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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. 79/15-70

BENJAMIN MERCADO AGREDANO
351 S. Ash Street
Stockton, California 95205

DEFAULT DECISION AND ORDER

**Advanced Emission Specialist (EA)
Technician License No. EA 634617**
(to be redesignated upon renewal as
Smog Check Inspector (EO) License
No. 634617 and/or Smog Check Repair
Technician (EI) License No. 634617)

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about November 7, 2014, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/15-70 against Benjamin Mercado Agredano (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

2. The Bureau of Automotive Repair (Bureau) issued Advanced Emission Specialist (EA) Technician License No. EA 634617 to Respondent on August 8, 2012 and expired on

1 November 30, 2014 and has not been renewed. Upon timely renewal of the license, the license
2 will be re-designated as EO 634617 and/or EI 634617.¹

3 3. On or about November 13, 2014, Respondent was served by Certified and First Class
4 Mail copies of Accusation No. 79/15-70, Statement to Respondent, Notice of Defense, Request
5 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
6 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
7 section 136, is required to be reported and maintained with the Bureau. Respondent's address of
8 record was and is:

9 351 S. Ash Street
10 Stockton, California 95205.

11 4. Service of the Accusation was effective as a matter of law under the provisions of
12 Government Code section 11505, subdivision (c), and/or Business & Professions Code section
13 124.

14 5. On or about November 17, 2014, Respondent returned a signed Certified Mail
15 Receipt for the aforementioned documents.

16 6. 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 7. 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 79/15-70.

25 8. California Government Code section 11520 states, in pertinent part:

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

¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
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 seven (7) days after service of the Decision on Respondent. The motion should be sent to the
2 Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho
3 Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing on
4 a showing of good cause, as defined in the statute.

5 This Decision shall become effective on March 10, 2015.

6 It is so ORDERED Albrucey 17, 2015

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10 TAMARA COLSON
11 Assistant General Counsel
12 Department of Consumer Affairs

12 11644362.DOC
13 SA2014117612

13 Attachment:
14 Exhibit A: Accusation

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Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0032
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**

12 In the Matter of the Accusation Against:

Case No. 79/15-70

13 **BENJAMIN MERCADO AGREDANO**
351 S. Ash Street
14 Stockton, California 95205

A C C U S A T I O N

15 **Advanced Emission Specialist (EA)**
Technician License No. EA 634617
16 (to be redesignated upon renewal as
Smog Check Inspector (EO) License
17 No. 634617 and/or Smog Check Repair
Technician (EI) License No. 634617)

18 Respondent.

19
20 Patrick Dorais ("Complainant") alleges:

21 **PARTIES**

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

24 **Advanced Emission Specialist Technician License**

25 2. On or about August 8, 2012, the Bureau issued Advanced Emission Specialist (EA)
26 Technician License Number EA 634617 ("technician license") to Benjamin Mercado Agredano
27 ("Respondent"). The advanced emission specialist (EA) technician license was in full force and

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1 effect at all times relevant to the charges brought herein and will expire on November 30, 2014.
2 Upon renewal, the license will be redesignated as EO 634617 and/or EI 645617.¹

3 **JURISDICTION**

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

7 4. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or
8 suspension of a license by operation of law, or by order or decision of the Director of Consumer
9 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
10 of jurisdiction to proceed with disciplinary action.

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

14 6. California Code of Regulations, title 16 ("Regulation"), section 3340.28(e), states that
15 "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
16 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
17 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

18 **STATUTORY PROVISIONS**

19 7. Health & Saf. Code section 44050 provides, in pertinent part:

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

25 ...

26 ¹ 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 (E1) license.

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

3 8. Business and Professions Code section 477 provides, in pertinent part, that "Board"
4 includes "bureau," "commission," "committee," "department," "division," "examining committee,"
5 "program," and "agency." "License" includes certificate, registration or other means to engage in
6 a business or profession regulated by the Business and Professions Code.

7 **COST RECOVERY**

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

12 **CAUSE FOR DISCIPLINE**

13 (Failure to Complete Training)

14 10. Respondent's technician license is subject to discipline pursuant to Health & Saf.
15 Code section 44050(e), in that on or about September 16, 2013, the Bureau issued Citation No.
16 M2014-0175 to Respondent against his technician license for violation of Health & Saf. Code
17 section 44032 (qualified technicians shall perform tests of emission control systems and devices
18 in accordance with Health & Saf. Code section 44012). On October 1, 2013, the Bureau
19 personally served Respondent with the citation, which required Respondent to complete an eight
20 hour training course. Respondent failed to file a timely appeal and the citation
21 was deemed final on November 1, 2013. Respondent has yet to submit proof of completion of
22 remedial training prescribed by the citation.

23 **OTHER MATTERS**

24 11. Pursuant to Health & Saf. Code section 44072.8, if the Advanced Emission Specialist
25 Technician (EA) License issued to Benjamin Mercado Agredano, currently designated as EA
26 634617, but upon renewal will be redesignated as EO 634617 and/or E1 634617, is revoked or
27 suspended, any additional license issued under this chapter in the name of said licensee may be
28 likewise revoked or suspended by the Director. 3

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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 or suspending Advanced Emission Specialist Technician (EA) License Number EA 634617, issued to Benjamin Mercado Agredano;
2. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Benjamin Mercado Agredano;
3. Ordering Benjamin Mercado Agredano 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: November 7, 2014 

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

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