

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

In the Matter of the Accusation Against:

**SMOG ZONE TEST ONLY SMOG STATION
MIKAIL JEBRIAL, Owner**

Automotive Repair Dealer Registration
No. ARD 241014
Smog Check, Test Only, Station License
No. TC 241014

and

MIKAIL JEBRIAL

Advanced Emission Specialist Technician
License No. EA 150510

Respondents.

Case No. 79/11-03

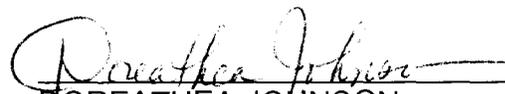
OAH No. 2010110511

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.

This Decision shall become effective 9/29/11 .

IT IS SO ORDERED this 29th day of September , 2011.


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:

SMOG ZONE TEST ONLY SMOG
STATION, MIKAIL JEBRIAL, OWNER
Automotive Repair Dealer Registration
No. ARD 241014
Smog Check Test Only Station License
No. TC 241014,

and

MIKAIL JEBRIAL
Advanced Emission Specialist Technician
License No. EA 150510,

Respondents.

Case No. 79/11-03

OAH No. 2010110511

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on July 28, 2011, in Oakland, California.

Deputy Attorney General Shana Bagley represented complainant Sherry Mehl, Chief of the Bureau of Automotive Repair.

Daniel Tristram Coffin, Attorney at Law, represented Smog Zone Test Only Smog Station and Mikail Jebrial, who was present throughout the administrative hearing.

The record was left open for the submission of written closing arguments which were timely received on August 11, 2011, and marked for identification as exhibits. The record was closed and the matter was submitted for decision on August 11, 2011.

FACTUAL FINDINGS

1. Sherry Mehl brought the Accusation solely in her official capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

2. Respondent Smog Zone Test Only Smog Station (Smog Zone) is owned by Mikail Jebrial (respondent). The Bureau registered Smog Zone as an Automotive Repair Dealer on September 13, 2005; the registration will expire on August 31, 2011, unless renewed. Smog Zone was licensed as a smog check/test only station on October 6, 2005; the license will expire on August 31, 2011, unless renewed. Respondent was licensed as an advanced emission specialist technician in 2004; the license will expire on April 30, 2013, unless renewed. The licenses were in effect during the time period in question.

3. On April 1, 2010, the Bureau initiated an investigation of Smog Zone. The investigation was prompted by a review of computer-generated information from the Bureau's Vehicle Information Database (VID) that indicated Smog Zone might be engaging in fraudulent smog check inspections. When the Bureau's VID computers identify codes being recorded that are not usually associated with a particular vehicle model being tested, the software issues a "red flag" warning. The Bureau field office is then notified that an investigation should be initiated. Joseph Cheung, a Program Representative II, has been employed by the Bureau for almost 12 years. He works in the Hercules field office and was assigned to investigate Smog Zone based upon a computer-generated report.

4. Between April 1, 2010 and April 14, 2010, Cheung conducted a detailed review of the VID data for all smog check inspections performed at Smog Zone between March 1, 2009 and February 28, 2010.

5. A properly performed smog inspection has three components: 1) a test of the emission gases as measured from the vehicle's tailpipe; 2) a visual inspection on the emission control components that is performed by the technician; and 3) a functional inspection, which includes testing the On Board Diagnostic, generation II, (OBD II) system on vehicles manufactured in 1996 or later. Smog check inspections are performed using a BAR97 Emissions Inspection System (EIS). The EIS is a computer-based analyzer, which samples the vehicles exhaust emissions through an exhaust sample probe, that is placed in the tailpipe of the vehicle. The EIS also accepts entries from the licensed technician regarding the visual and functional inspections; as well as information specific to the vehicle being tested, such as the make and model of the vehicle. The results of the test are transmitted electronically to the Department of Motor Vehicles and are stored on the Bureau's VID.

6. During the OBD II functional test, the technician is required to connect an interface cable from the BAR97 analyzer to a Diagnostic Link Connector (DLC), which is located inside the vehicle. Through the DLC, the EIS automatically retrieves information from the vehicle's on-board computer to determine if the vehicle's OBD II system is functioning properly. If the vehicle fails the OBD II test, it will fail the overall inspection. During this portion of the smog test, the EIS obtains information about the vehicle's Readiness Monitors (monitors). Each monitor is designed to diagnose a specific system within the engine and emissions controls.

7. If a malfunction is detected during the monitor operation, a diagnostic trouble code will be stored. All OBD II codes are five digits long with one letter followed by four numbers. In this matter, the code P0325 was generated during numerous smog inspections on vehicles that are not normally associated with that code. The letter P refers to the vehicle's power train. If a zero follows, it indicates a generic code utilized by all car manufacturers. The number 3 indicates the affected area is the ignition system. The number 25 is a specific code for the knock sensor; it measures whether the engine is detonating or knocking while operating. Each code is specific and often only used by a few manufacturers.

8. When a diagnostic trouble code occurs during a smog inspection, the technician can review service manuals to obtain information on the code. Nationally recognized publications provide manuals that have information about the codes. Test only smog stations are required to have resources available on site to use when conducting inspections, pursuant to the California Code of Regulations, title 16, section 3340.15, subdivision (a)(6). Alldata and Mitchell repair manuals, as well as the original equipment manufacturer's service information are resources commonly consulted by technicians seeking clarification of diagnostic trouble codes.

9. During Cheung's review of the VID data for Smog Zone's inspections, he found that the VID recorded the P0325 trouble code during the OBD II test on 29 different vehicles.¹ By checking Alldata, Mitchell and the manufacturer's manuals, Cheung concluded that the P0325 trouble code was not applicable to the vehicles tested in the following seven smog inspections performed by respondent:

Date and Time of Inspection	Vehicle Certified & License No.	Certificate No.
10/04/2009 12:25 to 12:46 hours	2002 Volvo S60, FWD Lic. No. 6AIX040	NO128443C
12/03/2009 15:32 to 15:42 hours	2003 Dodge Durango 2WD Lic. No. 6ECW003	NO845741C
12/12/2009 17:09 to 17:33 hours	2000 Plymouth Neon Lic. No. 5FJA197	NO941089C
1/04/2010 15:53 to 16:06 hours	1998 Volkswagen Passat Lic. No. 4HEV714	NQ197508C
1/11/2010 18:03 to 18:15 hours	1998 Saturn SC No license plates	NQ301561C
2/06/2010 11:31 to 12:06 hours	2000 Jeep Grand Cherokee 2WD License No. 5SOZ567	NQ665668C
2/21/2010 12:20 to 12:40 hours	2003 Dodge Dakota License No. 7A29842	NQ887307C

¹ The report and accusation indicate that a total of 19 vehicles during the year investigated listed the P0325 trouble code, however, at hearing Cheung corrected the number to 29 vehicles.

10. Based on his review of the VID data and his investigation, Cheung concluded that smog inspections on the seven vehicles listed in Finding 9 were performed using a method known as "clean-plugging." Clean-plugging is the use of the OBD II readiness monitor status and stored trouble code status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is not in compliance due to a failure to complete the minimum number of monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure. To clean plug, the technician either enters vehicle information into the EIS for the vehicle he wishes to certify and then performs a complete smog inspection on a different vehicle, or performs an incomplete smog inspection on the vehicle he wishes to certify and then plugs the OBD II connector from the BAR 97 EIS into a vehicle believed to have a properly functioning OBD II system.

11. David Lewis, who has worked for the Bureau for 27 years, testified at hearing. He is a Senior Engineer currently in charge of the Bureau's Hardware Certification Unit, which establishes the specifications and performance standards for the smog check program equipment. Lewis was heavily involved in the development of the BAR 97 emissions inspection system, including developing the electronic and software specifications. Lewis is also the manager of the Next Generation Electronic Transmission system that connects all of the state's smog check analyzers to a central database. He is the manager in charge of development and implementation of California's future On Board Diagnostic testing systems and the Chair of the Statewide On Board Diagnostic Committee. He also oversees the development and testing of the future smog check on board diagnostic testing system, which is currently under development.

12. Lewis explained that the vehicle manufacturer selects the diagnostic trouble codes it wants to use with a particular model and obtains the required approval for the code. Lewis has never seen a code come from a vehicle that was not disclosed by the manufacturer. The BAR 97 analyzer communicates with the vehicle's on board diagnostic device and information is sent to the VID. The vehicle's hard drive is tamper resistant. If there is a problem with the on board diagnostic system of the car, it will not communicate with the BAR 97 analyzer and the vehicle will fail the test. If there is a problem with the BAR 97 analyzer, it will not communicate with the VID and no smog certificate will be issued. A failure to communicate can result from the connector cable not being plugged in completely, or the cable being damaged, or the vehicle's computer being damaged; in any of those scenarios, there is no certificate issued.

13. The smog station owner is responsible for the tools he or she uses. The BAR 97 analyzer is regularly inspected and the station owner must maintain it. If there is a malfunction with the BAR 97 analyzer, there will be no communication and the car will not pass inspection.

14. The Bureau's engineering department searches for anomalies in the VID data. If, for example, only three cars of a particular make and model are showing a particular diagnostic trouble code, the computer identifies the result as out of the ordinary and the field office is asked to investigate. The investigation of Smog Zone was prompted in this manner.

Lewis is aware of only very few instances in which there has been a glitch in the smog check reporting system. The engineering team is constantly looking for glitches and they are fixed immediately when discovered. When issues arise, they occur when a new vehicle model is first introduced. So many cars are tested everyday in California, that any problems are immediately identified and rectified. When a problem does occur, there is no communication between the car and the analyzer, and the test cannot be completed.

15. Lewis stays abreast of service bulletins and recalls for vehicles. The Bureau often initiates the recalls, and the manufacturer often seeks the Bureau's assistance before it issues a service bulletin or a recall. He has never seen a service bulletin or a recall based upon a vehicle generating diagnostic trouble codes that are not assigned to that vehicle.

16. Lewis reviewed Cheung's investigative report and his conclusions. Lewis believes Cheung came to the correct conclusions. In Lewis's opinion, no undercover operation was necessary to make a determination that clean plugging was occurring, because the data speaks for itself. If the on board diagnostic system was corrupted or broken, it would not send unsupported diagnostic trouble codes, instead, there would be a failure to communicate and the car would not pass inspection. If the BAR 97 analyzer or the connector cable were not functioning properly, then no communication would occur and the car would not pass the inspection. In Lewis's opinion, it would be impossible for the seven vehicles to have generated the P0325 diagnostic trouble code because these vehicles do not have these codes in their on board diagnostic systems.

Evidence of Liability for Costs

17. The Bureau has incurred \$4,407.29 in investigative costs, and \$15,715 in legal fees from the Office of the Attorney General, for a total of \$20,122.29 in costs of investigation and enforcement. There was no challenge to the reasonableness of these costs and no basis upon which to find them unreasonable.

Respondent's Evidence

18. Respondent has been in business as the owner of Smog Zone for six years. He has conducted 15,000 to 16,000 smog inspections. The Bureau audits his equipment every six months or so. He believes he was once the subject of an undercover operation on a car that failed a visual inspection. His licenses have never before been subjected to discipline.

19. Respondent has made a number of requests for service on his BAR 97 analyzer. In January of 2009, he called the manufacturer because he was having trouble with the OBD II test. A certified maintenance technician visited his facility on January 8, 2009, and installed a different OBD II module. The technician originally installed it inside of the

machine, but relocated it outside of the machine.² He instructed respondent to push the re-set button if he had trouble with it. Respondent believes the OBD II equipment that was installed was used equipment. Respondent subsequently had a new unit installed. The man who installed it was a certified technician; he has since died.

20. Respondent provided a letter from Ronald Willits, a BAR certified automotive instructor. In his letter, Willits opines that "it is very possible the defective OBD II interface that was replaced on the BAR 97 analyzer may have been the cause for the repeated code in different vehicles." Jon Pszinitzki, of Walsh Brothers, Inc., in Berkeley, an ASE³ certified technician who has been in the automotive business for 40 years, submitted a letter suggesting that based upon his experience he questions whether the diagnostic software programs on the seven cars at issue here could have been read incorrectly by the BAR 97 analyzer.

21. Respondent submitted various service bulletins and recall notices on vehicle models involved in the allegations in the accusation. None of the notices or bulletins concerns a vehicle generating unsupported diagnostic trouble codes.

22. Neither respondent's testimony nor the hearsay documents he submitted, provided an explanation for the generation of the unsupported diagnostic trouble codes in the seven smog inspections at issue. Respondent did not deny under oath having been involved in clean-plugging of the vehicles; nor did he provide any evidence of rehabilitation or changed business practices.

LEGAL CONCLUSIONS

First Cause for Discipline: Untrue or Misleading Statements

1. Cause for discipline of the automotive repair dealer registration issued to respondent Smog Zone exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), for misleading statements made in the issuance of electronic certificates of compliance, certifying that the seven vehicles identified in Finding 9 were in compliance with applicable laws and regulations, when in fact, the smog inspections were performed using the clean-plugging method.

Second Cause for Discipline: Fraud

2. Cause for discipline of the automotive repair dealer registration issued to respondent exists pursuant to Business and Professions Code section 9884.7, subdivision

² According to the Bureau representatives, the OBD II equipment should be installed on the inside of the machine, but having it installed on the outside would not cause it to receive unsupported diagnostic trouble codes.

³ Automotive Service Excellence.

(a)(4), for fraud associated with its inspection and the issuance of the electronic certificates of compliance for the seven vehicles identified in Finding 9, without the performance of bona fide smog inspections.

Third Cause for Discipline: Violations of the Motor Vehicle Inspection Program

3. Cause for discipline of the smog check station license issued to respondent exists pursuant to Health and Safety Code section 44072.2, subdivision (a), in that respondent failed to comply with the following provisions of the Health and Safety Code pertaining to the Motor Vehicle Inspection Program:

- a. Section 44012: failing to determine that emission control tests were performed on the seven vehicles identified in Finding 9 in accordance with Bureau procedures.
- b. Section 44015: issuing electronic certificates of compliance for the seven vehicles identified in Finding 9 without proper testing and inspection.

Fourth Cause for Discipline: Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program

4. Cause for discipline of the smog check test only station license issued to respondent exists pursuant to Health and Safety Code section 44072.2, subdivision (c), in that respondent failed to comply with provisions of the California Code of Regulations, title 16, as follows:

- a. Section 3340.24, subdivision (c): respondent falsely or fraudulently issued electronic smog certificates of compliance for the seven vehicles identified in Finding 9 without performing a bona fide smog inspection.
- b. Section 3340.35, subdivision (c): respondent issued electronic smog certificates of compliance for the seven vehicles identified in Finding 9 without inspecting them in accordance with section 3340.42.
- c. Section 3340.42: respondent failed to ensure that the required smog tests were conducted on the seven vehicles identified in Finding 9 in accordance with the Bureau's specifications.

Fifth Cause for Discipline: Dishonesty, Fraud or Deceit

5. Cause for discipline of the smog check test only station license issued to respondent exists pursuant to Health and Safety Code section 44072.2, subdivision (d), for dishonesty, fraud or deceit in connection with the issuance of the certificates of compliance

for the seven vehicles identified in Finding 9, without performing bona fide inspections of the emission control devices and systems on the vehicles.

Sixth Cause for Discipline: Violations of the Motor Vehicle Inspection Program

6. Cause for discipline of the technician license issued to respondent exists pursuant to Health and Safety Code section 44072.2, subdivision (a), in that respondent failed to comply with section 44012 of the Health and Safety Code in a material respect in that respondent failed to perform the emission control tests on the seven vehicles identified in Finding 9 in accordance with Bureau procedures.

Seventh Cause for Discipline: Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program

7. Cause for discipline of the technician license issued to respondent exists pursuant to Health and Safety Code section 44072.2, subdivision (c), in that respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

- a. Section 3340.24, subdivision (c): respondent falsely or fraudulently issued electronic certificates of compliance for the seven vehicles identified in Finding 9.
- b. Section 3340.30, subdivision (a): respondent failed to inspect and test the vehicles identified in Finding 9 in accordance with Health and Safety Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.
- c. Section 3340.42: respondent failed to conduct the required smog tests and inspections on the seven vehicles identified in Finding 9, in accordance with the Bureau's specifications.

Eighth Cause for Discipline: Dishonesty, Fraud or Deceit

8. Cause for discipline of the technician license issued to respondent exists pursuant to Health and Safety Code section 44072.2, subdivision (d), in that respondent committed dishonest, fraudulent or deceitful acts whereby another is injured, in connection with the issuance of the certificates of compliance for the seven vehicles identified in Finding 9 without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California the protection afforded by the Motor Vehicle Inspection Act.

Costs of Investigation and Enforcement

9. Pursuant to Business and Professions Code section 125.3, the Bureau may request an administrative law judge to order a licensee found to have violated the licensing

act to pay an amount that does not exceed the reasonable costs of investigation and enforcement. The Bureau has requested reimbursement for the costs of investigation and enforcement as follows: \$15,715 in attorney's fees billed by the Office of the Attorney General, and \$4,407.29 in Bureau investigator costs, for a total of \$20,122.29. Cause to award costs pursuant to Business and Professions Code section 125.3 exists. (Finding 17.)

10. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the guidelines for the determining whether the costs should be assessed in the particular circumstances of each case. The Bureau must consider whether to do so will unfairly penalize the licensee who has committed misconduct, but who has used the hearing process to obtain dismissal or a reduction in the severity of the discipline imposed, as well as whether the licensee will be financially able to pay the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct. (*Id.*, at pp. 44-45.) Here, the misconduct committed by respondent was egregious and repetitive. Moreover, respondent did not use the hearing process to obtain a dismissal or a reduction of the severity of the discipline imposed. Nor was there an objection at hearing to the reasonableness of the reimbursement request, or substantiated evidence that respondent was unable to pay the costs requested. Respondent has not established a basis to reduce or eliminate the costs.

Penalty

11. Complainant is requesting the revocation of respondent's licenses and the permanent invalidation of his automotive repair dealer registration.

12. To foster uniformity of penalties and to make sure licensees and registrants understand the consequences of violations, the Bureau established guidelines for disciplinary penalties at California Code of Regulations, title 16, section 3395.4 (Guidelines). In determining the proper penalty, the factors in mitigation and aggravation should be considered. Of the factors in aggravation identified in the Guidelines, subdivisions (l) evidence of a pattern of unlawful acts and (r) conduct that constitutes fraud, apply. None of the factors identified as mitigation applies here.

13. The Guidelines provide that for violations of Business and Professions Code section 9884.7, subdivision (a), the penalty range is from the minimum of a 90-day suspension with 80 days stayed and two years of probation, to a maximum of revocation. For violations involving fraud, the minimum is revocation, stayed with a 30-day suspension and five years probation, to revocation. For violations of Health and Safety Code section 44012 (improper inspections), the range is from the minimum of a revocation of the automotive dealer registration and station license, stayed with a 30-day suspension of the station license and two years probation, to the maximum of revocation of both the registration and license. For violations of Health and Safety Code section 44015 (improper issuance of certificate of compliance), the range is from the minimum of a revocation of the automotive dealer registration and station license, stayed with a 30-day suspension of the

station license and two years probation, to the maximum of revocation of both the registration and license.

16. No guidelines are provided for violations of Regulations 3340.24, 3340.35 or 3340.42. However, the guideline for violations of Regulation 3340.41, subdivision (b) and (c) (tampering with or entering false information into a test analyzer system) range from revocation stayed with a 30-day suspension of the station license and two years of probation, to revocation of the station license and revocation, stayed with three years probation for an automotive dealer registration.

17. The instant matter involves clean-plugging, which constitutes fraud, and therefore the violations are of a serious nature. Moreover, it was the owner of the station who violated the law, and it occurred on seven separate occasions. Respondent did not take responsibility for his actions or provide any evidence of rehabilitation. Under these circumstances, the protection of the public compels revocation of respondent's licenses.

ORDER

1. Automotive Repair Dealer Registration Number ARD 241014 issued to Smog Zone Test Only Smog Station, Mikail Jebrial, Owner, and any other registration issued to Respondent Smog Zone Test Only Smog Station by the Bureau of Automotive Repair, is revoked.

2. Smog Check Test Only Station License Number TC 241014 issued to Smog Zone Test Only Smog Station, Mikail Jebrial, owner, and any other license issued to Respondent Smog Zone Test Only Smog Station by the Bureau of Automotive Repair, is revoked.

3. Advanced Emission Specialist Technician License No. EA 150510 issued to Mikail Jebrial, and any other license issued to Respondent Jebrial by the Bureau of Automotive Repair, is revoked.

4. Respondents Smog Zone Test Only Smog Station and Mikhail Jebrial, owner, are jointly and severally liable to the Bureau of Automotive Repair for the sum of \$20,122.29, as reimbursement for investigative and enforcement costs, pursuant to Business and Professions Code section 125.3.

DATED: 9/10/11



JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings

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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. 79/11-03

13 **SMOG ZONE TEST ONLY SMOG STATION**
14 **MIKAIL JEBRIAL, OWNER**
1199 San Pablo Avenue
15 **Berkeley, CA 94706**
Automotive Repair Dealer Reg. No. ARD 241014
16 **Smog Check, Test Only, Station License No. TC**
241014

ACCUSATION

(Smog Check)

17 **and**

18 **MIKAIL JEBRIAL**
620 Lexington Avenue, Unit C
19 **El Cerrito, CA 94530**
Advanced Emission Specialist Technician
20 **License No. EA 150510**

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 ("Bureau"), Department of Consumer Affairs.

26 2. On or about September 13, 2005, the Director of Consumer Affairs ("Director")
27 issued Automotive Repair Dealer Registration Number ARD 241014 (hereinafter "registration")
28 to Mikail Jebrial ("Respondent"), owner of Smog Zone Test Only Smog Station. Respondent's

1 registration was in full force and effect at all times relevant to the charges brought herein and will
2 expire on August 31, 2010, unless renewed.

3 3. On or about October 6, 2005, the Director issued Smog Check, Test Only, Station
4 License Number TC 241014 (hereinafter "smog check station license") to Respondent.
5 Respondent's smog check station license was in full force and effect at all times relevant to the
6 charges brought herein and will expire on August 31, 2010, unless renewed.

7 4. In or about 2004, the Director issued Advanced Emission Specialist Technician
8 License Number EA 150510 (hereinafter "technician license") to Respondent. Respondent's
9 technician license will expire on April 30, 2011, unless renewed.

10 **JURISDICTION**

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

13 6. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a
14 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
15 proceeding against an automotive repair dealer or to render a decision invalidating a registration
16 temporarily or permanently.

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

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

24 ///

25 ///

26 ///

27 ///

28 ///

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:

6

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

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 **FACTUAL BACKGROUND**

17 15. On April 1, 2010, the Bureau initiated an investigation against Respondent based on a
18 review of information from the Bureau's Vehicle Information Database ("VID") which indicated
19 that Respondent may be engaging in fraudulent smog check inspections.

20 16. From April 1, 2010, to April 14, 2010, a representative of the Bureau conducted a
21 detailed review of the VID data for all smog inspections performed at Respondent's facility for
22 the period of March 1, 2009, through February 28, 2010. The representative found that the VID
23 recorded the same diagnostic trouble code (hereinafter "code") during the OBD II test¹ on 19

24 _____
25 ¹ The On Board Diagnostic, generation II (OBD II), functional test is an automated
26 function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to
27 connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC)
28 which is 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.

1 different vehicles regardless of the make or model of the vehicle, including the 7 vehicles
2 identified below. The Bureau obtained information indicating that the code was not applicable to
3 any of the 7 vehicles. All 7 smog inspections were performed by Respondent.

4 17. The Bureau concluded that Respondent performed the smog inspections on the 7
5 vehicles using a method known as "clean plugging",² resulting in the issuance of fraudulent
6 certificates of compliance for the vehicles.

Date & Time of Inspection	Vehicle Certified & License No.	Certificate No.
1. 10/04/2009 12:25 - 12:46	2002 Volvo S60, FWD; License No. 6AIX040	NO128443C
2. 12/03/2009 15:32 - 15:42	2003 Dodge Durango 2WD; License No. 6ECW003	NO845741C
3. 12/12/2009 17:09 - 17:33	2000 Plymouth Neon; License No. 5FJA197	NO941089C
4. 01/04/2010 15:53 - 16:06	1998 Volkswagen Passat; License No. 4HEV714	NQ197508C
5. 01/11/2010 18:03 - 18:15	1998 Saturn SC; no plates	NQ301561C
6. 02/06/2010 11:31 - 12:06	2000 Jeep Grand Cherokee 2WD; License No. 5SOZ567	NQ665668C
7. 02/21/2010 12:20 - 12:40	2003 Dodge Dakota; License No. 7A29842	NQ887307C

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Untrue or Misleading Statements)**

19 18. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
20 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which
21 he knew or in the exercise of reasonable care should have known to be untrue or misleading, as
22 follows: Respondent certified that vehicles 1 through 7, identified in paragraph 17 above, had
23 passed inspection and were in compliance with applicable laws and regulations. In fact,

24
25 ² Clean-plugging is the use of the OBD II readiness monitor status and stored fault code
26 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
27 another vehicle that is not in compliance due to a failure to complete the minimum number of self
28 tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
control system or component failure.

1 Respondent conducted the inspections on the vehicles using clean-plugging methods in that he
2 substituted or used a different vehicle (s) during the OBD II functional tests in order to issue
3 smog certificates of compliance for the 7 vehicles, and did not test or inspect the 7 vehicles as
4 required by Health & Saf. Code section 44012.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Fraud)**

7 19. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
8 Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitute
9 fraud by issuing electronic smog certificates of compliance for vehicles 1 through 7, identified in
10 paragraph 17 above, without performing bona fide inspections of the emission control devices
11 and systems on the vehicles, thereby depriving the People of the State of California of the
12 protection afforded by the Motor Vehicle Inspection Program.

13 **THIRD CAUSE FOR DISCIPLINE**

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

15 20. 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 vehicles 1 through 7, identified in paragraph 17 above, in accordance with
20 procedures prescribed by the department.

21 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
22 vehicles 1 through 7, identified in paragraph 17 above, without ensuring that the vehicles were
23 properly tested and inspected to determine if they were in compliance with Health & Saf. Code
24 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 21. 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
6 provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
8 electronic smog certificates of compliance for vehicles 1 through 7, identified in paragraph 17
9 above.

10 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
11 compliance for vehicles 1 through 7, identified in paragraph 17 above, even though the vehicles
12 had not been inspected in accordance with section 3340.42.

13 c. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
14 conducted on vehicles 1 through 7, identified in paragraph 17 above, in accordance with the
15 Bureau's specifications.

16 **FIFTH CAUSE FOR DISCIPLINE**
17 **(Dishonesty, Fraud or Deceit)**

18 22. Respondent's smog check station license is subject to disciplinary action pursuant to
19 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
20 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
21 compliance for vehicles 1 through 7, identified in paragraph 17 above, without performing bona
22 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
23 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
24 Program.

25 **SIXTH CAUSE FOR DISCIPLINE**
26 **(Violations of the Motor Vehicle Inspection Program)**

27 23. Respondent's technician license is subject to disciplinary action pursuant to Health &
28 Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section

1 44012 of that Code in a material respect, as follows: Respondent failed to perform the emission
2 control tests on vehicles 1 through 7, identified in paragraph 17 above, in accordance with
3 procedures prescribed by the department.

4 **SEVENTH CAUSE FOR DISCIPLINE**

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

7 24. Respondent's technician license is subject to disciplinary action pursuant to Health &
8 Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions
9 of California Code of Regulations, title 16, as follows:

10 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
11 electronic smog certificates of compliance for vehicles 1 through 7, identified in paragraph 17
12 above.

13 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1
14 through 7, identified in paragraph 17 above, in accordance with Health & Saf. Code sections
15 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

16 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1
17 through 7, identified in paragraph 17 above, in accordance with the Bureau's specifications.

18 **EIGHTH CAUSE FOR DISCIPLINE**

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

20 25. Respondent's technician license is subject to disciplinary action pursuant to Health &
21 Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent,
22 or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance
23 for vehicles 1 through 7, identified in paragraph 17 above, without performing bona fide
24 inspections of the emission control devices and systems on the vehicles, thereby depriving the
25 People of the State of California of the protection afforded by the Motor Vehicle Inspection
26 Program.

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1 **OTHER MATTERS**

2 26. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
3 refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of
4 business operated in this state by Respondent Mikail Jebrial, owner of Smog Zone Test Only
5 Smog Station, upon a finding that Respondent has, or is, engaged in a course of repeated and
6 willful violations of the laws and regulations pertaining to an automotive repair dealer.

7 27. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
8 License Number TC 241014, issued to Respondent Mikail Jebrial, owner of Smog Zone Test
9 Only Smog Station, is revoked or suspended, any additional license issued under this chapter in
10 the name of said licensee may be likewise revoked or suspended by the director.

11 28. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
12 Technician License Number EA 150510, issued to Respondent Mikail Jebrial is revoked or
13 suspended, any additional license issued under this chapter in the name of said licensee may be
14 likewise revoked or suspended by the director.

15 **PRAYER**

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

18 1. Temporarily or permanently invalidating Automotive Repair Dealer Registration
19 Number ARD 241014, issued to Mikail Jebrial, owner of Smog Zone Test Only Smog Station;

20 2. Temporarily or permanently invalidating any other automotive repair dealer
21 registration issued to Mikail Jebrial;

22 3. Revoking or suspending Smog Check, Test Only, Station License Number
23 TC 241014, issued to Mikail Jebrial, owner of Smog Zone Test Only Smog Station;

24 4. Revoking or suspending Advanced Emission Specialist Technician License Number
25 EA 150510, issued to Mikail Jebrial;

26 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
27 and Safety Code in the name of Mikail Jebrial;

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