

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GNAL MGRDECHIAN
Advanced Emission Specialist Technician
License No. EA 154906,

Respondent.

Case No.: 79/10-69
OAH No.: 2011020794

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective 12/27/11.

IT IS SO ORDERED November 18, 2011.



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

ref

**BEFORE THE
BUREAU OF AUTOMOTIVE REPAIR
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

GNAL MGRDECHIAN
Advanced Emission Specialist Technician
License No. EA 154906,

Respondent.

Case No. 79/10-69

OAH No. 2011020794

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 13, 2011, in Los Angeles.

Terrence M. Mason, Deputy Attorney General, represented Sherry Mehl (complainant).

Respondent Gnal Mgrdechian appeared on his own behalf.

Oral and documentary evidence was received. The hearing was closed and the matter was submitted for decision on September 1, 2011.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity as Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department), State of California. Respondent timely filed a notice of defense.

2. In 2008, the Bureau issued Advanced Emission Specialist Technician License Number EA 154906 to respondent Peter Alfonso. The Advanced Emission Specialist Technician License was in full force and effect at all times relevant and will expire on July 31, 2013, unless renewed.

Current Violation

3. On August 25, 2009, a Bureau undercover operator drove a Bureau-documented 1999 Suzuki Grand Vitara to Crown America Car Wash and requested a smog inspection. The vehicle should not have been able to pass the visual portion of a properly-conducted smog

inspection because the vehicle's fuel evaporative charcoal canister had been removed. Respondent performed the smog inspection. During the inspection, respondent asked to see the operator's driver's license and questioned her as to whether she was employed by the Bureau, stating that there was a part missing and that he could receive a large fine if he passed the vehicle. Respondent nevertheless issued electronic Certificate of Compliance No. WD033712 for the vehicle. The operator paid \$55 for the smog inspection and received a copy of Invoice No. 001309 and the Vehicle Inspection Report (VIR).

4. At hearing, respondent denied noticing that the canister was missing until after he had issued the certificate of compliance, as he was closing the hood of the car. At that point, he testified, he asked the operator if he could take the car to a mechanic to replace the canister because he feared losing his license, and he called the Bureau to say he had made a mistake. Respondent acknowledged, however, that during the inspection the computer prompted him about specific components, including the fuel evaporative controls, that it was his responsibility to verify whether the canister was present before he entered "pass" into the computer, and that he failed to do so.

Prior Violations

5. On June 19, 2008, respondent issued a certificate of compliance to a Bureau vehicle with a missing Positive Crankcase Ventilation (PVC) system. On July 1, 2008, the Bureau issued Citation No. M09-0004 to respondent against his technician license for violation of Health and Safety Code (Code) section 44032 (qualified technicians shall perform tests of emission control systems and devices in accordance with section 44012 of that Code) and California Code of Regulations, title 16 (Regulation), section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with Code sections 44012 and 44035 and Regulation section 3340.42). The Citation Notice required respondent to attend an eight-hour training course and submit proof of completion of the course within 30 days of the date of the citation. At a Citation Conference on August 22, 2008, the Bureau informed respondent that he would be subject to inspection again to confirm compliance. Respondent complied with the citation on September 20, 2008, three months after the date of the citation.

6. On September 25, 2008, respondent improperly performed a smog inspection for a Bureau vehicle with a missing pulse air injection system by entering "NOT APPL" even though the pulse air injection system was a required emission system on that vehicle. On October 3, 2008, the Bureau issued Citation No. M09-0307 to respondent against his technician license for violations of Code section 44032 and Regulation section 3340.30, subdivision (a). The Citation Notice required respondent to attend a 16-hour training course and submit proof of completion of the course within 30 days of the date of the citation. At a Citation Conference on November 6, 2008, the Bureau informed respondent that he would be subject to inspection again to confirm compliance, and that he was putting his license in jeopardy. Respondent complied with the citation on February 3, 2009, four months after the date of the citation.

7. On December 10, 2008, respondent issued a certificate of compliance to a Bureau vehicle with a missing fuel evaporative charcoal canister.¹ On January 2, 2009, the Bureau issued Citation No. M09-0783 to respondent against his technician license for violations of Code section 44032 and Regulation section 3340.30, subdivision (a). The Citation Notice required respondent to attend a 68-hour clean air car course and to perform no smog inspection or repair until training is completed. At a Citation Conference on March 17, 2009, the Bureau informed respondent that he would be subject to inspection again to confirm compliance, and that he was putting his license and his livelihood in jeopardy. Respondent complied with the citation on April 7, 2009.

Other Relevant Facts

8. Fidel Reyes, III, a Program Representative for the Bureau, testified at hearing and reported that respondent “has demonstrated consistent incompetence that places the public health at risk.” (Ex. 4.) Mr. Reyes testified that the Bureau imposed citations as a way to attempt to obtain respondent’s voluntary compliance, each time increasing the amount of training required, from eight hours to 16 hours to 68 hours. All four citations were for failures in visual inspection. Mr. Reyes testified that if respondent’s license is revoked he may reapply for licensure after one year, and that upon reapplication respondent must show some effort at rehabilitation.

9. Respondent currently works as an emissions specialist at Highland Arco Smog, a test-only facility. There is no evidence that he has received any citations while employed there. Respondent testified that the Bureau acted unfairly by issuing all four citations within one year of issuing his license. He testified that he was given insufficient time to complete his coursework before a new citation was issued, noting that he was issued the third citation on January 2, 2009, even though he did not complete the course for the second citation until February 3, 2009. He enjoys working as an emission specialist, and is trying to get more experience and training in order to perform his job better. He has taken two semesters of automobile mechanics courses at the North Valley Occupational Center.

10. There was no evidence of a change in respondent’s business practices or of steps taken in order to minimize the violations’ recurrence after each of the various citations received by respondent, other than evidence that respondent eventually completed coursework required by the Bureau. Respondent’s testimony that the Bureau acted unfairly by issuing a third citation before he had completed the coursework required by his second citation is of no weight. Respondent took four months to complete that coursework; the second citation explicitly required him to complete it in one month. Had he complied, he would have finished the coursework more than one month before the next Bureau inspection.

11. Motor vehicle emissions are a significant contributor to air pollution levels in California. California’s smog check program is designed to improve air quality and to protect

¹ This was the same equipment that was missing in the following inspection (Factual Finding 3); the same operator brought the car to respondent for both inspections.

the public health by reducing vehicle emissions, and to comply with the federal Clean Air Act. (See, e.g., Health & Saf. Code, § 44001.5, subs. (a), (b); see also §§ 43000, subd. (c), 43000.5, subd. (b), and 43018.5, subd. (a).) Allowing respondent to continue to engage in his licensed activities would endanger the public health, safety, and welfare.

Costs of Investigation and Prosecution

12. The Bureau incurred reasonable enforcement costs totaling \$3,220.00, consisting of Attorney General fees. The Bureau also estimated that it would incur additional attorney's fees between September 2, 2011, and the commencement of hearing, in the amount of \$637.50. At hearing, no additional evidence was submitted of the actual costs for that time period; those additional costs are, therefore, disallowed.

LEGAL CONCLUSIONS

1. Enforcing the motor vehicle inspection program "is vested in the chief of the bureau who is responsible to the director." (Code, §§ 44001.5, 44002.)

2. Code section 44012 requires, among other things, that a visual inspection of emission control devices be performed in accordance with certain specified procedures. Code section 44032 requires technicians to "perform tests of emission control devices and systems in accordance with Section 44012."

3. Code section 44035 provides for suspension or revocation of a smog check technician's license for failure to meet performance or conduct standards. Code section 44072.2 provides for suspension, revocation, or other disciplinary action against a license if the licensee:

(a) Violates any section of this chapter² and the regulations adopted pursuant to it, which related to the licensed activities.

[¶] . . . [¶]

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

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

[¶] . . . [¶]

//

//

² Code section 44000, et seq.

4. Code section 44059 provides:

The willful making of any false statement or entry with regard to a material matter in any . . . certificate of compliance or noncompliance . . . which is required by this chapter . . . , constitutes perjury and is punishable as provided in the Penal Code.

5. Regulation section 3340.24, subdivision (c), provides that “[t]he bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance.”

6. Regulation section 3340.30, subdivision (a), provides that “[a] licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.”

7. Regulation section 3340.41, subdivision (c), provides that no person shall “knowingly enter into the emissions inspection system any false information about the vehicle being tested.”

8. The Bureau has established Guidelines for Disciplinary Penalties and Terms of Probation (Revised May 1997) (Guidelines) “[t]o foster uniformity of penalties and to make sure [] licensees and registrants understand the consequences of violations of the Automotive Repair Act or the Smog Check Program.” The Guidelines provide that, in determining the appropriate penalty for a violation, certain factors in aggravation should be considered, including:

- a. Prior warnings from BAR.
- b. Prior Notices of Violations.
- c. Prior Office Conference with BAR.
- d. Prior adverse Inspection Reports.
- e. Prior demonstrations of incompetence.
- f. Prior history of citations.

[¶] . . . [¶]

- r. Any other conduct which constitutes fraud or gross negligence.

9. Under Code section 44072.8, any additional license issued by the Bureau in respondent's name under Chapter 5 of the Health and Safety Code may be revoked or suspended.

10. Cause exists to suspend or revoke Advanced Emission Specialist Technician License No. EA 154906, issued to respondent. Respondent has violated Code sections 44032 and 44059 and Regulation sections 3340.24, 3340.30, subdivision (a), and 3340.41, subdivision (c), and has committed acts involving dishonesty, fraud, or deceit whereby another was injured, as set forth in Factual Findings 1-11. Cause further exists to revoke any other license issued by the Bureau in respondent's name, under Code section 44072.8.

11. Under Business and Professions Code section 125.3, complainant is entitled to recover reasonable costs of prosecution of this matter in the amount of \$3,220, as set forth in Factual Finding 12. Section 125.3, subdivision (c), allows a good faith estimate of costs to be used "where actual costs are unavailable." Although there was an estimate of additional costs to be incurred before the hearing in this matter (see Exhibit 3 and Factual Finding 12), complainant did not establish why it could not submit evidence of the actual costs incurred for that period of time. Without such evidence, an estimate is not permitted. The amount of costs to be recovered from respondent is therefore \$3,220. As reflected in the Order, below, upon a showing of financial hardship by respondent, the Bureau may allow respondent to pay costs over time or take other measures it deems appropriate. (See *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 [Bureau may not assess full costs without considering a respondent's ability to pay].)

ORDER

Advanced Emission Specialist Technician License No. EA 154906, issued to respondent Gnal Mgrdechian, is revoked. Any additional license issued by the Bureau to respondent under Chapter 5 of the Health and Safety Code is revoked. Respondent shall pay the Bureau the reasonable costs of the investigation and enforcement of this case in the amount of \$3,220; upon a showing of financial hardship by respondent, the Bureau may allow respondent to pay costs over time or take other measures it deems appropriate.

DATED: November 2, 2011



HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Special 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**

11 In the Matter of the Accusation Against:
12 **GNAL MGRDECHIAN**
13 **1020 East Acacia Avenue**
14 **Glendale, CA 91205**
15 **Advanced Emission Specialist Technician**
16 **License No. EA 154906**

Case No. 79/10-69

A C C U S A T I O N
SMOG CHECK

Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as
20 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

21 **Advanced Emission Specialist Technician License**

22 2. On a date uncertain in 2008, the Bureau issued Advanced Emission Specialist
23 Technician License Number EA 154906 ("technician license") to Gnal Mgrdechian
24 ("Respondent"). The technician license was in full force and effect at all times relevant to the
25 charges brought herein and will expire on July 31, 2011, unless renewed.

26 ///

27 ///

28 ///

1 inspection. The vehicle could not pass the visual portion of a smog inspection because the
2 vehicle's fuel evaporative charcoal canister was missing. Respondent performed the smog
3 inspection and despite informing the operator that the vehicle's fuel evaporative charcoal canister
4 was missing, he issued electronic Certificate of Compliance No. WD033712 for that vehicle. The
5 operator paid \$55 for the smog inspection and received a copy of Invoice No. 001309 and the
6 Vehicle Inspection Report ("VIR").

7 **FIRST CAUSE FOR DISCIPLINE**

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

9 9. Respondent has subjected his technician license to discipline under Health and Safety
10 Code section 44072.2, subdivision (a), in that on or about August 25, 2009, regarding the 1999
11 Suzuki Grand Vitara, he violated sections of that Code, as follows:

12 a. **Section 44032:** Respondent failed to perform tests of the emission control devices
13 and systems on that vehicle in accordance with section 44012 of that Code, in that the vehicle's
14 fuel evaporative charcoal canister was missing.

15 b. **Section 44059:** Respondent willfully made false entries for electronic Certificate of
16 Compliance No. WD033712, certifying that the vehicle was in compliance with all applicable
17 laws and regulations when, in fact, the vehicle should not have passed the visual portion of the
18 smog inspection because the vehicle's fuel evaporative charcoal canister was missing.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

21 10. Respondent has subjected his technician license to discipline under Health and Safety
22 Code section 44072.2, subdivision (c), in that on or about August 25, 2009, regarding the 1999
23 Suzuki Grand Vitara, he violated sections of the California Code of Regulations, title 16, as
24 follows:

25 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
26 electronic Certificate of Compliance No. WD033712 even though he knew the fuel evaporative
27 charcoal canister was missing from the vehicle.

1 Respondent was required to attend an 8-hour training course. Respondent complied with this
2 citation on September 20, 2008.

3 b. On October 3, 2008, the Bureau issued Citation No. M09-0307 to Respondent against
4 his technician license for violations of Health and Safety Code section 44032, (qualified
5 technicians shall perform tests of emission control systems and devices in accordance with
6 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
7 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
8 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
9 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a missing pulse
10 air injection system. Respondent was required to attend a 16-hour training course. Respondent
11 complied with this citation on February 3, 2009.

12 c. On January 2, 2009, the Bureau issued Citation No. M09-0783 to Respondent against
13 his technician license for violations of Health and Safety Code section 44032, (qualified
14 technicians shall perform tests of emission control systems and devices in accordance with
15 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
16 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
17 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
18 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a missing
19 evaporative charcoal cannister. Respondent was required to attend a 68-hour clean air car course.
20 Respondent complied with this citation on April 7, 2009.

21 OTHER MATTERS

22 13. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
23 Technician License Number EA 154906, issued to Gnal Mgrdechian, is revoked or suspended,
24 any additional license issued under this chapter in the name of said licensee may be likewise
25 revoked or suspended by the director.

26 PRAAYER

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

- 1 1. Revoking or suspending Advanced Emission Specialist Technician License Number
2 EA 154906, issued to Gnal Mgrdechian;
3 2. Revoking or suspending any additional license issued under Chapter 5 of the Health
4 and Safety Code in the name of Gnal Mgrdechian;
5 3. Ordering Gnal Mgrdechian to pay the Bureau of Automotive Repair the reasonable
6 costs of the investigation and enforcement of this case, pursuant to Business and Professions
7 Code section 125.3; and,
8 4. Taking such other and further action as deemed necessary and proper.
9

10
11 DATED: _____

4/21/10



SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant