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

12  
13 In the Matter of the Accusation Against:

Case No. 79/10-61

14 **AUTO SMOG CHECK TEST ONLY**  
15 **HECTOR TRUJILLO, JR., OWNER**  
738 S. Waterman Avenue, #A17  
16 San Bernardino, CA 92408  
Automotive Repair Dealer Reg. No. ARD 212969  
17 Smog Check, Test Only, Station License No. TC  
212969,

**ACCUSATION**

(Smog Check)

18 and

19 **HECTOR TRUJILLO, JR.**  
15400 Avenida De Portugal  
20 Moreno Valley, CA 92555  
Advanced Emission Specialist Technician  
License No. EA 141262

21 Respondents.

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23 Complainant alleges:

24 **PARTIES**

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

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1 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director  
2 of jurisdiction to proceed with disciplinary action.

3 **STATUTORY PROVISIONS**

4 9. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

14 . . . .

15 (4) Any other conduct which constitutes fraud . . .

16 10. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes  
17 "bureau," "commission," "committee," "department," "division," "examining committee,"  
18 "program," and "agency." "License" includes certificate, registration or other means to engage in  
19 a business or profession regulated by the Bus. & Prof. Code.

20 11. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

27 . . . .

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

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

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1 12. Health & Saf. Code section 44072.10 states, in pertinent part:

2 . . . .

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

7 (1) Clean piping, as defined by the department . . . .

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

11 **COST RECOVERY**

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

16 **VIDEO SURVEILLANCE OPERATION OF APRIL 22, 2009**

17 15. On April 22, 2009, a representative of the Bureau conducted a video surveillance  
18 operation of Respondent's smog check facility. The surveillance video and information obtained  
19 from the Bureau's vehicle information database revealed that a 1995 Honda Civic, License No.  
20 3LRE597 (hereinafter "Honda Civic"), was tested four times (between 1543 and 1558 hours,  
21 1559 and 1607 hours, 1625 and 1635 hours, and 1718 and 1731 hours). The first three tests were  
22 aborted; the fourth test resulted in the issuance of electronic smog Certificate of Compliance No.  
23 VZ352618C. The surveillance video revealed that a Nissan 240SX was in the testing bay during  
24 the third smog test on the Honda Civic, and an Acura Integra was in the testing bay during the  
25 fourth smog test. The Bureau determined that the third and fourth smog inspections on the Honda

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1 Civic were conducted using clean piping methods<sup>1</sup>, resulting in the issuance of a fraudulent  
2 certificate of compliance for the vehicle. Further, the smog inspections were conducted using  
3 Respondent's confidential access code.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 16. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.  
7 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which  
8 he knew or in the exercise of reasonable care should have known to be untrue or misleading, as  
9 follows: Respondent certified that the Honda Civic had passed inspection and was in compliance  
10 with applicable laws and regulations. In fact, Respondent used clean piping methods in order to  
11 issue a certificate for the vehicle and did not test or inspect the vehicle as required by Health &  
12 Saf. Code section 44012.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Fraud)**

15 17. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.  
16 Code section 9884.7, subdivision (a)(4), in that Respondent committed an act which constitutes  
17 fraud by issuing an electronic smog certificate of compliance for the Honda Civic without  
18 performing a bona fide inspection of the emission control devices and systems on the vehicle,  
19 thereby depriving the People of the State of California of the protection afforded by the Motor  
20 Vehicle Inspection Program.

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26 <sup>1</sup> Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t),  
27 "clean piping" means the use of a sample of the exhaust emissions of one vehicle in order to  
28 cause the EIS to issue a certificate of compliance for another vehicle.



1 FIFTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 20. Respondent's smog check station license is subject to disciplinary action pursuant to  
4 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,  
5 fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of  
6 compliance for the Honda Civic without performing a bona fide inspection of the emission  
7 control devices and systems on the vehicle, thereby depriving the People of the State of California  
8 of the protection afforded by the Motor Vehicle Inspection Program.

9 SIXTH CAUSE FOR DISCIPLINE

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

12 21. Respondent's technician license is subject to disciplinary action pursuant to Health &  
13 Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with California  
14 Code of Regulations, title 17, section 3340.41, subdivision (b), in a material respect, as follows:  
15 Respondent permitted the EIS to be accessed and the smog inspection of the Honda Civic to be  
16 conducted using his confidential access code.

17 OTHER MATTERS

18 22. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station  
19 License Number TC 212969, issued to Respondent Hector Trujillo, Jr., owner of Auto Smog  
20 Check Test Only, is revoked or suspended, any additional license issued under this chapter in the  
21 name of said licensee may be likewise revoked or suspended by the Director.

22 23. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist  
23 Technician License Number EA 141262, issued to Respondent Hector Trujillo, Jr., is revoked or  
24 suspended, any additional license issued under this chapter in the name of said licensee may be  
25 likewise revoked or suspended by the Director.

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PRAYER

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

1. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number ARD 212969, issued to Hector Trujillo, Jr., owner of Auto Smog Check Test Only;
2. Revoking or suspending Smog Check, Test Only, Station License Number TC 212969, issued to Hector Trujillo, Jr., owner of Auto Smog Check Test Only;
3. Revoking or suspending Advanced Emission Specialist Technician License Number EA 141262, issued to Hector Trujillo, Jr.;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Hector Trujillo, Jr.;
5. Ordering Respondent Hector Trujillo, Jr., individually and as owner of Auto Smog Check Test Only, to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
6. Taking such other and further action as deemed necessary and proper.

DATED: 3/17/10

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