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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:
JESUS ROCHA
54 Overpass Road
Watsonville, CA 95076
Smog Check Inspector License No. EO
153171

Respondent.

Case No. 79/15-22

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 26, 2013, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/15-22 against Jesus Rocha (Respondent) before the Director of Consumer Affairs.

(Accusation attached as Exhibit A.)

2. In or about 2006, the Bureau of Automotive Repair issued Advanced Emissions Specialist (EA) License No. 153171 to Jesus Rocha (Respondent). Advanced Emissions Specialist (EA) License was due to expire on December 31, 2012. Pursuant to California Code of Regulations, title 16, section 3340.28, subsection (e), the license was renewed, pursuant to

1 Respondent's election, as Smog Check Inspector License Number License No. EO 153171¹.
2 The Smog Check Inspector (EO) License is due to expire on December 31, 2014, unless renewed.
3 Respondent's Smog Check Inspector License No. EO 153171 was suspended on April 23, 2013.

4 3. On or about September 8, 2014, Respondent was served by Certified and First Class
5 Mail copies of the Accusation No. 79/15-22, 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 54 Overpass Road
11 Watsonville, CA 95076.

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. Government Code section 11506 states, in pertinent part:

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

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

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

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

¹ Effective August 1, 2012, California Code of Regulations, title 16, section 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 and/or Smog Check Repair Technician (EI) license.

Exhibit A

Accusation

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455 Golden Gate Avenue, Suite 11000
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Attorneys for Complainant

7
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. 79/15-22

12 **JESUS ROCHA**
13 **54 Overpass Road**
Watsonville, CA 95076

ACCUSATION

14 **Smog Check Inspector License No. EO**
15 **153171**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. In or about 2006, the Bureau of Automotive Repair issued Advanced Emissions
23 Specialist (EA) License No. 153171 to Jesus Rocha (Respondent). Advanced Emissions
24 Specialist (EA) License was due to expire on December 31, 2012. Pursuant to California Code of
25 Regulations, title 16, section 3340.28, subsection (e), the license was renewed, pursuant to
26 Respondent's election, as Smog Check Inspector License Number License No. EO 153171¹. The
27

28 ¹ Effective August 1, 2012, California Code of Regulations, title 16, section 3340.28,

(continued...)

1 Smog Check Inspector (EO) License is due to expire on December 31, 2014, unless renewed.
2 Respondent's Smog Check Inspector License No. EO 153171 was suspended on April 23, 2013.

3 **JURISDICTION**

4 3. This Accusation is brought before the Director of Consumer Affairs (Director) for the
5 Bureau of Automotive Repair, under the authority of the following laws.

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

9 5. Section 44045.6 of the Health and Safety Code states:

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

16 ..."

17 6. Section 44050, subsection (e), of the Health and Safety Code states:

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

21 7. Section 44072.2 of the Health and Safety Code states:

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

25 ...

26 (...continued)
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 and/or Smog Check Repair Technician (EI) license.

1 subdivision (c) of Section 44045.6 of the Health and Safety Code, shall be required to undergo
2 retraining at institutions and by instructors certified by the bureau pursuant to Sections 44030.5
3 and 44045.6 of the Health and Safety Code.

4 “(b) Failure by a licensed inspector or repair technician to complete retraining when
5 required by the department shall be grounds for revocation or suspension of the license, pursuant
6 to section 44045.6 of the Health and Safety Code.”

7 **COSTS**

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

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Failure to Comply with Citation)**

14 12. Respondent is subject to disciplinary action under section 44050, subsection (e) of the
15 Health and Safety Code in that Respondent failed to comply with a citation and order of
16 abatement. On or about January 30, 2013, Respondent was issued Citation No. M2013-0529.
17 The Citation ordered Respondent to attend an 8 hour certified training course. Respondent failed
18 to appeal the citation which became a final order. Respondent failed to take an 8 hour training
19 course.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Failure to Complete Training)**

22 13. Respondent is subject to disciplinary action under section 44045.6 subsection (e) of
23 the Health and Safety Code in conjunction with California Code of Regulations, title 16, section
24 3340.24, California Code of Regulations, title 16, section 3340.24 and Health and Safety Code
25 section 44072.2 in that Respondent failed to complete a training course that was ordered by the
26 Department. On or about January 30, 2013, Respondent was issued Citation No. M2013-0529.
27 The Citation ordered Respondent to attend an 8 hour certified training course. Respondent failed
28

1 to appeal the citation which became a final order. Respondent failed to take an 8 hour training
2 course.

3 P R A Y E R

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

6 1. Revoking or suspending Smog Check Inspector License Number EO 153171, issued
7 to Jesus Rocha;

8 2. Ordering Jesus Rocha to pay the Bureau of Automotive Repair the reasonable costs of
9 the investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3;

11 3. Taking such other and further action as deemed necessary and proper.

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DATED: August 26, 2014 

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

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