

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

In the Matter of the Accusation Against:

CALIFORNIA SMOG ONLY
NABILA IQBALL, Owner
443 S. Wilson Way
Stockton, California 95205
Automotive Repair Dealer Registration
No. ARD 264464
Smog Check, Test Only, Station License
No. TC 264464

and

CALIFORNIA SMOG
PARVEZ AHMED, Owner
443 S. Wilson Way
Stockton, California 95205
Automotive Repair Dealer Registration
No. ARD 262298
Smog Check, Test Only, Station License
No. TC 262298

and

HEDAYATULLAH BAYANZAY
12773 North Lower Sacramento Road
Lodi, California 95242
Advanced Emission Specialist Technician
License No. EA 631151

Respondents.

Case No. 79/12-40

OAH No. 2012020478

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, only as to respondent California Smog, Parvez Ahmed, Owner, Automotive Repair Dealer Registration No. ARD 262298 and Smog Check, Test Only, Station License No. TC 262298, except that, pursuant to Government Code section 11517(c)(2)(C), the typographical errors in the Proposed Decision are corrected as follows:

1. Page 1, caption: "Smog Check State License No. TC 262298" is corrected to read "Smog Check, Test Only, Station License No. TC 262298."

2. Page 2, paragraph 1, line 4, "Smog Check, Test Only, Station License No. TC 256293" is corrected to read "Smog Check, Test Only, Station License No. TC 262298."
3. Page 12, paragraph 3, line 1, "Smog Check Station License No. TC 262298" is corrected to read "Smog Check, Test Only, Station License No. TC 262298."

This Decision shall become effective 2/25/13.

DATED: January 18, 2013



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

CALIFORNIA SMOG; PARVEZ AHMED,
OWNER,

Stockton, California 95205

Automotive Repair Dealer Registration No.
ARD 262298
Smog Check State License No. TC 262298,

Respondents.

Case No. 79/12-40

OAH No. 2012020478

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on December 14, 2012, in Sacramento, California.

Geoffrey S. Allen, Deputy Attorney General, represented complainant Sherry Mehl, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department).

Respondent Parvez Ahmed represented himself and his business, California Smog. Kamal Judge, a certified Punjabi interpreter, interpreted the proceedings for respondent.

Evidence was received, the record was closed, and the matter was submitted for decision on December 14, 2012.

SUMMARY

Complainant seeks to discipline respondent's automotive repair dealer registration and smog check station license on the grounds that his smog technician violated numerous provisions of the Automotive Repair Act and regulations adopted pursuant to it. On December 16, 2010, the technician issued a certificate of compliance for a Bureau undercover vehicle that had a defective exhaust gas recirculation (EGR) valve and a

blockage plate installed. But the vehicle should have failed a valid smog inspection due to either of those defects. On January 27, 2011, that same technician issued a certificate of compliance for a 1990 Chevrolet Camaro based on the sampling of the exhaust emissions of a different vehicle.¹ As discussed below, cause exists to discipline respondent's registration and license based on his smog technician's violations of the law. Respondent did not introduce sufficient evidence to demonstrate that he is capable of performing the duties of a registrant or licensee of the Bureau in a manner consistent with public health, safety, and welfare, even on a probationary basis. Therefore, respondent's automotive repair dealer registration should be permanently invalidated and his smog check station license should be revoked.

FACTUAL FINDINGS

1. On June 21, 2010, the Bureau issued Automotive Repair Dealer Registration No. ARD 262298 (registration) to respondent doing business as California Smog. The registration expired June 30, 2011, and has not been renewed.² On July 13, 2010, the Bureau issued Smog Check, Test Only, Station License No. TC 256293 (station license) to respondent doing business as California Smog. The license expired June 30, 2011, and has not been renewed.³ There is no history of prior discipline of the registration or station license.

2. Complainant filed an Accusation solely in her official capacity on September 22, 2011. The Accusation seeks to discipline respondent's registration and station license based on numerous violations of the Automotive Repair Act and regulations adopted pursuant to it.

Documentation of the Bureau's 1995 Chevrolet Beretta

3. From November 10 through 23, 2010, Joseph T. Gibson, a Program Representative II - Specialist employed in the Bureau's Sacramento Documentation Lab, documented a 1995 Chevrolet Beretta, California license plate number [REDACTED] (Beretta). The vehicle is California emissions certified as a passenger vehicle, and is equipped with a fuel injected 3.1 liter, six cylinder engine and automatic transmission. Ordinarily, an

¹ "Clean piping" is a process by which a smog technician can fraudulently issue a certificate of compliance to a vehicle that could not otherwise pass a proper smog inspection by sampling the exhaust emissions from another vehicle but reporting them as being for the former.

² The expiration of a valid automotive repair dealer registration does not deprive the Department of jurisdiction to discipline the registration. (Bus. & Prof. Code, § 9884.13.)

³ The expiration of a valid smog check station license does not deprive the Department of jurisdiction to discipline the license. (Health & Saf. Code, § 44072.6.)

Exhaust Gas Recirculation (EGR) valve is part of one of the Beretta's required emission control systems. The EGR valve has three electrical solenoids controlled by the vehicle's computerized engine control system. By controlling these solenoids under varying conditions, the vehicle's computer introduces exhaust gases into the intake manifold to help reduce emissions of oxides of nitrogen (NOX). Mr. Gibson performed a smog inspection on the vehicle, and it passed inspection.

4. Mr. Gibson then removed the EGR valve and rendered it inoperative by breaking the wiring around each of the solenoids, which prevented the Beretta's computerized engine control system from controlling the valve. He then installed the defective EGR valve with an EGR blockage plate between the base of the valve and the engine. The blockage plate was installed to prevent any exhaust gas flow into the intake manifold if the solenoids somehow became operable, and independently rendered the EGR valve inoperative. He then installed a tamper indicator on the EGR valve to detect its removal. Mr. Gibson performed another smog inspection, and the vehicle failed the functional portion of the inspection because of the defective EGR valve and blockage plate.

December 16, 2010 Undercover Run

5. On December 16, 2010, Christopher A. Pryor, a Program Representative employed in the Bureau's Sacramento Field Office, retrieved the Beretta from the Bureau's Documentation Lab. He reviewed Mr. Gibson's paperwork to determine what changes were made to the vehicle and confirmed the vehicle's EGR valve was inoperative, the blockage plate was installed, and the tamper indicator was in place. He then turned custody of the vehicle over to an operative with instructions to drive to a predetermined location in Stockton, California. Once at that location, Mr. Pryor confirmed that the changes to the EGR valve and tamper indicator were still in place. He then instructed the operative to drive the Beretta to respondent's smog station and request a smog inspection.

6. The undercover operative drove to California Smog, spoke with smog technician Hedayatullah Bayanzay, and requested a smog inspection. Once the inspection was performed and Mr. Bayanzay told the operative the Beretta had passed inspection, the operative paid \$82.95 and received a copy of an estimate, an invoice, and a Vehicle Inspection Report (VIR). The operative drove back to the predetermined location, where Mr. Pryor confirmed that the EGR valve was still inoperative, the blockage plate was still in place, and the tamper indicator had not been disturbed. He then received the estimate, invoice, and VIR from the operative. The operative drove the Beretta to the Bureau's documentation lab and returned the vehicle to Mr. Pryor, who then secured the vehicle in the documentation lab.

7. On February 4, 2011, Mr. Gibson inspected the Beretta and confirmed the tamper indicator had not been disturbed and the EGR valve and blockage plate had not been removed. He then performed a smog inspection, and the vehicle failed the functional portion of the inspection because of the defective EGR valve and blockage plate.

8. The VIR the undercover operative received contains a box entitled "Overall Test Results." In that box, the VIR, in relevant part, states, "Congratulations! Your vehicle passed the enhanced Smog Check inspection, which helps California reach its daily goal of removing an extra 100 tons of smog-forming emissions from the air...." This box also includes the Certificate of Compliance number assigned to the Beretta and states the vehicle's "Smog Check certificate has been electronically transmitted to DMV."

The VIR also contains a section entitled "Emission Control Systems Visual Inspection/Functional Check Results." Under this title, in parentheses, the VIR states that "Visual/Functional tests are used to assist in the identification of oxides of nitrogen, crankcase and cold start emissions which are not measured during the idle test." One of the emission control systems listed on the VIR is "EGR Functional." The VIR contains no entry for the EGR functional test.

Near the bottom of the VIR is an area entitled "Smog Check Inspection Station Information." The VIR identifies Mr. Bayanzay as the technician who performed the smog inspection. Mr. Bayanzay signed the VIR under a certification that states:

I certify, under penalty of perjury, under the laws of the State of California, that I performed the inspection in accordance with all bureau requirements, and that the information listed on this vehicle inspection report is true and correct.

January 27, 2011 Video Surveillance of California Smog

9. On January 27, 2011, Mr. Pryor installed a video camera outside California Smog and aimed it at the smog station's repair bay. The camera recorded the activities that took place at California Smog from 6:55 a.m. to 6:35 p.m.

10. Sometime after January 27, 2011, on a specific date not established by the evidence, Mr. Pryor reviewed the BAR97 test summary for all smog inspections conducted at California Smog on January 27, 2011. Smog inspections performed at licensed smog check stations in California are conducted using a machine called the Emission Inspection System (EIS), also known as BAR97. Each smog station's EIS is connected by telephone modem to the Bureau's Vehicle Information Database (VID). The VID stores information about every smog inspection performed at a licensed smog check station in California. A Bureau representative has the ability to print out that information for a particular station by date, as well as a specific inspection.

11. The January 27, 2011 BAR97 test summary for California Smog showed that between 3:38 p.m. and 4:07 p.m., a 1990 Chevrolet Camaro, California license plate number 2VLS242 (Camaro), was tested and issued Certificate of Compliance No. OA343904 by Mr. Bayanzay. When Mr. Pryor reviewed the video surveillance from that date, he discovered that the Camaro was in fact driven and parked in the smog check bay at California Smog at 3:38 p.m. But two minutes later, the vehicle was driven out of the bay, and a Ford pickup

truck was driven into the bay. The truck was easily identifiable by its distinctive black and yellow striped tailgate. At 3:44 p.m., Mr. Bayanzay inserted the EIS sample probe into the tailpipe of the Ford pickup. He removed the probe at 3:47 p.m., drove the pickup out of the smog bay one minute later, and drove the Camaro back into the bay three minutes after that. The Camaro was driven out of the smog bay at 4:10 p.m. At no time was the EIS sample probe placed in the tailpipe of the Camaro, even though California law requires every smog inspection to include a sampling of the vehicle's exhaust emissions using the probe.

12. When Mr. Pryor returned to retrieve the video camera on January 27, 2011, he saw Mr. Bayanzay closing the shop. Mr. Pryor saw Mr. Bayanzay get into a pickup truck and drive away. While it was dark, Mr. Pryor was able to see the black and yellow stripes on the tailgate as Mr. Bayanzay drove away.

Factors in Aggravation, Mitigation, and Rehabilitation

13. At hearing, respondent did not dispute the above evidence. Instead, he claimed ignorance of Mr. Bayanzay's illegal activities. His testimony was not persuasive.

14. Respondent explained that for 15 or 16 years he has owned the building California Smog operated out of, but has never been in the automotive repair or smog check business and knows nothing about either business. Prior to respondent obtaining his registration and station license, he rented the building to a gentleman named "John," who opened and operated California Smog. Due to severe health problems, John was eventually forced to give up his business. But California Smog had established itself with several customers, and respondent decided to obtain his registration and station license and assume ownership of the business. Since he knew nothing about the automotive repair or smog check business, a friend referred him to Mr. Bayanzay's father, who had developed a reputation as a skilled smog technician in Lodi, California. Respondent entered into an agreement with Mr. Bayanzay's father, whereby the father agreed to operate California Smog in exchange for 50 percent of the profits. Mr. Bayanzay's father eventually passed the operation of California Smog to his older son (Mr. Bayanzay's older brother). Operation of the business was eventually passed on to Mr. Bayanzay, again in exchange for 50 percent of the profits. While respondent testified that he eventually terminated the operation agreement with Mr. Bayanzay and instead leased the property to him to operate California Smog on his own, the evidence demonstrated that did not occur until sometime after June 30, 2011, if in fact it occurred at all. Even if respondent may not have known of the illegal activity of Mr. Bayanzay, as the station licensee he is responsible for all activity conducted at his station by his partner.

15. As discussed below, cause exists for disciplining respondent's registration and station license based on the above violations of the Automotive Repair Act and regulations adopted pursuant to it. Respondent did not demonstrate that he has the ability to engage in the duties of a registrant or licensee of the Bureau in a manner consistent with public health, safety, and welfare, even on probation. Therefore, his registration should be permanently invalidated and his station license should be revoked.

Costs of Investigation and Enforcement

16. Pursuant to Business and Professions Code section 125.3, complainant has requested costs of investigation and enforcement in the total amount of \$15,920.57. This amount consists of costs incurred directly by the Bureau (\$4,618.07), as well as costs incurred by the Office of the Attorney General and billed to the Bureau (\$11,302.50). At the hearing, complainant introduced, without objection, a Certification of Investigative and Other Costs in support of the investigation costs incurred directly by the Bureau. The Certification is divided into four categories – Investigator Costs, Undercover Vehicle Operator & Evidence Costs, Clerical Support, and Attorney General’s Office Cost. The first and second categories provide no information about the general tasks performed or the amount of time spent on each particular task. (Cal. Code Regs., tit. 1, § 1042, subd. (b)(1) [cost declarations must include or attach sufficient information to “describe the general tasks performed, the time spent on each task and the method of calculating the cost.”]) The third and fourth categories have no cost items allocated to them.

Complainant also introduced, without objection, a Certification of Prosecution Costs; Declaration of Geoffrey S. Allen, which requests costs in the amount of \$11,302.50. Attached to the Certification is a printout of a Matter Time Activity by Professional Type, which describes tasks performed by the Office of the Attorney General in the amount of \$11,302.50. The entire amount requested by the Office of the Attorney General is reasonable in light of the description of the work performed.

Respondent offered no evidence of his inability to pay the costs requested by complainant.

Only the costs the Bureau incurred for work performed by the Office of the Attorney General (\$11,302.50) are reasonable in light of the issues involved in this matter as discussed in Legal Conclusion 17 below.

LEGAL CONCLUSIONS

Burden of Proof

1. Complainant has the burden of proving the allegations in the Accusation by a preponderance of the evidence. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.)

Respondent Formed a Partnership with Mr. Bayanzay to Operate California Smog

2. The courts have defined “partnership,” as between the partners themselves, as a contract of two or more persons to unite their property, labor, and skill, or some of them, in the prosecution of some joint and lawful business and to share the profits in certain proportions. (48 Cal.Jur.3d (2012) *Partnership* § 2, p. 423; citing, *Westcott v. Gilman*

(1915) 170 Cal. 562.) Respondent and Mr. Bayanzay entered into a partnership whereby the former contributed the real property and business goodwill, the latter contributed the necessary labor and skill to operate the business, and the profits were shared equally. (Factual Finding 14.)

Cause to Discipline

1995 Chevrolet Beretta

3. An automotive repair dealer registration may be disciplined if the dealer or any automotive technician, employee, partner, officer, or member of the dealer has made or authorized in any manner any written or oral statement that is untrue or misleading and that he or she knows, or through the exercise of reasonable care should know, is untrue or misleading. (Bus. & Prof. Code, § 9884.7, subd. (a)(1).) Mr. Bayanzay, a smog check technician who partnered with respondent to operate California Smog, made such a statement when he issued the certificate of compliance for the Beretta, thereby certifying that the vehicle was in full compliance with all applicable laws and regulations governing smog inspections even though it could not pass a properly performed smog inspection. (Factual Findings 3-8.) Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 262298 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

4. An automotive repair dealer registration may be disciplined if the dealer or any automotive technician, employee, partner, officer, or member of the dealer has committed fraud. (Bus. & Prof. Code, § 9884.7, subd. (a)(4).) Mr. Bayanzay, a smog check technician who partnered with respondent to operate California Smog, committed fraud when he issued the certificate of compliance for the Beretta, thereby certifying that the vehicle was in full compliance with all applicable laws and regulations governing smog inspections even though it could not pass a properly performed smog inspection. (Factual Findings 3-8.) Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 262298 pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

5. A smog check station license may be disciplined if the licensee or any partner, officer, or director of the licensee violates any provision of the Motor Vehicle Inspection Program (Health & Saf. Code, § 44000 et seq.). (Health & Saf. Code, § 44072.2, subd. (a).) Mr. Bayanzay, a smog check technician who partnered with respondent to operate California Smog, violated the Motor Vehicle Inspection Program when he issued the certificate of compliance for the Beretta, thereby certifying that the vehicle was in full compliance with all applicable laws and regulations governing smog inspections even though it could not pass a properly performed smog inspection. Therefore, cause exists to discipline Smog Check Station License No. TC 262298 pursuant to Health and Safety Code section 44072.2, subdivision (a), based on Mr. Bayanzay's violation of each of the following provisions of the Motor Vehicle Inspection Program:

a. **Health and Saf. Code, § 44012, subd. (f)**: This statute requires smog check technicians to perform smog inspections in accordance with procedures prescribed by the Department. Mr. Bayanzay failed to comply with this requirement in that he failed to perform a proper functional test of the Beretta's EGR valve as discussed in Factual Findings 3 through 8, a violation of Health and Safety Code section 44012, subdivision (f).

b. **Health and Saf. Code, § 44015, subd. (b)**: This statute allows smog check technicians to issue a certificate of compliance only for vehicles that meet the requirements of Health and Safety Code section 44012. As discussed in Factual Findings 3 through 8, Mr. Bayanzay issued a certificate of compliance for the Beretta even though he did not perform a proper functional test of the Beretta's EGR valve, a violation of Health and Safety Code section 44015, subdivision (b).

c. **Health and Saf. Code, § 44059**: This statute prohibits the willful making of any false statement on a certificate of compliance. As discussed in Factual Findings 3 through 8, Mr. Bayanzay issued a certificate of compliance for the Beretta even though he did not perform a proper functional test of the Beretta's EGR valve, a violation of Health and Safety Code section 44059.

6. A smog check station license may be disciplined if the licensee or any partner, officer, or director of the licensee violates any regulation adopted pursuant to the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44072.2, subd. (c).) Mr. Bayanzay, a smog check technician who partnered with respondent to operate California Smog, issued the certificate of compliance for the Beretta, thereby certifying that the vehicle was in full compliance with all applicable laws and regulations governing smog inspections even though it could not pass a properly performed smog inspection. Therefore, cause exists to discipline Smog Check Station License No. TC 262298 pursuant to Health and Safety Code section 44072.2, subdivision (c), based on Mr. Bethanay's violation of each of the following regulations adopted pursuant to the Motor Vehicle Inspection Program:

a. **Cal Code of Regs., tit. 16, § 3340.24, subd. (c)**: This regulation prohibits one from falsely or fraudulently issuing a certificate of compliance. As discussed in Factual Findings 3 through 8, Mr. Bayanzay falsely issued a certificate of compliance for the Beretta even though the vehicle could not pass a properly performed smog inspection, a violation of California Code of Regulations, title 16, section 3340.24, subdivision (c).

b. **Cal. Code of Regs., tit. 16, § 3340.35, subd. (c)**: This regulation allows smog check technicians to issue a certificate of compliance only for vehicles that have been inspected in accordance with the procedures specified in California Code of Regulations, title 16, section 3340.42. As discussed in Factual Findings 3 through 8, Mr. Bayanzay issued a certificate of compliance for the Beretta even though it was not inspected in accordance with those procedures, a violation of California Code of Regulations, title 16, section 3340.35, subdivision (c).

c. **Cal. Code of Regs., tit. 16, § 3340.42**: This regulation specifies the procedures for performing smog inspections. For the reasons discussed in Factual Findings 3 through 8, Mr. Bayanzay failed to comply with those procedures in that he failed to perform a proper functional test of the Beretta's EGR valve, a violation of California Code of Regulations, title 16, section 3340.42.

7. A smog check station license may be disciplined if the licensee or any partner, officer, or director of the licensee "commits any act involving dishonesty, fraud, or deceit whereby another is injured." (Health and Saf. Code, § 44072.2, subd. (d).) Mr. Bayanzay, a smog check technician who partnered with respondent to operate California Smog, committed an act involving dishonesty, fraud, or deceit when he issued the certificate of compliance for the Beretta, thereby certifying that the vehicle was in full compliance with all applicable laws and regulations governing smog inspections even though it could not pass a properly performed smog inspection. (Factual Findings 3-8) Therefore, cause exists to discipline Smog Check Station License No. TC 262298 pursuant to Health and Safety Code section 44072.2, subdivision (d).

1990 Chevrolet Camaro

8. As discussed in Factual Findings 9 through 11, Mr. Bayanzay, a smog check technician who partnered with respondent to operate California Smog, made an untrue or misleading statement when he issued the certificate of compliance for the Camaro, thereby certifying that the vehicle was in full compliance with all applicable laws and regulations governing smog inspections, without first having sampled the vehicle's exhaust emissions as required by law. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 262298 pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

9. As discussed in Factual Findings 9 through 11, Mr. Bayanzay, a smog check technician who partnered with respondent to operate California Smog, committed fraud when he issued the certificate of compliance for the Camaro, thereby certifying that the vehicle was in full compliance with all applicable laws and regulations governing smog inspections, without first having sampled the vehicle's exhaust emissions as required by law. Therefore, cause exists to discipline Automotive Repair Dealer Registration No. ARD 262298 pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

10. As discussed in Factual Findings 9 through 11, Mr. Bayanzay, a smog technician who partnered with respondent to operate California Smog, failed to have a sample of the Camaro's exhaust emissions tested as required by Health and Safety Code section 44012, subdivision (c). Nonetheless, he issued a certificate of compliance for the vehicle, thereby certifying that it was in full compliance with all applicable laws and regulations governing smog inspections, in violation of Health and Safety Code section 44015. Therefore, cause exists to discipline Smog Check Station License No. TC 262298 pursuant to Health and Safety Code section 44072.2, subdivision (a), as that statute relates to

Health and Safety Code section 44012, subdivision (c), and Health and Safety Code section 44015, individually and collectively.

11. As discussed in Factual Findings 9 through 11, Mr. Bayanzay, a smog technician who partnered with respondent to operate California Smog, issued a certificate of compliance for the Camaro, thereby certifying that it was in full compliance with all applicable laws and regulations governing smog inspections, without first having sampled the vehicle's exhaust emissions as required by law. By doing so, he violated California Code of Regulations, title 16, sections 3340.24, subdivision (c), 3340.35, subdivision (c), and 3340.42. Therefore, cause exists to discipline Smog Check Station License No. TC 262298 pursuant to Health and Safety Code section 44072.2, subdivision (c), as that statute relates to each of those regulations, individually and collectively.

12. As discussed in Factual Findings 9 through 11, Mr. Bayanzay, a smog technician who partnered with respondent to operate California Smog, committed a dishonest, fraudulent, or deceitful act by issuing a certificate of compliance for the Camaro, thereby certifying that it was in full compliance with all applicable laws and regulations governing smog inspections, without first having sampled the vehicle's exhaust emissions as required by law. Therefore, cause exists to discipline Smog Check Station License No. TC 262298 pursuant to Health and Safety Code section 44072.2, subdivision (d).

Additional Registrations and Licenses

13. All places of business operated in this state by an automotive repair dealer may be disciplined if the Department finds that the dealer has engaged in a course of repeated and willful violations of the Automotive Repair Act (Bus. & Prof. Code, § 9880 et seq.) or any regulation adopted pursuant to it. (Bus. & Prof. Code, § 9884.7, subd. (c).) For the reasons discussed in Legal Conclusions 3, 4, 8, and 9, individually and collectively, respondent engaged in a course of repeated and willful violations of the Automotive Repair Act. Therefore, cause exists pursuant to Business and Professions Code section 9884.7, subdivision (c), to discipline any other automobile dealer registrations issued to respondent.

14. When a smog check station license has been disciplined, the Department may discipline any other smog check station license issued to the licensee. (Health & Saf. Code, § 44072.8.) For the reasons discussed in Legal Conclusions 5 through 7 and 10 through 12, individually and collectively, cause exists to discipline Smog Check Station License No. TC 262298 issued to respondent. Therefore, cause exists pursuant to Health and Safety Code section 44072.8 to discipline any other smog check station license issued to respondent.

15. As discussed in Legal Conclusions 3, 4, 8, and 9, individually and collectively, cause exists to discipline Automotive Repair Dealer Registration No. ARD 262298. Cause also exists to discipline Smog Check Station License No. TC 262298 for the reasons discussed in Legal Conclusions 5 through 7 and 10 through 12, individually and collectively. And cause exists for disciplining any other automotive repair dealer registrations and licenses issued under Chapter 5 of the Health and Safety Code in respondent's name for the reasons

discussed in Legal Conclusions 13 and 14, respectively. Respondent did not present sufficient evidence of his ability to perform the duties of a registrant or licensee of the Bureau in a manner consistent with public health, safety, and welfare, even on probation, as discussed in Factual Finding 14. Therefore, Automotive Repair Dealer Registration No. ARD 262298 should be permanently invalidated and Smog Check Station License No. TC 262298 should be revoked. Furthermore, any other automotive repair dealer registration and license issued under Chapter 5 of the Health and Safety Code in respondent's name should be permanently invalidated or revoked as discussed in Legal Conclusions 13 and 14, respectively.

Cost Recovery

16. Business and Professions Code section 125.3 states, in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may direct a licentiate 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.

[¶]...[¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General....

California Code of Regulations, title 1, section 1042, subdivision (b), states the following about cost recovery:

Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and

shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: 1) the licentiate's success in getting the charges dismissed or reduced; 2) the licentiate's subjective good faith belief in the merits of his or her position; 3) whether the licentiate raised a colorable challenge to the proposed discipline; 4) the licentiate's financial ability to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Id.*, at p. 45.)

17. As set forth in Factual Finding 16, complainant failed to present sufficient details to support her request for investigation costs incurred directly by the Bureau in the amount of \$4,618.07. (Cal. Code of Regs., tit. 1, § 1042, subd. (b)(1).) The Declaration of Geoffrey S. Allen, however, is prima facie evidence of the reasonableness of the costs incurred by the Office of the Attorney General in the amount of \$11,302.50. (Bus. & Prof. Code, § 125.3, subd. (c).) Respondent offered no evidence to rebut that evidence. Therefore, after considering the relevant evidence and the pertinent *Zuckerman* factors, costs in the amount of \$11,302.50 are reasonable and are awarded as set forth in the Order below.

ORDER

1. Automotive Repair Dealer Registration No. ARD 262298 issued to respondent Parvez Ahmed, dba California Smog, is PERMANENTLY INVALIDATED.

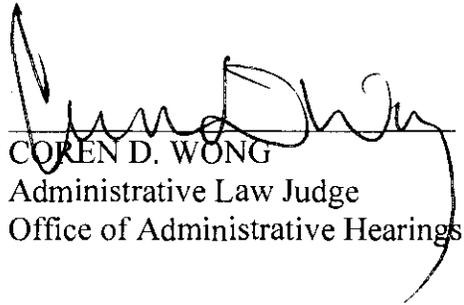
2. Any other automotive repair dealer registration issued to respondent is PERMANENTLY INVALIDATED.

3. Smog Check Station License No. TC 262298 issued to respondent Parvez Ahmed, dba California Smog, is REVOKED.

4. Any additional licenses issued under Chapter 5 of the Health and Safety code in respondent's name is REVOKED.

5. Respondent shall reimburse the Bureau the sum of \$11,302.50 for costs incurred while investigating and prosecuting this matter within 30 days of the effective date of the decision. Respondent may pay these costs according to a payment plan approved by the Bureau or its designee

DATED: December 27, 2012



COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:
13 **CALIFORNIA SMOG ONLY**
14 **NABILA IQBALL, OWNER**
443 S. Wilson Way
15 Stockton, California 95205
Automobile Repair Dealer Reg. No. ARD 264464
16 Smog Check Station License No. TC 264464
17 and
18 **CALIFORNIA SMOG**
19 **PARVEZ AHMED, OWNER**
443 S. Wilson Way
20 Stockton, California 95205
Automobile Repair Dealer Reg. No. ARD 262298
21 Smog Check Station License No. TC 262298
22 and
23 **HEDAYATULLAH BAYANZAY**
24 12773 North Lower Sacramento Road
Lodi, California 95242
25 Advanced Emission Specialist Technician
License No. EA 631151
26
27 Respondents.

BAR Case No. 79/12-40
OAH Case No. 2011080623
ACCUSATION
(Smog Check)

1 Complainant alleges:

2 PARTIES

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

5 **Automotive Repair Dealer Registration No. ARD 264464**

6 2. On or about March 28, 2011, the Director of Consumer Affairs ("Director") issued
7 Automotive Repair Dealer Registration Number ARD 264464 ("Registration") to California
8 Smog Only ("Respondent California Smog Only"), with Nabila Iqbal ("Iqbal") as owner. The
9 California Smog Only Registration will expire on March 31, 2012, unless renewed.

10 **Smog Check Station License No. TC 264464**

11 3. On or about March 29, 2011, the Director issued Smog Check Station License
12 Number TC 264464 ("Smog Check Station License") to Respondent California Smog Only. The
13 California Smog Only Station License will expire on March 31, 2012, unless renewed.

14 **Automotive Repair Dealer Registration No. ARD 262298**

15 4. On or about June 21, 2010, the Director issued Automotive Repair Dealer
16 Registration Number ARD 262298 ("Registration") to California Smog ("Respondent California
17 Smog"), with Parvez Ahmed ("Ahmed") as owner. The California Smog Registration expired on
18 June 30, 2011, and has not been renewed.

19 **Smog Check Station License No. TC 262298**

20 5. On or about June 22, 2010, the Director issued Smog Check Station License
21 Number TC 262298 ("Smog Check Station License") to Respondent California Smog. The
22 California Smog Station License expired on June 30, 2011, unless renewed.

23 **Advanced Emission Specialist Technician License No. EA 631151**

24 6. On or about July 6, 2009, the Director issued Advanced Emission Specialist
25 Technician License Number EA 631151 (hereinafter "Technician License") to Hedayatullah
26 Bayanzay ("Respondent Bayanzay" or "Bayanzay"). Respondent Bayanzay's Technician License
27 was in full force and effect at all times relevant to the charges brought herein and expired on July
28 31, 2011, and has not been renewed.

1 JURISDICTION

2 7. Business and Professions Code¹ section 9884.7 provides that the Director may
3 invalidate an automotive repair dealer registration.

4 8. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
5 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
6 against an automotive repair dealer or to render a decision invalidating a registration temporarily
7 or permanently.

8 9. Health and Safety Code section 44002 provides, in pertinent part, that the Director
9 has all the powers and authority granted under the Automotive Repair Act for enforcing the
10 Motor Vehicle Inspection Program.

11 10. Health and Safety Code section 44072.6 provides, in pertinent part, that the
12 expiration or suspension of a license by operation of law, or by order or decision of the Director
13 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
14 the Director of jurisdiction to proceed with disciplinary action.

15 **Interim Suspension Order**

16 11. On or about September 8, 2011, an Interim Suspension Order was issued against
17 Respondents California Smog Only and Respondent Bayanzay. This Order temporarily
18 suspended Respondent California Smog Only's Registration and Smog Check Station License
19 and Respondent Bayanzay's Technician License. A copy of this Order is attached hereto, and
20 fully incorporated herein by this reference, as Exhibit 1.

21 STATUTORY PROVISIONS

22 12. Code section 9884.7 states, in pertinent part:

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

¹ Unless otherwise specified, all subsequent statutory references are to the Business and Professions Code.

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

5

6 (4) Any other conduct which constitutes fraud.

7

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

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

17 14. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
18 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
19 proceeding against an automotive repair dealer or to render a decision invalidating a registration
20 temporarily or permanently.

21 15. Health and Safety Code section 44002 provides, in pertinent part, that the Director
22 has all the powers and authority granted under the Automotive Repair Act for enforcing the
23 Motor Vehicle Inspection Program

24 16. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

. . . .

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

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

3 17. Health and Safety Code section 44072.6 provides, in pertinent part, that the
4 expiration or suspension of a license by operation of law, or by order or decision of the Director
5 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
6 the Director of jurisdiction to proceed with disciplinary action.

7 18. Health and Safety Code section 44072.10 states, in pertinent part:

8

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

13

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

16 19. Health and Safety Code section 44072.8 states that when a license has been
17 revoked or suspended following a hearing under this article, any additional license issued under
18 this chapter in the name of the licensee may be likewise revoked or suspended by the director.

19 COST RECOVERY

20 20. Code section 125.3 provides, in pertinent part, that a Board may request the
21 administrative law judge to direct a licensee found to have committed a violation or violations of
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case.

24 FACTUAL BACKGROUND

25 21. In late 2010, BAR commenced its investigation of Respondents. BAR conducted
26 an undercover operation on December 16, 2010 upon Respondent California Smog and
27 Respondent Bayanzay. This operation revealed violations of the Automotive Repair Act (Code
28 section 9880 et. seq.) and the Motor Vehicle Inspection Program (Health and Safety Code section
44000 et. seq.) by Respondents. BAR subsequently conducted three (3) surveillance operations.
One surveillance operation was conducted on January 27, 2011, upon Respondent California

1 Smog and Respondent Bayanzay. On or about March 29, 2011, the Respondent California Smog
2 transferred the business to Respondent California Smog Only. The second surveillance operation
3 was conducted on April 18, 2011, upon Respondent California Smog Only and Respondent
4 Bayanzay. The third surveillance operation was conducted on May 10, 2011, upon Respondent
5 California Smog Only and Respondent Bayanzay. The surveillance operations revealed an
6 ongoing pattern of additional violations of the Automotive Repair Act and the Motor Vehicle
7 Inspection Program by Respondents.

8 **December 16, 2010, Undercover Operation with 1995 Chevrolet Beretta.**

9 22. Between November 10, 2010, and November 23, 2010, BAR Program
10 Representative Joseph T. Gibson prepared a 1995 Chevrolet Beretta owned by BAR so that it
11 would fail an inspection under the Motor Vehicle Inspection Program because of a defective
12 Exhaust Gas Recirculation (EGR) valve and the installation of a blockage plate. Replacement of
13 the defective EGR valve and the removal of a blockage plate was the only repair needed for the
14 vehicle to pass a smog inspection.

15 23. On December 16, 2010, BAR's undercover operator Michael N. Ponce (using the
16 assumed name Michael Pena) took the car to California Smog and asked for a smog inspection to
17 be performed on the vehicle. Respondent Bayanzay performed a smog inspection on the vehicle.
18 In spite of the defective EGR valve and the installation of the blockage plate, which both
19 independently rendered the vehicle unable to pass a smog inspection, Respondent Bayanzay and
20 Respondent California Smog issued an electronic Certificate of Compliance indicating that the
21 vehicle complied with the requirements of the Motor Vehicle Inspection Program without
22 repairing the defective EGR valve or removing the blockage plate.

23 **FIRST CAUSE FOR DISCIPLINE**

24 (Untrue or Misleading Statements)

25 24. Respondent California Smog's Registration is subject to disciplinary action
26 pursuant to Code section 9884.7, subdivision (a)(1), in that on or about December 16, 2010,
27 Respondent California Smog made or authorized statements which he knew, or in the exercise of
28 reasonable care, he should have known to be untrue or misleading, by issuing an electronic

1 Certificate of Compliance for the 1995 Chevrolet Beretta, certifying that the vehicle was in
2 compliance with applicable laws and regulations. In fact, the vehicle could not have passed the
3 smog inspection because the vehicle's EGR system had been rendered inoperable.

4 **SECOND CAUSE FOR DISCIPLINE**

5 (Fraud)

6 25. Respondent California Smog's Registration is subject to disciplinary action
7 pursuant to Code section 9884.7, subdivision (a)(4), in that on or about December 16, 2010, he
8 committed acts which constitute fraud by issuing an electronic Certificate of Compliance for the
9 1995 Chevrolet Beretta without performing a bona fide inspection of the emission control devices
10 and systems on the vehicle, thereby depriving the People of the State of California of the
11 protection afforded by the Motor Vehicle Inspection Program.

12 **THIRD CAUSE FOR DISCIPLINE**

13 (Violations of the Motor Vehicle Inspection Program)

14 26. Respondent California Smog's Smog Check Station License is subject to
15 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on
16 or about December 16, 2010, regarding the 1995 Chevrolet Beretta, he failed to comply with the
17 following sections of the Health and Safety Code:

18 a. Section 44012, subdivision (f): Respondent California Smog failed to
19 perform emission control tests on the vehicle in accordance with procedures prescribed by the
20 department.

21 b. Section 44015, subdivision (b): Respondent California Smog issued an
22 electronic Certificate of Compliance for the vehicle without properly testing and inspecting the
23 vehicle to determine if it was in compliance with Health and Safety Code section 44012.

24 c. Section 44059: Respondent California Smog willfully made false entries
25 for an electronic Certificate of Compliance by entering "N" into the Emissions Inspection System
26 (EIS) for functional test of the EGR system. By entering "N" Respondent California Smog
27 indicated that a functional test of the EGR system was not applicable. This was a false entry. In
28

1 fact, a functional test of the EGR system of the vehicle was required and should have been
2 performed.

3 **FOURTH CAUSE FOR DISCIPLINE**

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

5 27. Respondent California Smog's Smog Check Station License is subject to
6 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on
7 or about December 16, 2010, regarding the 1995 Chevrolet Beretta, he failed to comply with
8 provisions of California Code of Regulations, title 16, as follows:

9 a. Section 3340.24, subdivision (c): Respondent California Smog falsely or
10 fraudulently issued an electronic Certificate of Compliance for the vehicle, in that it could not
11 pass the smog inspection because the vehicle's EGR had been rendered inoperable.

12 b. Section 3340.35, subdivision (c): Respondent California Smog issued an
13 electronic Certificate of Compliance for the vehicle, even though the vehicle had not been
14 inspected in accordance with section 3340.42.

15 c. Section 3340.42: Respondent California Smog failed to conduct the
16 required smog tests on the vehicle in accordance with the Bureau's specifications.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 (Dishonesty, Fraud or Deceit)

19 28. Respondent California Smog's Smog Check Station License is subject to
20 disciplinary action pursuant Health and Safety Code section 44072.2, subdivision (d), in that on
21 or about December 16, 2010, Respondent committed dishonest, fraudulent or deceitful acts
22 whereby another is injured by issuing an electronic Certificate of Compliance for the 1995
23 Chevrolet Beretta without performing a bona fide inspection of the emission control devices and
24 systems on the vehicle, thereby depriving the People of the State of California of the protection
25 afforded by the Motor Vehicle Inspection Program.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 (Violations of the Motor Vehicle Inspection Program)

3 29. Respondent Bayanzay's Technician License is subject to disciplinary action
4 pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on or about
5 December 16, 2010, regarding the 1995 Chevrolet Beretta, he failed to comply with provisions of
6 the Health and Safety Code, as follows:

7 a. Section 44012, subdivision (f): Respondent Bayanzay failed to perform
8 emission control tests on the vehicle in accordance with procedures prescribed by the department.

9 b. Section 44032: Respondent Bayanzay failed to perform tests of the
10 emission control devices and systems on the vehicle in accordance with Health and Safety Code
11 section 44012.

12 c. Section 44059: Respondent Bayanzay willfully made false entries into the
13 EIS for an electronic Certificate of Compliance by entering "N" into the unit for functional test of
14 the EGR system. By entering "N" Respondent Bayanzay indicated that a functional test of the
15 EGR system was not applicable. This was a false entry. In fact, a functional test of the EGR
16 system of the vehicle was required and should have been performed.

17 **SEVENTH CAUSE FOR DISCIPLINE**

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

19 30. Respondent Bayanzay's Technician License is subject to disciplinary action
20 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on or about
21 December 16, 2010, regarding the 1995 Chevrolet Beretta, he failed to comply with provisions of
22 California Code of Regulations, title 16, as follows:

23 a. Section 3340.30, subdivision (a): Respondent Bayanzay failed to inspect
24 and test the vehicle in accordance with procedures prescribed by Health and Safety sections
25 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

26 b. Section 3340.41, subdivision (c): Respondent Bayanzay entered false
27 information into the EIS unit by entering "N" for functional test of the EGR system. By entering
28 "N" Respondent Bayanzay indicated that a functional test of the EGR system was not applicable.

1 This was a false entry. In fact, a functional test of the EGR system of the vehicle was required
2 and should have been performed..

3 c. Section 3340.42: Respondent Bayanzay failed to conduct the required
4 smog tests on the vehicle in accordance with the Bureau's specifications.

5 **EIGHTH CAUSE FOR DISCIPLINE**

6 (Dishonesty, Fraud or Deceit)

7 31. Respondent Bayanzay's Technician License is subject to disciplinary action
8 pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on or about
9 December 16, 2010, regarding the 1995 Chevrolet Beretta, he committed dishonest, fraudulent or
10 deceitful acts whereby another is injured by issuing an electronic Certificate of Compliance for
11 the vehicle without performing a bona fide inspection of the emission control devices and systems
12 on the vehicle, thereby depriving the People of the State of California of the protection afforded
13 by the Motor Vehicle Inspection Program.

14 **Surveillance Operation of January 27, 2011.**

15 32. On January 27, 2011, BAR Program Representative Christopher Pryor conducted a
16 video surveillance operation at the facility operated by Respondent California Smog, the then
17 employer of Respondent Bayanzay. The video camera was aimed at the smog test service bay at
18 Respondent California Smog and recorded Respondent Bayanzay throughout the day.

19 33. At the conclusion of the video recording, Mr. Pryor compared the Motor Vehicle
20 Inspection Program's test summary for January 27, 2011, and compared it to the video recording.
21 Mr. Pryor's comparison revealed that the Motor Vehicle Inspection Program test summary for
22 January 27, 2011, indicated that between 1538 and 1607 hours, a 1990 Chevrolet Camaro,
23 California license number 2VLS242, was tested and issued Certificate of Compliance number
24 OA343904 by Respondent Bayanzay and Respondent California Smog. But the video recording
25 shows something different. The video recording shows that at 1538 hours, a 1990 Chevrolet
26 Camaro, California license number 2VLS242, being driven into the smog bay at Respondent
27 California Smog. Two minutes later, at 1540, the Camaro was backed out of the smog bay. At
28 no time was an exhaust emission sample probe inserted into the tailpipe of the Camaro, a

1 mandatory step in an inspection for the Motor Vehicle Inspection Program. At 1543 hours, a blue
2 Ford pick-up truck was driven into the smog bay. At 1544 hours, Respondent Bayanzay inserted
3 an exhaust emission sample probe into the tailpipe of the Ford pick-up truck. At 1547 hours,
4 Respondent Bayanzay removed the sample probe from the Ford pick-up truck. At 1551 hours,
5 the Camaro was driven back into the smog bay. At 1610 hours, the Camaro was backed out of
6 the smog bay. At no time was an exhaust emission sample probe inserted into the tailpipe of the
7 Camaro. Between 1538 and 1607 hours, the only vehicle into which an exhaust emission sample
8 probe was inserted into the tailpipe was the Ford pick-up truck.

9 **NINTH CAUSE FOR DISCIPLINE**

10 **(Untrue or Misleading Statements)**

11 34. Respondent California Smog's Registration is subject to disciplinary action
12 pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent California Smog made or
13 authorized statements which it knew or in the exercise of reasonable care should have known to
14 be untrue or misleading. Respondent California Smog's smog check technician, Respondent
15 Bayanzay, certified under penalty of perjury on the vehicle inspection report for the Chevrolet
16 Camaro that he performed the smog inspection on the vehicle in accordance with all Bureau
17 requirements and that the vehicle had passed inspection and was in compliance with applicable
18 laws and regulations. In fact, Respondent Bayanzay conducted the inspection on the Chevrolet
19 Camaro using clean-piping methods² in that he used a Ford pick-up truck during the test in order
20 to issue an electronic Certificate of Compliance for the Chevrolet Camaro, and did not test or
21 inspect the Chevrolet Camaro as required by Health and Safety Code section 44012.

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25 ² Clean-piping is a process by which a smog technician and a smog check station can
26 fraudulently issue a certificate of compliance to a vehicle that would otherwise not pass an
27 inspection under the Motor Vehicle Inspection Program. To clean-pipe, the technician enters the
28 vehicle information for the vehicle he wishes to certify, but samples the exhaust from a different
(clean-running) vehicle. Using this method, the technician and station are able to issue a smog
Certificate of Compliance to a vehicle that is polluting and unable to pass an inspection under the
Motor Vehicle Inspection Program.

1 **TENTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 35. Respondent California Smog's Registration is subject to disciplinary action
4 pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent California Smog
5 committed acts which constitute fraud by issuing an electronic Certificate of Compliance for the
6 Chevrolet Camaro without performing a bona fide inspection of the emission control devices and
7 systems on the vehicle, thereby depriving the People of the State of California of the protection
8 afforded by the Motor Vehicle Inspection Program.

9 **ELEVENTH CAUSE FOR DISCIPLINE**

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

11 36. Respondent California Smog's Smog Check Station License is subject to
12 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that
13 Respondent California Smog failed to comply with the following sections of the Health and
14 Safety Code:

15 a. **Section 44012:** Respondent California Smog failed to ensure that the
16 emission control tests were performed on the Chevrolet Camaro in accordance with procedure
17 prescribed by the department.

18 b. **Section 44015:** Respondent California Smog issued an electronic
19 Certificate of Compliance for the Chevrolet Camaro without ensuring that the vehicle was
20 properly tested and inspected to determine if it was in compliance with Health and Safety Code
21 section 44012.

22 **TWELFTH CAUSE FOR DISCIPLINE**

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

25 37. Respondent California Smog's Smog Check Station License is subject to
26 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that
27 Respondent California Smog failed to comply with provisions of California Code of Regulations,
28 title 16, as follows:

1 a. **Section 3340.24, subdivision (c):** Respondent California Smog falsely or
2 fraudulently issued an electronic Certificate of Compliance for the Chevrolet Camaro.

3 b. **Section 3340.35, subdivision (c):** Respondent California Smog issued an
4 electronic Certificate of Compliance for the Chevrolet Camaro even though the vehicle had not
5 been inspected in accordance with section 3340.42.

6 c. **Section 3340.42:** Respondent California Smog failed to ensure that the
7 required smog test was conducted on the Chevrolet Camaro in accordance with the Bureau's
8 specifications.

9 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

11 38. Respondent California Smog's Smog Check Station License is subject to
12 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that
13 Respondent California Smog committed dishonest, fraudulent or deceitful acts whereby another is
14 injured by issuing an electronic Certificate of Compliance for the Chevrolet Camaro without
15 performing a bona fide inspection of the emission control devices and systems on the vehicle,
16 thereby depriving the People of the State of California of the protection afforded by the Motor
17 Vehicle Inspection Program.

18 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

20 39. Respondent Bayanzay's Technician License is subject to disciplinary action
21 pursuant to Health and Safety Code section 44072.2, subdivision (a), in that Respondent
22 Bayanzay failed to comply with section 44012 of the Health and Safety Code in a material
23 respect, as follows: Respondent Bayanzay failed to perform the emission control test on the
24 Chevrolet Camaro in accordance with procedure prescribed by the department.

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1 **FIFTEENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**

3 **to the Motor Vehicle Inspection Program)**

4 40. Respondent Bayanzay's Technician License is subject to disciplinary action
5 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that Respondent
6 Bayanzay failed to comply with provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c)**: Respondent Bayanzay falsely or
8 fraudulently issued an electronic Certificate of Compliance for the Chevrolet Camaro.

9 b. **Section 3340.30, subdivision (a)**: Respondent Bayanzay failed to inspect
10 and test the Chevrolet Camaro in accordance with Health and Safety Code sections 44012 and
11 44035, and California Code of Regulations, title 16, section 3340.42.

12 c. **Section 3340.42**: Respondent Bayanzay failed to conduct the required
13 smog test on the Chevrolet Camaro in accordance with the Bureau's specifications.

14 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

16 41. Respondent Bayanzay's Technician License is subject to disciplinary action
17 pursuant to Health and Safety Code section 44072.2, subdivision (d), in that Respondent
18 Bayanzay committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing
19 an electronic Certificate of Compliance for the Chevrolet Camaro without performing a bona fide
20 inspection of the emission control devices and systems on the vehicle, thereby depriving the
21 People of the State of California of the protection afforded by the Motor Vehicle Inspection
22 Program.

23 **Surveillance Operation of April 18, 2011.**

24 42. On April 18, 2011, BAR Program Representative Christopher Pryor conducted a
25 video surveillance operation at the facility operated by Respondent California Smog Only, the
26 current employer of Respondent Bayanzay. The video camera was aimed at the smog test service
27 bay at Respondent California Smog Only and recorded Respondent Bayanzay throughout the day.
28

1 a. **Section 3340.24, subdivision (c)**: Respondent California Smog Only
2 falsely or fraudulently issued an electronic Certificate of Compliance for the Toyota Camry.

3 b. **Section 3340.35, subdivision (c)**: Respondent California Smog Only
4 issued an electronic Certificate of Compliance for the Toyota Camry even though the vehicle had
5 not been inspected in accordance with section 3340.42.

6 c. **Section 3340.42**: Respondent California Smog Only failed to ensure that
7 the required smog test was conducted on the Toyota Camry in accordance with the Bureau's
8 specifications.

9 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

11 48. Respondent California Smog Only's Smog Check Station License is subject to
12 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that
13 Respondent California Smog Only committed dishonest, fraudulent or deceitful acts whereby
14 another is injured by issuing an electronic Certificate of Compliance for the Toyota Camry
15 without performing a bona fide inspection of the emission control devices and systems on the
16 vehicle, thereby depriving the People of the State of California of the protection afforded by the
17 Motor Vehicle Inspection Program.

18 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

20 49. Respondent Bayanzay's Technician License is subject to disciplinary action
21 pursuant to Health and Safety Code section 44072.2, subdivision (a), in that Respondent
22 Bayanzay failed to comply with section 44012 of the Health and Safety Code in a material
23 respect, as follows: Respondent Bayanzay failed to perform the emission control test on the
24 Toyota Camry in accordance with procedure prescribed by the department.

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1 53. At the conclusion of the video recording, Mr. Pryor compared the Motor Vehicle
2 Inspection Program's test summary for May 10, 2011, and compared it to the video recording.
3 Mr. Pryor's comparison revealed that the Motor Vehicle Inspection Program test summary for
4 May 10, 2011, indicated that between 0921 and 0938 hours, a 1991 Saturn SL, California license
5 number 4TCN322, was tested and issued Certificate of Compliance number OC748540 by
6 Respondents. But the video recording shows something different. The video recording shows
7 that at 0920 hours, an Infinity Q45 being driven into the smog bay at California Smog. At 0921
8 hours, Respondent Bayanzay inserted an exhaust emission sample probe into the tailpipe of the
9 Infinity Q45. At 0925 hours, Respondent Bayanzay removed the sample probe from the Infinity.
10 At 0926 hours, the Infinity pulled out of the smog bay. At 0927 hours a 2005 Chevrolet Malibu
11 pulled into the smog bay and remained there until the alleged test for the Saturn SL concluded at
12 0938 hours. The exhaust emission sample probe was not inserted into the tailpipe of the
13 Chevrolet Malibu. At no time was an exhaust emission sample probe into the tailpipe of the
14 Saturn SL. Between 0921 and 0938 hours, the only vehicle into which an exhaust emission
15 sample probe was inserted into the tailpipe was the Infinity Q45.

16 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

17 **(Untrue or Misleading Statements)**

18 54. Respondent California Smog Only's Registration is subject to disciplinary action
19 pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent California Smog Only
20 made or authorized statements which it knew or in the exercise of reasonable care should have
21 known to be untrue or misleading. Respondent California Smog Only's smog check technician,
22 Respondent Bayanzay, certified under penalty of perjury on the vehicle inspection report for the
23 Saturn SL that he performed the smog inspection on the vehicle in accordance with all Bureau
24 requirements and that the vehicle had passed inspection and was in compliance with applicable
25 laws and regulations. In fact, Respondent Bayanzay conducted the inspection on the Saturn SL
26 using clean-piping methods in that he used an Infinity Q45 during the test in order to issue an
27 electronic Certificate of Compliance for the Saturn SL, and did not test or inspect the Saturn SL
28 as required by Health and Safety Code section 44012.

1 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 55. Respondent California Smog Only's Registration is subject to disciplinary action
4 pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent California Smog Only
5 committed acts which constitute fraud by issuing an electronic Certificate of Compliance for the
6 Saturn SL without performing a bona fide inspection of the emission control devices and systems
7 on the vehicle, thereby depriving the People of the State of California of the protection afforded
8 by the Motor Vehicle Inspection Program.

9 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

11 56. Respondent California Smog Only's Smog Check Station License is subject to
12 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that
13 Respondent California Smog Only failed to comply with the following sections of the Health and
14 Safety Code:

15 a. **Section 44012:** Respondent California Smog Only failed to ensure that the
16 emission control tests were performed on the Saturn SL in accordance with procedure prescribed
17 by the department.

18 b. **Section 44015:** Respondent California Smog Only issued an electronic
19 Certificate of Compliance for the Saturn SL without ensuring that the vehicle was properly tested
20 and inspected to determine if it was in compliance with Health and Safety Code section 44012.

21 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

24 57. Respondent California Smog Only's Smog Check Station License is subject to
25 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that
26 Respondent California Smog Only failed to comply with provisions of California Code of
27 Regulations, title 16, as follows:

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1 a. **Section 3340.24, subdivision (c)**: Respondent California Smog Only
2 falsely or fraudulently issued an electronic Certificate of Compliance for the Saturn SL.

3 b. **Section 3340.35, subdivision (c)**: Respondent California Smog Only
4 issued an electronic Certificate of Compliance for the Saturn SL even though the vehicle had not
5 been inspected in accordance with section 3340.42.

6 c. **Section 3340.42**: Respondent California Smog Only failed to ensure that
7 the required smog test was conducted on the Saturn SL in accordance with the Bureau's
8 specifications.

9 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

11 58. Respondent California Smog Only's Smog Check Station License is subject to
12 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that
13 Respondent California Smog Only committed dishonest, fraudulent or deceitful acts whereby
14 another is injured by issuing an electronic Certificate of Compliance for the Saturn SL without
15 performing a bona fide inspection of the emission control devices and systems on the vehicle,
16 thereby depriving the People of the State of California of the protection afforded by the Motor
17 Vehicle Inspection Program.

18 **THIRTIETH CAUSE FOR DISCIPLINE**

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

20 59. Respondent Bayanzay's Technician License is subject to disciplinary action
21 pursuant to Health and Safety Code section 44072.2, subdivision (a), in that Respondent
22 Bayanzay failed to comply with section 44012 of the Health and Safety Code in a material
23 respect, as follows: Respondent Bayanzay failed to perform the emission control test on the
24 Saturn SL in accordance with procedure prescribed by the department.

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1 63. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to
2 validate, or may invalidate temporarily or permanently, the registrations for all places of business
3 operated in this state by Respondent California Smog Only upon a finding that said Respondent
4 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
5 pertaining to an automotive repair dealer.

6 64. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station
7 License Number TC 262298, issued to Respondent California Smog is revoked or suspended, any
8 additional license issued under this chapter in the name of said licensee may be likewise revoked
9 or suspended by the director.

10 65. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station
11 License Number TC 264464, issued to Respondent California Smog Only is revoked or
12 suspended, any additional license issued under this chapter in the name of said licensee may be
13 likewise revoked or suspended by the director.

14 66. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission
15 Specialist Technician License Number EA 631151, issued to Respondent Hedayatullah
16 Bayanzay, is revoked or suspended, any additional license issued under this chapter in the name
17 of said licensee may be likewise revoked or suspended by the director.

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1 PRAYER

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

4 1. Temporarily or permanently invalidating Automotive Repair Dealer Registration
5 Number ARD 262298, issued to Parvez Ahmed, owner of California Smog;

6 2. Temporarily or permanently invalidating any other automotive repair dealer
7 registration issued to Parvez Ahmed;

8 3. Revoking or suspending Smog Check Station License Number TC 262298, issued
9 to Parvez Ahmed, owner of California Smog;

10 4. Revoking or suspending any additional license issued under Chapter 5 of the
11 Health and Safety Code in the name of Parvez Ahmed;

12 5. Temporarily or permanently invalidating Automotive Repair Dealer Registration
13 Number ARD 264464, issued to Nabila Iqball, owner of California Smog Only;

14 6. Temporarily or permanently invalidating any other automotive repair dealer
15 registration issued to Nabila Iqball;

16 7. Revoking or suspending Smog Check Station License Number TC 264464, issued
17 to Nabila Iqball, owner of California Smog Only;

18 8. Revoking or suspending any additional license issued under Chapter 5 of the
19 Health and Safety Code in the name of Nabila Iqball;

20 9. Revoking or suspending Advanced Emission Specialist Technician License
21 Number EA 631151, issued to Hedayatullah Bayanzay;

22 10. Revoking or suspending any additional license issued under Chapter 5 of the
23 Health and Safety Code in the name of Hedayatullah Bayanzay;

24 11. Ordering Respondents California Smog, California Smog Only, and Bayanzay to
25 pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of
26 this case, pursuant to Business and Professions Code section 125.3;

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12. Taking such other and further action as deemed necessary and proper.

DATED: 9/22/11

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

Doug BALATTI
Assist. Chief
B.A.R.

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

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

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

Petitioner,

v.

CALIFORNIA SMOG ONLY
NABILA IQBALL, Owner
443 S. Wilson Way
Stockton, California 95205
Automotive Repair Dealer Registration No. ARD
264464
Smog Check Station No. TC 264464

and

HEDAYATULLAH BAYANZAY
12773 North Lower Sacramento Road
Lodi, California 95242
Advanced Emission Specialist Technician
License No. EA 631151

Respondents.

OAH No. 2011080623

**DECISION ON PETITION
FOR INTERIM SUSPENSION
ORDER**

[Bus. & Prof. Code, § 494]

This matter was heard on September 6, 2011, before Administrative Law Judge
Dian M. Vorters, State of California, Office of Administrative Hearings, in Sacramento,
California.

Geoffrey S. Allen, Deputy Attorney General, represented petitioner.

There was no appearance by or on behalf of respondents Hedayatullah Bayanzay and
Nabila Iqball, owner, doing business as, California Smog Only.

Evidence was received and the matter was submitted on September 6, 2011.¹

FACTUAL FINDINGS

1. On August 10, 2011, Kamala D. Harris, Attorney General of the State of California, made and filed a Petition for Interim Order of Suspension against California Smog Only (respondent CSO), Nabila Iqball (respondent Iqball), and Hedayatullah Bayanzay (respondent Bayanzay), pursuant to Business and Professions Code section 494. The petition was filed on behalf of Sherry Mehl, Chief (petitioner), Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

The petition was received by the Office of Administrative Hearings on August 16, 2011. The Notice of Hearing, Petition and Memorandum of Points and Authorities in Support of Interim Suspension Order, and two Declarations of Christopher Pryor with attachments, including DVDs of surveillance tapes, were served on respondents by certified mail in separate mailings on August 16, 2011. Notice was found to be proper pursuant to Government Code section 11509 and Business and Professions Code section 494, subdivision (c). This matter proceeded as a default against respondents pursuant to Government Code section 11520.

2. On March 28, 2011, the Licensing Division of the Bureau issued Automotive Repair Dealer Registration (ARD) number ARD 264464 to respondent Iqball as owner of respondent CSO. On March 29, 2011, the Bureau issued Smog Check, Test Only, Station License number TC 264464 to respondent Iqball doing business as California Smog Only. The registration and license numbers will both expire on March 31, 2012, unless renewed.

3. On July 6, 2009, the Licensing Division of the Bureau issued Advanced Emission Specialist (EA) Technician license number EA 631151 to respondent Bayanzay. The license expired on July 31, 2011, and has not been renewed.

4. Between November 2010 and May 2011, the Bureau conducted an investigation of respondents for possible violations of the Automotive Repair Act and Smog Check Program. (Bus. & Prof. Code, § 9880 et. seq.; Health & Saf. Code, § 44000 et seq.) The Bureau's investigation included an undercover operation involving an altered vehicle and three video surveillance operations at respondent CSO. The operations revealed multiple violations of law which are outlined below.

¹ Pursuant to Business and Professions Code section 494, subdivision (d), evidence in the form of written affidavits and supporting documentation was received and admitted into the record. Exhibits included declarations from three employees of the Bureau: Christopher A. Pryor, Joseph T. Gibson, Michael N. Ponce, and from Barbara L. Weller, Ph.D., of the Air Resources Board (ARB). No oral testimony was taken.

December 2010 Undercover Operation - Altered 1995 Chevrolet Beretta

5. Joseph T. Gibson is a Program Representative II for the Bureau. On or about November 10, 2010, he began work to alter the emission control systems on a 1995 Chevrolet Beretta (California license number [REDACTED]). He ran an initial Two Speed Idle (TSI) California Emissions Test on the vehicle. The TSI test requires a functional test of the Exhaust Gas Recirculation (EGR) system. Mr. Gibson confirmed that the EGR valve was working correctly. The vehicle passed all aspects of the tests including the tailpipe, visual, and functional tests required to receive a California Emissions Inspection Certificate of Compliance (Certificate of Compliance). Mr. Gibson retained a printout of the test showing "Overall Test Results-PASS."

6. Mr. Gibson then intentionally altered the vehicle by removing the EGR valve and rendering it electrically inoperative by affixing a blockage plate. The blockage plate, as installed, prevented any exhaust gas from flowing into the intake manifold. As altered, the EGR valve could not respond to commands from the vehicle computer and was "completely non-functional." Mr. Gibson then reinstalled the defective EGR valve into the vehicle. Mr. Gibson road tested the altered vehicle. The vehicle drove normally with no defects noted. Mr. Gibson then performed a second TSI California Emissions Test on the vehicle. The vehicle passed the visual and tailpipe emissions portions of the test, but failed the functional portion of the test. Mr. Gibson retained a printout of the test showing "Overall Test Results-FAIL." In order to pass the TSI test, a properly functioning EGR valve and removal of the blockage plate was required. On November 24, 2010, this vehicle was stored in its altered state at the Bureau's Sacramento Documentation Lab for use in undercover operations. Mr. Gibson re-inspected the vehicle on February 4, 2011. The defective parts had not been replaced or restored. He obtained a printout showing "Overall Test Results-TAMPER." In its altered condition, the vehicle could not be issued a Certificate of Compliance.

7. Christopher Pryor is a Program Representative in the Bureau's Sacramento Field Office. On December 16, 2010, he re-inspected the 1995 Chevrolet Beretta to confirm that the EGR valve was still altered. He released the vehicle to Michael Ponce with instructions to have the vehicle tested at respondent CSO, in Stockton. Mr. Ponce drove the vehicle to respondent CSO and requested a smog inspection. Respondent Bayanzay performed the inspection which took approximately 30 minutes. After the inspection, Mr. Ponce paid \$82.95 and received a copy of the invoice and Smog Check Vehicle Inspection Report (VIR). The VIR indicates that the vehicle passed all aspects of the smog check inspection including the visual and functional checks at respondent CSO. Mr. Ponce then returned the vehicle to Mr. Pryor along with the invoice and VIR. Mr. Pryor re-inspected the vehicle and confirmed that the altered EGR valve was still modified such that it could not pass a California emissions test.

8. Respondent Bayanzay did not properly perform the Smog Check Vehicle Inspection on the 1995 Chevrolet Beretta according to Bureau prescribed procedures. Had he done so, he would have found that the EGR valve was malfunctioning. He issued a Certificate of Compliance to a 1995 Chevrolet Beretta with an inoperative EGR valve. As such, he engaged in false and misleading acts and statements in the performance of his duties as a

licensed Advanced EA Technician. His conduct violated the Automotive Repair Act (Bus. & Prof. Code, § 9889.22), and numerous provisions of the Smog Check Program (Health & Saf. Code, §§ 44012, 44032, and 44059; and Cal. Code Regs., tit. 16, §§ 3340.30, subdivision (a), 3340.41, subdivision (c), and 3340.42.)

January 2011 Video Surveillance of Respondent CSO

9. On January 27, 2011, during the period of time from 6:55 a.m. until 6:35 p.m., agents of the Bureau conducted an undercover surveillance of the smog check activities at respondent CSO, 443 South Wilson Way, Stockton. The camera was aimed at the smog test service bay and the surveillance was recorded on a hard drive. The recorded activity was stored on three DVD-R discs that were then initialed, dated, and secured as evidence at the Bureau.

10. Subsequent to the surveillance, Mr. Pryor downloaded the computerized audit data from respondent CSO's Test Analyzer System (TAS) at the Bureau's headquarters. The audit data report is referred to as the BAR97 Test Summary (BAR97). Mr. Pryor compared the BAR97 data to the videotaped activities at respondent CSO and found material conflicts between the actual and reported activities. The BAR97 for January 27, 2011, indicated that between 3:38 p.m. and 4:07 p.m., a 1990 Chevrolet Camaro, California license number 2VLS242 (1990 Camaro), was tested and issued a Certificate of Compliance by respondent Bayanzay.

11. The video surveillance showed that at 3:40 p.m., the 1990 Camaro was driven into respondent CSO's smog bay and backed out two minutes later. At 3:43 p.m., a black and yellow striped Ford pick-up was driven into respondent CSO's smog bay. Respondent Bayanzay then inserted an Emission Information System (EIS) probe into the tailpipe of the Ford pickup. Five minutes later, he removed the EIS probe and backed the Ford pick-up out of the smog bay. Respondent Bayanzay then drove the 1990 Camaro back into the smog bay. After approximately 20 minutes, he backed the 1990 Camaro out of the smog bay. At no time did respondent Bayanzay insert the EIS probe into the tailpipe of the 1990 Camaro.

12. According to Mr. Pryor, respondent's conduct constitutes a fraudulent practice known as "clean-piping." To clean-pipe, the technician enters vehicle information into the EIS for the vehicle he wishes to certify and then samples the exhaust of a different, clean-running vehicle. Using this method, the technician is able to issue a smog Certificate of Compliance to a vehicle that is polluting and unable to pass the Smog Check Inspection. The motive is to avoid the expense and inconvenience of having the vehicle properly inspected and repaired. Respondent Bayanzay illegally issued a Certificate of Compliance to a 1990 Camaro utilizing clean-piping methods. His conduct violated numerous provisions of the Automotive Repair Act and Smog Check Program.

April 2011 Video Surveillance of Respondent CSO

13. On April 18, 2011, during the period of time from 9:11 a.m. until 8:04 p.m., agents of the Bureau conducted an undercover surveillance of the smog check activities at respondent CSO, 443 South Wilson Way, Stockton. The camera was aimed at the smog test service bay and the surveillance was recorded on a hard drive. The recorded activity was stored on three DVD-R discs that were then initialed, dated, and secured as evidence at the Bureau.

14. Mr. Prior downloaded the BAR97 data for respondent CSO on April 18, 2011. He then compared the BAR97 data to the videotaped activities of respondent CSO and found material conflicts between the actual and reported activities. The BAR97 for April 18, 2011, indicated that between 7:30 p.m. and 7:56 p.m., respondent Bayanzay (EZ631151), tested a 1992 Toyota Camry, California license number 2ZRC115 (1992 Camry), and issued a Certificate of Compliance (OC477699).

15. The video surveillance showed that during the time that the 1992 Camry was purportedly tested, respondent Bayanzay drove an Infinity Q45 into the smog test bay at respondent CSO. The Infinity Q45 was parked in the smog test bay from 7:37 p.m. to 7:56 p.m. The rear wheels of the Infinity Q45 were placed on the dynamometer rollers to perform an acceleration simulation mode (ASM) test. It is noted that the Toyota Camry is a front wheel drive vehicle and, as such, its front wheels would have to be placed on the rollers to perform an ASM test. There was no vehicle parked in the smog test bay during the six minute interval from 7:30 p.m. to 7:37 p.m. Hence, the 1992 Toyota Camry was not tested during the time indicated on the BAR97 audit report.

16. Respondent Bayanzay issued a fraudulent Certificate of Compliance on the 1992 Toyota Camry in violation of numerous provisions of the Automotive Repair Act and the Smog Check Program.

May 2011 Video Surveillance of Respondent CSO

17. On May 10, 2011, during the period of time from 8:53 a.m. until 8:05 p.m., agents of the Bureau conducted an undercover surveillance of the smog check activities at respondent CSO, 443 South Wilson Way, Stockton. The camera was aimed at the smog test service bay and the surveillance was recorded on a hard drive. The recorded activity was stored on three DVD-R discs that were then initialed, dated, and secured as evidence at the Bureau.

18. Mr. Prior downloaded the BAR97 data for respondent CSO on May 10, 2011. He then compared the BAR97 data to the videotaped activities of respondent CSO and found material conflicts between the actual and reported activities. The BAR97 for May 10, 2011, indicated that respondent Bayanzay (EA 631151), tested a 1991 Saturn SL, California license number 4TCN322 (1991 Saturn), and issued a Certificate of Compliance (number OC748540).

19. The video surveillance showed that during the time that the 1991 Saturn was purportedly tested, respondent Bayanzay drove an Infinity Q45 into the smog test bay at respondent CSO. Respondent Bayanzay inserted an EIS probe into the Infinity tailpipe for approximately four minutes. He then pulled the Infinity Q45 out of the smog test bay and drove a 2005 Chevrolet Malibu into the smog test bay. He did not at any time place the EIS probe into the 2005 Malibu. At no time during the test period reported on the BAR97 for the 1991 Saturn SL, did such a car enter the smog test bay.

20. Respondent Bayanzay issued a fraudulent Certificate of Compliance on the 1991 Saturn SL in violation of numerous provisions of the Automotive Repair Act and the Smog Check Program.

21. According to Barbara L. Weller, Ph.D, air pollution specialist, hydrocarbons, nitrogen oxides, and carbon monoxide (CO) contained in motor vehicle engine exhaust are hazardous to the atmosphere (ozone), environment, and human health. Hazards associated with vehicle exhaust have been shown to increase with the level of pollution. The California Smog Check Program is a critical strategy for improving air quality and protecting public health. Respondents' knowing and fraudulent actions contributed to the unnecessary increase in the amount of such pollutants exhausted into the atmosphere by motor vehicles.

Moreover, respondents' total disregard for the law, as demonstrated over the course of a six month investigation, demonstrates that they can not be trusted to comply with any reasonable restrictions upon their activities. Permitting respondents to continue in the licensed activities pending final resolution of this matter, considering this persistent and egregious conduct, would only exacerbate the situation and further endanger the health, safety and welfare of the People of the State of California.

LEGAL CONCLUSIONS

1. Business and Professions Code section 494, subdivision (a), provides for issuance of an interim order of suspension where: (1) the licentiate has engaged in acts or omissions constituting a violation of the Business and Professions Code, and (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. Section 494, subdivision (b) provides that no interim order shall be issued without notice to the licentiate unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

3. Section 494, subdivision (c) provides that the licentiate shall be given 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the board in support of the petition.

4. Section 494, subdivision (d) provides, in relevant part, that at the hearing on the petition for an interim order, the licentiate may be represented by counsel, have a record made of the proceedings, present affidavits and other documentary evidence, and present oral argument.

5. Petitioner served respondent with the Petition for Interim Suspension Order on August 16, 2011, by certified mail. Respondent received more than 15 days actual notice of the hearing on September 6, 2011. Respondent did not appear at hearing and filed no declarations, affidavits or documents in opposition to the Petition for Interim Order. This matter proceeded as a default under Government Code section 11520.

6. Respondents' acts and omissions undermine the purpose of the Smog Check Program, which is to ensure the health and safety of the public.

7. Petitioner established by a preponderance of the evidence that respondent Bayanzay violated the Automotive Repair Act (Bus. & Prof. Code, § 9889.22), and numerous provisions of the Smog Check Program. (Health & Saf. Code, §§ 44012, 44032, and 44059; and Cal. Code Regs., tit. 16, §§ 3340.30, subdivision (a), 3340.41, subdivision (c), and 3340.42.) Respondent Bayanzay knowingly and unlawfully issued Certificates of Compliance to four vehicles during the period from December 2010 through May 2011. He did so by willfully refusing to comply with Bureau procedures for administering smog emissions tests. (Factual Findings 5 through 21.)

8. Petitioner established by a preponderance of the evidence that respondent Iqball, owner, dba respondent CSO, violated the Automotive Repair Act (Bus. & Prof. Code, § 9889.22), and numerous provisions of the Smog Check Program. (Health & Saf. Code, §§ 44012, 44032, and 44059; and Cal. Code Regs., tit. 16, §§ 3340.30, subdivision (a), 3340.41, subdivision (c), and 3340.42.) Respondent Iqball, dba respondent CSO, permitted a pattern and practice of unlawful issuance of Certificates of Compliance by failing to supervise technicians and ensure adherence to the Bureau's smog check procedures. (Factual Findings 5 through 21.)

9. It was established by a preponderance of the evidence that permitting respondent Bayanzay to continue operating as an EA technician would endanger the public health, safety and welfare. Pursuant to Business and Professions Code section 494, cause was established to issue an interim order suspending respondent Bayanzay's EA technician license number EA 631151.

10. It was established by a preponderance of the evidence that permitting respondent Iqball to continue operating as an automobile repair dealer would endanger the public health, safety and welfare. Pursuant to Business and Professions Code section 494, cause was established to issue an interim order suspending respondent Iqball's ARD registration number ARD 264464.

11. It was established by a preponderance of the evidence that permitting respondent CSO to continue operating as a smog check station would endanger the public health, safety and welfare. Pursuant to Business and Professions Code section 494, cause was established to issue an interim order suspending respondent CSO's smog check station license number TC 264464.

ORDER

The Petition for an Interim Suspension Order is GRANTED.

1. Automotive Repair Dealer Registration No. ARD 264464, which was issued to respondent Nabila Iqball, as owner of California Smog Only, is temporarily suspended pending the outcome of the hearing in this matter;

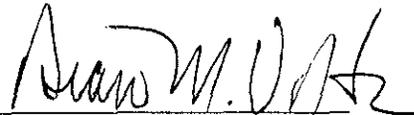
2. Smog Check Station License No. TC 264464, which was issued to respondent Nabila Iqball, as owner of California Smog Only, is temporarily suspended pending the outcome of the hearing in this matter; and

3. Advanced Emission Specialist Technician License No. EA 631151, which was issued to respondent Hedayatullah Bayanzay, is temporarily suspended pending the outcome of the hearing in this matter.

4. A prominent sign, provided by the Bureau, shall be posted on the outside of the business premises of respondent California Smog Only, Nabila Iqball, owner, 443 South Wilson Way, Stockton, California, pending the outcome of the hearing in this matter. The sign shall indicate the reason for the temporary suspension and shall be conspicuously displayed on the licensed premises in a location open to and frequented by customers. The sign shall remain posted during the entire period of temporary suspension.

5. Failure of the Bureau to comply with any of the requirements of Business and Professions Code section 494, subdivision (f), shall dissolve the interim order by operation of law.

Dated: September 8, 2011



DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings