

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant 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
Attorneys for Complainant
7

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:

Case No. 79/13-34

13 **MODIR MIRZAEI**
14 **926 E. Tujunga Avenue**
15 **Burbank, CA 91501**

A C C U S A T I O N

16 **Advanced Emission Specialist Technician**
17 **License No. EA 145971**

(Smog Check)

Respondent.

18 Complainant alleges:

19 **PARTIES**

- 20 1. John Wallauch ("Complainant") brings this Accusation solely in his official capacity
21 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.
22 2. In or about 2002, the Director of Consumer Affairs ("Director") issued Advanced
23 Emission Specialist Technician License Number EA 145971 ("technician license") to Modir
24 Mirzaei ("Respondent"). Respondent's technician license was in full force and effect at all times
25 relevant to the charges brought herein and will expire on May 31, 2014, unless renewed.

26 ///

27 ///

28 ///

1 JURISDICTION

2 3. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent
3 part, that the Director has all the powers and authority granted under the Automotive Repair Act
4 for enforcing the Motor Vehicle Inspection Program.

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

9 STATUTORY PROVISIONS

10 5. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

15

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

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

19 6. Health & Saf. Code section 44072.8 states that when a license has been revoked or
20 suspended following a hearing under this article, any additional license issued under this chapter
21 in the name of the licensee may be likewise revoked or suspended by the director.

22 7. Business and Professions Code ("Bus. & Prof. Code") section 22, subdivision (a),
23 states:

24 "Board" as used in any provision of this Code, refers to the board in
25 which the administration of the provision is vested, and unless otherwise expressly
26 provided, shall include "bureau," "commission," "committee," "department,"
"division," "examining committee," "program," and "agency."

27 ///

28 ///

1 **COST RECOVERY**

2 8. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
3 the administrative law judge to direct a licentiate found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
5 and enforcement of the case.

6 **UNDERCOVER OPERATION: 1991 MAZDA 626**

7 9. On March 8, 2012, an undercover operator of the Bureau ("operator") took the
8 Bureau's 1991 Mazda 626 to Modern Smog & Test Only located in North Hollywood, California,
9 and requested a smog inspection. The ignition timing on the Bureau-documented vehicle was not
10 adjusted to manufacturer's specifications (the ignition timing was set to 16 degrees BTDC [before
11 top dead center] when the manufacturer's specifications are 6 degrees BTDC), and consequently,
12 the vehicle would not pass a California smog check inspection. After the inspection was
13 completed, the operator paid the facility \$60 and received copies of an invoice and a vehicle
14 inspection report ("VIR"). The VIR indicated that Respondent performed the smog inspection on
15 the vehicle and that the vehicle passed. That same day, electronic smog Certificate of
16 Compliance No. OK808603C was issued for the vehicle.

17 10. On March 22, 2012, the Bureau inspected the vehicle and found that the ignition
18 timing was still set to 16 degrees BTDC and was not adjusted to manufacturer's specifications.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Violations of the Motor Vehicle Inspection Program)**

21 11. Respondent's technician license is subject to disciplinary action pursuant to Health &
22 Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section
23 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the functional
24 ignition timing check on the Bureau's 1991 Mazda 626 in accordance with procedures prescribed
25 by the department.

26 ///

27 ///

28 ///

1 MATTERS IN AGGRAVATION

2 14. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges as follows:

4 a. On or about February 28, 2008, the Bureau issued Citation No. M08-0727 against
5 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
6 perform tests of emission control systems and devices in accordance with Health & Saf. Code
7 section 44012); and California Code of Regulations, title 16, section ("Regulation") 3340.30,
8 subdivision (a) (qualified technicians shall inspect, test and repair vehicles in accordance with
9 Health & Saf. Code sections 44012 and 44035 and Regulation 3340.42). On or about February
10 15, 2008, Respondent had issued a certificate of compliance to a Bureau undercover vehicle with
11 a missing positive crankcase ventilation (PCV) system. Respondent was directed to complete an
12 8 hour training course and to submit proof of completion to the Bureau within 30 days from
13 receipt of the citation. Respondent complied with the citation and completed the training on April
14 29, 2008.

15 b. On or about March 7, 2011, the Bureau issued Citation No. M2011-1029 against
16 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
17 perform tests of emission control systems and devices in accordance with Health & Saf. Code
18 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
19 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
20 Regulation 3340.42). On or about January 27, 2011, Respondent had issued a certificate of
21 compliance to a Bureau undercover vehicle with a missing PCV system. Respondent was
22 directed to complete a 16 hour training course and to submit proof of completion to the Bureau
23 within 30 days from receipt of the citation. Respondent complied with the citation and completed
24 the training on March 28, 2011.

25 c. On or about September 9, 2011, the Bureau issued Citation No. M2012-0211 against
26 Respondent for violating Health & Saf. Code section 44032 (qualified technicians shall perform
27 tests of emission control systems and devices in accordance with Health & Saf. Code section
28 44012). On or about August 24, 2011, Respondent had issued a certificate of compliance to a

1 Bureau undercover vehicle with the ignition timing adjusted beyond specifications. Respondent
2 was directed to complete the Basic Clean Air Car Course and to submit proof of completion to the
3 Bureau. Respondent complied with the citation and completed the training on October 19, 2011.

4 **OTHER MATTERS**

5 15. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
6 Technician License Number EA 145971, issued to Modir Mirzaei, is revoked or suspended, any
7 additional license issued under this chapter in the name of said licensee may be likewise revoked
8 or suspended by the Director.

9 **PRAYER**

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

12 1. Revoking or suspending Advanced Emission Specialist Technician License Number
13 EA 145971, issued to Modir Mirzaei;

14 2. Revoking or suspending any additional license issued under Chapter 5 of the Health
15 and Safety Code in the name of Modir Mirzaei;

16 3. Ordering Modir Mirzaei to pay the Bureau of Automotive Repair the reasonable costs
17 of the investigation and enforcement of this case, pursuant to Business and Professions Code
18 section 125.3;

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

20
21 DATED: Dec 10, 2012


JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

22
23
24
25
26
27
28 LA2012506848