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8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**
12

13 In the Matter of the Accusation Against:

Case No. 79/12-74

14 **PEDRO LUIS RIVERA**
10965 Glenoaks Blvd., Spc. 117
15 Pacoima, CA 91331

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

16 **Smog Check Inspector (EO) License No.**
632642
17 **Smog Check Repair Technician (EI) License**
No. 632642
18 **(formerly Advanced Emission Specialist**
Technician License No. EA 632642)
19

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21 Respondents.

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23 **FINDINGS OF FACT**

24 1. On or about February 3, 2012, Complainant Patrick Dorais, in his official capacity as
25 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation
26 No. 79/12-74 against Pedro Luis Rivera before the Director of Consumer Affairs. (Accusation
27 attached as Exhibit A.)
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1 2. On or about November 3, 2010, the Bureau of Automotive Repair (Bureau) issued
2 Advanced Emission Specialist (EA) Technician License No. EA632642 to Pedro Luis Rivera
3 (Respondent). On November 9, 2012, said license was cancelled and renewed pursuant to
4 Respondent's election as a Smog Check Inspector (EO) License No. 632642 and Smog Check
5 Technician (EI) License No. 632642.¹ The Smog Check Inspector (EO) and Smog Check Repair
6 Technician (EI) Licenses were in full force and effect at all times relevant to the charges brought
7 in Accusation No. 70/12-74 and will expire on December 31, 2014, unless renewed.

8 3. On or about March 8, 2012, Respondent was served by Certified and First Class Mail
9 copies of the Accusation No. 79/12-74, Statement to Respondent, Notice of Defense, Request for
10 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
11 Respondent's address of record which, pursuant to Business and Professions Code section 136, is
12 required to be reported and maintained with the Bureau. Respondent's address of record was and
13 is:

14 10965 Glenoaks Blvd Spc 117
15 Pacoima, CA 91331.

16 4. No envelopes or certified receipts were returned after Respondent was served by
17 Certified and First Class Mail.

18 5. Service of the Accusation was effective as a matter of law under the provisions of
19 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
20 124.

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

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

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
29 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
30 Check Inspector (EO) license and/or Smog Check Repair technician (EI) license.

ORDER

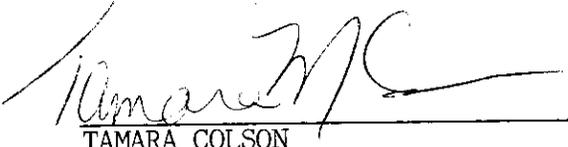
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IT IS SO ORDERED that Smog Check Inspector (EO) License No. 632642 and Smog Check Repair Technician (EI) License No. 632642, heretofore issued to Respondent Pedro Luis Rivera, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The motion should be sent to the Bureau of Automotive Repair, ATTN: William D. Thomas, 10240 Systems Parkway, Sacramento, CA 95827. 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 November 13, 2014.

It is so ORDERED. October 17, 2014



TAMARA COLSON
Assistant Chief Counsel
Department of Consumer Affairs

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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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. 79/12-74

13 **JOSE'S SMOG TEST ONLY**
14 **JOSE FLORES RODRIGUEZ, OWNER**
9727 Telfair Ave
15 Pacoima, CA 91331
Mailing Address:
16 7357 Sepulveda Boulevard, #36
Van Nuys, CA 91331
17 Automotive Repair Dealer Reg. No. ARD 263543
Smog Check, Test Only, Station License No.
TC 263543

18 **ACCUSATION**
(Smog Check)

18 and

19 **PEDRO LUIS RIVERA**
10965 Glenoaks Boulevard, Spc. 117
20 Pacoima, CA 91331
Advanced Emission Specialist Technician
21 License No. EA 632642

22 Respondents.

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24 Complainant alleges:

25 **PARTIES**

26 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as
27 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

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Jose's Smog Test Only; Jose Flores Rodriguez, Owner

2. On or about October 28, 2010, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 263543 ("registration") to Jose Flores Rodriguez ("Respondent Rodriguez"), owner of Jose's Smog Test Only. Respondent's registration expired on October 31, 2011, and was canceled on November 17, 2011.

3. On or about October 29, 2010, the Director issued Smog Check, Test Only, Station License Number TC 263543 ("smog check station license") to Respondent Rodriguez. Respondent's smog check station license expired on October 31, 2011, and was canceled on November 17, 2011.

Pedro Luis Rivera

4. On or about November 3, 2010, the Director issued Advanced Emission Specialist Technician License Number EA 632642 ("technician license") to Pedro Luis Rivera ("Respondent Rivera"). Respondent's technician license will expire on December 31, 2012, unless renewed.

JURISDICTION

5. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that the Director may revoke an automotive repair dealer registration.

6. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision temporarily or permanently invalidating (suspending or revoking) a registration.

7. Bus. & Prof. Code section 118, subdivision (b), states:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

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13. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

....

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

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

14. Health & Saf. Code section 44072.10 states, in pertinent part:

....

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

....

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

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

COST RECOVERY

16. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licentiate 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.

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1 **FACTUAL BACKGROUND**

2 17. In or about May 2011, the Bureau initiated an investigation of Respondent
3 Rodriguez's smog check station based on a review of information from the Bureau's Vehicle
4 Information Database ("VID"), which indicated that Respondent Rodriguez or his employees may
5 be engaging in fraudulent smog check inspections.

6 18. On May 31, 2011, a representative of the Bureau conducted a detailed review of the
7 VID data for all smog inspections performed at Respondent Rodriguez's facility for the period of
8 April 29, 2011, through May 12, 2011. The representative found that the VID recorded the same
9 diagnostic trouble code ("code") during the OBD II test¹ on the 19 vehicles identified below
10 regardless of the make or model of the vehicle. The representative obtained information
11 indicating that the codes were not applicable to the vehicles. The VID data also showed that
12 Respondent Rivera performed the smog inspections on all 19 vehicles. The Bureau concluded
13 that Respondent Rivera performed the inspections on the vehicles using a method known as
14 "clean plugging",² resulting in the issuance of fraudulent certificates of compliance for the
15 vehicles.

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Date & Time of Inspection	Vehicle Certified & License or VIN No.	Certificate No.
17 1. 04/29/2011 18 0955 - 1006	1997 Honda Odyssey; License No. 3UPY635	OC613248C
19 2. 04/29/2011 1042 - 1059	1999 Nissan Frontier pickup; License No. 8H09692	OC613250C

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21 ¹ The On Board Diagnostic, generation II (OBD II), functional test is an automated
22 function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to
23 connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC)
24 which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically
retrieves information from the vehicle's on-board computer about the status of the readiness
indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD
II functional test, it will fail the overall inspection.

25 ² Clean-plugging is the use of the OBD II readiness monitor status and stored fault code
26 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
27 another vehicle that is not in compliance due to a failure to complete the minimum number of self
tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
control system or component failure.

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	Date & Time of Inspection	Vehicle Certified & License or VIN No.	Certificate No.
1			
2	3. 04/29/2011 1149 - 1202	2000 Chevrolet Cavalier; VIN No. 3G1JC1244YS157481	OC679952C
3	4. 05/03/2011 1337 - 1400	1997 Nissan Quest; License No. 3VWE051	OC679973C
4	5. 05/03/2011 1740 - 1750	2000 Ford Expedition; License No. 5DUU536	OC679976C
5	6. 05/03/2011 1800 - 1809	1998 Ford Windstar; License No. 4CAB919	OC679977C
6	7. 05/04/2011 0835 - 0846	1998 Dodge Caravan; License No. 4ALR791	OC679978C
7	8. 05/04/2011 1122 - 1130	1998 Honda Accord; License No. 6GLC698	OC679982C
8	9. 05/04/2011 1231 - 1240	2002 Toyota Corolla; License No. 5BYU868	OC679984C
9	10. 05/05/2011 1103 - 1117	1997 Ford F150 pickup; License No. 6M44369	OC679989C
10	11. 05/07/2011 0928 - 0940	2003 Toyota Corolla; License No. 5CUJ597	OC781901C
11	12. 05/09/2011 1641 - 1657	2000 Chevrolet Express van; License No. 8T29588	OC781912C
12	13. 05/09/2011 1750 - 1800	2001 Nissan Altima; License No. 4RNT953	OC781915C
13	14. 05/10/2011 1105 - 1116	1997 Infiniti J30; License No. 3VLW465	OC781918C
14	15. 05/11/2011 1240 - 1255	2001 Dodge Durango; License No. 4TSX163	OC781925C
15	16. 05/11/2011 1527 - 1535	1998 Ford Expedition; License No. 4BPV027	None; vehicle failed inspection
16	17. 05/11/2011 1554 - 1605	1997 Nissan Quest; License No. 6ESB024	OC781929C
17	18. 05/11/2011 1622 - 1633	1999 Pontiac Grand Am; License No. 6MPF774	OC781930C
18	19. 05/12/2011 1517 - 1534	1998 Ford Expedition; License No. 4BPV027	OC781941C
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FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

19. Respondent Rodriguez's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Rodriguez's smog check technician, Respondent Rivera, certified that vehicles 1 through 15 and 17 through 19, identified in paragraph 18 above, had

1 passed inspection and were in compliance with applicable laws and regulations. In fact,
2 Respondent Rivera conducted the inspections on the vehicles using clean-plugging methods in
3 that he substituted or used a different vehicle (s) during the OBD II functional tests in order to
4 issue smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as
5 required by Health & Saf. Code section 44012.

6 **SECOND CAUSE FOR DISCIPLINE**

7 (Fraud)

8 20. Respondent Rodriguez's registration is subject to disciplinary action pursuant to Bus.
9 & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute
10 fraud by issuing electronic smog certificates of compliance for vehicles 1 through 15 and 17
11 through 19, identified in paragraph 18 above, without performing bona fide inspections of the
12 emission control devices and systems on the vehicles, thereby depriving the People of the State of
13 California of the protection afforded by the Motor Vehicle Inspection Program.

14 **THIRD CAUSE FOR DISCIPLINE**

15 (Violations of the Motor Vehicle Inspection Program)

16 21. Respondent Rodriguez's smog check station license is subject to disciplinary action
17 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
18 comply with the following sections of that Code:

19 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
20 performed on vehicles 1 through 19, identified in paragraph 18 above, in accordance with
21 procedures prescribed by the department.

22 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
23 vehicles 1 through 15 and 17 through 19, identified in paragraph 18 above, without ensuring that
24 the vehicles were properly tested and inspected to determine if they were in compliance with
25 Health & Saf. Code section 44012.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 22. Respondent Rodriguez's smog check station license is subject to disciplinary action
5 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
6 comply with provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
8 compliance for vehicles 1 through 15 and 17 through 19, identified in paragraph 18 above, even
9 though the vehicles had not been inspected in accordance with section 3340.42.

10 b. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
11 conducted on vehicles 1 through 19, identified in paragraph 18 above, in accordance with the
12 Bureau's specifications.

13 **FIFTH CAUSE FOR DISCIPLINE**

14 **(Dishonesty, Fraud or Deceit)**

15 23. Respondent Rodriguez's smog check station license is subject to disciplinary action
16 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
17 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog
18 certificates of compliance for vehicles 1 through 15 and 17 through 19, identified in paragraph 18
19 above, without performing bona fide inspections of the emission control devices and systems on
20 the vehicles, thereby depriving the People of the State of California of the protection afforded by
21 the Motor Vehicle Inspection Program.

22 **SIXTH CAUSE FOR DISCIPLINE**

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

24 24. Respondent Rivera's technician license is subject to disciplinary action pursuant to
25 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
26 section 44012 of that Code, as follows: Respondent failed to perform the emission control tests
27 on vehicles 1 through 19, identified in paragraph 18 above, in accordance with procedures
28 prescribed by the department.

1 Test Only, is revoked or suspended, any additional license issued under this chapter in the name
2 of said licensee may be likewise revoked or suspended by the director.

3 29. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
4 Technician License Number EA 632642, issued to Respondent Pedro Luis Rivera, is revoked or
5 suspended, any additional license issued under this chapter in the name of said licensee may be
6 likewise revoked or suspended by the director.

7 PRAYER

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

10 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
11 263543, issued to Jose Flores Rodriguez, owner of Jose's Smog Test Only;

12 2. Revoking or suspending any other automotive repair dealer registration issued to Jose
13 Flores Rodriguez;

14 3. Revoking or suspending Smog Check, Test Only, Station License Number
15 TC 263543, issued to Jose Flores Rodriguez, owner of Jose's Smog Test Only;

16 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
17 and Safety Code in the name of Jose Flores Rodriguez;

18 5. Revoking or suspending Advanced Emission Specialist Technician License Number
19 EA 632642, issued to Pedro Luis Rivera;

20 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
21 and Safety Code in the name of Pedro Luis Rivera;

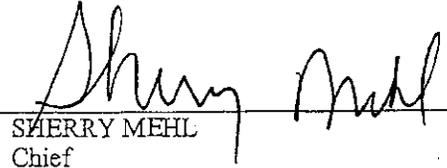
22 7. Ordering Respondents Jose Flores Rodriguez, owner of Jose's Smog Test Only, and
23 Pedro Luis Rivera, to pay the Director of Consumer Affairs the reasonable costs of the
24 investigation and enforcement of this case, pursuant to Business and Professions Code section
25 125.3;

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

DATED: 2/3/12



SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

LA2012601684