

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

In the Matter of the Accusation Against:

QUALITY TUNE UP #40

3846 Fruitridge Road
Sacramento, CA 95820-4858
MIGUEL PEREZ, Owner

Automotive Repair Dealer Registration
No. ARD 183857
Smog Check Station License No. RC 183857

and

MIGUEL PEREZ

7686 Bluebrook Way
Sacramento, CA 95823

Advanced Emission Specialist Technician
License No. EA 314602

Respondents.

Case No. 79/08-24

OAH No. 2007110725

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517(c)(2)(C), the typographical error on page 4, paragraph 16, of the Proposed Decision is corrected as follows:

The words "use a" were typed in twice in line 1 of paragraph 16. That paragraph should thus read as follows:

"16. Respondent Perez initially tried to use a bidirectional scanner to test the EGR valve. But the scanner did not work with the Corsica. Next, according to respondent Perez, he "power braked" the car while it was connected to the scanner in order to see if the solenoids were being commanded to operate the EGR valve. The scanner indicated that the solenoids were being directed to operate the EGR valve."

This Decision shall become effective 2/27/09.

IT IS SO ORDERED this 22nd day of January, 2009.

P. J. Harris

PATRICIA HARRIS
Deputy Director, Board/Bureau Support
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

QUALITY TUNE UP #40
3846 Fruitridge Road
Sacramento, CA 95820-4858
MIGUEL PEREZ, Owner

Automotive Repair Dealer Registration
No. ARD 183857
Smog Check Station License No. RC 183857

and

MIGUEL PEREZ
Advanced Emission Specialist Technician
License No. EA 314602

Respondents. ¹

Case No. 79/08-24

OAH No. 2007110725

PROPOSED DECISION

This matter was heard before Judith A. Kopec, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on December 4 and 5, 2008, in Sacramento, California.

Patrick M. Kenady, Deputy Attorney General, represented Sherry Mehl (complainant), Chief of the Bureau of Automotive Repair (bureau), Department of Consumer Affairs (department).

Robb Hewitt, Attorney at Law, represented Miguel Perez (respondent), individually and as owner of Quality Tune Up #40 (respondent Quality Tune Up).

¹ The accusation incorrectly identified respondent Quality Tune Up's automotive repair dealer registration number as AE 183857, and respondent Perez's smog check station license as RE 18357. The caption has been corrected.

FACTUAL FINDINGS

1. On October 15, 2007, complainant in her official capacity made an accusation against both respondents.

2. On May 23, 1995, the bureau issued automotive repair dealer registration number ARD 183857 (registration) to respondent Perez, doing business as Quality Tune Up #40, 3846 Fruitridge Road, Sacramento, CA. The registration will expire on May 31, 2009, unless renewed.

3. On May 31, 1995, the bureau issued smog check station license number RC 183857 (station license) to respondent Perez, doing business as respondent Quality Tune Up. The station license will expire on May 31, 2009, unless renewed.

4. In 1996, the bureau issued advanced emission specialist technician license number EA 314602 (technician license) to respondent Perez, which will expire on October 31, 2010, unless renewed.

Background

5. There are three parts to a California emissions inspection test, also known as a smog check or smog inspection: a tailpipe emissions test to ensure that the vehicle's emissions are within acceptable levels; a visual inspection of the vehicle's emission control components to ensure that they are present and connected properly; and a functional test of certain components to ensure they are working properly. A vehicle must pass all three parts of the emissions inspection test before an emission inspection certificate of compliance may be issued. The undercover operation resulting in the allegations at issue involved only the functional test portion of the smog inspection.

6. There are two types of tailpipe tests conducted in California; the type of tailpipe test that is required will influence the elements of the functional test. An acceleration simulation mode (ASM) test is required in densely populated, or "enhanced" areas, such as Sacramento. The other test is a two-speed idle (TSI) test, which is required in all other areas. Generally, less populated areas, such as Sutter or Calaveras Counties, are not enhanced. Some, like Placer County, are a mixture of enhanced and basic areas. The zip code for the location in which the vehicle is registered determines which tailpipe test a car is required to have. The BAR97 analyzer (analyzer), which is the emission inspection system the technician uses to run a smog test, informs the technician of which test is required.

7. When a TSI test is done on a vehicle, the analyzer will also prompt the technician to perform a functional test of the exhaust gas recirculation (EGR) valve. When it works properly, the EGR valve recirculates some of the engine's exhaust gas and reduces the level of oxides of nitrogen (NO_x) in the emissions. If the EGR valve is not working, higher levels of NO_x are emitted from the tailpipe. When an ASM test is done, a functional test of the EGR valve is not required because the ASM tailpipe emissions test measures NO_x.

Because the TSI tailpipe emissions test does not measure NO_x, the function of the EGR valve must be tested to ensure that the level of NO_x is within the required limits. The analyzer prompts the technician to test the EGR valve according to the manufacturer's specifications for the vehicle being tested.

8. The examination for an advanced emission technician's license requires knowledge of older and newer types of EGR valves; knowledge of where to obtain the correct specifications for the EGR; knowledge of how EGR valves operate; knowledge of the various procedures for checking an EGR system; and the ability to interpret failures of the functional test and report them on the analyzer. This knowledge is required for initially obtaining a license and to successfully perform smog inspections.

Undercover Operation

9. Roger Lehman has been a program representative II with the bureau for eight years. Based on his knowledge of respondents' history with the bureau, Mr. Lehman decided to conduct an undercover operation with a 1991 Chevrolet Corsica (Corsica) that had a nonfunctional EGR valve and a blockage plate.

10. Kyle Tetlow has been a program representative I with the bureau for three years. Among other duties, he prepares vehicles for use in undercover operations, and inspects, repairs and maintains vehicles in the bureau's undercover fleet. Mr. Tetlow is certified by the National Institute of Automotive Service Excellence as a master automobile technician, and in the automobile advanced engine performance category, and also has completed its refrigerant recovery and recycling review and certification program. He is licensed by the bureau as a brake adjuster, a lamp adjuster, and an advanced smog check repair technician.

11. In preparation for the undercover operation, Mr. Tetlow inspected the Corsica to make sure that it was in good condition. He performed the ASM and TSI smog tests and it passed both of them. As requested by Mr. Lehman, he made the EGR valve inoperable. Mr. Tetlow did this by drilling out the windings within the solenoid, which blocked the electric current from opening the valve. He also inserted a blockage plate to seal the passageway between the exhaust manifold and the intake manifold, which prevented exhaust gas from being recirculated. After installing the modified EGR valve on the Corsica, Mr. Tetlow tested each of the valve's solenoids, and the engine's revolutions per minute (rpm) did not drop, which indicated the solenoids were not working. He again performed both an ASM and TSI smog test, and the car did not pass. The EGR valve, blockage plate, and gasket were all new parts.

12. On April 4, 2007, Ronald C. Otzman posed as a customer and drove the Corsica with the inoperable EGR valve to respondent Quality Tune Up for a smog inspection. The dashboard's 'check engine light' went on about half way to the shop. Respondent Perez performed the smog test, indicated that the Corsica passed the test, and issued a smog check certificate. Mr. Otzman paid \$59.95 for the test, and returned the car to

the bureau. The 'check engine light' also went on while he drove the car back to the bureau. The light was on for about 15 minutes each way.

13. Mr. Tetlow also inspected the Corsica after Mr. Otzman returned it from the undercover operation. He tested the EGR valve using two different tools, both of which indicated that the EGR valve did not work. Mr. Tetlow did not perform a manual test of the EGR valve. He removed the EGR valve, and found the gasket and blockage plate as he had installed them. He marked the parts for identification, and placed them in the documentation lab's evidence locker. Mr. Tetlow checked the Corsica's on-board diagnostic computer and did not find that a trouble code had been set for a problem with the EGR valve. Mr. Tetlow did not know what the Corsica's system requirements were for the computer to show a trouble code for the EGR valve. Mr. Tetlow persuasively established that the 'check engine light' could have properly gone on without a trouble code being set for a nonfunctioning EGR valve.

14. Mr. Tetlow persuasively established that experienced technicians are generally able to distinguish different sounds made by different functions in a vehicle while a smog inspection is being performed. For example, the sound from an engine is identifiable and different from the sound of the cooling fan. When a technician is using any of the tests on an EGR valve, the technician must use his or her experience to determine if a decrease in the engine's rpms is detected to indicate that the valve is functioning properly. When an EGR valve is functioning properly, each of the three solenoids has a distinctive response in terms of the resulting decrease in rpms. The first solenoid creates a "light stumble," the second solenoid, a "moderate stumble," and the third solenoid has a "heavy stumble." According to Mr. Tetlow, a 'stumble' sounds like the car is stalling.

Test Performed by Respondent Perez

15. Respondent Perez calibrated the analyzer every three days, as required, in order to ensure that it operated properly. He has the required equipment and manuals in order to perform smog inspections as required by law. Respondent Perez performed the smog inspection of the bureau's Corsica. He entered the information from the car into the analyzer and performed a TSI tailpipe emissions test, as required. The Corsica properly passed the TSI test. Respondent Perez next performed the visual inspection. As part of the visual inspection, he properly verified that the wiring harness was connected to the EGR valve. The Corsica properly passed the visual inspection. During the smog test, the cooling fan was cycling on and off.

16. Respondent Perez initially tried to use a use a bidirectional scanner to test the EGR valve. But the scanner did not work with the Corsica. Next, according to respondent Perez, he "power braked" the car while it was connected to the scanner in order to see if the solenoids were being commanded to operate the EGR valve. The scanner indicated that the solenoids were being directed to operate the EGR valve.

17. Respondent Perez next performed a manual test of the Corsica's EGR valve. This required him to apply positive voltage to each solenoid while grounding the others. If the solenoid was operating, the engine's rpms would drop. According to respondent Perez, each time he tested one of the solenoids, he heard the engine's rpms drop. He heard the same noise, a "bit of dropping, like a stumbling," when each solenoid was checked, and incorrectly determined that the EGR valve was functioning properly. Respondent Perez entered information into the analyzer that the Corsica passed the functional test, and issued a certificate of compliance for the Corsica.

18. Mr. Tetlow persuasively testified that when a test of an EGR valve is performed correctly, there is a noticeable difference between the drop in rpms as one cycles through each of the solenoids. This is contrary to respondent Perez's results. Respondent Perez attempted to show that there are legitimate reasons why he may have found that the EGR valve was functioning. However, the evidence did not support his contentions. While there was background noise in the shop, Mr. Tetlow established that an experience technician can distinguish various noises and would be able to determine if the EGR valve was operating properly. There was no evidence that the blockage plate or the gasket were warped or would otherwise allow gas to flow through the valve.

19. Respondent Perez argued that the functional test of the EGR valve was a particularly difficult test, and that the bureau set him up to fail. The evidence did not support this. The ability to perform a functional test of an EGR valve is required of both basic and advanced technicians. In response to questions from the ALJ, respondent Perez stated that he performed a manual test of an EGR valve in about one percent of the smog inspections he performed. Since he performed over 10,000 smog inspections during his career, this would amount to 1,000 manual tests over a 20-year career. But respondent Perez answered the question reluctantly and only after being pressed. His manner and tone of testifying indicated that his response was not reliable. The evidence shows that respondent Perez did not often perform the test and was not as familiar with it as he was required to be. As a result, he improperly determined that the Corsica's EGR valve was functioning properly. While respondent Perez did not intentionally pass the Corsica knowing that it failed the inspection, neither did he competently perform the test. Respondent Perez failed to exercise a reasonable level of care and competence that is required of a technician. The evidence shows that respondent Perez followed the required procedures when conducting the smog inspection.

Evidence of Aggravation: Prior Citations

20. On August 25, 2005, Bill Howe, program representative II with the bureau, and Mr. Lehman conducted an educational conference with respondent Perez. During the conference, bureau staff discussed in detail a quality assurance investigation conducted in May 2005. In addition, they reviewed and discussed numerous quality assurance inspections conducted between July 1999 and June 2005. They discussed a variety of violations, including smog check inspection, diagnosis and repair, and work estimate and invoice requirements. Bureau staff provided two pages of written recommendations, including that

all smog check inspections and tests shall be performed in accordance with the bureau's procedures, inspection steps shall be followed as outlined in the manual and as prompted by the Emissions Inspection System, and a vehicle shall be certified as complying with the law only after it is determined to meet all of the requirements.

21. On March 15, 2006, the bureau issued a citation against respondent Quality Tune Up as a result of an undercover operation involving a Chevrolet Tahoe with a missing air injection system. One of respondent Perez's employees improperly certified that the vehicle passed a smog inspection, in violation of Health and Safety Code section 44012, subdivision (f), failure to perform a visual or functional inspection according to the department's procedures, and California Code of Regulations, title 16, section 3340.35, subdivision (c), issuing a certificate of compliance to a vehicle that was improperly tested. A citation office conference was conducted on April 25, 2005; respondent Quality Tune Up paid the fine of \$500 on that date.

22. On July 18, 2006, the bureau issued a citation against respondent Quality Tune Up as a result of an undercover operation involving a Ford Ranger with a missing positive crankcase ventilation system. Respondent Quality Tune Up violated Health and Safety Code section 44012, subdivision (f), and California Code of Regulations, title 16, section 3340.35, subdivision (c). A citation office conference was conducted on August 22, 2006; respondent Quality Tune Up paid the fines of \$1,000 on that date.

23. On July 18, 2006, the bureau issued a citation against respondent Perez for improperly certifying that the Ford Ranger passed a smog inspection in violation of Health and Safety Code section 44032, and California Code of Regulations, title 16, section 3340.30, subdivision (a), both of which require that a smog test shall be done as required by law. Respondent Perez was ordered to take an eight-hour training course, which he completed in September 2006.

24. On November 27, 2006, the bureau issued a citation against respondent Quality Tune Up as a result of an undercover operation involving a Toyota pickup truck with a missing air injection system valve. One of respondent Perez's employees improperly certified that the vehicle passed a smog inspection, in violation of Health and Safety Code section 44012, subdivision (f), and California Code of Regulations, title 16, section 2240.35, subdivision (c). A citation office conference was conducted on December 14, 2006; respondent Quality Tune Up paid the \$2,000 fine on that date.

25. Respondents received a written report that summarized each citation conference and reiterated the recommendations provided to respondents in the 2005 educational conference, described in Factual Finding 20.

Evidence of Mitigation or Rehabilitation

26. Respondent Perez has owned respondent Quality Tune Up since 1995. He has been licensed by the bureau since 1987, and worked at different Quality Tune Up locations

during his career. Respondent Perez has taken the continuing education courses required to maintain his license. Since the summer of 1996, he has successfully completed six classes, for a total of 7 units. Respondent Perez has performed over 10,000 smog inspection in his career. Performing smog inspections is a significant percentage of the business at respondent Quality Tune Up. Respondent Perez's wife and older daughter work with him in the business. His family is supported entirely through the income earned at respondent Quality Tune Up.

27. Respondents did not offer any evidence that any measures were taken after the prior citations to minimize recurrence of these violations. There was no evidence that respondent Perez or any of his employees had additional training other than that required for maintaining licensure, or that quality control procedures were implemented to minimize violations.

Costs of Investigation and Enforcement

28. Complainant requested costs of investigation and enforcement in the total amount of \$7,405.61, which includes \$1,769.61 for investigative services from bureau staff, and \$5,636 for legal services from the Office of the Attorney General. The only evidence in support of the requested costs for investigative services is a declaration from Curtis Worden, enforcement manager for the bureau's smog check program. The requested costs are generically described as "including, but not limited to, travel, investigative time, evidence, report writing and clerical services." There is no further substantiation of these expenses, such as the particular actions taken, the number of hours spent on those actions, or the costs attributed to those actions. Complainant did not submit sufficient substantiation of these requested costs to determine whether they were reasonable. Therefore, these costs are not allowed.

29. Also included is \$5,636 for legal costs. This is comprised of the costs for 28 hours for one attorney, at \$158 an hour from June 2007 through November 2008, and for 12 hours for one paralegal, at \$101 an hour in June through September 2007. These requested costs are reasonable. Respondents did not provide any evidence showing that they are unable to pay the requested costs.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Absent a statute to the contrary, the burden of proof in a license disciplinary proceeding is on the party filing the accusation, which is ordinarily the agency. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In disciplinary cases involving the suspension or revocation of a professional license (i.e., a license requiring a significant showing of education, training, experience and/or testing to qualify for the issuance of the license), the standard of proof is "clear and convincing evidence." (*Ettinger*

v. Board of Medical Quality Assurance (1982) 135 Cal.App.3d 853, 857 [physician's license].) The issuance of an advanced emission specialist technician's license requires a substantial showing of education, training, and experience. An applicant must pass a licensing examination before the technician's license is issued. For these reasons, the "clear and convincing evidence" standard of proof applies in disciplinary matters seeking to revoke or suspend such a license.

2. There is some uncertainty about what standard of proof applies in an action to suspend or revoke an automotive dealer registration and a smog check station license. The operation of these enterprises requires considerable expertise to properly supervise subordinate licensees, and a substantial investment of time and capital. Despite this, it appears that a preponderance of the evidence standard applies to a disciplinary matter seeking the permanent or temporary invalidation of an automotive dealer registration and the revocation or suspension of a smog check station license because issuance of the license does not require a showing of extensive education, training, or experience.

Cause to Discipline Respondent Quality Tune Up's Registration

3. Where the automotive repair dealer cannot show that there was a "bona fide error," an automotive repair dealer registration may be invalidated when the automotive repair dealer, or any technician employed by the dealer, has made "in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading." (Bus. & Prof. Code, § 98847, subd. (a)(1).) Neither the Automotive Repair Act (Bus. & Prof. Code, § 9880 et seq.), nor the regulations promulgated under it, define "bona fide error." A bona fide error is generally defined as a mistake that is unintentional, inadvertent, and in good faith. (Black's Law Dict. (5th ed. 1979) p. 161, col. 1.) Good faith is generally defined as "that state of mind denoting honesty of purpose, freedom from intention to defraud, and ... being faithful to one's duty or obligation." (*Id.* at p. 624, col. 1; *Merrill v. Department of Motor Vehicles* (1969) 71 Cal.2d 907, 920-921.)

4. Based on Factual Findings 11 through 14, and 17 through 19, respondents issued a smog check vehicle inspection report indicating that the Corsica passed the visual inspection, and issued a smog check certificate that it passed the smog inspection. These statements were untrue. Based on Factual Findings 13, 14, 18, and 19, respondent Perez failed to exercise reasonable care and competence during the inspection. The weight of the evidence established that these statements did not result from bona fide error, and cause exists to discipline respondent Quality Tune Up's registration under Business and Professions Code section 9884.7, subdivision (a)(1).

5. Where the automotive repair dealer cannot show that there was a "bona fide error," an automotive repair dealer registration may be invalidated when the automotive repair dealer, or any technician employed by the dealer, has engaged in conduct that constitutes fraud. Neither the Automotive Repair Act nor the regulations promulgated under it include a definition of "fraud." In general, fraud will be found when an individual

“intentionally, or by design, misrepresents a material fact, or produces a false impression in order to mislead another, or to entrap or cheat him, or to obtain an undue advantage of him.” (*Wayne v. Bureau of Private Investigators & Adjusters* (1962) 201 Cal.App.2d 427, 438; see Civ. Code, § 1572.)

6. Based on Factual Findings 15 through 19, the evidence did not establish that either respondent engaged in any conduct that constituted fraud in connection with the smog inspection of the Corsica. Accordingly, cause does not exist to discipline respondent Quick Tune Up’s registration under Business and Professions Code section 9884.7, subdivision (a)(4).

Cause to Discipline Respondent Quick Tune Up’s Station License and Respondent Perez’s Technician License

7. A station license and a technician license may be suspended, revoked or otherwise disciplined if the licensee, or any partner, officer, or director, violates any section of the Motor Vehicle Inspection Program (Health & Saf. Code, § 44000 et seq.), or the regulations promulgated under it which relate to the licensed activities. (Health & Saf. Code, § 44072.2, subd. (a).) The test at a smog check station shall be performed in accordance with procedures prescribed by the department. The department shall ensure that a visual or functional check is made of emission control devices specified by the department. The visual or functional check shall be performed in accordance with procedures prescribed by the department. (Health & Saf. Code, § 44012, subd. (f).)

8. Based on Factual Findings 15 through 19, the evidence did not establish that either respondent failed to perform emission control tests on the Corsica as required by the department’s procedures and the law. Accordingly, cause does not exist to discipline either respondent Quality Tune Up’s station license or respondent Perez’s technician license under Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health and Safety Code section 44012, subdivision (f).

9. If a vehicle meets the requirements of Health and Safety Code section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance. (Health & Saf. Code, § 44015, subd. (b).) Based on Factual Findings 11 through 14, and 17 through 19, respondent Quality Tune Up issued a certificate of compliance to the Corsica when it did not have a functioning EGR valve as required by law. Accordingly, cause exists to discipline respondent Quality Tune Up’s station license under Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health and Safety Code section 44015, subdivision (b).

10. The willful making of any false statement or entry with regard to a material matter in any certificate of compliance or noncompliance which is required by the Motor Vehicle Inspection Program or the Automotive Repair Act, constitutes perjury. (Health & Saf. Code, § 44059.) The term “willful” as used in perjury statutes requires criminal intent,

i.e. the intention to make a false statement. (*People v. Von Tiedeman* (1898) 120 C. 128, 134 [Otherwise, “a person with the most honest intentions could be convicted.”].)

11. Based on Factual Findings 15 through 19, the evidence did not establish that either respondent willfully made a false statement or entry in connection with the certificate of compliance that was issued for the Corsica. Accordingly, cause does not exist to discipline either respondent Quality Tune Up’s station license or respondent Perez’s technician license under Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health and Safety Code section 44059.

12. Qualified technicians shall perform tests of emission control devices and systems according to Health and Safety Code section 44012. (Health & Saf. Code, § 44032.) Based on Factual Findings 15 through 19 and Legal Conclusions 7 and 8, the evidence did not establish that respondent Perez failed to perform an emission control test on the Corsica as required by the department’s procedures and the law. Accordingly, cause does not exist to discipline respondent Perez’s technician license under Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health and Safety Code section 44032.

13. A station license and a technician license may suspended, revoked or otherwise disciplined if a licensee, or any partner, officer, or director violates any of the regulations adopted under the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44072.2, subd. (c).) The bureau may suspend or revoke the license if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance. (Cal. Code Regs., tit. 16, § 3340.24, subd. (c).)

14. Based on Factual Findings 11 through 14, and 17 through 19, respondent Quality Tune Up issued a smog certificate of compliance that falsely represented that the Corsica passed a smog inspection. Accordingly, cause exists to discipline respondent Quality Tune Up’s station license under Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 15, section 3340.24, subdivision (c).

15. A licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified by law, and has all the required emission control equipment and devices installed and functioning correctly. (Cal. Code Regs., tit. 16, § 3340.35, subd. (c).) Based on Factual Findings 11 through 14, and 17 through 19, respondent Quality Tune Up issued a certificate of compliance for the Corsica when it did not have a functional EGR valve as required. Accordingly, cause exists to discipline respondent Quality Tune Up’s station license under Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.35, subdivision (c).

16. Smog check stations and smog check technicians shall conduct tests and inspections according to the bureau’s specifications. (Cal. Code Regs., tit. 16, § 3340.42.) Based on Factual Findings 15 through 19, and Legal Conclusions 7 and 8, the evidence did

not establish that either respondent failed to conduct the functional test of the Corsica according to the bureau's specifications. Accordingly, cause does not exist to discipline either respondent Quality Tune Up's station license or respondent Perez's technician license under Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.42.

17. A smog check technician shall inspect, test and repair vehicles according to Health and Safety Code, sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42. (Cal. Code Regs., tit. 16, § 3340.30.) Based on Factual Findings 15 through 19, and Legal Conclusions 7 and 8, the evidence did not establish that respondent Perez failed to conduct the functional test of the Corsica according to the legal requirements. Accordingly, cause does not exist to discipline respondent Perez's technician license under Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.42.

18. No person shall enter into the emissions inspection system any false information about the vehicle being tested. (Cal. Code Regs., tit. 16, § 3340.41, subd. (c).) Based on Factual Findings 11 through 14, and 17 through 19, respondent Perez entered false information into the emission inspection system about the Corsica. Accordingly, cause exists to discipline respondent Perez's technician license under Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.41, subdivision (c).

19. A station license and technician license may be suspended, revoked or otherwise disciplined if the licensee, or any partner, officer, or director commits any act involving dishonesty, fraud, or deceit whereby another is injured. (Health & Saf. Code, § 44072.2, subd. (d).) Based on Factual Findings 15 through 19, and Legal Conclusions 10 and 11, the evidence did not establish that either respondent committed any act involving dishonesty, fraud, or deceit. Accordingly, cause does not exist to discipline either respondent Quality Tune Up's station license or respondent Perez's technician license under Health and Safety Code section 44072.2, subdivision (d).

20. The director of the department (director) may invalidate, temporarily or permanently, the registrations for all the places of business in California operated by an automotive repair dealer upon a finding that the automotive repair dealer has or is engaged in a course of repeated and willful violations of the laws pertaining to an automotive repair dealer. (Bus. & Prof. Code, § 9884.7, subd. (c) There is insufficient evidence to invalidate, temporarily or permanently, any other registrations held by respondent Perez. When a license has been revoked or suspended following a hearing under the Motor Vehicle Inspection Program, any additional license issued under the Motor Vehicle Inspection Program in the name of the licensee may be revoked or suspended by the director. (Health & Saf. Code, § 44072.8.) There is insufficient evidence to revoke or suspend any additional license held by either respondent.

Appropriate Discipline

21. A person whose registration has previously been refused validation or who has committed acts prohibited by Business and Professions Code section 9884.7 shall submit evidence which is deemed to be sufficient to establish his rehabilitation. (Cal. Code Regs., tit. 16, § 3395.1.)

22. The bureau's disciplinary guidelines shall be considered when reaching a decision concerning a disciplinary action. (Cal. Code Regs., tit. 16, § 3395.4.) The bureau's disciplinary guidelines provide that the following factors shall be considered as factors in aggravation: prior notices of violation and prior office conferences. (Bureau of Automotive Repair Guidelines for Disciplinary Penalties and Terms of Probation, revised May 1997, para. II.1.) The disciplinary guidelines provide that the following factors shall be considered as factors in mitigation: evidence of voluntary participation in retraining for self or employees; no loss to consumer and no damage to consumer's property (undercover cars are treated as consumers); evidence that the shop has taken specific steps for retraining and has initiated steps to minimize recurrence; and evidence of internal control or audit designed to eliminate errors. (*Id.* at para. II.2.)

23. The disciplinary guidelines provide the following minimum and maximum penalties: For a violation of Business and Professions Code section 9884.7, subdivision (a) (false or misleading statements), the minimum penalty is 90 days' suspension, 80 days of it stayed, and two years' probation; the maximum penalty is revocation. For a violation of Health and Safety Code section 44015 (improper certificate of compliance), the minimum penalty for each violation is revocation of registration and station license, stayed, 30 days' suspension of the station license, and two years' probation; the maximum penalty for each violation is revocation. For a violation of Health and Safety Code section 3340.41, subdivision (c) (false entry into system), the minimum penalty is revocation of the licensees, stayed, 30 days' suspension of the station license, and two years' probation, and the maximum penalty is revocation of the registration, stayed, and three years' probation, and revocation of the station license.

Respondent Quality Tune Up's Registration and Station License

24. Respondents asserted the affirmative defense of entrapment by estoppel. Entrapment by estoppel is based on the principle "that the government may not actively provide assurances that conduct is lawful, then prosecute those who act in reasonable reliance on those assurances." (*People v. Chacon* (2007) 40 Cal.4th 558, 568.) This defense was recognized in a regulatory setting when the United States Supreme Court held that a corporate defendant should have been allowed to present a defense that it was misled by administrative regulations that appeared to permit the defendant's actions. (*Ibid.*, citing *United States v. Pennsylvania Chem. Corp.* (1973) 411 U.S. 655, 670-675.) Entrapment by estoppel requires a showing that the government represented that the charged conduct was legal, the defendant reasonably relied on the government's representation, and, as a result, prosecution would be unfair. (*Id.* at p. 568, fn. 10.) According to respondents, they were

misled by the concealment of the blockage plate on the EGR valve and the creation of a defect in the Corsica that could not readily be found. There is no evidence supporting entrapment by estoppel.

25. Based on Legal Conclusions 9, 14, and 15, cause exists, individually and jointly, to revoke Quality Tune Up's station license. Two factors in aggravation are present: respondent received prior notices of violation and participated in prior office conferences. None of the bureau's factors in mitigation is present. Respondent Perez was the technician responsible for one of the prior citations, and as owner of respondent Quality Tune Up, he was responsible for ensuring that all of the work performed in his shop complied with legal requirements. Respondent Perez now understands the importance of complying with the legal requirements. He appears motivated to do what is necessary to retain his registration and station license so that he can continue to provide for his family. Weighing all of the evidence, the public can be adequately protected by a stayed revocation of the station license subject to terms and conditions of probation.

26. Based on Legal Conclusion 4, cause exists to permanently invalidate respondent Quality Tune Up's registration. The violations that are the subject of this action and the prior citations involve respondent Quality Tune Up's smog inspections and not its auto repair work. Because of this, the public can be adequately protected by a stayed invalidation of respondent's registration subject to terms and conditions of probation.

Respondent Perez's Technician License

27. Based on Legal Conclusion 18, cause exists to revoke or suspend respondent Perez's technician license. While a serious violation, respondent Perez did not engage in fraud or willfully disregard the legal requirements. Because of this, the public can be adequately protected by a stayed revocation of respondent's technician license subject to terms and conditions of probation.

Cost Recovery

28. A licensee found to have violated the licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. (Bus. & Prof. Code, § 125.3) An agency may prove the costs by submitting a declaration that contains specific and sufficient facts to support findings regarding the actual costs incurred and the reasonableness of the costs. (Cal. Code Regs., tit. 1, § 1042, subd. (b).) For services provided by an agency employee, the declaration shall describe the general tasks performed, the time spent on each task, and the method of calculating the costs. (*Id.* at subd. (b)(1).) For other costs, the bill, invoice or other supporting document shall be attached to the declaration. (*Ibid.*)

29. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court established several factors to be considered in determining the reasonableness of the costs sought under statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at

hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

30. At hearing, respondents did not offer any evidence as to their financial ability to pay the requested costs. They were successful in getting some, but not all, of the charges dismissed. Based upon all the factors set forth in *Zuckerman*, the reasonable amount of costs to be charged against respondent is \$5,000.

ORDER

1. Smog check station license number RC 183857 issued to respondent Miguel Perez, as owner of Quality Tune Up #40, 3846 Fruitridge Road, Sacramento, California, is revoked. However, the revocation is stayed and the license is placed on probation for two years, subject to the following terms and conditions:

a. Comply with all statutes, regulations and rules governing automotive inspections and estimates.

b. Report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

c. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Business and Professions Code section 9884.6.

d. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

e. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the department may, after giving notice and opportunity to be heard, temporarily or permanently invalidate the registration.

f. During the period of probation, respondent shall attend and successfully complete a bureau-certified training course in diagnosis and repair of emission systems failures and engine performance, applicable to the class of license held by the respondent. The course shall be completed and proof of completion submitted to the bureau within 60 days of the effective date of this decision and order. If proof of completion of the

course is not furnished to the bureau within the 60-day period, respondent's license shall be immediately suspended until such proof is received. The training course that respondent completes to satisfy this term and condition shall be separate and distinct from the training course that respondent completes to satisfy the term and conditions contained in paragraph 3.f. of this order.

2. Automotive repair dealer registration number ARD 183857 issued to respondent Miguel Perez, as owner of Quality Tune Up #40, 3846 Fruitridge Road, Sacramento, California, is permanently invalidated. However, the permanent invalidation is stayed and the registration is placed on probation for two years, subject to the following terms and conditions:

a. Comply with all statutes, regulations and rules governing automotive inspections and estimates.

b. Report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

c. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Business and Professions Code section 9884.6.

d. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

e. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the department may, after giving notice and opportunity to be heard, temporarily or permanently invalidate the registration.

3. Advanced emission specialist technician station license number EA 314602, issued to respondent Miguel Perez, is revoked. However, the revocation is stayed and the license is placed on probation for two years, subject to the following terms and conditions:

a. Comply with all statutes, regulations and rules governing automotive inspections and estimates.

b. Report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

c. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Business and Professions Code section 9884.6.

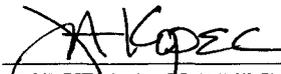
d. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

e. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the department may, after giving notice and opportunity to be heard, temporarily or permanently invalidate the registration.

f. During the period of probation, respondent shall attend and successfully complete a bureau-certified training course in diagnosis and repair of emission systems failures and engine performance, applicable to the class of license held by the respondent. The course shall be completed and proof of completion submitted to the bureau within 60 days of the effective date of this decision and order. If proof of completion of the course is not furnished to the bureau within the 60-day period, respondent Miguel Perez's license shall be immediately suspended until such proof is received. The training course that respondent completes to satisfy this term and condition shall be separate and distinct from the training course that respondent completes to satisfy the term and conditions contained in paragraph 1.f. of this order.

4. Respondent Miguel Perez shall reimburse the bureau for its reasonable costs in the total amount of \$5,000. The bureau may establish a payment schedule for the payment of costs extending over the period of probation established in this order. This is a term and condition of the probation imposed under paragraphs 1 through 3 of this order.

Dated: December 31, 2008



JUDITH A. KOPEC
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 PATRICK M. KENADY, State Bar No. 50882
Deputy Attorney General
4 California Department of Justice
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-6100
Facsimile: (916) 324-5567

7 Attorneys for Complainant
8

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

12 In the Matter of the Accusation Against:
13 **QUALITY TUNE UP #40**
3846 Fruitridge Road
14 Sacramento, CA 95820-4858
MIGUEL PEREZ, OWNER
15 Automotive Repair Dealer
Registration No. AE 183857
16 Smog Check Station License No. RE 183857

Case No. 79/08-24

ACCUSATION
(SMOG CHECK)

17 **MIGUEL PEREZ**
7686 Bluebrook Way
18 Sacramento, CA 95823
Advanced Emission Specialist Technician
19 License No. EA 314602

20 Respondents.
21

22 Sherry Mehl ("Complainant") alleges:

23 **PARTIES**

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

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Automotive Repair Dealer Registration

2. On or about May 23, 1995, the Bureau issued Automotive Repair Dealer Registration Number AE 183857 ("registration") to Miguel Perez ("Respondent Perez"), doing business as Quality Tune Up #40. The registration will expire on May 31, 2008, unless renewed.

Smog Check Station License

3. On or about May 31, 1995, the Bureau issued Smog Check Station Number RE 183857 ("station license") to Respondent Perez. The station license will expire on May 31, 2008, unless renewed.

Advanced Emission Specialist Technician License

4. On a date uncertain in 1996, the Bureau issued Advanced Emission Specialist Technician License Number EA 314602 ("technician license") to Respondent Perez. The technician license was delinquent from October 31, 2004, to November 2, 2004, and from October 31, 2006, to November 14, 2006. Respondent Perez's technician license will expire on October 31, 2008, unless renewed.

STATUTORY PROVISIONS

5. Business and Professions Code ("Code") section 9884.7 states, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

(1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(4) Any other conduct which constitutes fraud.

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only invalidate temporarily or permanently the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner

///

1 the right of the automotive repair dealer to operate his or her other places of
2 business.

3 (c) Notwithstanding subdivision (b), the director may invalidate
4 temporarily or permanently, the registration for all places of business operated in
5 this state by an automotive repair dealer upon a finding that the automotive repair
6 dealer has, or is, engaged in a course of repeated and willful violations of this
7 chapter, or regulations adopted pursuant to it.

8 6. Code section 9884.13 provides, in pertinent part, that the expiration of a
9 valid registration shall not deprive the director or chief of jurisdiction to proceed with a
10 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a
11 registration temporarily or permanently.

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

15 8. Health and Safety Code section 44072.2 states:

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

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

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

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

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

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

1 applicable laws and regulations. In fact, the vehicle could not have passed the smog inspection
2 because the vehicle's EGR valve had been rendered inoperable.

3 **SECOND CAUSE FOR DISCIPLINE**

4 (Fraud)

5 15. Respondent Perez's registration is subject to disciplinary action pursuant
6 to Code section 9884.7, subdivision (a)(4), in that on or about April 4, 2007, he committed acts
7 which constitute fraud by issuing electronic Certificate of Compliance No. MQ465562 for the
8 1991 Chevrolet Corsica without performing a bona fide inspection of the emission control
9 devices and systems on the vehicle, thereby depriving the People of the State of California of the
10 protection afforded by the Motor Vehicle Inspection Program.

11 **THIRD CAUSE FOR DISCIPLINE**

12 (Violations of the Motor Vehicle Inspection Program)

13 16. Respondent Perez's station license is subject to disciplinary action
14 pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about April 4,
15 2007, regarding the 1991 Chevrolet Corsica, he failed to comply with the following sections of
16 that Code:

17 a. **Section 44012, subdivision (f)**: Respondent Perez failed to perform
18 emission control tests on the vehicle in accordance with procedures prescribed by the department.

19 b. **Section 44015, subdivision (b)**: Respondent Perez issued electronic
20 Certificate of Compliance No. MQ465562 for the vehicle without properly testing and inspecting
21 the vehicle to determine if it was in compliance with Health & Safety Code section 44012.

22 c. **Section 44059**: Respondent Perez willfully made false entries for
23 electronic Certificate of Compliance MQ465562, by certifying that the vehicle had been
24 inspected as required when, in fact, it had not.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 (Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

27 17. Respondent Perez's station license is subject to disciplinary action
28 pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about April 4,

1 2007, regarding the 1991 Chevrolet Corsica, he failed to comply with provisions of California
2 Code of Regulations, title 16, as follows:

3 a. **Section 3340.24, subdivision (c)**: Respondent Perez falsely or
4 fraudulently issued electronic Certificate of Compliance No. MQ465562 for the vehicle, in that
5 the vehicle could not pass the smog inspection because the EGR valve had been rendered
6 inoperable.

7 b. **Section 3340.35, subdivision (c)**: Respondent Perez issued electronic
8 Certificate of Compliance No. MQ465562 for the vehicle, even though the vehicle had not been
9 inspected in accordance with section 3340.42.

10 c. **Section 3340.42**: Respondent Perez failed to conduct the required smog
11 tests on the vehicle in accordance with the Bureau's specifications.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 (Dishonesty, Fraud or Deceit)

14 18. Respondent Perez's station license is subject to disciplinary action
15 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about April 4,
16 2007, Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured
17 by issuing electronic Certificate of Compliance No. MQ465562 for the 1991 Chevrolet Corsica
18 without performing a bona fide inspection of the emission control devices and systems on the
19 vehicle, thereby depriving the People of the State of California of the protection afforded by the
20 Motor Vehicle Inspection Program.

21 **SIXTH CAUSE FOR DISCIPLINE**

22 (Violations of the Motor Vehicle Inspection Program)

23 19. Respondent Perez's technician license is subject to disciplinary action
24 pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about April 4,
25 2007, regarding the 1991 Chevrolet Corsica, he failed to comply with provisions of that Code, as
26 follows:

27 ///

28 ///

1 a. **Section 44012, subdivision (f)**: Respondent Perez failed to perform
2 emission control tests on the vehicle in accordance with procedures prescribed by the department.

3 b. **Section 44032**: Respondent Perez failed to perform tests of the emission
4 control devices and systems on the vehicle in accordance with Health & Safety Code section
5 44012.

6 c. **Section 44059**: Respondent Perez willfully made false entries into the
7 Emission Inspection System ("EIS") for electronic Certificate of Compliance No. MQ465562 by
8 entering "Pass" in the unit for the EGR valve even though that system had been rendered
9 inoperable.

10 **SEVENTH CAUSE FOR DISCIPLINE**

11 (Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

12 20. Respondent Perez's technician license is subject to disciplinary action
13 pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about April 4,
14 2007, regarding the 1991 Chevrolet Corsica, he failed to comply with provisions of California
15 Code of Regulations, title 16, as follows:

16 a. **Section 3340.30, subdivision (a)**: Respondent Perez failed to inspect and
17 test the vehicle in accordance with procedures prescribed by Health & Safety Code sections
18 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

19 b. **Section 3340.41, subdivision (c)**: Respondent Perez entered false
20 information into the EIS unit by entering "Pass" for the EGR valve, when in fact, the EGR valve
21 had been rendered inoperable.

22 c. **Section 3340.42**: Respondent Perez failed to conduct the required smog
23 tests on the vehicle in accordance with the Bureau's specifications.

24 **EIGHTH CAUSE FOR DISCIPLINE**

25 (Dishonesty, Fraud or Deceit)

26 21. Respondent Perez's technician license is subject to disciplinary action
27 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about April 4,
28 2007, regarding the 1991 Chevrolet Corsica, he committed dishonest, fraudulent or deceitful acts

1 whereby another is injured by issuing electronic Certificate of Compliance No. MQ465562 for
2 the vehicle without performing a bona fide inspection of the emission control devices and
3 systems on the vehicle, thereby depriving the People of the State of California of the protection
4 afforded by the Motor Vehicle Inspection Program.

5 **PRIOR CITATIONS**

6 22. To determine the degree of discipline, if any, to be imposed on
7 Respondent Perez, Complainant alleges, as follows:

8 a. On or about March 15, 2006, the Bureau issued Citation No. C06-0552
9 against Respondent Perez, as owner of Quality Tune Up #40, Automotive Repair Dealer
10 Registration No. AE 183857, and Smog Check Station License No. RE 183857, for violations of
11 Health & Safety Code section 44012, subdivision (f) (failure to confirm that emission control
12 devices and systems were installed and functioning correctly), and California Code of
13 Regulations, title 16 ("Regulation"), section 3340.35, subdivision (c) (issuing a certificate of
14 compliance to a vehicle that was improperly tested). The Bureau assessed a fine of \$500 to
15 Respondent Perez. Respondent complied with this citation on April 25, 2006.

16 b. On or about July 18, 2006, the Bureau issued Citation No. C07-0008
17 against Respondent Perez, as owner of Quality Tune Up #40, Automotive Repair Dealer
18 Registration No. AE 183857, and Smog Check Station License No. RE 183857, for violations of
19 Health & Safety Code section 44012, subdivision (f) (failure to confirm that emission control
20 devices and systems were installed and functioning correctly), and Regulation, section 3340.35,
21 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). The
22 Bureau assessed a fine of \$1,000 to Respondent Perez. Respondent complied with this citation
23 on August 22, 2006.

24 c. On or about July 18, 2006, the Bureau issued Citation No. M07-0009
25 against Respondent Perez, Advanced Emission Specialist Technician License No. EA314602, for
26 violations of Health & Safety Code section 44032 (failure to confirm that emission control
27 devices and systems were installed and functioning correctly), and Regulation, section 3340.30,
28 subdivision (a) (failure to inspect vehicles in accordance with Health and Safety Code sections

1 44012, 44035 and Regulation 3340.42). The Bureau directed Respondent Perez to complete an
2 eight hour training course. Respondent complied with this citation on September 8, 2006.

3 d. On or about November 27, 2006, the Bureau issued Citation No. C07-
4 0329 against Respondent Perez, as owner of Quality Tune Up #40, Automotive Repair Dealer
5 Registration No. AE 183857, and Smog Check Station License No. RE 183857, for violations of
6 Health & Safety Code section 44012, subdivision (f) (failure to confirm that emission control
7 devices and systems were installed and functioning correctly), and Regulation, section 3340.35,
8 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). The
9 Bureau assessed a fine of \$2,000 to Respondent Perez. Respondent complied with this citation
10 on January 11, 2007.

11 **OTHER MATTERS**

12 23. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse
13 to validate or invalidate temporarily or permanently, the registrations for all places of business
14 operated in this state by Miguel Perez, doing business as Quality Tune Up #40, upon a finding
15 that he has, or is, engaged in a course of repeated and willful violations of the laws and
16 regulations pertaining to an automotive repair dealer.

17 24. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station
18 License Number RE 183857, issued to Respondent Perez, is revoked or suspended, any
19 additional license issued under this chapter in the name of said licensee may be likewise revoked
20 or suspended by the director.

21 25. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission
22 Specialist Technician License Number EA 314602, issued to Respondent Perez, is revoked or
23 suspended, any additional license issued under this chapter in the name of said licensee may be
24 likewise revoked or suspended by the director.

25 ///

26 ///

27 ///

28 ///

1 PRAYER

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

4 1. Temporarily or permanently invalidating Automotive Repair Dealer
5 Registration Number AE 183857, issued to Miguel Perez, doing business as Quality Tune Up
6 #40;

7 2. Temporarily or permanently invalidating any other automotive repair
8 dealer registration issued to Miguel Perez;

9 3. Revoking or suspending Smog Check Station License Number
10 RE 183857, issued to Miguel Perez, doing business as Quality Tune Up #40;

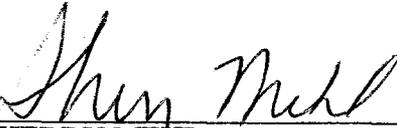
11 4. Revoking or suspending Advanced Emission Specialist Technician
12 License Number EA 314602, issued to Miguel Perez;

13 5. Revoking or suspending any additional license issued under Chapter 5 of
14 the Health and Safety Code in the name of Miguel Perez;

15 6. Ordering Respondent Miguel Perez to pay the Director of Consumer
16 Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code
17 section 125.3; and,

18 7. Taking such other and further action as deemed necessary and proper.

19 DATED: 10-15-07

20
21 
22 SHERRY MEHL
23 Chief
24 Bureau of Automotive Repair
25 Department of Consumer Affairs
26 State of California
27 Complainant

25 03562110-SA2007101535
26 10375986.wpd
27 bfc [7/31/07]