

**TITLE 16. STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS**

FINAL STATEMENT OF REASONS

HEARING DATE: October 13, 2016

SUBJECT MATTER OF THE PROPOSED REGULATION: Disciplinary Guidelines Revisions

SECTION AMENDED: California Code of Regulations, Title 16, Division 19, section 1937.11

UPDATED INFORMATION: The Initial Statement of Reasons is included in the rulemaking file. There are updates to the information contained therein as follows.

The following technical and non-substantive changes were made:

PROPOSED LANGUAGE

In the portion of the document where the reference sections are cited, commas were added following Government Code section 125.3 and Business and Professions Code section 8666.

PROPOSED GUIDELINES

Index

In the index section of the Guidelines re-numbering changes were made so that the index would accurately reflect the modifications made throughout the document. Those modifications are detailed below.

Proposed Guidelines, Pages 1-4

In the Penalty Guidelines section re-numbering changes were made so that the Penalty Guidelines index would accurately reflect the modifications made throughout the document. Those modifications are detailed below.

Additionally, in the Penalty Guidelines section, after the publication of the Modified Text, additional changes were made to correct typographical errors. These changes are as follows —

Section 8636 — Optional Condition 13 was listed twice and Optional Condition 12 was omitted. This typographical error was corrected.

Section 8637 — In the Minimum Penalty section Optional Condition 19 was listed and Optional Conditional 18 was omitted. This typographical error was corrected.

Section 8638 — Optional Condition 16 was listed and Optional Condition 17 was omitted. This typographical error was corrected.

Section 8642 — Optional Condition 27 was listed incorrectly with the modified text, Optional Condition 27 was renumbered to Optional Condition 18. This typographical error was corrected.

Section 8643 — Optional Condition 22 was omitted to correct a typographical error in the modified text.

Section 8646 — Optional Condition 22 was omitted to correct a typographical error in the modified text.

Section 8657 — Optional Condition 15 was incorrectly listed. This typographical error was corrected.

Optional Condition 21 was omitted to correct a typographical error in the modified text.

Section 8666 — Optional Conditions 15 and 17 were listed twice and Optional Condition 16 was omitted. This typographical error was corrected.

Optional conditions 17, 18, 19, 20, 21, and 23 were omitted to correct a typographical error in the modified text.

Proposed Guidelines, Page 5

In the Factors in Aggravation: Crimes or Acts section, for factor j., the words “negative status” were replaced with the words, “compliance with.” This change was made in order to provide more clarity and consistency.

In the Factors in Aggravation: Crimes or Acts section, for factor k., the word “exclusive” was replaced with the word “limited” in order to more clearly state the Board’s intent.

In the Factors in Mitigation: Crimes or Acts section, for factor a., the word “exclusive” was replaced with the word “limited” in order to more clearly state the Board’s intent.

Proposed Guidelines, Page 6

The title of the Factors in Extenuation: Crimes or Acts section was changed from “Matters in Extenuation: Crimes or Acts” to “Factors in Extenuation: Crimes or Acts” in order to be consistent with the titles of the previous sections.

In the concluding paragraph immediately following the Factors in Extenuation section, the word “intend” has been replaced by the words “require the presence” and the words “be required” were stricken. These modifications were made to provide more clarity.

In the Standard Terms and Conditions of Probation section, renumbering changes were made to accurately reflect the modifications that were made to the Standard Terms and Conditions of Probation that appear later in the document.

In the Optional Terms and Conditions of Probation section, renumbering changes were made to accurately reflect the modifications that were made to the Optional Terms and Conditions of Probation that appear later in the document.

Proposed Guidelines, Page 7

In the Optional Terms and Conditions of Probation section, renumbering changes were made to accurately reflect the modifications that were made to the Optional Terms and Conditions of Probation that appear later in the document.

In the Model Disciplinary Orders section, the word “numbers” was replaced with the word “language” in order to accurately reflect the changes made to the Model Disciplinary Orders section.

Model Disciplinary Orders 1-7 were changed to Model Disciplinary Orders A-G in order for them to be differentiated from the numbers used to identify the Terms and Conditions of Probation.

Proposed Guidelines, Page 8

The Standard Terms and Conditions of Probation were renumbered appropriately in light of the Model Disciplinary Orders being changed from numbers to letters.

In Standard Term 1 “he/she” was replaced with the term “respondent” in order to consistent with language used elsewhere in the guidelines.

Proposed Guidelines, Page 9

In Standard Term 3 the language outlining the circumstances during which probation shall be tolled was re-written for the sake of clarity.

Standard Term 13 was removed as a Standard Term and instead included as an Optional Term and Condition of Probation due to the difference between a licensee and a registered company. Because a licensee may not be permitted by his or her employer to post a notice of suspension at his or her place of employment it was inappropriate as a standard term.

Proposed Guidelines, Page 10

Standard Term 14 was removed as a Standard Term and instead included as an Optional Term and Condition of Probation because the outcome associated with successful completion of probation is not itself a standard term of probation. It was included as an optional term of

probation in order to provide the opportunity to explicitly state what occurs upon successful completion of probation.

In Standard Term 5 the term “statement of issues” was replaced with the term “accusation” in order to accurately describe the mechanism that would be used in that scenario.

Additionally, in Standard Term 5, the sentence “or if respondent requests a hearing to be conducted pursuant to 11500 of the Government Code” was removed because the guidelines related to hearings are outlined elsewhere.

Lastly, in Standard Term 5, the words “is final” were replaced by the words “has been acted upon by the Board” in order to more clearly state the intention of this term of probation.

Standard Term 16, “Cost Recovery” was re-numbered as Standard Term 9.

In Standard Term 7, the word “formal” was replaced by the words “the Board’s” in order to make clear to whom the respondent would surrender his or her license.

Additionally, in Standard Term 7, the words “to the Board’s offices” were added to make clear where the respondent would deliver his or her surrendered license.

Proposed Guidelines, Page 11

There were no changes to the substance of Standard Term 8 however, it was renumbered and its location in the Terms and Conditions of Probation was changed.

In Standard Term 9 the words “be permitted to” were removed to more clearly state the intention of this condition.

Additionally, In Standard Term 9, the words “which may subject Respondent’s license to outright revocation” were removed because they were unnecessary. Noncompliance with this condition would constitute a violation of probation and therefore, the consequences would be outlined elsewhere.

The title of the optional probationary terms was changed to “Optional Terms and Conditions of Probation”.

In Optional Term 10, the requirement to post a notice of suspension was added. This term was formerly included in the Standard Terms and was moved due to the fact that it applies only to companies and therefore should not be considered standard.

Proposed Guidelines, Page 12

In Optional Condition 16, the term “reimbursement” was replaced with the word “restitution” in order to more accurately describe what it is required.

In Optional Condition 17, the words “or responsible managing employee” were added to further clarify the intent of this probationary condition.

Additionally, in Optional Condition 17, the words “that discipline is imposed on (Ex. Operator's/Field Representative's) License No. (Ex. OPR 1234).” were replaced with the words “of probation” for the sake of clarity.

In Optional Condition 19, the words “it shall constitute a violation of probation” replaced the words “respondent shall notify the board and cease practice until respondent takes and successfully passes said examination”. This change was made in order to be consistent with regard to the consequences for noncompliance with Standard, or Optional probationary terms.

SMALL BUSINESS IMPACT: No proposed alternative would lessen the economic impact on small businesses. The Board made this determination because it is not aware of any alternative that would accomplish the stated goal of the proposed regulation.

LOCAL MANDATE DETERMINATION: The proposed regulation does not impose any mandate on local agencies or school districts.

CONSIDERATION OF ALTERNATIVES: The Board has determined that no proposed or considered alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board made this determination because in order to update its Disciplinary Guidelines it is necessary to amend CCR section 1937.11 and “A Manual of Disciplinary Guidelines and Model Disciplinary Orders” which is Incorporated by reference. The Board is not aware of any alternative that would accomplish this goal.

OBJECTIONS OR RECOMMENDATIONS / RESPONSES: The Board received no comments, objections, or recommendations specifically directed at the proposed regulatory change during the initial notice period.

COMMENTS RECEIVED (15 DAY NOTICE OF MODIFIED TEXT)

The Board received no comments, objections, or recommendations during the 15 Day Notice of Modified Text comment period.

INCORPORATION BY REFERENCE: The Board is continuing to incorporate “A Manual of Disciplinary Guidelines and Model Disciplinary Orders” by reference because it is a twenty page document and would therefore be cumbersome and impractical to print in the CCR.

The Board has made the document immediately available upon request from the public and additionally, intends for it to be available on the Board’s internet website subsequent to approval.