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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:

NICHOLAS J. BACA
612 18th Street, #2
Sacramento, CA 95811

Smog Check Inspector License No.
EO631138
Smog Check Repair Technician License No.
EI631138
Advanced Emission Specialist Technician
License No. EA631138

Respondent.

Case No. 79/14-100

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 5, 2014, Complainant Patrick Dorais, in his official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/14-100 against Nicholas J. Baca (Respondent) before the Director of Consumer Affairs. (Accusation attached as Exhibit A.)

2. On or about July 29, 2013, the Bureau of Automotive Repair (Bureau) issued Smog Check Inspector License No. EO631138 to Respondent. The Smog Check Inspector License was
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1 in full force and effect at all times relevant to the charges brought in Accusation No. 79/14-100
2 and will expire on April 30, 2015, unless renewed.

3 3. On or about July 29, 2013, the Bureau of Automotive Repair issued Smog Check
4 Repair Technician License No. EI631138 to Respondent. The Smog Check Repair Technician
5 License was in full force and effect at all times relevant to the charges brought in Accusation No.
6 79/14-100 and will expire on April 30, 2015, unless renewed.

7 4. On or about June 30, 2009, the Bureau of Automotive Repair issued Advanced
8 Emission Specialist Technician License No. EA631138 to Respondent. The Advanced Emission
9 Specialist Technician License expired on April 30, 2013, and has not been renewed. This lapse in
10 licensure, however, pursuant to Business and Professions Code section 118(b) does not deprive
11 the Bureau of authority to institute or continue this disciplinary proceeding.

12 5. On or about March 10, 2014, Respondent was served by Certified and First Class
13 Mail copies of the Accusation No. 79/14-100, Statement to Respondent, Notice of Defense,
14 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
15 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
16 Code section 136, is required to be reported and maintained with the Bureau. Respondent's
17 address of record was and is:

18 612 18th Street, #2
19 Sacramento, CA 95811

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

23 7. Government Code section 11506 states, in pertinent part:

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

1 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
2 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
3 79/14-100.

4 9. California Government Code section 11520 states, in pertinent part:

5 (a) If the respondent either fails to file a notice of defense or to appear at the
6 hearing, the agency may take action based upon the respondent's express admissions
7 or upon other evidence and affidavits may be used as evidence without any notice to
8 respondent.

8 10. Pursuant to its authority under Government Code section 11520, the Director after
9 having reviewed the proof of service dated March 10, 2014, signed by Celia Cruz, finds
10 Respondent is in default. The Director will take action without further hearing and, based on
11 Accusation No. 79/14-100, proof of service and on the Affidavit of Bureau Representative
12 Douglas Brown, finds that the allegations in Accusation are true.

13 11. Taking official notice of its own internal records, pursuant to Business and
14 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
15 and Enforcement is \$2,480.00 as of July 10, 2014.

16 DETERMINATION OF ISSUES

17 1. Based on the foregoing findings of fact, Respondent Nicholas J. Baca has subjected
18 his Smog Check Inspector License No. EO631138 , his Smog Check Repair Technician License
19 No. EI631138 , and his Advanced Emission Specialist Technician License No. EA631138 to
20 discipline.

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

22 3. The Director of Consumer Affairs is authorized to revoke Respondent's Smog Check
23 Inspector License based upon the following violations alleged in the Accusation which are
24 supported by the evidence contained in the affidavit of Bureau Representative Douglas Brown in
25 this case.:

26 a. Respondent's technician licenses are subject to discipline pursuant to Health and
27 Safety Code section 44072.2, subdivision (a), in that on or about August 15, 2013, regarding the
28 Bureau's 2007 Jeep, Respondent violated sections of that Code as follows:

1 i. Section 44012, subdivision (f): Respondent failed to perform on the vehicle a visual
2 and/or functional check of the emission control devices in accordance with required procedures.

3 ii. Section 44032: Respondent failed to perform tests of the emission control devices
4 and systems on the vehicle in accordance with Code section 44012, in that the vehicle had an
5 aftermarket performance chip device installed, which had not been removed.

6 b. Respondent's technician licenses are subject to discipline pursuant to Health and
7 Safety Code section 44072.2, subdivision (c), in that on or about August 15, 2013, regarding the
8 Bureau's 2007 Jeep, Respondent failed to comply with provisions of California Code of
9 Regulations, title 16, as follows:

10 i. Section 3340.30, subdivision (a): Respondent failed to inspect and test the vehicle in
11 accordance with Health and Safety Code section 44012.

12 ii. Section 3341.41, subdivision (c): Respondent knowingly entered false information
13 into the emission inspection system.

14 iii. Section 3340.42: Respondent failed to conduct the required smog tests on the vehicle
15 in accordance with the Bureau's specifications.

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ORDER

IT IS SO ORDERED that Smog Check Inspector License No. EO631138, Smog Check Repair Technician License No. EI631138 , and Advanced Emission Specialist Technician License No. EA631138, heretofore issued to Respondent Nicholas J. Baca, 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.

This Decision shall become effective on August 30, 2014.

It is so ORDERED July 30, 2014



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

32021524.DOC
DOJ Matter ID:SA2013113115

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 LORRIE M. YOST
Deputy Attorney General
4 State Bar No. 119088
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-2271
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. **79/14-100**

12 **NICHOLAS J. BACA**
612 18th Street, #2
13 Sacramento, California 95811

ACCUSATION

14 **Smog Check Inspector License No.**
EO 631138
15 **Smog Check Repair Technician License**
No. EI 631138
16 **(Formerly Advanced Emission Specialist**
Technician License No. EA 631138)

17 Respondent.
18

19 Patrick Dorais ("Complainant") alleges:

20 **PARTIES**

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

23 2. On or about June 30, 2009, the Bureau issued Advanced Emission Specialist
24 Technician License Number EA 631138 to Nicholas J. Baca ("Respondent"). The Advanced
25 Emission Specialist Technician License expired on April 30, 2013. Pursuant to California Code
26 of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed pursuant to
27 Respondent's election, as Smog Check Inspector License No. EO 631138, effective April 30,
28 2013, and Smog Check Repair Technician License No. EI 631138, effective July 29, 2013

1 (“technician licenses”).¹ Respondent’s technician licenses will expire on April 30, 2015, unless
2 renewed.

3 **JURISDICTION**

4 3. Health and Safety Code section 44002 provides, in pertinent part, that the Director
5 has all the powers and authority granted under the Automotive Repair Act for enforcing the
6 Motor Vehicle Inspection Program.

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

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

14 6. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
15 “[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
16 Specialist Technician license issued prior to the effective date of this regulation, the license may
17 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

18 **STATUTORY AND REGULATORY PROVISIONS**

19 7. Business and Professions Code (“Code”) section 22, subdivision (a), states:

20 “Board,” as used in any provision of this code, refers to the board in which the
21 administration of the provision is vested, and unless otherwise expressly provided,
22 shall include “bureau,” “commission,” “committee,” “department,” “division,”
23 “examining committee,” “program,” and “agency.”

24 8. Code section 477 provides, in pertinent part, that ABoard@ includes Abureau,@
Acommission,@ Acommittee,@ Adepartment,@ Adivision,@ Aexamining committee,@ Aprogram,@

25 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
26 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
27 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
28 Check Inspector (EO) license and/or Smog Check Repair Technician (E1) license.

1 and Agency. A License includes certificate, registration or other means to engage in a
2 business or profession regulated by the Code.

3 9. Health & Safety Code section 44072.2 states, in pertinent part:

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

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

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

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

11 10. Health & Safety Code section 44072.10 states, in pertinent part:

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

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

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

19 COST RECOVERY

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

24 UNDERCOVER OPERATION

25 13. On August 15, 2013, a Bureau undercover operator ("operator") took the Bureau's
26 2007 Jeep to Southport Smog in West Sacramento, California, for a smog inspection. The
27 operator requested a smog inspection, which was allegedly performed. The operator paid \$58 and
28 received a copy of the estimate, invoice, and a Vehicle Inspection Report.

1 14. The Bureau obtained information from the vehicle information database ("VID")
2 showing that Respondent performed a smog inspection on the 2007 Jeep on August 15, 2013,
3 between 10:12 and 10:26 hours, resulting in the issuance of electronic smog Certificate of
4 Compliance No. OY537875C.

5 15. The Bureau determined that the certificate of compliance was issued illegally because
6 an aftermarket performance chip device modification installed on the 2007 Jeep had not been
7 removed during the smog inspection, which precluded the vehicle from passing a lawful smog
8 inspection.

9 **FIRST CAUSE FOR DISCIPLINE**

10 (Violations of the Motor Vehicle Inspection Program)

11 16. Respondent's technician licenses are subject to discipline pursuant to Health and
12 Safety Code section 44072.2, subdivision (a), in that on or about August 15, 2013, regarding the
13 Bureau's 2007 Jeep, Respondent violated sections of that Code as follows:

14 a. **Section 44012, subdivision (f)**: Respondent failed to perform on the vehicle a visual
15 and/or functional check of the emission control devices in accordance with required procedures.

16 b. **Section 44032**: Respondent failed to perform tests of the emission control devices
17 and systems on the vehicle in accordance with Code section 44012, in that the vehicle had an
18 aftermarket performance chip device installed, which had not been removed.

19 **SECOND CAUSE FOR DISCIPLINE**

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

21 17. Respondent's technician licenses are subject to discipline pursuant to Health and
22 Safety Code section 44072.2, subdivision (c), in that on or about August 15, 2013, regarding the
23 Bureau's 2007 Jeep, Respondent failed to comply with provisions of California Code of
24 Regulations, title 16, as follows:

25 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the vehicle in
26 accordance with Health and Safety Code section 44012.

27 b. **Section 3341.41, subdivision (c)**: Respondent knowingly entered false information
28 into the emission inspection system.

1 c. Section 3340.42: Respondent failed to conduct the required smog tests on the vehicle
2 in accordance with the Bureau's specifications.

3 MATTERS IN AGGRAVATION

4 18. To determine the degree of discipline, if any, to be imposed on Respondent,
5 Complainant alleges as follows:

6 a. On or about October 7, 2010, the Bureau issued Citation No. M2011-0413 against
7 Respondent's Advanced Emission Specialist Technician License No. EA 631138 for violations of
8 the Motor Vehicle Inspection Program. On September 29, 2009, Respondent issued a certificate
9 of compliance to a Bureau undercover vehicle with a missing positive crankcase ventilation
10 system. Respondent was directed to complete an 8 hour training course and to submit proof of
11 completion to the Bureau within 30 days from receipt of the citation. Respondent completed the
12 training on December 3, 2010.

13 b. On or about February 4, 2011, the Bureau issued Citation No. M2011-0872 against
14 Respondent's Advanced Emission Specialist Technician License No. EA 631138 for violations of
15 the Motor Vehicle Inspection Program. On January 19, 2011, Respondent issued a certificate of
16 compliance to a Bureau undercover vehicle with a missing thermostatic air cleaner hot air tube.
17 Respondent was directed to complete a 16 hour training course and submit proof of completion to
18 the Bureau 30 days from receipt of citation. Respondent completed the training on March 28,
19 2011.

20 c. On or about June 26, 2012, the Bureau issued Citation No. M2012-1854 against
21 Respondent's Advanced Emission Specialist Technician License No. EA 631138 for violations of
22 the Motor Vehicle Inspection Program. Respondent was directed to complete a 68 hour Basic
23 Clean Air Car Course and submit proof of completion to the Bureau 60 days from receipt of
24 citation. Respondent appealed the citation and a hearing on the matter was held on January 28,
25 2014. On February 14, 2014, a Decision was issued effective March 26, 2014, denying
26 Respondent's appeal and upholding the citation.

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1 **OTHER MATTERS**


2 19. Pursuant to Health and Safety Code section 44072.8, if the Smog Check Inspector
3 (EO) License No. 631138 or the Smog Check Repair Technician (EI) License No. 631138 issued
4 to Nicholas J. Baca is revoked or suspended, any additional license issued under this chapter in
5 the name of said licensee may be likewise revoked or suspended by the Director.

6 **PRAYER**

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

- 9 1. Revoking or suspending Nicholas J. Baca's Smog Check Inspector License
10 No. EO 631138;
- 11 2. Revoking or suspending Nicholas J. Baca's Smog Check Repair Technician License
12 No. EI 631138;
- 13 3. Revoking or suspending any additional license issued under Chapter 5 of the Health
14 and Safety Code in the name of Nicholas J. Baca;
- 15 2. Ordering Nicholas J. Baca to pay the Bureau of Automotive Repair the reasonable
16 costs of the investigation and enforcement of this case, pursuant to Business and Professions
17 Code section 125.3; and,
- 18 3. Taking such other and further action as deemed necessary and proper.

19
20 DATED: March 5, 2014


21 PATRICK DORAIS
22 Chief
23 Bureau of Automotive Repair
24 Department of Consumer Affairs
25 State of California
26 *Complainant*

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