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8 **BEFORE THE**  
9 **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. 79/11-50

13 **SMOG DOCTOR**  
14 **ARDESHIR M. BEHBAHANY, OWNER**  
15 **2270 Camden Avenue**  
16 **Campbell, CA 95008**  
17 **Automotive Repair Dealer Reg. No. ARD 218772**  
18 **Smog Check, Test Only, Station License No.**  
19 **TC 218772**

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

SMOG CHECK

Respondent.

20 Complainant alleges:

21 **PARTIES**

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

24 2. In or about 2001, the Director of Consumer Affairs ("Director") issued Automotive  
25 Repair Dealer Registration Number ARD 218772 to Ardeshir M. Behbahany ("Respondent"),  
26 owner of Smog Doctor. Respondent's automotive repair dealer registration was in full force and  
27 effect at all times relevant to the charges brought herein and will expire on November 30, 2011,  
28 unless renewed.

3. On or about May 19, 2004, the Director issued Smog Check, Test Only, Station  
License Number TC 218772 to Respondent. Respondent's smog check, test only, station license

1 was in full force and effect at all times relevant to the charges brought herein and will expire on  
2 November 30, 2011, unless renewed.

3 **JURISDICTION**

4 4. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that  
5 the Director may revoke an automotive repair dealer registration.

6 5. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a  
7 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary  
8 proceeding against an automotive repair dealer or to render a decision temporarily or permanently  
9 invalidating (revoking or suspending) a registration.

10 6. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent  
11 part, that the Director has all the powers and authority granted under the Automotive Repair Act  
12 for enforcing the Motor Vehicle Inspection Program.

13 7. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or  
14 suspension of a license by operation of law, or by order or decision of the Director of Consumer  
15 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director  
16 of jurisdiction to proceed with disciplinary action.

17 **STATUTORY PROVISIONS**

18 8. Bus. & Prof. Code section 9884.7 states, in pertinent part:

19 (a) The director, where the automotive repair dealer cannot show there  
20 was a bona fide error, may deny, suspend, revoke, or place on probation the  
21 registration of an automotive repair dealer for any of the following acts or omissions  
22 related to the conduct of the business of the automotive repair dealer, which are done  
23 by the automotive repair dealer or any automotive technician, employee, partner,  
24 officer, or member of the automotive repair dealer.

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

28 .....

(4) Any other conduct that constitutes fraud.

.....

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or  
place on probation the registration for all places of business operated in this state by

1 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,  
2 engaged in a course of repeated and willful violations of this chapter, or regulations  
3 adopted pursuant to it.

4 9. Bus. & Prof. Code section 22, subdivision (a), states:

5 "Board" as used in any provision of this Code, refers to the board in  
6 which the administration of the provision is vested, and unless otherwise expressly  
7 provided, shall include "bureau," "commission," "committee," "department,"  
8 "division," "examining committee," "program," and "agency."

9 10. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a  
10 "license" includes "registration" and "certificate."

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

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

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

18 . . . .

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

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

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

24 . . . .

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

. . . .

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

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

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1 **COST RECOVERY**

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

6 **UNDERCOVER OPERATION: 1994 TOYOTA CAMRY**

7 15. On May 2, 2010, an undercover operator of the Bureau (hereinafter "operator") took  
8 the Bureau's 1994 Toyota Camry to Respondent's facility and requested a smog inspection. The  
9 ignition timing on the Bureau-documented vehicle was not adjusted to manufacturer's  
10 specifications (the ignition timing was set to 20 degrees BTDC when the manufacturer's  
11 specifications are 10 degrees BTDC) and consequently, the vehicle would not pass a California  
12 smog check inspection. The operator signed and received a copy of a work order/estimate.  
13 Respondent's smog check technician, Tai Tri Nguyen ("Nguyen"), performed the inspection on  
14 the vehicle. Before the inspection was completed, Nguyen informed the operator that the engine  
15 ignition timing "was off" and asked the operator if the timing had been tampered with. The  
16 operator replied "No." Nguyen told the operator that he would pass the vehicle on the smog  
17 inspection, but that the operator should make sure a mechanic adjusted the timing back to proper  
18 specifications. Following the inspection, the operator paid the facility \$79.95 and received copies  
19 of an invoice and vehicle inspection report. That same day, electronic smog Certificate of  
20 Compliance No. NS794242C was issued for the vehicle.

21 16. On May 4, 2010, the Bureau inspected the vehicle and found that the ignition timing  
22 was still set to 20 degrees BTDC and was not adjusted to manufacturer's specifications.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Untrue or Misleading Statements)**

25 17. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section  
26 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which he knew, or  
27 in the exercise of reasonable care should have known to be untrue or misleading, as follows:  
28 Respondent's smog check technician, Nguyen, certified under penalty of perjury on the vehicle

1 inspection report that the Bureau's 1994 Toyota Camry had passed the inspection and was in  
2 compliance with applicable laws and regulations. In fact, the ignition timing on the vehicle was  
3 not adjusted to manufacturer's specifications. As such, the vehicle would not pass the inspection  
4 required by Health & Saf. Code section 44012.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Fraud)**

7 18. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.  
8 Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that constitutes  
9 fraud, as follows: Respondent issued an electronic smog certificate of compliance for the  
10 Bureau's 1994 Toyota Camry without ensuring that a bona fide inspection was performed of the  
11 emission control devices and systems on the vehicle, thereby depriving the People of the State of  
12 California of the protection afforded by the Motor Vehicle Inspection Program.

13 **THIRD CAUSE FOR DISCIPLINE**

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

15 19. Respondent's smog check station license is subject to disciplinary action pursuant to  
16 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the  
17 following sections of that Code:

18 a. **Section 44012:** Respondent failed to ensure that the emission control tests were  
19 performed on the Bureau's 1994 Toyota Camry in accordance with procedures prescribed by the  
20 department.

21 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for  
22 the Bureau's 1994 Toyota Camry without ensuring that the vehicle was properly tested and  
23 inspected to determine if it was in compliance with Health & Saf. Code section 44012.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**  
3 **to the Motor Vehicle Inspection Program)**

4 20. Respondent's smog check station license is subject to disciplinary action pursuant to  
5 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with the  
6 following sections of California Code of Regulations, title 16:

7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an  
8 electronic smog certificate of compliance for the Bureau's 1994 Toyota Camry.

9 b. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate  
10 of compliance for the Bureau's 1994 Toyota Camry even though the vehicle had not been  
11 inspected in accordance with section 3340.42.

12 c. **Section 3340.42:** Respondent failed to ensure that the required smog tests were  
13 conducted on the Bureau's 1994 Toyota Camry in accordance with the Bureau's specifications.

14 **FIFTH CAUSE FOR DISCIPLINE**

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

16 21. Respondent's smog check station license is subject to disciplinary action pursuant to  
17 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,  
18 fraudulent, or deceitful act whereby another is injured, as follows: Respondent issued an  
19 electronic smog certificate of compliance for the Bureau's 1994 Toyota Camry without ensuring  
20 that a bona fide inspection was performed of the emission control devices and systems on the  
21 vehicle, thereby depriving the People of the State of California of the protection afforded by the  
22 Motor Vehicle Inspection Program.

23 **MATTERS IN AGGRAVATION**

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

26 a. On or about February 25, 2009, the Bureau issued Citation No. C09-0997 against  
27 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to  
28 perform a visual/functional check of emission control devices according to procedures prescribed

1 by the department); and California Code of Regulations, title 16, section ("Regulation") 3340.35,  
2 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested).  
3 Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a missing  
4 Positive Crankcase Ventilation system. The Bureau assessed civil penalties totaling \$500 against  
5 Respondent for the violations. Respondent complied with the citation and paid the fine on April  
6 3, 2009.

7 b. On or about October 6, 2009, the Bureau issued Citation No. C2010-0336 against  
8 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to  
9 perform a visual/functional check of emission control devices according to procedures prescribed  
10 by the department); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance  
11 to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a  
12 Bureau undercover vehicle with a missing Positive Crankcase Ventilation system. The Bureau  
13 assessed civil penalties totaling \$1,000 against Respondent for the violations. Respondent  
14 complied with the citation and paid the fine on October 23, 2009.

15 c. On or about February 23, 2010, the Bureau issued Citation No. C2010-0849 against  
16 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to  
17 perform a visual/functional check of emission control devices according to procedures prescribed  
18 by the department); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance  
19 to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a  
20 Bureau undercover vehicle with a missing EVAP canister. The Bureau assessed civil penalties  
21 totaling \$2,000 against Respondent for the violations. Respondent complied with the citation and  
22 paid the fine on March 17, 2010.

### 23 **OTHER MATTERS**

24 23. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
25 suspend, revoke, or place on probation the registration for all places of business operated in this  
26 state by Respondent Ardeshir M. Behbahany, owner of Smog Doctor, upon a finding that  
27 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and  
28 regulations pertaining to an automotive repair dealer.

1 24. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station  
2 License Number TC 218772, issued to Respondent Ardeshir M. Behbahany, owner of Smog  
3 Doctor, is revoked or suspended, any additional license issued under this chapter in the name of  
4 said licensee may be likewise revoked or suspended by the director.

5 **PRAYER**

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

8 1. Revoking or suspending Automotive Repair Dealer Registration Number  
9 ARD 218772, issued to Ardeshir M. Behbahany, owner of Smog Doctor;

10 2. Revoking or suspending any other automotive repair dealer registration issued to  
11 Ardeshir M. Behbahany;

12 3. Revoking or suspending Smog Check, Test Only, Station License Number  
13 TC 218772, issued to Ardeshir M. Behbahany, owner of Smog Doctor;

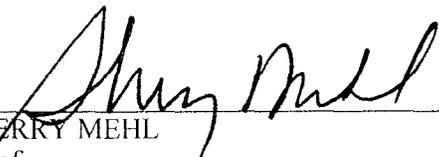
14 4. Revoking or suspending any additional license issued under Chapter 5 of the Health  
15 and Safety Code in the name of Ardeshir M. Behbahany;

16 5. Ordering Ardeshir M. Behbahany, owner of Smog Doctor, to pay the Director of  
17 Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant  
18 to Business and Professions Code section 125.3;

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

20  
21 DATED: \_\_\_\_\_

12/17/10

  
SHERRY MEHL  
Chief

Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
Complainant

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