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

10
11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against:

13 **SERGIO GUEVARA**
16745 D. Street
14 Victorville, CA 92395
Advanced Emission Specialist Technician
License No. EA 315102

15
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 The technician license was revoked from April 3, 2006, to September 8, 2009.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.
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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
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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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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.

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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;

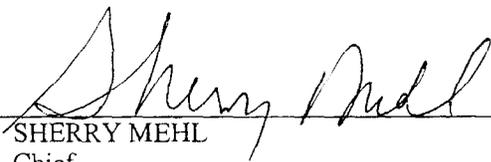
2. Revoking or suspending any other license issued under this chapter in the name of Sergio Guevara;

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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