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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:

RON BARRY ROSENBERG
16620 Pauhaska Road
Apple Valley, CA 92307
Advanced Emission Specialist Technician
License No. EA 149782

Respondent.

Case No. 79/13-33

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about December 10, 2012, Complainant John Wallauch, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/13-33 against Ron Barry Rosenberg (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)
2. On or about January 1, 2005, the Bureau of Automotive Repair (Bureau) issued Advanced Emission Specialist Technician License No. EA 149782 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. 79/13-33 and will expire on February 28, 2013,
2 unless renewed.

3 3. On or about December 31, 2012, Respondent was served by Certified and First Class
4 Mail copies of the Accusation No. 79/13-33, 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: 16620 Pauhaska Road, Apple Valley, CA 92307.

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 February 4, 2013, the aforementioned documents were returned by the
13 U.S. Postal Service marked "No Forwarding Address." The address on the documents was the
14 same as the address on file with the Bureau. Respondent failed to maintain an updated address
15 with the Bureau and the Bureau has made attempts to serve the Respondent at the address on file.
16 Respondent has not made himself available for service and therefore, has not availed himself of
17 his right to file a notice of defense and appear at hearing.

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

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

24 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
25 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
26 79/13-33.

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

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

1 representative obtained information from the California Department of Motor Vehicles ("DMV")
2 showing that the Blazer was registered to Respondent.

3 b. On or about February 10, 2012, the representative went to Rancho Motor Company and
4 spoke with the service manager, Bill Markloff ("Markloff"), regarding the anonymous complaint.
5 Markloff checked the facility's computer system and could not locate an invoice for the smog
6 inspection of January 26, 2012. Markloff told the representative that the facility had terminated
7 Respondent's employment. Markloff explained that on January 26, 2012, he and the facility's
8 owner/president, John Wilkins ("Wilkins"), were walking toward Wilkins' vehicle and observed
9 Respondent placing the facility's Emissions Inspection System ("EIS") exhaust sample probe into
10 the tailpipe of his personal vehicle, a 1991 Chevrolet Silverado pickup, License No. KI6FJG
11 ("Silverado"). Markloff stated that it appeared strange because the Silverado was headed forward
12 into the service bay rather than backed in (so that the vehicle could be run on the dynamometer).
13 Markloff had the facility's foreman, Mike Paholsky ("Paholsky"), check the EIS to determine
14 whether a smog certificate had been issued. Paholsky found that Certificate of Compliance No.
15 XD311861C had been issued to the Blazer and not the Silverado. Paholsky printed a copy of the
16 Vehicle Inspection Report ("VIR"). Later, Markloff and Paholsky reviewed surveillance video
17 from the facility's surveillance system. The video showed that the Blazer was not present in the
18 service bay at the time of the smog inspection. Markloff provided the representative with 5 still
19 photographs which he had printed from the video. The representative found in reviewing the
20 photographs that Respondent's Silverado was in the service bay at the time Certificate of
21 Compliance No. XD311861C was issued for the Blazer. Later, the representative drove to
22 Respondent's residence and took photographs of the Blazer and Silverado. The representative
23 obtained DMV information showing that the Silverado was registered to Denise Rosenberg.

24 c. On or about February 14, 2012, the representative returned to the facility and obtained
25 declarations from Markloff, Wilkins, and Paholsky. Markloff stated in his declaration that the
26 surveillance video of January 26, 2012, showed the Silverado was in the service bay at the time
27 the smog certificate was issued to the Blazer. Markloff also stated that he and Wilkins met with
28 Respondent on January 30, 2012, and confronted him with the VIR and the still

1 photographs. Respondent admitted to Markloff and Wilkins that he had used his Silverado to
2 issue Certificate of Compliance No. XD311861C for the Blazer.

3 d. On or about February 16, 2012, the representative met with Respondent at his
4 residence. After discussing the smog inspection of January 26, 2012, Respondent voluntarily
5 surrendered his technician license and technician badge.

6 e. Respondent's technician license is subject to disciplinary action pursuant to Health &
7 Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section
8 44012 of that Code, as follows: Respondent used clean piping methods in order to issue a
9 certificate of compliance for the 1991 Chevrolet K-1500 Blazer, and did not test or inspect the
10 vehicle as required by section 44012.

11 f. Respondent's technician license is subject to disciplinary action pursuant to Health & Saf.
12 Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of
13 California Code of Regulations, title 16, as follows:

14 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the 1991
15 Chevrolet K-1500 Blazer in accordance with Health & Saf. Code sections 44012 and 44035 and
16 California Code of Regulations, title 16, section 3340.42.

17 b. **Section 3340.41, subdivision (c)**: Respondent entered false information into the EIS
18 by entering vehicle identification information or emission control system identification data for a
19 vehicle other than the one being tested.

20 c. **Section 3340.42**: Respondent failed to conduct the required smog tests on the 1991
21 Chevrolet K-1500 Blazer in accordance with the Bureau's specifications.

22 g. Respondent's technician license is subject to disciplinary action pursuant to Health &
23 Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent
24 or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance
25 for the 1991 Chevrolet K-1500 Blazer without performing a bona fide inspection of the emission
26 control devices and systems on the vehicle, thereby depriving the People of the State of California
27 of the protection afforded by the Motor Vehicle Inspection Program.

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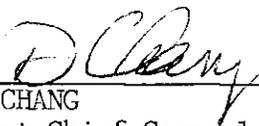
ORDER

IT IS SO ORDERED that Advanced Emission Specialist Technician License No. EA 149782, heretofore issued to Respondent Ron Barry Rosenberg, is revoked.

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

This Decision shall become effective on 4/5/13.

It is so ORDERED March 15, 2013



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

51236721.DOC
DOJ Matter ID:LA2012506705

Attachment:
Exhibit A: Accusation

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3 GREGORY J. SALUTE
Supervising Deputy Attorney General
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Attorneys for Complainant
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8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
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12 **RON BARRY ROSENBERG**
13 **16620 Pauhaska Road**
14 **Apple Valley, CA 92307**
15 **Advanced Emission Specialist Technician**
License No. EA 149782
16 Respondent.

Case No. 79/13-33

ACCUSATION
(Smog Check)

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 2005, the Director of Consumer Affairs ("Director") issued Advanced
23 Emission Specialist Technician License Number EA 149782 ("technician license") to Ron Barry
24 Rosenberg ("Respondent"). Respondent's technician license was in full force and effect at all
25 times relevant to the charges brought herein and will expire on February 28, 2013, unless
26 renewed.

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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
17 this chapter.

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

19 6. Health & Saf. Code section 44072.10 states, in pertinent part:

20

21 (c) The department shall revoke the license of any smog check technician
22 or station licensee who fraudulently certifies vehicles or participates in the fraudulent
inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
23 the following:

24 (1) Clean piping, as defined by the department.

25

26 (4) Intentional or willful violation of this chapter or any regulation,
standard, or procedure of the department implementing this chapter . . .

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1 11. On or about February 10, 2012, the representative went to Rancho Motor Company
2 and spoke with the service manager, Bill Markloff ("Markloff"), regarding the anonymous
3 complaint. Markloff checked the facility's computer system and could not locate an invoice for
4 the smog inspection of January 26, 2012. Markloff told the representative that the facility had
5 terminated Respondent's employment. Markloff explained that on January 26, 2012, he and the
6 facility's owner/president, John Wilkins ("Wilkins"), were walking toward Wilkins' vehicle and
7 observed Respondent placing the facility's Emissions Inspection System ("EIS") exhaust sample
8 probe into the tailpipe of his personal vehicle, a 1991 Chevrolet Silverado pickup, License No.
9 K16FJG ("Silverado"). Markloff stated that it appeared strange because the Silverado was headed
10 forward into the service bay rather than backed in (so that the vehicle could be run on the
11 dynamometer). Markloff had the facility's foreman, Mike Paholsky ("Paholsky"), check the EIS
12 to determine whether a smog certificate had been issued. Paholsky found that Certificate of
13 Compliance No. XD311861C had been issued to the Blazer and not the Silverado. Paholsky
14 printed a copy of the Vehicle Inspection Report ("VIR"). Later, Markloff and Paholsky reviewed
15 surveillance video from the facility's surveillance system. The video showed that the Blazer was
16 not present in the service bay at the time of the smog inspection. Markloff provided the
17 representative with 5 still photographs which he had printed from the video. The representative
18 found in reviewing the photographs that Respondent's Silverado was in the service bay at the time
19 Certificate of Compliance No. XD311861C was issued for the Blazer. Later, the representative
20 drove to Respondent's residence and took photographs of the Blazer and Silverado. The
21 representative obtained DMV information showing that the Silverado was registered to Denise
22 Rosenberg.

23 12. On or about February 14, 2012, the representative returned to the facility and
24 obtained declarations from Markloff, Wilkins, and Paholsky. Markloff stated in his declaration
25 that the surveillance video of January 26, 2012, showed the Silverado was in the service bay at
26 the time the smog certificate was issued to the Blazer. Markloff also stated that he and Wilkins
27 met with Respondent on January 30, 2012, and confronted him with the VIR and the still

28 ///

1 photographs. Respondent admitted to Markloff and Wilkins that he had used his Silverado to
2 issue Certificate of Compliance No. XD311861C for the Blazer.

3 13. On or about February 16, 2012, the representative met with Respondent at his
4 residence. After discussing the smog inspection of January 26, 2012, Respondent voluntarily
5 surrendered his technician license and technician badge.

6 **FIRST CAUSE FOR DISCIPLINE**

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

8 14. Respondent's technician license is subject to disciplinary action pursuant to Health &
9 Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section
10 44012 of that Code, as follows: Respondent used clean piping methods in order to issue a
11 certificate of compliance for the 1991 Chevrolet K-1500 Blazer, and did not test or inspect the
12 vehicle as required by section 44012.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with Regulations Pursuant**
15 **to the Motor Vehicle Inspection Program)**

16 15. Respondent's technician license is subject to disciplinary action pursuant to Health &
17 Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions
18 of California Code of Regulations, title 16, as follows:

19 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the 1991
20 Chevrolet K-1500 Blazer in accordance with Health & Saf. Code sections 44012 and 44035 and
21 California Code of Regulations, title 16, section 3340.42.

22 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS
23 by entering vehicle identification information or emission control system identification data for a
24 vehicle other than the one being tested.

25 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the 1991
26 Chevrolet K-1500 Blazer in accordance with the Bureau's specifications.

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

DATED: December 10, 2012 John Wallauch

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

LA2012506705