

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

JORGE HUGO GOMEZ

Applicant for Smog Check Inspector
License, Smog Check Repair Technician
License, Brake Adjuster License and Lamp
Adjuster License

Respondent.

Case No. 79/06-53s

OAH No. 2012110425

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective November 10, 2014.

DATED: October 17, 2014



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

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2 THOMAS L. RINALDI
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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 Statement of Issues
Against:

13 **JORGE HUGO GÓMEZ**

14 **Applicant for Smog Check Inspector**
15 **License, Smog Check Repair Technician**
16 **License, Brake Adjuster License and Lamp**
17 **Adjuster License**

Respondent.

Case No. 79/06-53s

OAH No. 2012110425
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 PARTIES

22 1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair. He
23 brought this action solely in his official capacity and is represented in this matter by Kamala D.
24 Harris, Attorney General of the State of California, by Michael Brown, Deputy Attorney General.

25 2. Respondent Jorge Hugo Gomez (Respondent) is represented in this proceeding by
26 attorney Gilbert Varela, whose address is: Law Office of Gilbert Varela, 6086 York Blvd., Los
27 Angeles, CA 90042.

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1 subpoenas to compel the attendance of witnesses and the production of documents; the right to
2 reconsideration and court review of an adverse decision; and all other rights accorded by the
3 California Administrative Procedure Act and other applicable laws.

4 10. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
5 every right set forth above.

6 CULPABILITY

7 11. Respondent admits the truth of each and every charge and allegation in Statement of
8 Issues No. 79/06-53s.

9 12. Respondent agrees that his Application for Smog Check Inspector License, Smog
10 Check Repair Technician License, Lamp Adjuster License and Brake Adjuster License are
11 subject to denial and he agrees to be bound by the Director's probationary terms as set forth in
12 the Disciplinary Order below.

13 CONTINGENCY

14 13. This stipulation shall be subject to approval by the Director of Consumer Affairs or
15 the Director's designee. Respondent understand and agree that counsel for Complainant and the
16 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of
17 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
18 or participation by Respondent or his counsel. By signing the stipulation, Respondent understand
19 and agree that he may not withdraw his agreement or seek to rescind the stipulation prior to the
20 time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the
21 Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
22 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
23 and the Director shall not be disqualified from further action by having considered this matter.

24 14. The parties understand and agree that Portable Document Format (PDF) and facsimile
25 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
26 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

27 15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
28 integrated writing representing the complete, final, and exclusive embodiment of their agreement.

1 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
2 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
3 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
4 writing executed by an authorized representative of each of the parties.

5 16. In consideration of the foregoing admissions and stipulations, the parties agree that
6 the Director may, without further notice or formal proceeding, issue and enter the following
7 Disciplinary Order:

8 **DISCIPLINARY ORDER**

9 IT IS HEREBY ORDERED that upon meeting all pre-licensure requirements, Applications
10 for Smog Check Inspector, Smog Check Repair Technician License, Brake Adjuster License and
11 Lamp Adjuster License filed by Respondent Jorge Hugo Gomez will be granted, the licenses
12 issued and immediately revoked. The revocations will be stayed and the Respondent placed on
13 three (3) years probation on the following terms and conditions:

14 1. **Obey All Laws.** Comply with all statutes, regulations and rules governing
15 automotive inspections, estimates and repairs.

16 2. **Reporting.** Respondent or Respondent's authorized representative must report in
17 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the
18 Bureau, but no more frequently than each quarter, on the methods used and success achieved in
19 maintaining compliance with the terms and conditions of probation.

20 3. **Report Financial Interest.** Within 30 days of the effective date of this action, report
21 any financial interest which any partners, officers, or owners of the Respondent facility may have
22 in any other business required to be registered pursuant to Section 9884.6 of the Business and
23 Professions Code.

24 4. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect
25 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

26 5. **Jurisdiction.** If an accusation is filed against Respondent during the term of
27 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter
28 until the final decision on the accusation, and the period of probation shall be extended until such

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs

Dated: August 5, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
THOMAS L. RINALDI
Supervising Deputy Attorney General



MICHAEL BROWN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 79/06-53s

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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 Statement of Issues
Against:

13 **JORGE HUGO GOMEZ**
14 **13434 Moore Street**
Cerritos, CA 90703

15 Respondent.

Case No. **79/06-535**

STATEMENT OF ISSUES

Smog Check

17 Complainant alleges:

18 **PARTIES**

19 1. John Wallauch (Complainant) brings this Statement of Issues solely in his official
20 capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

21 **Applications for Brake and Lamp Adjuster Licenses**

22 2. On or about May 3, 2012, the Bureau received Applications for Brake and Lamp
23 Adjuster Licenses from Jorge Hugo Gomez (Respondent). On or about April 25, 2012, Jorge
24 Hugo Gomez certified under penalty of perjury to the truthfulness of all statements, answers, and
25 representations in the applications. The Bureau denied the applications on June 7, 2012.

26 **Application for Advanced Emission Specialist Technician License**

27 3. On or about May 3, 2012, the Bureau received an Application for Initial Smog Check
28 Technician License from Respondent. On or about April 25, 2012, Jorge Hugo Gomez certified

1 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
2 application. The Bureau denied the application on June 7, 2012.

3 **PRIOR LICENSE INFORMATION**

4 **Advanced Emission Specialist Technician License**

5 4. On a date uncertain in 1997, the Bureau issued Advanced Emission Specialist
6 Technician License Number EA 032105 to Respondent. The license was due to expire on July
7 31, 2007, however, it was revoked on December 18, 2006.

8 **PRIOR DISCIPLINE**

9 5. Effective December 18, 2006, pursuant to the Decision in Accusation Number 79/06-
10 53, attached hereto as Exhibit "A" and incorporated herein by reference, Respondent's Advanced
11 Emission Specialist Technician License Number EA 032105 was permanently revoked

12 6. On or about May 31, 2006, an Accusation, Case No. 79/06-53, was filed against
13 Respondent's Advanced Emission Specialist License. The Accusation resulted from two
14 videotaped surveillances initiated by the Bureau. The surveillance operation and information
15 obtained from the Emission Inspection System ("EIS") unit and the Bureau's Vehicle Information
16 Database ("VID") revealed that Respondent performed seven (7) illegal smog inspections, which
17 resulted in the issuance of six (6) electronic certificates of compliance certifying that the vehicles
18 had been tested and inspected and that those vehicles were in compliance with applicable laws
19 and regulations when, in fact, Respondent performed the smog inspections using "clean
20 plugging",¹ methods.

21 **STATUTORY PROVISIONS**

22 7. Section 480 of the Business and Professions Code provides, in pertinent part, that a
23 board may deny a license if the applicant has been convicted of a crime substantially related to
24 the qualifications, functions or duties of the business or profession for which application is made,
25 has committed any act involving dishonesty, fraud or deceit, has committed any act which if done

26
27 ¹ "Clean-plugging" is sampling the (clean) tailpipe emissions and/or the RPM readings of
28 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
compliance or are not present in the smog check area during the time of the certification.

1 by a licentiate would be grounds for suspension or revocation of a license, or has knowingly made
2 a false statement of fact required to be revealed in the application.

3 8. Section 9889.1 of the Business and Professions Code ("Code") provides, in pertinent
4 part, that the Director may refuse to issue a license to any applicant for the reasons set forth in
5 Code section 9889.2.

6 9. Code section 9889.2 states, in pertinent part:

7 The director may deny a license if the applicant or any partner, officer, or
8 director thereof:

9 (c) Has committed any act which, if committed by any licensee, would
10 be grounds for the suspension or revocation of a license issued pursuant to this
11 chapter.

12 (d) Has committed any act involving dishonesty, fraud, or deceit
13 whereby another is injured or whereby the applicant has benefited.

14 10. Section 44072 of the Health and Safety Code provides, in pertinent part, that the
15 director may refuse to issue a license to any applicant for the reasons set forth in Section 44072.1.

16 11. Section 44072.1 of the Health and Safety Code states:

17 The director may deny a license if the applicant, or any partner, officer, or
18 director thereof, does any of the following:

19 (b) Was previously the holder of a license issued under this chapter [the
20 Motor Vehicle Inspection Program (Health and Saf. Code, § 44000, et seq.)], which
21 license has been revoked and never reissued or which license was suspended and the
22 terms of the suspension have not been fulfilled.

23 (c) Has committed any act which, if committed by any licensee, would
24 be grounds for the suspension or revocation of a license issued pursuant to this
25 chapter.

26 (d) Has committed any act involving dishonesty, fraud, or deceit
27 whereby another is injured or whereby the applicant has benefited.

28 (f) Has entered a plea of guilty or nolo contendere to, or been found guilty of,
or been convicted of a crime substantially related to the qualifications, functions, and duties
of the licenseholder in question, and the time for appeal has elapsed or the judgment of
conviction has been affirmed on appeal, irrespective of an order granting probation
following the conviction, suspending the imposition of sentence, or of a subsequent order
under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty
and to enter a plea of not guilty, or setting aside the plea or verdict of guilty, or dismissing
the accusation or information."

1 12. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
2 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
3 the Motor Vehicle Inspection Program.

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

8 **DENIAL OF APPLICATIONS FOR BRAKE AND LAMP ADJUSTER LICENSES**

9 **FIRST CAUSE FOR DENIAL OF APPLICATION**

10 (Acts if Committed by a Licentiate Constitute Grounds for Discipline)

11 14. Respondent's applications for brake and lamp licenses are subject to denial pursuant
12 to Code section 9889.2, subdivision (c), in that Respondent committed acts which if committed
13 by any licensee would be grounds for suspension or revocation of a license issued by this chapter,
14 as more particularly set forth in Accusation Number 79/06-53.

15 **SECOND CAUSE FOR DENIAL OF APPLICATION**

16 (Acts Constituting Dishonesty, Fraud or Deceit)

17 15. Respondent's applications for brake and lamp licenses are subject to denial pursuant
18 to Code section 9889.2, subdivision (d), in that Respondent committed acts involving dishonesty,
19 fraud or deceit, as more particularly set forth in Accusation Number 79/06-53.

20 **THIRD CAUSE FOR DENIAL OF APPLICATION**

21 (Conviction of Substantially Related Crime)

22 16. Respondent's application for brake and lamp licenses are subject to denial under
23 Sections 480(a)(1) of the Code and Health and Safety Code section 44072.1, subdivision (f) in
24 that Respondent was convicted of a crime substantially related to the qualifications, functions or
25 duties of an Advanced Emission Specialist Technician. The circumstances are as follows:

26 a. On or about September 28, 2006, before the Superior Court of California, County of
27 Los Angeles, Case No. BA303247, entitled *The People of the State of California v. Jorge Hugo*
28

1 Gomez, Respondent was convicted of one count of the crime of altering/etc. computer system for
2 illegal use, in violation of Section 502(c)(1) of the Penal Code, a felony.

3 b. The circumstances were that on November 30, 2004, Respondent performed a smog
4 check and issued a certificate of compliance on a vehicle by willfully and unlawfully and
5 knowingly accessing and without permission altered, damaged, deleted and destroyed and used
6 data, computer, computer system and computer network in order to either devise and execute a
7 scheme or artifice to defraud, deceive and extort or to wrongfully control and obtain money,
8 property and data.

9 c. As a result of the above conviction, Respondent was placed on formal probation for a
10 term of three years, performed 100 hours of community service and paid restitution to the victim
11 in the amount of \$11,642.00.

12 **DENIAL OF APPLICATION FOR INITIAL**
13 **SMOG CHECK TECHNICIAN LICENSE**
14 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

15 **(Previously Revoked License)**

16 17. Respondent's application for smog check technician license is subject to denial
17 pursuant to Code section 44072.1, subdivision (b), in that Respondent was previously the holder
18 of Advanced Emission Specialist Technician License Number EA 032105, which license was
19 permanently revoked pursuant to the Decision in Accusation Number 79/06-53, as more
20 particularly set forth in Accusation Number 79/06-53.

21 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

22 **(Acts if Committed by a Licentiate Constitute Grounds for Discipline)**

23 18. Respondent's application for smog check technician license is subject to denial
24 pursuant to Health and Safety Code section 44072.1, subdivision (c), in that Respondent
25 committed acts which if committed by any licensee would be grounds for suspension or
26 revocation of a license issued by this chapter, as more particularly set forth in Accusation Number
27 79/06-53.

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SIXTH CAUSE FOR DENIAL OF APPLICATION

(Acts Constituting Dishonesty, Fraud or Deceit)

19. Respondent's application for smog check technician license is subject to denial pursuant to Health and Safety Code section 44072.1, subdivision (d), in that Respondent committed acts involving dishonesty, fraud or deceit, as more particularly set forth in Accusation Number 79/06-53.

SEVENTH CAUSE FOR DENIAL OF APPLICATION

(Conviction of Substantially Related Crime)

20. Respondent's application for smog check technician license is subject to denial under Sections 480(a)(1) of the Code and Health and Safety Code section 44072.1, subdivision (f) in that Respondent was convicted of a crime substantially related to the qualifications, functions or duties of an Advanced Emission Specialist Technician, as more fully described in paragraph 16, above.

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. Denying the applications of Jorge Hugo Gomez for brake and lamp adjuster licenses;
2. Denying the application of Jorge Hugo Gomez for an Advanced Emission Specialist Technician License; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/8/12

John Wallauch by Doug BAAH
 JOHN WALLAUCH
 Chief
 Bureau of Automotive Repair
 Department of Consumer Affairs
 State of California
 Complainant

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