

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

In the Matter of the Petition for an Interim Suspension
Order Against:

**ADVANCED SMOG TEST ONLY CENTER
FERNANDO JACINTO, OWNER**
Automotive Repair Dealer Registration No. ARD 254132
Smog Check Test Only Station License No. TC 254132

and

PETER ALFONSO
Advanced Emission Specialist Technician License
No. EA 632902,

and

GHEVOND VAHE AVEDIAN
Advanced Emission Specialist Technician License
No. EA 631628,

Respondents.

Case No. 79/12-06

OAH No. 2011080745

AMENDED ORDER ON PETITION FOR INTERIM SUSPENSION ORDER

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings,
State of California, heard this matter on September 2, 2011, in Los Angeles.

Thomas L. Rinaldi, Deputy Attorney General, represented Sherry Mehl (Petitioner).

Respondent Fernando Jacinto, doing business as Advanced Smog Test Only Center,
appeared and was represented by Alejandro Menchaca, attorney at law. Respondent Peter
Alfonso appeared and represented himself. Respondent Ghevond Vahe Avedian appeared
and was represented by William Ferreira, attorney at law, Automotive Defense Specialists.

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The Administrative Law Judge, having read and considered the petition for an interim suspension order (Petition) and the memorandum of points and authorities with attachments and declarations in support of the Petition, and the Opposition to Petition, with attachments and declarations, filed by respondent Avedian, and having heard oral argument, makes the following order:

FACTUAL FINDINGS

1. Petitioner filed the Petition in her official capacity as Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department), State of California. Respondents were given timely notice of the hearing on the Petition in conformity with the requirements of the Business and Professions Code and the Administrative Procedure Act (Gov. Code, § 11370 et seq.)
2. On March 19, 2008, the Bureau issued Automotive Repair Dealer Registration Number ARD 254132 to respondent Fernando Jacinto, doing business as Advanced Smog Test Only Center (Advanced Smog). The registration was in full force and effect at all times relevant and will expire on February 29, 2012, unless renewed.
3. On March 20, 2003, the Bureau issued Smog Check Test Only Station License Number TC 254132 to respondent Advanced Smog. The registration and license were in full force and effect at all times relevant and will expire on February 29, 2012, unless renewed.
4. On January 7, 2010, the Bureau issued Advanced Emission Specialist Technician License Number EA 631628 to respondent Ghevond Vahe Avedian. The Advanced Emission Specialist Technician license was in full force and effect at all times relevant and will expire on January 31, 2012, unless renewed.
5. On March 2, 2011, the Bureau issued Advanced Emission Specialist Technician License Number EA 632902 to respondent Peter Alfonso. The Advanced Emission Specialist Technician license was in full force and effect at all times relevant and will expire on March 31, 2013, unless renewed.
6. On May 17, 2011, between 11:09 a.m. and 5:07 p.m., the Bureau conducted a videotaped surveillance of smog inspections performed at Advanced Smog. The surveillance operation and information obtained from the Bureau's Vehicle Information Database (VID) revealed that during the period of the surveillance, respondents Alfonso and Avedian, with the assistance of respondent Jacinto, who is not a licensed smog technician, performed five smog inspections that resulted in the issuance of electronic certificates of compliance, certifying that five vehicles had been inspected and were in compliance with applicable law.
7. In fact, respondents Alfonso and Avedian, with the assistance and participation of respondent Jacinto, performed those inspections using the "clean piping" method, certifying vehicles that were not tested. The "clean-piping" method involves the use of an exhaust gas sample that will pass the smog check emissions test, while entering data into the analyzer for

the vehicle to be fraudulently certified. None of the five vehicles certified was in the test bay at the time of the smog inspections.

8. Respondents Jacinto, doing business as Advanced Smog, and Alfonso submitted no written evidence in opposition to the Petition.

9. Respondent Avedian submitted a declaration in opposition to the Petition. He declared that, on the instructions of respondent Jacinto, he knowingly entered his license number into the computer so that respondent Jacinto could perform illegal smog checks. Respondent Avedian further declared, however, that he had cooperated with respondent Jacinto due to economic duress, respondent Jacinto having told him that performing the clean-piping was a condition of continued employment. Respondent Avedian submitted no authority for the dubious proposition that the prospect of losing one's job legally justifies participation in a fraudulent scheme. Nor did he submit evidence to support the proposition that he would act differently were a subsequent employer to make the same demands on him that respondent Jacinto did.

10. Motor vehicle emissions are a significant contributor to air pollution levels in California. California's smog check program is designed to improve air quality and to protect the public health by reducing vehicle emissions. It is also designed to comply with the federal Clean Air Act. (See, e.g., Health & Saf. Code, § 44001.5, subds. (a), (b); see also §§ 43000, subd. (c), 43000.5, subd. (b), and 43018.5, subd. (a).)

11. Allowing respondents Fernando Jacinto, doing business as Advanced Smog, Peter Alfonso, and Ghevond Vahe Avedian to continue to engage in their licensed activities would endanger the public health, safety, and welfare.

LEGAL CONCLUSIONS

1. Business and Professions Code section 494, subdivision (a), provides in pertinent part:

(a) A board or an administrative law judge sitting alone . . . may, upon petition, issue an interim order suspending any licentiate or imposing licensing restrictions The petition shall include affidavits that demonstrate, to the satisfaction of the board, both of the following:

(1) The licentiate has engaged in acts or omissions constituting a violation of this code

(2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.

2. The standard of proof required to obtain an interim suspension order is a preponderance of the evidence. (Bus. & Prof. Code, § 494, subd. (e).)

3. For purposes of this proceeding only, the evidence established that respondents Jacinto, doing business as Advanced Smog, Alfonso, and Avedian engaged in acts or omissions constituting violations of the Motor Vehicle Inspection Program (Health and Safety Code section 44000 et seq.). Specifically, the evidence establishes violations of Health and Safety Code sections 44072.2, subdivisions (a), (c), and (d), and California Code of Regulations, title 16, sections 3340.24, subdivision (c), 3340.35, subdivision (c), and 3340.42. (Factual Findings 1-10.)

4. For purposes of this proceeding only, it was also established that permitting respondents to continue engaging in the licensed activity pending the outcome of an administrative hearing in this matter would endanger the public health, safety, and welfare. Each illegal smog inspection performed put another vehicle on the road that disproportionately discharges noxious gases that pollute the environment. Respondents' illegal conduct creates a serious and ongoing threat to the health, safety, and welfare of the public. (Factual Findings 1-10.) Clean-piping is considered so egregious that the Legislature has mandated that a single instance of clean-piping committed by a smog station or technician shall result in the outright revocation of his or her license under Health and Safety Code section 44072.10, subdivision (c).

5. Cause exists, therefore, under Business and Professions Code section 494, to issue an interim suspension order against respondents. Given respondent Jacinto's willingness to engage in clean-piping, his insistence that his employees engage in clean-piping, and the willingness of those employees, respondents Alfonso and Avedian, to follow respondent Jacinto's instructions, there is no reason to believe that any of the respondents would discontinue the misconduct absent an interim suspension order. (Factual Findings 1-10.)

ORDER

The Petition is granted.

Automotive Repair Dealer Registration Number ARD 254132 and Smog Check Test Only Station License No. TC 254132, issued to respondent Fernando Jacinto, owner, doing business as Advanced Smog Test Only Center, are suspended pending a final decision issued by the Bureau on the Accusation that is required to be filed under Business and Professions Code section 494, subdivision (f).

Advanced Emission Specialist Technician License Number EA 632902, issued to respondent Peter Alfonso, is suspended pending a final decision issued by the Bureau on the Accusation that is required to be filed under Business and Professions Code section 494, subdivision (f).

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Advanced Emission Specialist Technician License Number EA 631628, issued to respondent Ghevond Vahe Avedian, is suspended pending a final decision issued by the Bureau on the Accusation that is required to be filed under Business and Professions Code section 494, subdivision (f).

DATED: September 7, 2011


HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Interim Suspension Order
Against:

Case No. 79/12-06

12 In the Matter of the Accusation Against:

13 **PETITION FOR INTERIM SUSPENSION**
14 **ORDER**

14 **ADVANCED SMOG TEST ONLY**
15 **CENTER**
16 **9614 East Garvey, Unit C**
17 **El Monte, CA 91733**
18 **FERNANDO JACINTO, OWNER**
19 **Automotive Repair Dealer Registration No.**
20 **ARD 254132**
21 **Smog Check Test Only Station License No.**
22 **TC 254132**

[Business and Professions Code section 494]

DATE: September 2, 2011
TIME: 10:00 A.M.
LOCATION: Office of Administrative
Hearings, 320 West Fourth Street, Suite 630
Los Angeles, CA 90013.

18 and

19 **PETER ALFONSO**
20 **25344 Pennsylvania Ave, #1**
21 **Lomita, CA 90717**
22 **Advanced Emission Specialist Technician**
23 **License No. EA 632902,**

23 and

24 **GHEVOND VAHE AVEDIAN**
25 **1940 Hilldale Drive**
26 **La Canada, CA 91011**
27 **Advanced Emission Specialist Technician**
28 **License No. EA 631628**

Respondents.

1 technician license was in full force and effect at all times relevant to the charges brought herein
2 and will expire on March 31, 2013, unless renewed.

3 5. On or about January 7, 2010, the Bureau issued Advanced Emission Specialist
4 Technician License Number EA 631628 to Ghevond Vahe Avedian ("Respondent Avedian").
5 The technician license was in full force and effect at all times relevant to the charges brought
6 herein and will expire on January 31, 2012, unless renewed.

7 **JURISDICTION**

8 6. Business and Professions Code section 494 provides, in pertinent part as
9 follows:

10 (a) A board or administrative law judge sitting alone...may, upon petition, issue an
11 interim order suspending any licentiate....The petition shall include affidavits that
12 demonstrate, to the satisfaction of the board, both of the following:

13 (1) The licentiate has engaged in acts or omissions constituting a violation of this
14 code or has been convicted of a crime substantially related to the licensed activity.

15 (2) Permitting the licentiate to continue to engage in the licensed activity, or
16 permitting the licentiate to continue in the licensed activity without restrictions,
17 would endanger the public health, safety, or welfare.

18 7. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

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

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

**VIOLATIONS OF THE AUTOMOTIVE REPAIR ACT AND MOTOR
VEHICLE INSPECTION PROGRAM**

Respondents have engaged in acts or omissions constituting violations of the
Motor Vehicle Inspection Program (Health and Safety Code section 44000 et. seq.) in the
following respects:

8. On or about May 17, 2011, the Bureau performed a video-taped surveillance at Respondent Advanced Smog's facility. The surveillance operation and information obtained from the Bureau's Vehicle Information Database ("VID") revealed that between 1109 hours and 1707 hours, Respondents Alfonso and Avedian, with the assistance of Fernando Jacinto, who is not a licensed smog technician, performed five (5) smog inspections that resulted in the issuance of electronic certificates of compliance for the vehicles set forth in Table 1, below, certifying that they had tested and inspected those vehicles and that the vehicles were in compliance with applicable laws and regulations.

Table 1

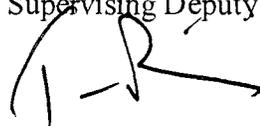
Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
1 5/17/2011 1109 hours to 1126 hours	2009 Toyota Yaris, VIN No. JTD8T903491300436	1999 Ford Escort, License No. 5GBU744	WV409899C	Respondent Alfonso and Jacinto performed inspection.
2 5/17/2011 1339 hours to 1344 hours	2009 Toyota Yaris VIN No. JTDBT903491300436	1999 Ford Escort, License No. 5GBU744	WV471602C	Respondent Alfonso and Jacinto performed the inspection a second time. The VIN # was entered into the EIS incorrectly for the first test.
3 5/17/2011 1347 hours to 1353 hours	2000 Hyundai Accent License No. 4LVM098	1999 Ford Escort, License No. 5GBU744	WV471603C	Respondent Alfonso and Jacinto performed the inspection.
4 5/17/2011 1625 hours to 1641 hours	1995 Acura Integra, License No. 3LCW263	1999 Mazda 626, License No. 4FXV803 or 1999 Ford Escort, License No. 5GBU744	WV471605C	Respondent Avedian and Jacinto performed the inspection.
5 5/17/2011 1651 hours To 1707 hours	1991 Mercedes 300SL, License No. 5ROZ487	2001 Toyota Sienna, License No. 4MRP772	WV471606C	Respondent Avedian and Jacinto performed the inspection.

1 Program and further, order any other and further relief deemed necessary to protect the public
2 health, safety, and welfare.

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4 Dated: August 10, 2011

Respectfully submitted,

5 KAMALA D. HARRIS
6 Attorney General of California
7 KAREN B. CHAPPELLE
8 Supervising Deputy Attorney General



9 THOMAS L. RINALDI
10 Deputy Attorney General
11 *Attorneys for Complainant*

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