

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

AKRAM S. SEAGHAT
dba ERICS SMOG TEST ONLY

Automotive Repair Dealer Registration
No. ARD 240241
Smog Check, Test Only, Station License
No. TC 240241

and

AKRAM S. SEAGHAT

Advanced Emission Specialist Technician
License No. EA 148483

and

FADEL CHAHO

Advanced Emission Specialist Technician
License No. EA 630093

Respondents.

Case No. 79/11-16

OAH No. 2011120932

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter only as to respondent Akram S. Seaghat, dba Eric's Smog Test Only, Automotive Repair Dealer Registration No. ARD 240241, Smog Check, Test Only, Station License No. TC 240241, and Advanced Emission Specialist Technician License No. 148483, except that, pursuant to Government Code section 11517(c)(2)(C), the typographical error on page 7, first paragraph, second line, under ORDER, of the Proposed Decision is corrected as follows:

The station name "Eri's Smog Test Only" is corrected to read "Eric's Smog Test Only."

This Decision shall become effective 10/4/12

DATED: August 29, 2012


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

Case No. 79/11-16

AKRAM S. SEAGHAT, doing business as
ERICS SMOG TEST ONLY
Automotive Repair Dealer Registration No.
ARD 240241; Smog Check Test Only Station
No. TC 240241

OAH No. 2011120932

and

AKRAM S. SEAGHAT
Advanced Emission Specialist Technician
License No. EA 148483

and

FADEL CHAHO
Advanced Emission Specialist Technician
License No. EA 630093

Respondents.

PROPOSED DECISION

The hearing in the above-captioned matter took place on June 26, 2012, at Los Angeles, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings, presided. Complainant was represented by Terrence M. Mason, Deputy Attorney General. Respondent Akram Seaghat appeared with his attorney, Jeffrey T. Osborn. There was no appearance by Respondent Fadel Chaho who had previously defaulted by failing to file a Notice of Defense.¹

¹ Therefore, no findings will be made regarding Mr. Chaho, unless necessary to provide context for the decision.

Evidence was received, and argument made, but the record was left open so that Respondent might submit further documentary evidence of repairs to his facility's equipment. Respondent was given until July 6, 2012, to submit such documents, and he did so in a timely manner, his further submission being marked as Exhibit B. Complainant's counsel, Mr. Mason, was given until July 16 to lodge any objection. On July 9, 2012, Complainant filed written notice that she did not object to the admission of Exhibit B, which shall be received in evidence. Complainant's written notice will be received as Exhibit 10.

The matter was deemed submitted for decision on July 9, 2012. Based on the evidence and argument, the ALJ makes the following proposed decision.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Complainant Sherry Mehl filed the Accusation in the above-captioned matter while acting in her official capacity as the Chief of the Bureau of Automotive Repair (Bureau), of the Department of Consumer Affairs (Department).

2. Respondent Akram S. Seaghat (Seaghat)² is licensed as an Advanced Emission Specialist Technician, holding license number EA 148483, and he has been so licensed since 2004. His license will expire on September 30, 2012 unless renewed.

3. Seaghat also holds a Automotive Repair Dealer (ARD) Registration, number ARD 240241, and has held that ARD since July 2005. His ARD will expire on June 30, 2013 if not renewed. In July 2005 the Bureau also issued a Smog Check, Test Only, station license to Respondent. That license, number TC 240241, will expire on June 30, 2013 unless renewed. Respondent does business as Eric's Smog Test Only, in Reseda, California.

4. In this action, Complainant asserts that Seaghat utilized an improper testing method, known as "clean plugging." Seaghat filed a Notice of Defense, denying the allegations, and this proceeding ensued. All jurisdictional requirements have been met.

The Anomalous Data Allegedly Showing Clean Plugging

5. In April 2010, a Bureau representative conducted a review of data contained in the Bureau's Vehicle Information Database (VID), which data had been generated by the test equipment at Respondent's facility. The VID receives information from the smog test systems at each licensed facility in the state. The information includes the identity of the

² In light of Chaho's default, all further references to "Respondent" shall be to Mr. Seaghat unless otherwise noted.

vehicle, the place where a smog test is conducted on that vehicle, the identity of the technician conducting the smog test, and information generated during the test, including the results of the tests.

6. Among the data placed in the VID during the testing process is information obtained from the car's On Board Diagnostics system, part of the computer system that governs many modern vehicle operations. The system, known as the OBD II, is the one that will turn on the "check engine" dashboard light if there is a malfunction that implicates emission control or other performance problems. However, the system will also record other information, including trouble codes of potential problems that are not at a point that the check engine light (known as the MIL—Malfunction Indicator Light) will be activated.

7. During the performance of a smog test, the technician is required to connect the test system—known as the BAR-97 Analyzer—to the subject vehicle's OBD II through the Diagnostic Link Connector. Practically speaking, this is the same as connecting two computer components to each other with a cable. A vehicle that fails the OBD II test fails the smog test.

8. The BAR-97 can obtain some codes and transmit them to the VID even where those codes have not activated the MIL and would not cause the test to fail. The technician conducting the test does not have access to such codes, and would be unaware that they were being transmitted.

9. The Bureau's review of VID data for Respondent's facility covered the period of June 6, 2009, through November 2009 (the test period). The review showed that among the many vehicles that had been smog checked and certified by Respondent's facility during the test period, 12 of those vehicles had transmitted trouble codes to the VID which trouble codes did not match the car being tested. That is, the anomalous trouble codes—labeled "unsupported codes" by Complainant—were specific to certain manufactures, and the cars being tested were not of that manufacture.³ For example, a Kia Optima was tested on June 6, 2009, and a trouble code, P1456, was transmitted to Respondent's equipment and then the VID. However, that code number is not one used in Kia automobiles. The record indicates that Honda uses that trouble code, as it appears as the trouble code for a Honda tested on August 14, 2009, and for a Honda tested the same day (June 6, 2009) as the Kia Optima in question.⁴

³ Complainant put forth evidence regarding the trouble codes used in cars, showing that some codes are specific to a manufacturer, and others are generic. The codes, having both numerals and letters of the alphabet, can be deciphered using manufacturer vehicle specifications, or standard technical manuals.

⁴ Exhibit 5, tab 6, has the data for all tests during the audit period. On page 1 the June 6, 2009 test data for the Kia and Honda are found. And, at page 12 of tab 6, an August 14 test of a Honda shows the same trouble code.

10. The 12 vehicles that generated anomalous trouble codes are listed in Table 1 of the Accusation, incorporated herein by reference. That Table identifies the vehicles by make and license number, and shows the test date and time, as well as the serial number for the certificate of compliance issued for each car. Finally, the identity of the technician conducting the test is shown. In this case, 10 of the 12 tests were conducted by Respondent, and the last two, in November 2009, were conducted by Mr. Chaho. Seven of the twelve vehicles were without license plates.

11. In Exhibit 5, at tab 21, a table is found showing more data than set forth in the Accusation. It reveals that after the Kia Optima discussed in Factual Finding 9 was tested, the next eight cars listed with anomalous trouble codes all reported trouble code P1676. The cars in question include two Fords, two Toyotas, a Lincoln, an Infinity, a Hyundai, and another Kia. To be clear, P1676 is not a trouble code for any of those cars. The last two cars in question, a Ford and a Toyota, were tested on the same morning, November 28, 2009, within one-half hour of each other. Each car reported trouble code P1388, a code not used by either of those manufacturers. Neither of these cars, tested by Mr. Chaho, had license plates.

12. Based on the VID data, it appears that on 12 occasions, the test equipment at Respondent's facility was plugged into the on board computer of vehicles other than those ostensibly being tested. This conduct is known as "clean plugging" and used by smog check technicians when they suspect that the vehicle being tested will not pass the test.

Respondent's Repair to His Test Equipment

13. At the hearing, Respondent testified that he had not "clean plugged" any vehicles, and that there was a problem with his equipment. Specifically, he testified that shortly after receiving the Accusation, he contacted Environmental Systems Products (ESP), a firm that can repair smog test analyzer equipment.

14. On October 5, 2010, a technician came to Respondent's shop, and replaced the OBD component of his test equipment. A work order bearing that date was received in evidence. In the section of the work order titled "problem," it is noted that "OBD sending wrong info to VID." In the column titled "repair," the technician wrote "found problem with software on OBD module, could not update firmware. Replaced OBD module/tested ok. Set tampers." (Ex. A.)

15. Respondent provided documentation, after the hearing, establishing that he paid ESP \$1,006.95 for the repair of the OBD unit. (Ex. B.)

16. Respondent adduced no testimony or other evidence that would establish that the problem with the OBD, listed on Exhibit A, caused his smog test equipment to randomly put 12 incorrect trouble codes into the VID during the six months of the test period. During his testimony he stated that the repairman said the OBDII module was not downloading, but that may only establish that it was not uploading firmware as of October 2010, nearly one year

after the test period. And, it should be noted that Respondent told the repairman that the unit was sending wrong information to the VID; there is no evidence that the repairman established that as a fact.

Other Matters

17. A review of the table showing all of the data from the test period—Exhibit 5, tab 6—shows that 818 cars were tested during the test period. Of those cars, the ALJ counts 156 that transmitted a trouble code to the VID, about 25 per cent of the total. Of those 156 cars, only 12 transmitted anomalous trouble codes during the test period, i.e, the 12 “unsupported codes” referred to in Factual Finding 9. As previously noted, eight of the 12 had the same trouble code—P1676—and two more, tested the same day, had the code P1388.

18. Complainant’s expert witness, David Lewis, is the Senior Engineer in charge of the Bureau’s Hardware Certification Unit. He was heavily involved in the development of the BAR 97 test system, which is utilized by all facilities in California, including Respondent’s. He attested that he has an agreement with ESP to the effect that they would contact him and inform him if they ever detected a problem with the OBD systems in test equipment. They have not contacted him to inform him that Respondent’s equipment was defective and causing the recording of incorrect trouble codes.

19. Respondent has no prior record of discipline. His smog testing business is the source of his livelihood for himself, and a family. Mr. Chaho has not worked for Respondent since late 2010.

20. The Bureau has incurred costs of investigating and prosecuting this matter, in the amount of \$7,432.50, which amount is reasonable under all of the circumstances.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter pursuant to Business and Professions Code section 9884.7 and Health and Safety Code section 44072.2 was established, based on Factual Findings 1 through 3.

2. Cause was established to discipline Respondent Seaghat’s ARD pursuant to Business and Professions Code section 9884.7, subdivision (a)(1) for making untrue statements, based on Factual Findings 1 through 12, and 16 through 18.

3. Cause was established to discipline Seaghat’s ARD pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), for fraud, in that Respondent and his employee employed the practice of “clean plugging” on 12 vehicles over a period of months. This Conclusion is supported by Factual Findings 1 through 12, and 16 through 18.

4. Cause was established to discipline Respondent Seaghat's smog check station license pursuant to Health and Safety Code section 44072.2, subdivision (a), for violation of sections 44012, 44015, and 44059 of that code in connection with 12 inspections. This Conclusion is based on Factual Findings 1 through 12, and 16 through 18, which establish that each vehicle was not properly tested.

5. Cause was established to discipline Respondent Seaghat's smog check station license pursuant to Health and Safety Code section 44072.2, subdivision (c), for failure to comply with regulations enacted by the Bureau. In this case Respondent violated California Code of Regulations (CCR), title 16, section 3340.24, subdivision (c);⁵ section 3340.35, subdivision (c); and, section 3340.42, by issuing 12 certificates of compliance for vehicles that were improperly tested, or by failing to test the vehicles in accordance with Bureau specifications. This Conclusion is based on Factual Findings 1 through 12, and 16 through 18.

6. Cause was established to discipline Respondent Seaghat's smog check station license pursuant to Health and Safety Code section 44072.2, subdivision (d), for dishonesty, fraud, or deceit in connection with the issuance of 12 certificates of compliance where clean plugging was utilized. This Conclusion is based on Factual Findings 1 through 12, and 16 through 18.

7. Cause was established to discipline Respondent Seaghat's technician license pursuant to Health and Safety Code section 44072.2, subdivision (a), in that he failed to comply with section 44012 of that code, requiring performance of smog checks in compliance with Bureau procedures. This Conclusion is based on Factual Findings 1 through 12, and 16 through 18.

8. Cause was established to discipline Respondent Seaghat's technician license pursuant to Health and Safety Code section 44072.2, subdivision (c), in that he failed to comply with Bureau regulations. The regulations violated include CCR sections 3340.24, subdivision (c); 3340.30, subdivision (a); and, section 3340.42. This Conclusion is based on Factual Findings 1 through 12, and 16 through 18.

9. Cause was established to discipline Respondent Seaghat's technician license pursuant to Health and Safety Code section 44072.2, subdivision (d), for dishonest, deceitful, or fraudulent acts in "clean plugging" 10 vehicles, based on Factual Findings 1 through 12, and 16 through 18.

10. Cause exists to order Respondents to pay costs pursuant to Business and Professions Code section 123.5, based on Legal Conclusions 1 through 9. The reasonable amount of costs is \$7,432.50 based on Factual Finding 20.

⁵ All citations to the CCR are to title 16 thereof.

11. The Bureau has developed guidelines for use in determining the type and level of discipline that should flow from violations of the statutes and regulations that it is charged with enforcing. The guidelines are incorporated into the regulations, at CCR section 3395.4 (hereafter Guidelines). Those Guidelines provide factors in aggravation and mitigation. Here, there is no prior discipline, but little or no evidence of mitigation or rehabilitation. While there is some variance in the Guidelines regarding penalties, the Guidelines call for minimum discipline in the form of stayed orders of revocation, 30 to 60 days of suspension, and at least two years probation.

12. The purpose of proceedings of this type are to protect the public, and not to punish an errant licensee. (E.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) It is concluded that discipline short of outright revocation would be sufficient to dissuade Respondent from further misconduct in connection with his business, as he will be left on the brink of occupational extinction by the order that follows, for a period of years.

ORDER

The Automotive Repair Dealer Registration, number ARD 240241, issued to Respondent Akram S. Seaghat, dba Eri's Smog Test Only, the Smog Check Test Only Station License, number TC 240241 and the Advanced Emission Specialist Technician License, number EA 148483, also issued to Respondent Seaghat, are each hereby revoked. However, that revocation or invalidation of the licenses and registration are hereby stayed, on the following terms and conditions:

A. Respondent Seaghat's licenses shall be placed on probation for a period of three years from the effective date of this order.

B. Respondents' licenses, and each of them, shall be suspended for a period of 30 days beginning on the effective date of this order.

C. If Respondent fully complies with probation, at the end of the three-year period, the licenses shall be fully restored.

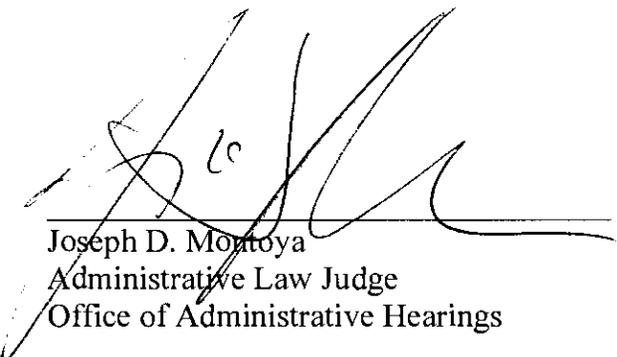
D. Respondent shall pay costs in the amount of \$7,432.50, in monthly installments of \$212.35, for 35 months and until the entire amount is paid, beginning 30 days after the effective date of this order. Failure to pay the costs may be deemed a violation of probation.

E. During the period of probation, Respondent shall:

i. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

- ii. Post a prominent sign where he operates his smog check station and ARD, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.
- iii. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
- iv. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.
- v. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.
- vi. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.
- vii. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard temporarily or permanently invalidate the registrations or licenses held by Respondent.

August 7, 2012



Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

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

10 79/11-16

11 In the Matter of the Accusation Against:

Case No.

12 **AKRAM S. SEAGHAT**
13 **dba ERICS SMOG TEST ONLY**
18102 Victory Blvd., #B
14 Reseda, California 91335
Automotive Repair Dealer Registration No. ARD 240241
15 **Smog Check Test Only Station License No. TC 240241**

ACCUSATION

SMOG CHECK

16 **AKRAM S. SEAGHAT**
18102 Victory Blvd., Unit B
17 Reseda, California 91335
Advanced Emission Specialist Technician License No.
18 **EA 148483**

19
20 **FADEL CHAHO**
7711 Reseda Blvd., Unit 36
21 Reseda, California 91335
Advanced Emission Specialist Technician License No.
22 **EA 630093**

23 Respondents.

24 Sherry Mehl ("Complainant") alleges:

25 **PARTIES**

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

1 (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more
2 than one place of business in this state, the director pursuant to subdivision (a) shall only suspend,
3 revoke, or place on probation the registration of the specific place of business which has violated
4 any of the provisions of this chapter. This violation, or action by the director, shall not affect in
5 any manner the right of the automotive repair dealer to operate his or her other places of business.

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

10 7. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a
11 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
12 proceeding against an automotive repair dealer or to render a decision invalidating a registration
13 temporarily or permanently.

14 8. 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 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

26 10. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
27 expiration or suspension of a license by operation of law, or by order or decision of the
28

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

3 11. Section 44072.8 of the Health and Safety Code states:

4 "When a license has been revoked or suspended following a hearing under this article, any
5 additional license issued under this chapter in the name of the licensee may be likewise revoked
6 or suspended by the director."

7 COST RECOVERY

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

12 FACTUAL BACKGROUND

13 13. On or about April 26, 2010, the Bureau conducted a detailed review of the Vehicle
14 Information Database ("VID") for all smog inspections performed at Respondent's facility for the
15 period of June 6, 2009, through November 28, 2009. The VID showed a pattern of various
16 random diagnostic trouble codes stored in the memory of the power train control module
17 ("PCM") on different vehicles. Vehicles 1 through 12, set forth in Table 1 below, were all
18 certified with various pending codes stored in the PCM memory while the original equipment
19 manufacturer ("OEM") service information shows these vehicles do not support the pending
20 codes stored in the PCM memory. The vehicles receiving smog certificates were not tested
21 during the OBD II¹ functional test and another vehicle(s) was used, constituting clean plugging².
22 All of the following inspections were performed by Respondent Seaghat and Respondent Chaho.

23 ¹ The On Board Diagnostics (OBDII) functional test is an automated function of the
24 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an
25 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is
26 located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves
information from the vehicle's on-board computer about the status of the readiness indicators,
trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II
functional test, it will fail the overall inspection.

27 ² Clean plugging is the use of the OBD II readiness monitor status and stored fault code
28 (trouble code) status of a passing vehicle for the purposes of illegally issuing a smog certificate to
another vehicle that is not in compliance due to a failure to complete the minimum number of
(continued...)

TABLE 1

| Date and Time of Inspection | Vehicle Certified License No. | Certificate No. | Technician |
|-------------------------------|---|-----------------|-----------------------|
| 1. 06/06/2009 1135 - 1146 | 2005 Kia Optima License No. (no plates) | NK632821C | Respondent Seaghat |
| 2. 06/13/2009 1116 - 1130 | 1998 Ford E350 License No. 7U20019 | NK729423C | Respondent Seaghat |
| 3. 07/03/2009 1030 - 1039 | 1999 Toyota Avalon License No. 4GNJ640 | NK952373C | Respondent Seaghat |
| 4. 07/03/2009 1633 - 1642 | 1997 Kia Sportage License No. 3VJK532 | NK952380C | Respondent Seaghat |
| 5. 07/05/2009 1223 - 1231 | 2000 Ford F150 License No. (no plates) | NK952384C | Respondent Seaghat |
| 6. 07/05/2009 1306 - 1312 | 2001 Infiniti I30 License No. (no plates) | NK952387C | Respondent Seaghat |
| 7. 07/16/2009 1608 - 1614 | 1998 Lincoln Navigator License No. (no plates) | NM155835C | Respondent Seaghat |
| 8. 07/17/2009 1201 - 1212 | 2002 Hyundai Santa Fe License No. 4XYC837 | NM155838C | Respondent Seaghat |
| 9. 07/18/2009 1501 - 1514 | 1999 Toyota Camry License No. 4GPU444 | NM225302C | Respondent Seaghat |
| 10. 08/15/2009 1300 - 1306 | 2003 Nissan Altima License No. (no plates) | NM543881C | Respondent Seaghat |
| 11. 11/28/2009 0957 - 1010 | 2002 Ford F250 License No. (no plates) | NO803772C | Respondent Chaho |
| 12. 11/28/2009 1020 - 1028 | 2001 Toyota Tundra License No. (no plates) | NO803773C | Respondent Chaho |

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

14. Respondent's registration is subject to discipline pursuant to Code section 9884.7(a)(1), in that between June 6, 2009, and November 28, 2009, Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent certified that vehicles 1 through 12, set forth above in Table 1, had passed inspection and were in compliance with applicable laws and

self test, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

1 regulations. In fact, Respondent conducted the inspections on the vehicles using the clean
2 plugging method, in that he substituted or used a different vehicle(s) during the OBD II functional
3 tests in order to issue smog certificates of compliance for the 12 vehicles, and did not test or
4 inspect the 12 vehicles as required by Health and Safety Code section 44012.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Fraud)**

7 15. Respondent's registration is subject to discipline pursuant to Code section
8 9884.7(a)(4), in that between June 6, 2009, and November 28, 2009, Respondent committed acts
9 which constitute fraud by issuing electronic certificates of compliance for vehicles 1 through 12,
10 set forth above in Table 1, without performing bona fide inspections of the emission control
11 devices and systems on those vehicles, thereby depriving the People of the State of California of
12 the protection afforded by the Motor Vehicle Inspection Program.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with the Motor Vehicle Inspection Program)**

15 16. Respondent's station license is subject to discipline pursuant to Health and Safety
16 Code section 44072.2(a), in that between June 6, 2009, and November 28, 2009, regarding
17 vehicles 1 through 12, set forth above in Table 1, Respondent failed to comply with the following
18 sections of that Code:

19 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
20 performed on vehicles 1 through 12, in accordance with procedures prescribed by the department.

21 b. **Section 44015:** Respondent issued electronic certificates of compliance for
22 vehicles 1 through 12, without ensuring that the vehicles were properly tested and inspected to
23 determine if they were in compliance with Health and Safety Code section 44012.

24 c. **Section 44059:** Respondent willfully made false entries for the electronic
25 certificates of compliance by certifying that those vehicles had been inspected as required when,
26 in fact, they had not.

27 ///

28 ///

1 FOURTH CAUSE FOR DISCIPLINE

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

4 17. Respondent's station license is subject to discipline pursuant to Health and Safety
5 Code section 44072.2(c), in that between June 6, 2009, and November 28, 2009, regarding
6 vehicles 1 through 12, set forth above in Table 1, Respondent failed to comply with provisions of
7 California Code of Regulations, title 16, as follows:

8 a. Section 3340.24(c): Respondent falsely or fraudulently issued electronic certificates of
9 compliance for those vehicles without performing bona fide inspections of the emission control
10 devices and systems on the vehicles as required by Health and Safety Code section 44012.

11 b. Section 3340.35(c): Respondent issued electronic certificates of compliance even
12 though those vehicles had not been inspection in accordance with section 3340.42 of that Code.

13 c. Section 3340.42: Respondent failed to conduct the required smog tests and inspections
14 on those vehicle sin accordance with the Bureau's specifications.

15 FIFTH CAUSE FOR DISCIPLINE

16 (Dishonesty, Fraud or Deceit)

17 18. Respondent's station license is subject to discipline pursuant to Health and Safety
18 Code section 44072.2(d), in that between June 6, 2009, and November 28, 2009, regarding
19 vehicles 1 through 12, set forth above in Table 1, Respondent committed acts involving
20 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of
21 compliance for those vehicles without performing bona fide inspections of the emission control
22 devices and systems on the vehicles, thereby depriving the People of the State of California of the
23 protection afforded by the Motor Vehicle Inspection Program.

24 SIXTH CAUSE FOR DISCIPLINE

25 (Violations of the Motor Vehicle Inspection Program)

26 19. Respondent Seaghat's technician license is subject to discipline pursuant to Health
27 and Safety Code section 44072.2(a), in that between June 6, 2009, and August 15, 2009,
28 regarding vehicles 1 through 10, set forth above in Table 1, he failed to comply with section

1 44012 of that Code in a material respect, as follows: Respondent Seaghat failed to perform the
2 emission control tests on those vehicles in accordance with procedures prescribed by the
3 department.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Regulations Pursuant to the**
6 **Motor Vehicle Inspection Program)**

7 20. Respondent Seaghat's technician license is subject to discipline pursuant to Health
8 and Safety Code section 44072.2(c), in that between June 6, 2009, and August 15, 2009,
9 regarding vehicles 1 through 10, set forth above in Table, he failed to comply with provisions of
10 California Code of Regulations, title 16, as follows:

11 a. **Section 3340.24(c)**: Respondent Seaghat falsely or fraudulently issued electronic
12 certificates of compliance without performing bona fide inspections of the emission control
13 devices and systems on those vehicles as required by Health and Safety Code section 44012.

14 b. **Section 3340.30(a)**: Respondent Seaghat failed to inspect and test those vehicles in
15 accordance with Health and Safety Code sections 44012.

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

18 **EIGHTH CAUSE FOR DISCIPLINE**

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

20 21. Respondent Seaghat's technician license is subject to discipline pursuant to Health
21 and Safety Code section 44072.2(d), in that between June 6, 2009, and August 15, 2009,
22 regarding vehicles 1 through 10, set forth above in Table 1, he committed acts involving
23 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of
24 compliance without performing bona fide inspections of the emission control devices and systems
25 on those vehicles, thereby depriving the People of the State of California of the protection
26 afforded by the Motor Vehicle Inspection Program.

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1 NINTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 22. Respondent Chaho's technician license is subject to discipline pursuant to Health
4 and Safety Code section 44072.2(a), in that on or about November 28, 2009, regarding vehicles
5 11 and 12, set forth above in Table 1, he failed to comply with section 44012 of that Code in a
6 material respect, as follows: Respondent Chaho failed to perform the emission control tests on
7 those in accordance with procedures prescribed by the department.

8 TENTH CAUSE FOR DISCIPLINE

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

11 23. Respondent Chaho's technician license is subject to discipline pursuant to Health
12 and Safety Code section 44072.2(c), in that on or about November 28, 2009, regarding vehicles
13 11 and 12, set forth above in Table 1, he failed to comply with provisions of California Code of
14 Regulations, title 16, as follows:

15 a. Section 3340.24(c): Respondent Chaho falsely or fraudulent issued electronic
16 certificates of compliance without performing bona fide inspections of the emission control
17 devices and systems on those vehicles as required by Health and Safety Code section 44012.

18 b. Section 3340.30(a): Respondent Chaho failed to inspect and test those vehicles in
19 accordance with Health and Safety Code sections 44012.

20 c. Section 3340.42: Respondent Chaho failed to conduct the required smog tests and
21 inspections on those vehicles in accordance with the Bureau's specifications.

22 ELEVENTH CAUSE FOR DISCIPLINE

23 (Dishonesty, Fraud or Deceit)

24 24. Respondent Chaho's technician license is subject to discipline pursuant to Health and
25 Safety Code section 44072.2(d), in that on or about November 28, 2009, regarding vehicles 11
26 and 12, set forth above in Table 1, he committed acts involving dishonesty, fraud or deceit
27 whereby another was injured by issuing electronic certificates of compliance without performing
28 bona fide inspections of the emission control devices and systems on those vehicles, thereby

1 depriving the People of the State of California of the protection afforded by the Motor Vehicle
2 Inspection Program.

3 OTHER MATTERS

4 25. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
5 probation the registrations for all places of business operated in this state by Akram S. Seaghat,
6 doing business as Eric's Smog Test Only, upon a finding that he has, or is, engaged in a course of
7 repeated and willful violation of the laws and regulations pertaining to an automotive repair
8 dealer.

9 26. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
10 Station License Number TC 240241, issued to Akram S. Seaghat, doing business as Eric's Smog
11 Test Only, is revoked or suspended, any additional license issued under this chapter in the name
12 of said licensee may be likewise revoked or suspended by the director.

13 27. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission Specialist
14 Technician License Number EA 148483, issued to Akram S. Seaghat, is revoked or suspended,
15 any additional license issued under this chapter in the name of said licensee may be likewise
16 revoked or suspended by the director.

17 28. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission Specialist
18 Technician License Number EA 630093, issued to Fadel Chaho, is revoked or suspended, any
19 additional license issued under this chapter in the name of said licensee may be likewise revoked
20 or suspended by the director.

21 PRAYER

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

24 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD
25 240241, issued to Akram S. Seaghat, doing business as Eric's Smog Test Only;

26 2. Revoking or suspending any other automotive repair dealer registration issued to
27 Akram S. Seaghat;

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