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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. 79/15-65

DAVID LOPEZ
2309 N. Hazel Avenue
Fresno, California 93722

DEFAULT DECISION AND ORDER

Advanced Emission Specialist (EA)
Technician License No. EA 312569 (to be re-
designated upon renewal as EO 312569
and/or EI 312569)

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about November 4, 2014, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/15-65 against David Lopez (Respondent) before the Director, Department of Consumer Affairs. (Accusation attached as Exhibit A.)

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1 2. In or about 1997, the Bureau of Automotive Repair (Bureau) issued Advanced
2 Emission Specialist Technician License No. EA 312569 to Respondent. The Advanced Emission
3 Specialist Technician License expired on October 31, 2013, and has not been renewed.¹

4 3. On or about November 17, 2014, Respondent was served by Certified Mail, and also
5 United States First Class Mail, with copies of the Accusation No. 79/15-65, Statement to
6 Respondent, Notice of Defense, Request for Discovery, Discovery Statutes (Government Code
7 sections 11507.5, 11507.6, and 11507.7) and Disciplinary Guidelines at Respondent's address of
8 record which, pursuant to Business and Professions Code section 136, is required to be reported
9 and maintained with the Bureau. Respondent's address of record was and is: 2309 N. Hazel
10 Avenue, Fresno, California 93722.

11 4. 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 5. As of December 16, 2014, neither the Certified Mail nor the United States First Class
15 Mail to Respondent referred to in Paragraph 3 has been returned by the United States Postal
16 Service.

17 6. 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 7. 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 79/15-65.

26 ¹Effective 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 Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or smog Check Repair Technician (EI) license.

Exhibit A

Accusation

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**

11 In the Matter of the Accusation Against:
12 **DAVID LOPEZ**
13 2309 N. Hazel Avenue
14 Fresno, California 93722
15 **Advanced Emission Specialist (EA)**
16 **Technician License No. EA 312569 (to be**
designated upon renewal as EO 312569
and/or E1 312569)
17 Respondent.

Case No. 79/15-65

ACCUSATION
SMOG check

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 ///
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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

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

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1 KAMALA D. HARRIS
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2 KENT D. HARRIS
Supervising Deputy Attorney General
3 STERLING A. SMITH
Deputy Attorney General
4 State Bar No. 84287
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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**

11 In the Matter of the Accusation Against:

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

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

18 Respondent.

Case No. 79/15-65

STATEMENT TO RESPONDENT

[Gov. Code §§ 11504, 11505(b)]

20 **TO RESPONDENT:**

21 Enclosed is a copy of the Accusation that has been filed with the Director of Consumer
22 Affairs, Bureau of Automotive Repair (Bureau), and which is hereby served on you.

23 Unless a written request for a hearing signed by you or on your behalf is delivered or
24 mailed to the Bureau, represented by Deputy Attorney General Sterling A. Smith, within fifteen
25 (15) days after a copy of the Accusation was personally served on you or mailed to you, you will
26 be deemed to have waived your right to a hearing in this matter and the Bureau may proceed upon
27 the Accusation without a hearing and may take action thereon as provided by law.
28

1 The request for hearing may be made by delivering or mailing one of the enclosed forms
2 entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided in
3 section 11506 of the Government Code, to

4
5 **Sterling A. Smith**
6 **Deputy Attorney General**
7 **1300 I Street, Suite 125**
8 **P.O. Box 944255**
9 **Sacramento, California 94244-2550**

10 You may, but need not, be represented by counsel at any or all stages of these proceedings.

11 The enclosed Notice of Defense, if signed and filed with the Bureau, shall be deemed a
12 specific denial of all parts of the Accusation, but you will not be permitted to raise any objection
13 to the form of the Accusation unless you file a further Notice of Defense as provided in section
14 11506 of the Government Code within fifteen (15) days after service of the Accusation on you.

15 If you file any Notice of Defense within the time permitted, a hearing will be held on the
16 charges made in the Accusation.

17 The hearing may be postponed for good cause. If you have good cause, you are obliged to
18 notify the Office of Administrative Hearings, Attn: General Jurisdiction, 2349 Gateway Oaks,
19 Suite 200, Sacramento, CA 95833-4231, within ten (10) working days after you discover the
20 good cause. Failure to notify the Office of Administrative Hearings within ten (10) days will
21 deprive you of a postponement.

22 Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are enclosed.

23 If you desire the names and addresses of witnesses or an opportunity to inspect and copy
24 the items mentioned in section 11507.6 of the Government Code in the possession, custody or
25 control of the Bureau you may send a Request for Discovery to the above designated Deputy
26 Attorney General.

27 **NOTICE REGARDING STIPULATED SETTLEMENTS**

28 It may be possible to avoid the time, expense and uncertainties involved in an
administrative hearing by disposing of this matter through a stipulated settlement. A stipulated

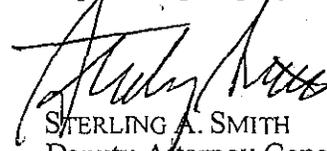
1 settlement is a binding written agreement between you and the government regarding the matters
2 charged and the discipline to be imposed. Such a stipulation would have to be approved by the
3 Director of Consumer Affairs, Bureau of Automotive Repair but, once approved, it would be
4 incorporated into a final order.

5 Any stipulation must be consistent with the Bureau's established disciplinary guidelines;
6 however, all matters in mitigation or aggravation will be considered. A copy of the Bureau's
7 Disciplinary Guidelines will be provided to you on your written request to the state agency
8 bringing this action.

9 If you are interested in pursuing this alternative to a formal administrative hearing, or if you
10 have any questions, you or your attorney should contact Deputy Attorney General Sterling A.
11 Smith at the earliest opportunity.

12 Dated: November 17, 2014

KAMALA D. HARRIS
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General


STERLING A. SMITH
Deputy Attorney General
Attorneys for Complainant

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1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 STERLING A. SMITH
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12 In the Matter of the Accusation Against:

Case No. 79/15-65

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

REQUEST FOR DISCOVERY

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

17
18 Respondent.

19
20 TO RESPONDENT:

21 Under section 11507.6 of the Government Code of the State of California, parties to an
22 administrative hearing, including the Complainant, are entitled to certain information concerning
23 the opposing party's case. A copy of the provisions of section 11507.6 of the Government Code
24 concerning such rights is included among the papers served.

25 PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU ARE
26 HEREBY REQUESTED TO:

27 1. Provide the names and addresses of witnesses to the extent known to the Respondent,
28 including, but not limited to, those intended to be called to testify at the hearing, and

1 2. Provide an opportunity for the Complainant to inspect and make a copy of any of the
2 following in the possession or custody or under control of the Respondent:

3 a. A statement of a person, other than the Respondent, named in the
4 initial administrative pleading, or in any additional pleading, when it is claimed that
5 the act or omission of the Respondent as to this person is the basis for the
6 administrative proceeding;

7 b. A statement pertaining to the subject matter of the proceeding made
8 by any party to another party or persons;

9 c. Statements of witnesses then proposed to be called by the
10 Respondent and of other persons having personal knowledge of the acts, omissions or
11 events which are the basis for the proceeding, not included in (a) or (b) above;

12 d. All writings, including but not limited to reports of mental, physical
13 and blood examinations and things which the Respondent now proposes to offer in
14 evidence;

15 e. Any other writing or thing which is relevant and which would be
16 admissible in evidence, including but not limited to, any patient or hospital records
17 pertaining to the persons named in the pleading;

18 f. Investigative reports made by or on behalf of the Respondent
19 pertaining to the subject matter of the proceeding, to the extent that these reports (1)
20 contain the names and addresses of witnesses or of persons having personal
21 knowledge of the acts, omissions or events which are the basis for the proceeding, or
22 (2) reflect matters perceived by the investigator in the course of his or her
23 investigation, or (3) contain or include by attachment any statement or writing
24 described in (a) to (e), inclusive, or summary thereof.

25 For the purpose of this Request for Discovery, "statements" include written statements by
26 the person, signed, or otherwise authenticated by him or her, stenographic, mechanical, electrical
27 or other recordings, or transcripts thereof, of oral statements by the person, and written reports or
28 summaries of these oral statements.

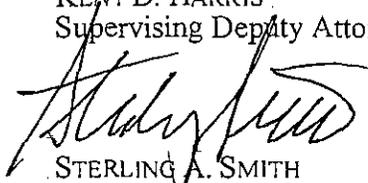
1 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for Discovery
2 should be deemed to authorize the inspection or copying of any writing or thing which is
3 privileged from disclosure by law or otherwise made confidential or protected as attorney's work
4 product.

5 Your response to this Request for Discovery should be directed to the undersigned attorney
6 for the Complainant at the address on the first page of this Request for Discovery within 30 days
7 after service of the Accusation.

8 Failure without substantial justification to comply with this Request for Discovery may
9 subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30 of the
10 Government Code.

11 Dated: November 17, 2014

KAMALA D. HARRIS
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General



STERLING A. SMITH
Deputy Attorney General
Attorneys for Complainant

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