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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:

Case No. 79/13-34

MODIR MIRZAEI
926 E. Tujunga Avenue
Burbank, CA 91501

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

**Advanced Emission Specialist Technician
License No. EA 145971, to be redesignated
upon renewal as, Smog Check Inspector
License No. EO 145971 and/or Smog Check
Repair Technician No. EI 145971**

Respondent.

FINDINGS OF FACT

1. On or about December 10, 2012, Complainant John Wallaugh, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/13-34 against Modir Mirzaei (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

2. On or about January 1, 2002, the Bureau of Automotive Repair (Bureau) issued Advanced Emission Specialist Technician License No. EA 145971 to Respondent. The Advanced Emission Specialist Technician License was in full force and effect at all times

1 relevant to the charges brought in Accusation No. 79/13-34 and will expire on May 31, 2014,
2 unless renewed. Upon renewal, Advance Emission Specialist Technician License No. EA 145971
3 shall be redesignated to Smog Check Inspector License No. EO 145971 and/or Smog Check
4 Repair Technician License No. EI 145971.¹

5 3. On or about January 25, 2013, Respondent was served by Certified and First Class
6 Mail copies of the Accusation No. 79/13-34, Statement to Respondent, Notice of Defense,
7 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
8 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
9 Code section 136, is required to be reported and maintained with the Bureau. Respondent's
10 address of record was and is:

11 926 E. Tujunga Avenue
12 Burbank, CA 91501.

13 4. Service of the Accusation was effective as a matter of law under the provisions of
14 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
15 124.

16 5. On or about January 30, 2013, Respondent presented himself at the Valencia Field
17 Office of the Bureau and requested to surrender his smog technician license. Respondent
18 participated in a telephone call with a Bureau Representative, and a Deputy Attorney General in
19 which Respondent stated he received, read, and reviewed the case documents specific to
20 Accusation 79/13-34 and still wanted to surrender his smog technician license.

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

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

27 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
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 A. Respondent failed to inspect and test the Bureau's 1991 Mazda 626 in
2 accordance with Health & Saf. Code sections 44012 and 44035 and California Code of
3 Regulations, title 16, section 3340.42.

4 ii. **Section 3340.41, subdivision (c):**

5 B. Respondent entered false information into the facility's Emissions Inspection
6 System by entering that the ignition timing on the Bureau's 1991 Mazda 626 was 7 degrees
7 BTDC and that the vehicle passed the functional ignition timing check. In fact, the ignition
8 timing was set to 16 degrees BTDC at the time the vehicle was taken to the facility and as such,
9 the vehicle would not pass the inspection required by Health & Saf. Code section 44012,
10 subdivision (f).

11 iii. **Section 3340.42:**

12 C. Respondent failed to conduct the required smog tests on the Bureau's 1991
13 Mazda 626 in accordance with the Bureau's specifications.

14 c. Respondent's technician license is subject to disciplinary action pursuant to Health &
15 Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent
16 or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance
17 for the Bureau's 1991 Mazda 626 without performing a bona fide inspection of the emission
18 control devices and systems on the vehicle, thereby depriving the People of the State of California
19 of the protection afforded by the Motor Vehicle Inspection Program.

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Exhibit A

Accusation No. 79/13-34

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
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6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case No. 79/13-34

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

ACCUSATION

15 **Advanced Emission Specialist Technician**
License No. EA 145971

(Smog Check)

16 Respondent.
17

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.

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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 licensee 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. [REDACTED] 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.

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MATTERS IN AGGRAVATION

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

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

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

c. On or about September 9, 2011, the Bureau issued Citation No. M2012-0211 against Respondent for violating Health & Saf. Code section 44032 (qualified technicians shall perform tests of emission control systems and devices in accordance with Health & Saf. Code section 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

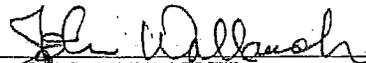
5 15. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
6 Technician License Number EA 145971, issued to Modir Mirzaei, is revoked or suspended, any
7 additional license issued under this chapter in the name of said licensee may be likewise revoked
8 or suspended by the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

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21 DATED: Dec 10, 2012


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

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