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

In the Matter of the Accusation Against:

NHAT TUAN NGUYEN
589 Cypress Ave
Los Angeles, CA 90065
Advanced Emission Specialist Technician
License No. EA 142754 (to be redesignated
upon renewal as EO 142754 and/or EI
142754)

Respondent.

Case No. 79/15-35

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 4, 2014, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/15-35 against Nhat Tuan Nguyen (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)
2. In or about 2002, the Bureau of Automotive Repair (Bureau) issued Advanced Emission Specialist Technician License No. EA 142754 to Respondent. The Advanced Emission

1 renewed. Upon timely renewal of the license, the license will be redesignated as EO 142754
2 and/or EI 142754.¹

3 3. On or about September 10, 2014, Respondent was served by Certified and First Class
4 Mail copies of the Accusation No. 79/15-35, Statement to Respondent, Notice of Defense,
5 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
6 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
7 Code section 136, is required to be reported and maintained with the Bureau. Respondent's
8 address of record was and is: 589 Cypress Ave, Los Angeles, CA 90065.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
11 124.

12 5. On or about September 12, 2014, the aforementioned documents were marked by the
13 U.S. Postal Service as "Delivered."

14 6. Government Code section 11506 states, in pertinent part:

15 (c) The respondent shall be entitled to a hearing on the merits if the respondent
16 files a notice of defense, and the notice shall be deemed a specific denial of all parts
17 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

18 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
19 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
20 79/15-35.

21 8. California Government Code section 11520 states, in pertinent part:

22 (a) If the respondent either fails to file a notice of defense or to appear at the
23 hearing, the agency may take action based upon the respondent's express admissions
24 or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

25 _____
26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 GREGORY J. SALUTE
Supervising Deputy Attorney General
4 State Bar No. 164015
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2520
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 **NHAT TUAN NGUYEN,**
14 **589 Cypress Avenue,**
Los Angeles, CA 90065

15 **Advanced Emission Specialist Technician License No. EA**
16 **142754, (to be redesignated upon renewal as EO 142754**
17 **and/or EI 142754)**

18 Respondent.

Case No. **79/15-35**

A C C U S A T I O N

S M O G C H E C K

19 Complainant alleges:

20 **PARTIES**

21 1. Patrick Dorais ("Complainant") brings this Accusation solely in his official capacity
22 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

23 **Advanced Emission Specialist Technician License**

24 2. In or about 2002, the Bureau of Automotive Repair issued Advanced Emission
25 Specialist Technician License Number EA 142754 to Nhat Tuan Nguyen ("Respondent Nguyen
26 or Respondent"). The Advanced Emission Specialist Technician License was due to expire on
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1 March 31, 2014. However, it was suspended on March 13, 2013. Upon timely renewal of the
2 license, the license will be redesignated as EO 142754 and/or EI 142754.¹

3 **JURISDICTION AND STATUTORY PROVISIONS**

4 3. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
5 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
6 the Motor Vehicle Inspection Program.

7 4. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
8 expiration or suspension of a license by operation of law, or by order or decision of the Director
9 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
10 the Director of jurisdiction to proceed with disciplinary action.

11 5. Section 44045.6 of the Health and Safety Code states, in pertinent part:

12 “(c) The department may require remedial training at a certified training facility or may
13 take disciplinary action, whichever the department determines to be the most appropriate, for any
14 licensed technician who the department determines cannot perform inspections, testing, or repairs
15 as required under the program. The failure to complete the remedial training when required by the
16 department shall be a ground for revocation or suspension of a smog check technician's license
17 under Section 44072.2.”

18 6. Section 44050 of the Health and Safety Code states, in pertinent part:

19 “(a) In addition to or in lieu of any other remedy or penalty, including,
20 but not limited to, education, training, or an office conference, the department may
21 issue a citation to a licensee, contractor, or fleet owner for a violation of the
22 requirements of this chapter or a regulation adopted pursuant to this chapter. The
23 citation may contain an order of abatement or the assessment of an administrative
24 fine, or both.

25 (e) Failure to comply with an order of abatement or payment of an
26 administrative fine issued by the department pursuant to this section is grounds for
27 suspension or revocation of the license, or placing the license on probation.”

28 7. Section 44055 of the Health and Safety Code, subdivision (b) states, in pertinent part:

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 devices in accordance with section 44012 of the Health and Safety Code). On or about January
2 11, 2013, the Bureau served Respondent with the citation. The Bureau ordered Respondent
3 Nguyen to attend a 28 hour training course with proof of completion submitted to the Bureau
4 within 60 days of receipt of the Citation and pay a fine of \$500.00. Respondent Nguyen failed to
5 appeal the citation and the citation became effective on February 11, 2013. To date, Respondent
6 Nguyen has failed to submit to the Bureau proof of completion of the 28 hour training course and
7 has failed to pay the fine.

8 **OTHER MATTERS**

9 13. Pursuant to Health & Saf. Code section 44072.8, if Respondent Nguyen's Advanced
10 Emission Specialist Technician License currently designated as EA 142754 and as redesignated
11 upon timely renewal as EO 142754 and/or EI 142754, is revoked or suspended, any additional
12 license issued under this chapter in the name of said licensee may be likewise revoked or
13 suspended by the director.

14 **PRAAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Director of Consumer Affairs issue a decision:

17 1. Revoking or suspending Nhat Tuan Nguyen's Advanced Emission Specialist
18 Technician License currently designated as EA 142754, and as redesignated upon timely renewal
19 as EO 142754 and/or EI 142754;

20 2. Revoking or suspending any additional license issued under Chapter 5 of the Health
21 and Safety Code in the name of Nhat Tuan Nguyen;

22 3. Ordering Nhat Tuan Nguyen to pay the Bureau of Automotive Repair the reasonable
23 costs of the investigation and enforcement of this case, pursuant to Business and Professions
24 Code section 125.3; and,

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

DATED: September 4, 2014 Patrick Dorais

PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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