

**MINUTES OF THE MEETING OF THE
STRUCTURAL PEST CONTROL BOARD**

The Meeting was held January 13 & 14, 2016 at the Hilton San Diego Airport / Harbor Island,
Skyline / Lindberg Room, 1960 Harbor Island Drive, San Diego, California.

Board Members Present:

Dave Tamayo, President
Curtis Good, Vice President
Ronna Brand
Mike Duran
Marisa Quiroz
Cliff Utley

Board Members Absent:

Naresh Duggal

Board Staff Present:

Susan Saylor, Executive Officer
Robert Lucas, Assistant Executive Officer
Kathy Boyle, Chief Enforcement Officer
David Skelton, Administrative Analyst

Departmental Staff Present:

Frederic Chan-You, Legal Counsel

Wednesday – 1:00 P.M.

ROLL CALL / ESTABLISHMENT OF QUORUM

Mr. Tamayo called the meeting to order at 1:00 P.M. and Ms. Saylor called roll.

Board members Tamayo, Good, Brand, Duran, Quiroz, and Utley were present.

Board member Duggal was absent.

A quorum of the Board was established.

FLAG SALUTE / PLEDGE OF ALLEGIANCE

Mr. Tamayo led everyone in the flag salute and recitation of the Pledge of Allegiance.

PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

There were no public comments for items not on the agenda.

PETITION FOR REINSTATEMENT

HENRY P. VILLARE / OPR 9198, BRANCH 2

Administrative Law Judge Alan S. Meth sat with the Board to hear the Petition for Reinstatement for Henry P. Villare, Operator License Number 9198. Mr. Villare was informed that he would be notified by mail of the Board's decision.

PETITION FOR REINSTATEMENT

DOUGLAS LEE SMITH / OPR 9832, BRANCH 2

The Petition for Reinstatement for Douglas Lee Smith, Operator License Number 9832, was cancelled. No new hearing date was scheduled.

CLOSED SESSION

Pursuant to subdivision (c) (3) of section 11126 of the Government code, the Board met in closed session to consider proposed disciplinary actions, stipulated settlements, and petitions for modification / termination of probation and reinstatement.

Return to Open Session

ADJOURNMENT

The meeting was adjourned for the day at 2:50 P.M.

Thursday, January 14, 2016

ROLL CALL / ESTABLISHMENT OF QUORUM

Mr. Tamayo called the meeting to order at 8:02 A.M. and Ms. Saylor called roll.

Board members Tamayo, Good, Brand, Duran, Quiroz, and Utley were present.

Board member Duggal was absent.

A quorum of the Board was established.

FLAG SALUTE / PLEDGE OF ALLEGIANCE

Mr. Tamayo led everyone in the flag salute and recitation of the Pledge of Allegiance.

PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

There were no public comments for items not on the agenda.

APPROVAL OF MINUTES FROM THE OCTOBER 7 & 8, 2015 BOARD MEETING

Mr. Utley moved and Mr. Duran seconded to approve the Minutes of the October 7 & 8, 2015 Board Meeting. Passed unanimously. (AYES: TAMAYO, GOOD, BRAND, DURAN, UTLEY. NOES: NONE. ABSTENTIONS: QUIROZ.)

EXECUTIVE OFFICER'S REPORT

Ms. Saylor reported to the Board on licensing and enforcement survey results and statistics, examination statistics, WDO statistics, examination development, and regulatory and legislative updates.

Ms. Saylor stated that the Board is currently seeking Branch 3 Field Representatives and Branch 2 Operators to participate in an Occupational Analysis survey as part of the Board's ongoing effort to update its licensing examinations.

Mr. Utley asked if Board members could take part in the Occupational Analysis surveys.

Ms. Saylor stated that Board members could participate in the Occupational Surveys but that they could not attend examination development workshops.

Ms. Saylor stated that she has been working with a lobbyist for the Pest Control Operators of California (PCOC) in an effort to find authors who could implement some of the Board approved legislative changes recommended by the Act Review Committee.

STAFF UPDATE ON OFFICE OF INSPECTOR GENERAL'S (OIG) EVALUATION OF STRUCTURAL FUMIGATION TREATMENT INCIDENTS PROJECT

Peggy Byerly, Department of Pesticide Regulation (DPR), provided the Board with information relating to OIG's Structural Fumigation Incidents Evaluation Project and stated that along with the Los Angeles County Agricultural Commissioner they observed a fumigation that was performed by Beneficial Exterminating and came away impressed with the safety measures that are in place in California, as well as the professionalism that was displayed by the fumigator.

Mr. Tamayo asked if there would be a report at the conclusion of the project.

Ms. Byerly stated that there would be a report at the conclusion of the project but that there is currently no timetable for when that will be.

Mr. Tamayo thanked the Board, DPR, and the industry for their contributions to the project.

UPDATE FROM LEGAL COUNSEL AND POSSIBLE BOARD POSITION ON BERKELEY, CALIFORNIA ORDINANCE REGARDING INSPECTION AND CERTIFICATION REQUIREMENTS OF EXTERIOR ELEVATED ELEMENTS AS THEY PERTAIN TO BOARD LICENSEES

Mr. Chan-You briefed the Board on how its licensees are impacted by the Berkeley ordinance requiring inspection and certification of exterior elevated elements.

Mr. Chan-You stated that in his opinion the Board need not take any action because the ordinance does not require Board licensees to perform work that is outside the scope of their license.

PRESENTATION, DISCUSSION AND POSSIBLE BOARD ACTION ON ACT REVIEW COMMITTEE RECOMMENDED LEGISLATIVE AND REGULATORY CHANGES TO BUSINESS AND PROFESSIONS CODE SECTION 8616.9 AND CALIFORNIA CODE OF REGULATIONS SECTIONS 1990, AND ADDITION OF BUSINESS AND PROFESSIONS CODE SECTIONS 8504.2 AND 8504.3

Mike Katz, Western Exterminator Company, presented the recommendations of the Act Review Committee to the Board.

Mr. Good moved and Mr. Utley seconded to approve the addition of B&P Code Section 8504.2 and to authorize Ms. Saylor to seek a legislative author to implement the addition. Passed unanimously. (AYES: TAMAYO, GOOD, BRAND, DURAN, QUIROZ, UTLEY. NOES: NONE. ABSTENTIONS: NONE.)

8504.2 Control means a pest population management system that utilizes all suitable techniques to reduce and maintain pest populations at levels below those causing economic or material injury or to so manipulate the populations that they are prevented from causing such injury.

Mr. Good moved and Mr. Utley seconded to approve the addition of B&P Code Section 8504.3 and to authorize Ms. Saylor to seek a legislative author to implement the addition. Passed unanimously. (AYES: TAMAYO, GOOD, BRAND, DURAN, QUIROZ, UTLEY. NOES: NONE. ABSTENTIONS: NONE.)

8504.3 Eradication means the total elimination of a pest from a designated area. For purposes of this subdivision eliminate and exterminate shall have the same meaning.

Mr. Utley moved and Mr. Duran seconded to approve the recommended changes to B&P Code Section 8616.9 and to authorize Ms. Saylor to seek a legislative author to implement the changes. Passed unanimously. (AYES: TAMAYO, GOOD, BRAND, DURAN, QUIROZ, UTLEY. NOES: NONE. ABSTENTIONS: NONE.)

8616.9. If an employee is found during an inspection or investigation not wearing personal protective equipment required by label or regulation, the commissioner shall have the ~~option to use discretion in citing an employer only if evidence of all of the following is provided:~~ discretion to issue a compliance and/or enforcement action to the employee, employer, or both. In order for the commissioner to issue a compliance and/or enforcement action to the employee only, the employer must provide evidence of all of the following:

- (a) The employer has a written training program, has provided training to the employee, and has maintained a record of training as required by label or regulation.
- (b) The employer provided personal protective equipment required by label or regulation, the equipment was available at the site when the employee was handling the pesticide or pesticides, and the equipment was properly maintained and in good working order.
- (c) The employer is in compliance with regulations relating to the workplace and supervision of employees.
- (d) The employer has documented implementation and adheres to a written company policy of disciplinary action for employees who violate company policy or state or local laws or regulations.
- (e) The employer has not been issued a compliance or enforcement action for violations relating to personal protective equipment for the previous two (2) years history of repeated violations of this section.

Mr. Utley stated his support for the proposed change to CCR Section 1990 regarding faulty grade level.

Mr. Duran moved and Mr. Good seconded to approve the recommended changes to CCR Section 1990 and for staff to begin the formal rulemaking process to implement the changes. Passed unanimously. (AYES: TAMAYO, GOOD, BRAND, DURAN, QUIROZ, UTLEY. NOES: NONE. ABSTENTIONS: NONE.)

§ 1990. Report Requirements Under Section 8516(b) 1-9, Inclusive.

(a) All reports shall be completed as prescribed by the board. Copies ~~filed with~~ provided to the board shall be clear and legible. All reports must supply the information required by Section 8516 of the Code and the information regarding the pesticide or pesticides used as set forth in Section 8538 of the Code, and shall contain or describe the following:

- (1) Structural pest control license number of the ~~person~~ Branch 3 licensee(s) making who performed the inspection.
 - (2) Signature of the Branch 3 licensee(s) who ~~made~~ performed the inspection.
 - (3) Infestations, infections or evidence thereof.
 - (4) Wood members found to be damaged by wood destroying pests or organisms.
- (b) Conditions usually deemed likely to lead to infestation or infection include, but are not limited to:

(1) Faulty Grade Level. A faulty grade level exists when the top of any foundation is even with or below the adjacent earth surface. The existing earth surface level shall be considered grade.

(2) Inaccessible subareas or portions thereof and areas where there is less than 12 inches clear space between the bottom of the floor joists and the unimproved ground area.

(3) Excessive Cellulose Debris. This is defined as any cellulose debris of a size that can be raked or larger. Stumps and wood imbedded in footings in earth contact shall be reported.

(4) Earth-wood contacts.

(5) Commonly controllable moisture conditions which would foster the growth of a fungus infection materially damaging to woodwork.

(c) When an infestation of carpenter ants or carpenter bees is found in a structure, control measures may be applied by a registered ~~companies holding a~~ Branch 2 or Branch 3 company ~~registration certificate~~. If a Branch 3 licensee discovers an infestation or evidence of carpenter ant or carpenter bee infestation while performing an inspection pursuant to section 8516 of the code, he or she shall report his or her findings and make recommendations for controlling the infestation.

(d) Even though the licensee may consider the following areas inaccessible for purposes of inspection, the licensee must state specifically which of these areas or any other areas were not inspected and why the inspection of these areas is not practical: furnished interiors; inaccessible attics or portions thereof; the interior of hollow walls; spaces between a floor or porch deck and the ceiling or soffit below; stall showers over finished ceilings; such structural segments as porte cocheres, enclosed bay windows, buttresses, and similar areas to which there is no access without defacing or tearing out lumber, masonry or finished work; built-in cabinet work; floors beneath coverings, areas where storage conditions or locks make inspection impracticable.

(e) Information regarding all accessible areas of the structure including but not limited to the substructure, foundation walls and footings, porches, decks, patios and steps, stairways, air vents, abutments, stucco walls, columns, attached structures or other parts of a structure normally subject to attack by wood-destroying pests or organisms.

(f) The following language shall appear just prior to the first finding/recommendation on each separated report:

"This is a separated report which is defined as Section I/Section II conditions evident on the date of the inspection. Section I contains items where there is visible evidence of active infestation, infection or conditions that have resulted in or from infestation of infection. Section II items are conditions deemed likely to lead to infestation or infection but where no visible evidence of such was found. Further inspection items are defined as recommendations to inspect area(s) which during the original inspection did not allow the inspector access to complete the inspection and cannot be defined as Section I or Section II."

~~(g) Information must be reported regarding any wooden deck, wooden stairs or wooden landing in exterior exposure attached to or touching the structure being inspected.~~

Portions of such structure that are not available for visual inspection must be designated as inaccessible.

**PRESENTATION, DISCUSSION AND POSSIBLE BOARD ACTION ON STAFF
RECOMMENDATION TO AMEND CALIFORNIA CODE OF REGULATIONS SECTION 1914**

Ms. Saylor presented the staff recommendation to amend CCR Section 1914.

Mr. Duran moved and Mr. Utley seconded to approve the changes to CCR Section 1914 and for staff to begin the formal rulemaking process to implement the changes. Passed unanimously. (AYES: TAMAYO, GOOD, BRAND, DURAN, QUIROZ, UTLEY. NOES: NONE. ABSTENTIONS: NONE.)

§ 1914. Name Style - Company Registration.

No company registration certificate shall be issued in a fictitious name which the board determines is likely to be confused with that of a governmental agency or trade association. No company registration shall be issued in the same name of a firm whose company registration has been suspended, surrendered or revoked unless a period of at least one year has elapsed from the effective date of the suspension, surrender or revocation.

It shall be grounds for disciplinary action for a registered company to use the telephone number and/or name style of a firm whose company registration has been suspended, surrendered or revoked, without the prior written approval of the board.

**UPDATE FROM LEGAL COUNSEL AND POSSIBLE BOARD POSITION ON NORTH
CAROLINA STATE BOARD OF DENTAL EXAMINERS V. FEDERAL TRADE COMMISSION
AND CALIFORNIA ATTORNEY GENERAL, KAMALA HARRIS'S LEGAL OPINION ON
WHAT CONSTITUTES "ACTIVE STATE SUPERVISION" OF A CALIFORNIA STATE
LICENSING BOARD**

Mr. Chan-You explained the North Carolina State Board of Dental Examiners v. Federal Trade Commission Supreme Court decision and how it applies to the Board. Mr. Chan-You stated that the North Carolina holding mainly affected the issue of immunity for individual Board Members in an anti-trust lawsuit.

Mr. Chan-You stated that in the event the Board takes action that could have anti-trust implications it needs to do so while enforcing a clearly articulated state policy and while acting under "active state supervision" in order to receive immunity in an anti-trust lawsuit.

Mr. Tamayo asked what constitutes "active state supervision."

Mr. Chan-You explained what "active state supervision" could entail. However, he also stated that it isn't yet clear what constitutes "active state supervision" but that the legislature is in the process of addressing it.

Mr. Chan-You advised the Board to continue carrying out its mandate of consumer protection and that legal counsel would continue to monitor matters that the Board may be considering that could implicate anti-trust issues.

UPDATE ON PROPOSED FEDERAL CONTINUING EDUCATION REGULATIONS

Darren Van Steenwyk, Chairman, Structural Pest Control Board (SPCB) Continuing Education (CE) Integrated Pest Management (IPM) Review Committee, updated the Board on the status of the proposed Federal CE regulations.

Mr. Van Steenwyk stated that the National Pest Management Association (NPMA) submitted comments seeking clarification on the proposed CE categories, what a certified or non-certified applicator is, and the possible category or categories for structural fumigation.

Mr. Van Steenwyk advised the Board to delay moving forward with the recommendations of the CE IPM Review Committee until it is clear what is going to happen with the proposed Federal CE regulations.

Ms. Byerly stated that Department of Pesticide Regulation (DPR) submitted comment on the proposed Federal regulations and expressed concern that the requirement for a licensee to complete half their CE requirement in an 18 month period would be difficult to track. A calendar year CE completion requirement was suggested as an alternative.

BOARD CALENDAR

The following 4 Board Meetings were scheduled for April 6 & 7, 2016 in Sacramento, July 13 & 14, 2016 in Ontario, October 12 & 13, 2016 in Sacramento and January 11 & 12, 2017 in San Diego.

FUTURE AGENDA ITEMS

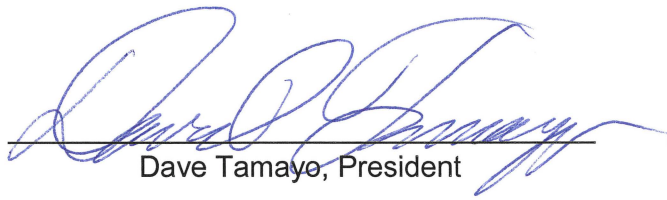
The following items were identified as future agenda items.

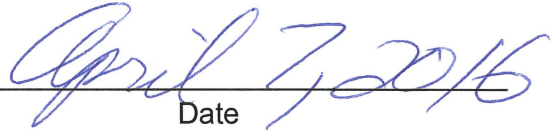
An update on the proposed Federal CE requirements.

A discussion on study guides and the reference material used in exam creation.

ADJOURNMENT

The meeting adjourned at 9:24 A.M.


Dave Tamayo, President


Date