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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. 79/12-21

13 **BRYANT AUTO REPAIR**
14 **PHUOC THANH PHAM, Owner**
5337 International Blvd.
15 **Oakland, California 94601**
Automotive Repair Dealer Registration No.
16 **ARD222956**
Smog Check Station License No. RC222956

A C C U S A T I O N

SMOG CHECK

17 **PHUOC THANH PHAM**
18 5337 International Blvd.
Oakland, California 94601
19 Other address: P.O. Box 4671
Oakland, California 94605
Advanced Emission Specialist Technician
20 License No. EA044647

21 Respondents.

22 Complainant alleges:

23 **PARTIES**

- 24 1. Sherry Mehl (Complainant) brings this Accusation solely in her official capacity as
25 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.
- 26 2. On a date uncertain in 2002, the Director of Consumer Affairs ("Director") issued
27 Automotive Repair Dealer Registration Number ARD222956 to Phuoc Thanh Pham, doing
28 business as Bryant Auto Repair (hereinafter referred to as "Bryant Auto Repair" or "Respondent

1 Bryant Auto Repair"). The Bryant Auto Repair Automotive Repair Dealer Registration was in
2 full force and effect at all times relevant to the charges brought in the Accusation, and will expire
3 on July 31, 2012, unless renewed. On or about September 5, 2002, the Director issued Smog
4 Check Station License Number RC222956 to Phuoc Thanh Pham, doing business as Bryant Auto
5 Repair (hereinafter referred to as "Bryant Auto Repair" or "Respondent Bryant Auto Repair").
6 The Smog Check Station License was in full force and effect at all times relevant to the charges
7 brought in the Accusation, and will expire on July 31, 2012, unless renewed.

8 3. On a date uncertain in 2003, the Director issued Advanced Emission Specialist
9 Technician License Number EA044647 to Phuoc Thanh Pham (hereinafter referred to as "Phuoc
10 Pham" or "Respondent Pham"). Phuoc Pham's Advanced Emission Specialist Technician
11 License was in full force and effect at all times relevant to the charges brought in the Accusation,
12 and will expire on May 31, 2013, unless renewed.

13 STATUTORY PROVISIONS

14 4. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
15 part:

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

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

25

26 (4) Any other conduct that constitutes fraud.

27

28 (b) Except as provided for in subdivision (b), 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
specific place of business which has violated any of the provisions of this chapter.
This violation, or action by the director, shall not affect in any manner the right of the
automotive repair dealer to operate his or her other places of business.

1 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
2 place on probation the registration for all places of business operated in this state by
3 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
4 engaged in a course of repeated and willful violations of this chapter, or regulations
5 adopted pursuant to it.

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

10 6. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
11 "commission," "committee," "department," "division," "examining committee," "program," and
12 "agency." "License" includes certificate, registration or other means to engage in a business or
13 profession regulated by the Code.

14 7. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
15 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
16 the Motor Vehicle Inspection Program.

17 8. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

24

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

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

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

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TABLE 1

Date & Time of Inspection	Vehicle Certified & License No.	Certificate No.
1. 11/30/2010 1640 – 1652 hours	1996 Nissan 200SX, WA License No. 418RHG	NY193228C
2. 12/2/2010 1556 – 1614 hours	1999 Mitsubishi Galant, License No.4UQR156	NY193230C
3. 12/13/2010 1106 – 1202 hours	1998 Toyota Corolla, License No. 3XTN710	NY193239C
4. 12/18/2010 1415 – 1428 hours	2002 Subaru Impreza AWD, License No. 5FEH171	NY193248C
5. 12/21/2010 1025 – 1117 hours	2005 Lexus RX 330, No License Plate, VIN 2T2GA31U65C029803	NY193250C
6. 12/22/2010 1146 – 1213 hours	2000 Ford F150 Reg Cab Long, No License Plate, VIN 1FTRF07W5YKB04922	WR077254C
7. 12/27/2010 1154 – 1216 hours	2000 Toyota Tacoma 2WD, License No. 6E33167	WR077256C
8. 12/28/2010 1406 – 1421 hours	2000 Toyota Sienna, License No. 5FYS522	WR077257C
9. 1/3/2011 1514 – 1541 hours	1998 Dodge Stratus, License No. 3VRG905	WR077265C
10. 1/12/2011 1532 – 1558 hours	2005 Chrysler 300, License No. 5LXF994	WR077269C
11. 1/15/2011 1400- 1428 hours	2001 Nissan Pathfinder, License No. 5DQB695	WR077275C
12. 2/15/2011 1433 – 1438 hours	2001 GMC Sierra 1500 4WD, License No. 6X71882	OA516654C
13. 2/15/2011 1455 – 1535 hours	2001 Ford Explorer 4DR, License No. 6G34372	OA516655C
14. 2/15/2011 1612. – 1626 hours	2000 Pontiac Grand Prix, License No. 4HQZ393	OA516656C
15. 12/8/2010 1407 – 1438 hours	2000 Mitsubishi Mirage, License No. 6KXB526	NY193235C
16. 3/5/2011 1423 – 1443 hours	1998 Chevrolet Astro, License No. 4XID340	OA516671C
17. 3/7/2011 1302 – 1317 hours	2001 Nissan Quest, License No. 4TTD640	OA516672C
18. 3/7/2011 1329 – 1410 hours	2000 Plymouth Voyager 2WD, License No. 4HG573	OA516673C
19. 3/9/2011 1733 – 1755 hours	1996 Buick Century, License No. 5CKY147	OA516675C
20. 3/10/2011 1514 – 1531 hours	2003 Chevrolet Trailblazer EXT 2WD, License No. 5NDH948	OA516676C
21. 3/12/2011 1356 – 1500 hours	2000 Nissan Maxima, License No. 5YMA410	OA516679C
22. 3/16/2011 1335 – 1340 hours	1998 Toyota 4Runner, License No. 4APU006	OA516686C
23. 3/30/2011 1438 – 1459 hours	2001 GMC C3500 Sierra, License No. 6N92024	OA516699C
24. 4/12/2011 1128 – 1152 hours	2003 K1500 Ksuburan 4WD, License No. 5GSF524	OC231606C

1 a. **Section 44012:** Respondent Bryant Auto Repair failed to ensure that the emission
2 control tests were performed on those vehicles in accordance with procedures prescribed by the
3 department.

4 b. **Section 44015:** Respondent Bryant Auto Repair issued electronic certificates of
5 compliance for those vehicles without ensuring that the vehicles were properly tested and
6 inspected to determine if they were in compliance with Health and Safety Code section 44012.

7 c. **Section 44059:** Respondent Bryant Auto Repair willfully made false entries for the
8 electronic certificates of compliance by certifying that those vehicles had been inspected as
9 required when, in fact, they had not.

10 **FOURTH CAUSE FOR DISCIPLINARY ACTION**

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

12 16. Respondent Bryant Auto Repair has subjected his station license to disciplinary
13 action under Health and Safety Code section 44072.2, subdivision (c), in that on or about
14 November 30, 2010, through April 12, 2011, regarding vehicles 1 through 24, identified in Table
15 1, above, he violated sections of the California Code of Regulations, title 16, as follows:

16 a. **Section 3340.24, subdivision (c):** Respondent Bryant Auto Repair falsely or
17 fraudulently issued electronic certificates of compliance for those vehicles without performing
18 bona fide inspections of the emission control devices and systems on the vehicles as required by
19 Health and Safety Code section 44012.

20 b. **Section 3340.35, subdivision (c):** Respondent Bryant Auto Repair issued electronic
21 certificates of compliance even though those vehicles had not been inspected in accordance with
22 section 3340.42 of that Code.

23 c. **Section 3340.42:** Respondent Bryant Auto Repair failed to conduct the required
24 smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

25 **FIFTH CAUSE FOR DISCIPLINARY ACTION**

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

27 17. Respondent Bryant Auto Repair has subjected his station license to disciplinary
28 action under Health and Safety Code section 44072.2, subdivision (d), in that on or about

1 November 30, 2010, through April 12, 2011, regarding vehicles 1 through 24, set forth in Table 1,
2 above, he committed acts involving dishonesty, fraud or deceit whereby another was injured by
3 issuing electronic certificates of compliance for those vehicles without performing bona fide
4 inspections of the emission control devices and system on the vehicles, thereby depriving the
5 People of the State of California of the protection afforded by the Motor Vehicle Inspection
6 Program.

7 **SIXTH CAUSE FOR DISCIPLINARY ACTION**

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

9 18. Respondent Pham has subjected his technician license to disciplinary action under
10 Health and Safety Code section 44072.2, subdivision (a), in that on or about November 30, 2010,
11 through April 12, 2011, regarding vehicles 1 through 24, identified in Table 1, above, Respondent
12 Pham failed to comply with section 44012 of that Code in a material respect, as follows:
13 Respondent Pham failed to perform the emission control tests on those vehicles in accordance
14 with procedures prescribed by the department.

15 **SEVENTH CAUSE FOR DISCIPLINARY ACTION**

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

17 19. Respondent Pham has subjected his technician license to disciplinary action under
18 Health and Safety Code section 44072.2, subdivision (c), in that on or about November 30, 2010,
19 through April 12, 2011, vehicles 1 through 24, identified in Table 1, above, he violated sections
20 of the California Code of Regulations, title 16, as follows:

21 a. **Section 3340.24, subdivision (c):** Respondent Pham falsely or fraudulently issued
22 electronic certificates of compliance without performing bona fide inspections of the emission
23 control devices and systems on those vehicles as required by Health and Safety Code section
24 44012.

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

27 c. **Section 3340.42:** Respondent Pham failed to conduct the required smog tests and
28 inspections on those vehicles in accordance with the Bureau's specifications.

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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. Revoking or suspending Automotive Repair Dealer Registration Number ARD222956, issued to Phuoc Thanh Pham, doing business as Bryant Auto Repair;

2. Revoking or suspending Smog Check Station License Number RC222956, issued to Phuoc Thanh Pham, doing business as Bryant Auto Repair;

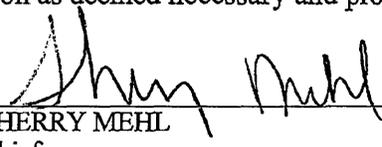
3. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Phuoc Thanh Pham, including but not limited to Advanced Emission Specialist Technician License Number EA044647;

4. Revoking or suspended Advanced Emission Specialist Technician License Number EA044647, issued to Phuoc Thanh Pham;

5. Ordering Phuoc Thanh Pham 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; and,

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

DATED: 9/28/11



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

SF2011202412
Bryant Auto Repair Accusation