

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

In the Matter of the Accusation Against:

DISCOUNT SMOG,
ADANAN AMAR BATH, Owner
Automotive Repair Dealer ARD 249722
Smog Check Repair Station RC 249722

Respondent,
and

ADANAN AMAR BATH,
Smog Check Repair Technician EI 151462
Smog Check Inspector EO 151462

Respondent.

Bureau No. 79/15-36

OAH No. 2014110777

DECISION AFTER RECONSIDERATION

On July 30, 2015, the Director (Director) of the Department of Consumer Affairs (Department) issued a Decision adopting the Proposed Decision of the Administrative Law Judge, to become effective on September 8, 2015. Subsequently, the Department received a petition for reconsideration (Petition) from Respondent.

On September 4, 2015, the Director issued an Order Granting Hearing for Reconsideration, pursuant to which the parties were given until November 11, 2015 to submit written argument. Both parties timely submitted their respective written arguments.

The Director, having read and considered the entire record, including the arguments submitted, hereby adopts the attached Decision as the Decision in the above-entitled matter.

This Decision shall become effective on September 12, 2016.

DATED: August 5, 2016



KURT HEPPLER
Supervising Attorney
Division of Legal Affairs
Department of Consumer Affairs

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Smog Check Inspector EO 151462

Respondent.

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

September 8, 2015

DATED:

May 30, 2015


TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

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PROPOSED DECISION

This matter convened for hearing before Vincent Pastorino, Administrative Law Judge for the Office of Administrative Hearings (OAH), State of California, in Sacramento, California, on April 20 and 21, 2015.

Kent D. Harris, Supervising Deputy Attorney General, appeared and represented complainant Bureau of Automotive Repair (Bureau or BAR), Department of Consumer Affairs (Department). Enrique Lopez, Program Representative II, also appeared on behalf of the Bureau.

William Ferreira, Attorney at Law, appeared and represented Adanan Amar Bath. Mr. Bath was also present.

Each party submitted evidence and argument at the hearing. Each party submitted written closing argument, received at OAH on May 12, 2015. OAH received complainant's reply brief on May 19, 2015, whereupon the record was closed and the matter submitted.

FACTUAL FINDINGS

Background

1. Adanan Amar Bath, as owner of and doing business as Discount Smog, has held Automotive Repair Dealer Registration number ARD 249722 (Registration) since April 2007, and Smog Check Station License number RC 249722 (Station License) since June 2007.

2. Mr. Bath received Advanced Admission Specialist Technician License number EA 151462 in 2005. On or about April 2, 2013, in accordance with license restructuring under California regulations, the Bureau issued Smog Check Inspector License number EO 151462 and Smog Check Repair Technician License number EI 151462 (collectively, Technician Licenses) to Mr. Bath.

3. From February 18 to March 24, 2014, the Bureau conducted an undercover operation on Discount Smog. The operation included five days of video surveillance. The investigator, Enrique Lopez, concluded that an illegal activity known as "clean piping" had occurred during the smog check of a 1985 Toyota Tercel on February 20 and during the smog check of a 2006 Ford Fusion on March 10. Clean piping occurs when a technician, during the emissions testing, obtains and uses exhaust samples from a vehicle other than the vehicle being tested.

4. On September 17, 2014, the Bureau served the Accusation and related documents on Mr. Bath. The Accusation alleges multiple causes for discipline arising from each of the alleged clean-piping incidents. The Accusation requests that the Director of Consumer Affairs issue a decision "revoking or suspending" all Bureau registrations and licenses issued to Mr. Bath. The Accusation also requests payment of costs.

5. Mr. Bath submitted his Notice of Defense, dated September 19, 2014, which included a request for hearing. This matter convened for hearing on April 20 and 21, 2015, under the procedures set forth in Health and Safety Code section 44072, subdivision (d), and Government Code section 11500 et seq. Both parties presented documentary evidence. Mr. Lopez, Program Representative II at the Bureau, was the only witness. Mr. Bath did not testify. The standard of proof in this matter is preponderance of the evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911.)

Inspection Procedures

6. A proper California smog check consists of a three basic parts – tailpipe emissions test, visual inspection, and functional check. During the smog check, the technician uses a machine known as a BAR97 Emissions Inspection System (EIS). The EIS, on what is analogous to a computer screen, prompts the technician to perform tasks or enter data in a prescribed sequence. The EIS also analyzes and transmits data, as described below.

7. The EIS typically is located in the station's "enhanced test inspection area" (inspection area). The EIS includes and controls a remotely-attached dynamometer, which is a treadmill-like system of rollers used to monitor the "speed" of the vehicle and place a load on the engine as the wheels are turning. The dynamometer is in the inspection area but is located several steps away from the main control panel of the EIS.

8. To start the smog check, the technician accesses the EIS by selecting "smog check inspection mode," scanning his or her badge, and entering his or her personal identification code. The EIS then seeks to establish a connection with the Bureau's Vehicle Information Database (VID) using a telephone line and modem.

9. The VID records the "Test Start" time as the time that the EIS establishes communication with the VID. Thus, the technician can commence the test and access and interact with the EIS before the Test Start time shown on subsequent reports obtained from the VID. The technician enters information into the EIS that is specific to the vehicle being tested, such as the year, make, model, license number, vehicle identification number (VIN), and number of engine cylinders.

10. The tailpipe emissions test, also known as the ASM (Acceleration Simulation Mode test), is the first part of the smog test. The vehicle will already have been driven onto the dynamometer's rollers. The EIS prompts the technician to insert the tailpipe exhaust probe (exhaust probe). The technician inserts the exhaust probe into a tailpipe on the vehicle and accelerates the vehicle on the rollers. The EIS samples the exhaust emissions when the vehicle's speed is at 15 miles per hour (mph) and at 25 mph. The EIS uses a 5-gas analyzer to evaluate the samples. According to Mr. Lopez, two or three minutes are typical lengths of time used by the EIS to gather and process the necessary data from the exhaust collected by the exhaust probe. When the EIS has determined that it has gathered the needed samples and data, the ASM test ends and the EIS prompts the technician to stop the wheels and begin the next portions of the smog check, which are the visual inspection and functional check.

11. The EIS prompts the technician through each step of the data entry process for the visual inspection and functional check. The EIS screen displays the requested data point, and the technician does the visual inspection or functional check for that data point and enters pass, fail, or other values as applicable. After each entry, the EIS displays the prompt for the next data point.

12. In the visual inspection, the technician must visually inspect the vehicle's emission components to ensure that they are present, properly connected, and in good working condition. The technician can gather most of this information prior to the ASM test, but none can be entered into the EIS until the EIS prompts the technician. The prompts for the visual inspection and functional check appear only after completion of the ASM test.

13. The technician's functional check includes items such as the "low pressure fuel evaporate test (LPFET)," required on 1995 and older vehicles, including the Toyota Tercel at issue in this case. To perform the test, the technician uses a specialized device to

pressurize the fuel tank and check for leaks. That device is completely separate from the EIS. The test can be performed at any time, but the technician can enter the result only when prompted by the EIS.

14. Some of the functional checks require equipment connected to and controlled by the EIS. Such tests can only be performed after the ASM test, when the EIS reaches the applicable prompt. One such functional check includes the "Fuel Cap Integrity Test." To perform this test, the technician uses a pressure testing device. One end of the device connects to the fuel cap, which has been removed from the vehicle, and the other end of the device is connected to the EIS. The EIS, not the technician, controls the test and determines whether the result is pass or fail. This test was required on the Toyota Tercel.

15. On 1996 or newer vehicles, the functional portion of the smog check includes a test of the On Board Diagnostic Generation II System (OBD-II check) which checks for codes and whether system monitors are ready. This test was required on the Ford Fusion at issue in this case.

16. The "Test End" time shown in VID-generated documents typically represents the following sequence: (1) after completion of the ASM, the technician has viewed and entered a response to each EIS prompt for the visual inspection and functional check; (2) the technician has responded "no" to a prompt that inquires whether any repairs were performed on the vehicle, and upon entry of the "no" response, the EIS begins a computation process to determine whether the vehicle has passed or failed the smog check; (3) the EIS reaches its determination as to whether the vehicle has passed or failed, and the VID records the time of that determination as the "Test End" time.

17. After the EIS has determined whether the vehicle has passed or failed and has established the "Test End" time, the EIS communicates the test results to the VID. Upon receipt, the VID records this as the "VID Received" time. The EIS also prints a Vehicle Inspection Report (VIR) at the smog station. The VIR shows a date and time on the report. In addition, if the EIS finds that the vehicle has passed, it issues a smog certificate electronically to the Department of Motor Vehicles (DMV).

18. The Bureau can access the VID to see details concerning each vehicle tested by smog check technicians and smog check stations. Details for a particular vehicle appear in a multi-page report entitled BAR97 Test Detail, and summary information for all vehicles tested by a particular smog station on a particular date appear in a report entitled BAR97 Test.

Toyota Tercel

VIDEO SURVEILLANCE AND SMOG CHECK DATA

19. The BAR97 Test Detail report for the Toyota on February 20, 2014, states that the Test Start time is 11:53:12 hours, the Test End time is 12:04:00 hours, and the VID

Received time is 12:04:53 hours. The report states that the vehicle passed each part of the smog check and that a certificate was issued.

20. The surveillance video shows that the Toyota is driven into the smog bay and directly onto the dynamometer at 11:45:55 hours. The tailpipe is briefly visible on the left rear of the vehicle as the vehicle enters into the smog bay. Thereafter, the tailpipe is obscured from view behind a stop sign in the bay doorway. The EIS machine is several steps to the right side (passenger) side of the vehicle, but the machine is visible on none of the surveillance videos.

21. At 11:46:35 hours, Mr. Bath walks behind the vehicle, from left to right on the video, to the EIS machine area. At 11:48:13, hours he walks to the front of the vehicle and promptly returns to the EIS. At 11:48:20 hours, he is carrying the exhaust probe and drops it on the floor at the right rear of the vehicle while he continues walking to the left side of the vehicle. The video quality is insufficient to show what Mr. Bath did when he went to the left side of the vehicle, but the illumination of the brake lights at 11:48:27 and 11:48:38 hours, accompanied by some side-to-side swaying of the vehicle several inches left and right, indicates that someone shifted the vehicle into "drive" to center it onto the dynamometer rollers in preparation for testing it on the rollers.

22. At 11:48:45 hours, Mr. Bath picks up the exhaust probe and inserts it into the tailpipe at the left rear of the vehicle while standing to the right of the tailpipe, and then he returns to the EIS area. At 11:49:15 hours, Mr. Bath returns to the left side of the vehicle and the brake lights illuminate for about a second. The brake lights illuminate again at 11:50:30 hours and stay lit for about 8 seconds. At 11:50:42 hours, Mr. Bath reappears from the left side of the vehicle, removes the exhaust probe from the tailpipe, and carries the exhaust probe toward the EIS machine area. On at least one occasion during the next two minutes, Mr. Bath is seen walking near the vehicle while carrying what appears to be a clipboard or some device for taking notes.

23. At 11:54:30 hours, Mr. Bath walks from the EIS machine area to the front of the vehicle. According to Mr. Lopez, Mr. Bath appeared to be carrying the EIS tachometer pickup. At 11:56:01 hours, he opens the fuel door on the right side of the vehicle, using a key, and unscrews the fuel cap. Whether the cap remains attached to the vehicle by a cord cannot be discerned. At 11:56:51 hours, he returns from the EIS machine area to the fuel door and screws something onto the spot where a fuel cap would attach. When asked whether that could be the fuel cap, Mr. Lopez testified that "it could also be the adapter to do the low pressure fuel evap test [LPFET]." At 11:57:23 hours, Mr. Bath appears from left of the vehicle and wheels the LPFET tester unit to the right side of the vehicle near the fuel door area. At 11:58:00 hours, another vehicle is driven into the station, crossing behind the Toyota and disappearing toward an adjacent bay to the left of the Toyota. At about 11:58:01 hours, and again 11:58:08 hours, the brake lights on the Toyota illuminate briefly. At 11:59:26 hours, Mr. Bath hooks up the LPFET tester hose to the fuel door area.

24. At 11:59:51 hours, another unidentified vehicle is driven into the station, again crossing behind the Toyota and disappearing toward an adjacent bay to the left of the Toyota.

25. At 12:00:15 hours, an unidentified male holding an exhaust probe walks behind the Toyota from right to left, passing the Toyota's exhaust pipe and disappearing to the left of the vehicle. Although the video does not show where the person took the probe, it shows that he did not stop near the Toyota to insert the exhaust probe into the tailpipe of the Toyota. Instead, from the pace of his walking, he appeared intent on taking the exhaust probe to some place beyond the Toyota. At 12:00:35, the Toyota's brake lights illuminate. At 12:01:02 hours, the unidentified male, previously seen at 12:00:15, hours walks from left to right behind the Toyota; he is not carrying an exhaust probe.

26. At 12:01:53 hours, the Toyota's brakes lights illuminate for a couple of seconds. At 12:02:00 hours, Mr. Bath appears from somewhere left of the vehicle and is carrying the tailpipe probe as he walks behind the vehicle and toward the EIS machine area. At 12:02:08 hours, Mr. Bath reaches and touches something on or near the hose between the fuel door area and the LPFET tester unit.

27. At 12:02:18 hours, the unidentified vehicle that had entered the station at 11:59:51 hours exits on the same path, but in reverse gear.

28. From 12:02:52 to 12:03:25 hours, Mr. Bath generally is standing between the LPFET unit and the vehicle and working with his hands in the area of the open fuel door. When he walks away from that area at 12:03:26, the fuel door has been shut and the hose that was connected to the LPFET unit has been disconnected from the vehicle. At 12:03:30 hours, he walks to the front of the vehicle. At 12:03:35 hours, according to Mr. Lopez, Mr. Bath appears to take the EIS tachometer pickup from the front of the vehicle to the EIS machine area. At 12:04:31 hours, the Toyota is driven out of the smog bay and exits the facility.

DISCUSSION

INDICATORS OF CLEAN-PIPING

29. The complainant's allegations of clean piping on the Toyota rely chiefly on the facts that (1) the exhaust probe was inserted into the Toyota's tailpipe at 11:48:45 hours and permanently removed at 11:50:42 hours; (2) the Toyota was active on the dynamometer, as indicated by brake lights, during the time that the exhaust probe had disappeared to the left of the Toyota; and (3) the BAR97 Test Detail for the Toyota states that the Test Start time was 11:53:12 hours and the Test End time was 12:04:00 hours. Complainant concludes that since the exhaust probe was never present in the Toyota's tailpipe during the "official" time period of the smog check, the exhaust sample analyzed by the EIS must have come from a different vehicle, meaning that clean piping occurred.

TIME LAG

30. Mr. Bath notes that the Test Start time listed on the BAR97 Test Detail, i.e., 11:53:12 hours, does not represent the actual time that Mr. Bath accessed the EIS and started the smog check. Instead, the Start Time represents the time the EIS connected with the VID through the telephone modem, and that connection occurred at some time after Mr. Bath accessed the EIS. If the time lag between the actual commencement of the test and the establishment of the EIS connection with the VID was several minutes, such a time lag could account for the fact that insertion (11:48:45 hours) and removal 11:50:42 hours) of the exhaust probe occurred before the Test Start time (11:53:12) shown on the BAR97 Test Detail.¹

31. Mr. Bath's contentions regarding a time lag do not explain why the video shows brake-light illumination on the Toyota at 12:00:35 and 12:01:53 hours, in addition to the Toyota's occasional swaying motion, all of which occurred while the exhaust probe had disappeared to the left of the Toyota. Those events could indicate that the Toyota was active on the dynamometer, consistent with the ASM phase of the smog check, while the missing exhaust probe was collecting exhaust samples from a different vehicle.

LPFET AND FUEL CAP INTEGRITY TEST

32. The 1995 Toyota required both an LPFET and a Fuel Cap Integrity Test as part of the functional check. As stated in Findings 13 and 14, the technician can perform the LPFET prior to the ASM test and enter the data at a later time. In contrast, the Fuel Cap Integrity Test requires a physical connection to the EIS. The EIS, not the technician, controls the test and determines whether the result is pass or fail. (Finding 14.) Thus, the ASM test must be complete before one can perform the Fuel Cap Integrity Test.

33. In his written closing argument, Mr. Bath asserted that the video showed that the LPFET and Fuel Cap Integrity Test "were performed after the ASM test with the Tercel around 11:55:52." If that is correct, the EIS must have completed the ASM test by approximately 11:55:52 hours, which is prior to the exhaust probe's disappearance to the left of the Toyota at 12:00:15 hours, and clean-piping could not have occurred. That contention will now be addressed in detail.

34. The video shows that Mr. Bath removed the exhaust probe from the Toyota's tailpipe at 11:50:42 hours, which potentially shows that the EIS had completed the ASM portion of the smog check by that time and had prompted Mr. Bath to proceed with the visual inspection and functional check.

¹ There was testimony concerning an off-line test option when an existing telephone modem connection is interrupted, but the testimony was vague regarding whether an ASM test that starts several minutes before the EIS establishes a modem connection with the VID would be documented on the BAR97 Test Detail as an offline test. The BAR97 Test Detail for the Toyota did not record the test as being an offline test.

35. The video shows that Mr. Bath opened the fuel door on the Toyota at 11:56:01 hours and promptly unscrewed the fuel cap, which may or may not have remained attached to the vehicle by a cord. At 11:56:51 hours, he returned from the EIS machine area to the fuel door and screwed something onto the spot where a fuel cap would attach, which was either the fuel cap or an adapter for the LPEFT test. At 11:57:23 hours, Mr. Bath took the LPFET tester unit to the right side of the Toyota and left it near the fuel door area. At 11:59:26 hours, Mr. Bath hooked up the LPFET tester hose to the fuel door area.

36. The video shows an unidentified person taking an exhaust probe from the EIS area and disappearing to the left of the Toyota at 12:00:15 hours. At 12:00:35 hours and again at 12:01:53 hours, the brake lights on the Toyota briefly illuminate, which, in a clean-piping situation, would be consistent with maintaining proper speed on the dynamometer while the exhaust probe is in the tailpipe of a different vehicle. At 12:02:00 hours, Mr. Bath appears from somewhere left of the Toyota and is carrying an exhaust probe as he walks behind the vehicle and toward the EIS machine area.

37. From 12:02:52 hours to 12:03:25 hours, Mr. Bath generally is between the LPFET and the vehicle and working near the fuel door area, where he disconnects a hose and closes the fuel door.

38. The quality and camera angles of the video are insufficient to establish the time that Mr. Bath, using the EIS, performed the Fuel Cap Integrity Test. If Mr. Bath did not clean pipe the Toyota, he must have completed the official ASM test by about 11:50:42 hours, the time when the exhaust probe was removed from the Toyota, and EIS machine then would have commenced prompting for the visual check and functional inspection. In either event, Mr. Bath opened the fuel door at 11:56:01 hours, so the Fuel Cap Integrity Test most likely occurred after 11:56:01 hours.

39. If Mr. Bath did clean pipe the Toyota, the ASM test information from a different vehicle would have been completed just before 12:02:00 hours, which is the time that Mr. Bath appears from the left of the Toyota and returns with an exhaust probe to the EIS area. The EIS prompts for the visual and functional data would have commenced thereafter. In that circumstance, between 12:02:00 hours and the Test End at 12:04:00 hours, Mr. Bath would have had to perform the Fuel Cap Integrity Test by hooking up the EIS to the fuel cap, and he would have had to enter all of the visual inspection and functional check data points, as individually prompted, into the EIS. In addition, the EIS would have needed time to compute the smog check results before posting Test End at 12:04:00 hours. Whether all of those tasks could have been accomplished within the available two-minute window of time is a critical question.

40. In his testimony, Mr. Lopez estimated that if a technician had already performed a visual inspection and simply needed to go through the EIS prompts and enter the results, the sequence would take about "30 seconds to a minute," although he has seen it take longer on various occasions. He also estimated that the EIS would need about one minute to do the Fuel Cap Integrity Test, or two minutes if the initial test failed and the test was

repeated. At the completion of the data entry, the EIS would calculate the results and post the Test End time. According to Mr. Lopez' estimates, one and one-half minutes would be the estimated *minimum* time to perform those tasks. This would leave an estimated surplus of about 30 seconds to perform those tasks within the available two-minute window.

41. However, the video shows that Mr. Bath is consuming significant amounts of time performing other activities during that two-minute time interval between 12:02:00 and 12:04:00 hours. First, Mr. Bath needs several seconds to complete his walk as he brings an exhaust probe from an area left of the Toyota to the EIS machine area. From 12:02:52 to 12:03:25 hours, about 33 seconds, Mr. Bath is between the LPFET and the fuel door and appears to disconnect a hose, most likely the hose that connects from the vehicle to the LPFET. He may or may not also be conducting the Fuel Cap Integrity Test at that time; one cannot tell either way from the video. At about 12:03:30 hours, Mr. Bath expends several more seconds walking to the front of the Toyota and likely is retrieving the EIS tachometer pickup so he can return it to the EIS machine area.

42. In summary, the video and the BAR97 Test Detail raise serious concerns regarding the occurrence of various suspicious events, such as the delayed Test Start time, brake light illumination during the interval when the exhaust probe had disappeared to the left of the smog bay, and the entry and exit of a vehicle during the time interval that coincides with the disappearance and re-emergence of the exhaust probe. However, the significance of the brake light illumination is somewhat diminished by the fact that the Toyota's brake lights also illuminated at about 11:58:01 hours and again 11:58:08 hours, during a period when there was no indication that an exhaust probe was in any vehicle. In addition, the troublesome limitations of the video quality and video camera angles adversely affect the ability to evaluate what occurred at various critical times.

43. On the basis of the evidence presented at the hearing, in particular the evidence presented concerning smog check procedures and the operation of the EIS, it is highly unlikely that Mr. Bath, within the available two-minute window of time ending at 12:04:00 hours, could have performed all of the tasks and activities listed in Findings 39, 40, and 41. It is more probable that Mr. Bath began receiving prompts for the visual and functional data well before the time that an ASM test would have been completed under the alleged clean-piping scenario. Since the EIS will not allow the Fuel Cap Integrity Test to occur prior to completion of the ASM test, it is most probable that the official ASM test was completed when the exhaust probe was in the tailpipe of the Toyota, and not in the tailpipe of a different vehicle. Complainant has failed to prove by a preponderance of the evidence that clean piping occurred during the smog check of the Toyota.

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Ford Fusion

VIDEO SURVEILLANCE AND SMOG CHECK DATA

44. On the BAR97 Test Detail report for the Ford Fusion on March 10, 2014, the Test Start time is 14:58:11 hours; the Test End time is 15:16:09 hours, and the VID Received time is 15:17:03 hours. The report states that the vehicle passed each part of the smog check and that a certificate was issued.

45. The surveillance video shows the Ford Fusion being driven into the smog service bay at 14:55:55 hours and onto the dynamometer at 14:56:16 hours. At 14:57:55 hours, Mr. Bath is at the rear of the vehicle and holding a clipboard. He walks to the left side of the vehicle at 15:00:54 hours, and the brake lights illuminate at 15:01:12 hours. Mr. Bath walks to the EIS area at 15:01:19 hours, and he inserts the exhaust probe into the tailpipe of the vehicle at 15:01:29 hours. He stands near the rear of the vehicle from 15:02:51 to 15:03:06 hours, and he walks to the left side of the vehicle at 15:03:08 hours. The brake lights illuminate at 15:03:12 and 15:05:02 hours. Mr. Bath walks to the rear of the vehicle at 15:05:12 hours and removes the exhaust probe at 15:05:15 hours.

46. Someone drives the Ford Fusion off of the dynamometer, in reverse, at 15:06:38 hours, and then turns left and drives it further into the smog station, where the vehicle disappears to the left.

47. At 15:07:12 hours, a Honda Civic is driven into the same smog service bay as previously occupied by the Ford, and onto the same dynamometer.

48. Mt. Bath walks to the rear of the Honda Civic at 15:13:38 hours and inserts an exhaust probe into the tailpipe of the Honda Civic at 15:13:41 hours.

49. Mr. Bath walks to the left side of the Honda Civic at 15:13:45 hours, and the brake lights illuminate at 15:13:50 and 15:15:09 hours.

50. Somebody walks to the EIS machine at 15:15:38 hours.

51. An unidentified male removes the exhaust probe from the Honda Civic's tailpipe at 15:16:54 hours, and the vehicle is driven off the dynamometer and out of the service bay at 15:17:00 hours.

DISCUSSION

INDICATORS OF CLEAN-PIPING

52. The complainant's case regarding the Ford Fusion relies chiefly on the following:

53. The Ford Fusion was driven onto the dynamometer at 14:56:16 hours, and the BAR97 Test Detail shows the Test Start time as 14:58:11 hours. The subsequent insertion of the exhaust probe into the tailpipe at 15:01:29 hours and illumination of the brake lights thereafter shows that Mr. Bath was using the EIS in some fashion to sample the emissions. When the Ford was driven off of the dynamometer at 15:06:38 hours and replaced by the Honda Civic at 15:07:12 hours, the smog check on the Ford Fusion was still in progress, as the Test End time recorded on the Bar97 Test Detail is 15:16:09 hours.

54. The insertion of an exhaust probe into the tailpipe of the Honda Civic at 15:13:41 hours and the illumination of the brake lights at 15:13:50 and 15:15:09 hours show that tailpipe emissions were collected from the Honda Civic while it was on the dynamometer and prior to the Test End time for the Ford Fusion.

55. The uneventful presence of the Honda Civic on the dynamometer from 15:07:12 to 15:13:41 hours is consistent with the "reset time" that the EIS would impose during an ASM test in the event of an occurrence that could trigger a reset. Such an event would include removal of the Ford Fusion from the dynamometer while the EIS was monitoring speed and/or engine RPMs during an ASM test. The BAR97 Test Detail for the Ford Fusion shows that one ASM restart occurred.

56. Emission samples taken from the Honda Civic during the test period for the Fusion were taken by the same EIS machine that was testing the Fusion. Mr. Lopez testified that an EIS machine cannot test multiple vehicles simultaneously.

57. The BAR97 Test report for Discount Smog on March 10, 2014, shows that the test on the 2006 Ford Fusion ended at 15:16 hours and the start time for next listed test, on a 2007 Ford, is 14:58 hours. No test for a Honda appears on the March 10, 2014 report.

"31 SECONDS"

58. Mr. Bath offered no explanation for the Honda Civic's presence on the dynamometer during the test period for the Ford Fusion. His chief asserted defense concerning the Ford Fusion is that if the Honda Civic was used for clean piping, he would not have had enough time to enter the data for the visual inspection and functional check prior to the 15:16:09 Test End time. That assertion will now be examined in detail.

59. As stated in Finding 12, most visual inspection and functional check data can be gathered prior to the ASM test, but none can be entered into the EIS until the EIS prompts the technician, and the prompts for the visual inspection and functional check appear only after completion of the ASM test.

60. If the Ford Fusion was clean-piped using emissions from the Honda Civic, the ASM portion of the test most likely would have ended at or shortly before the time of the Honda Civic's brake light illumination at 15:15:09 hours. The video shows someone

walking toward the EIS machine at 15:15:38 hours, which is only 31 seconds before the Test End time (15:16:09 hours).

61. According to Mr. Bath, any assertion that he could have entered the required visual and functional data within 31 seconds is implausible. His contention regarding the 31-second window of time is analogous to the situation with the Toyota Tercel, discussed above. However, there are some significant differences.

62. Weighing against Mr. Bath's argument regarding the 31 seconds of available time are the facts that the LPFET and the Fuel Cap Integrity Test, required on the 1985 Toyota Tercel, are not required and were not performed on the 2006 Ford Fusion. Also weighing against Mr. Bath's argument is the fact that "other activities" such as described in Finding 41 were not performed on the Ford Fusion and did not consume time from the available 31 seconds.

63. Weighing in favor of Mr. Bath's argument is the fact that the Smog Check Vehicle Inspection Report for the Ford Fusion shows "Pass" for the "OBD System Check." According to Mr. Lopez's Investigative Report, the OBD-II system is tested as part of the functional portion of the smog check on 1996 and newer vehicles. Mr. Lopez testified that the OBD-II test is "[a]nother part of the functional test where they insert a connector to the data link under the dash of the vehicle, and it will check if there are any pending codes or if there are any codes or the monitors are ready." His above quote does not specifically state that the data link connects directly to the EIS machine. However, when Mr. Lopez testified regarding the method by which the EIS machine can determine the engine RPMs during an ASM test, he stated, essence, that one method would be to feed the information from the vehicle to the EIS machine using the OBD-II connector.

64. As stated in Finding 40, Mr. Lopez estimated that if a technician had already done a visual inspection and functional checks and simply needed to go through the EIS prompts and enter the results, the sequence would take about "30 seconds to a minute." He later revised his testimony and indicated that the data could be entered in 20 to 30 seconds. In either event, the evidence showed that a technician could not enter the inspection data *and* perform the OBD-II functional test within only 31 seconds.

65. Findings 63 and 64 raise an additional question. If clean piping occurred by using the Honda Civic for the ASM portion of the test after the Ford Fusion had left the smog bay and was somewhere to the left of the smog bay, how did Mr. Bath subsequently complete an OBD-II hookup from the Ford Fusion to the EIS machine? This would have required a long connector cord, and perhaps an extension, to reach the Ford Fusion.

66. Given the limitations of the video with regard to camera angles and generally poor definition and exposure control, the potential list of unresolved questions, pro and con with regard to clean piping, is lengthy. However, arguments based on a 31-second window of time to enter the visual and functional data are dependent upon the accuracy of that 31-second premise. The evidentiary support for that 31-second premise, described above, is

somewhat circumstantial. By contrast, the evidence showing the exhaust probe in the tailpipe of the Honda Civic, which was active on the dynamometer during the test period for the Ford Fusion, is direct and compelling. Mr. Bath offered no plausible explanation regarding how that situation could have represented anything other than clean piping. Accordingly, complainant has proven by a preponderance of the evidence that clean piping occurred during the smog check of the Ford Fusion.

Prior Citations

67. Mr. Bath, as owner of Discount Smog and also a technician, received citations from the Bureau on May 29, 2008, and October 27, 2008, for failure to properly perform a visual and functional check during an undercover operation. He was assessed civil penalties totaling \$1,500 and ordered to complete an 8-hour training course and a 16-hour training course.

Costs

68. Complainant submitted two declarations of costs in support of his claim for costs under Business and Professions Code section 125.3. The Declaration by William Thomas, Program Manager II, requests costs computed as 177 hours of billable time by program representatives in fiscal year 2013-2014, multiplied by the applicable hourly rate. Those claimed costs total \$13,559.26. The declaration provides neither a description of the general tasks performed nor the time spent on each task. Mr. Lopez testified that the hours listed on the declaration included traveling back and forth to the business location for Discount Smog, setting up the cameras for five days of surveillance, reviewing data, and writing reports. He testified that the hours included the work of one or two other persons in addition to work that he performed himself. That information is insufficient to show that the total number of hours was reasonable.

69. The second declaration is by Mr. Harris and itemizes the amount that the Department of Justice has billed to the Bureau on this matter. That amount totals \$2,482.50. The declaration and attachments lists the date, time, and tasks performed. Given the scope and complexity of the case, that amount is reasonable.

70. The parties presented evidence that directly addressed Mr. Bath's ability to pay costs. His ability to pay may be minimal if his licenses are revoked.

Mitigation/Rehabilitation

71. Mr. Bath presented no evidence of mitigation or rehabilitation, but instead focused upon attempting to defeat the allegations concerning clean piping.

LEGAL CONCLUSIONS

Legal Framework of the Motor Vehicle Inspection Program

1. Business and Professions Code section 9884 et seq., Health and Safety Code section 44000 et seq., and California Code of Regulations, title 16, section 3340.1 et seq., are the chief statutes and regulations concerning the Bureau, smog checks, and the motor vehicle inspection program.

Accusation

2. The Accusation alleges sixteen separate causes for discipline, most of which contain multiple subparts. Causes one through eight apply to the testing of the Toyota Tercel, and causes nine through sixteen apply to the testing of the Ford Fusion. Some causes apply to Mr. Bath's Registration, some apply to his Station License, and some apply to his Technician Licenses. The Legal Conclusions portion of this Proposed Decision addresses each of the alleged causes for discipline in the same sequence as presented in the Accusation.

Toyota Tercel

FIRST CAUSE – UNTRUE OR MISLEADING STATEMENTS

3. Business and Professions Code section 9884.7, subdivision (a), states, in pertinent part:

- (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the 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.
 - (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

[¶] ... [¶]

4. In the Accusation's First Cause for Discipline, complainant asserts that Mr. Bath's Registration is subject to disciplinary action under Business and Professions Code section 9884.7, subdivision (a)(1), in that on or about February 20, 2014, Mr. Bath issued a Certificate of Compliance for the Toyota when he knew, or should have known, that he had

clean-piped the vehicle. On the basis of Finding 43, the First Cause for Discipline will be dismissed.

SECOND CAUSE – FRAUD

5. Business and Professions Code section 9984.7, subdivision (a)(4), lists “any conduct that constitutes fraud” as one of the acts for which the director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer when the act is done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

6. In the Accusation’s Second Cause for Discipline, complainant asserts that Mr. Bath’s Registration is subject to disciplinary action under Business and Professions Code section 9984.7, subdivision (a)(4), in that on or about February 20, 2014, Mr. Bath committed fraud by issuing a Certificate of Compliance for the Toyota Tercel “without performing a bona fide inspection on that vehicle.” On the basis of Finding 43, the Second Cause for Discipline will be dismissed.

THIRD CAUSE – VIOLATION OF MOTOR VEHICLE INSPECTION PROGRAM

7. Health and Safety Code section 44072.2, subdivision (a), provides that the director may suspend, revoke, or take other disciplinary action against a license if the licensee, or any partner, officer, or director thereof violates any section of “this chapter,” i.e., the Motor Vehicle Inspection Program, and the regulations adopted pursuant to it, which relate to the licensed activities.

8. In the Accusation’s Third Cause for Discipline, complainant asserts that Mr. Bath’s Station License is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that on or about February 20, 2014, in regard to the Toyota Tercel, Mr. Bath violated Health and Safety Code sections 44012, subdivision (f); 44015, subdivision (b); and 44059.

9. Health and Safety Code section 44012 provides, in pertinent part, that the test at smog check stations shall be performed in accordance with procedures prescribed by the department, and that the department shall ensure, as appropriate to the test method, standards that apply to various items listed in subdivisions (a) thru (i). Subdivision (f) requires that “[a] visual or functional check is made of emission control devices specified by the department The visual or functional check shall be performed in accordance with procedures prescribed by the department.”

10. Complainant asserts that Mr. Bath violated Health and Safety Code section 44012, subdivision (f), by failing to ensure that the emission control tests on the Toyota were performed in accordance with the procedures prescribed by the Department. On the basis of Finding 43, that portion of the Third Cause for Discipline will be dismissed.

11. Health and Safety Code section 44015, subdivision (b), states that “[if] a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.”²

12. Complainant asserts that Mr. Bath violated section 44015, subdivision (b), by issuing a Certificate of Compliance on the Toyota without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012. On the basis of Finding 43, that portion of the Third Cause for Discipline will be dismissed.

13. Health and Safety Code section 44059 states that “[t]he willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.”

14. Complainant asserts that Mr. Bath violated Health and Safety Code section 44059 by falsely representing on the Certificate of Compliance that the Toyota had been inspected as required, when, in fact, it had not. However, the apparent stated purpose of section 44059 is to define certain acts as perjury for purposes of criminal prosecution under the Penal Code. This license discipline matter is not a criminal matter. Moreover, the Accusation does not allege a Penal Code violation. Accordingly, that portion of the Third Cause for Discipline will be dismissed.

FOURTH CAUSE – FAILURE TO COMPLY WITH REGULATIONS

15. Health and Safety Code section 44072.2, subdivision (c), provides that the director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof “[v]iolates any of the regulations adopted by the director pursuant to this chapter.”

16. In the Accusation’s Fourth Cause for Discipline, complainant asserts that Mr. Bath’s Station License is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c), in that on or about February 20, 2014, in regard to the Toyota, Mr. Bath “failed to comply with Regulations,” specifically, California Code of Regulations, title 16, sections 3340.24, subdivision (c); 3340.35, subdivision (c); 3340.41, subdivision (c); and 3340.42.

17. California Code of Regulations, title 16, section 3340.24, subdivision (c), states that “[t]he bureau may suspend or revoke the license of or pursue other legal action

² Health and Safety Code section 44015, subdivision (b), is interpreted herein to mean that if the smog check is properly performed under section 44012, the smog station shall issue a certificate of compliance or noncompliance as warranted by the findings made in the smog check.

against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance.”

18. Complainant asserts that Mr. Bath violated section 3340.24, subdivision (c), when he “falsely or fraudulently issued a Certificate of Compliance for the vehicle [Toyota Tercel] without performing a bona fide inspection of the emission control devices and systems on that vehicle as required by Health & Saf. Code section 44012.” On the basis of Finding 43, that portion of the Fourth Cause for Discipline will be dismissed.

19. California Code of Regulations, title 16, section 3340.35, subdivision (c), states in pertinent part that “[a] licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly. . . .”

20. Complainant asserts that Mr. Bath violated section 3340.35, subdivision (c), when he “issued a Certificate of Compliance even though the vehicle had not been inspected in accordance with section 3340.42.” Section 3340.42 sets forth smog check test methods and standards. On the basis of Finding 43, that portion of the Fourth Cause for Discipline will be dismissed.

21. California Code of Regulations, title 16, section 3340.41, subdivision (c), states that “[n]o person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested.”

22. Complainant asserts that Mr. Bath violated section 3340.41, subdivision (c), when he “entered false information into the EIS by entering vehicle identification information or emission control system identification data for a vehicle other than the one being tested.” On the basis of Finding 43, that portion of the Fourth Cause for Discipline will be dismissed.

23. California Code of Regulations, title 16, section 3340.42, sets forth smog check test methods and standards.

24. Complainant asserts that Mr. Bath violated section 3340.42 by “[failing] to ensure that the required smog test was conducted in accordance with the Bureau’s specifications.” On the basis of Finding 43, that portion of the Fourth Cause for Discipline will be dismissed.

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FIFTH CAUSE – DISHONESTY, FRAUD, OR DECEIT

25. Health and Safety Code section 44072.2, subdivision (d), provides that the director may suspend, revoke, or take other disciplinary action against a license if the licensee, or any partner, officer, or director thereof “[c]ommits any act involving dishonesty, fraud, or deceit whereby another is injured.”

26. In the Accusation’s Fifth Cause for Discipline, complainant asserts that Mr. Bath’s Station License is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (d), in that on or about February 20, 2014, Mr. Bath “committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing a Certificate of Compliance for the 1985 Toyota Tercel when, in fact, it had not been properly tested and inspected, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.”

27. On the basis of Finding 43, the Fifth Cause for Discipline will be dismissed.

SIXTH CAUSE – VIOLATIONS OF THE MOTOR VEHICLE INSPECTION PROGRAM

28. As stated above, Health and Safety Code section 44072.2, subdivision (a), provides that the director may suspend, revoke, or take other disciplinary action against a license if the licensee, or any partner, officer, or director thereof violates any section of “this chapter,” i.e., the Motor Vehicle Inspection Program, and the regulations adopted pursuant to it, which relate to the licensed activities.

29. In the Accusation’s Sixth Cause for Discipline, complainant asserts that Mr. Bath’s Technician Licenses are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that on or about February 20, 2014, in regard to the Toyota, Mr. Bath “failed to comply with section 44012 of that Code” by violating Health and Safety Code sections 44012, subdivision (f); 44032; and 44059.

30. Complainant asserts that respondent violated Health and Safety Code section 44012, subdivision (f), by “[failing] to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with prescribed test procedures.” On the basis of Finding 43 and Legal Conclusion 9, that portion of the Sixth Cause for Discipline will be dismissed.

31. Health and Safety Code section 44032 provides, in pertinent part, that qualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.

32. Complainant asserts that Mr. Bath violated Health and Safety Code section 44032 by failing to perform tests of the emission control devices and systems in accordance with section 44012 “in that the vehicle had been clean-piped.” On the basis of Finding 43, that portion of the Sixth Cause for Discipline will be dismissed.

33. Complainant asserts that Mr. Bath violated Health and Safety Code section 44059 by willfully making "false entries into the Emission Inspection System ("EIS") for a Certificate of Compliance by entering vehicle identification information or emission control information for a vehicle other than the one being tested." For the same reasons stated in Legal Conclusions 13 and 14, that portion of the Sixth Cause for will be dismissed.

SEVENTH CAUSE – FAILURE TO COMPLY WITH REGULATIONS

34. In the Accusation's Seventh Cause for Discipline, complainant asserts that Mr. Bath's Technician Licenses are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c), in that on or about February 20, 2014, in regard to the Toyota Tercel, Mr. Bath failed to comply with California Code of Regulations, title 16, sections 3340.30, subdivision (a); 3340.41, subdivision (c); and 3340.42.

35. California Code of Regulations, title 16, section 3340.30, subdivision (a), provides that a licensed smog check inspector and/or repair technician shall comply with the requirement to "[i]nspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article."

36. Complainant asserts that Mr. Bath violated California Code of Regulations, title 16, section 3340.30, subdivision (a), by failing "to inspect and test the vehicle in accordance with Health & Saf. Code section 44012." On the basis of Finding 43 and Legal Conclusions 9 and 15, that portion of the Seventh Cause for Discipline will be dismissed.

37. Complainant asserts that Mr. Bath violated California Code of Regulations, title 16, section 3340.41, subdivision (c), by "[entering] false information into the EIS by entering vehicle identification information or emission control system identification data for a vehicle other than the one being tested." On the basis of Finding 43 and Legal Conclusion 22, that portion of the Seventh Cause for Discipline will be dismissed.

38. Complainant asserts that Mr. Bath violated California Code of Regulations, title 16, section 3340.42, by "[failing] to ensure that the required smog test was conducted in accordance with the Bureau's specifications." On the basis of Finding 43 and Legal Conclusions 23 and 24, that portion of the Seventh Cause for Discipline will be dismissed.

EIGHTH CAUSE – DISHONESTY, FRAUD, OR DECEIT

39. In the Accusation's Eighth Cause for Discipline, complainant asserts that Mr. Bath's Technician Licenses are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (d), in that on or about February 20, 2014, Mr. Bath "committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing a Certificate of Compliance for the 1985 Toyota Tercel 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."

40. On the basis of Finding 43 and Legal Conclusions 25 and 26, the Eighth Cause for Discipline will be dismissed.

Ford Fusion

NINTH CAUSE – UNTRUE OR MISLEADING STATEMENTS

41. In the Accusation's Ninth Cause for Discipline, complainant asserts that Mr. Bath's Registration is subject to disciplinary action under Business and Professions Code section 9984.7, subdivision (a)(1), in that on or about March 10, 2014, Mr. Bath issued a Certificate of Compliance for the Ford Fusion when he knew, or should have known, that he had clean-piped the vehicle. On the basis of Finding 66 and Legal Conclusion 3, the Ninth Cause for Discipline will be affirmed.

TENTH CAUSE – FRAUD

42. In the Accusation's Tenth Cause for Discipline, complainant asserts that Mr. Bath's Registration is subject to disciplinary action under Business and Professions Code section 9984.7, subdivision (a)(4), in that on or about March 10, 2014, Mr. Bath committed fraud by issuing a Certificate of Compliance for the Ford Fusion "without performing a bona fide inspection on that vehicle . . ." On the basis of Finding 66 and Legal Conclusion 5, the Tenth Cause for Discipline will be affirmed.

ELEVENTH CAUSE – VIOLATION OF THE MOTOR VEHICLE INSPECTION PROGRAM

43. In the Accusation's Eleventh Cause for Discipline, complainant asserts that Mr. Bath's Station License is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that on or about March 10, 2014, in regard to the Ford Fusion, Mr. Bath violated Health and Safety Code sections 44012, subdivision (f); 44015, subdivision (b); and 44059.

44. Complainant asserts that Mr. Bath violated Health and Safety Code section 44012, subdivision (f), by failing to ensure that the emission control tests on the Ford Fusion were performed in accordance with the procedures prescribed by the Department. On the basis of Finding 66 and Legal Conclusions 7 and 9, that portion of the Eleventh Cause for Discipline will be affirmed.

45. Complainant asserts that Mr. Bath violated section 44015, subdivision (b), by issuing a Certificate of Compliance on the Ford Fusion without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012. On the basis of Finding 66 and Legal Conclusions 7 and 11, that portion of the Third Cause for Discipline will be affirmed.

46. Complainant asserts that Mr. Bath violated Health and Safety Code section 44059 by falsely representing on the Certificate of Compliance that the Ford Fusion had been inspected as required, when, in fact, it had not. For the same reasons stated in Legal Conclusions 13 and 14, that portion of the Eleventh Cause for Discipline will be dismissed.

TWELFTH CAUSE – FAILURE TO COMPLY WITH REGULATIONS

47. In the Accusation's Twelfth Cause for Discipline, complainant asserts that Mr. Bath's Station License is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c), in that on or about March 10, 2014, in regard to the Ford Fusion, Mr. Bath "failed to comply with Regulations," specifically, California Code of Regulations, title 16, sections 3340.24, subdivision (c); 3340.35, subdivision (c); 3340.41, subdivision (c); and 3340.42.

48. Complainant asserts that Mr. Bath violated section 3340.24, subdivision (c), when he "falsely or fraudulently issued a Certificate of Compliance for the vehicle [Ford Fusion] without performing a bona fide inspection of the emission control devices and systems on that vehicle as required by Health & Saf. Code section 44012." On the basis of Finding 66 and Legal Conclusions 15 and 17, that portion of the Twelfth Cause for Discipline will be affirmed.

49. Complainant asserts that Mr. Bath violated section 3340.35, subdivision (c), when he "issued a Certificate of Compliance even though the vehicle had not been inspected in accordance with section 3340.42." Section 3340.42 sets forth smog check test methods and standards. On the basis of Finding 66 and Legal Conclusion 15, that portion of the Twelfth Cause for Discipline will be affirmed.

50. Complainant asserts that Mr. Bath violated section 3340.41, subdivision (c), when he "entered false information into the EIS by entering vehicle identification information or emission control system identification data for a vehicle other than the one being tested." On the basis of Finding 66 and Legal Conclusions 15 and 21, that portion of the Twelfth Cause for Discipline will be affirmed.

51. Complainant asserts that Mr. Bath violated section 3340.42 by "[failing] to ensure that the required smog test was conducted in accordance with the Bureau's specifications." On the basis of Finding 66 and Legal Conclusions 15 and 23, that portion of the Twelfth Cause for Discipline is will be affirmed.

THIRTEENTH CAUSE – DISHONESTY, FRAUD, OR DECEIT

52. In the Accusation's Thirteenth Cause for Discipline, complainant asserts that Mr. Bath's Station License is subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (d), in that on or about March 10, 2014, Mr. Bath "committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing a Certificate of Compliance for the 2006 Ford Fusion when, in fact, it had not been properly tested and

inspected, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program."

53. On the basis of Finding 66 and Legal Conclusion 25, the Thirteenth Cause for Discipline will be affirmed.

FOURTEENTH CAUSE – VIOLATIONS OF MOTOR VEHICLE INSPECTION PROGRAM

54. In the Accusation's Fourteenth Cause for Discipline, complainant asserts that Mr. Bath's Technician Licenses are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that on or about March 10, 2014, in regard to the Ford Fusion, Mr. Bath "failed to comply with section 44012 of that Code" by violating Health and Safety Code sections 44012, subdivision (f); 44032; and 44059.

55. Complainant asserts that respondent violated Health and Safety Code section 44012, subdivision (f), by "[failing] to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with prescribed test procedures." On the basis of Finding 66 and Legal Conclusion 9 and 28, that portion of the Fourteenth Cause for Discipline will be affirmed.

56. Complainant asserts that Mr. Bath violated Health and Safety Code section 44032 by failing to perform tests of the emission control devices and systems in accordance with section 44012 "in that the vehicle had been clean-piped." On the basis of Finding 66 and Legal Conclusion 31, that portion of the Fourteenth Cause for Discipline will be affirmed.

57. Complainant asserts that Mr. Bath violated Health and Safety Code section 44059 by willfully making "false entries into the Emission Inspection System ("EIS") for a Certificate of Compliance by entering vehicle identification information or emission control information for a vehicle other than the one being tested." For the same reasons stated in Legal Conclusions 13 and 14, that portion of the Fourteenth Cause for Discipline will be dismissed.

FIFTEENTH CAUSE – FAILURE TO COMPLY WITH REGULATIONS

58. In the Accusation's Fifteenth Cause for Discipline, complainant asserts that Mr. Bath's Technician Licenses are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (c), in that on or about March 10, 2014, in regard to the Ford Fusion, Mr. Bath failed to comply with California Code of Regulations, title 16, sections 3340.30, subdivision (a); 3340.41, subdivision (c); and 3340.42.

59. Complainant asserts that Mr. Bath violated California Code of Regulations, title 16, section 3340.30, subdivision (a), by failing "to inspect and test the vehicle in accordance with Health & Saf. Code section 44012." On the basis of Finding 66 and Legal Conclusions 9 and 15, that portion of the Fifteenth Cause for Discipline will be affirmed.

60. Complainant asserts that Mr. Bath violated California Code of Regulations, title 16, section 3340.41, subdivision (c), by “[entering] false information into the EIS by entering vehicle identification information or emission control system identification data for a vehicle other than the one being tested.” On the basis of Finding 66 and Legal Conclusion 22, that portion of the Fifteenth Cause for Discipline will be affirmed.

61. Complainant asserts that Mr. Bath violated California Code of Regulations, title 16, section 3340.42, by “[failing] to ensure that the required smog test was conducted in accordance with the Bureau’s specifications.” On the basis of Finding 66 and Legal Conclusions 23 and 24, that portion of the Fifteenth Cause for Discipline will be affirmed.

SIXTEENTH CAUSE – DISHONESTY, FRAUD, OR, DECEIT

62. In the Accusation’s Sixteenth Cause for Discipline, complainant asserts that Mr. Bath’s Technician Licenses are subject to disciplinary action under Health and Safety Code section 44072.2, subdivision (d), in that on or about March 10, 2014, Mr. Bath “committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing a Certificate of Compliance for the 2006 Ford Fusion 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.”

63. On the basis of Finding 66, and Legal Conclusions 25 and 26, the Sixteenth Cause for Discipline will be affirmed.

Costs

64. Business and Professions Code section 125.3 provides that a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution. California Code of Regulations, title 1, section 1042, provides that declarations submitted in support of requests for costs shall describe the general tasks performed, the time spent on each task, and the hourly rate, as applicable.

65. There is no doubt that a significant amount of time was devoted to this investigation. However, the declaration submitted by Mr. Thomas, combined with the supporting testimony by Mr. Lopez, described in Finding 68, do not meet the requirements of California Code of Regulations, title 1, section 1042, for assessing reasonableness of costs. Accordingly, those claimed costs in the amount of \$13,559.26 are subject to reduction. The costs related billings from the Department of Justice, in the amount of \$2,482.50, are reasonable. (Finding 69.)

66. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 lists additional factors for consideration in determining the amount of costs to be assessed under statutory provisions such as Business and Professions Code section 125.3. Those additional factors include whether the licensee was successful at hearing in getting charges dismissed or

reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee raised a colorable challenge to the proposed discipline, and the financial ability of the licensee to pay.

67. Mr. Bath was successful in having approximately half of the allegations dismissed. Given the overall result, however, his ability to pay costs is questionable.

68. After consideration of the above factors, the request for costs will be granted, but in the modified amount of \$5,000.

Discipline

69. Health and Safety Code section 44072.10, subdivision (c), states:

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

(1) Clean piping, as defined by the department.

[¶] ... [¶]

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

70. California Code of Regulations, title 16, section 3340.1, states that "clean piping," for purposes of Health and Safety Code section 44072.10(c)(1), means the use of a substitute exhaust emissions sample in place of the actual test vehicle's exhaust in order to cause the EIS to issue a certificate of compliance for the test vehicle."

71. The evidence established that Mr. Bath clean piped the Ford Fusion. The provisions of Health and Safety Code section 44072.10, subdivision (c), require revocation of Mr. Bath's smog check station license RC 249722, and smog check inspector license EO 151462, and smog check repair technician license EI 151462.

ORDER

1. The First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes for Discipline are dismissed.

2. The Ninth, Tenth, Twelfth, Thirteenth, Fifteenth, and Sixteenth Causes for Discipline are affirmed.

3. The portions of the Eleventh and Fourteenth Causes for Discipline concerning Health and Safety Code section 44059 are dismissed. The remaining portions of the Eleventh and Fourteenth Causes for Discipline are affirmed.

4. Respondent's Smog Check Station License, RC 249722, is revoked.

5. Respondent's Automotive Repair Dealer Registration, ARD 249722, is revoked.

6. Respondent's Smog Check Inspector License, EO 151462, is revoked.

7. Respondent's Smog Check Repair Technician License, EI 151462, is revoked.

8. Costs are awarded to the Bureau in the amount of \$5,000.

DATED: June 18, 2015



VINCENT PASTORINO
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against:

DISCOUNT SMOG
ADANAN AMAR BATH, OWNER
937 West 16th Street
Merced, California 95340
Automotive Repair Dealer No. ARD 249722
Smog Check Station No. RC 249722

and

ADANAN AMAR BATH
1623 9th Street
Livingston, California 95334
Smog Check Repair Technician
License No. EI 151462
Smog Check Inspector
License No. EO 151462,

Case No. 79/15-36
ACCUSATION
smog check

Respondents.

Patrick Dorais ("Complainant") alleges:

PARTIES

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

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Automotive Repair Dealer Registration

2 2. On or about April 25, 2007, the Bureau issued Automotive Repair Dealer Registration
3 Number ARD 249722 ("Registration") to Adanan Amar Bath ("Respondent"), owner of Discount
4 Smog. The Registration was in full force and effect at all times relevant to the charges brought
5 herein and will expire on March 31, 2015, unless renewed.

Smog Check Station License

7 3. On or about June 4, 2007, the Bureau issued Smog Check Station License
8 Number RC 249722 ("Station License") to Respondent. The smog check station license was in
9 full force and effect at all times relevant to the charges brought herein and will expire on
10 March 31, 2015, unless renewed.

Smog Check Technician/Inspector License

12 4. On a date uncertain in 2005, the Bureau issued Advanced Emission Specialist
13 Technician License Number EA 151462 to Respondent. On or about April 2, 2013, the Bureau
14 issued Smog Check Inspector License Number EO 151462 and Smog Check Repair Technician
15 (EI) Number 151462 to Respondent (“Technician Licenses”).¹ The smog check inspector and
16 smog check repair technician licenses were in full force and effect at all times relevant to the
17 charges brought herein and will expire on March 31, 2015, unless renewed.

JURISDICTION

19 5. Business and Professions Code ("Code") section 9884.7 provides that the Director
20 may revoke an automotive repair dealer registration.

21 6. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
22 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding

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²⁵ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
26 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
27 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 against an automotive repair dealer or to render a decision temporarily or permanently
2 invalidating (suspending or revoking) a registration.

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

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

9. 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.

13 10. California Code of Regulations, title 16 (“Regulations”), section 3340.28, states, in .
14 pertinent part:

STATUTORY PROVISIONS

11. Code section 22 provides, in pertinent part, that "Board" as used in any provision of
this Code, refers to the board in which the administration of the provision is vested, and unless
otherwise provided, shall include "bureau," "commission," "committee," "department,"
"division," "examining committee," "program," and "agency."

23 12. Code section 477 provides, in pertinent part, that a "license" includes "certificate"
24 and "registration".

25 13. Code section 9884.7 states, in pertinent part:

26 (a) The director, where the automotive repair dealer cannot show there was a
27 bona fide error, may deny, suspend, revoke, or place on probation the registration
28 of an automotive repair dealer for any of the following acts or omissions related to
the conduct of the business of the 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.

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

(4) Any other conduct that constitutes fraud.

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

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

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

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

(e) 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.

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

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

(1) Clean piping, as defined by the department.

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

COST RECOVERY

16. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licensee to comply subjecting the license to not being

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1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
2 included in a stipulated settlement.

3 **UNDERCOVER VIDEO SURVEILLANCE #1**

4 17. On or about February 20, 2014, between approximately 06:45 and 18:30 hours, the
5 Bureau performed a video surveillance of Respondent's facility. A videotape of the surveillance
6 operation and/or information obtained from the Bureau's vehicle information database ("VID").
7 revealed that between 11:53 and 12:04 hours, Respondent performed a smog test on a 1985
8 Toyota Tercel, license number 6ECR484, and issued electronic Smog Certificate of Compliance
9 #YD385915C ("Certificate of Compliance") for the vehicle. In fact, Respondent performed the
10 smog inspection using the clean-piping method by using the tail pipe emissions of a vehicle other
11 than the 1985 Toyota Tercel in order to issue the Certificate of Compliance.²

12 **FIRST CAUSE FOR DISCIPLINE**

13 (Untrue or Misleading Statements)

14 18. Respondent's Registration is subject to disciplinary action under Code section
15 9884.7(a)(1), in that on or about February 20, 2014, Respondent made or authorized statements
16 which he knew or in the exercise of reasonable care should have known to be untrue or
17 misleading. Specifically, Respondent issued a Certificate of Compliance for a 1985 Toyota
18 Tercel, certifying that the vehicle was in compliance with applicable laws and regulations when,
19 in fact, the vehicle had been clean-piped.

20 **SECOND CAUSE FOR DISCIPLINE**

21 (Fraud)

22 19. Respondent's Registration is subject to disciplinary action under Code section
23 9884.7(a)(4), in that on or about February 20, 2014, Respondent committed an act that constitutes

25 ² California Code of Regulations, title 16, section 3340, states, in pertinent part, that
26 "[c]lean piping" for the purposes of Health and Safety Code section 44072.10(c)(1), means the
27 use of a substitute exhaust emissions sample in place of the actual test vehicle's exhaust in order
28 to cause the EIS to issue a certificate of compliance for the test vehicle".

1 fraud by issuing a Certificate of Compliance for the 1985 Toyota Tercel without performing a
2 bona fide inspection on that vehicle, thereby depriving the People of the State of California of the
3 protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program

6 20. Respondent's Station License No. RC 249722 is subject to disciplinary action under
7 Health & Saf. Code section 44072.2(a), in that on or about February 20, 2014, Respondent failed
8 to comply with the provisions of that Code as regards the 1985 Toyota Tercel, as follows:

9 a. Section 44012(f): Respondent failed to ensure that the emission control tests were
10 performed in accordance with the procedures prescribed by the department.

11 b. Section 44015(b): Respondent issued a Certificate of Compliance without
12 properly testing and inspecting the vehicle to determine if it was in compliance with Health &
13 Saf. Code section 44012.

14 c. Section 44059: Respondent falsely represented on the Certificate of Compliance
15 that the vehicle had been inspected as required when, in fact, it had not.

FOURTH CAUSE FOR DISCIPLINE

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

18 21. Respondent's Station License is subject to disciplinary action under Health & Saf.
19 Code section 44072.2(c), in that on or about February 20, 2014, Respondent failed to comply with
20 Regulations regarding the 1985 Toyota Tercel, as follows:

21 a. Section 3340.24(c): Respondent falsely or fraudulently issued a Certificate of
22 Compliance for the vehicle without performing a bona fide inspection of the emission control
23 devices and systems on that vehicle as required by Health & Saf. Code section 44012.

24 b. Section 3340.35(c): Respondent issued a Certificate of Compliance even though
25 the vehicle had not been inspected in accordance with section 3340.42.

26 c. Section 3340.41(c): Respondent entered false information into the EIS by entering
27 vehicle identification information or emission control system identification data for a vehicle
28 other than the one being tested.

d. Section 3340.42: Respondent failed to ensure that the required smog test was conducted in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

5 22. Respondent's Station License is subject to disciplinary action under Health & Saf.
6 Code section 44072.2(d), in that on or about February 20, 2014, Respondent committed a
7 dishonest, fraudulent or deceitful act whereby another is injured by issuing a Certificate of
8 Compliance for the 1985 Toyota Tercel when, in fact, it had not been properly tested and
9 inspected, thereby depriving the People of the State of California of the protection afforded by the
10 Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

13 23. Respondent's Technician Licenses are subject to disciplinary action under Health &
14 Saf. Code section 44072.2(a), in that on or about February 20, 2014, Respondent failed to comply
15 with section 44012 of that Code as regards the 1985 Toyota Tercel, as follows:

16 a. Section 44012(f): Respondent failed to determine that all emission control
17 devices and systems required by law were installed and functioning correctly in accordance with
18 prescribed test procedures.

19 b. Section 44032: Respondent failed to perform tests of the emission control
20 devices and systems in accordance with Health & Saf. Code section 44012, in that the vehicle had
21 been clean-piped.

22 c. Section 44059: Respondent willfully made false entries into the Emission
23 Inspection System ("EIS") for a Certificate of Compliance by entering vehicle identification
24 information or emission control information for a vehicle other than the one being tested.

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SEVENTH CAUSE FOR DISCIPLINE

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

3 24. Respondent's Technician Licenses are subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2(c), in that on or about February 20, 2014, Respondent failed
5 to comply with Regulations as regards the 1985 Toyota Tercel as follows:

6 a. Section 3340.30(a): Respondent failed to inspect and test the vehicle in
7 accordance with Health & Saf. Code section 44012.

8 b. Section 3340.41(c): Respondent entered false information into the EIS by
9 entering vehicle identification information or emission control system identification data for a
10 vehicle other than the one being tested.

11 c. Section 3340.42: Respondent failed to ensure that the required smog test was
12 conducted in accordance with the Bureau's specifications.

EIGHTH CAUSE FOR DISCIPLINE

14 (Dishonesty, Fraud, or Deceit)

15 25. Respondent's Technician Licenses are subject to disciplinary action pursuant to
16 Health & Saf. Code section 44072.2(d), in that on or about February 20, 2014, Respondent
17 committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing a
18 Certificate of Compliance for the 1985 Toyota Tercel without performing a bona fide inspection
19 of the emission control devices and systems on the vehicle, thereby depriving the People of the
20 State of California of the protection afforded by the Motor Vehicle Inspection Program.

UNDERCOVER VIDEO SURVEILLANCE #2

22 26. On or about March 10, 2014, between approximately 06:35 and 19:02 hours, the
23 Bureau performed a video surveillance of Respondent's facility. A videotape of the surveillance
24 operation and/or information obtained from the Bureau's vehicle information database ("VID"),
25 revealed that between 14:58 and 15:16 hours, Respondent performed a smog test on a 2006 Ford
26 Fusion, license number 5TTR150, and issued Smog Certificate of Compliance #PE549130C
27 ("Certificate of Compliance") for the vehicle. In fact, Respondent performed the smog inspection

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1 using the clean-piping method by using the tail pipe emissions of a vehicle other than the 2006
2 Ford Fusion in order to issue the Certificate of Compliance.

NINTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

5 27. Respondent's Registration is subject to disciplinary action under Code
6 section 9884.7(a)(1), in that on or about March 10, 2014, Respondent made or authorized
7 statements which he knew or in the exercise of reasonable care should have known to be untrue or
8 misleading. Specifically, Respondent issued a Certificate of Compliance for a 2006 Ford Fusion,
9 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,
10 the vehicle had been clean-piped.

TENTH CAUSE FOR DISCIPLINE

(Fraud)

13 28. Respondent's Registration is subject to disciplinary action under Code section
14 9884.7(a)(4), in that on or about March 10, 2014, Respondent committed an act that constitutes
15 fraud by issuing a Certificate of Compliance for the 2006 Ford Fusion without performing a bona
16 fide inspection on that vehicle, thereby depriving the People of the State of California of the
17 protection afforded by the Motor Vehicle Inspection Program.

ELEVENTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

20 29. Respondent's Station License No. RC 249722 is subject to disciplinary action under
21 Health & Saf. Code section 44072.2(a), in that on or about March 10, 2014, Respondent failed to
22 comply with the provisions of that Code as regards the 2006 Ford Fusion, as follows:

23 a. Section 44012(f): Respondent failed to ensure that the emission control tests
24 were performed in accordance with the procedures prescribed by the department.

25 b. Section 44015(b): Respondent issued a Certificate of Compliance without
26 properly testing and inspecting the vehicle to determine if it was in compliance with Health &
27 Saf. Code section 44012.

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1 c. Section 44059: Respondent falsely represented on a Certificate of Compliance
2 that the vehicle had been inspected as required when, in fact, it had not.

TWELFTH CAUSE FOR DISCIPLINE

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

5 30. Respondent's Station License is subject to disciplinary action under Health & Saf.
6 Code section 44072.2(c), in that on or about March 10, 2014, Respondent failed to comply with
7 Regulations regarding the 2006 Ford Fusion, as follows:

8 a. Section 3340.24(c): Respondent falsely or fraudulently issued a Certificate of
9 Compliance for the vehicle without performing a bona fide inspection of the emission control
10 devices and systems on that vehicle as required by Health & Saf. Code section 44012.

11 b. Section 3340.35(c): Respondent issued a Certificate of Compliance even though
12 the vehicle had not been inspected in accordance with section 3340.42.

13 c. Section 3340.41(c): Respondent entered false information into the EIS by
14 entering vehicle identification information or emission control system identification data for a
15 vehicle other than the one being tested.

16 d. Section 3340.42: Respondent failed to ensure that the required smog test was
17 conducted in accordance with the Bureau's specifications.

THIRTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

20 31. Respondent's Station License is subject to disciplinary action under Health & Saf.
21 Code section 44072.2(d), in that on or about March 10, 2014, Respondent committed a dishonest,
22 fraudulent or deceitful act whereby another is injured by issuing a Certificate of Compliance for
23 the 2006 Ford Fusion when, in fact, it had not been properly tested and inspected, thereby
24 depriving the People of the State of California of the protection afforded by the Motor Vehicle
25 Inspection Program.

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FOURTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

3 32. Respondent's Technician Licenses are subject to disciplinary action under Health &
4 Saf. Code section 44072.2(a), in that on or about March 10, 2014, Respondent failed to comply
5 with section 44012 of that Code as regards the 2006 Ford Fusion, as follows:

6 a. Section 44012(f): Respondent failed to determine that all emission control
7 devices and systems required by law were installed and functioning correctly in accordance with
8 prescribed test procedures.

12 c. Section 44059: Respondent willfully made false entries into the Emission
13 Inspection System ("EIS") for a Certificate of Compliance by entering vehicle identification
14 information or emission control information for a vehicle other than the one being tested.

FIFTEENTH CAUSE FOR DISCIPLINE

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

17 33. Respondent's Technician Licenses are subject to disciplinary action pursuant to
18 Health & Saf. Code section 44072.2(c), in that on or about March 10, 2014, Respondent failed to
19 comply with Regulations as regards the 2006 Ford Fusion as follows:

20 a. Section 3340.30(a): Respondent failed to inspect and test the vehicle in
21 accordance with Health & Saf. Code section 44012.

22 b. Section 3340.41(c): Respondent entered false information into the EIS by
23 entering vehicle identification information or emission control system identification data for a
24 vehicle other than the one being tested.

25 c. Section 3340.42: Respondent failed to ensure that the required smog test was
26 conducted in accordance with the Bureau's specifications.

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SIXTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, or Deceit)

3 34. Respondent's Technician Licenses are subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2(d), in that on or about March 10, 2014, Respondent
5 committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing a
6 Certificate of Compliance for the 2006 Ford Fusion without performing a bona fide inspection of
7 the emission control devices and systems on the vehicle, thereby depriving the People of the State
8 of California of the protection afforded by the Motor Vehicle Inspection Program.

MATTERS IN AGGRAVATION

Discount Smog

11 35. On or about May 29, 2008, the Bureau issued Citation No. C08-1048 against
12 Respondent for violation of Health & Saf. Code section 44012(f) (failure to perform a
13 visual/functional check of emission control devices according to procedures prescribed by the
14 department), and Regulations, section 3340.35(c) (issuing a certificate of compliance to a vehicle
15 that was improperly tested). On May 21, 2008, Respondent issued a certificate of compliance to a
16 Bureau undercover vehicle with a missing PCV system. The Bureau assessed civil penalties
17 totaling \$500 against Respondent for the violations. Respondent paid the fine on July 15, 2008.

18 36. On or about October 27, 2008, the Bureau issued Citation No. C09-0458 against
19 Respondent for violation of Health & Saf. Code section 44012(f) (failure to perform a
20 visual/functional check of emission control devices according to procedures prescribed by the
21 department), and Regulations, section 3340.35(c) (issuing a certificate of compliance to a vehicle
22 that was improperly tested). On October 14, 2008, Respondent issued a certificate of compliance
23 to a Bureau undercover vehicle with a missing pulse air reed valve. The Bureau assessed civil
24 penalties totaling \$1000 against Respondent for the violations. Respondent paid the fine on
25 December 3, 2008.

Adanan Bath

27 37. On or about May 29, 2008, the Bureau issued Citation No. M08-1049 against
28 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall

1 perform tests of emission control systems and devices in accordance with Health & Saf. Code
2 section 44012), and Regulations, section 3340.30(a) (qualified technicians shall inspect, test, and
3 repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035, and
4 Regulations, section 3340.42). On May 21, 2008, Respondent issued a certificate of compliance
5 to a Bureau undercover vehicle with a missing PVC system. Respondent was directed to
6 complete an eight hour training course and to submit proof of completion to the Bureau within 30
7 days from receipt of the citation. Respondent completed the training on August 16, 2008.

8 38. On or about October 27, 2008, the Bureau issued Citation No. M09-0459 against
9 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
10 perform tests of emission control systems and devices in accordance with Health & Saf. Code
11 section 44012), and Regulations, section 3340.30(a) (qualified technicians shall inspect, test, and
12 repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035, and
13 Regulations, section 3340.42). On October 14, 2008, Respondent issued a certificate of
14 compliance to a Bureau undercover vehicle with a missing pulse air reed valve. Respondent was
15 directed to complete a sixteen hour training course and to submit proof of completion to the
16 Bureau within 30 days from receipt of the citation. Respondent completed the training on
17 January 24, 2009.

18 **OTHER MATTERS**

19 39. Pursuant to Code section 9884.7(c), the Director may suspend, revoke, or place on
20 probation the registration for all places of business operated in this state by Adarian Amar Bath,
21 owner of Discount Smog, upon a finding that said Respondent has, or is, engaged in a course of
22 repeated and willful violations of the laws and regulations pertaining to an automotive repair
23 dealer.

24 40. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
25 Number RC 249722, issued to Adarian Amar Bath, owner of Discount Smog, is revoked or
26 suspended, any additional license issued under this chapter in the name of said licensee may be
27 likewise revoked or suspended by the Director.

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1 41. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
2 Number EO 151462 and/or Smog Check Repair Technician License Number EI 151462, issued to
3 Adanan Amar Bath is revoked or suspended, any additional license issued under this chapter in
4 the name of said licensee may be likewise revoked or suspended by the Director.

PRAYER

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

8 1. Revoking or suspending Automotive Repair Dealer Registration Number
9 ARD 249722, issued to Adanan Amar Bath, as owner of Discount Smog;

10 2. Revoking or suspending any other automotive repair dealer registration issued to
11 Adanan Amar Bath;

12 3. Revoking or suspending Smog Check Station License Number RC 249722, issued to
13 Adanan Amar Bath, as owner of Discount Smog;

14 4. Revoking or suspending Smog Check Inspector License Number EO 151462 and
15 Smog Check Repair Technician License Number EI 151462, issued to Respondent Adanan Amar
16 Bath;

17 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
18 and Safety Code in the name of Adanan Amar Bath;

19 6. Ordering Adanan Amar Bath, individually, and as owner of Discount Smog, to pay
20 the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of
21 this case, pursuant to Business and Professions Code section 125.3; and,

22 7. Taking such other and further action as deemed necessary and proper.

23 DATED: September 4, 2014

PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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