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7  
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. 79/15-128

13 **JAY MORTA ATALIT, SR.**  
14 **47 Saint James Court**  
15 **Daly City, CA 94015**

**ACCUSATION**

16 **Advanced Emission Specialist License No.**  
17 **EA 33429**

(SMOG CHECK)

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

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

23 2. In 2006, the Bureau of Automotive Repair issued Advanced Emission Specialist  
24 Technician License (Technician License) Number EA 33429 to Jay Morta Atalit. Sr.  
25 (Respondent). Respondent Atalit's Technician License was in full force and effect at all times  
26 relevant to the charges brought herein. Respondent Atalit's Technician License was suspended  
27 on June 18, 2012. The Advanced Emission Specialist Technician License expired on October 31,  
28

1 2013, and has not been renewed. Upon timely renewal of the license, the license will be  
2 redesignated as EO 33429 and/or EI 33429.<sup>1</sup>

3 **JURISDICTION**

4 3. This Accusation is brought before the Director of Consumer Affairs (Director) for the  
5 Bureau of Automotive Repair, under the authority of the following laws.

6 4. Section 118, subdivision (b), of the Business and Professions Code provides that the  
7 suspension, expiration, surrender or cancellation of a license shall not deprive the Director of  
8 jurisdiction to proceed with a disciplinary action during the period within which the license may  
9 be renewed, restored, reissued or reinstated.

10 5. Section 477 of the Business and Professions Code provides, in pertinent part, that  
11 "Board" includes "bureau," "commission," "committee," "department," "division," "examining  
12 committee," "program," and "agency." "License" includes certificate, registration or other means  
13 to engage in a business or profession regulated by the code.

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

17 **STATUTORY PROVISIONS**

18 7. Section 44045.6, subdivision (c), of the Health and Safety Code states:

19 “(c) The department may require remedial training at a certified training facility or may  
20 take disciplinary action, whichever the department determines to be the most appropriate, for any  
21 licensed technician who the department determines cannot perform inspections, testing, or repairs  
22 as required under the program. The failure to complete the remedial training when required by the  
23 department shall be a ground for revocation or suspension of a smog check technician's license  
24 under Section 44072.2.”

25 //

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

1 8. Section 44050 of the Health and Safety Code states, in pertinent part:

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

7 . . . .

8 (c) An order of abatement issued pursuant to this section shall fix a  
9 reasonable time for abatement of the violation. An order of abatement may require  
10 any or all of the following:

11 . . . .

12 (2) The smog check technician to successfully complete one or more  
13 retraining courses prescribed by the department pursuant to subdivision (c) of  
14 Section 44031.5, or successfully complete one or more advanced retraining  
15 courses prescribed by the department, or both.

16 . . . .

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

20 . . . .

21 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

28 . . . .

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

10. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
expiration or suspension of a license by operation of law, or by order or decision of the Director  
of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive  
the Director of jurisdiction to proceed with any investigation of, or action or disciplinary  
proceedings against the licensee, or to render a decision suspending or revoking the license.

1 11. Section 44072.8 of the Health and Safety Code states:

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

5 **REGULATORY PROVISIONS**

6 12. California Code of Regulations, title 16, section 3340.24, states, in pertinent part:

7 (a) Any disciplinary or reinstatement proceeding under this article involving  
8 licensed stations, licensed technicians, or fleet owners licensed pursuant to section  
9 44020 of the Health and Safety Code shall be conducted in accordance with  
chapter 5 (commencing with section 11500) of division 3, Title 2 of the  
Government Code.

10 . . . .

11 (d) The bureau may suspend or revoke the license of or pursue other legal  
12 action against a licensee that fails to complete retraining when required by the  
department, pursuant to section 44045.6 of the Health and Safety Code.

13 **COST RECOVERY**

14 13. Section 125.3 of the Business and Professions Code provides, in pertinent part, that  
15 the Board may request the administrative law judge to direct a licentiate found to have committed  
16 a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the  
17 investigation and enforcement of the case, with failure of the licentiate to comply subjecting the  
18 license to not being renewed or reinstated. If a case settles, recovery of investigation and  
19 enforcement costs may be included in a stipulated settlement.

20 **CAUSE FOR DISCIPLINE**

21 **(Failure to Complete Training)**

22 14. Respondent has subjected his technician license to discipline pursuant to Health and  
23 Safety Code Section 44045.6, subdivision (c) and 44050, subdivision (e), in that on or about May  
24 4, 2012, the Bureau issued Citation No. M2012-1485 to Respondent against his Technician  
25 License for violations of Health and Safety Code Section 44032 (qualified technicians shall  
26 perform tests of emission control systems and devices in accordance with section 44012 of that  
27 Code). On May 14, 2012, the Bureau served Respondent with the Citation. The Bureau required  
28 that Respondent complete an 8-hour training course. Respondent did not appeal the Citation

1 within thirty (30) days of service of the citation nor has Respondent completed the required  
2 training.

3 **OTHER MATTERS**

4 15. Under Health and Safety Code Section 44072.8, if Respondent Jay Morta Atalit's  
5 Technician License currently designated as EA 33429 (to be redesignated upon timely renewal as  
6 EO 33429 and/or EI 33429), is revoked or suspended, any additional license issued under this  
7 Chapter in the name of Respondent may also be revoked or suspended by the Director.

8 **PRAYER**

9 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,  
10 and that following the hearing, the Director of Consumer Affairs issue a Decision:

- 11 1. Revoking or suspending Respondent Jay Morta Atalit, Sr's., Technician License  
12 currently designated as EA 33429 (to be redesignated upon timely renewal as EO 33429 and/or EI  
13 33429);
  - 14 2. Revoking or suspending any additional license issued under Chapter 5, of the Health  
15 and Safety Code to Respondent Jay Morta Atalit, Sr.;
  - 16 3. Ordering Respondent Jay Morta Atalit, Sr., to pay the Bureau of Automotive Repair  
17 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
18 Professions Code section 125.3;
  - 19 4. Taking such other and further action as deemed necessary and proper.
- 20

21 DATED: June 10, 2015

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

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