

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 GREGORY TUSS  
Deputy Attorney General  
4 State Bar Number 200659  
1515 Clay Street, 20th Floor  
5 Post Office Box 70550  
Oakland, California 94612-0550  
6 Telephone: (510) 622-2143  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:  
12 **WEI SUN SAMMY SY**  
13 **4241 Tanbark Street**  
14 **San Jose, California 95129**  
15 **Advanced Emission Specialist Technician**  
**License Number EA 035033,**  
16 Respondent.

Case Number *79/15-76*  
**ACCUSATION**

17  
18  
19 Complainant Patrick Dorais alleges:

20 **PARTIES**

- 21 1. Complainant brings this accusation solely in his official capacity as the Chief of  
22 the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.
- 23 2. In 1998, the Bureau issued Advanced Emission Specialist Technician License  
24 Number EA 35033 to respondent Wei Sun Sammy Sy. This advanced emission specialist  
25 technician license was suspended on October 16, 2012. It expired on February 28, 2013, and has  
26 not been renewed. If it is renewed, it will be redesignated as Smog Check Inspector (EO)License  
27 Number EO 35033 and/or Smog Check Repair Technician (EI) License Number EI 35033. (See  
28 Cal. Code. Regs., tit. 16, §§ 3340.28-3340.30.)

1 JURISDICTION

2 3. This accusation is brought before the Director of Consumer Affairs (Director) for  
3 the Bureau under the authority of the following laws.

4 4. Business and Professions Code section 118, subdivision (b), states:

5 "The suspension, expiration, or forfeiture by operation of law of a license issued by a  
6 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by  
7 order of a court of law, or its surrender without the written consent of the board, shall not, during  
8 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its  
9 authority to institute or continue a disciplinary proceeding against the licensee upon any ground  
10 provided by law or to enter an order suspending or revoking the license or otherwise taking  
11 disciplinary action against the licensee on any such ground."

12 5. Business and Professions Code section 9882, subdivision (a), states in part:

13 "There is in the Department of Consumer Affairs a Bureau of Automotive Repair under  
14 the supervision and control of the director. The duty of enforcing and administering this chapter  
15 is vested in the chief who is responsible to the director. The director may adopt and enforce those  
16 rules and regulations that he or she determines are reasonably necessary to carry out the purposes  
17 of this chapter and declaring the policy of the bureau, including a system for the issuance of  
18 citations for violations of this chapter as specified in Section 125.9."

19 6. Business and Professions Code section 9884.13 states:

20 "The expiration of a valid registration shall not deprive the director or chief of jurisdiction  
21 to proceed with any investigation or disciplinary proceeding against an automotive repair dealer  
22 or to render a decision invalidating a registration temporarily or permanently."

23 7. Business and Professions Code section 9884.22, subdivision (a), states:

24 "Notwithstanding any other provision of law, the director may revoke, suspend, or deny at  
25 any time any registration required by this article on any of the grounds for disciplinary action  
26 provided in this article. The proceedings under this article shall be conducted in accordance with  
27 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
28 Code, and the director shall have all the powers granted therein."

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

8. Business and Professions Code section 9889.1 states:

“Any license issued pursuant to Articles 5 and 6, may be suspended or revoked by the director. The director may refuse to issue a license to any applicant for the reasons set forth in Section 9889.2. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.”

9. Health and Safety Code section 44072 states:

“Any license issued under this chapter and the regulations adopted pursuant to it may be suspended or revoked by the director. The director may refuse to issue a license to any applicant for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.”

10. Health and Safety Code section 44072.6 states:

“The expiration or suspension of a license by operation of law or by order or decision of the director or a court of law, or the voluntary surrender of a license by a licensee 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.”

**STATUTORY AND REGULATORY PROVISIONS**

11. Health and Safety Code section 44012 states in part:

“The test at the smog check stations shall be performed in accordance with procedures prescribed by the department . . . . The department shall ensure, as appropriate to the test method, the following:

. . .

“(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.”

///

1           12.     Health and Safety Code section 44032 states:

2            “No person shall perform, for compensation, tests or repairs of emission control devices or  
3 systems of motor vehicles required by this chapter unless the person performing the test or repair  
4 is a qualified smog check technician and the test or repair is performed at a licensed smog check  
5 station. Qualified technicians shall perform tests of emission control devices and systems in  
6 accordance with Section 44012.”

7           13.     Health and Safety Code section 44045.6, subdivision (c), states:

8            “The department may require remedial training at a certified training facility or may take  
9 disciplinary action, whichever the department determines to be the most appropriate, for any  
10 licensed technician who the department determines cannot perform inspections, testing, or repairs  
11 as required under the program. The failure to complete the remedial training when required by  
12 the department shall be a ground for revocation or suspension of a smog check technician’s  
13 license under Section 44072.2.”

14          14.     Health and Safety Code section 44050, subdivision (a), states in part:

15          “In addition to or in lieu of any other remedy or penalty, including, but not limited to,  
16 education, training, or an office conference, the department may issue a citation to a licensee,  
17 contractor, or fleet owner for a violation of the requirements of this chapter or a regulation  
18 adopted pursuant to this chapter.”

19          15.     Health and Safety Code section 44072.2 states in part:

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

23           “(a) Violates any section of this chapter and the regulations adopted pursuant to it, which  
24 related to the licensed activities.”

25          16.     California Code of Regulations, title 16, section 3340.24, subdivision (d), states:

26          “The bureau may suspend or revoke the license of or pursue other legal action against a  
27 licensee that fails to complete retraining when required by the department, pursuant to section  
28 44045.6 of the Health and Safety Code.”

1 17. California Code of Regulations, title 16, section 3394.25 states:

2 "The director or his/her designee is authorized to determine when and against whom a  
3 citation will be issued and to issue citations containing orders of abatement and/or administrative  
4 fines for violations by a licensee or contractor of Health and Safety Code section 44000 et seq.  
5 and any regulations adopted pursuant thereto."

6 **COST RECOVERY**

7 18. Section 125.3, subdivision (a), states in part:

8 "Except as otherwise provided by law, in any order issued in resolution of a disciplinary  
9 proceeding before any board within the department or before the Osteopathic Medical Board  
10 upon request of the entity bringing the proceedings, the administrative law judge may direct a  
11 licentiate found to have committed a violation or violations of the licensing act to pay a sum not  
12 to exceed the reasonable costs of the investigation and enforcement of the case."

13 **FACTUAL BACKGROUND**

14 19. On May 3, 2012, respondent performed a smog check inspection on, and issued a  
15 certificate of compliance to, a Bureau undercover vehicle with a missing secondary air injection  
16 reactor system.

17 20. On June 1, 2012, the Bureau issued Citation Number M2012-1688 to respondent  
18 for violating Health and Safety Code section 44032. The Bureau ordered respondent to complete  
19 a 16-hour training course and to submit proof of completion of this training course to the Bureau  
20 within 30 days of receipt of the citation.

21 21. Respondent attended a citation conference with the Bureau on June 12, 2012. At  
22 the conference, the Bureau informed respondent that the conference was not a citation appeal  
23 hearing; if respondent wanted to appeal the citation, he had to make a written request within 30  
24 days. Respondent also signed and received a citation conference summary report which  
25 contained the following:

26 "A request for a hearing shall be submitted in writing within thirty (30) days from service  
27 of the citation, and shall be delivered to the office of the Bureau of Automotive Repair in  
28 Sacramento. . . . As per Section 44053(b), "If, within thirty (30) days from service of the citation,

1 the licensee or qualified mechanic fails to request a hearing, the citation shall be deemed the final  
2 order of the department.[<sup>1</sup>] The payment of the assessed civil penalty or proof of completion of  
3 the required training shall be submitted to the Bureau of Automotive Repair in Sacramento within  
4 30 days from receipt of this citation.”

5 22. To date, the Bureau has not received the proof of completion of the required  
6 training or a request for hearing of the citation.

7 **CAUSE FOR DISCIPLINE**

8 **Failure to Complete Training**

9 **Health and Safety Code sections 44045.6, subdivision (c), and 44072, subdivision (a); and  
California Code of Regulations, title 16, section 3340.24, subd. (d)**

10 23. The allegations of paragraphs 19-22 are realleged and incorporated by reference as  
11 if fully set forth.

12 24. Respondent has subjected his advanced emission specialist technician license, or,  
13 if renewed, his smog check inspector (EO) and/or smog check repair technician (EI) license, to  
14 discipline for failing to complete the training imposed by Citation Number M2012-1688 (Health  
15 & Saf. Code, §§ 44045.6, subd. (c), 44072.2, subd. (a); Cal. Code Regs., tit. 16, § 3340.24, subd.  
16 (d)). Citation Number M2012-1688 ordered respondent to complete a 16-hour training course  
17 and to submit proof of completion to the Bureau within 30 days of receipt of the citation. To  
18 date, the Bureau has not received the proof of completion of the required training or a request for  
19 hearing of the citation.

20 **OTHER MATTERS**

21 25. Health and Safety Code section 44072.8 states:

22 “When a license has been revoked or suspended following a hearing under this article, any  
23 additional license issued under this chapter in the name of the licensee may be likewise revoked  
24 or suspended by the director.”

25 ///

26  
27  
28 <sup>1</sup> This section was repealed effective January 1, 2011.

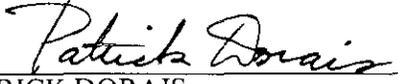
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PRAYER**

WHEREFORE, complainant requests that a hearing be held on the matters alleged in this accusation, and that following the hearing, the Director of Consumer Affairs issues a decision:

1. Revoking or suspending Advanced Emission Specialist Technician License Number EA 35033 or, if renewed, Smog Check Inspector (EO) License Number EO 35033 and/or Smog Check Repair Technician (EI) License Number EI 35033 issued to respondent Wei Sun Sammy Sy;
2. Ordering respondent Wei Sun Sammy Sy to pay the Bureau of Automotive Repair under Business and Professions Code section 125.3 the reasonable costs of the investigation and enforcement of this case, and;
3. Taking such other and further action as deemed necessary and proper.

DATED: November 21, 2014

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

SF2014409803  
90451385.doc