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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:

**RICK RODRIGUEZ**  
**3981 Fruitridge Road**  
**Sacramento, CA 95820**  
**Smog Check Inspector (EO) License No.**  
**150055**  
**(formerly Advanced Emission Specialist**  
**(EA) Technician License No. 150055**

Respondent.

Case No. 79/15-81

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about December 1, 2014, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/15-81 against Rick Rodriguez (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)
2. At a date unknown in 2004, the Bureau issued Advanced Emission Specialist (EA) Technician License No. 150055 to Rick Rodriguez (“Respondent”). On or about October 31, 2012, the advanced emission specialist (EA) technician license expired. Effective November 1, 2012, said license was renewed as Smog Check Inspector (EO) License No. 150055 pursuant to

1 Respondent's election.<sup>1</sup> The smog check inspector (EO) license expired on January 15, 2013, and  
2 on or about January 16, 2013, the Bureau denied renewal due to Family Support Code section  
3 17520 (failure to comply with a child or family support order).

4 3. On or about December 9, 2014, Respondent was served by Certified and First Class  
5 Mail copies of the Accusation No. 79/15-81, Statement to Respondent, Notice of Defense,  
6 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,  
7 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions  
8 Code section 136, is required to be reported and maintained with the Bureau. Respondent's  
9 address of record was and is:

10 3981 Fruitridge Road  
11 Sacramento, CA 95820.

12 4. Service of the Accusation was effective as a matter of law under the provisions of  
13 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
14 124.

15 5. On or about December 10, 2014, a signed return receipt green card was received. The  
16 documents sent via regular mail were not returned.

17 6. Government Code section 11506 states, in pertinent part:

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

23 7. Respondent failed to file a Notice of Defense within 15 days after service upon him  
24 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
25 79/15-81.

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

27 (a) If the respondent either fails to file a notice of defense or to appear at the  
28 hearing, the agency may take action based upon the respondent's express admissions

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<sup>1</sup> 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 or upon other evidence and affidavits may be used as evidence without any notice to  
2 respondent.

3 9. Pursuant to its authority under Government Code section 11520, the Director after  
4 having reviewed the proof of service dated December 9, 2014, signed by Praveen K. Singh, the  
5 signed return receipt green card, finds Respondent is in default. The Director will take action  
6 without further hearing and, based on Accusation, No. 79/15-81, proof of service and on the  
7 Affidavit of Bureau Representative Joseph B. Cheung, finds that the allegations in Accusation are  
8 true.

9 DETERMINATION OF ISSUES

10 1. Based on the foregoing findings of fact, Respondent Rick Rodriguez has subjected his  
11 Smog Check Inspector (EO) License No. 150055, formerly Advanced Emission Specialist  
12 Technician (EA) License No. 150055, to discipline.

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

14 3. The Director of Consumer Affairs is authorized to revoke Respondent's Smog Check  
15 Inspector license based upon the following violations alleged in the Accusation which are  
16 supported by the evidence contained in the affidavit of Bureau Representative Joseph B. Cheung  
17 in this case.:

18 a. Respondent is subject to discipline pursuant to Health and Safety Code  
19 section 44050(e), in that on or about November 29, 2012, the Bureau issued Citation No. M2013-  
20 0351 to Respondent against his Advanced Emission Specialist Technician license for violations  
21 of Health and Safety Code section 44032 (qualified technicians shall perform tests of emission  
22 control systems and devices in accordance with Health and Safety Code section 44012). On  
23 January 10, 2013, the Bureau personally served Respondent with the citation. The Bureau  
24 assessed an administrative fine in the amount of \$500. Respondent failed to file a timely appeal  
25 and the citation was deemed final on February 10, 2013. Respondent has yet to pay the  
26 administrative fine for this citation.

27 b. Respondent is subject to discipline pursuant to Health and Safety Code section  
28 44045.6(c), in that on or about November 29, 2012, the Bureau issued Citation No. M2013-0351

1 to Respondent against his Advanced Emission Specialist Technician license for violations of  
2 Health and Safety Code section 44032 (qualified technicians shall perform tests of emission  
3 control systems and devices in accordance with Health and Safety Code section 44012). On  
4 January 10, 2013, the Bureau personally served Respondent with the citation, which required  
5 Respondent to complete an eight hour training course. Respondent failed to file a timely appeal  
6 and the citation was deemed final on February 10, 2013. Respondent has yet to submit proof of  
7 completion of remedial training prescribed by the citation.

8 ORDER

9 IT IS SO ORDERED that Smog Check Inspector (EO) License No. 150055, formerly  
10 Advanced Emission Specialist Technician (EA) License No. 150055, heretofore issued to  
11 Respondent Rick Rodriguez, is revoked.

12 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
13 written motion requesting that the Decision be vacated and stating the grounds relied on within  
14 seven (7) days after service of the Decision on Respondent. The motion should be sent to the  
15 Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho  
16 Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing  
17 on a showing of good cause, as defined in the statute.

18 This Decision shall become effective on December 3, 2015.

19 It is so ORDERED November 10, 2015

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21 

22 \_\_\_\_\_  
23 TAMARA COLSON  
24 Assistant General Counsel  
25 Division of Legal Affairs  
26 Department of Consumer Affairs

27 11919074.DOC  
28 DOJ Matter ID:SA2014116958

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 ELENA L. ALMANZO  
Deputy Attorney General  
4 State Bar No. 131058  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 322-5524  
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:  
13 **RICK RODRIGUEZ**  
3981 Fruitridge Road  
Sacramento, California 95820  
14  
15 **Smog Check Inspector (EO)**  
License No. 150055 (formerly Advanced  
Emission Specialist Technician License No.  
16 150055)  
17 Respondent.

Case No. 79/15-81

18 **ACCUSATION**  
(SMOG CHECK)

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. At a date unknown in 2004, the Bureau issued Advanced Emission Specialist (EA)  
24 Technician License No. 150055 to Rick Rodriguez ("Respondent"). On or about October 31,  
25 2012, the advanced emission specialist (EA) technician license expired. Effective November 1,

26 ///  
27 ///  
28 ///

1 2012, said license was renewed as Smog Check Inspector (EO) License No. 150055 pursuant to  
2 Respondent's election.<sup>1</sup> The smog check inspector (EO) license expired on January 15, 2013, and  
3 on or about January 16, 2013, the Bureau denied renewal.

#### 4 JURISDICTION

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

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

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

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

#### 19 STATUTORY PROVISIONS

20 7. Health and Safety Code section 44050 provides, in pertinent part:

21 (a) In addition to or in lieu of any other remedy or penalty, including, but not  
22 limited to, education, training, or an office conference, the department may issue a  
23 citation to a licensee, contractor, or fleet owner for a violation of the requirements of  
24

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25 <sup>1</sup> 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 this chapter or a regulation adopted pursuant to this chapter. The citation may  
2 contain an order of abatement or the assessment of an administrative fine, or both.

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

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

#### 10 COST RECOVERY

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

#### 15 FIRST CAUSE FOR DISCIPLINE

16 (Failure to Pay Administrative Fine)

17 10. Respondent is subject to discipline pursuant to Health and Safety Code  
18 section 44050(e), in that on or about November 29, 2012, the Bureau issued Citation No. M2013-  
19 0351 to Respondent against his Advanced Emission Specialist Technician license for violations  
20 of Health and Safety Code section 44032 (qualified technicians shall perform tests of emission  
21 control systems and devices in accordance with Health and Safety Code section 44012). On  
22 January 10, 2013, the Bureau personally served Respondent with the citation. The Bureau  
23 assessed an administrative fine in the amount of \$500. Respondent failed to file a timely appeal  
24 and the citation was deemed final on February 10, 2013. Respondent has yet to pay the  
25 administrative fine for this citation.

#### 26 SECOND CAUSE FOR DISCIPLINE

27 (Failure to Complete Training)

28 11. Respondent is subject to discipline pursuant to Health and Safety Code section  
44045.6(c), in that on or about November 29, 2012, the Bureau issued Citation No. M2013-0351

1 to Respondent against his Advanced Emission Specialist Technician license for violations of  
2 Health and Safety Code section 44032 (qualified technicians shall perform tests of emission  
3 control systems and devices in accordance with Health and Safety Code section 44012). On  
4 January 10, 2013, the Bureau personally served Respondent with the citation, which required  
5 Respondent to complete an eight hour training course. Respondent failed to file a timely appeal  
6 and the citation was deemed final on February 10, 2013. Respondent has yet to submit proof of  
7 completion of remedial training prescribed by the citation.

8 **OTHER MATTERS**

9 12. Under Health and Safety Code section 44072.8, if the Smog Check Inspector (EO)  
10 License No. 150055 issued to Rick Rodriguez, is revoked or suspended, any additional license  
11 issued under this chapter in the name of Rick Rodriguez may likewise be revoked or suspended.

12 **PRAYER**

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

- 15 1. Revoking or suspending Smog Check Inspector (EO) License No. 150055, formerly  
16 Advanced Emission Specialist Technician License No. 150055, issued to Rick Rodriguez;  
17 2. Revoking or suspending any additional license issued under Chapter 5 of the Health  
18 and Safety Code in the name of Rick Rodriguez;  
19 3. Ordering Rick Rodriguez, to pay the Bureau of Automotive Repair the reasonable  
20 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
21 Code section 125.3; and,  
22 4. Taking such other and further action as deemed necessary and proper.

23  
24 DATED: December 1, 2014



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

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