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

In the Matter of the Accusation Against:
SOUTH HARBOR SMOG TEST ONLY CENTER,
DAVID STEPHEN BARROS, Owner
904 South Harbor Blvd.
Santa Ana, CA 92704

Automotive Repair Dealer Reg. No. ARD 256815
Smog Check Station License No. TC 256815

and
DAVID STEPHEN BARROS
13722 McMains Street
Garden Grove, CA 92844-2730

Advanced Emission Specialist Technician License No.
EA079715

Respondent.

Case No. 79/13-30
DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 30, 2012, Complainant John Wallauch, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/13-30 against South Harbor Smog Test Only Center, David Stephen Barros,

1 Owner and David Stephen Barros (Respondent) before the Director of Consumer Affairs.
2 (Accusation attached as Exhibit A.)

3 2. On or about December 3, 2008, the Bureau of Automotive Repair (Bureau) issued
4 Automotive Repair Dealer Registration No. ARD 256815 to Respondent South Harbor Smog
5 Test Only Center, David Stephen Barros, owner. The Automotive Repair Dealer Registration
6 expired on November 30, 2010, and has not been renewed.

7 3. On or about December 15, 2008, the Bureau of Automotive Repair issued Smog
8 Check Station License No. TC 256815 to Respondent South Harbor Smog Test Only Center. The
9 Smog Check Station License expired on November 30, 2010, and has not been renewed.

10 4. On a date uncertain in 1998, the Bureau issued Advanced Emission Specialist
11 Technician License Number EA079715 (technician license) to Respondent David Stephen Barros.
12 The technician license was due to expire on May 31, 2012 but it was suspended on May 11, 2011.

13 5. On or about December 4, 2012, Respondent South Harbor Smog Test Only Center
14 was served by Certified and First Class Mail copies of the Accusation No. 79/13-30, Statement to
15 Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government
16 Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant
17 to Business and Professions Code section 136, is required to be reported and maintained with the
18 Bureau. Respondent's address of record was and is: 904 South Harbor Blvd., Santa Ana, CA
19 92704.

20 6. On or about December 4, 2012, Respondent David Stephen Barros was served by
21 Certified and First Class Mail copies of the Accusation No. 79/13-30, Statement to Respondent,
22 Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections
23 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business
24 and Professions Code section 136, is required to be reported and maintained with the Bureau.
25 Respondent's address of record was and is: 13722 McMains Street, Garden Grove, CA 92844-
26 2730.

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2. The agency has jurisdiction to adjudicate this case by default.

3. The Director of Consumer Affairs is authorized to revoke Respondent's Advanced Emission Technician License and Smog Check Station License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the affidavit of Bureau Representative Roger Lehman, Program Representative II Specialist in this case:

a. Respondent has subjected his station license to discipline pursuant to Health and Safety Code section 44050, subdivision (e) for failure to pay the administrative fine for a citation issued to the smog station.

b. Respondent has subjected his technician license to discipline pursuant to Health and Safety Code section 44050, subdivision (e) for failure to submit proof of completion of remedial training prescribed by a citation issued to him.

ORDER

IT IS SO ORDERED that Smog Check Station License No. TC 256815, heretofore issued to South Harbor Smog Test Only Center, David Stephen Barros, Owner and Advanced Emission Specialist Technician License No. EA079715 heretofore issued to David Stephen Barros, are 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, 10949 North Mather Blvd., Rancho Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

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This Decision shall become effective on 2/12/13

It is so ORDERED January 18, 2013



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

70666641.DOC
DOJ Matter ID:SD2012704111

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
4 State Bar No. 101336
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
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. **79/13-30**

13 **SOUTH HARBOR SMOG TEST ONLY CENTER,**
DAVID STEPHEN BARROS, Owner
14 904 South Harbor Blvd.
Santa Ana, CA 92704

ACCUSATION

(Smog Check)

15 Automotive Repair Dealer Reg. No. ARD 256815
16 Smog Check Station License No. TC 256815

17 and

18 **DAVID STEPHEN BARROS**
13722 McMains Street
19 Garden Grove, CA 92844-2730

20 Advanced Emission Specialist Technician License No.
EA079715

21 Respondent.

22
23 Complainant alleges:

24 **PARTIES**

25 1. John Wallauch (Complainant) brings this Accusation solely in his official
26 capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer
27 Affairs.

28 ///

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

4 8. Section 44055 of the Health and Safety Code, subdivision (b) states:

5 The department may deny an application for the renewal of a test station
6 or repair station license if the applicant, or any partner, officer, or director thereof,
7 has failed to pay any civil penalty or administrative fine in accordance with this
8 article.

9 9. Section 44072.8 of the Health and Safety Code states:

10 When a license has been revoked or suspended following a hearing under
11 this article, any additional license issued under this chapter in the name of the
12 licensee may be likewise revoked or suspended by the director.

13 COST RECOVERY

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

18 FIRST CAUSE FOR DISCIPLINE

19 (Failure to Pay Administrative Fine)

20 11. Respondent has subjected his station license to discipline pursuant to Health and
21 Safety Code section 44050, subdivision (e), in that on or about February 16, 2010, the Bureau
22 issued Citation No. C2010-0827 to Respondent against his station license for violations of Health
23 and Safety Code section 44012, subdivision (f), failure to perform a visual/functional check of
24 emission control devices and California Code of Regulations, title 16, (Regulation), section
25 3340.35, subdivision (c), issuing a certificate of compliance to a vehicle improperly tested. On
26 March 3, 2010, the Bureau served Respondent with the citation. The Bureau assessed an
27 administrative fine in the amount of \$1,000.00. On March 23, 2010, Respondent appealed this
28 citation, but withdrew his appeal on October 21, 2010. Respondent has not paid the
administrative fine for this citation.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Failure to Complete Training)**

3 12. Respondent has subjected his technician license to discipline pursuant to Health
4 and Safety Code section 44050, subdivision (e), in that on or about February 16, 2010, the
5 Bureau issued Citation No. M2010-0828 to Respondent against his technician license for
6 violations of Health and Safety Code section 44032, qualified technicians shall perform tests of
7 emission control systems and devices in accordance with section 44012 of that Code and
8 Regulation section 3340.30, subdivision (a), qualified technicians shall inspect, test, and repair
9 vehicles in accordance with sections 44012 and 44035 of the Health and Safety Code, and
10 Regulation section 3340.42. On March 3, 2010, the Bureau served Respondent with the citation,
11 which required Respondent to complete a 16-hour training course. On March 23, 2010,
12 Respondent appealed this citation, but the appeal was later withdrawn and the citation became
13 final on October 21, 2010. Respondent has not submitted proof of completion of remedial
14 training prescribed by the citation.

15 **OTHER MATTERS**

16 13. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
17 License Number TC 256815, issued to David Stephen Barros, doing business as South Harbor
18 Smog Test Only Center, is revoked or suspended, any additional license issued under this chapter
19 in the name of said licensee may be likewise revoked or suspended by the director.

20 14. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
21 Technician License Number EA 079715, issued to David Stephen Barros, is revoked or
22 suspended, any additional license issued under this chapter in the name of said licensee may be
23 likewise revoked or suspended by the director.

24 **PRAYER**

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

27 1. Revoking or suspending Smog Check Station License Number TC 256815, issued
28 to David Stephen Barros, doing business as South Harbor Smog Test Only Center;

- 1 2. Revoking or suspending Advanced Emission Specialist Technician License
- 2 Number EA 079715, issued to David Stephen Barros;
- 3 3. Revoking or suspending any additional license issued under Chapter 5 of the
- 4 Health and Safety Code in the name of David Stephen Barros;
- 5 4. Ordering David Stephen Barros to pay the Bureau of Automotive Repair the
- 6 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
- 7 Professions Code section 125.3; and,
- 8 5. Taking such other and further action as deemed necessary and proper.

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DATED: November 30, 2012

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

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