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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/Petition to Revoke Probation Against:  
  
**SCOTT ALAN MILLER, ADVANCED EMISSION SPECIALIST TECHNICIAN  
8373 A Summerdale Road  
San Diego, CA 92126**  
  
**Advanced Emission Specialist Technician  
License No. EA 145097**  
  
Respondent.

Case No. 79/13-58  
OAH No. 2013040855  
  
**DEFAULT DECISION AND ORDER**

FINDINGS OF FACT

1. On March 15, 2013, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, filed Accusation/Petition to Revoke Probation No. 79/13-58 against Scott Alan Miller, Advanced Emission Specialist Technician (Respondent) before the Director of Consumer Affairs. On January 30, 2014, Complainant filed First Amended Accusation/Petition to Revoke No. 79/13-58 against Respondent. (First Amended Accusation /Petition to Revoke Probation attached as Exhibit A.)
2. On a date uncertain in 2002, the Bureau issued Advanced Emission Specialist Technician License Number EA 145097 (technician license) to Scott Alan Miller (Respondent). Pursuant to the Decision and Stipulated Settlement and Disciplinary Order as to Respondent Scott Alan Miller in Accusation No. 79/11-30, attached as Exhibit A to Exhibit A hereto, and incorporated herein by reference, the Director of the Department revoked Respondent's technician license, effective November 10, 2011. However, the revocation was stayed and Respondent was placed on probation for five years with certain terms, including Term No. 2,

1 requiring Respondent to obey all laws and comply with all statutes, regulations and rules  
2 governing automotive inspections, estimates and repairs. The technician license was in full force  
3 and effect at all times relevant to the charges brought herein, expired on December 31, 2013, and  
4 has remained delinquent since. This lapse in licensure, however, pursuant to Business and  
5 Professions Code (Code) section 118(b) does not deprive the Bureau of its authority to institute or  
6 continue this disciplinary proceeding. Upon timely renewal of the license, Respondent's  
7 technician license will be redesignated as EO 145097 and/or EI 145097.<sup>1</sup>

8 3. On March 15, 2013, Respondent was served by Certified and First Class Mail copies  
9 of the Accusation/Petition to Revoke Probation No. 79/13-58, Statement to Respondent, Notice of  
10 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,  
11 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Code section 136, is  
12 required to be reported and maintained with the Bureau. Respondent's address of record was and  
13 is 8373 A Summerdale Road, San Diego, CA 92126. On January 31, 2014, Respondent was  
14 served by Certified and First Class Mail copies of the First Amended Accusation/Petition to  
15 Revoke Probation No. 79/13-58 and Supplemental Statement to Respondent at his same address  
16 of record and at 17151 West Bernardo Drive – 107, San Diego, CA 92127, an alternate address  
17 Respondent provided on his March 20, 2013 Notice of Defense.

18 4. Service of the Accusation/Petition to Revoke Probation was effective as a matter of  
19 law under the provisions of Government Code section 11505, subdivision (c) and/or Code section  
20 124.

21 5. On March 20, 2013, Respondent signed and returned a Notice of Defense, requesting  
22 a hearing in this matter. On April 22, 2013, a Notice of Hearing was served by mail at  
23 Respondent's address of record and his alternate address by Certified and First Class Mail, which  
24 informed him that an administrative hearing in this matter was scheduled for February 25, 2014.  
25 On May 14, 2013, and May 30, 2013, the Certified Mail envelopes for the aforementioned

26 <sup>1</sup> 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 documents mailed to Respondent's alternate address and address of record, respectively, were  
2 returned by the U.S. Postal Service marked "Unclaimed." Neither of the First Class Mail  
3 envelopes sent to Respondent was returned. Respondent failed to appear at that hearing.

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

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

10 7. California Government Code section 11520 states, in pertinent part:

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

15 8. Pursuant to its authority under Government Code section 11520, the Director after  
16 having reviewed the proof of service dated March 15, 2013, and Certified Mail envelopes  
17 returned unclaimed finds Respondent is in default. The Director will take action without further  
18 hearing and, based on First Amended Accusation/Petition to Revoke Probation, No. 79/13-58,  
19 proofs of service and on the Affidavit of Bureau Representative John Pendleton, finds that the  
20 allegations in First Amended Accusation/Petition to Revoke Probation No. 79/13-58 are true.

#### 21 DETERMINATION OF ISSUES

22 1. Based on the foregoing findings of fact, Respondent Scott Alan Miller, Advanced  
23 Emission Specialist Technician has subjected his Advanced Emission Specialist Technician  
24 License No. EA 145097 to discipline.

25 2. The agency has jurisdiction to adjudicate this case by default.

26 3. The Director of Consumer Affairs is authorized to revoke Respondent's Advanced  
27 Emission Specialist Technician License based upon the following violations alleged in the First  
28 Amended Accusation/Petition to Revoke Probation which are supported by the evidence  
contained in the affidavit of Bureau Representative John Pendleton in this case:

1 a. Respondent's technician license is subject to discipline pursuant to Health & Safety  
2 (H&S) Code section 44072.2, subdivision (a), in that on or about September 14, 2012, he violated  
3 sections of that Code, as follows:

4 i. Section 44012: Respondent failed to follow test procedures in accordance with  
5 procedures prescribed by the department.

6 ii. Section 44012, subdivision (f): Respondent failed to perform functional emission  
7 control tests in accordance with procedures prescribed by the department.

8 iii. Section 44032: Respondent failed to perform tests of the emission control  
9 devices and systems in accordance with section 44012 of that Code.

10 b. Respondent's technician license is subject to discipline pursuant to H&S Code section  
11 44072.2 subdivision (c), in that on September 14, 2012, he violated sections of the Regulations as  
12 follows:

13 i. Section 3340.24, subdivision (c): Respondent falsely or fraudulently issued  
14 electronic Certificate of Compliance No. [REDACTED] without performing a bona fide inspection of  
15 emission control devices and systems as required by H&S Code section 44012.

16 ii. Section 3340.30, subdivision (a): Respondent failed to inspect and test the vehicle  
17 in accordance with H&S Code section 44012.

18 iii. Section 3340.42: Respondent failed to conduct the required smog tests and  
19 inspections on the vehicle in accordance with the Bureau's specifications.

20 c. Respondent's technician license is subject to discipline pursuant to H&S Code section  
21 44072.2, subdivision (d), in that on or about September 14, 2012, he committed acts involving  
22 dishonesty, fraud, or deceit whereby another was injured by issuing an electronic certificate of  
23 compliance for a vehicle without performing a bona fide inspection of the emission control  
24 devices and systems, thereby depriving the People of the State of California of the protection  
25 afforded by the Motor Vehicle Inspection Program.

26 d. Respondent's probation is subject to revocation because he failed to comply with  
27 Probation Term No. 2 by failing to obey all laws since November 10, 2011, as more fully set forth  
28 in paragraphs 3 (a) through (c), above.

1 ORDER

2 IT IS SO ORDERED that Advanced Emission Specialist Technician License No. EA  
3 145097, heretofore issued to Respondent Scott Alan Miller, Advanced Emission Specialist  
4 Technician, is revoked.

5 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
6 written motion requesting that the Decision be vacated and stating the grounds relied on within  
7 seven days after service of the Decision on Respondent. The motion should be sent to the Bureau  
8 of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho  
9 Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing  
10 on a showing of good cause, as defined in the statute.

11 This Decision shall become effective on April 23, 2014.

12 It is so ORDERED APR 01 2014

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17 DONALD CHANG  
18 Assistant Chief Counsel  
19 Department of Consumer Affairs

20 Attachment: Exhibit A: First Amended Accusation/Petition to Revoke Probation  
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24

25 70833951.DOC  
26 DOJ Matter ID:SD2013704949  
27  
28

# Exhibit A

First Amended Accusation/Petition to Revoke Probation No. 79/13-58

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 G. MICHAEL GERMAN  
Deputy Attorney General  
4 State Bar No. 103312  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2617  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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 Accusation and Petition to  
12 Revoke Probation Against:

13 **SCOTT ALAN MILLER**  
14 **8373 A Summerdale Road**  
15 **San Diego, CA 92126**

16 **Advanced Emission Specialist Technician**  
17 **License No. EA 145097 (to be designated**  
18 **upon renewal as EO 145097 and/or EI**  
19 **145097)**

20 Respondent.

BAR Case No. 79/13-58

OAH Case No. 2013040855

**FIRST AMENDED ACCUSATION &**  
**PETITION TO REVOKE PROBATION**

Hearing Date: February 25, 2014

18 Complainant alleges:

19 **PARTIES**

20 1. Complainant Patrick Dorais brings this First Amended Accusation and Petition to  
21 Revoke Probation solely in his official capacity as the Chief of the Bureau of Automotive Repair  
22 (Bureau), Department of Consumer Affairs (Department).

23 **LICENSE INFORMATION**

24 2. On a date uncertain in 2002, the Bureau issued Advanced Emission Specialist  
25 Technician License Number EA 145097 (technician license) to Scott Alan Miller (Respondent).  
26 Pursuant to California Code of Regulations, title 16 (Regulations), section 3340.28, subdivision  
27 (e), upon timely renewal of the license, Respondent's technician license will be redesignated as  
28

1 EO 145097 and/or EI 145097.<sup>1</sup> The technician license was in full force and effect at all times  
2 relevant to the charges brought herein and expired on December 31, 2013.

### 3 PRIOR DISCIPLINARY ACTION

4 3. Pursuant to the Decision and Stipulated Settlement and Disciplinary Order as to  
5 Respondent Scott Alan Miller and Accusation No. 79/11-30, attached hereto as Exhibit "A" and  
6 incorporated herein by reference, the Director of the Department revoked Respondent's  
7 technician license, effective November 10, 2011. However, the revocation was stayed and  
8 Respondent was placed on probation for five years with certain terms.

### 9 JURISDICTION

10 4. This Petition to Revoke Probation is brought before the Director of the Department  
11 for the Bureau, pursuant to Term 7 of the Decision and Order in Case No. 79/11-30, referenced in  
12 paragraph 3, above, which states:

13 **Term 7 - Violation of Probation.** Should the Director of Consumer Affairs determine that  
14 Respondent has failed to comply with the terms and conditions of probation, the Department may,  
15 after giving notice and opportunity to be heard permanently revoke the license

16 5. This Accusation is brought before the Director under the authority of the following  
17 laws. All section references are to the Business and Professions Code (Code) and Health and  
18 Safety Code (H&S Code).

19 6. Section 118(b) of the Code states:

20 The suspension, expiration, or forfeiture by operation of law of a license  
21 issued by a Board in the department, or its suspension, forfeiture, or cancellation by  
22 order of the board or by order of a court of law, or its surrender without the written  
23 consent of the board, shall not, during any period in which it may be renewed,  
24 restored, reissued, or reinstated, deprive the board of its authority to institute or  
25 continue a disciplinary proceeding against the licensee upon any ground provided by  
26 law or to enter an order suspending or revoking the license or otherwise taking  
27 disciplinary action against the licensee on any such ground.

28 <sup>1</sup> Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,  
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.



1 11. H&S Code section 44072.2 states, in pertinent part:

2 The director may suspend, revoke, or take other disciplinary action against  
3 a license as provided in this article if the licensee, or any partner, officer, or director  
4 thereof, does any of the following:

5 (a) Violates any section of this chapter [the Motor Vehicle Inspection  
6 Program (Health and Safety Code § 44000, et seq.)] and the regulations adopted  
7 pursuant to it, which related to the licensed activities.

8 . . . .

9 (c) Violates any of the regulations adopted by the director pursuant to this  
10 chapter.

11 (d) Commits any act involving dishonesty, fraud, or deceit whereby  
12 another is injured.

### 13 REGULATORY PROVISIONS

14 12. Regulations, section 3340.24, subdivision (c) provides that the Bureau may suspend  
15 or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or  
16 fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance.

17 13. Regulations, section 3340.30, states:

18 A licensed smog check inspector and/or repair technician shall comply  
19 with the following requirements at all times while licensed:

20 (a) Inspect, test and repair vehicles, as applicable, in accordance with  
21 section 44012 of the Health and Safety Code, section 44035 of the Health and Safety  
22 Code, and section 3340.42 of this article.

23 . . . .

24 14. Regulations, section 3340.42, states:

25 With the exception of diesel-powered vehicles addressed in subsection (f)  
26 of this section, the following emissions test methods and standards apply to all  
27 vehicles:

28 . . . .

(2) A functional inspection of the vehicle's emission control systems.  
During the functional inspection, the technician shall conduct, as applicable, the  
following tests and verifications of the vehicle:

(A) proper operation of the exhaust gas recirculation (EGR) system,

- 1 (B) a check of the gasoline filler cap's integrity,  
2 (C) proper setting of ignition timing,  
3 (D) a low pressure check of the fuel evaporative control system,  
4 (E) proper operation of the malfunction indicator light (MIL) or "Check  
Engine Light," and  
5 (F) an on-board diagnostics (OBD) systems test.  
6 (3) A liquid leak inspection of the vehicle's fuel storage and delivery  
7 systems.  
8 (4) An inspection of the vehicle's tailpipe and crankcase for the  
emissions of smoke.

9 ....

#### 10 COST RECOVERY

11 15. Code section 125.3 provides, in pertinent part, that the Bureau may request the  
12 administrative law judge to direct a licentiate found to have committed a violation or violations of  
13 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
14 enforcement of the case. If a case settles, recovery of investigation and enforcement costs may be  
15 included in a stipulated settlement.

#### 16 SEPTEMBER 14, 2012 UNDERCOVER OPERATION

17 16. On September 14, 2012, a Bureau undercover operator drove a Bureau documented  
18 1992 Nissan Maxima to Escondido Test Only, where Respondent was working, and requested a  
19 smog inspection. The ignition timing of the Maxima had been adjusted beyond specifications,  
20 causing the vehicle to be incapable of passing a properly performed smog inspection. After the  
21 smog inspection was completed the operator paid the facility \$68.00 and received a copy of  
22 Invoice No. [REDACTED] and a Vehicle Inspection Report (VIR). The VIR indicates that the smog  
23 inspection was performed by Respondent resulting in the issuance of electronic Certificate of  
24 Compliance No. [REDACTED], certifying that the Maxima had been tested and inspected and that it  
25 was in compliance with applicable laws and regulations when, in fact, the vehicle could not have  
26 passed the functional portion of the smog inspection as the ignition timing had been adjusted  
27 beyond specification.



1 involving dishonesty, fraud, or deceit whereby another was injured by issuing electronic  
2 Certificate of Compliance No. [REDACTED] for the Maxima without performing a bona fide  
3 inspection of the emission control devices and systems, thereby depriving the People of the State  
4 of California of the protection afforded by the Motor Vehicle Inspection Program.

5 **PETITION TO REVOKE PROBATION**

6 **CAUSE TO REVOKE PROBATION**

7 **(Failure to Obey All Laws)**

8 20. At all times after the effective date of Respondent's probation, Probation Term No. 2  
9 stated as follows:

10 **Term 2 – Obey all laws:** Respondent shall comply with all statutes, regulations and rules  
11 governing automotive inspections, estimates and repairs.

12 21. Respondent's probation is subject to revocation because he failed to comply with  
13 Probation Term No. 2 in that he has failed to obey all laws since November 10, 2011, as more  
14 fully set forth in paragraphs 16 through 19, above.

15 **OTHER MATTERS**

16 22. Pursuant to H&S Code section 44072.8, if Advanced Emission Specialist Technician  
17 License Number EA 145097, issued to Scott Alan Miller, to be designated upon timely renewal as  
18 EO 145097 and/or EI 145097, is revoked or suspended, any additional license issued under this  
19 chapter in the name of said licensee may be likewise revoked or suspended by the director.

20 **PRAYER**

21 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
22 First Amended Accusation and Petition to Revoke Probation, and that following the hearing, the  
23 Director of Consumer Affairs issue a decision:

24 1. Vacating the stay and reimposing the order of revocation of Advanced Emission  
25 Specialist Technician License Number EA 145097, issued to Scott Alan Miller;

26 2. Revoking or suspending Advanced Emission Specialist Technician License Number  
27 EA 145097, to be designated upon timely renewal as EO 145097 and/or EI 145097, issued to  
28 Scott Alan Miller;

- 1        3.    Revoking or suspending any additional license issued under Chapter 5 of the Health
- 2    and Safety Code in the name of Scott Alan Miller;
- 3        4.    Ordering Scott Alan Miller to pay the Director of Consumer Affairs the reasonable
- 4    costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 5        5.    Taking such other and further action as deemed necessary and proper.

6  
7    DATED: January 30, 2014        Patrick Dorais

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

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