

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 STERLING A. SMITH
Deputy Attorney General
4 State Bar No. 84287
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-0378
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. *19/15-65*

13 **DAVID LOPEZ**
2309 N. Hazel Avenue
14 Fresno, California 93722

15 **ACCUSATION**
smog check

16 **Advanced Emission Specialist (EA)**
Technician License No. EA 312569 (to be
designated upon renewal as EO 312569
and/or E1 312569)

17 Respondent.

18
19 Patrick Dorais ("Complainant") alleges:

20 **PARTIES**

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

23 2. On a date uncertain in 1997, the Bureau issued Advanced Emission Specialist
24 (EA) Technician License Number EA 312569 to David Lopez ("Respondent"). The advanced

25 ///

26 ///

27 ///

28 ///

1 emission specialist (EA) technician license was suspended on April 23, 2013, and expired on
2 October 31, 2013. If renewed, the license will be re-designated as EO 312569 and/or E1
3 312569.¹

4 JURISDICTION

5 3. Health and Safety Code section 44002 provides, in pertinent part, that the Director
6 has all the powers and authority granted under the Automotive Repair Act for enforcing the
7 Motor Vehicle Inspection Program.

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

12 5. Health and Safety Code section 44072.8 states that, "When a license has been
13 revoked or suspended following a hearing under this article, any additional license issued under
14 this chapter in the name of the licensee may be likewise revoked or suspended by the director."

15 6. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
16 "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
17 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
18 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

19 STATUTORY PROVISIONS

20 7. Health and Safety Code section 44050 provides, in pertinent part:

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

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist (EA) Technician license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (E1) license.

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

4 8. Business and Professions Code section 477 provides, in pertinent part, that "Board"
5 includes "bureau," "commission," "committee," "department," "division," "examining committee,"
6 "program," and "agency." "License" includes certificate, registration or other means to engage in
7 a business or profession regulated by the Code.

8 COST RECOVERY

9 9. Business and Professions Code section 125.3 provides, in pertinent part, that a Board
10 may request the administrative law judge to direct a licentiate found to have committed a
11 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
12 investigation and enforcement of the case.

13 FIRST CAUSE FOR DISCIPLINE

14 (Failure to Pay Administrative Fine)

15 10. Respondent is subject to discipline pursuant to Health and Safety Code
16 section 44050(e), in that on or about January 26, 2013, the Bureau issued Citation No. M2013-
17 0524 to Respondent against his advanced emissions specialist (EA) technician license for
18 violations of Health and Safety Code section 44032 (qualified technicians shall perform tests of
19 emission control systems and devices in accordance with Health and Safety Code section 44012).
20 On February 20, 2013, the Bureau personally served Respondent with the Citation, whereby the
21 Bureau assessed an administrative fine in the amount of \$500. Respondent failed to file a timely
22 appeal and the Citation was deemed final on March 22, 2013. Respondent has yet to pay the
23 administrative fine for this citation.

24 SECOND CAUSE FOR DISCIPLINE

25 (Failure to Complete Training)

26 11. Respondent is subject to discipline pursuant to Health and Safety Code
27 section 44050(a), in that on or about January 26, 2013, the Bureau issued Citation No. M2013-
28 0524 to Respondent against his advanced emissions technician (EA) specialist license for
violations of Health and Safety Code section 44032 (qualified technicians shall perform tests of

1 emission control systems and devices in accordance with Health and Safety Code section 44012).
2 On February 20, 2013, the Bureau personally served Respondent with the citation, which requires
3 Respondent to complete a twenty-eight (28) hour training course. Respondent failed to file a
4 timely appeal and the Citation was deemed final on March 22, 2013. Respondent has yet to
5 submit proof of completion of remedial training prescribed by the citation.

6 **OTHER MATTERS**

7 12. Under Health and Safety Code section 44072.8, if the Advanced Emission Specialist
8 (EA) Technician License Number EA 312569 issued to David Lopez is revoked or suspended,
9 any additional license issued under this chapter in the name of David Lopez may likewise be
10 revoked or suspended.

11 **PRAYER**

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

- 14 1. Revoking or suspending Advanced Emission Specialist (EA) Technician License
15 Number EA 312569 issued to David Lopez;
16 2. Revoking or suspending any additional license issued under Chapter 5 of the Health
17 and Safety Code in the name of David Lopez;
18 3. Ordering David Lopez, to pay the Bureau of Automotive Repair the reasonable costs
19 of the investigation and enforcement of this case, pursuant to Business and Professions Code
20 section 125.3; and,
21 4. Taking such other and further action as deemed necessary and proper.

22
23 DATED: November 4, 2014



24 PATRICK DORAIS
25 Chief
26 Bureau of Automotive Repair
27 Department of Consumer Affairs
28 State of California
Complainant

SA2014313915
Lopez Revised Acc.docx