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

In the Matter of the Accusation Against: **CITY SMOG & LUBE** **DIEN THI DO, OWNER** **1502 N. Wilson Way** **Stockton, CA 95205** **Automotive Repair Dealer Reg. No. ARD 264744** **Smog Check, Test Only, Station License No. TC 264744,** **NAM PHAM** **4166 Riverbrook Court** **Stockton, CA 95219** **Advanced Emission Specialist Technician License No. EA 133709,** **and** **LONG NGOC NGUYEN** **736 Castle Oak Drive** **Stockton, CA 95210** **Advanced Emission Specialist Technician License No. EA 630502** Respondents.	Case No. 79/13-48 **ACCUSATION** Smog Check

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Complainant alleges:

PARTIES/LICENSE INFORMATION

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

City Smog & Lube; Dien Thi Do, Owner

2. On or about April 22, 2011, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 264744 ("registration") to Dien Thi Do ("Respondent Do" or "Do"), owner of City Smog & Lube. Respondent's registration is currently under suspension, as set forth in paragraph 6 below, and will expire on April 30, 2013, unless renewed.

3. On or about May 2, 2011, the Director issued Smog Check, Test Only, Station License Number TC 264744 ("smog check station license") to Respondent Do. Respondent's smog check station license is currently under suspension, as set forth in paragraph 6 below, and will expire on April 30, 2013, unless renewed.

Nam Pham

4. In or about 1998, the Director issued Advanced Emission Specialist Technician License Number EA 133709 ("technician license") to Nam Pham ("Respondent Pham" or "Pham"). Respondent's technician license is currently under suspension, as set forth in paragraph 6 below, and will expire on February 28, 2014, unless renewed.

Long Ngoc Nguyen

5. On or about September 26, 2008, the Director issued Advanced Emission Specialist Technician License Number EA 630502 ("technician license") to Long Ngoc Nguyen ("Respondent Nguyen" or "Nguyen"). Respondent's technician license was under suspension, as set forth in paragraph 6 below, but dissolved by operation of law on January 28, 2013, and will expire on March 31, 2014, unless renewed.

Interim Suspension Order

6. On January 11, 2013, in the disciplinary proceeding entitled "In the Matter of the Ex Parte Interim Suspension Order Against: Dien Thi Do", et al., the Office of Administrative

Hearings issued an *ex parte* interim order pursuant to Business and Professions Code ("Bus. & Prof. Code") section 494 suspending Respondent Do's registration and smog check station license and Respondents Pham's and Nguyen's technician licenses until the within Accusation is filed and a decision is issued thereon. At the ex parte Interim Suspension Order Hearing on January 11, 2013, Respondents Do and Pham waived their right to a noticed Interim Suspension Order hearing pursuant to Code section 494, subsection (b), but Respondent Nguyen was not present at the *ex parte* hearing. Although Petitioner served the January 11, 2013 *ex parte* Interim Suspension Order on all Respondents, it failed to serve the Interim Suspension Order Petition and supporting documents on Respondent Nguyen, and therefore, the *ex parte* Interim Suspension Order as to Respondent Nguyen was dissolved by operation of law on January 28, 2013, pursuant to Code section 494, subsection (b).

JURISDICTION

7. Bus. & Prof. Code section 9884.7 provides that the Director may revoke an automotive repair dealer registration.

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

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

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

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STATUTORY PROVISIONS

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

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

. . . .

(4) Any other conduct that constitutes fraud.

. . . .

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

12. Bus. & Prof. Code section 118, subdivision (b), states:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

13. Bus. & Prof. Code section 22, subdivision (a), states:

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

14. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes "registration" and "certificate."

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

> The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:
>
> (a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code § 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.
>
> (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured . . .

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

COST RECOVERY

17. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to 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.

VIDEO SURVEILLANCE OPERATION OF AUGUST 13, 2012

18. On August 13, 2012, from 0841 to 1520 hours, a representative of the Bureau conducted a video surveillance operation of Respondent Do's smog check facility. The surveillance video and information obtained from the Bureau's vehicle information database ("VID") revealed that Respondent Pham issued electronic smog certificates of compliance on behalf of Do, certifying that he had tested and inspected the vehicles identified below and that the vehicles were in compliance with applicable laws and regulations. In fact, Pham performed the smog inspections on the vehicles using clean piping[1] and "clean-plugging" methods[2], resulting in the issuance of fraudulent electronic smog certificates of compliance for the vehicles.

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[1] Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t), (continued...)

Time of Inspection	Vehicle Certified & License No.	Certificate No.	Bureau's Findings
1. 1257 - 1324	1993 Toyota Corolla; CA License No. 5FLX019	OO907198C	Vehicle was clean piped; Nguyen assisted Pham during the inspection
2. 1417 - 1427	2000 Dodge Stratus; CA License No. 4MHX590	OO907199C	Vehicle was clean piped and clean plugged; Nguyen assisted Pham during the inspection

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

19. Respondent Do's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which she knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent Do's technician, Respondent Pham, certified that vehicles 1 and 2, identified in paragraph 18 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Pham used clean piping methods in order to issue certificates for the vehicles and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

b. Respondent Do's technician, Respondent Pham, certified that vehicle 2, identified in paragraph 18 above, had passed inspection and was in compliance with applicable laws and regulations. In fact, Pham conducted the inspection on vehicle 2 using clean-plugging methods in that he substituted or used a different vehicle during the OBD II functional test[3] in order to issue a

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"clean piping" means the use of a sample of the exhaust emissions of one vehicle in order to cause the EIS (Emissions Inspection System) to issue a certificate of compliance for another vehicle.

[2] Clean-plugging is the use of the OBD II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is not in compliance due to a failure to complete the minimum number of self tests, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

[3] The On Board Diagnostics (OBD II) functional test is an automated function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves information from the vehicle's on-board computer about the status of the readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II

(continued...)

smog certificate of compliance for vehicle 2, and did not test or inspect vehicle 2 as required by Health & Saf. Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

20. Respondent Do's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud by issuing electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 18 above, without ensuring that bona fide inspections were performed of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

21. Respondent Do's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with provisions of that Code, as follows:

a. **Section 44012:** Respondent failed to ensure that the emission control tests were performed on vehicles 1 and 2, identified in paragraph 18 above, in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 18 above, without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health & Saf. Code section 44012.

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functional test, it will fail the overall inspection.

FOURTH CAUSE FOR DISCIPLINE

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

22. Respondent Do's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.35, subdivision (c):** Respondent Do issued electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 18 above, even though those vehicles had not been inspected in accordance with section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent Do authorized or permitted Respondent Pham to enter false information into the EIS unit by entering vehicle identification information or emission control system identification data for vehicles other than the ones being tested.

c. **Section 3340.42:** Respondent Do failed to ensure that the required smog tests were conducted on vehicles 1 and 2, identified in paragraph 18 above, in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

23. Respondent Do's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 18 above, without ensuring that bona fide inspections were performed of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

24. Respondent Pham's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012 of that Code, as follows: Respondent failed to perform the emission control tests on vehicles 1 and 2, identified in paragraph 18 above, in accordance with procedures prescribed by the department.

SEVENTH CAUSE FOR DISCIPLINE

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

25. Respondent Pham's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1 and 2, identified in paragraph 18 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS by entering vehicle identification information or emission control system identification data for vehicles other than the ones being tested.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1 and 2, identified in paragraph 18 above, in accordance with the Bureau's specifications.

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

26. Respondent Pham's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 18 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the

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

VIDEO SURVEILLANCE OPERATION OF AUGUST 14, 2012

27. On August 14, 2012, from 0832 to 1713 hours, a representative of the Bureau conducted a video surveillance operation of Respondent Do's smog check facility. The surveillance video and information obtained from the Bureau's VID revealed that Respondents Pham and Nguyen issued electronic smog certificates of compliance on behalf of Do, certifying that they had tested and inspected the vehicles identified below and that the vehicles were in compliance with applicable laws and regulations. In fact, Pham and Nguyen performed the smog inspections on the vehicles using clean piping and clean-plugging methods, resulting in the issuance of fraudulent electronic smog certificates of compliance for the vehicles.

Time of Inspection	Vehicle Certified & License No.	Certificate No.	Bureau's Findings
3. 1022 - 1036	1990 Acura Integra; CA License No. 5PCZ210	OQ030553C	Pham performed the inspection; the vehicle was clean piped.
4. 1050 - 1110	2000 Kia Sephia; CA License No. 6MTN551	OQ030554C	Pham performed the inspection; the vehicle was clean plugged.
Time of Inspection	**Vehicle Certified & License No.**	**Certificate No.**	**Bureau's Findings**
5. 1319 - 1333	1996 Volkswagen Jetta III; CA License No. 3SHH747	OQ030555C	Nguyen performed the inspection assisted by Pham (Nguyen issued the certificate); the vehicle was clean piped.
6. 1434 - 1451	1993 Toyota Corolla; CA License No. 4YZL831	OQ030557C	Pham performed the inspection assisted by Nguyen (Pham issued the certificate); the vehicle was clean piped
7. 1624 - 1641	1994 Honda Accord; CA License No. 4EQF686	OQ030559C	Pham performed the inspection; the vehicle was clean piped

NINTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

28. Respondent Do's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which she knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent Do's technician, Respondent Pham, certified that vehicles 3, 6, and 7, identified in paragraph 27 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Pham used clean piping methods in order to issue certificates for the vehicles and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

b. Respondent Do's technician, Respondent Pham, certified that vehicle 4, identified in paragraph 27 above, had passed inspection and was in compliance with applicable laws and regulations. In fact, Pham conducted the inspection on vehicle 4 using clean-plugging methods in that he substituted or used a different vehicle during the OBD II functional test in order to issue a smog certificate of compliance for vehicle 4, and did not test or inspect vehicle 4 as required by Health & Saf. Code section 44012.

c. Respondent Do's technician, Respondent Nguyen, certified that vehicle 5, identified in paragraph 27 above, had passed inspection and was in compliance with applicable laws and regulations. In fact, Nguyen used clean piping methods in order to issue a certificate for the vehicle and did not test or inspect the vehicle as required by Health & Saf. Code section 44012.

TENTH CAUSE FOR DISCIPLINE

(Fraud)

29. Respondent Do's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud by issuing electronic smog certificates of compliance for vehicles 3 through 7, identified in paragraph 27 above, without ensuring that bona fide inspections were performed of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

ELEVENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

30. Respondent Do's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with provisions of that Code, as follows:

a. **Section 44012:** Respondent failed to ensure that the emission control tests were performed on vehicles 3 through 7, identified in paragraph 27 above, in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued electronic smog certificates of compliance for vehicles 3 through 7, identified in paragraph 27 above, without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health & Saf. Code section 44012.

TWELFTH CAUSE FOR DISCIPLINE

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

31. Respondent Do's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.35, subdivision (c):** Respondent Do issued electronic smog certificates of compliance for vehicles 3 through 7, identified in paragraph 27 above, even though those vehicles had not been inspected in accordance with section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent Do authorized or permitted Respondents Pham and Nguyen to enter false information into the EIS unit by entering vehicle identification information or emission control system identification data for vehicles other than the ones being tested.

c. **Section 3340.42:** Respondent Do failed to ensure that the required smog tests were conducted on vehicles 3 through 7, identified in paragraph 27 above, in accordance with the Bureau's specifications.

THIRTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

32. Respondent Do's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of

compliance for vehicles 3 through 7, identified in paragraph 27 above, without ensuring that bona fide inspections were performed of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

FOURTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

33. Respondent Pham's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012 of that Code, as follows: Respondent failed to perform the emission control tests on vehicles 3, 4, 6, and 7, identified in paragraph 27 above, in accordance with procedures prescribed by the department.

FIFTEENTH CAUSE FOR DISCIPLINE

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

34. Respondent Pham's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 3, 4, 6, and 7, identified in paragraph 27 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS by entering vehicle identification information or emission control system identification data for vehicles other than the ones being tested.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 3, 4, 6, and 7, identified in paragraph 27 above, in accordance with the Bureau's specifications.

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SIXTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

35. Respondent Pham's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 3, 4, 6, and 7, identified in paragraph 27 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

36. Respondent Nguyen's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012 of that Code, as follows: Respondent failed to perform the emission control tests on vehicle 5, identified in paragraph 27 above, in accordance with procedures prescribed by the department.

EIGHTEENTH CAUSE FOR DISCIPLINE

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

37. Respondent Nguyen's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test vehicle 5, identified in paragraph 27 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

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

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicle 5, identified in paragraph 27 above, in accordance with the Bureau's specifications.

NINETEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

38. Respondent Nguyen's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for vehicle 5, identified in paragraph 27 above, without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

VIDEO SURVEILLANCE OPERATION OF AUGUST 15, 2012

39. On August 15, 2012, from 0831 to 1732 hours, a representative of the Bureau conducted a video surveillance operation of Respondent Do's smog check facility. The surveillance video and information obtained from the Bureau's VID revealed that Respondents Nguyen and Pham issued electronic smog certificates of compliance on behalf of Do, certifying that they had tested and inspected the vehicles identified below and that the vehicles were in compliance with applicable laws and regulations. In fact, Nguyen and Pham performed the smog inspections on the vehicles using clean piping and clean-plugging methods, resulting in the issuance of fraudulent electronic smog certificates of compliance for the vehicles.

Time of Inspection	Vehicle Certified & License No.	Certificate No.	Bureau's Findings
8. 1050 - 1106	1997 Nissan pickup; CA License No. 7F28947	OQ030560C	Nguyen performed the inspection; the vehicle was clean piped.
9. 1221 - 1250	2000 Volkswagen GTI; CA License No. 4SWL082	OQ030562C	Pham performed the inspection; the vehicle was clean piped.
10. 1613 - 1626	1999 Saturn SL; CA License No. 6PUW565	OQ030563C	Pham performed the inspection assisted by Nguyen (Pham issued the certificate); the vehicle was clean piped and clean plugged.
11. 1638 - 1654	1997 Honda Civic; CA License No. 6MTT963	OQ030564C	Pham performed the inspection assisted by Nguyen (Pham issued the certificate); the vehicle was clean piped and clean plugged

TWENTIETH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

40. Respondent Do's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which she knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent Do's technician, Respondent Nguyen, certified that vehicle 8, identified in paragraph 39 above, had passed inspection and was in compliance with applicable laws and regulations. In fact, Nguyen used clean piping methods in order to issue a certificate for the vehicle and did not test or inspect the vehicle as required by Health & Saf. Code section 44012.

b. Respondent Do's technician, Respondent Pham, certified that vehicles 9 through 11, identified in paragraph 39 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Pham used clean piping methods in order to issue certificates for the vehicles and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

c. Respondent Do's technician, Respondent Pham, certified that vehicles 10 and 11, identified in paragraph 39 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Pham conducted the inspections on vehicles 10 and 11 using clean-plugging methods in that he substituted or used different vehicles during the OBD II functional test in order to issue smog certificates of compliance for vehicles 10 and 11, and did not test or inspect vehicles 10 and 11 as required by Health & Saf. Code section 44012.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Fraud)

41. Respondent Do's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud by issuing electronic smog certificates of compliance for vehicles 8 through 11, identified in paragraph 39 above, without ensuring that bona fide inspections were performed of the emission

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control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

42. Respondent Do's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with provisions of that Code, as follows:

a. **Section 44012:** Respondent failed to ensure that the emission control tests were performed on vehicles 8 through 11, identified in paragraph 39 above, in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued electronic smog certificates of compliance for vehicles 8 through 11, identified in paragraph 39 above, without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health & Saf. Code section 44012.

TWENTY-THIRD CAUSE FOR DISCIPLINE

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

43. Respondent Do's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.35, subdivision (c):** Respondent Do issued electronic smog certificates of compliance for vehicles 8 through 11, identified in paragraph 39 above, even though those vehicles had not been inspected in accordance with section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent Do authorized or permitted Respondents Pham and Nguyen to enter false information into the EIS unit by entering vehicle identification information or emission control system identification data for vehicles other than the ones being tested.

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c. **Section 3340.42:** Respondent Do failed to ensure that the required smog tests were conducted on vehicles 8 through 11, identified in paragraph 39 above, in accordance with the Bureau's specifications.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

44. Respondent Do's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 8 through 11, identified in paragraph 39 above, without ensuring that bona fide inspections were performed of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

45. Respondent Nguyen's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012 of that Code, as follows: Respondent failed to perform the emission control tests on vehicle 8, identified in paragraph 39 above, in accordance with procedures prescribed by the department.

TWENTY-SIXTH CAUSE FOR DISCIPLINE

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

46. Respondent Nguyen's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicle 8, identified in paragraph 39 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

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

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicle 8, identified in paragraph 39 above, in accordance with the Bureau's specifications.

TWENTY-SEVENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

47. Respondent Nguyen's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for vehicle 8, identified in paragraph 39 above, without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TWENTY-EIGHTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

48. Respondent Pham's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012 of that Code, as follows: Respondent failed to perform the emission control tests on vehicles 9 through 11, identified in paragraph 39 above, in accordance with procedures prescribed by the department.

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TWENTY-NINTH CAUSE FOR DISCIPLINE

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

49. Respondent Pham's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 9 through 11, identified in paragraph 39 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS by entering vehicle identification information or emission control system identification data for vehicles other than the ones being tested.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 9 through 11, identified in paragraph 39 above, in accordance with the Bureau's specifications.

THIRTIETH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

50. Respondent Pham's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 9 through 11, identified in paragraph 39 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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VIDEO SURVEILLANCE OPERATION OF AUGUST 16, 2012

51. On August 16, 2012, from 0832 to 1717 hours, a representative of the Bureau conducted a video surveillance operation of Respondent Do's smog check facility. The surveillance video and information obtained from the Bureau's VID revealed that Respondent Nguyen issued electronic smog Certificate of Compliance No. OQ030568C on behalf of Do, certifying that he had tested and inspected a 1998 Ford F150, California License No. 5T37663 ("vehicle 12"), and that the vehicle was in compliance with applicable laws and regulations. In fact, Nguyen conducted the inspection on the vehicle using clean piping methods, resulting in the issuance of fraudulent electronic smog certificate of compliance for the vehicle.

THIRTY-FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

52. Respondent Do's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which she knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Do's technician, Respondent Nguyen, certified that vehicle 12, identified in paragraph 51 above, had passed inspection and was in compliance with applicable laws and regulations. In fact, Nguyen used clean piping methods in order to issue a certificate for the vehicle and did not test or inspect the vehicle as required by Health & Saf. Code section 44012.

THIRTY-SECOND CAUSE FOR DISCIPLINE

(Fraud)

53. Respondent Do's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that constitutes fraud by issuing an electronic smog certificate of compliance for vehicle 12, identified in paragraph 51 above, without ensuring that a bona fide inspection was performed of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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THIRTY-THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

54. Respondent Do's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with provisions of that Code, as follows:

a. **Section 44012:** Respondent failed to ensure that the emission control tests were performed on vehicle 12, identified in paragraph 51 above, in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for vehicle 12, identified in paragraph 51 above, without ensuring that the vehicle was properly tested and inspected to determine if it was in compliance with Health & Saf. Code section 44012.

THIRTY-FOURTH CAUSE FOR DISCIPLINE

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

55. Respondent Do's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.35, subdivision (c):** Respondent Do issued an electronic smog certificate of compliance for vehicle 12, identified in paragraph 51 above, even though the vehicle had not been inspected in accordance with section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent Do authorized or permitted Respondent Nguyen to enter false information into the EIS unit by entering vehicle identification information or emission control system identification data for a vehicle other than the one being tested.

c. **Section 3340.42:** Respondent Do failed to ensure that the required smog tests were conducted on vehicle 12, identified in paragraph 51 above, in accordance with the Bureau's specifications.

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THIRTY-FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

56. Respondent Do's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful acts whereby another is injured by issuing an electronic smog certificate of compliance for vehicle 12, identified in paragraph 51 above, without ensuring that a bona fide inspection was performed of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRTY-SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

57. Respondent Nguyen's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012 of that Code, as follows: Respondent failed to perform the emission control tests on vehicle 12, identified in paragraph 51 above, in accordance with procedures prescribed by the department.

THIRTY-SEVENTH CAUSE FOR DISCIPLINE

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

58. Respondent Nguyen's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicle 12, identified in paragraph 51 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

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

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicle 12, identified in paragraph 51 above, in accordance with the Bureau's specifications.

THIRTY-EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

59. Respondent Nguyen's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for vehicle 12, identified in paragraph 51 above, without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

MATTERS IN AGGRAVATION

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

Respondent Pham

a. On or about June 18, 2004, the Bureau issued Citation No. M04-0620 against Respondent Pham for violations of Health & Saf. Code section 44032 (qualified technicians shall perform tests of emission control systems and devices in accordance with Health & Saf. Code section 44012); and California Code of Regulations, title 16, section ("Regulation") 3340.30, subdivision (a) (qualified technicians shall inspect, test and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and Regulation 3340.42). Respondent was directed to complete an 8 hour training course. Respondent completed the training on July 19, 2004.

b. On or about July 10, 2008, the Bureau issued Citation No. M09-0023 against Respondent Pham for violations of Health & Saf. Code section 44032 (qualified technicians shall perform tests of emission control systems and devices in accordance with Health & Saf. Code section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and

Regulation 3340.42). Respondent was directed to complete an 8 hour training course. Respondent completed the training on August 18, 2008.

c. On or about October 17, 2008, the Bureau issued Citation No. M09-0383 against Respondent Pham for violations of Health & Saf. Code section 44032 (qualified technicians shall perform tests of emission control systems and devices in accordance with Health & Saf. Code section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and Regulation 3340.42). Respondent was directed to complete a 16 hour training course. Respondent completed the training on November 22, 2008.

Respondent Nguyen

d. On or about May 6, 2009, the Bureau issued Citation No. M09-1278 against Respondent Nguyen for violations of Health & Saf. Code section 44032 (qualified technicians shall perform tests of emission control systems and devices in accordance with Health & Saf. Code section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and Regulation 3340.42). Respondent was directed to complete an 8 hour training course. Respondent completed the training on May 30, 2009.

OTHER MATTERS

61. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may suspend, revoke or place on probation the registration for all places of business operated in this state by Respondent Dien Thi Do, owner of City Smog & Lube, upon a finding that said Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

62. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station License Number TC 264744, issued to Respondent Dien Thi Do, owner of City Smog & Lube, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

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63. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 133709, issued to Respondent Nam Pham, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

64. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 630502, issued to Respondent Long Ngoc Nguyen, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 264744, issued to Dien Thi Do, owner of City Smog & Lube;

2. Revoking or suspending any other automotive repair dealer registration issued to Dien Thi Do;

3. Revoking or suspending Smog Check, Test Only, Station License Number TC 264744, issued to Dien Thi Do, owner of City Smog & Lube;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Dien Thi Do;

5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 133709, issued to Nam Pham;

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

7. Revoking or suspending Advanced Emission Specialist Technician License Number EA 630502, issued to Long Ngoc Nguyen;

8. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Long Ngoc Nguyen;

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9. Ordering Dien Thi Do, owner of City Smog & Lube, Nam Pham, and Long Ngoc Nguyen 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;

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

DATED: 2-6-13

John Wallauch by Doug Balatti

JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

SA2013109628