

1 KAMALA D. HARRIS
2 Attorney General of California
3 ALFREDO TERRAZAS
4 Senior Assistant Attorney General
5 JAMES M. LEDAKIS
6 Supervising Deputy Attorney General
7 State Bar No. 132645
8 110 West "A" Street, Suite 1100
9 San Diego, CA 92101
10 P.O. Box 85266
11 San Diego, CA 92186-5266
12 Telephone: (619) 645-2105
13 Facsimile: (619) 645-2061
14 *Attorneys for Complainant*

15 **BEFORE THE**
16 **DEPARTMENT OF CONSUMER AFFAIRS**
17 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
18 **STATE OF CALIFORNIA**

19 In the Matter of the Accusation Against:

20 Case No. 79/12-48

21 **PALM SPRINGS SMOG TEST CENTER ONLY**
22 **KHALIL AILABOUNI, Owner**
23 **3395 N. Indian Canyon Drive**
24 **Palm Springs, California 92262-1609**

25 **A C C U S A T I O N**

26 SMOG CHECK

27 **Automotive Repair Dealer Registration No. ARD 189852**
28 **Smog Check Test Only Station License No. TC 189852**

Respondent.

Sherry Mehl ("Complainant") alleges:

PARTIES

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

Automotive Repair Dealer Registration

2. In or about 1996, the Bureau issued Automotive Repair Dealer Registration Number ARD 189852 ("registration") to Khalil Ailabouni ("Respondent") doing business as Palm Springs Smog Test Center Only. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2012, unless renewed.

1 Emission Specialist Technician, David Agam, performed the smog inspection and issued
2 electronic Certificate of Compliance No. WR657044C, certifying that he had tested and inspected
3 the vehicle and that the vehicle was in compliance with applicable laws and regulations. In fact,
4 the vehicle could not have passed the functional portion of the smog inspection because the
5 vehicle's ignition timing was adjusted beyond the manufacturer's specifications. The operator
6 paid Respondent \$68.25 and received a copy of Invoice No. 022940 and the Vehicle Inspection
7 Report. On or about February 8, 2011, a Bureau representative re-inspected the vehicle and
8 found that no adjustments had been made to the ignition timing.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Untrue or Misleading Statements)**

11 12. Respondent's registration is subject to discipline pursuant to Code section
12 9884.7(a)(1), in that on or about February 4, 2011, Respondent made or authorized statements
13 which he knew or in the exercise of reasonable care should have known to be untrue or
14 misleading by issuing electronic Certificate of Compliance No. WR657044C for the 1994 Nissan
15 Sentra, certifying that the vehicle was in compliance with applicable laws and regulations. In
16 fact, the vehicle could not have passed the functional portion of the smog inspection because the
17 vehicle's ignition timing was adjusted beyond the manufacturer's specifications.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Fraud)**

20 13. Respondent's registration is subject to discipline pursuant to Code section
21 9884.7(a)(4), in that on or about February 4, 2011, Respondent committed acts which constitute
22 fraud by issuing electronic Certificate of Compliance No. WR657044C for the 1994 Nissan
23 Sentra without performing a bona fide inspection of the emission control devices and systems on
24 the vehicle, thereby depriving the People of the State of California of the protection afforded by
25 the Motor Vehicle Inspection Program.

26 ///

27 ///

28 ///

1 THIRD CAUSE FOR DISCIPLINE

2 **(Failure to Comply with Provisions of the Automotive Repair Act)**

3 14. Respondent's registration is subject to discipline under Code section 9884.7(a)(6),
4 in that on or about February 4, 2011, regarding the 1994 Nissan Sentra, Respondent failed to
5 materially comply with the following provisions of that Code:

6 a. **Section 9884.9:**

7 i. Respondent failed to provide the operator with a written estimated price for
8 labor and parts necessary for a specific job.

9 FOURTH CAUSE FOR DISCIPLINE

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

11 15. Respondent's station license is subject to discipline under Health & Safety Code
12 section 44072.2(a), in that on or about February 4, 2011, regarding the 1994 Nissan Sentra, he
13 failed to comply with the following sections of that Code:

14 a. **Section 44012(a):** Respondent failed to determine that all emission control
15 devices and systems required by law were installed and functioning correctly in accordance with
16 test procedures.

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

19 c. **Section 44015(b):** Respondent issued electronic Certificate of Compliance No.
20 WR657044C for the vehicle without properly testing and inspecting the vehicle to determine if it
21 was in compliance with Health & Safety Code section 44012.

22 FIFTH CAUSE FOR DISCIPLINE

23 **(Failure to Comply with Regulations)**

24 16. Respondent's station license is subject to discipline under Health & Safety Code
25 section 44072.2(c), in that on or about February 4, 2011, regarding the 1994 Nissan Sentra, he
26 failed to comply with provisions of California Code of Regulations, title 16, as follows:

27 ///

28 ///

1 a. **Section 3340.35(c):** Respondent issued electronic Certificate of Compliance No.
2 WR657044C for the vehicle even though the vehicle had not been inspected in accordance with
3 section 3340.42.

4 b. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
5 vehicle in accordance with the Bureau's specifications.

6 **SIXTH CAUSE FOR DISCIPLINE**

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

8 17. Respondent's station license is subject to discipline under Health & Safety Code
9 section 44072.2(d), in that on or about February 4, 2011, he committed dishonest, fraudulent or
10 deceitful acts whereby another is injured by issuing electronic Certificate of Compliance No.
11 WR657044C for the 1994 Nissan Sentra without performing a bona fide inspection of the
12 emission control devices and systems on the vehicle, thereby depriving the People of the State of
13 California of the protection afforded by the Motor Vehicle Inspection Program.

14 **PRIOR CITATIONS**

15 18. To determine the degree of discipline, if any, Complaint alleges the following:

16 a. On or about July 17, 2002, the Bureau issued Citation No. C03-0094 to Respondent
17 against his registration and station licenses for violations of Health and Safety Code section
18 44012(f) (failure to determine that emission control devices and systems required by State and
19 Federal law were installed and functioning correctly in accordance with test procedures), and
20 California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to
21 a vehicle that was improperly tested). Respondent issued a certificate of compliance to a Bureau
22 vehicle with the ignition timing adjusted beyond the manufacturer's specifications and a
23 nonfunctional gas cap. The Bureau assessed civil penalties totaling \$500. Respondent complied
24 with this citation on September 4, 2002.

25 b. On or about October 17, 2002, the Bureau issued Citation No. C03-0484 to
26 Respondent against his registration and station licenses for violations of Health and Safety Code
27 section 44012(f) (failure to determine that emission control devices and systems required by State
28 and Federal law were installed and functioning correctly in accordance with test procedures), and

1 California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to
2 a vehicle that was improperly tested). Respondent issued a certificate of compliance to a Bureau
3 vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The Bureau
4 assessed civil penalties totaling \$1,000. On or about November 27, 2002, Respondent appealed
5 the citation. A hearing was held on August 25, 2003. The citation was upheld and the penalty
6 was reduced to \$500. Respondent complied with this citation on February 3, 2004.

7 c. On or about May 15, 2009, the Bureau issued Citation No. C09-1311 to Respondent
8 against his registration and station licenses for violations of Health and Safety Code section
9 44012(f) (failure to determine that emission control devices and systems required by State and
10 Federal law were installed and functioning correctly in accordance with test procedures), and
11 California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to
12 a vehicle that was improperly tested). Respondent issued a certificate of compliance to a Bureau
13 vehicle with a missing fuel vapor canister. The Bureau assessed civil penalties totaling \$500.
14 Respondent complied with this citation on July 14, 2009.

15 d. On or about October 27, 2009, the Bureau issued Citation No. C2010-0409 to
16 Respondent against his registration and station licenses for violations of Health and Safety Code
17 section 44012(f) (failure to determine that emission control devices and systems required by State
18 and Federal law were installed and functioning correctly in accordance with test procedures), and
19 California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to
20 a vehicle that was improperly tested). Respondent issued a certificate of compliance to a Bureau
21 vehicle with a missing exhaust gas recirculation valve, and failed to perform the low pressure fuel
22 evaporative test and gas cap test. The Bureau assessed civil penalties totaling \$2,000.
23 Respondent complied with this citation on January 11, 2010.

24 e. On or about August 23, 2010, the Bureau issued Citation No. C2011-0206 to
25 Respondent against his registration and station licenses for violations of Health and Safety Code
26 section 44012(f) (failure to determine that emission control devices and systems required by State
27 and Federal law were installed and functioning correctly in accordance with test procedures), and
28 California Code of Regulations, title 16, section 3340.35(c) (issuing a certificate of compliance to

1 a vehicle that was improperly tested). Respondent issued a certificate of compliance to a Bureau
2 vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The Bureau
3 assessed civil penalties totaling \$2,500. On or about October 21, 2010, Respondent appealed the
4 citation. This citation is pending.

5 **OTHER MATTERS**

6 19. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
7 probation the registrations for all places of business operated in this state by Khalil Ailabouni,
8 upon a finding that he has, or is, engaged in a course of repeated and willful violation of the laws
9 and regulations pertaining to an automotive repair dealer.

10 20. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station
11 License Number TC 189852, issued to Khalil Ailabouni, doing business as Palm Springs Smog
12 Test Center Only, is revoked or suspended, any additional license issued under this chapter in the
13 name of said licensee may be likewise revoked or suspended by the director.

14 **PRAYER**

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

17 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
18 Registration No. ARD 189852, issued to Khalil Ailabouni, doing business as Palm Springs Smog
19 Test Center Only;

20 2. Revoking, suspending, or placing on probation any other automotive repair dealer
21 registration issued to Khalil Ailabouni;

22 3. Revoking or suspending Smog Check Station License Number TC 189852, issued
23 to Khalil Ailabouni, doing business as Palm Springs Smog Test Center Only;

24 4. Revoking or suspending any additional license issued under chapter 5, of the
25 Health and Safety Code in the name of Khalil Ailabouni;

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

5. Ordering Khalil Ailabouni to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: isulu Sherry Mehl by Doug Balatt
SHERRY MEHL Chief
Bureau of Automotive Repair Assist Chief
Department of Consumer Affairs
State of California
Complainant

SD2011800516
10751018.doc