

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

In the Matter of the Accusation Against:

A + SMOG CHECK
TRUONG P. DINH, Partner
DANNY H. PHAM, Partner
KHUONG Q. PHAM, Partner
233 W. Evelyn Avenue
Mountain View, CA 94041

Automotive Repair Dealer Registration
No. ARD 242846
Smog Check, Test Only, Station License
No. TC 242846

Respondents.

Case No. 79/09-60

OAH No. N2009020635

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective 5-26-09.

DATED: April 17, 2009



PATRICIA HARRIS
Acting Chief Deputy Director
Department of Consumer Affairs

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 WILBERT E. BENNETT
Supervising Deputy Attorney General
3 KIM M. SETTLES, State Bar No. 116945
Deputy Attorney General
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7 Attorneys for Complainant

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**BEFORE THE
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FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

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**Automotive Repair Dealer No. ARD 242846
Smog Check, Test Only, Station License No.
TC 242846**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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Respondent.

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IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
above-entitled proceedings that the following matters are true:

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PARTIES

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1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive
26 Repair. She brought this action solely in his official capacity and is represented in this matter by
27 Edmund G. Brown Jr., Attorney General of the State of California, by Kim M. Settles, Deputy
28 Attorney General.

1 subpoenas to compel the attendance of witnesses and the production of documents; the right to
2 reconsideration and court review of an adverse decision; and all other rights accorded by the
3 California Administrative Procedure Act and other applicable laws.

4 8. Respondents voluntarily, knowingly, and intelligently waive and give up
5 each and every right set forth above.

6 **CULPABILITY**

7 9. Respondents admit the truth of every charge and allegation contained in
8 Accusation No. 79/09-60.

9 10. Respondents agree that their Automotive Repair Dealer Registration
10 Number ARD 242846, and Smog Check Station License Number TC 242846 (A+ Smog Check)
11 are subject to discipline and they agree to be bound by the Director's imposition of discipline as
12 set forth in the Disciplinary Order below. Respondent, KHUONG Q. PHAM agrees that his
13 Automotive Repair Dealer Registration Number ARD 241633, Smog Check Station License
14 Number TC 2441633, Automotive Repair Dealer Registration Number 233078, and Smog
15 Check Station License Number TC 233078 are subject to discipline and he agrees to be bound by
16 the Director's imposition of discipline as set forth in the Disciplinary Order below.

17 **CONTINGENCY**

18 11. The parties understand and agree that facsimile copies of this Stipulated
19 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
20 force and effect as the originals.

21 12. Respondents understand that by signing this stipulation, they are enabling
22 the Director to issue her order as set forth below, regarding Respondents' Automotive Repair
23 Dealer Registration Number ARD 242846 and Smog Check Station License Number 242846;
24 and, Respondent KHUONG Q. PHAM's Automotive Repair Dealer Registration Number ARD
25 241633 (76 Smog Check Test Only), Smog Check Station License Number TC 241633,
26 Automotive Repair Dealer Registration Number 233078 (South Bay Test Center) and Smog
27 Check Station License Number TC 233078. In the event this stipulation is rejected for any
28 reason by the Director, it will be of no force or effect for either party. The Director will not be

1 achieved in maintaining compliance with the terms and conditions of probation.

2 3. **Report Financial Interest.** Within thirty (30) days of the effective date of
3 this action, report any financial interest which any partners, officers, or owners of the Respondent
4 facility may have in any other business required to be registered pursuant to Business and
5 Professions Code section 9884.6.

6 4. **Jurisdiction.** If an accusation and/or petition to revoke probation is filed
7 against Respondent during the term of probation, the Director of Consumer Affairs shall have
8 continuing jurisdiction over this matter until the final decision on the accusation and/or petition
9 to revoke probation, and the period of probation shall be extended until such decision.

10 5. **Violation of Probation.** Should the Director of Consumer Affairs
11 determine that Respondent has failed to comply with the terms and conditions of probation, the
12 Director may, after giving notice and opportunity to be heard, suspend or revoke Respondent's
13 licenses.

14 6. **Cost Recovery.** Payment to the Bureau of the full amount of cost
15 recovery in the amount of \$4,000.00 shall be received no later than six (6) months from the
16 effective date of this decision. Failure to complete payment of cost recovery within this time
17 frame shall constitute a violation of probation which may subject Respondents' above-referenced
18 ARD Registrations and Smog Check Station Licenses to outright revocation; however, the
19 Director or the Director's Bureau of Automotive Repair designee may elect to continue probation
20 until such time as reimbursement of the entire cost recovery amount has been made to the
21 Bureau. Respondent, TRUONG P. DINH shall be responsible for payment of the cost recovery
22 referenced herein.

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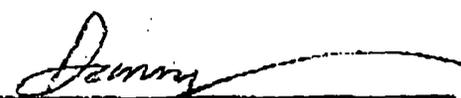
ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registrations and Smog Check Station Licenses. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 4-02-09


TRUONG P. DINH, Partner
Respondent

DATED: 4-02-09


DANNY H. PHAM, Partner

DATED: 4-02-09


KHUONG Q. PHAM, Partner

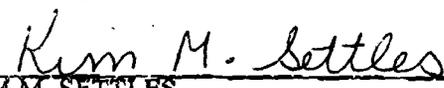
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

DATED: 4/6/09

EDMUND G. BROWN JR., Attorney General
of the State of California

WILBERT E. BENNETT
Supervising Deputy Attorney General


KIM M. SETTLES
Deputy Attorney General
Attorneys for Complainant

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17 Automotive Repair Dealer No. ARD 242846
18 Smog Check, Test Only, Station License No.
TC 242846
Respondent.

Case No. 79/09-60
A C C U S A T I O N
SMOG CHECK

19 Complainant alleges:

20 **PARTIES**

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

24 **Automotive Repair Dealer Registration No. ARD 242846**

25 2. On or about December 21, 2005, the Director of Consumer Affairs
26 ("Director") issued Automotive Repair Dealer Registration Number ARD 242846 ("registration")
27 to A+ Smog Check ("Respondent"), with Truong P. Dinh, Danny H. Pham, and Khuong Q. Pham

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1 as partners. Respondent's registration was in full force and effect at all times relevant to the
2 charges brought herein and will expire on December 31, 2008, unless renewed.

3 **Smog Check, Test Only, Station License No. TC 242846**

4 3. On or about December 27, 2005, the Director issued Smog Check, Test
5 Only, Station License Number TC 242846 ("smog check station license") to Respondent.
6 Respondent's smog check station license was in full force and effect at all times relevant to the
7 charges brought herein and will expire on December 31, 2008.

8 **JURISDICTION**

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

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

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

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

22 **STATUTORY PROVISIONS**

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

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

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

5 (2) Causing or allowing a customer to sign any work order which does
6 not state the repairs requested by the customer or the automobile's odometer
7 reading at the time of repair.

8
9 (4) Any other conduct which constitutes fraud.

10
11 (c) Notwithstanding subdivision (b), the director may refuse to
12 validate, or may invalidate temporarily or permanently, the registration
13 for all places of business operated in this state by an automotive repair
14 dealer upon a finding that the automotive repair dealer has, or is, engaged
15 in a course of repeated and willful violations of this chapter, or regulations
16 adopted pursuant to it.

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

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

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

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

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

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

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

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1 **COST RECOVERY**

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

6 **UNDERCOVER OPERATION: 1995 CHEVROLET ASTRO**

7 13. On April 16, 2008, an undercover operator with the Bureau, using the
8 fictitious name "David Gomez" (hereinafter "operator"), took the Bureau's 1995 Chevrolet Astro
9 to Respondent A+ Smog Check's facility and requested a smog inspection. A non-functional
10 Exhaust Gas Recirculation ("EGR") valve had been installed on the Bureau-documented vehicle.
11 The operator signed and received a copy of a repair order/written estimate for the inspection.
12 After the inspection was completed, the operator paid the facility \$65.20 and received copies of
13 an invoice and a vehicle inspection report signed by smog check technician Ryan Nathan Brasil
14 ("Brasil"). That same day, electronic smog Certificate of Compliance #NA292758C was issued
15 for the vehicle.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Untrue or Misleading Statements)**

18 14. Respondent's registration is subject to disciplinary action pursuant to Bus.
19 & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a
20 statement which it knew or in the exercise of reasonable care should have known to be untrue or
21 misleading. Respondent's smog check technician, Brasil, certified under penalty of perjury on
22 the vehicle inspection report that he performed the smog inspection on the Bureau's 1995
23 Chevrolet Astro in accordance with all Bureau requirements and that the vehicle passed the
24 inspection and was in compliance with applicable laws and regulations. In fact, a non-functional
25 EGR valve had been installed on the vehicle and as such, the vehicle would not pass the
26 inspection required by Health & Saf. Code section 44012.

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FIFTH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued an electronic smog certificate of compliance for the Bureau's 1995 Chevrolet Astro.

b. **Section 3340.35, subdivision (c)**: Respondent issued an electronic smog certificate of compliance for the Bureau's 1995 Chevrolet Astro even though the vehicle had not been inspected in accordance with section 3340.42.

c. **Section 3340.42**: Respondent failed to conduct the required smog tests on the Bureau's 1995 Chevrolet Astro in accordance with the Bureau's specifications.

SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

19. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that it committed a dishonest, fraudulent, or deceitful act whereby another is injured. Respondent issued an electronic smog certificate of compliance for the Bureau's 1995 Chevrolet Astro without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

DISCIPLINE CONSIDERATIONS

20. To determine the degree of discipline, if any, to be imposed on Respondents, Complainant alleges as follows:

a. On or about August 10, 2007, the Bureau issued Citation No. C08-0125 against Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to determine that emission control devices and systems required by State and Federal law are

PRAYER

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

1. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number ARD 242846, issued to A+ Smog Check;
2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to A+ Smog Check;
3. Revoking or suspending Smog Check, Test Only, Station License Number TC 242846, issued to A+ Smog Check;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of A+ Smog Check;
5. Ordering Respondent A+ Smog Check to pay the Director of Consumer Affairs 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: 1/9/09



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