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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 Against:

Case No. 79/15-56

DEFAULT DECISION AND ORDER

MICHAEL VALENZUELA
2450 North Bryan Ave.
Fresno, CA 93723
Advanced Emission Specialist Technician
License No. EA 630355

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about October 15, 2014, Complainant Patrick Dorias, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/15-56 against Michael Valenzuela (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

2. On or about July 28, 2008, the Bureau of Automotive Repair (Bureau) issued Advanced Emission Specialist Technician License No. EA 630355 to Respondent. Upon timely

1 renewal of the license, the license will be re-designated as EO 630355 and/or EI 630355 upon
2 renewal).¹

3 3. On or about October 24, 2014, Respondent was served by Certified Mail and United
4 States First Class Mail with copies of the Accusation No. 79/15-56, Statement to Respondent,
5 Notice of Defense (2), Request for Discovery, Disciplinary Guidelines, and Discovery Statutes
6 (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record
7 which, pursuant to Business and Professions Code section 136, is required to be reported and
8 maintained with the Bureau. Respondent's address of record was and is: 2450 North Bryan Ave.,
9 Fresno, CA 93723.

10 3. Service of the Accusation was effective as a matter of law under the provisions of
11 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
12 124.

13 4. As of November 18, 2014, neither the Certified Mail nor the First Class Mail to
14 Respondent containing the documents identified in Paragraph 3 were returned by the United
15 States Postal Service.

16 5. Government Code section 11506 states, in pertinent part:

17 (c) The respondent shall be entitled to a hearing on the merits if the respondent
18 files a notice of defense, and the notice shall be deemed a specific denial of all parts
19 of the accusation not expressly admitted. Failure to file a notice of defense shall
20 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
21 may nevertheless grant a hearing.

22 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
23 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
24 79/15-56.

25 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
26 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
27 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
28 Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 7. California Government Code section 11520 states, in pertinent part:

2 (a) If the respondent either fails to file a notice of defense or to appear at the
3 hearing, the agency may take action based upon the respondent's express admissions
4 or upon other evidence and affidavits may be used as evidence without any notice to
5 respondent.

6 8. Pursuant to its authority under Government Code section 11520, the Director of the
7 Department of Consumer Affairs (Director), after having reviewed the proof of service dated
8 October 24, 2014, signed by Julie Hutcherson, finds Respondent is in default. The Director will
9 take action without further hearing and, based on Accusation, No. 79/15-56, proof of service and
10 on the Affidavit of Bureau Representative Joseph B. Cheung, finds that the allegations in
11 Accusation are true.

12 DETERMINATION OF ISSUES

13 1. Based on the foregoing findings of fact, Respondent Michael Valenzuela has
14 subjected his Advanced Emission Specialist Technician License No. EA 630355 (to be re-
15 designated as EO 630355 and/or EI 630355 upon renewal) to discipline.

16 2. The agency has jurisdiction to adjudicate this case by default.

17 3. The Director is authorized to revoke Respondent's Advanced Emission Specialist
18 Technician License based upon the following violations alleged in the Accusation, supported by
19 the evidence contained in the affidavit of Bureau Representative Joseph B. Cheung: violation of
20 Health and Safety Code section 44050(e) by failing to comply with final Citation No. M2012-
21 1520.

22 ORDER

23 IT IS SO ORDERED that Advanced Emission Specialist Technician License No. EA
24 630355 (to be re-designated as EO 630355 and/or EI 630355 upon renewal), heretofore issued to
25 Respondent Michael Valenzuela, is revoked.

26 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
27 written motion requesting that the Decision be vacated and stating the grounds relied on within
28 seven (7) days after service of the Decision on Respondent. The motion should be sent to the

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Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on March 10, 2015

It is so ORDERED March 17, 2015
0



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 STERLING A. SMITH
Deputy Attorney General
4 State Bar No. 84287
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-0378
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 79/15-56

12 **MICHAEL VALENZUELA**
13 2450 North Bryan Ave.
14 Fresno, CA 93723
15 **Advanced Emission Specialist Technician**
16 **License No. EA 630355 (to be re-designated**
17 **upon renewal as EO 630355 and/or EI**
18 **630355)**

ACCUSATION

Respondent.

19 Patrick Dorais ("Complainant") alleges:

20 **PARTIES**

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

23 2. On or about July 28, 2008, the Bureau issued Advanced Emission Specialist
24 Technician License Number EA 630355 to Michael Valenzuela ("Respondent"). On July 5, 2012,
25 the license was suspended, license expired on March 31, 2014, and has not been renewed. Upon
26 renewal of the license, the license will be re-designated as EO 630355 and/or EI 630355.¹

27 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
28 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced

(continued...)

STATUTORY PROVISIONS

1
2 3. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
3 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
4 the Motor Vehicle Inspection Program.

5 4. Section 44050 of the Health and Safety Code states, in pertinent part:

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

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

14 5. Section 44055 of the Health and Safety Code, subdivision (b) states:

15 (b) The department may deny an application for the renewal of a test
16 station or repair station license if the applicant, or any partner, officer, or director
17 thereof, has failed to pay any civil penalty or administrative fine in accordance with
18 this article.

19 6. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
20 expiration or suspension of a license by operation of law, or by order or decision of the Director
21 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
22 the Director of jurisdiction to proceed with disciplinary action.

23 7. Section 44072.8 of the Health and Safety Code states:

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

COST RECOVERY

27 8. Section 125.3 of the Code provides, in pertinent part, that a Board may request the
28 administrative law judge to direct a licensee 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.

(...continued)

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 CAUSE FOR DISCIPLINE

2 (Failure to Comply with Citation)

3 9. Respondent is subject to discipline pursuant to Health and Safety Code section
4 44050(e), in that on or about May 8, 2012, the Bureau issued Citation No. M2012-1520 to
5 Respondent against his technician license for violating Health and Safety Code section 44032
6 (qualified technicians shall perform tests of emission control systems and devices in accordance
7 with section 44012 of that Code) and California Code of Regulations, title 16, section 3340.30(a)
8 (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012
9 and 44035 of the Health and Safety Code, and Regulation section 3340.42)². On or about
10 June 1, 2012, the Bureau served Respondent with the Citation. The Bureau required that
11 Respondent complete an 8-hour training course or appeal the Citation within thirty (30) days of
12 receipt of the Citation. Respondent did not appeal the Citation nor has Respondent completed the
13 required training.

14 OTHER MATTERS

15 10. Under Health and Safety Code section 44072.8, if Respondent's technician license,
16 currently designated as EA 630355, and as re-designated upon timely renewal as EO 630355
17 and/or EI 630355, is/are revoked or suspended, any additional license issued under this chapter in
18 the name of said licensee may be likewise revoked or suspended by the director.

19 PRAYER

20 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
21 and that following the hearing, the Director of Consumer Affairs issue a decision:

- 22 1. Revoking or suspending Michael Valenzuela's technician license, currently
23 designated as EA 630355, and to be re-designated upon renewal as EO 630355 and/or EI 630355;
24 2. Revoking or suspending any additional license issued under Chapter 5 of the Health
25 and Safety Code in the name of Michael Valenzuela;

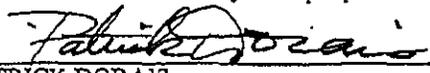
26
27 ² On or about April 11, 2012, Respondent issued Certificate of Compliance No.
28 XF531244 to a Bureau undercover vehicle with a missing Positive Crankcase Ventilation valve.

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3. Ordering Michael Valenzuela 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;

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

DATED: October 15, 2014


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

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL
(Separate Mailings)

Case Name: **In the Matter of the Accusation Against: Valenzuela, Michael (ACC)**

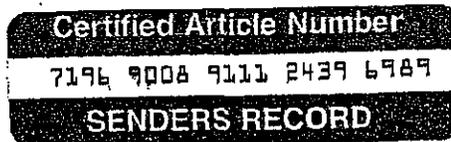
No.: **79/15-56**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On October 24, 2014, I served the attached [**Accusation, Statement to Respondent, Request for Discovery, Notice of Defense (2 copies), Copy of Government Code Sections 11507.5, 11507.6 and 11507.7, Disciplinary Guidelines**] by placing a true copy thereof enclosed in a sealed envelope as certified mail with return receipt requested, and another true copy of the [**Accusation, Statement to Respondent, Request for Discovery, Notice of Defense (2 copies), Copy of Government Code Sections 11507.5, 11507.6 and 11507.7, Disciplinary Guidelines**] was enclosed in a second sealed envelope as first class mail in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Michael Valenzuela
2450 North Bryan Ave.
Fresno, CA 93723
Respondent



Courtesy Copy:
Greg.Pearson@dca.ca.gov

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 24, 2014, at Sacramento, California.

Julie Hutcherson
Declarant

Julie A. Hutcherson

Signature

7196 9008 9111 2439 6989

TO: Michael Valenzuela
2450 North Bryan Ave.
Fresno, CA 93723

SENDER: Sterling A. Smith

REFERENCE: SA2014117242

PS Form 3800, January 2005

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