

BEFORE THE
BUREAU OF AUTOMOTIVE REPAIR
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Interim
Suspension Order Against:

ATM MOTORS
5168 South Vermont Avenue
Los Angeles, California 90037,
ANGEL TORRES, Owner,
aka JOSE ANGEL TORRES MEDRANO,
Automotive Repair Dealer
Registration No. ARD-211032,
Smog Check Test Only Station
License No. TC-211032,

Case No. 79/11-94

OAH No. 2011060656

and

JUAN A. RIOS
3703 ½ South Victoria Avenue
Los Angeles, California 90016,
Advanced Emission Specialist Technician
License No. EA-631361,

Respondents.

ORDER ON PETITION FOR INTERIM SUSPENSION

Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, heard this matter at Los Angeles on July 1, 2011. Petitioner was represented by William D. Gardner, Deputy Attorney General. Respondent Angel Torres was represented by Rene Sanz, Attorney at Law. Respondent Juan Rios did not make an appearance at the hearing.

Prior to the hearing, on June 30, 2011, respondent Juan A. Rios by his counsel filed a Notice of Non-Opposition to Petition for Interim Suspension Order (Exh. B), indicating that he would not oppose the Petition for Interim Suspension Order.

For the hearing, petitioner filed the Petition for Interim Suspension Order, Memorandum of Points and Authorities in Support of the Petition for Interim Suspension

Order, Declaration of Barbara L. Weller, Ph.D., and Declarations of Albert Ramos (Exh. 1). During the hearing on the Petition for Interim Suspension Order, respondent Angel Torres presented two pages from his U.S. Passport, which was marked as Exhibit A. Both parties presented oral argument.

At the conclusion of the hearing, the record was held open for petitioner to file a Proposed Order and for respondent to file a declaration. On July 1, 2011, petitioner filed a Proposed Order Granting Petition for Interim Suspension Order and respondent Angel Torres filed a Declaration in Opposition to Interim Suspension Order, which was marked as Exhibit 2 and C, respectively.

Documentary evidence having been received and oral argument heard, the Administrative Law Judge submitted this matter for decision on July 1, 2011, and makes the following factual findings based on the declarations submitted by the parties:

FACTUAL FINDINGS

1. (A) On June 9, 2011, the Petition for Interim Suspension Order, Case No. 79/11-94, was made and filed on behalf of petitioner Sherry Mehl, Chief, Bureau of Automotive Repair, Department of Consumer Affairs, State of California (Bureau), by her counsel William D. Gardner, Deputy Attorney General.

(B) On June 10, 2011, the Petition for Interim Suspension Order, Memorandum of Points and Authorities in Support of Petition for Interim Suspension Order, exhibits, declarations, and Notice of Hearing were properly served upon respondents Angel Torres and Juan A. Rios by first class mail at their addresses of record.

2. (A) On December 19, 2000, the Bureau issued automotive repair dealer registration no. ARD-211032 to respondent Angel Torres, owner and doing business as ATM Motors, 5168 South Vermont Avenue, Los Angeles, California 90037. Said automotive repair dealer registration expired on June 30, 2011, unless renewed.

(B) On July 31, 2009, the Bureau issued smog check test only station license no. TC-211032 to respondent Torres. Said license expired on June 30, 2011, unless renewed.

3. On September 24, 2009, the Bureau issued advanced emission specialist technician license no. EA-631361 to respondent Juan A. Rios, 3703½ South Victoria Avenue, Los Angeles, California 90016. Said technician's license expires on October 31, 2011, unless renewed, and is in full force and effect.

4. On July 1, 2011, a noticed hearing was held on the Petition for Interim Suspension Order pursuant to Business and Professions Code section 494.

5. (A) As set forth in the Declarations of Albert Ramos, program representative of the Bureau, on December 7 and 8, 2010, the Bureau conducted an undercover surveillance of ATM Motors during which the licensed activities at the station were recorded by video equipment. Ramos and other Bureau program representatives had a clear view of the service bay entrance of ATM Motors. Respondent Rios was present at the station on both days and he performed approximately 27 smog check inspections while using his smog check technician's license and code to access the Electronic Inspection System (EIS). An unidentified individual greeted customers, handled paperwork, and participated in the smog check testing process. Respondent Torres was not present on the station premises on either day.

(B) After the video-taped surveillance on both December 7 and 8, 2010, Ramos returned to the Bureau field office and downloaded BAR97 Test Detail summaries from the Bureau's Vehicle Information Database that showed the licensed information of respondent Rios and information about the smog check inspections and vehicles that he inspected and certified on the two days. Ramos compared the BAR97 Test Detail summaries to the video-taped surveillance of the station.

(C) Based on the BAR97 Test Detail summaries and the video-taped surveillance, Ramos determined that, on December 7 and 8, 2010, respondent Rios conducted a total of eight illegal smog check inspections and issued seven fraudulent certificates of compliance for vehicles by using the illegal "clean piping" method at the station. Clean piping is a method to fraudulently certify vehicles that should not pass smog check inspection, or are not even present on the premises of a station during smog check inspections and tests, by using the clean emission or exhaust gas samples of a vehicle that can pass the smog check emissions test and entering information or data into the EIS for the fraudulently certified vehicles. Here, respondent Rios used a 1996 Mitsubishi that was registered to respondent Torres to clean pipe and fraudulently certify four vehicles.

6. Based on Finding 5 above, the illegal smog check inspections conducted by respondent Rios and the fraudulent certificates of compliance issued by respondent Rios and ATM Motors constituted violations of Business and Professions Code section 9884.7, subdivisions (a)(1) and (4), and Health and Safety Code section 44072.2, subdivisions (a), (c), and (d). These violations subverted state laws enacted to protect the health, safety, and welfare of the citizens of this state.

7. Respondent Torres was in El Salvador from November 10, 2010, through February 9, 2011. While he was out of the country, respondent Torres did not know that his employee, respondent Rios, was doing anything illegal and did not condone or give him permission to perform any illegal activity at his smog check station. Respondent Rios does not work for him at the station any longer.

8. As the owner and individual licensed by the Bureau to operate ATM Motors as an automotive repair dealer and smog check test only station, respondent Torres is responsible for the licensed activities at his station and the activities of his employees,

including those of the licensed technician respondent Rios. As a matter of mitigation, it was not established that respondent Torres participated in the illegal and fraudulent activities perpetrated by respondent Rios at the station or had knowledge of his employee's illegal and fraudulent activities.

9. It was not established that respondent Torres has any prior disciplinary history with the Bureau.

10. On February 9, 2011, Ramos and another Bureau program representative returned to ATM Motors to conduct a quality assurance inspection. The Bureau program representatives spoke to respondent Rios and to Henry Torres, the manager of the station and asked to review invoice records.

11. Respondent Rios did not present any declaration in opposition to the Petition for Interim Suspension Order.

* * * * *

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

CONCLUSIONS OF LAW

1. Grounds exist to issue an interim order of suspension pursuant to Business and Professions Code section 494, subdivision (a)(1), in that the declarations and exhibits in support of the Petition for Interim Suspension Order demonstrate that respondents Torres and Rios have engaged in acts or omissions constituting violations of the Automotive Repair Act (Bus. & Prof. Code, § 9880 et seq.) and the Motor Vehicle Inspection Law (Health & Saf. Code, § 44000 et seq.), as set forth in Findings 1 – 11 above.

2. Grounds do not exist to issue an interim order of suspension pursuant to Business and Professions Code section 494, subdivision (a)(2), in that the declarations in support of the Petition for Interim Suspension Order do not show that permitting respondent Torres and his station to continue to engage in the licensed activities of an automotive repair dealer and smog check test only station will endanger the public health, safety, or welfare, based on Findings 1 – 11 above.

3. Discussion-- Based on the declarations of the program representative Ramos, petitioner demonstrated that licensed smog check technician Rios engaged in eight illegal smog check inspections and issued fraudulent certificates of compliance for seven vehicles. Public health and safety require that Rios' technician license be suspended under Business

and Professions Code section 494, subdivision (a). However, the preponderance of the evidence did not show that respondent Torres represents a danger to the public health and safety. He did not participate in the illegal activities of his employee, for he was out of the country. While his car was used in the clean piping activities of respondent Rios, it was not shown that respondent Torres allowed or gave permission to his employee to use his vehicle for illegal purposes and had knowledge of the illegal activities of his employee. Respondent Rios no longer works at the station as a licensed technician.

* * * * *

WHEREFORE, the following Order is hereby made:

ORDER

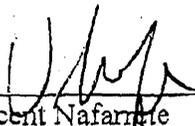
1. The Petition for Interim Suspension Order, Case No. 79/11-94, filed and heard with notice under Business and Professions Code section 494, subdivision (a), is granted, in part, as follows: advanced emission specialist technician license no. EA-631361 and licensing rights issued to respondent Juan A. Rios shall be immediately suspended pending a hearing and decision on the Accusation.

2. Automotive repair dealer registration no. ARD-211032 and smog check test only station license no. TC-211032 and registration and licensing rights issued to respondent Angel Torres, owner and doing business as ATM Motors, will not be suspended but shall be restricted as follows: Respondent Torres shall be present at all times that the station ATM Motors is open and conducting licensed activities. Respondent Torres and his station and any licensed technician employed there shall perform no more than ten (10) smog check inspections per day and respondent Torres shall supervise the smog check activities of any licensed technician employed at the station. Any violation of these restrictions shall be grounds for the immediate suspension of the automotive repair dealer registration and smog check test only station license issued to respondent Angel Torres.

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3. The Bureau of Automotive Repair shall file, within fifteen (15) days of the issuance of this Order, an Accusation. If one or both of respondents Juan A. Rios and Angel Torres files a notice of defense, then the Bureau of Automotive Repair shall cause a hearing to be scheduled and held within thirty (30) days of the receipt of a notice of defense. Respondents are entitled to a hearing on the Accusation as set forth in Business and Professions Code section 494, subdivision (f).

Dated: July 7, 2011



Vincent Nafarrie
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 WILLIAM D. GARDNER
Deputy Attorney General
4 State Bar No. 244817
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2114
6 Facsimile: (213) 897-2804
Attorneys for Petitioner

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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Interim Suspension Order
Against:

12 **ATM MOTORS; ANGEL TORRES, AKA**
13 **JOSE ANGEL TORRES MEDRANO**
14 **5168 South Vermont Ave**
15 **Los Angeles, CA 90037**
16 **Automotive Repair Dealer Registration No.**
ARD 211032
Smog Check, Test Only, Station License No.
TC 211032

17 and

18 **JUAN A. RIOS**
19 **3703 1/2 South Victoria Ave**
20 **Los Angeles, CA 90016**
Advanced Emission Specialist Technician
License No. EA 631361

21
22
23 Respondents.

Case No. 79/11-94

OAH No.

**PETITION FOR INTERIM SUSPENSION
ORDER**

[B & P § 494]

(Filed concurrently with Memorandum of
Points and Authorities)

Date: July 1, 2011

Time: 1:30 pm

Place: Office of Administrative Hearings

320 West Fourth Street, Suite 630

Los Angeles, CA 90013

24
25 **INTRODUCTION**

26 Petitioner Sherry Mehl ("Petitioner"), Chief of the Bureau of Automotive Repair,
27 Department of Consumer Affairs ("Bureau"), State of California, by and through her counsel,
28 Kamala D. Harris, Attorney General of the State of California, by Deputy Attorney General

1 William D. Gardner, hereby petitions for an Interim Suspension Order pursuant to Business and
2 Professions Code section 494, to temporarily suspend Automotive Repair Dealer Registration No.
3 ARD 211032 and Smog Check Station License No. TC 211032 issued to ATM Motors; Angel
4 Torres, aka Jose Angel Torres Medrano; and Advanced Emission Specialist Technician License
5 No. EA 631361 issued to Juan A. Rios (collectively, "Respondents") until a hearing can be held
6 on an Accusation charging Respondents with violations of the Automotive Repair Act (Business
7 and Professions Code section 9880, et. seq.) and Motor Vehicle Inspection Program (Health and
8 Safety Code section 4000, et. seq.). This Petition is based upon this petition for interim
9 suspension order, the concurrently filed memorandum of points and authorities, supporting
10 declarations and exhibits, all documents on file in this matter, as well as any oral argument made
11 at the hearing.

12 **PARTIES**

13 1. Petitioner is duly appointed and serving as the Chief of the Bureau, and files this
14 Petition in her official capacity.

15 2. On or about December 19, 2000, the Bureau of Automotive Repair issued
16 Automotive Repair Dealer Registration Number ARD 211032 to ATM Motors; Angel Torres, aka
17 Jose Angel Torres Medrano. The Automotive Repair Dealer Registration was in full force and
18 effect at all times relevant to the charges brought herein and will expire on June 30, 2011, unless
19 renewed.

20 3. On or about July 31, 2009, the Bureau of Automotive Repair issued Smog Check,
21 Test Only, Station License Number TC 211032 to ATM Motors; Angel Torres, aka Jose Angel
22 Torres Medrano. The Smog Check, Test Only, Station License was in full force and effect at all
23 times relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

24 4. On or about September 24, 2009, the Bureau issued Advanced Emission Specialist
25 Technician License No. 631361 to Juan A. Rios. The Advanced Emission Specialist Technician
26 license was in full force and effect at all times relevant to the charges brought herein and will
27 expire on October 31, 2011.

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1 on their own, or in some instances, are not even present during the time the test is performed. To
 2 clean-pipe, the technician uses a "clean" exhaust gas sample that will pass the smog check
 3 emissions test, while entering data into the analyzer for the vehicle to be fraudulently certified.

4 8. Respondents' clean piping operation is straightforward and simple: (1) respondent
 5 Rios uses his technician license and access code to set up a smog check on a non-compliant
 6 vehicle; (2) instead of testing the non-compliant vehicle, a substitute vehicle is used to ensure
 7 compliance and allow for the issuance of a fraudulent smog certificate. The chart below details
 8 the fraudulent activity observed and recorded by Bureau representatives during their surveillance
 9 of respondent ATM Motors in December 2010.

TEST DATES & TIMES* (EA631361)**	VEHICLE IN BAR97 DATA & LICENSE # (ES419283)***	VEHICLE ACTUALLY TESTED & LICENSE #	CERT ISSUED	DETAILS
12/07/2010 0831 to 0858	1996 Ford Windstar (4FMB841)	2000 Ford Ranger (6H57317)	WP785959C	The 1996 Ford Windstar was not seen during surveillance. The Ford Ranger was used by respondent Rios in place of the Windstar.
12/07/2010 1416 to 1430	2003 Mitsubishi Montero (5AQV901)	2000 Ford Ranger (6H57317)	WP785964C	The 2003 Mitsubishi Montero was not seen during surveillance. The Ford Ranger was used by respondent Rios in place of the Mitsubishi.
12/07/2010 1435 to 1448	1977 Dodge B200 Van (7T67122)	1996 Mitsubishi (5BGH828)	WP785965C	The 1977 Dodge B200 Van was seen on the premises during inspection, but the 1996 Mitsubishi was used by respondent Rios in place of the Dodge van.

1					The 1996 Chevrolet Astro Minivan was not seen on the premises during the inspection.
2					The 1997 Chevrolet pickup truck was used by respondent Rios in place of the Astro Minivan.
3	12/07/2010	1996 Chevrolet Astro Minivan (5KSM333)	1997 Chevrolet Pickup Truck (7A04365)	WP785969C	
4	1612 to 1633				
5					
6					
7					The 1978 Chevrolet G20 Van was not seen on the premises during the inspection. The 1996 Mitsubishi was used by respondent Rios in place of the Chevrolet.
8					
9	12/08/2010	1978 Chevrolet G20 Van (3BUM647)	1996 Mitsubishi (5BGH828)	Certificate Not Issued	
10	1045 to 1059				
11					
12					The 1996 Jeep was not seen on the premises during the inspection. The 2004 Toyota Corolla was used by respondent Rios in place of the Jeep.
13					
14	12/08/2010	1996 Jeep (4VCV023)	2004 Toyota Corolla (5HLT683)	WP785947C	
15	1155 to 1218				
16					
17					The 1985 Chevrolet G30 Van was not seen on the premises during the inspection. The 1996 Mitsubishi was used by respondent Rios in place of the Chevrolet.
18					
19	12/08/2010	1985 Chevrolet G30 Van (2U42537)	1996 Mitsubishi (5BGH828)	WP785979C	
20	1511 to 1526				
21					
22					The 1988 Honda Civic was not seen on the premises during the inspection. The 1996 Mitsubishi was used by respondent Rios in place of the Honda.
23					
24	12/08/2010	1988 Honda Civic (2KDV866)	1996 Mitsubishi (5BGH828)	WP785980C	
25	1531 to 1554				

* Test times are in military time and reflect the time recorded in the Vehicle Information Database (VID); the time stamp on the video recordings is approximately one (1) minute behind the VID time.

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Program and further, order any other and further relief deemed necessary to protect the public health, safety, and welfare.

DATED: June 9, 2011

KAMALA D. HARRIS
Attorney General of the State of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General



WILLIAM D. GARDNER
Deputy Attorney General
Attorneys for Petitioner

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