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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:

KEVIN TYRONE NEWTON

**6321 37th Ave.
Sacramento, CA 95824**

**Advanced Emission Specialist Technician
License No. EA 152888 (to be re-designated
upon timely renewal as EO 152888 and/or
EI 152888)**

Respondent.

Case No. 79/15-24

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 26, 2014, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/15-24 against Kevin Tyrone Newton (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)
2. On or about January 1, 2006, the Bureau of Automotive Repair (Bureau) issued Advanced Emission Specialist Technician License No. EA 152888 to Respondent. The

1 Advanced Emission Specialist Technician License expired on June 30, 2012, and has not been
2 renewed. Upon timely renewal of the license, the license will be redesignated as EO 152888
3 and/or EI 152888.¹ On or about August 28, 2014, Respondent was served by First Class and
4 Certified Mail copies of the Accusation No. 79/15-24, Statement to Respondent, Notice of
5 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,
6 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and
7 Professions Code section 136, is required to be reported and maintained with the Bureau.
8 Respondent's address of record was and is:

9 6321 37th Ave.
10 Sacramento, CA 95824.

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

14 4. On or about September 26, 2014, the aforementioned documents that were served by
15 certified mail were returned by the U.S. Postal Service marked "Unclaimed." The documents
16 served by First Class Mail were not returned.

17 5. Government Code section 11506 states, in pertinent part:

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

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

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

27 (a) If the respondent either fails to file a notice of defense or to appear at the
28

¹ 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 hearing, the agency may take action based upon the respondent's express admissions
2 or upon other evidence and affidavits may be used as evidence without any notice to
3 respondent.

4 8. Pursuant to its authority under Government Code section 11520, the Director after
5 having reviewed the proof of service dated August 28, 2014, signed by Tami D. Aschenbrenner,
6 (and return envelopes) finds Respondent is in default. The Director will take action without
7 further hearing and, based on Accusation, No. 79/15-24, proof of service and on the Affidavit of
8 Bureau Representative Joseph B. Cheung, PII(S), finds that the allegations in Accusation are
9 true.

10 DETERMINATION OF ISSUES

11 1. Based on the foregoing findings of fact, Respondent Kevin Tyrone Newton has
12 subjected his Advanced Emission Specialist Technician License No. EA 152888 to discipline.

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

14 3. The Director of Consumer Affairs is authorized to revoke Respondent's Advanced
15 Emission Specialist Technician License based upon the following violations alleged in the
16 Accusation which are supported by the evidence contained in the affidavit of Bureau
17 Representative Joseph B. Cheung, PII(S) in this case:

18 a. Respondent is subject to discipline pursuant to Health and Safety Code section
19 44050(e), in that on or about November 23, 2011, the Bureau issued Citation No. M2012-0494 to
20 Respondent against his technician license for violating Health and Safety Code section 44032
21 (qualified technicians shall perform tests of emission control systems and devices in accordance
22 with section 44012 of that Code) and California Code of Regulations, title 16, section 3340.30(a)
23 (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012
24 and 44035 of the Health and Safety Code, and Regulation section 3340.42)². On or about
25 December 21, 2011, the Bureau served Respondent with the Citation. The Bureau required that
26 Respondent complete an 8-hour training course or appeal the Citation within thirty (30) days of

27 ² On or about October 28, 2011, Respondent issued Certificate of Compliance No.
28 OG993729 to a Bureau undercover vehicle with a missing Positive Crankcase Ventilation valve.

1 receipt of the Citation. Respondent did not appeal the Citation nor has Respondent completed the
2 required training.

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ORDER

IT IS SO ORDERED that Advanced Emission Specialist Technician License No. EA 152888, heretofore issued to Respondent Kevin Tyrone Newton, 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 January 22, 2016.

It is so ORDERED December 23, 2015



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

11927060.DOC
DOJ Matter ID:SA2014313960

Attachment:
Exhibit A: Accusation Packet with Service Documents and Returned Mail

Exhibit A

Accusation

(KEVIN TYRONE NEWTON)

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS
Deputy Attorney General
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5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-6292
Facsimile: (916) 327-8643
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:

Case No. 79/15-24

13 **KEVIN TYRONE NEWTON**
14 **6321 37th Ave.**
Sacramento, CA 95824

A C C U S A T I O N

15 **Advanced Emission Specialist Technician**
16 **License No. EA 152888 (to be re-designated**
17 **upon renewal as EO 152888 and/or EI**
152888)

18 Respondent.

19
20 Patrick Dorais ("Complainant") alleges:

21 **PARTIES**

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

24 2. In 2006, the Bureau issued Advanced Emission Specialist Technician License
25 Number EA 152888 to Kevin Tyrone Newton ("Respondent"). On or about January 24, 2012, the
26 license was suspended pursuant to Health and Safety Code section 44045.6(c) and California
27 Code of Regulations, title 16, section 3340.24(d) for failing to complete remedial training when
28 required by the Bureau, as more particularly set forth below in paragraph 9. The license expired

1 on June 30, 2012, and has not been renewed. Upon renewal of the license, the license will be re-
2 designated as EO 152888 and/or EI 152888.¹

3 **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 44050 of the Health and Safety Code states, in pertinent part:

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

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

16 5. Section 44055 of the Health and Safety Code, subdivision (b) states:

17 (b) The department may deny an application for the renewal of a test
18 station or repair station license if the applicant, or any partner, officer, or director
19 thereof, has failed to pay any civil penalty or administrative fine in accordance with
20 this article.

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

25 7. Section 44072.8 of the Health and Safety Code states:

26 When a license has been revoked or suspended following a hearing under
27 this article, any additional license issued under this chapter in the name of the
28 licensee may be likewise revoked or suspended by the director.

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¹ 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 COST RECOVERY

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

6 CAUSE FOR DISCIPLINE

7 **(Failure to Comply with Citation)**

8 9. Respondent is subject to discipline pursuant to Health and Safety Code section
9 44050(e), in that on or about November 23, 2011, the Bureau issued Citation No. M2012-0494 to
10 Respondent against his technician license for violating Health and Safety Code section 44032
11 (qualified technicians shall perform tests of emission control systems and devices in accordance
12 with section 44012 of that Code) and California Code of Regulations, title 16, section 3340.30(a)
13 (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012
14 and 44035 of the Health and Safety Code, and Regulation section 3340.42)². On or about
15 December 21, 2011, the Bureau served Respondent with the Citation. The Bureau required that
16 Respondent complete an 8-hour training course or appeal the Citation within thirty (30) days of
17 receipt of the Citation. Respondent did not appeal the Citation nor has Respondent completed the
18 required training.

19 OTHER MATTERS

20 10. Under Health and Safety Code section 44072.8, if Respondent's technician license,
21 currently designated as EA 152888, and as re-designated upon timely renewal as EO 152888
22 and/or EI 152888, is/are revoked or suspended, any additional license issued under this chapter in
23 the name of said licensee may be likewise revoked or suspended by the director.

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27 ² On or about October 28, 2011, Respondent issued Certificate of Compliance No.
28 OG993729 to a Bureau undercover vehicle with a missing Positive Crankcase Ventilation valve.

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PRAYER

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

1. Revoking or suspending Kevin Tyrone Newton's technician license, currently designated as EA 152888, and as re-designated upon renewal as EO 152888 and/or EI 152888;
2. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Kevin Tyrone Newton;
3. Ordering Kevin Tyrone Newton to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
4. Taking such other and further action as deemed necessary and proper.

DATED: August 26, 2014 Patrick Dorais

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

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