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: **JASWINDER SINGH NAGRA** Roseville, California 95747 Advanced Emission Specialist Technician License No. EA 36716 Respondent.	Case No. 79/11-85 OAH No. 2011060296

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.

This Decision shall become effective 3/26/12.

DATED: February 16, 2012

Doreathea Johnson
DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

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PROPOSED DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings, State of California, on January 3, 2012, in Sacramento California.

Patrick M. Kenady, Deputy Attorney General, represented complainant, Sherry Mehl, Chief of the Bureau of Automotive Repair (bureau), Department of Consumer Affairs (department).

R. Robert Monterrosa, Attorney at Law, represented respondent, Jaswinder Singh Nagra, who was present throughout the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on January 3, 2012.

FACTUAL FINDINGS

1. On March 1, 2010, the bureau issued Advanced Emission Specialist Technician License No. EA 36716 to respondent. Respondent's license was immediately revoked, the revocation was stayed, and respondent's license was placed on two years probation, subject to the following terms and conditions: (1) comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs; (2) report in person or in writing as prescribed by the bureau, on a schedule set by the bureau, but no more

frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation; (3) within 30 days of the effective date of this action, report any financial interest respondent may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code; (4) provide bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repair, up to and including the point of completions and vehicle repair records; (5) if an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision; and (6) should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department of Consumer Affairs may, after giving proper notice and opportunity to be heard, temporarily or permanently revoke respondent's license. Respondent's probation is scheduled to end on May 19, 2012. Respondent's probationary license will expire on August 31, 2012, unless renewed.

2. In a Probation Conference held on June 14, 2010, Mark Eddy, Program Representative II, and Tim Corcoran, Program Representative III, reviewed with respondent the terms and conditions of respondent's probation, and notified respondent that "the Bureau may audit repair records and/or send an undercover vehicle to confirm compliance with the Automotive Repair Act." The bureau's representatives also notified respondent that "failure to comply with the Automotive Repair Act and other applicable laws and regulations may result in disciplinary action which could jeopardize his Smog check Technician license." Respondent signed the Probation Conference report and identified the following plan/method he would employ to achieve compliance with the terms and conditions of his probation: "supervising smog repairs and tests at shop."

3. On April 20, 2011, complainant filed the Accusation and Petition to Revoke Probation in her official capacity. Complainant seeks to revoke respondent's license and to revoke respondent's probation on the grounds that respondent passed the smog inspection and issued a Certificate of Compliance on a bureau undercover vehicle, despite the fact that a malfunction was introduced into the vehicle to prevent the vehicle from passing the smog inspection.

4. There are three parts to a California Emissions Inspection Test (also called a smog inspection, smog check or smog test): (1) a tailpipe emissions test to ensure that the vehicle's emissions are reading at or below acceptable levels; (2) a visual inspection of the vehicle's emission control components to ensure that they are present, properly connected, and in good working condition; and (3) a functional test of each component that is required to be functionally tested, depending on the make and model of the vehicle. A vehicle must pass all three parts of the California Emissions Inspection Test before an Emission Inspection Certificate of Compliance may be issued. The undercover operations resulting in the allegations at issue concerned the visual inspection portion of the smog test.

Undercover Operation – July 1, 2010 – 1995 Chevrolet Caprice

5. Eric Schulte is a Program Representative I in the bureau's Sacramento Documentation Lab. As part of his job duties, Mr. Schulte prepares undercover vehicles for smog inspections and inspects and photographs those vehicles after they are returned.

6. Between June 17 and 23, 2010, Mr. Schulte documented a 1995 Chevrolet Caprice, California license number 4LPX196, for an undercover run. He removed the positive crankcase ventilation (PCV) valve pipe from the vehicle, and plugged the valve pipe and intake manifold plenum fittings with bolts so that the PCV system would not operate properly, thereby causing the vehicle to fail the smog test. According to Mr. Schulte, the PCV system "prevents harmful engine crankcase vapors from entering the atmosphere." With the PCV valve pipe removed and the fittings plugged, Mr. Schulte performed a smog inspection to confirm that the 1995 Chevrolet Caprice could not pass the visual inspection portion of the California Emissions Inspection Test.

7. On July 1, 2010, Mr. Schulte released the vehicle to Kenn Besson, a Program Representative I with the bureau's Sacramento Field Office. According to Mr. Besson,[1] on July 1, 2010, he received from Mr. Schulte, the 1995 Chevrolet Caprice at the bureau's Sacramento Documentation Lab. Mr. Besson visually verified that the positive crankcase ventilation (PCV) system had been removed from the vehicle, and that two hex head bolts had been installed to plug the PCV valve and the vacuum port. Mr. Besson took photographs of the vehicle's engine, released the vehicle to undercover operator, Candace Gonzalez, and instructed Ms. Gonzalez to take the vehicle to Midtown Auto Repair in Sacramento and request a smog inspection.

8. Candace Gonzalez is an undercover operator for the bureau. According to Ms. Gonzalez,[2] on July 1, 2010, she received the 1995 Chevrolet Caprice from Mr. Besson and observed him taking photographs of the vehicle. Ms. Gonzalez then drove the vehicle to Midtown Auto Repair and, using the assumed name, Candace Eiland, requested a smog inspection. Prior to the inspection, Ms. Gonzalez completed a blank work order and provided it to a service advisor. Ms. Gonzalez paid $79.99 for the inspection, and received from the service advisor a copy of Invoice #874013 and a Vehicle Inspection Report (VIR) showing that the vehicle had passed the smog inspection. Ms. Gonzalez drove the vehicle to a prearranged location and observed Mr. Besson take photographs of the vehicle. She then initialed and dated the invoice and VIR, and returned the vehicle to Mr. Besson.

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[1] Kenn Besson's testimony was received by sworn declaration pursuant to Government Code section 11514.

[2] Candace Gonzalez's testimony was received by sworn declaration pursuant to Government Code section 11514.

9. Upon return of the vehicle from Ms. Gonzalez, Mr. Besson reinspected the vehicle and verified that the PCV system was still missing. He took photographs of the area of the missing PCV system and plugged ports, and initialed and dated the invoice and VIR which he received from Ms. Gonzalez.

10. On August 16, 2010, Mr. Schulte received the 1995 Chevrolet Caprice from Mr. Besson and performed a smog test of the vehicle. The vehicle failed the visual inspection portion of the smog test due to the missing PCV valve. Mr. Schulte reinspected and photographed the vehicle, and observed that the PCV system was missing and the bolts plugging the PCV valve and intake plenum were still in place.

11. On the VIR is a section entitled "Emission Control Systems Visual Inspection/Functional Check Results." One of the Emission Control Systems listed in that section is "PCV." The VIR indicated that the PCV on the 1995 Chevrolet Caprice passed the visual inspection, and Smog Check Certificate Number NS271790 was issued. Smog technician Jaswinder Nagra signed the VIR under a certification that states: "I certify, under penalty of purjury [sic] under the laws of the State of California, that I inspected the vehicle described above, that I performed the inspection in accordance with all bureau requirements, and that the information listed on this vehicle inspection report is true and correct." Because the 1995 Chevrolet Caprice could not pass a smog inspection with a missing PCV system, Mr. Nagra's certification was not true and correct.

Prior Disciplinary Action

12. In 1996, the bureau issued Basic Area Technician (EB) License No. 36716 to respondent. On July 13, 1999, in Case No. 79/00-8, the bureau filed an Accusation against respondent's EB license on the grounds that between March 17, 1999 and May 18, 1999, respondent issued Certificates of Compliance on seven vehicles using unlawful "clean piping" methods.[3] Effective January 11, 2000, respondent's license was revoked.

Factors in Aggravation, Mitigation and Rehabilitation

13. At hearing, respondent recalled performing the smog check of the 1995 Chevrolet Caprice in July 2010. He admitted, however, that he made a mistake when he did not notice that the PCV valve was missing. According to respondent, the shop was "very busy that day," he had "a couple of other jobs too," and his evaporative pressure machine had not been calibrated for this older vehicle. At the same time that he was performing the visual inspection portion of the smog test, respondent was also trying to recalibrate his evaporative pressure machine so he would not have to abort the test. As a result, he "was confused and nervous" because he thought he would not be able to complete the smog test if he could not perform the evaporative pressure test on the vehicle.

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[3] At hearing, the bureau's representative, Tim Bowden, described "clean piping" as using the exhaust of a vehicle that can pass the smog test to register the emissions for a vehicle that cannot pass the smog test.

14. While respondent agreed to implement corrective measures in response to the prior disciplinary action, there is no evidence that he took any steps to either prevent the conduct at issue, or, once it occurred, to minimize a recurrence. The conduct at issue occurred while respondent was on probation for the prior disciplinary case. Respondent's belief that he should not be held responsible for his actions suggests that he either lacks an understanding of, or is unwilling to take complete responsibility for his legal obligations as the holder of advanced emission specialist technician license.

Costs of Investigation and Enforcement

15. Pursuant to Business and Professions Code section 125.3, complainant has requested costs of investigation and enforcement in the total amount of $2,774.09. This total amount consists of the following:

a. Complainant submitted a certified Statement of Costs incurred by the bureau, which requests $1,891.59 for investigator costs, undercover vehicle operator and evidence costs, clerical support, and attorney general office costs. Business and Professions Code section 125.3, subdivision (c), permits a board or bureau seeking costs to submit a "certified copy of the actual costs." In this case, the bureau did not submit a breakdown of the time spent by bureau staff on this matter or provide any evidentiary support for its costs during the hearing. Consequently, it did not provide sufficient evidence of the "actual costs" as required under Business and Professions Code section 125.3, subdivision (c), to find that the amount requested is reasonable. These requested costs will, therefore, not be awarded.

b. Complainant submitted a Certification of Prosecution Costs and the Declaration of the Deputy Attorney General, which requests costs in the amount of $882.50. Attached to the Deputy Attorney General's Declaration are printouts of documents entitled "Cost-of-Suit-Summary," and "Matter Time Activity By Professional Type." These documents describe the work performed by Deputies Attorney General and a paralegal. The amount requested by the Office of the Attorney General is reasonable in light of the description of the work performed and the nature of this case.

16. At hearing, respondent did not offer any evidence as to his financial ability to pay the costs of investigation and enforcement. The costs of investigation and enforcement are addressed in Legal Conclusions 16 and 17 below.

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. Pursuant to Health and Safety Code section 44072.2, subdivisions (a) and (c), an advanced emission specialist technician license may be suspended, revoked or otherwise

disciplined if the licensee violates any section of the Motor Vehicle Inspection Program, Health and Safety Code section 44000 et seq., or violates "any of the regulations adopted by the director pursuant to the Motor Vehicle Inspection Program."

2. Pursuant to Health and Safety Code section 44072.10, subdivision (c)(4), "[t]he department shall revoke the license of any smog check technician ... who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following: ... [i]ntentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter."

Cause for Discipline

3. Pursuant to Health and Safety Code section 44012, subdivision (a), a smog check shall ensure that "[e]mission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013." As set forth in Factual Findings 6 through 11 and 13, respondent failed to determine that all emission control devices and systems required by law were installed and functioning correctly on the 1995 Chevrolet Caprice in accordance with test procedures. Therefore, cause exists to discipline respondent's advanced emission specialist technician license for a violations of Health and Safety Code sections 44072.2, subdivision (a), and 44012, subdivision (a).

4. Pursuant to Health and Safety Code section 44012, subdivision (f), a smog check shall ensure that a "visual or functional check is made of emission control devices specified by the department ...." As set forth in Factual Findings 6 through 11 and 13, respondent failed to perform emission control tests on the 1995 Chevrolet Caprice in accordance with procedures prescribed by the department. Therefore, cause exists to discipline respondent's advanced emission specialist technician license for a violation of Health and Safety Code sections 44072.2, subdivision (a), and 44012, subdivision (f).

5. Pursuant to Health and Safety Code section 44032, "[q]ualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012." As set forth in Factual Findings 6 through 11 and 13, respondent failed to determine that all emission control devices and systems required by law were installed and functioning correctly on the 1995 Chevrolet Caprice in accordance with test procedures. Therefore, cause exists to discipline respondent's advanced emission specialist technician license pursuant to Health and Safety Code sections 44072.2, subdivision (a), and 44032.

6. Pursuant to Health and Safety Code section 44059, the "willful making of any false statement or entry with regard to a material matter in any ... certificate of compliance ... constitutes perjury." The evidence established that respondent "willfully" made false entries when he issued an electronic certificate of compliance for the 1995 Chevrolet Caprice. Therefore, cause exists to discipline respondent's advanced emission specialist

technician license pursuant to Health and Safety Code sections 44072.2, subdivision (a) and 44059.

7. Pursuant to Health and Safety Code section 44072.2, subdivision (d), an advanced emission specialist technician license may be suspended, revoked or otherwise disciplined if the licensee "[c]ommits any act involving dishonesty, fraud, or deceit whereby another is injured." As set forth in Factual Findings 6 through 11 and 13, respondent engaged in acts involving dishonesty, fraud, or deceit when he issued a certificate of compliance for the 1995 Chevrolet Caprice without performing a bona fide inspection of the vehicle. Therefore, cause exists to discipline respondent's advanced emission specialist technician license pursuant to Health and Safety Code section 44072.2, subdivision (d).

8. Pursuant to California Code of Regulations, title 16, section 3340.24, subdivision (c), the bureau "may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance." As set forth in Factual Findings 6 through 11 and 13, respondent issued an electronic smog certificate of compliance that falsely represented that the 1995 Chevrolet Caprice passed the California Emissions Inspection Test. Therefore, cause exists to discipline respondent's advanced emission specialist technician license pursuant to Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.24, subdivision (c).

9. Pursuant to California Code of Regulations, title 16, section 3340.30, subdivision (a), a "licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code." As set forth in Factual Findings 6 through 11 and 13, respondent failed to inspect and test the 1995 Chevrolet Caprice in accordance with Health and Safety Code section 44012. Therefore, cause exists to discipline respondent's advanced emission specialist technician license pursuant to Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.30, subdivision (a).

10. Pursuant to California Code of Regulations, title 16, section 3340.42, smog check technicians shall conduct tests and inspections in accordance with the bureau's BAR-97 Emissions Inspection System Specifications. As set forth in Factual Findings 6 through 11 and 13, respondent failed to conduct the required smog tests and inspections on the 1995 Chevrolet Caprice in accordance with the bureau's specifications. Therefore, cause exists to discipline respondent's advanced emission specialist technician license pursuant to Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.42.

Cause to Revoke Probation

11. Pursuant to the terms and conditions of respondent's probation, respondent was required to "[c]omply with all statutes, regulations and rules governing automotive inspections, estimates and repairs." As set forth in Factual Findings 1 and 2, respondent's

advanced emission specialist technician license was on probation at the time of the conduct at issue in this matter. As set forth in Factual Findings 6 through 11 and 13, respondent failed to comply with the statutes and regulations governing smog inspections. Therefore, cause exists to revoke respondent's probation pursuant to the terms and conditions of probation.

Fitness for Continued Licensure

12. Respondent's license was on probation at the time of the conduct giving rise to this accusation and petition to revoke probation. No evidence was presented to establish that respondent implemented corrective measures in response to the prior disciplinary action, and no evidence was presented to establish that he took any steps to either prevent the conduct at issue, or, once it occurred, to minimize a recurrence. He offered no assurances that he now understands and accepts responsibility for his conduct.

13. In addition, respondent attended a Probationary Conference with the bureau, and received notice of ongoing inspections and/or undercover operations. Despite this knowledge, however, respondent continues to violate the rules and regulations designed to protect the health of all Californians. He offered no assurances that he now understands and accepts responsibility for his conduct. Therefore, respondent cannot be relied upon to comply with the law.

14. As respondent was unable to comply with the terms and conditions of his prior probation, additional terms and conditions of probation will not ensure that the public interest and welfare will be adequately protected. The evidence did not establish that he could benefit from additional training to properly perform smog inspections. Given this history, revocation of respondent's advanced emission specialist technician license is required to protect the public interest and welfare.

15. Pursuant to Health and Safety Code section 44072.8, "[w]hen a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director."

Cost Recovery

16. Pursuant to Business and Professions Code section 125.3, subdivision (a), an administrative law judge may direct a licensee found to have violated the licensing act to "pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth the following factors to be considered in determining the reasonableness of the costs sought pursuant to regulatory and statutory provisions like Business and Professions Code section 125.3:

> The Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that regulation 317.5 does not deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing. Thus, the Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a chiropractor who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The Board must consider the chiropractor's "subjective good faith belief in the merits of his or her position" [citation] and whether the chiropractor has raised a "colorable challenge" to the proposed discipline [citation]. Furthermore, as in cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation [citation], the Board must determine that the chiropractor will be financially able to make later payments. Finally, the Board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a chiropractor engaged in relatively innocuous misconduct.

17. As set forth in Factual Finding 15, there was sufficient evidence to substantiate that the $882.50 in enforcement costs charged by the Attorney General's office were reasonable. Respondent did not provide evidence of his financial ability to pay the requested costs. Based upon all the factors set forth in *Zuckerman*, respondent should be ordered to pay the bureau $882.50 for the costs of enforcement of this Accusation and Petition to Revoke Probation.

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ORDER

1. The Stay Order in the March 1, 2010 Decision of the bureau, in Case No. 79/00-8S, is lifted and set aside.

2. Advanced Emission Specialist Technician License Number EA 36716 issued to respondent Jaswinder Singh Nagra is revoked.

3. Respondent is ordered to pay to the bureau the costs of enforcement of this matter, in the amount of $882.50, pursuant to Factual Findings 15 and 16, and Legal Conclusions 16 and 17.

Dated: January 11, 2012

REBECCA M. WESTMORE
Administrative Law Judge
Office of Administrative Hearings

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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 and Petition to Revoke Probation Against: **JASWINDER SINGH NAGRA** **9381 Moondancer Circle** **Roseville, CA 95747** **Advanced Emission Specialist Technician License No. EA 036716** Respondent.	Case No. 79/11-85 **ACCUSATION AND PETITION TO REVOKE PROBATION** **(Smog Check)**

Complainant alleges:

PARTIES/LICENSE INFORMATION

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

2. On or about May 19, 2010, the Director of Consumer Affairs ("Director") issued Advanced Emission Specialist Technician License Number EA 036716 ("technician license") to Jaswinder Singh Nagra ("Respondent"). Respondent's technician license was immediately revoked, the revocation was stayed, and Respondent was placed on probation for two years, as set forth in paragraph 5 below. Respondent's technician license will expire on August 31, 2012, unless renewed.

3. In or about 1996, the Director issued Basic Area Technician License EB 036716 to Respondent. On or about January 11, 2000, Respondent's basic area technician license was revoked, as set forth in paragraph 4 below.

DISCIPLINARY HISTORY

4. On or about August 31, 1999, in the disciplinary action titled *In the Matter of the Petition for Interim Suspension Order By Steven V. Giorgi*, etc., Case No. 79/00-8, Respondent's basic area technician license was suspended on an interim basis pending a hearing in Accusation Case No. 79/00-8. On or about December 8, 1999, pursuant to the Proposed Decision of the Administrative Law Judge adopted as the Decision of the Director in the disciplinary action titled *In the Matter of the Accusation Against: Value Gas, Inc.*, etc., Case Number 79/00-8, the Director revoked Respondent's basic area technician license effective January 11, 2000.

5. On or about January 25, 2010, pursuant to the Decision After Nonadoption in the disciplinary action titled *In the Matter of the Statement of Issues Against: Jaswinder Singh Nagra*, Case Number 79/00-8S, the Director granted Respondent's application for an advanced emission specialist technician license effective March 1, 2010. The Director ordered that Respondent's technician license be immediately revoked, the revocation stayed, and Respondent placed on probation for two years on terms and conditions, including Condition 1, which states that Respondent shall comply with all statutes, regulations, and rules governing automotive inspections, estimates, and repairs.

ACCUSATION

JURISDICTION

6. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

7. Health & Saf. Code section 44072.6 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 disciplinary action.

8. Business and Professions Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

STATUTORY PROVISIONS

9. Health & Saf. Code section 44072.2 states, in pertinent part:

> The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:
>
> (a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.
>
> . . . .
>
> (c) Violates any of the regulations adopted by the director pursuant to this chapter.
>
> (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured . . .

10. Health & Saf. Code section 44072.10 states, in pertinent part:

> . . . .
>
> (c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:
>
> . . . .
>
> (4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter . . .

11. Health & Saf. Code section 44072.8 states that when a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.

COST RECOVERY

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

UNDERCOVER OPERATION: 1995 CHEVROLET CAPRICE

13. On July 1, 2010, an undercover operator with the Bureau (hereinafter "operator") took the Bureau's 1995 Chevrolet Caprice to Midtown Auto Repair located in Sacramento, California, and requested a smog inspection. The positive crankcase ventilation ("PCV") valve and pipe were removed from the Bureau-documented vehicle (the vehicle would not pass a California smog check inspection in this condition).[1] After the inspection was performed, the operator paid the facility $79.99 and received copies of an invoice and a vehicle inspection report ("VIR"). The VIR indicated that Respondent had performed the smog inspection on the vehicle and that the vehicle had passed the inspection, resulting in the issuance of electronic smog Certificate of Compliance No. NS271790C.

FIRST CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

14. Respondent is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with provisions of that Code, as follows:

a. **Section 44012**: Respondent failed to perform the emission control tests on the Bureau's 1995 Chevrolet Caprice in accordance with procedures prescribed by the department.

b. **Section 44059**: Respondent willfully made a false entry on the VIR, as follows: Respondent certified under penalty of perjury on the VIR that the Bureau's 1995 Chevrolet Caprice had passed inspection and was in compliance with applicable laws and regulations. In fact, the PCV valve and pipe had been removed from the vehicle and as such, the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

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[1] The PCV system prevents harmful engine crankcase vapors from entering the atmosphere.

SECOND CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

15. Respondent is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1995 Chevrolet Caprice.

b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's 1995 Chevrolet Caprice in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the Bureau's 1995 Chevrolet Caprice in accordance with the Bureau's specifications.

THIRD CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

16. Respondent is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the Bureau's 1995 Chevrolet Caprice without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

PETITION TO REVOKE PROBATION

17. Complainant incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 16 above.

18. Grounds exist to revoke probation and reimpose the order of revocation of Respondent's technician license in that Respondent has failed to comply with Condition 1 of his probation by failing to comply with all statutes, regulations and rules governing automotive inspections, as set forth in paragraphs 13 through 16 above.

OTHER MATTERS

19. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 036716, issued to Respondent Jaswinder Singh Nagra, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or 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. Revoking probation and reimposing the order of revocation of Advanced Emission Specialist Technician License Number EA 036716, issued to Jaswinder Singh Nagra;

2. Revoking or suspending Advanced Emission Specialist Technician License Number EA 036716, issued to Jaswinder Singh Nagra;

3. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Jaswinder Singh Nagra;

4. Ordering Jaswinder Singh Nagra to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 4/20/11

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

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accusation.rtf