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

12 In the Matter of the Accusation Against:  
13 **VU PHONG LAM, OWNER, DOING**  
14 **BUSINESS AS DMVEE SMOG & TEST**  
15 **ONLY**  
16 **1000 West Williamson Avenue**  
**Fullerton, CA 92833**  
17 **Automotive Repair Dealer Registration No.**  
**ARD 264796**  
18 **Smog Check-Test Only Station License No.**  
**TC 264796,**  
19 **and**  
20 **VU PHONG LAM**  
21 **8172 Larson Avenue #7**  
**Garden Grove, CA 92844**  
22 **Smog Check Inspector License No. EO**  
23 **633821**  
24 **Smog Check Repair Technician License No.**  
**EI 633821 (formerly Advanced Emission**  
25 **Specialist Technician License No. EA**  
**633821)**  
26 Respondents.

Case No. *79/15-122*  
**ACCUSATION**  
*Smog Check*

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1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about April 27, 2011, the Bureau of Automotive Repair issued Automotive  
6 Repair Dealer Registration Number ARD 264796 to Vu Phong Lam, Owner, doing business as  
7 DMVEE Smog & Test Only (DMVEE). The Automotive Repair Dealer Registration expired on  
8 April 30, 2015, and has not been renewed.

9 3. On or about May 27, 2011, the Bureau of Automotive Repair issued Smog Check-  
10 Test Only Station License Number TC 264796 to DMVEE. The Smog Check-Test Only Station  
11 License expired on April 30, 2015, and has not been renewed.

12 4. On or about November 21, 2011, the Bureau of Automotive Repair issued Advanced  
13 Emission Specialist Technician License Number EA 633821 to Vu Phong Lam (Respondents).  
14 The Advanced Emission Specialist Technician License expired on April 30, 2014, and has not been  
15 renewed.

16 5. On November 21, 2011, the Bureau issued Advanced Emission Specialist (EA)  
17 Technician License No. 633821 to Vu Phong Lam (Lam). It expired and was cancelled on April  
18 30, 2014. Under California Code of Regulations, title 16, section 3340.28, subdivision (c), the  
19 license was renewed, under Lam's election, as Smog Check Inspector License No. EO 633821 and  
20 Smog Check Repair Technician License No. EI 633821, effective April 30, 2014. The Smog  
21 Check Inspector License and Smog Check Repair Technician License (collectively technician  
22 licenses) were in full force and effect at all times relevant to the charges brought herein and will  
23 expire on April 30, 2016, unless renewed.<sup>1</sup>

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

1 **JURISDICTION**

2 6. This Accusation is brought before the Director of Consumer Affairs (Director) for the  
3 Bureau of Automotive Repair, under the authority of the following laws.

4 7. Section 118, subdivision (b), of the Code provides that the suspension, expiration,  
5 surrender, cancellation of a license shall not deprive the Director of jurisdiction to proceed with a  
6 disciplinary action during the period within which the license may be renewed, restored, reissued  
7 or reinstated.

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

12 9. Section 9884.20 of the Code states:

13 “All accusations against automotive repair dealers shall be filed within three years after the  
14 performance of the act or omission alleged as the ground for disciplinary action, except that with  
15 respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action, the  
16 accusation may be filed within two years after the discovery, by the bureau, of the alleged facts  
17 constituting the fraud or misrepresentation.”

18 10. Section 9884.22 of the Code states:

19 “(a) Notwithstanding any other provision of law, the director may revoke, suspend, or deny  
20 at any time any registration required by this article on any of the grounds for disciplinary action  
21 provided in this article. The proceedings under this article shall be conducted in accordance with  
22 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
23 Code, and the director shall have all the powers granted therein.

24 “. . . .”

25 11. Section 44002 of the Health and Safety Code provides, in pertinent part, that the  
26 Director has all the powers and authority granted under the Automotive Repair Act for enforcing  
27 the Motor Vehicle Inspection Program.

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1           12. Section 44072 of the Health and Safety Code states:

2            “Any license issued under this chapter and the regulations adopted pursuant to it may be  
3 suspended or revoked by the director. The director may refuse to issue a license to any applicant  
4 for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted  
5 in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2  
6 of the Government Code, and the director shall have all the powers granted therein.”

7           13. Section 44072.4 of the Health and Safety Code states:

8            “The director may take disciplinary action against any licensee after a hearing as provided in  
9 this article by any of the following:

10           “(a) Imposing probation upon terms and conditions to be set forth by the director.

11           “(b) Suspending the license.

12           “(c) Revoking the license.”

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

17           15. Section 44072.7 of the Health and Safety Code states:

18            “All accusations against licensees shall be filed within three years after the act or omission  
19 alleged as the ground for disciplinary action, except that with respect to an accusation alleging a  
20 violation of subdivision (d) of Section 44072.2, the accusation may be filed within two years after  
21 the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation  
22 prohibited by that section.”

23           16. Section 44072.8 of the Health and Safety Code states:

24            “When a license has been revoked or suspended following a hearing under this article, any  
25 additional license issued under this chapter in the name of the licensee may be likewise revoked or  
26 suspended by the director.”

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1 dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated  
2 and willful violations of this chapter, or regulations adopted pursuant to it."

3 20. Section 44012 of the Health and Safety Code states:

4 "The test at the smog check stations shall be performed in accordance with procedures  
5 prescribed by the department and may require loaded mode dynamometer testing in enhanced  
6 areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other  
7 appropriate test procedures as determined by the department in consultation with the state board.  
8 The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode  
9 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning no  
10 earlier than January 1, 2013. However, the department, in consultation with the state board, may  
11 prescribe alternative test procedures that include loaded mode dynamometer or two-speed idle  
12 testing for vehicles with onboard diagnostic systems that the department and the state board  
13 determine exhibit operational problems. The department shall ensure, as appropriate to the test  
14 method, the following:

15 "(a) Emission control systems required by state and federal law are reducing excess  
16 emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section  
17 44013.

18 "(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of  
19 the vehicle's emission control system.

20 "(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons,  
21 carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are  
22 tested in accordance with procedures prescribed by the department. In determining how loaded  
23 mode and evaporative emissions testing shall be conducted, the department shall ensure that the  
24 emission reduction targets for the enhanced program are met.

25 "(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and  
26 crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic  
27 compound emissions, in accordance with procedures prescribed by the department.

28

1           “(c) For diesel-powered vehicles, a visual inspection is made of emission control devices and  
2 the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the  
3 department, that may include, but are not limited to, onboard diagnostic testing. The test may  
4 include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon the  
5 adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

6           “(f) A visual or functional check is made of emission control devices specified by the  
7 department, including the catalytic converter in those instances in which the department determines  
8 it to be necessary to meet the findings of Section 44001. The visual or functional check shall be  
9 performed in accordance with procedures prescribed by the department.

10           “(g) A determination as to whether the motor vehicle complies with the emission standards  
11 for that vehicle's class and model-year as prescribed by the department.

12           “(h) An analysis of pass and fail rates of vehicles subject to an onboard diagnostic test and a  
13 tailpipe test to assess whether any vehicles passing their onboard diagnostic test have, or would  
14 have, failed a tailpipe test, and whether any vehicles failing their onboard diagnostic test have or  
15 would have passed a tailpipe test.

16           “(i) The test procedures may authorize smog check stations to refuse the testing of a vehicle  
17 that would be unsafe to test, or that cannot physically be inspected, as specified by the department  
18 by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle  
19 from compliance with all applicable requirements of this chapter.”

20           21. Section 44015 of the Health and Safety Code states:

21           “(a) A licensed smog check station shall not issue a certificate of compliance, except as  
22 authorized by this chapter, to any vehicle that meets the following criteria:

23           “(1) A vehicle that has been tampered with.

24           “(2) A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision (b) of  
25 Section 44036. A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision  
26 (b) of Section 44036 shall be directed to the department to determine whether an inadvertent error  
27 can explain the irregularity, or whether the vehicle otherwise meets smog check requirements,

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1 allowing the certificate for compliance to be issued, or the vehicle shall be reinspected by a referee  
2 or another smog check station.

3 “(3) A vehicle that, prior to repairs, has been initially identified by the smog check station as  
4 a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated test-  
5 only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections  
6 44014 and 44014.2.

7 “(4) A vehicle described in subdivision (c).

8 “(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to  
9 issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

10 “(c)(1) A repair cost waiver shall be issued, upon request of the vehicle owner, by an entity  
11 authorized to perform referee functions for a vehicle that has been properly tested but does not  
12 meet the applicable emission standards when it is determined that no adjustment or repair can be  
13 made that will reduce emissions from the inspected motor vehicle without exceeding the applicable  
14 repair cost limit established under Section 44017 and that every defect specified by paragraph (2)  
15 of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section  
16 43205, has been corrected. A repair cost waiver issued pursuant to this paragraph shall be  
17 accepted in lieu of a certificate of compliance for the purposes of compliance with Section 4000.3  
18 of the Vehicle Code. No repair cost waiver shall exceed two years' duration. No repair cost waiver  
19 shall be issued until the vehicle owner has expended an amount equal to the applicable repair cost  
20 limit specified in Section 44017.

21 “(2) An economic hardship extension shall be issued, upon request of a qualified low-income  
22 motor vehicle owner, by an entity authorized to perform referee functions, for a motor vehicle that  
23 has been properly tested but does not meet the applicable emission standards when it is determined  
24 that no adjustment or repair can be made that will reduce emissions from the inspected motor  
25 vehicle without exceeding the applicable repair cost limit, as established pursuant to Section  
26 44017.1, that every defect specified in paragraph (2) of subdivision (a) of Section 43204, and in  
27 paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected, that the low-  
28 income vehicle owner would suffer an economic hardship if the extension is not issued, and that all

1 appropriate emissions-related repairs up to the amount of the applicable repair cost limit in Section  
2 44017.1 have been performed.

3 “(d) No repair cost waiver or economic hardship extension shall be issued under any of the  
4 following circumstances:

5 “(1) If a motor vehicle was issued a repair cost waiver or economic hardship extension in the  
6 previous biennial inspection of that vehicle. A repair cost waiver or economic hardship extension  
7 may be issued to a motor vehicle owner only once for a particular motor vehicle belonging to that  
8 owner. However, a repair cost waiver or economic hardship extension may be issued for a motor  
9 vehicle that participated in a previous waiver or extension program prior to January 1, 1998, as  
10 determined by the department. For waivers or extensions issued in the program operative on or  
11 after January 1, 1998, a waiver or extension may be issued for a motor vehicle only once per  
12 owner.

13 “(2) Upon initial registration of all of the following:

14 “(A) A direct import motor vehicle.

15 “(B) A motor vehicle previously registered outside this state.

16 “(C) A dismantled motor vehicle pursuant to Section 11519 of the Vehicle Code.

17 “(D) A motor vehicle that has had an engine change.

18 “(E) An alternate fuel vehicle.

19 “(F) A specially constructed vehicle.

20 “(e) Except as provided in subdivision (f), a certificate of compliance or noncompliance shall  
21 be valid for 90 days.

22 “(f) Excluding any vehicle whose transfer of ownership and registration is described in  
23 subdivision (d) of Section 4000.1 of the Vehicle Code, and except as otherwise provided in  
24 Sections 4000.1, 24007, 24007.5, and 24007.6 of the Vehicle Code, a licensed motor vehicle  
25 dealer shall be responsible for having a smog check inspection performed on, and a certificate of  
26 compliance or noncompliance issued for, every motor vehicle offered for retail sale. A certificate  
27 issued to a licensed motor vehicle dealer shall be valid for a two-year period, or until the vehicle is  
28 sold and registered to a retail buyer, whichever occurs first.

1 “(g) A test may be made at any time within 90 days prior to the date otherwise required.”

2 22. Section 44035 of the Health and Safety Code states:

3 “(a) A smog check station's license or a qualified smog check technician's qualification may  
4 be suspended or revoked by the department, after a hearing, for failure to meet or maintain the  
5 standards prescribed for qualification, equipment, performance, or conduct. The department shall  
6 adopt rules and regulations governing the suspension, revocation, and reinstatement of licenses  
7 and qualifications and the conduct of the hearings.

8 “(b) The department or its representatives, including quality assurance inspectors, shall be  
9 provided access to licensed stations for the purpose of examining property, station equipment,  
10 repair orders, emissions equipment maintenance records, and any emission inspection items, as  
11 defined by the department.”

12 23. Section 44072.2 of the Health and Safety Code states:

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

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

19 “. . .

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

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

22 “. . . .”

23 24. Section 44072.10 of the Health and Safety Code states:

24 “. . .

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

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



1 28. California Code of Regulations, title 16, section 3340.41, subdivision (c) states:

2 “. . .

3 “(c) No person shall enter into the emissions inspection system any vehicle identification  
4 information or emission control system identification data for any vehicle other than the one being  
5 tested. Nor shall any person knowingly enter into the emissions inspection system any false  
6 information about the vehicle being tested.

7 “. . . .”

8 29. California Code of Regulations, title 16, section 3340.42 states:

9 “Smog check inspection methods are prescribed in the Smog Check Manual, referenced by  
10 section 3340.45.

11 “(a) All vehicles subject to a smog check inspection, shall receive one of the following test  
12 methods:

13 “(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year  
14 vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-  
15 mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen  
16 emissions, as contained in the bureau's specifications referenced in subsection (a) of Section  
17 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test  
18 equipment, including a chassis dynamometer, certified by the bureau.

19 “On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection  
20 shall be measured and compared to the emissions standards shown in the Vehicle Look-up Table  
21 (VLT) Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby  
22 incorporated by reference. If the emissions standards for a specific vehicle are not included in this  
23 table then the exhaust emissions shall be compared to the emissions standards set forth in TABLE  
24 I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured  
25 emissions are less than or equal to the applicable emission standards specified in the applicable  
26 table.

27 “(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999 model-  
28 year vehicles, except diesel-powered, registered in all program areas of the state, except in those

1 areas of the state where the enhanced program has been implemented. The two-speed idle mode  
2 test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and  
3 again at idle RPM, as contained in the bureau's specifications referenced in subsection (a) of  
4 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall be  
5 measured and compared to the emission standards set forth in this section and as shown in TABLE  
6 III. A vehicle passes the two-speed idle mode test if all of its measured emissions are less than or  
7 equal to the applicable emissions standards specified in Table III.

8 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered  
9 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.  
10 The OBD test failure criteria are specified in section 3340.42.2.

11 “(b) In addition to subsection (a), all vehicles subject to the smog check program shall  
12 receive the following:

13 “(1) A visual inspection of emission control components and systems to verify the vehicle's  
14 emission control systems are properly installed.

15 “(2) A functional inspection of emission control systems as specified in the Smog Check  
16 Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper  
17 operation.

18 “. . . .”

19 30. California Code of Regulations, title 16, section 3395.4 states:

20 “In reaching a decision on a disciplinary action under the Administrative Procedure Act  
21 (Government Code Section 11400 et seq.), including formal hearings conducted by the Office of  
22 Administrative Hearing, the Bureau of Automotive Repair shall consider the disciplinary guidelines  
23 entitled ‘Guidelines for Disciplinary Penalties and Terms of Probation’ [May, 1997] which are  
24 hereby incorporated by reference. The ‘Guidelines for Disciplinary Penalties and Terms of  
25 Probation’ are advisory. Deviation from these guidelines and orders, including the standard terms  
26 of probation, is appropriate where the Bureau of Automotive Repair in its sole discretion  
27 determines that the facts of the particular case warrant such deviation -for example: the presence  
28 of mitigating factors; the age of the case; evidentiary problems.”

1 **COSTS**

2 31. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
7 included in a stipulated settlement.

8 **CLEAN PIPING**

9 32. At all times alleged in this Accusation, Lam was acting in the course and within the  
10 scope of a technician, employee, partner, officer, or member of DMVEE.

11 33. On October 3, 2014, a Bureau representative conducted video surveillance at  
12 DMVEE's smog station. The Bureau representative used a video camera and video recording  
13 equipment. Before the surveillance began, the Bureau representative verified that the clock of the  
14 video recording equipment was in sync with the Vehicle Information Database clock. When the  
15 recording stopped for the day, the Bureau representative created several DVDs from the video  
16 surveillance. After the Bureau representative made copies of the DVDs, the Bureau representative  
17 placed the originals in an envelope that was sealed and tagged. The Bureau representative then  
18 transferred custody of the envelope containing the DVDs to another Bureau representative, who  
19 then secured the envelope with the DVDs in an evidence locker at the Bureau's South El Monte  
20 Headquarters.

21 34. The BAR97 Test Detail from the Vehicle Information Database shows that on October  
22 3, 2014, from 1108 hours to 1131 hours, Lam and DMVEE performed a smog check inspection  
23 on a 1994 Honda Accord, CA License #6VLJ979, VIN #JHMCD5654RC025818. The Accord  
24 was issued Certificate of Compliance #YJ944629.

25 35. However, on the video surveillance of October 3, 2014, at 1105 hours, Lam drove a  
26 1996-1997 year model Honda Accord, CA License #6TIF071 (the 1997 Accord) into the smog  
27 bay at DMVEE's smog station. At 1109 hours, Lam inserted the Emissions Inspection System  
28 tailpipe probe into the exhaust of the 1997 Accord and drove it on the dynamometer. At 1112

1 hours, Lam removed the probe. At 1114 hours, he drove the 1997 Accord out of the smog bay.  
2 At 1117 hours, Lam drove a 1994-1995 year model Honda Accord, CA License #6VLJ979 (the  
3 1994 Accord) into the smog bay. At 1119 hours, Lam placed the Low Pressure Fuel Evaporative  
4 Test tester on the 1994 Accord's trunk and connected the test hose. At 1125 hours, Lam removed  
5 the Low Pressure Fuel Evaporative Test tester from the 1994 Accord. At 1127 hours, Lam  
6 tightened the license plate attaching screws. At 1132 hours, Lam drove the 1994 Accord out of  
7 the smog bay. Lam did not place the Emissions Inspection System tailpipe probe into the exhaust  
8 of the 1994 Accord or operate it on the dynamometer while it was in the smog bay.

9 36. On January 9, 2015, a Bureau representative drove to DMVEE and photographed a  
10 1997 Honda Accord, CA License #6TIF071 located in the parking lot next to DMVEE. The 1997  
11 Accord is registered to Lam.

12 37. DMVEE and Lam clean-piped the 1994 Accord by using the exhaust sample of the  
13 1997 Accord.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Untrue or Misleading Statements)**

16 38. Complainant re-alleges and incorporates by reference the allegations set forth above in  
17 paragraphs 32-37.

18 39. DMVEE's Registration is subject to disciplinary action under Code section 9884.7,  
19 subdivision (a)(1), in that DMVEE made or authorized statements which DMVEE knew or in the  
20 exercise of reasonable care should have known to be untrue or misleading as follows: DMVEE  
21 certified that the vehicle(s) described in paragraphs 32-37 were properly inspected and passed the  
22 smog inspection(s), when in fact and in truth as DMVEE knew the vehicle(s) were not properly  
23 inspected.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Violations of Motor Vehicle Inspection Program)**

26 40. Complainant re-alleges and incorporates by reference the allegations set forth above in  
27 paragraphs 32-39.

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1 41. DMVEE's Station License is subject to disciplinary action under Health and Safety  
2 Code sections 44072.10, subdivision (c), and 44072.2, subdivision (a), in that DMVEE failed to  
3 comply with the following sections of that Code:

4 a. **Section 44012**: DMVEE failed to perform the test(s) of the emission control  
5 systems and devices on the vehicle(s) described in paragraphs 32-39 in accordance with  
6 procedures prescribed by the Department.

7 b. **Section 44015**: DMVEE issued certificates of compliance for the vehicle(s)  
8 described in paragraphs 32-39 without properly testing and inspecting them to determine if they  
9 complied with Health & Safety Code section 44012.

10 c. **Section 44035**: DMVEE failed to meet or maintain the standards prescribed for  
11 qualification, equipment, performance, or conduct by failing to properly perform smog  
12 inspection(s) on the vehicle(s) described in paragraphs 32-39 or certifying that such test(s) had  
13 been properly performed, when in fact they were not properly performed.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with Regulations Under the Motor Vehicle Inspection Program)**

16 42. Complainant re-alleges and incorporates by reference the allegations set forth above in  
17 paragraphs 32-41.

18 43. DMVEE's Station License is subject to disciplinary action under Health and Safety  
19 Code sections 44072.10, subdivision(c) and 44072.2, subdivision (a), in that DMVEE failed to  
20 comply with the following sections of California Code of Regulations, title 16:

21 a. **Section 3340.35, subdivision (c)**: DMVEE failed to inspect and test the  
22 vehicle(s) described in paragraphs 32-41 in accordance with the procedures specified in section  
23 3340.42 of the Regulations and failed to ensure that the vehicle(s) had all the required emission  
24 control equipment and devices installed and functioning correctly.

25 b. **Section 3340.41, subdivision (c)**: DMVEE knowingly entered into the  
26 Emissions Inspection System false information about the vehicle(s) described in paragraphs 32-41,  
27 providing results for smog inspection(s) which were not properly performed.

28

1 c. **Section 3340.42:** DMVEE failed to conduct the required smog test(s) on the  
2 vehicle(s) described in paragraphs 32-41 in accordance with the Bureau's specifications.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Dishonesty, Fraud, Deceit)**

5 44. Complainant re-alleges and incorporates by reference the allegations set forth above in  
6 paragraphs 32-43.

7 45. DMVEE's Registration is subject to disciplinary action under Code section 9884.7,  
8 subdivision (a)(4), and DMVEE's Station License is subject to disciplinary action under Health  
9 and Safety Code sections 44072.10, subdivision (c) and 44072.2, subdivision (d), in that DMVEE  
10 committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing smog  
11 inspection certificate(s) for the vehicle(s) described in paragraphs 32-43 without performing bona  
12 fide inspection(s) of the emission control devices and systems on them, thereby depriving the  
13 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
14 Program.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Clean Piping)**

17 46. Complainant re-alleges and incorporates by reference the allegations set forth above in  
18 paragraphs 32-45.

19 47. DMVEE's Station license is subject to disciplinary action for clean piping under  
20 Health & Safety Code, § 44072.10, subdivision (c)(1), as defined in California Code of  
21 Regulations, title 16, section 3340.1, in that DMVEE used a substitute exhaust emission sample of  
22 one vehicle in place of another vehicle's exhaust emission sample in order to cause the Emissions  
23 Inspection System to issue certificates of compliance for the inspection(s) described in paragraphs  
24 32-45.

25 **SIXTH CAUSE FOR DISCIPLINE**

26 **(Violation of Motor Vehicle Inspection Program)**

27 48. Complainant re-alleges and incorporates by reference the allegations set forth above in  
28 paragraphs 32-47.



1 c. **Section 3340.42:** Lam failed to conduct the required smog tests on the  
2 vehicle(s) in paragraphs 32-49 in accordance with the Bureau's specifications.

3 **EIGHTH CAUSE FOR DISCIPLINE**

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

5 52. Complainant re-alleges and incorporates by reference the allegations set forth above in  
6 paragraphs 32-51.

7 53. Lam's technician licenses are subject to disciplinary action under Health and Safety  
8 Code sections 44072.10, subdivision (c) and 44072.2, subdivision (d), in that he committed  
9 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing smog inspection  
10 certificate(s) for the vehicle(s) described in paragraphs 32-51 without performing bona fide  
11 inspections of the emission control devices and systems on them, thereby depriving the People of  
12 the State of California of the protection afforded by the Motor Vehicle Inspection Program.

13 **NINTH CAUSE FOR DISCIPLINE**

14 **(Clean Piping)**

15 54. Complainant re-alleges and incorporates by reference the allegations set forth above in  
16 paragraphs 32-53.

17 55. Lam's technician licenses are subject to disciplinary action under Health & Safety  
18 Code, § 44072.10, subdivision (c)(1), as defined in California Code of Regulations, title 16,  
19 section 3340.1, in that Lam used a substitute exhaust emission sample of one vehicle in place of  
20 another vehicle's exhaust emission sample in order to cause the Emissions Inspection System to  
21 issue certificate(s) of compliance for the inspection(s) described in paragraphs 32-53.

22 **DISCIPLINE CONSIDERATIONS**

23 56. To determine the degree of discipline, if any, to be imposed on DMVEE, Complainant  
24 alleges that on or about July 26, 2012, in a prior action, the Bureau of Automotive Repair issued  
25 Citation Number C2013-0091 to DMVEE. The Citation charged DMVEE with a violation of  
26 Health and Safety Code section 44012, subdivision (f). It alleged that on May 23, 2012, DMVEE  
27 issued a smog certificate of compliance to a Bureau-documented vehicle with missing  
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1 Thermostatic Air Cleaner components. The Citation was paid on August 20, 2012. That Citation  
2 is now final and is incorporated by reference as if fully set forth in this paragraph.

3 57. To determine the degree of discipline, if any, to be imposed on DMVEE, Complainant  
4 alleges that on or about August 13, 2013, in a prior action, the Bureau of Automotive Repair  
5 issued Citation Number C2014-0103 to DMVEE. The Citation charged DMVEE with a violation  
6 of Health and Safety Code section 44012, subdivision (f). It alleged that on July 23, 2013,  
7 DMVEE issued a smog certificate of compliance to a Bureau-documented vehicle with missing  
8 Pulse Secondary Air (PAIR) components. The Citation was paid on September 13, 2013. That  
9 Citation is now final and is incorporated by reference as if fully set forth in this paragraph.

10 58. To determine the degree of discipline, if any, to be imposed on Lam, Complainant  
11 alleges that on or about July 26, 2012, in a prior action, the Bureau of Automotive Repair issued  
12 Citation Number M2013-0092 to Lam. The Citation charged Lam with a violation of Health and  
13 Safety Code section 44032. It alleged that on May 23, 2012, Lam issued a smog certificate of  
14 compliance to a Bureau-documented vehicle with missing Thermostatic Air Cleaner components.  
15 The training was completed on August 26, 2012. That Citation is now final and is incorporated by  
16 reference as if fully set forth in this paragraph.

17 59. To determine the degree of discipline, if any, to be imposed on Lam, Complainant  
18 alleges that on or about August 13, 2013, in a prior action, the Bureau of Automotive Repair  
19 issued Citation Number M2014-0104 to Lam. The Citation charged Lam with a violation of  
20 Health and Safety Code section 44032. It alleged that on July 23, 2013, Lam issued a smog  
21 certificate of compliance to a Bureau-documented vehicle with missing Pulse Secondary Air  
22 (PAIR) components. The Citation was paid on September 13, 2013. The training was completed  
23 on September 24, 2013. That Citation is now final and is incorporated by reference as if fully set  
24 forth in this paragraph.

#### 25 **OTHER MATTERS**

26 60. Under Code section 9884.7, subdivision (c), the Director may suspend, revoke, or  
27 place on probation the registration for all places of business operated in this State by DMVEE  
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1 upon a finding that DMVEE has, or is, engaged in a course of repeated and willful violations of  
2 the laws and regulations pertaining to an automotive repair dealer.

3 61. Under Health & Safety Code section 44072.8, if DMVEE's Station License is revoked  
4 or suspended, the Director may likewise revoke or suspend any additional license issued under  
5 Chapter 5 of the Health and Safety Code in the name of DMVEE.

6 62. Under Health & Safety Code section 44072.8, if Lam's technician licenses are revoked  
7 or suspended, the Director may likewise revoke or suspend any additional license issued under  
8 Chapter 5 of the Health and Safety Code in the name of Lam.

9 **PRAYER**

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

12 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
13 264796, issued to Vu Phong Lam, Owner, doing business as DMVEE Smog & Test Only;

14 2. Revoking or suspending Smog Check-Test Only Station License Number TC 264796,  
15 issued to Vu Phong Lam, Owner, doing business as DMVEE Smog & Test Only;

16 3. Revoking or suspending Smog Check Inspector License Number EO 633821, issued  
17 to Vu Phong Lam;

18 4. Revoking or suspending Smog Check Repair Technician License Number EI 633821,  
19 issued to Vu Phong Lam;

20 5. Revoking or suspending the registration for all places of business operated in this state  
21 by Vu Phong Lam, Owner, doing business as DMVEE Smog & Test Only;

22 6. Revoking or suspending any additional license issued under Chapter 5 of the Health  
23 and Safety Code in the name of Vu Phong Lam;

24 7. Ordering Vu Phong Lam and Vu Phong Lam, Owner, doing business as DMVEE  
25 Smog & Test Only, to pay the Bureau of Automotive Repair the reasonable costs of the  
26 investigation and enforcement of this case, pursuant to Business and Professions Code section  
27 125.3; and

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

DATED: May 15, 2015 Patrick Dorais

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

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