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

11
12 In the Matter of the Accusation and Petition to
Revoke Probation Against,

13 **JOSE MANUEL SALAZAR**
14 **1017 N. 1st Street**
El Cajon, CA 92021

15 **Smog Check Inspector License No. EO**
16 **30584**
17 **Smog Check Repair Technician License No.**
EI 30584
18 **(Former Advanced Emission Specialist**
Technician License No. EA 30584)

19 Respondent.

Case No. *79/16-24*

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

20
21 Complainant alleges:

22 **PARTIES**

23 1. Patrick Dorais (Complainant) brings this Accusation and Petition to Revoke
24 Probation solely in his official capacity as the Chief of the Bureau of Automotive Repair,
25 Department of Consumer Affairs.

26 2. In or about 1996, the Bureau of Automotive Repair (Bureau) issued Advanced
27 Emission Specialist Technician License Number EA 30584 to Jose Manuel Salazar (Respondent).

28 ///

1 The Advanced Emission Specialist Technician (EA) License was due to expire on May 31, 2014,
2 however it was canceled on March 21, 2014.

3 3. Pursuant to California Code of Regulations (CCR), title 16, section 3340.28(e)¹,
4 Respondent's EA license was renewed at his election, as Smog Check Inspector (EO) License
5 Number 30584 and Smog Check Repair Technician (EI) License Number 30584. Both licenses
6 became effective March 21, 2014. The Smog Check Inspector (EO) License and Smog Check
7 Repair Technician (EI) License will each expire on May 31, 2016, unless renewed.

8 4. In a disciplinary action entitled "In the Matter of Accusation Against Jose Manuel
9 Salazar," Case No. 79/11-49, the Director of Consumer Affairs for the Bureau of Automotive
10 Repair issued a decision, effective December 18, 2012, in which Respondent's Advanced
11 Emission Specialist Technician License was revoked. However, the revocation was stayed and
12 Respondent's Advanced Emission Specialist Technician License was placed on probation for a
13 period of five (5) years with certain terms and conditions. A copy of that decision is attached as
14 Exhibit A and is incorporated by reference.

15 5. In a disciplinary action entitled "In the Matter of the Citation Against Jose Manuel
16 Salazar," Citation No. M08-0991, the Bureau of Automotive Repair issued a citation against
17 Respondent for a violation of Health and Safety Code section 44032 and CCR section 3340.30(a).

18 JURISDICTION

19 6. Business and Professions Code (Code) section 9889.3 provides in pertinent part,

20 The director may suspend, revoke, or take other disciplinary action against a
21 license as provided in this article if the licensee or any partner, officer, or director
thereof:

22 (a) Violates any section of the Business and Professions Code that relates to his
23 or her licensed activities.

24 ...

25 (c) Violates any of the regulations promulgated by the director pursuant to this
chapter.

26
27 ¹ Effective August 1, 2012, an amendment to CCR, title 16, sections 3340.28, 3340.29 and
28 3340.30, implemented a license restructure of Smog Check Technician (EA/EB) license types to
Smog Check Inspector (EO) licenses and Smog Check Repair Technician (EI) licenses.

1 ...
2 (h) Violates or attempts to violate the provisions of this chapter relating to the
3 particular activity for which he or she is licensed.

4 ...
5 7. Code section 9889.5 provides in pertinent part:

6 The director may take disciplinary action against any licensee after a hearing as
7 provided in this article by any of the following:

- 8 (a) Imposing probation upon terms and conditions to be set forth by the director.
- 9 (b) Suspending the license.
- 10 (c) Revoking the license.

11 8. Code section 9889.7 provides, in pertinent part,

12 The expiration or suspension of a license by operation of law or by order or
13 decision of the director or a court of law, or the voluntary surrender of a license by
14 a licensee shall not deprive the director of jurisdiction to proceed with any
15 investigation of or action or disciplinary proceedings against such licensee, or to
16 render a decision suspending or revoking such license.

17 9. Health and Safety Code section 44002 provides, in pertinent part, that the Director
18 has all the powers and authority granted under the Automotive Repair Act for enforcing the
19 Motor Vehicle Inspection Program.

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

24 STATUTORY PROVISIONS

25 11. Health and Safety Code Section 44012 provides, in pertinent part:

26 The test at the smog check stations shall be performed in accordance with
27 procedures prescribed by the department and may require loaded mode
28 dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a
vehicle's onboard diagnostic system, or other appropriate test procedures as
determined by the department in consultation with the state board. The department
shall implement testing using onboard diagnostic systems, in lieu of loaded mode
dynamometer or two-speed idle testing, on model year 2000 and newer vehicles
only, beginning no earlier than January 1, 2013. However, the department, in
consultation with the state board, may prescribe alternative test procedures that
include loaded mode dynamometer or two-speed idle testing for vehicles with
onboard diagnostic systems that the department and the state board determine

1 exhibit operational problems. The department shall ensure, as appropriate to the
2 test method, the following:

3 (a) Emission control systems required by state and federal law are reducing
4 excess emissions in accordance with the standards adopted pursuant to
5 subdivisions (a) and (c) of Section 44013.

6 (b) Motor vehicles are preconditioned to ensure representative and stabilized
7 operation of the vehicle's emission control system.

8 (c) For other than diesel-powered vehicles, the vehicle's exhaust emissions
9 of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an
10 idle mode or loaded mode are tested in accordance with procedures prescribed by
11 the department. In determining how loaded mode and evaporative emissions
12 testing shall be conducted, the department shall ensure that the emission reduction
13 targets for the enhanced program are met.

14 (d) For other than diesel-powered vehicles, the vehicle's fuel evaporative
15 system and crankcase ventilation system are tested to reduce any nonexhaust
16 sources of volatile organic compound emissions, in accordance with procedures
17 prescribed by the department.

18 (e) For diesel-powered vehicles, a visual inspection is made of emission
19 control devices and the vehicle's exhaust emissions are tested in accordance with
20 procedures prescribed by the department, that may include, but are not limited to,
21 onboard diagnostic testing. The test may include testing of emissions of any or all
22 of the pollutants specified in subdivision (c) and, upon the adoption of applicable
23 standards, measurement of emissions of smoke or particulates, or both.

24 (f) A visual or functional check is made of emission control devices
25 specified by the department, including the catalytic converter in those instances in
26 which the department determines it to be necessary to meet the findings of Section
27 44001. The visual or functional check shall be performed in accordance with
28 procedures prescribed by the department.

(g) A determination as to whether the motor vehicle complies with the
emission standards for that vehicle's class and model-year as prescribed by the
department.

(h) An analysis of pass and fail rates of vehicles subject to an onboard
diagnostic test and a tailpipe test to assess whether any vehicles passing their
onboard diagnostic test have, or would have, failed a tailpipe test, and whether any
vehicles failing their onboard diagnostic test have or would have passed a tailpipe
test.

(i) The test procedures may authorize smog check stations to refuse the
testing of a vehicle that would be unsafe to test, or that cannot physically be
inspected, as specified by the department by regulation. The refusal to test a
vehicle for those reasons shall not excuse or exempt the vehicle from compliance
with all applicable requirements of this chapter.

12. Health and Safety Code Section 44032 states:

No person shall perform, for compensation, tests or repairs of emission
control devices or systems of motor vehicles required by this chapter unless the
person performing the test or repair is a qualified smog check technician and the

1 test or repair is performed at a licensed smog check station. Qualified technicians
2 shall perform tests of emission control devices and systems in accordance with
3 Section 44012.

4 13. Health and Safety Code section 44072.2 states, in pertinent part:

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

8 (a) Violates any section of this chapter [the Motor Vehicle Inspection
9 Program (Health and Saf. Code § 44000, et seq.)] and the regulations adopted
10 pursuant to it, which related to the licensed activities.

11

12 (c) Violates any of the regulations adopted by the director pursuant to this
13 chapter.

14 (d) Commits any act involving dishonesty, fraud, or deceit whereby
15 another is injured . . .

16 14. Health and Safety Code section 44072.8 provides that when a license has been
17 revoked or suspended following a hearing under this article, any additional license issued under
18 this chapter in the name of the licensee may be likewise revoked or suspended by the Director.

19 15. Health and Safety Code section 44072.10 states, in pertinent part:

20

21 (c) The department shall revoke the license of any smog check technician
22 or station licensee who fraudulently certifies vehicles or participates in the
23 fraudulent inspection of vehicles. A fraudulent inspection includes, but is not
24 limited to, all of the following:

25

26 (4) Intentional or willful violation of this chapter or any regulation,
27 standard, or procedure of the department implementing this chapter . . .

28 REGULATIONS

16. CCR, title 16, section 3340.30(a) states:

A licensed smog check inspector and/or repair technician shall comply
with the following requirements at all times while licensed:

(a) Inspect, test and repair vehicles, as applicable, in accordance with
section 44012 of the Health and Safety Code, section 44035 of the Health and
Safety Code, and section 3340.42 of this article.

///

1 17. CCR, title 16, section 3340.35 states, in pertinent part:

2 . . .

3 (c) A licensed station shall issue a certificate of compliance or
4 noncompliance to the owner or operator of any vehicle that has been inspected in
5 accordance with the procedures specified in section 3340.42 of this article and has
6 all the required emission control equipment and devices installed and functioning
7 correctly. . . .

8 18. CCR, title 16, section 3340.42 states, in pertinent part:

9 (a) All vehicles subject to a smog check inspection, shall receive one of the
10 following test methods:

11 . . .

12 (3) An OBD-focused test, shall be the test method used to inspect
13 gasoline-powered vehicles 2000 model-year and newer, and diesel-powered
14 vehicles 1998 model-year and newer. The OBD test failure criteria are specified in
15 section 3340.42.2.

16 (b) In addition to subsection (a), all vehicles subject to the smog check
17 program shall receive the following:

18 (1) A visual inspection of emission control components and systems to
19 verify the vehicle's emission control systems are properly installed.

20 (2) A functional inspection of emission control systems as specified in
21 the Smog Check Manual, referenced by section 3340.45, which may include an
22 OBD test, to verify their proper operation.

23 **COST RECOVERY**

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

28 **ACCUSATION**

FEBRUARY 12, 2015 UNDERCOVER OPERATION

20. On January 30, 2015, a Bureau mechanic documented the Bureau's 2008 Ford (Ford)
to fail a properly performed Smog Check inspection. The Bureau mechanic removed the Ford's
Diesel Particulate Filter/Periodic Trap Oxidizer, which is a required emission control component
for the truck, and replaced it with a Diesel Particulate Filter/Periodic Trap Oxidizer delete pipe
that is marketed for "Off Road Use Only." The Bureau mechanic then performed a smog check

1 inspection on the Ford and the overall test results were "Tamper" and as a result the Ford did not
2 pass the smog check inspection.

3 21. On February 12, 2015, a Bureau employee turned the Ford over to an undercover
4 operator (operator) who drove the Bureau's Ford to the smog shop where Respondent was
5 employed and asked for a smog check inspection. Respondent performed a smog check
6 inspection on the Ford and passed the vehicle. A Vehicle Inspection Report for the Ford was
7 issued and given to the operator. The operator immediately returned the Ford to the Bureau
8 employee. The Bureau employee inspected the Ford and verified that the Diesel Particulate
9 Filter/Periodic Trap Oxidizer was still missing. The Bureau employee then secured the Ford at a
10 Bureau storage facility.

11 22. On March 18, 2015, the Ford was returned to the Bureau's documentation lab. Upon
12 return of the Ford, the Bureau mechanic verified that the Ford's Diesel Particulate Filter/Periodic
13 Trap Oxidizer was still missing.

14 23. On March 19, 2015, the Bureau mechanic performed a smog check inspection on the
15 Ford and the overall test results were "Tamper" and the Ford did not pass the smog check
16 inspection. The condition of the Ford had not changed from when the Bureau mechanic released
17 the Ford on February 3, 2015 for the undercover run, to when he inspected it again on March 19,
18 2015. On March 19, 2015, the Diesel Particulate Filter/Periodic Trap Oxidizer was still missing.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Violations of the Motor Vehicle Inspection Program)**

21 24. Respondent's Smog Check Inspector (EO) License and Smog Check Repair
22 Technician (EI) License are subject to disciplinary action pursuant to Health and Safety Code
23 section 44072.2, subdivision (a), in that Respondent failed to comply with provisions of that
24 Code, as more specifically set forth above in paragraphs 20 through 23, and incorporated herein
25 as though fully set forth, and as follows:

26 a. **Section 44012:** Respondent failed to follow test procedures on the Bureau's 2008
27 Ford in accordance with the test analyzer specifications.

28 ///

1 **PRAYER**

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

4 1. Revoking the probation that was granted by the Bureau of Automotive Repair in Case
5 No. 79/11-49 and imposing the disciplinary order that was stayed thereby revoking Smog Check
6 Inspector (EO) License Number 30584 issued to Jose Manuel Salazar;

7 2. Revoking the probation that was granted by the Bureau of Automotive Repair in Case
8 No. 79/11-49 and imposing the disciplinary order that was stayed thereby revoking Smog Check
9 Repair Technician (EI) License Number 30584 issued to Jose Manuel Salazar;

10 3. Ordering Jose Manuel Salazar to pay the Director of Consumer Affairs the reasonable
11 costs of the investigation and enforcement of this case, pursuant to Business and Professions
12 Code section 125.3; and

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

14
15 DATED: September 16, 2015


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

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Exhibit A

Decision and Order

Bureau of Automotive Repair Case No. 79/11-49