

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

In the Matter of the Accusation and Petition to  
Revoke Probation Against:

**SERGIO GUEVARA**  
16745 D Street  
Victorville, CA 92395

Advanced Emission Specialist Technician  
License No. EA 315102

Respondent.

Case No. 79/11-12

OAH No. 2011020069

In the Matter of the Statement of Issues Against:

**SERGIO GUEVARA**  
16745 D Street  
Victorville, CA 92395

Respondent.

Case No. 79/05-57S

OAH No. 2011020545

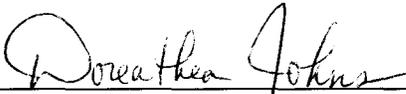
**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517(c)(2)(C), the typographical error on page 4, Legal Conclusions, paragraph 5, second line, of the Proposed Decision is corrected as follows:

Section 9989.2 is corrected to read "Section 9889.2."

This Decision shall become effective 11/28/11.

DATED: October 21, 2011

  
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DOREATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

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**PROPOSED DECISION**

This matter regularly came before Amy C. Lahr, Administrative Law Judge, Office of Administrative Hearings, in Norwalk, California, on September 22, 2011.

Shawn Cook, Deputy Attorney General, represented Sherry Mehl (Complainant), Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, State of California.

Sergio Guevara (Respondent) represented himself.

Complainant seeks to discipline Respondent's smog check technician license and revoke his probation for alleged violation of the vehicle inspection program. Complaint also seeks to deny Respondent's application for a brake and lamp adjuster license on the same grounds. Respondent admitted the allegations, and presented mitigation evidence in support of continued licensure and to grant his application.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

### FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity.

#### *Procedural History*

2. Respondent held three department licenses, as follows. In October 2001, the Director of Consumer Affairs issued Advanced Specialist Technician License No. EA 315102 to Respondent. In November 2002, the Director of Consumer Affairs issued Automotive Repair Dealer Registration Number AK 224372 to Respondent. In January 2003, the Director of Consumer Affairs issued Smog Check Station License Number RK 224372 to Respondent.

3. In 2006, the Bureau revoked all of Respondent's licenses for "clean piping," which entailed entering information about a car allegedly being tested into the computer-based smog testing system, and then sampling and testing the exhaust emitted from a different vehicle. (See ALJ Humberto Flores' Proposed Decision, effective April 3, 2006, OAH No. L2005060067.)

4. In 2008, the Bureau granted Respondent's application for an Advanced Emission Specialist Technician, revoked the license, and placed it on probation for two years. (See ALJ Vallera J. Johnson's Proposed Decision, effective September 8, 2008, OAH No. 2008040182.) The probation terms included compliance with all statutes, regulations and rules governing inspections. The license expired on September 30, 2011, unless it was renewed.

5. On December 1, 2009, Respondent applied for a Brake Adjuster or Lamp Adjuster license. The Bureau denied his application on December 17, 2009. Respondent timely appealed, and this hearing followed.

#### *Undercover Vehicle Inspections*

6. a. On March 9, 2010, a Bureau undercover operator drove a Bureau documented 1996 Chevrolet Corsica to Smog Depot, located at 16745 D. Street, Victorville, California, where Respondent is employed as a smog technician. Respondent performed a smog inspection and issued a compliance certificate to the vehicle which certified that it complied with all laws and regulations. Prior to the inspection, the Bureau removed the fuel evaporative canister (EVAP). Thus, the vehicle should not have passed the visual portion of the smog inspection because the EVAP canister was missing.

b. There was no evidence that Respondent's conduct was due to dishonesty, fraud or deceit.

7. The day prior to the uncover inspection, March 8, 2010, Respondent met with Bureau representatives for a probation conference. Respondent assured the Bureau representatives that he was complying with his probations terms, and stated that he inspects every car vehicle if it were an undercover Bureau car.

8. Several days later, on March 11, 2010, the Bureau conducted a second undercover operation. Respondent inspected a 1997 Pontiac Firebird which was missing its Positive Crankcase Ventilation (PCV) valve and vent hose. Respondent discovered the missing PCV valve and properly failed the vehicle.

9. The Bureau presented the testimony of five representatives. All unanimously agreed that Respondent should have observed that the EVAP canister was missing from the Chevy Corsica upon a proper visual inspection. The vehicles under-hood map directs a technician to the exact location of the part in question, which was located underneath the coolant reservoir. The missing component left a six-inch hole in the engine, which was visible to the naked eye, and could have been discoverable by feeling underneath the coolant reservoir. If Respondent could not locate the part, he could have chosen not to perform the inspection, a practice that the Bureau consistently recommends to technicians who have difficulty with an inspection. The testimony of the Bureau representatives was not controverted and is deemed credible.

#### *Evidence Presented in Mitigation*

10. Respondent testified at the hearing. He has been a technician for 25 years. He and his family suffered greatly when his licenses were previously revoked. Respondent acknowledged saying that he inspected every car as though it were a Bureau car. He explained that the shop is very busy, especially on the day in question, and he simply did not see the removed part. He made a mistake. He apologized and stated that he will accept the appropriate consequences. Respondent maintained that he is capable of doing inspections.

11. On cross examination, Respondent acknowledged that he works on a commission basis, thus, the more cars he inspects, the more money he earns.<sup>1</sup> Respondent would like to receive his brake and lamp adjuster license, and ultimately open his own shop.

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<sup>1</sup> During cross examination, Respondent denied being arrested for "clean piping." Counsel for the Bureau requested that a finding against Respondent's credibility be made because of this denial. The evidence did not establish that Respondent had been arrested, and thus, no negative credibility findings will be made against Respondent. The Bureau did not conclusively establish that Respondent had suffered an arrest.

*Enforcement Costs*

12. The Bureau incurred investigation and prosecution costs in this matter in the amount of \$5,274.94. These costs are deemed to be reasonable. Respondent did not present any evidence regarding his ability to pay costs.

**LEGAL CONCLUSIONS**

1. Cause exists to suspend or revoke Advanced Emission Specialist Technician License Number EA 315102, issued to Respondent Sergio Guevara, pursuant to Health and Safety Code section 44072.2, subdivision (a), for violating sections 44012, 44032 and 44059 based on his failure to perform a proper inspection, as set forth in Factual Finding 6.

2. Cause exists to suspend or revoke Advanced Emission Specialist Technician License Number EA 315102, issued to Respondent Sergio Guevara, pursuant to Health and Safety Code section 44072.2, subdivision (c), for violating California Code of Regulations, title 16, sections 3340.24, subdivision (c) and 3340.30, subdivision (a), based on his failure to perform a proper inspection and his subsequent issuance of a compliance certificate, as set forth in Factual Finding 6.

3. Cause does not exist to suspend or revoke Advanced Emission Specialist Technician License Number EA 315102, issued to Respondent Sergio Guevara, pursuant to Health and Safety Code section 44072.2, subdivision (d), for committing acts involving dishonesty, fraud or deceit based on his failure to perform a proper inspection and his subsequent issuance of a compliance certificate, as set forth in Factual Finding 6.

4. Grounds exist to revoke the probation and re-impose the order of revocation of Respondent's Advanced Emission Specialist Technician License Number EA 102315, as required by Term A of his probation terms, for failing to comply with all statutes, regulations and rules governing inspections, as set forth in Factual Findings 4 and 6.

5. Cause exists to deny Respondent's application for a brake and lamp adjuster license, pursuant to Business and Professions Code section 9989.2, subdivision (b), in that Respondent previously held an automotive repair dealer license which was revoked, as set forth in Factual Findings 2 and 3.

6. Cause exists to deny Respondent's application for a brake and lamp adjuster license, pursuant to Business and Professions Code section 9889.2, subdivision (c), in that Respondent committed acts which if committed by any licensee would be grounds for suspension or revocation of a license, as set forth in Factual Finding 6.

7. Cause does not exist to deny Respondent's application for a brake and lamp adjuster license, pursuant to Business and Professions Code section 9889.2, subdivision (d), for committing acts involving dishonesty, fraud or deceit based on his failure to perform a proper inspection and his subsequent issuance of a compliance certificate, as set forth in Factual Finding 6.

8. All evidence offered in mitigation and rehabilitation has been considered. Respondent failed to observe an obvious missing component during an inspection, and thereafter certified that the vehicle met state standards, which are very serious violations. Respondent had previously had his licenses revoked for clean piping, also a serious offense. The current violations occurred during his probationary period, the day following a probation conference with the Bureau, during which he assured them that he was carefully conducting inspections. Respondent's fee-sharing arrangement, based on a commission of the number of inspections he performs, incentivizes him to rush, and he did not convincingly demonstrate that his conduct will not recur. Accordingly, the Order that follows is necessary for the protection of the public.

9. Cause exists pursuant to Business and Professions Code section 125.3, to order Respondent to reimburse the Board for its reasonable costs of investigation and prosecution, as set forth in factual finding number 12 and legal conclusion numbers 1 through 7.

*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, directs the administrative law judge and the agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Thus, the Board must not assess the full costs where it would unfairly penalize the respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The Board must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge. The Board must also consider the respondent's ability to pay.

10. In this case, the actual costs of investigation and enforcement of this matter are \$5,274.94, as set forth in factual finding number 12. The Accusation's third cause for discipline, and the Statement of Issue's third cause for denial (dishonesty, fraud or deceit) were not upheld, and Respondent obtained the dismissal of these charges. Thus, although the Board is entitled to reasonable costs of investigation and enforcement, the sum is reduced by one-third, to \$3,570.21.

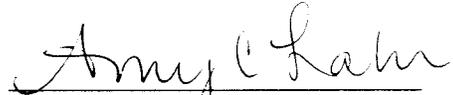
## **ORDER**

1. Advanced Emissions Specialist Technician License Number EA 315102, issued to Respondent Sergio Guevara, is revoked

2. Respondent Sergio Guevara's application for a Brake Adjuster or Lamp Adjuster license is denied.

3. Respondent Sergio Guevara is ordered to pay the Director of Consumer Affairs the costs of investigation and prosecution totaling \$3,570.21.

Dated: October 7, 2011



AMY C. LAHR  
Administrative Law Judge  
Office of Administrative Hearings

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*Attorneys for Complainant*

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8 **BEFORE THE**  
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9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
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13 **16745 D. Street**  
14 **Victorville, CA 92395**  
**Advanced Emission Specialist Technician**  
15 **License No. EA 315102**

16 Respondent.

79/11-12

Case No.

**ACCUSATION AND PETITION TO  
REVOKE PROBATION**

**SMOG CHECK**

17 Complainant alleges:

18 **PARTIES**

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

22 **Advanced Emission Specialist Technician License**

23 2. On a date uncertain in 2001, the Bureau issued Advanced Emission Specialist  
24 Technician License Number EA 315102 ("technician license") to Sergio Guevara  
25 ("Respondent"). The technician license was revoked from April 3, 2006, to September 8, 2009.  
26 The technician license was in full force and effect at all times relevant to the charges brought  
27 herein and will expire on September 30, 2011, unless renewed.  
28

1 **PRIOR DISCIPLINARY ACTION**

2 3. Pursuant to the Decision in Accusation Number 79/05-57, attached hereto as Exhibit  
3 "A" and incorporated herein by reference, effective April 3, 2006, the Director of Consumer  
4 Affairs ("Director") revoked Respondent's Automotive Repair Dealer Registration No. ARD  
5 224372 (formerly No. AK 224372), Smog Check Station License No. RC 224372 (formerly RK  
6 224372), and Respondent's Advanced Emission Specialist Technician License No. EA 315102.

7 4. Effective September 8, 2008, pursuant to the Decision in Statement of Issues Number  
8 79/05-57S, Respondent's Application for an Advanced Emission Specialist Technician License  
9 was granted. The license was issued and immediately revoked; however, the revocation was  
10 stayed, and Respondent was placed on probation for two (2) years with terms, including Term A,  
11 set forth as follows:

12 Term A - Obey all Laws: Respondent shall comply with all statutes, regulations, and rules  
13 governing automotive inspections, estimates, and repairs.

14 **STATUTORY PROVISIONS**

15 5. Section 44002 of the Health and Safety Code provides, in pertinent part, that the  
16 Director has all the powers and authority granted under the Automotive Repair Act for enforcing  
17 the Motor Vehicle Inspection Program.

18 6. Section 44072.2 of the Health and Safety Code states, in pertinent part:

19 The director may suspend, revoke, or take other disciplinary action  
20 against a license as provided in this article if the licensee, or any partner, officer, or  
director thereof, does any of the following:

21 (a) Violates any section of this chapter [the Motor Vehicle Inspection  
22 Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted  
pursuant to it, which related to the licensed activities.

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

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

26 7. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
27 expiration or suspension of a license by operation of law, or by order or decision of the Director  
28

1 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive  
2 the Director of jurisdiction to proceed with disciplinary action.

3 8. Section 44072.8 of the Health and Safety Code states:

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

7 9. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau,"  
8 "commission," "committee," "department," "division," "examining committee," "program," and  
9 "agency." "License" includes certificate, registration or other means to engage in a business or  
10 profession regulated by the Code.

### 11 COST RECOVERY

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

### 16 ACCUSATION

#### 17 UNDERCOVER OPERATION – MARCH 9, 2010

18 11. On March 9, 2010, a Bureau undercover operator ("operator") drove a Bureau  
19 documented 1996 Chevrolet Corsica to Smog Depot, located at 16745 D. Street, Victorville,  
20 California, where Respondent was employed as a smog technician. Respondent performed a  
21 smog inspection and issued electronic Certificate of Compliance Number WH663937 to the 1996  
22 Chevrolet Corsica, certifying that the vehicle was in compliance with all laws and regulations;  
23 however, the vehicle should not have passed the visual portion of the smog inspection because the  
24 fuel evaporative canister (EVAP) was missing.

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28 ///

1 FIRST CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 12. Respondent has subjected his technician license to discipline under Health and Safety  
4 Code section 44072.2, subdivision (a), in that regarding the 1996 Chevrolet Corsica, he violated  
5 sections of that Code, as follows:

6 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission  
7 control devices and systems required by law were installed and functioning correctly in  
8 accordance with test procedures.

9 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests  
10 on that vehicle in accordance with procedures prescribed by the department.

11 c. **Section 44032:** Respondent failed to perform tests of the emission control devices  
12 and systems on that vehicle in accordance with section 44012 of that Code, in that the vehicle's  
13 EVAP system was missing.

14 d. **Section 44059:** Respondent entered false information for electronic Certificate of  
15 Compliance No. WH663937, certifying that the vehicle had been inspected as required when, in  
16 fact, it had not.

17 SECOND CAUSE FOR DISCIPLINE

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

19 13. Respondent has subjected his technician license to discipline under Health and Safety  
20 Code section 44072.2, subdivision (c), in that regarding the 1996 Chevrolet Corsica, he violated  
21 sections of the California Code of Regulations, title 16, as follows:

22 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
23 electronic Certificate of Compliance Number WH663937 without performing a bona fide  
24 inspection of the emission control devices and systems on that vehicle as required by Health and  
25 Safety Code section 44012.

26 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test that vehicle  
27 in accordance with Health and Safety Code section 44012.

28 ///

1 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the  
2 Emission Inspection System for electronic Certificate of Compliance Number WH663937 by  
3 entering "Pass" for the fuel evaporative controls even though the EVAP system was missing from  
4 this vehicle.

5 d. **Section 3340.42:** Respondent failed to conduct the required smog tests and  
6 inspections on that vehicle in accordance with the Bureau's specifications.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Dishonesty, Fraud or Deceit)**

9 14. Respondent has subjected his technician license to disciplinary action pursuant to  
10 Health and Safety Code section 44072.2, subdivision (d), in that he committed acts involving  
11 dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of  
12 Compliance No. WH663937 for the 1996 Chevrolet Corsica without performing a bona fide  
13 inspection of the emission control devices and systems on that vehicle, thereby depriving the  
14 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
15 Program.

16 **PETITION TO REVOKE PROBATION**

17 15. The allegations of paragraphs 1 through 14 of the accusation above are incorporated  
18 herein by reference as though fully set forth and are realleged.

19 16. Grounds exist to revoke the probation and reimpose the order of revocation of  
20 Respondent's Advanced Emission Specialist Technician License Number EA 315102, in that  
21 Respondent failed to comply with all statutes, regulations, and rules governing estimates and  
22 inspections as required by Term A of the terms of the probation under Decision and Order No.  
23 79/05-57S, as set forth in paragraphs 11 through 14 of the accusation above.

24 **OTHER MATTERS**

25 17. Under section 44072.8 of the Health and Safety Code, if Advanced Emission  
26 Specialist Technician License Number EA 315102, is revoked or suspended, any additional  
27 license issued under this chapter in the name of said licensee may be likewise revoked or  
28 suspended by the director.

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. Vacating the stay and reimposing the order of revocation of Advanced Emission Specialist Technician License Number EA 315102, issued to Sergio Guevara;

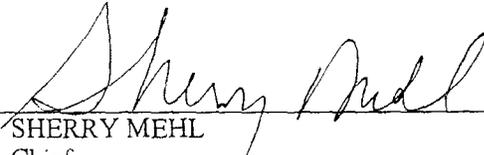
2. Revoking or suspending any other license issued under this chapter in the name of Sergio Guevara;

3. Ordering Sergio Guevara 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; and,

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

DATED:

8/23/10



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

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