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

12 In the Matter of the Accusation Against:

Case No. 79/09-41

13 **AJ SMOG TEST ONLY**
14 660 E. Vista Way
Vista, California 92084
15 **HUSSEIN ALY, A.K.A.,**
HUSSEIN E. ALY, OWNER

ACCUSATION
[SMOG CHECK]

16 Automotive Repair Dealer Registration
No. ARD 204920
17 Smog Check Test Only Station License
No. TC 204920

18
19 and

20 **HUSSEIN E. ALY, A.K.A.,**
HUSSEIN ALY
1951 Labrea Street
21 Escondido, California 92026

22 Advanced Emission Specialist Technician
License No. EA 303228

23
24 Respondents.

25 Sherry Mehl ("Complainant") alleges:

26 **PARTIES**

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

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Automotive Repair Dealer Registration

2. On or about May 11, 1999, the Bureau issued Automotive Repair Dealer Registration Number ARD 204920 (“registration”) to Hussein Aly, also known as Hussein E. Aly, doing business as AJ Smog Test Only (“Respondent”). The registration will expire on April 30, 2009, unless renewed.

Smog Check Test Only Station License

3. On or about May 18, 1999, the Bureau issued Smog Check Test Only Station License Number TC 204920 (“station license”) to Respondent. The station license will expire on April 30, 2009, unless renewed.

Advanced Emission Specialist Technician License

4. On a date uncertain in 1996, the Bureau issued Advanced Emission Specialist Technician License Number EA 303228 (“technician license”) to Respondent. The technician license will expire on January 31, 2009, unless renewed.

STATUTORY PROVISIONS

5. Section 9884.7 of the Business and Professions Code (“Code”) 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.

(6) Failure in any material respect to comply with the provisions of this chapter [the Automotive Repair Act (Bus. & Prof. Code, 9880, et seq.)] or regulations adopted pursuant to it.

(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

1 chapter. This violation, or action by the director, shall not affect in any manner
2 the right of the automotive repair dealer to operate his or her other places of
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
dealer has, or is, engaged in a course of repeated and willful violations of this
chapter, or regulations adopted pursuant to it.

6 6. Code section 9884.9, subdivision (a), states:

7 (a) The automotive repair dealer shall give to the customer a written
8 estimated price for labor and parts necessary for a specific job. No work shall be
9 done and no charges shall accrue before authorization to proceed is obtained from
10 the customer. No charge shall be made for work done or parts supplied in excess
11 of the estimated price without the oral or written consent of the customer that
12 shall be obtained at some time after it is determined that the estimated price is
13 insufficient and before the work not estimated is done or the parts not estimated
14 are supplied. Written consent or authorization for an increase in the original
15 estimated price may be provided by electronic mail or facsimile transmission from
16 the customer. The bureau may specify in regulation the procedures to be followed
17 by an automotive repair dealer if an authorization or consent for an increase in the
18 original estimated price is provided by electronic mail or facsimile transmission.
19 If that consent is oral, the dealer shall make a notation on the work order of the
20 date, time, name of person authorizing the additional repairs and telephone
21 number called, if any, together with a specification of the additional parts and
22 labor and the total additional cost, and shall do either of the following:

23 (1) Make a notation on the invoice of the same facts set forth in the
24 notation on the work order.

25 (2) Upon completion of the repairs, obtain the customer's signature or
26 initials to an acknowledgment of notice and consent, if there is an oral consent of
27 the customer to additional repairs, in the following language:

28 "I acknowledge notice and oral approval of an increase in the original estimated
price.

(signature or initials)"

Nothing in this section shall be construed as requiring an automotive
repair dealer to give a written estimated price if the dealer does not agree to
perform the requested repair.

24 7. Code section 9884.13 provides, in pertinent part, that the expiration of a
25 valid registration shall not deprive the director or chief of jurisdiction to proceed with a
26 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a
27 registration temporarily or permanently.

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1 systems on that vehicle, thereby depriving the People of the State of California of the protection
2 afforded by the Motor Vehicle Inspection Program.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with the Automotive Repair Act)**

5 17. Respondent has subjected his registration to discipline under Code section
6 9884.7, subdivision (a)(6), in that on or about March 24, 2008, Respondent failed to materially
7 comply with Code section 9884.9, subdivision (a) by failing to provide the operator with a
8 written estimated price for parts and labor for a specific job regarding the smog inspection.

9 **FOURTH CAUSE FOR DISCIPLINE**

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

11 18. Respondent has subjected his station license to discipline under Health and
12 Safety Code section 44072.2, subdivision (a), in that on or about March 24, 2008, regarding the
13 1994 Toyota Corolla, he violated sections of that Code, as follows:

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

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

19 c. **Section 44015, subdivision (b):** Respondent issued electronic
20 Certificate of Compliance No. VP168865 for that vehicle without properly testing and inspecting
21 the vehicle to determine if it was in compliance with Code section 44012.

22 d. **Section 44059:** Respondent willfully made false entries for electronic
23 Certificate of Compliance No. VP168865 for that vehicle, certifying that the vehicle had been
24 inspected as required when, in fact, it had not.

25 **FIFTH CAUSE FOR DISCIPLINE**

26 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

27 19. Respondent has subjected his station license to discipline under Health and
28 Safety Code section 44072.2, subdivision (c), in that on or about March 24, 2008, regarding the

1 1994 Toyota Corolla, he violated sections of the California Code of Regulations, title 16, as
2 follows:

3 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
4 issued electronic Certificate of Compliance No. VP168865 for that vehicle without performing a
5 bona fide inspection of the emission control devices and systems on the vehicle as required by
6 Health and Safety Code section 44012.

7 b. **Section 3340.35, subdivision (c):** Respondent issued electronic
8 Certificate of Compliance No. VP168865 for that vehicle even though the vehicle had not been
9 inspected in accordance with section 3340.42 of that Code.

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

12 **SIXTH CAUSE FOR DISCIPLINE**

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

14 20. Respondent has subjected his station license to discipline under Health and
15 Safety Code section 44072.2, subdivision (d), in that on or about March 24, 2008, he committed
16 acts involving dishonesty, fraud or deceit whereby another was injured by issuing Certificate of
17 Compliance No. VP168865 for the 1994 Toyota Corolla without performing a bona fide
18 inspection of the emission control devices and systems on the vehicle, thereby depriving the
19 People of the State of California of the protection afforded by the Motor Vehicle Inspection
20 Program.

21 **SEVENTH CAUSE FOR DISCIPLINE**

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

23 21. Respondent has subjected his technician license to discipline under Health
24 and Safety Code section 44072.2, subdivision (a), in that on or about March 24, 2008, regarding
25 the 1994 Toyota Corolla, he violated sections of that Code, as follows:

26 a. **Section 44012, subdivision (a):** Respondent failed to determine that all
27 emission control devices and systems required by law were installed and functioning correctly in
28 accordance with test procedures.

1 electronic Certificate of Compliance No. VP168865 for the 1994 Toyota Corolla without
2 performing a bona fide inspection of the emission control systems and devices on that vehicle,
3 thereby depriving the People of the State of California of the protection afforded by the Motor
4 Vehicle Inspection Program.

5 **PRIOR CITATIONS**

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

8 a. On or about November 20, 2006, the Bureau issued Citation No.
9 C07-0319 against Respondent's registration and station licenses for violations of Health & Safety
10 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission
11 control devices according to procedures prescribed by the department), and California Code of
12 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
13 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
14 Bureau undercover vehicle with a missing PCV system. The Bureau assessed civil penalties
15 totaling \$500 against Respondent for the violations. Respondent complied with this citation on
16 January 8, 2007.

17 b. On or about November 20, 2006, the Bureau issued Citation No. M07-
18 0320 against Respondent's technician license for violations of Health & Safety Code section
19 44032, (failure to perform a visual/functional check of emission control devices according to
20 procedures prescribed by the department), and Regulation 3340.30, subdivision (a) (issuing a
21 certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of
22 compliance to a Bureau undercover vehicle with a missing PCV system. The Bureau directed
23 Respondent to complete an 8-hour training course. Respondent complied with this citation on
24 February 10, 2007.

25 c. On or about September 11, 2007, the Bureau issued Citation No. C08-
26 0223 against Respondent's registration and station licenses for violations of Health & Safety
27 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission
28 control devices according to procedures prescribed by the department), and Regulation 3340.35,

1 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
2 issuing a certificate of compliance to a Bureau undercover vehicle with a missing pulse air
3 injection system. The Bureau assessed civil penalties totaling \$1,000 against Respondent for the
4 violations. Respondent complied with this citation on October 29, 2007.

5 d. On or about September 11, 2007, the Bureau issued Citation No. M08-
6 0224 against Respondent's technician license for violations of Health & Safety Code section
7 44032, (failure to perform a visual/functional check of emission control devices according to
8 procedures prescribed by the department), and Regulation 3340.30, subdivision (a) (issuing a
9 certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of
10 compliance to a Bureau undercover vehicle with a missing pulse air injection system. The
11 Bureau directed Respondent to complete a 16-hour training course. Respondent complied with
12 this citation on November 3, 2007.

13 e. On or about November 8, 2007, the Bureau issued Citation No. C08-0468
14 against Respondent's registration and station licenses for violations of Health & Safety Code
15 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
16 devices according to procedures prescribed by the department), and Regulation 3340.35,
17 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
18 issuing a certificate of compliance to a Bureau undercover vehicle with the ignition timing
19 adjusted beyond the manufacturer's specifications. The Bureau assessed civil penalties totaling
20 \$2,000 against Respondent for the violations. Respondent complied with this citation on
21 May 27, 2008.

22 f. On or about November 8, 2007, the Bureau issued Citation No. M08-0469,
23 against Respondent's technician license for violations of Health & Safety Code section 44032,
24 (failure to perform a visual/functional check of emission control devices according to procedures
25 prescribed by the department), and Regulation 3340.30, subdivision (a) (issuing a certificate of
26 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
27 Bureau undercover vehicle with ignition timing adjusted beyond the manufacturer's

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1 specifications. The Bureau directed Respondent to complete a basic clean air course.
2 Respondent complied with this citation on April 16, 2008.

3 **OTHER MATTERS**

4 25. Pursuant to Code section 9884.7, subdivision (c), the Director may
5 invalidate temporarily or permanently, the registrations for all places of business operated in this
6 state by Hussein Aly, also known as Hussein E. Aly, doing business as AJ Smog Test Only, upon
7 a finding that said he has, or is, engaged in a course of repeated and willful violations of the laws
8 and regulations pertaining to an automotive repair dealer.

9 26. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test
10 Only Station License Number TC 204920, issued to Hussein Aly, also known as Hussein E. Aly,
11 doing business as AJ Smog Test Only, is revoked or suspended, any additional license issued
12 under this chapter in the name of said licensee may be likewise revoked or suspended by the
13 director.

14 27. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission
15 Specialist Technician License Number EA 303228, issued to Hussein E. Aly, also known as
16 Hussein Aly, is revoked or suspended, any additional license issued under this chapter in the
17 name of said licensee may be likewise revoked or suspended by the director.

18 **PRAYER**

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

21 1. Temporarily or permanently invalidating Automotive Repair Dealer
22 Registration Number ARD 204920, issued to Hussein Aly, also known as Hussein E. Aly, doing
23 business as AJ Smog Test Only;

24 2. Temporarily or permanently invalidating any other automotive repair
25 dealer registration issued to Hussein Aly, also known as Hussein E. Aly, doing business as
26 AJ Smog Test Only;

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1 3. Revoking or suspending Smog Check Test Only Station License Number
2 TC 204920, issued to Hussein Aly, also known as Hussein E. Aly, doing business as AJ Smog
3 Test Only;

4 4. Revoking or suspending any additional license issued under Chapter 5 of
5 the Health and Safety Code in the name of Hussein Aly, also known as Hussein E. Aly, doing
6 business as AJ Smog Test Only;

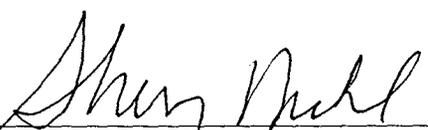
7 3. Revoking or suspending Advanced Emission Specialist Technician
8 License Number EA 303228, issued to Hussein E. Aly, also known as Hussein Aly;

9 4. Revoking or suspending any additional license issued under Chapter 5 of
10 the Health and Safety Code in the name of Hussein E. Aly, also known as Hussein Aly;

11 7. Ordering Hussein Aly, also known as Hussein E. Aly to pay the Director
12 of Consumer Affairs the reasonable costs of the investigation and enforcement of this case,
13 pursuant to Code section 125.3; and,

14 8. Taking such other and further action as deemed necessary and proper.

15 DATED: 11-7-08.



SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant