He is committed to sobriety. He understands that he has to be committed 100 per cent.

9. Petitioner works at Denny’s Restaurant. He disclosed his criminal background to Denny’s management when he applied for the job. He has worked the graveyard shift for two and one-half years, but it is taking its toll on him. In a letter dated January 11, 2015, Petitioner’s manager, Gabriel Lucatero, wrote,

Besides requested days off in advance, I cannot think of one time he has ever showed (sic) up late, called in sick or been anything but dependable, responsible, honorable, and trustworthy. He has been the employee of the month numerous times. He is the backbone of our Front of the House. . . . Although I can’t imagine life without [Petitioner] at Denny’s store 7747, we were more than happy to put in a good word for him. He absolutely earned it.

Petitioner was a credible witness. He answered each question in a straightforward manner. He was candid about his past and accepted responsibility for his conduct. He showed a strong commitment to sobriety, to other individuals undergoing rehabilitation, and to his family and community.

## LEGAL CONCLUSIONS

1. Petitioner bears the burden of proving the basis for his requested relief. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.)

2. Government Code section 11522 authorizes a person whose license has been disciplined to petition for reinstatement or reduction of the penalty after a period of not less than one year has elapsed from the effective date of the decision imposing discipline.

3. California Code of Regulations, title 16, section 1937.2 lists the criteria to consider when determining whether an applicant or licensee who had criminal convictions should hold a license. Subdivision (c) directs the Board to consider the following factors when considering a petition for reinstatement of a structural pest control license:

(a) The nature and severity of the acts or crimes committed;

(b) The total criminal record;

(c) The time that has elapsed since Petitioner committed the acts or crimes that resulted in the revocation of his license;

(d) The extent to which Petitioner has complied with terms of probation, restitution or other conditions imposed against him by the courts;

(e) Evidence of expungement of the criminal proceedings pursuant to Penal Code Section 1203.4; and

(f) Evidence of rehabilitation.

4. The Board has promulgated Disciplinary Guidelines that include criteria to consider when determining whether to discipline a licensee. The criteria are similar to those contained in California Code of Regulations, title 16, section 1937.2.

5. California Code of Regulations, title 16, section 1937.12 provides:

(a) Whenever a proposed decision places a licensee . . . on probation as a condition of staying a revocation or staying all or any portion of a suspension, the order granting such probation shall include at least the following conditions:

(1) That the licensee or registered company, shall file quarterly reports with the board during the period of probation;

(2) Such other terms and conditions as may be appropriate in light of the number and nature of the violations proven.

(b) Nothing in this regulation shall deprive the board of its authority to modify or delete any term or condition of probation contained in a proposed decision submitted by an administrative law judge.

6. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

### *Evaluation*

7. Cause exists to grant the petition for reinstatement of Petitioner's license. A probationary license will ensure public protection. Petitioner took full responsibility for the conduct that led to the revocation of his license and for other illegal conduct he engaged in before and after his license was revoked. Respondent was candid and sincere in his testimony and his dedication to a sober and clean lifestyle. He is to be commended for achieving sobriety, continuing in his quest to remain clean and sober, and for giving his time to help others who want to achieve and maintain sobriety. He regularly attends 12 step meetings, has a mentor in the program, and mentors others. He was contrite in acknowledging the impact his actions had upon his family, friends, employer, and the profession; as part of the 12 step program, he has made amends to them. It is unlikely that Petitioner will return to a life of abusing and selling drugs and engaging in criminal activity. Petitioner has been employed full time for almost two years at Denny's in Santa Barbara. His manager values Petitioner as a trusted, responsible employee and supports his efforts to have his license reinstated.

Upon consideration of the entirety of the facts, the application of the disciplinary criteria and consideration of the Board's Disciplinary Guidelines, protection of the public will not be compromised if Petitioner's license is reinstated, the reinstated license is immediately revoked, the revocation is stayed, and his license is placed on a probationary status. This measure of discipline is consistent with the Board's disciplinary guidelines.

### ORDER

The petition filed by Barry Ronald Herron for reinstatement of Applicator's License No. RA 50560 is granted. Applicator's License No. RA 50560 is reinstated; however, the license is immediately revoked; the revocation is stayed; and Petitioner is placed on three years' probation on the following terms and conditions:

1. Petitioner shall obey all laws and rules relating to the practice of structural pest control.

2. Petitioner shall file quarterly reports with the Board during the period of probation. The quarterly report must include evidence of Petitioner's ongoing participation in a substance avoidance/treatment program.

3. Should Petitioner leave California to reside outside this state, he must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

4. Petitioner shall notify all present and prospective employers of the decision in OAH Case No. 2014120993 and the terms, conditions and restrictions imposed on Petitioner by said decision. Within 30 days of the effective date of this decision, and within 15 days of Petitioner undertaking employment in the pest control industry, Petitioner shall cause his employer to report to the Board in writing acknowledging the employer has read the decision in case OAH Case No. 2014120993.

5. Upon successful completion of probation, Petitioner's license will be fully restored.

6. Should Petitioner violate probation in any respect, the Board, after giving Petitioner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against Petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

7. Petitioner shall complete a continuing education course for pest control in Branch 1 (fumigation) within six months of the effective date of this decision. This required course shall be in addition to any course(s) required to be taken for a license renewal.

8. Petitioner shall complete a continuing education course for pest control in Branch 2 (general pest) within six months of the effective date of this decision. This required course shall be in addition to any course(s) required to be taken for a license renewal.

9. Petitioner shall complete a continuing education course for pest control in Branch 3 (wood destroying pests and organisms) within six months of the effective date of this decision. This required course shall be in addition to any course(s) required to be taken for a license renewal.

10. Petitioner is prohibited from serving as an officer, director, associate, partner, qualifying manager or branch office manager of any registered company during the period that discipline is imposed on Applicator's License No. RA 50560.

11. Petitioner shall not have any legal or beneficial interest in any company currently or hereinafter registered by the Board during the period of probation.



12. Petitioner shall reimburse the Board in the amount of \$1,572.50 for its investigation and prosecution costs that were awarded in the underlying case. He shall be permitted to pay these costs in a payment plan approved by the Board with payments to be completed no later than one month prior to the end of the probation period. Failure to make payments in accordance with any formal agreement entered into with the Board or pursuant to any Decision by the Board shall be considered a violation of probation.

DATED: March 11, 2015



DAVID TAMAYO  
President, Structural Pest Control Board