

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

In the Matter of the Accusation Against:

**GUERO TEST ONLY**  
**FRANCISCO VAZQUEZ, Owner**  
460 W. 92<sup>nd</sup> Street  
Los Angeles, CA 90003  
Automotive Repair Dealer Registration  
No. ARD 262321  
Smog Check Test Only Station License  
No. TC 262321

and

**JAMES EDWARD KNOX**  
8241 South Country Way  
Sacramento, CA 95828 and/or  
4823 Arlington Avenue  
Los Angeles, CA 90043  
Advanced Emission Specialist Technician  
License No. EA 631224

Respondent.

Case No. 79/11-84

OAH No. 2011060236

**DECISION AFTER NONADOPTION**

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, on July 1, 2011, at Los Angeles, California.

M. Travis Peery, Deputy Attorney General, represented the Complainant. Respondent Guero Test only, Francisco Vazquez, Owner, appeared and was represented by Orlando J. Castano, Jr.

James Edward Knox failed to appear despite all due and proper notice and process.

Oral and documentary evidence and evidence by way of official notice and stipulation was received and the cause argued and then submitted.

The proposed decision of the Administrative Law Judge was submitted to the Director on August 1, 2011. After due consideration thereof, the Director declined to adopt said proposed decision and thereafter on August 25, 2011 issued an Order of Non-adoption and subsequently on October 5, 2011 issued an Order Fixing Date for Submission of Argument. Written argument having been received from both parties and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Director of the Department of Consumer Affairs pursuant to Section 11517 of the Government Code hereby makes the following decision:

## **FACTUAL FINDINGS**

### *Parties*

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

### **Automotive Repair Dealer Registration**

2. On June 22, 2010, the Bureau issued Automotive Repair Dealer Registration Number ARD 262321 (registration) to Francisco Vazquez (Respondent Guero), doing business as Guero Test Only. The registration is in full force and effect.

### **Smog Check Test Only Station License**

3. On August 12, 2010, the Bureau issued Smog Check Test Only Station License Number TC 262321 (station license) to Respondent Guero. The station license is in full force and effect.

### **Advanced Emission Specialist Technician License**

4. On August 3, 2009, the Bureau issued Advanced Emission Specialist Technician License Number EA 631224 (technician license) to James Edward Knox (Respondent Knox). The technician license is in full force and effect.

### ***Jurisdiction***

5. The Bureau has jurisdiction to proceed pursuant to Business and Professions Code sections 9884.7 and 9884.13 and Health and Safety Code sections 44002 and 44072.3. Administrative proceedings before the Bureau are conducted in conformity with the provisions of the California Administrative Procedure Act, Chapter 5, commencing with Government Code section 11500 et seq.

## Clean Piping

### Undercover Operation – August 26, 2010

6. On August 26, 2010, the Bureau performed an undercover operation at Respondent Guero's facility based on information it received that smog certificates could be purchased for \$250 a piece without a smog inspection. The undercover operation and the information obtained from the Bureau's Vehicle Information Database (VID) revealed that Respondent Knox performed three (3) smog inspections, which resulted in the issuance of electronic certificates of compliance for the vehicles set forth in Table 1 certifying that he had tested and inspected those vehicles and that the vehicles were in compliance with applicable laws and regulations. In fact, Respondent Knox performed the smog inspections using the clean piping method<sup>1</sup> by using the tail pipe emissions of vehicle other than the vehicles being certified in order to issue the electronic certificates of compliance. The vehicles certified were not in the test bay at the time of the smog inspections. They were in the Bureau's possession.

**Table 1**

<b>Date and Test Times</b>	<b>Vehicle Certified</b>	<b>Vehicle Actually Tested</b>	<b>Certificate Issued</b>
8/26/2010 0825 hours to 0834 hours	2000 Honda Accord	Unknown	WN339960C
8/26/2010 0839 hours to 0854 hours	1994 Dodge Ram 2500	Unknown	WN339961C
8/26/2010 0906 hours to 0915 hours	1990 Pontiac 6000	Unknown	WN339963C

7. On August 26, 2010, regarding the vehicles set forth in Table 1, Finding 6, Respondent Knox violated sections of that Code, as follows:

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<sup>1</sup> "Clean piping" is a method used to fraudulently inspect and/or certify vehicles that will not pass a properly performed smog inspection on their own or in some instances are not present during the time the test is performed. To clean pipe a vehicle the technician or other individual uses a clean exhaust sample that will pass the smog check emission test while entering data for the vehicle being illegally inspected.

- a. Section 44012, subdivision (a): Respondent Knox failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.
- b. Section 44012, subdivision (f): Respondent Knox failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.
- c. Section 44032: Respondent Knox failed to perform tests of the emission control devices systems on those vehicles in accordance with section 44012 of that Code, in that the vehicle had been clean piped.
- d. Section 44059: Respondent Knox willfully made false entries for the electronic certificates of compliance by certifying that those vehicles had been inspected as required when, in fact, they had not.

8. On August 26, 2010, regarding the vehicles set forth in Table 1, Finding 6 Respondent Knox violated sections of the California Code of Regulations, title 16, as follows:

- a. Section 3340.24, subdivision (c): Respondent Knox falsely or fraudulently issued electronic certificates of compliance without performing bona fide inspections of the emission control devices and systems on those vehicles as required by Health and Safety Code section 44012.
- b. Section 3340.30, subdivision (a): Respondent Knox failed to inspect and test those vehicles in accordance with Health and Safety Code section 44012.
- c. Section 3340.41, subdivision (c): Respondent Knox entered false information into the Emission Inspection System for the electronic certificates of compliance by entering vehicle emission control information for vehicles other than the vehicles being tested.
- d. Section 3340.42: Respondent Knox failed to conduct the required smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

9. On August 26, 2010, Respondent Knox committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for the vehicles set forth in Table 1, Finding 6 without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

10. The evidence supports a finding that Respondent Guero through his employee, Respondent Knox, has subjected his smog check test only license to discipline based on the following:

- a. August 26, 2010, Respondent Guero, made statements which by exercise of reasonable care he should have known were untrue or misleading when he issued electronic certificates of compliance for the vehicles set forth in Table 1, Finding 6, certifying that those vehicle were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.
- b. On August 26, 2010, Respondent Guero, Respondent Knox, issued electronic certificates of compliance for the vehicles set forth in Table 1, Finding 6, without ensuring the performance of bona fide inspections of the emission control devices and systems afforded by the Motor Vehicles Inspection Program.

11. On August 26, 2010, regarding the vehicles set forth in Table 1, Finding 6 Respondent Guero violated sections of that Code, as follows:

- a. Section 44012, subdivision (a): Respondent Guero, through his employee Respondent Knox, failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.
- b. Section 44012, subdivision (f): Respondent Guero through his employee Respondent Knox, failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.
- c. Section 44015, subdivision (b): Respondent Guero issued electronic certificates of compliance without ensuring the proper testing and inspecting the vehicles to determine if they were in compliance with section 44012 of that Code.

12. On August 26, 2010, regarding the vehicles set forth in Table 1, Finding 6 Respondent Guero violated sections of the California Code of Regulations, title 16, as follows:

- a. Section 3340.24, subdivision (c): Respondent Guero falsely issued electronic certificates of compliance without ensuring the performance of bona fide inspections of the emission control devices and systems on those vehicles as required by Health and Safety Code section 44012.

- b. Section 3340.35, subdivision (c): Respondent Guero issued electronic certificates of compliance even though those vehicles had not been inspected in accordance with section 3340.42 of that Code.
- c. Section 3340.42: Respondent Guero failed to ensure the conduct of the required smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

13. Respondent Guero elected to operate his business through employees and therefore he must be responsible for their conduct in the exercise of his license. *Arenstein v. California St. Bd. of Pharmacy* (1968) 265 Cal.App.2d 179, 192. In accordance with Business and Professions Code section 9884.7, subdivision (1), Respondent Guero's Automotive Repair Dealer Registration is subject to discipline for any acts or omissions conducted by the automotive repair dealer or any employee, involving untrue or misleading statements, including acts of fraud and or gross negligence related to the business of the automotive repair dealer. Respondent Guero is therefore responsible for the dishonest, deceitful, and fraudulent acts of his employee, Respondent Knox. Based on this finding, and pursuant to Health and Safety Code section 44072.8, the director may revoke all licenses and registrations issued in Respondents' name.

*Costs*

14. Pursuant to Business and Professions Code section 125.3<sup>2</sup> the Complainant certifies the following costs of investigation and enforcement of the case.

Bureau Investigation	\$ 9,964.98
Attorney General Prosecution	<u>13,192.50</u>
Total	\$23,157.48

15. Given the time and effort, in the public interest, to investigate and marshal evidence in this matter the costs set forth in Finding 14 are reasonable.

LEGAL CONCLUSIONS

*Violations*

1. Respondent Guero's registration is subject to disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), by reason of Findings 10, 11, and 12.

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<sup>2</sup> Business and Professions Code section 125.3 provides that in any order issued in resolution of a disciplinary proceeding before a Bureau within the Department of Consumer Affairs where a licensee is found to have committed a violation or violations of the licensing act, the Bureau may request the administrative law judge to order the licensee to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

2. Respondent Guero's registration is subject to disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(4) and (5), by reason of Findings 10, 11, and 12.

3. Respondent Guero's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), by reason of Findings 10, 11, and 12.

4. Respondent Guero's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), by reason of Findings 10, 11, and 12.

5. Respondent Guero's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), by reason of Findings 10, 11, and 12.

6. Respondent Knox's technician license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), by reason of Findings 7, 8, and 9.

7. Respondent Knox's technician license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), by reason of Findings 7, 8, and 9.

8. Respondent Knox's technician license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), by reason of Findings 7, 8, and 9.

#### Costs

9. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost regulation similar to section 125.3. In so doing, however, the Court directed the Administrative Law Judge and the agency to evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, the Bureau must not assess the full costs where it would unfairly penalize the Respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Bureau must consider a Respondent's subjective good faith belief in the merits of his or her position and whether the Respondent has raised a colorable challenge; the Bureau must consider a Respondent's ability to pay; and the Bureau may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a Respondent engaged in relatively innocuous misconduct. (*Zuckerman v. State Board of Chiropractic Examiners*, supra at p. 45).

10. Respondents Knox and Guero are severally liable for costs set forth in Finding 14, rounded for convenience to \$23,150.00. However in the interest of justice since there is no evidence that Respondent Guero had knowledge of the illegal activities, his liability is reduced by \$5,000 and Respondent Knox is assessed the balance of \$11,575. Neither proffered evidence of inability to pay (financial hardship).

#### *Licensing Considerations*

11. The Board's Disciplinary Guidelines (Guidelines) dated and revised October, 2007 were reviewed and considered by the Administrative Law Judge to determine the appropriate level of discipline warranted. Additionally, the objective of a disciplinary proceeding is to protect the public<sup>3</sup>, the licensed profession, maintain integrity, high standards, and preserve public confidence in licensees of the Board. The purpose of proceedings of this type is not to punish Respondent. In particular, the statutes relating to Board licensees are designed to protect the public from any potential risk of harm. The law looks with favor upon those who have been properly rehabilitated.

12. In sum, on August 26, 2010, the Bureau of Automotive Repair was able to purchase Smog Check Certificates of Compliance for vehicles that were in the Bureau's possession. James Edward Knox's Smog Check Technician license and access code were used to perform three illegal smog check inspections that resulted in three Certificates of Compliance being illegally issued. The three vehicles tested were not at the facility when the smog check inspections were performed. The three vehicles were illegally certified by James Edward Knox using a method known as "clean piping".

13. Respondent Knox's corrupt conduct (dishonesty, deceit, fraud) directly harmed the public. Respondent Guero is strictly liable for the conduct of his employee, Respondent Knox. Respondent Guero's conduct demonstrated a total lack of knowledge of the legislative scheme and regulatory scheme which govern his registration and station license. His conduct harmed the public. Accordingly, the Order which follows is consistent with the public interest.

14. Though the evidence showed that Respondent Guero had been in business for approximately 2 weeks before the illegal clean-piping, the lack of efforts to effectively manage and supervise the smog check operations is glaring. Absent is any evidence that Respondent Guero took any steps to ensure that activities in his business complied with the law. More troubling still is Respondent's testimony that he bore no responsibility for the clean-piping because He was not present when they occurred. It is this lack of responsibility coupled with the fact that Respondent Guero embarked on a smog check business after claiming to work in the smog industry for

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<sup>3</sup> *Camacho v. Youde* (1975) 95 Cal.App3d, 165; *Clerical v. Department of Motor Vehicles* (1990) 224 Cal.App.3rd 1016, 1030-1031; *Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 816.

over 20 years that makes any discipline short of revocation ineffective. Therefore, protection of the public justifies the following Order.

**ORDER**

1. Automotive Repair Dealer Registration Number ARD 262321, issued to Francisco Vazquez doing business as Guero Test Only, is permanently invalidated and therefore revoked.

2. Any other automotive repair dealer registration issued to Francisco Vazquez is permanently invalidated and therefore revoked.

3. Smog Check, Test Only, Station License Number TC 262321, issued to Francisco Vazquez doing business as Guero Test Only is hereby revoked.

4. Any additional license issued under Chapter 5 of the Health and Safety Code in the name of Francisco Vazquez is hereby revoked.

5. Advanced Emission Specialist Technician License Number EA 631224, issued to James Edward Knox is hereby revoked.

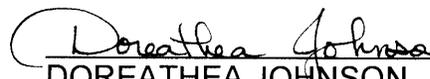
6. Any additional license issued under Chapter 5 of the Health and Safety Code in the name of James Edward Knox is hereby revoked.

7. Francisco Vazquez, individually, and as owner of Guero's Test Only, shall pay the Director of Consumer Affairs the sum of \$6,575.00 at the Director's Sacramento address within thirty days of the effective date of this Decision.

8. James Edward Knox shall pay to said Director at said address the sum of \$11,575.00 within thirty days of the effective date of this Decision.

This Decision shall become effective on 11/23/12,

IT IS SO ORDERED this 19th day of December, 2011.

  
DOREATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

**GUERO TEST ONLY**  
**FRANCISCO VAZQUEZ, Owner**  
460 W. 92<sup>nd</sup> Street  
Los Angeles, CA 90003  
Automotive Repair Dealer Registration  
No. ARD 262321  
Smog Check Test Only Station License  
No. TC 262321

and

**JAMES EDWARD KNOX**  
8241 South Country Way  
Sacramento, CA 95828 and/or  
4823 Arlington Avenue  
Los Angeles, CA 90043  
Advanced Emission Specialist Technician  
License No. EA 631224

Respondent.

Case No. 79/11-84

OAH No. 2011060236

**ORDER OF NONADOPTION OF PROPOSED DECISION**

Pursuant to Section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is not adopted. The Director of Consumer Affairs will decide the case upon the record, including the transcript of the hearing held on July 1, 2011, and upon such written argument as the parties may wish to submit. The Director is particularly interested in arguments directed to whether or not the discipline should be reduced. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

IT IS SO ORDERED this 25th day of August, 2011.

  
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**DOREATHEA JOHNSON**  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

GUERO TEST ONLY  
460 W. 92<sup>nd</sup> Street  
Los Angeles, CA 90003  
FRANCISCO VAZQUEZ, Owner  
Automotive Repair Dealer Registration No. ARD 262321  
Smog Check Test Only Station License No. TC 262321

and

JAMES EDWARD KNOX  
8241 South Country Way  
Sacramento, CA 95828 and/or  
4823 Arlington Avenue  
Los Angeles, CA 90043  
Advanced Emission Specialist Technician License  
No. EA 631224.

Respondents.

Case No.: 79/11-84

OAH No.: 2011060236

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, on July 1, 2011, at Los Angeles, California.

M. Travis Peery, Deputy Attorney General, represented the Complainant.

Respondent Guero Test only, Francisco Vazquez, Owner, appeared and was represented by Orlando J. Castano, Jr.

James Edward Knox failed to appear despite all due and proper notice and process.

Oral and documentary evidence and evidence by way of official notice and stipulation was received and the cause argued and then submitted.

The Administrative Law Judge now finds, concludes and orders as follows:

## FACTUAL FINDINGS

### *Parties*

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

### **Automotive Repair Dealer Registration**

2. On June 22, 2010, the Bureau issued Automotive Repair Dealer Registration Number ARD 262321 (registration) to Francisco Vazquez (Respondent Guero), doing business as Guero Test Only. The registration is in full force and effect.

### **Smog Check Test Only Station License**

3. On August 12, 2010, the Bureau issued Smog Check Test Only Station License Number TC 262321 (station license) to Respondent Guero. The station license is in full force and effect.

### **Advanced Emission Specialist Technician License**

4. On August 3, 2009, the Bureau issued Advanced Emission Specialist Technician License Number EA 631224 (technician license) to James Edward Knox (Respondent Knox). The technician license is in full force and effect.

### *Jurisdiction*

5. The Bureau has jurisdiction to proceed pursuant to Business and Professions Code sections 9884.7 and 9884.13 and Health and Safety Code sections 44002 and 44072.3. Administrative proceedings before the Bureau are conducted in conformity with the provisions of the California Administrative Procedure Act, Chapter 5, commencing with Government Code section 11500 *et seq.*

### *Clean Piping*

### **Undercover Operation – August 26, 2010**

6. On August 26, 2010, the Bureau performed an undercover operation at Respondent Guero's facility based on information it received that smog certificates could be purchased for \$250 a piece without a smog inspection. The undercover operation and the information obtained from the Bureau's Vehicle Information Database (VID) revealed that Respondent Knox performed three (3) smog inspections, which resulted in the issuance of electronic

certificates of compliance for the vehicles set forth in Table 1 certifying that he had tested and inspected those vehicles and that the vehicles were in compliance with applicable laws and regulations. In fact, Respondent Knox performed the smog inspections using the clean piping method<sup>1</sup> by using the tail pipe emissions of vehicle other than the vehicles being certified in order to issue the electronic certificates of compliance. The vehicles certified were not in the test bay at the time of the smog inspections. They were in the Bureau's possession.

Table 1

<b>Date and Test Times</b>	<b>Vehicle Certified</b>	<b>Vehicle Actually Tested</b>	<b>Certificate Issued</b>
8/26/2010 0825 hours to 0834 hours	2000 Honda Accord	Unknown	WN339960C
8/26/2010 0839 hours to 0854 hours	1994 Dodge Ram 2500	Unknown	WN339961C
8/26/2010 0906 hours to 0915 hours	1990 Pontiac 6000	Unknown	WN339963C

7. On August 26, 2010, Respondent Guero made statements which by exercise of reasonable care he should have known were untrue or misleading when he issued electronic certificates of compliance for the vehicles set forth in Table 1, Finding 6 certifying that those vehicle were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

8. On August 26, 2010, Respondent Guero issued electronic certificates of compliance for the vehicles set forth in Table 1, Finding 6 without performing bona fide inspections of the emission control devices and systems afforded by the Motor Vehicles Inspection Program. However, it was not established that said conduct constituted fraud.

9. On August 26, 2010, regarding the vehicles set forth in Table 1, Finding 6 Respondent Guero violated sections of that Code, as follows:

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<sup>1</sup> "Clean piping" is a method used to fraudulently inspect and/or certify vehicles that will not pass a properly performed smog inspection on their own or in some instances are not present during the time the test is performed. To clean pipe a vehicle the technician or other individual uses a clean exhaust sample that will pass the smog check emission test while entering data for the vehicle being illegally inspected.

- (A) Section 44012, subdivision (a): Respondent Guero failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.
- (B) Section 44012, subdivision (f): Respondent Guero failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.
- (C) Section 44015, subdivision (b): Respondent Guero issued electronic certificates of compliance without properly testing and inspecting the vehicles to determine if they were in compliance with section 44012 of that Code.

10. On August 26, 2010, regarding the vehicles set forth in Table 1, Finding 6 Respondent Guero violated sections of the California Code of Regulations, title 16, as follows:

- (A) Section 3340.24, subdivision (c): Respondent Guero falsely issued electronic certificates of compliance without performing bona fide inspections of the emission control devices and systems on those vehicles as required by Health and Safety Code section 44012.
- (B) Section 3340.35, subdivision (c): Respondent Guero issued electronic certificates of compliance even though those vehicles had not been inspected in accordance with section 3340.42 of that Code.
- (C) Section 3340.42: Respondent Guero failed to conduct the required smog Tests and inspections on those vehicles in accordance with the Bureau's specifications..

11. On August 26, 2010, regarding the vehicles set forth in Table 1, finding 6, Respondent Guero committed acts involving gross negligence whereby another was injured by issuing electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. It was established that the acts were grossly negligent. It wasn't established that said Respondent's acts involved dishonesty, fraud or deceit.

12. On August 26, 2010, regarding the vehicles set forth in Table 1, Finding 6, Respondent Knox violated sections of that Code, as follows:

- (A) Section 44012, subdivision (a): Respondent Knox failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

- (B) Section 44012, subdivision (f): Respondent Knox failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.
- (C) Section 44032: Respondent Knox failed to perform tests of the emission control devices systems on those vehicles in accordance with section 44012 of that Code, in that the vehicle had been clean piped.
- (D) Section 44059: Respondent Knox willfully made false entries for the electronic certificates of compliance by certifying that those vehicles had been inspected as required when, in fact, they had not.

13. On August 26, 2010, regarding the vehicles set forth in Table 1, Finding 6 Respondent Knox violated sections of the California Code of Regulations, title 16, as follows:

- (A) Section 3340.24, subdivision (c): Respondent Knox false or fraudulently issued electronic certificates of compliance without performing bona fide inspections of the emission control devices and systems on those vehicles as required by Health and Safety Code section 44012.
- (B) Section 3340.30, subdivision (a): Respondent Knox failed to inspect and test those vehicles in accordance with Health and Safety Code section 44012.
- (C) Section 3340.41, subdivision (c): Respondent Knox entered false information into the Emission Inspection System for the electronic certificates of compliance by entering vehicle emission control information for vehicles other than the vehicles being certified.
- (D) Section 3340.42: Respondent Knox failed to conduct the required smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

14. On August 26, 2010, Respondent Knox committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for the vehicles set forth in Table 1, Finding 6 without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

#### *Costs*

15. Pursuant to Business and Professions Code section 125.3<sup>2</sup> the Complainant certifies the following costs of investigation and enforcement of the case.

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<sup>2</sup> Business and Professions Code section 125.3 provides that in any order issued in resolution of a disciplinary proceeding before a Bureau within the Department of Consumer Affairs

Bureau Investigation	\$ 9,964.98
Attorney General Prosecution	<u>13,192.50</u>
Total	\$23,157.48

16. Given the time and effort, in the public interest, to investigate and marshal evidence in this matter the costs set forth in Finding 15 are reasonable.

## LEGAL CONCLUSIONS

### *Violations*

1. Respondent Guero's registration is subject to disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), by reason of Finding 7.
2. Respondent Guero's registration is not subject to disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), by reason of Finding 8.
3. Respondent Guero's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), by reason of Finding 9.
4. Respondent Guero's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), by reason of Finding 10.
5. Respondent Guero's smog check station license is not subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), by reason of Finding 11.
6. Respondent Knox's technician license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), by reason of Finding 12.
7. Respondent Knox's technician license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), by reason of Finding 13.
8. Respondent Knox's technician license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), by reason of Finding 14.

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where a licentiate is found to have committed a violation or violations of the licensing act, the Bureau may request the administrative law judge to order the licensee to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

*Costs*

9. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost regulation similar to section 125.3. In so doing, however, the Court directed the Administrative Law Judge and the agency to evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, the Bureau must not assess the full costs where it would unfairly penalize the Respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Bureau must consider a Respondent's subjective good faith belief in the merits of his or her position and whether the Respondent has raised a colorable challenge; the Bureau must consider a Respondent's ability to pay; and the Bureau may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a Respondent engaged in relatively innocuous misconduct. (*Zuckerman v. State Board of Chiropractic Examiners, supra* at p. 45).

10. Respondents Knox and Guero are severally liable for costs set forth in Finding 15, rounded for convenience to \$23,150.00. Accordingly, each is liable for \$11,575.00. Neither proffered evidence of inability to pay (financial hardship).

11. In the instant case all charges of the Bureau have been sustained against Respondent Knox (Legal Conclusions 6, 7 and 8). Respondent Guero "raised a colorable challenge" to some charges and achieved a dismissal of two causes of action (legal Conclusions 2 and 5). Accordingly, a reduction of \$5,000.00 is reasonable and prudent. Costs, therefore are assessed as follows:

Respondent Knox	\$11,575.00
Respondent Guero	6,575.00

*Licensing Considerations*

12. The Board's Disciplinary Guidelines (Guidelines) dated and revised October, 2007 were reviewed and considered by the Administrative Law Judge to determine the appropriate level of discipline warranted. Additionally, the objective of a disciplinary proceeding is to protect the public<sup>3</sup>, the licensed profession, maintain integrity, high standards, and preserve public confidence in licensees of the Board. The purpose of proceedings of this type is not to punish Respondent. In particular, the statutes relating to Board licensees are designed to protect the public from any potential risk of harm. The law looks with favor upon those who have been properly rehabilitated.

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<sup>3</sup> *Camacho v. Youde* (1975) 95 Cal.App3d, 165; *Clerical v. Department of Motor Vehicles* (1990) 224 Cal.App.3<sup>rd</sup> 1016, 1030-1031; *Fahmy v. Medical Board of California* (1995) 38 Cal.App.4<sup>th</sup> 810, 816.

13. In sum, on August 26, 2010, the Bureau of Automotive Repair was able to purchase Smog Check Certificates of Compliance for vehicles that were in the Bureau's possession. James Edward Knox's Smog Check Technician license and access code were used to perform three illegal smog check inspections that resulted in three Certificates of Compliance being illegally issued. The three vehicles tested were not at the facility when the smog check inspections were performed. The three vehicles were illegally certified by James Edward Knox using a method known as "clean piping".

14. Respondent Knox's corrupt conduct (dishonesty, deceit, fraud) directly harmed the public. Respondent Guero is strictly liable for the conduct of his employee, Respondent Knox. Respondent Guero's grossly negligent conduct demonstrated a total lack of knowledge of the legislative scheme and regulatory scheme which govern his registration and station license. His grossly negligent conduct harmed the public. Accordingly, the Order which follows is consistent with the public interest.

#### ORDER

1. Automotive Repair Dealer Registration Number ARD 262321, issued to Francisco Vazquez doing business as Guero Test Only, is permanently invalidated and therefore revoked.

2. Any other automotive repair dealer registration issued to Francisco Vazquez is permanently invalidated and therefore revoked.

3. Smog Check, Test Only, Station License Number TC 262321, issued to Francisco Vazquez doing business as Guero Test Only is hereby revoked.

4. Any additional license issued under Chapter 5 of the Health and Safety Code in the name of Francisco Vazquez is hereby revoked.

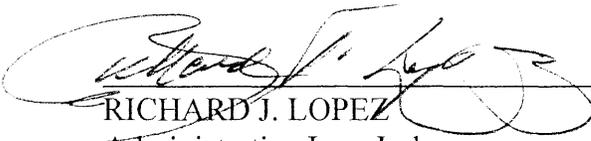
5. Advanced Emission Specialist Technician License Number EA 631224, issued to James Edward Knox is hereby revoked.

6. Any additional license issued under Chapter 5 of the Health and Safety Code in the name of James Edward Knox is hereby revoked.

7. Francisco Vazquez, individually, and as owner of Guero's Test Only, shall pay the Director of Consumer Affairs the sum of \$6,575.00 at the Director's Sacramento address within thirty days of the effective date of this Decision.

8. James Edward Knox shall pay to said Director at said address the sum of \$11,575.00 within thirty days of the effective date of this Decision.

Dated: August 1, 2011

  
RICHARD J. LOPEZ  
Administrative Law Judge  
Office of Administrative Hearings

RJL:ref

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*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:  
12 **GUERO TEST ONLY**  
460 W. 92nd Street  
13 Los Angeles, CA 90003  
**FRANCISCO VAZQUEZ, OWNER**  
14 **Automotive Repair Dealer Registration**  
No. ARD 262321  
15 **Smog Check Test Only Station License**  
No. TC 262321  
16  
17 **and**  
18 **JAMES EDWARD KNOX**  
8241 South Country Way  
19 Sacramento, CA 95828 and/or  
4823 Arlington Avenue  
20 Los Angeles, CA 90043  
**Advanced Emission Specialist Technician**  
License No. EA 631224  
21  
22 Respondents.

Case No. 79111-84  
  
**ACCUSATION**  
  
**SMOG CHECK**

23 Complainant alleges:

24 **PARTIES**

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

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

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

10 7. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"  
11 "commission," "committee," "department," "division," "examining committee," "program," and  
12 "agency." "License" includes certificate, registration or other means to engage in a business or  
13 profession regulated by the Code.

14 8. Section 44002 of the Health and Safety Code provides, in pertinent part, that the  
15 Director has all the powers and authority granted under the Automotive Repair Act for enforcing  
16 the Motor Vehicle Inspection Program.

17 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

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1 11. Section 44072.8 of the Health and Safety Code states:

2 When a license has been revoked or suspended following a hearing under  
3 this article, any additional license issued under this chapter in the name of the  
4 licensee may be likewise revoked or suspended by the director.

4 **COST RECOVERY**

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

9 **UNDERCOVER OPERATION – AUGUST 26, 2010**

10 13. On or about August 26, 2010, the Bureau performed an undercover operation at  
11 Respondent Guero's facility based on information it received that smog certificates could be  
12 purchased for \$250 apiece without a smog inspection. The undercover operation and information  
13 obtained from the Bureau's Vehicle Information Database ("VID") revealed that Respondent  
14 Knox performed three (3) smog inspections, which resulted in the issuance of electronic  
15 certificates of compliance for the vehicles set forth in Table 1, below, certifying that he had tested  
16 and inspected those vehicles and that the vehicles were in compliance with applicable laws and  
17 regulations. In fact, Respondent Knox performed the smog inspections using the clean piping  
18 method<sup>1</sup> by using the tail pipe emissions of vehicles other than the vehicles being certified in  
19 order to issue the electronic certificates of compliance. The vehicles certified were not in the test  
20 bay at the time of the smog inspections.

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26 <sup>1</sup> "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of  
27 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in  
28 compliance or are not present in the smog check area during the time of the certification.

Table 1

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued
8/26/2010 0825 hours to 0834 hours	2000 Honda Accord	Unknown	WN339960C
8/26/2010 0839 hours to 0854 hours	1994 Dodge Ram 2500	Unknown	WN339961C
8/26/2010 0906 hours to 0915 hours	1990 Pontiac 6000	Unknown	WN339963C

**FIRST CAUSE FOR DISCIPLINE**

**(Misleading Statements)**

14. Respondent Guero has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about August 26, 2010, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading when he issued electronic certificates of compliance for the vehicles set forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

**SECOND CAUSE FOR DISCIPLINE**

**(Fraud)**

15. Respondent Guero has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about August 26, 2010, he committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table 1, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Violation of the Motor Vehicle Inspection Program)

3 16. Respondent Guero Test Only has subjected his station license to discipline under  
4 Health and Safety Code section 44072.2, subdivision (a), in that on or about August 26, 2010,  
5 regarding the vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

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

9 b. **Section 44012, subdivision (f):** Respondent Guero failed to perform emission  
10 control tests on those vehicles in accordance with procedures prescribed by the department.

11 c. **Section 44015, subdivision (b):** Respondent Guero issued electronic certificates of  
12 compliance without properly testing and inspecting the vehicles to determine if they were in  
13 compliance with section 44012 of that Code.

14 d. **Section 44059:** Respondent Guero willfully made false entries for the electronic  
15 certificates of compliance by certifying that those vehicles had been inspected as required when,  
16 in fact, they had not.

17 FOURTH CAUSE FOR DISCIPLINE

18 (Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

19 17. Respondent Guero has subjected his station license to discipline under Health and  
20 Safety Code section 44072.2, subdivision (c), in that on or about August 26, 2010, regarding the  
21 vehicles set forth in Table 1, above, he violated sections of the California Code of Regulations,  
22 title 16, as follows:

23 a. **Section 3340.24, subdivision (c):** Respondent Guero falsely or fraudulently issued  
24 electronic certificates of compliance without performing bona fide inspections of the emission  
25 control devices and systems on those vehicles as required by Health and Safety Code section  
26 44012.



1 d. **Section 44059:** Respondent Knox willfully made false entries for the electronic  
2 certificates of compliance by certifying that those vehicles had been inspected as required when,  
3 in fact, they had not.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

6 20. Respondent Knox has subjected his technician license to discipline under Health and  
7 Safety Code section 44072.2, subdivision (c), in that on or about August 26, 2010, regarding the  
8 vehicles set forth in Table 1, above, he violated sections of the California Code of Regulations,  
9 title 16, as follows:

10 a. **Section 3340.24, subdivision (c):** Respondent Knox falsely or fraudulently issued  
11 electronic certificates of compliance without performing bona fide inspections of the emission  
12 control devices and systems on those vehicles as required by Health and Safety Code section  
13 44012.

14 b. **Section 3340.30, subdivision (a):** Respondent Knox failed to inspect and test those  
15 vehicles in accordance with Health and Safety Code section 44012.

16 c. **Section 3340.41, subdivision (c):** Respondent Knox entered false information into  
17 the Emission Inspection System for the electronic certificates of compliance by entering vehicle  
18 emission control information for vehicles other than the vehicles being certified.

19 d. **Section 3340.42:** Respondent Knox failed to conduct the required smog tests and  
20 inspections on those vehicles in accordance with the Bureau's specifications.

21 **EIGHTH CAUSE FOR DISCIPLINE**

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

23 21. Respondent Knox has subjected his technician license to discipline under Health and  
24 Safety Code section 44072.2, subdivision (d), in that on or about August 26, 2010, he committed  
25 acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic  
26 certificates of compliance for the vehicles set forth in Table 1, above, without performing bona  
27 fide inspections of the emission control devices and systems on those vehicles, thereby depriving  
28

1 the People of the State of California of the protection afforded by the Motor Vehicle Inspection  
2 Program.

3 **OTHER MATTERS**

4 22. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,  
5 or may invalidate temporarily or permanently, the registrations for all places of business operated  
6 in this state by Francisco Vazquez doing business as Guero Test Only, upon a finding that he has,  
7 or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining  
8 to an automotive repair dealer.

9 23. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station  
10 License Number TC 262321, issued to Francisco Vazquez doing business as Guero Test Only, is  
11 revoked or suspended, any additional license issued under this chapter in the name of said  
12 licensee may be likewise revoked or suspended by the director.

13 24. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist  
14 Technician License Number EA 631224, issued to James Edward Knox, is revoked or suspended,  
15 any additional license issued under this chapter in the name of said licensee may be likewise  
16 revoked or suspended by the director.

17 **PRAYER**

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

20 1. Revoking, suspending, placing on probation, Automotive Repair Dealer Registration  
21 Number ARD 262321, issued to Francisco Vazquez doing business as Guero Test Only;

22 2. Revoking, suspending, or placing on probation any other automotive repair dealer  
23 registration issued to Francisco Vazquez;

24 3. Revoking or suspending Smog Check Test Only Station License Number TC 262321,  
25 issued to Francisco Vazquez doing business as Guero Test Only;

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

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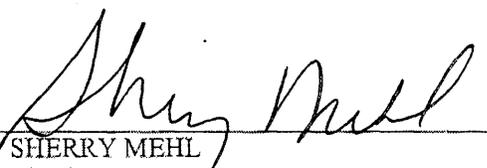
5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 631224, issued to James Edward Knox;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of James Edward Knox;

7. Ordering Francisco Vazquez and James Edward Knox to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 5/5/11

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

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