

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 ADRIAN R. CONTRERAS  
Deputy Attorney General  
4 State Bar No. 267200  
600 West Broadway, Suite 1800  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2634  
7 Facsimile: (619) 645-2061  
E-mail: Adrian.Contreras@doj.ca.gov  
8 *Attorneys for Complainant*

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

13 In the Matter of the Accusation Against:

14 **VU PHONG LAM, OWNER, DOING**  
**BUSINESS AS DMVEE SMOG & TEST**  
**ONLY**  
15 **1000 West Williamson Avenue**  
**Fullerton, CA 92833**

16 **Automotive Repair Dealer Registration No.**  
17 **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.**  
25 **EI 633821 (formerly Advanced Emission**  
**Specialist Technician License No. EA**  
**633821)**

26 Respondents.

27  
28 ///

Case No. 79/15-122

OAH No. 2015060062

**FIRST AMENDED**

**ACCUSATION (SMOG CHECK)**

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 was in full  
8 force and effect at all times relevant to the charges brought herein and will expire on April 30,  
9 2016, unless renewed.

10 3. On or about May 27, 2011, the Bureau of Automotive Repair issued Smog Check-  
11 Test Only Station License Number TC 264796 to DMVEE. The Smog Check-Test Only Station  
12 License was in full force and effect at all times relevant to the charges brought herein and will  
13 expire on April 30, 2016, unless renewed.

14 4. On November 21, 2011, the Bureau issued Advanced Emission Specialist (EA)  
15 Technician License No. 633821 to Vu Phong Lam (Lam). It expired and was cancelled on April  
16 30, 2014. Under California Code of Regulations, title 16, section 3340.28, subdivision (e), the  
17 license was renewed, under Lam's election, as Smog Check Inspector License No. EO 633821  
18 and Smog Check Repair Technician License No. EI 633821, effective April 30, 2014. The Smog  
19 Check Inspector License and Smog Check Repair Technician License (collectively technician  
20 licenses) were in full force and effect at all times relevant to the charges brought herein and will  
21 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 5. This First Amended Accusation is brought before the Director of Consumer Affairs  
3 (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

4 6. 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 7. 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 8. 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,  
16 the accusation may be filed within two years after the discovery, by the bureau, of the alleged  
17 facts constituting the fraud or misrepresentation."

18 9. 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 10. 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 11. 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 12. 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  
9 in 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 13. 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  
15 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive  
16 the Director of jurisdiction to proceed with disciplinary action.

17 14. 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 15. 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  
26 or suspended by the director."

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1           20. Section 490 of the Code states:

2           “(a) In addition to any other action that a board is permitted to take against a licensee, a  
3 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
4 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
5 or profession for which the license was issued.

6           “(b) Notwithstanding any other provision of law, a board may exercise any authority to  
7 discipline a licensee for conviction of a crime that is independent of the authority granted under  
8 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
9 of the business or profession for which the licensee's license was issued.

10           “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
11 conviction following a plea of nolo contendere. An action that a board is permitted to take  
12 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
13 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
14 made suspending the imposition of sentence, irrespective of a subsequent order under Section  
15 1203.4 of the Penal Code.

16           “(d) The Legislature hereby finds and declares that the application of this section has been  
17 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th  
18 554, and that the holding in that case has placed a significant number of statutes and regulations  
19 in question, resulting in potential harm to the consumers of California from licensees who have  
20 been convicted of crimes. Therefore, the Legislature finds and declares that this section  
21 establishes an independent basis for a board to impose discipline upon a licensee, and that the  
22 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change  
23 to, but rather are declaratory of, existing law.”

24           21. Section 493 of the Code states:

25           “Notwithstanding any other provision of law, in a proceeding conducted by a board within  
26 the department pursuant to law to deny an application for a license or to suspend or revoke a  
27 license or otherwise take disciplinary action against a person who holds a license, upon the  
28 ground that the applicant or the licensee has been convicted of a crime substantially related to the

1 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
2 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
3 and the board may inquire into the circumstances surrounding the commission of the crime in  
4 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
5 qualifications, functions, and duties of the licensee in question.

6 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
7 'registration.'

8 22. Section 9884.7 of the Code states:

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

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

17 "...

18 "(4) Any other conduct that constitutes fraud.

19 "...

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

24 23. Section 44012 of the Health and Safety Code states:

25 "The test at the smog check stations shall be performed in accordance with procedures  
26 prescribed by the department and may require loaded mode dynamometer testing in enhanced  
27 areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other  
28 appropriate test procedures as determined by the department in consultation with the state board.

1 The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode  
2 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning  
3 no earlier than January 1, 2013. However, the department, in consultation with the state board,  
4 may prescribe alternative test procedures that include loaded mode dynamometer or two-speed  
5 idle testing for vehicles with onboard diagnostic systems that the department and the state board  
6 determine exhibit operational problems. The department shall ensure, as appropriate to the test  
7 method, the following:

8 “(a) Emission control systems required by state and federal law are reducing excess  
9 emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of  
10 Section 44013.

11 “(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of  
12 the vehicle's emission control system.

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

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

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

26 “(f) A visual or functional check is made of emission control devices specified by the  
27 department, including the catalytic converter in those instances in which the department  
28

1 determines it to be necessary to meet the findings of Section 44001. The visual or functional  
2 check shall be performed in accordance with procedures prescribed by the department.

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

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

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

13 24. Section 44015 of the Health and Safety Code states:

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

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

17 “(2) A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision (b) of  
18 Section 44036. A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision  
19 (b) of Section 44036 shall be directed to the department to determine whether an inadvertent error  
20 can explain the irregularity, or whether the vehicle otherwise meets smog check requirements,  
21 allowing the certificate for compliance to be issued, or the vehicle shall be reinspected by a  
22 referee or another smog check station.

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

27 “(4) A vehicle described in subdivision (c).  
28

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

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

14           “(2) An economic hardship extension shall be issued, upon request of a qualified low-  
15 income motor vehicle owner, by an entity authorized to perform referee functions, for a motor  
16 vehicle that has been properly tested but does not meet the applicable emission standards when it  
17 is determined that no adjustment or repair can be made that will reduce emissions from the  
18 inspected motor vehicle without exceeding the applicable repair cost limit, as established pursuant  
19 to Section 44017.1, that every defect specified in paragraph (2) of subdivision (a) of Section  
20 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected, that  
21 the low-income vehicle owner would suffer an economic hardship if the extension is not issued,  
22 and that all appropriate emissions-related repairs up to the amount of the applicable repair cost  
23 limit in Section 44017.1 have been performed.

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

26           “(1) If a motor vehicle was issued a repair cost waiver or economic hardship extension in  
27 the previous biennial inspection of that vehicle. A repair cost waiver or economic hardship  
28 extension may be issued to a motor vehicle owner only once for a particular motor vehicle

1 belonging to that owner. However, a repair cost waiver or economic hardship extension may be  
2 issued for a motor vehicle that participated in a previous waiver or extension program prior to  
3 January 1, 1998, as determined by the department. For waivers or extensions issued in the  
4 program operative on or after January 1, 1998, a waiver or extension may be issued for a motor  
5 vehicle only once per owner.

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

7 “(A) A direct import motor vehicle.

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

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

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

11 “(E) An alternate fuel vehicle.

12 “(F) A specially constructed vehicle.

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

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

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

23 25. Section 44035 of the Health and Safety Code states:

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

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

5           26. Section 44072.2 of the Health and Safety Code states:

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

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

12           “... ”

13           “(b) Is convicted of any crime substantially related to the qualifications, functions, or duties  
14 of the licenseholder in question.

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

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

17           “... ”

18           27. Section 44072.3 of the Health and Safety Code states:

19           “A plea or verdict of guilty or a conviction following a plea of nolo contendere is a  
20 conviction within the meaning of this article. The director may order the license suspended or  
21 revoked or may decline to issue a license, when the time for appeal has elapsed, or the judgment  
22 of conviction has been affirmed on appeal, or when an order granting probation is made  
23 suspending the imposition of sentence irrespective of a subsequent order under Section 1203.4 of  
24 the Penal Code allowing the person to withdraw a plea of guilty and to enter a plea of not guilty,  
25 or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.”

26           28. Section 44072.10 of the Health and Safety Code states:

27           “... ”

28           ///

1 “(c) The department shall revoke the license of any smog check technician or station  
2 licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles.

3 A fraudulent inspection includes, but is not limited to, all of the following:

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

5 “(2) Tampering with a vehicle emission control system or test analyzer system.

6 “(3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or  
7 falsely fail an inspection.

8 “(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure  
9 of the department implementing this chapter.”

### 10 REGULATORY PROVISIONS

11 29. California Code of Regulations, title 16, section 3340.1. states:

12 “. . .

13 “‘Clean piping,’ for the purposes of Health and Safety Code section 44072.10(c)(1), means  
14 the use of a substitute exhaust emissions sample in place of the actual test vehicle's exhaust in  
15 order to cause the EIS to issue a certificate of compliance for the test vehicle.

16 “. . . .”

17 30. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that  
18 “[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission  
19 Specialist Technician license issued prior to the effective date of this regulation, the licensee may  
20 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

21 31. California Code of Regulations, title 16, section 3340.35, subdivision (c) states:

22 “. . .

23 “(c) A licensed station shall issue a certificate of compliance or noncompliance to the owner  
24 or operator of any vehicle that has been inspected in accordance with the procedures specified in  
25 section 3340.42 of this article and has all the required emission control equipment and devices  
26 installed and functioning correctly. The following conditions shall apply:

27 “(1) Customers shall be charged the same price for certificates as that paid by the licensed  
28 station; and

1           “(2) Sales tax shall not be assessed on the price of certificates.

2           “...”

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

4           “... ”

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

9           “...”

10          33. California Code of Regulations, title 16, section 3340.42 states:

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

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

15          “(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year  
16 vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-  
17 mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen  
18 emissions, as contained in the bureau's specifications referenced in subsection (a) of Section  
19 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test  
20 equipment, including a chassis dynamometer, certified by the bureau.

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

1           “(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999 model-  
2 year vehicles, except diesel-powered, registered in all program areas of the state, except in those  
3 areas of the state where the enhanced program has been implemented. The two-speed idle mode  
4 test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and  
5 again at idle RPM, as contained in the bureau's specifications referenced in subsection (a) of  
6 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall  
7 be measured and compared to the emission standards set forth in this section and as shown in  
8 TABLE III. A vehicle passes the two-speed idle mode test if all of its measured emissions are less  
9 than or equal to the applicable emissions standards specified in Table III.

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

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

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

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

20           “ . . . ”

21           34. California Code of Regulations, title 16, section 3395 states:

22           “ . . .

23           “(b) When considering the suspension or revocation of a license or a registration on the  
24 grounds that the licensee or registrant has been convicted of a crime, the bureau, in evaluating the  
25 rehabilitation of such person, will consider the following criteria:

26           “(1) Nature and severity of the act(s) or offense(s).

27           “(2) Total criminal record.

28           “(3) The time that has elapsed since commission of the act(s) or offense(s).



1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
2 included in a stipulated settlement.

### 3 **CLEAN PIPING**

4 38. At all times alleged in this First Amended Accusation, Lam was acting in the course  
5 and within the scope of a technician, employee, partner, officer, or member of DMVEE.

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

16 40. The BAR97 Test Detail from the Vehicle Information Database shows that on  
17 October 3, 2014, from 1108 hours to 1131 hours, Lam and DMVEE performed a smog check  
18 inspection on a 1994 Honda Accord, CA License #6VLJ979, VIN #JHMCDS654RC025818. The  
19 Accord was issued Certificate of Compliance #YJ944629.

20 41. However, on the video surveillance of October 3, 2014, at 1105 hours, Lam drove a  
21 1996-1997 year model Honda Accord, CA License #6TIF071 (the 1997 Accord) into the smog  
22 bay at DMVEE's smog station. At 1109 hours, Lam inserted the Emissions Inspection System  
23 tailpipe probe into the exhaust of the 1997 Accord and drove it on the dynamometer. At 1112  
24 hours, Lam removed the probe. At 1114 hours, he drove the 1997 Accord out of the smog bay.  
25 At 1117 hours, Lam drove a 1994-1995 year model Honda Accord, CA License #6VLJ979 (the  
26 1994 Accord) into the smog bay. At 1119 hours, Lam placed the Low Pressure Fuel Evaporative  
27 Test tester on the 1994 Accord's trunk and connected the test hose. At 1125 hours, Lam removed  
28 the Low Pressure Fuel Evaporative Test tester from the 1994 Accord. At 1127 hours, Lam

1 tightened the license plate attaching screws. At 1132 hours, Lam drove the 1994 Accord out of  
2 the smog bay. Lam did not place the Emissions Inspection System tailpipe probe into the exhaust  
3 of the 1994 Accord or operate it on the dynamometer while it was in the smog bay.

4 42. On January 9, 2015, a Bureau representative drove to DMVEE and photographed a  
5 1997 Honda Accord, CA License #6TIF071 located in the parking lot next to DMVEE. The 1997  
6 Accord is registered to Lam.

7 43. DMVEE and Lam clean-piped the 1994 Accord by using the exhaust sample of the  
8 1997 Accord.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Untrue or Misleading Statements)**

11 44. Complainant re-alleges and incorporates by reference the allegations set forth above  
12 in paragraphs 38-43.

13 45. DMVEE's Registration is subject to disciplinary action under Code section 9884.7,  
14 subdivision (a)(1), in that DMVEE made or authorized statements which DMVEE knew or in the  
15 exercise of reasonable care should have known to be untrue or misleading as follows: DMVEE  
16 certified that the vehicle(s) described in paragraphs 38-43 were properly inspected and passed the  
17 smog inspection(s), when in fact and in truth as DMVEE knew the vehicle(s) were not properly  
18 inspected.

19 **SECOND CAUSE FOR DISCIPLINE**

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

21 46. Complainant re-alleges and incorporates by reference the allegations set forth above  
22 in paragraphs 38-45.

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

26 a. **Section 44012**: DMVEE failed to perform the test(s) of the emission control  
27 systems and devices on the vehicle(s) described in paragraphs 38-45 in accordance with  
28 procedures prescribed by the Department.



1 51. DMVEE's Registration is subject to disciplinary action under Code section 9884.7,  
2 subdivision (a)(4), and DMVEE's Station License is subject to disciplinary action under Health  
3 and Safety Code sections 44072.10, subdivision (c) and 44072.2, subdivision (d), in that DMVEE  
4 committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing smog  
5 inspection certificate(s) for the vehicle(s) described in paragraphs 38-49 without performing bona  
6 fide inspection(s) of the emission control devices and systems on them, thereby depriving the  
7 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
8 Program.

9 **FIFTH CAUSE FOR DISCIPLINE**

10 **(Clean Piping)**

11 52. Complainant re-alleges and incorporates by reference the allegations set forth above  
12 in paragraphs 38-51.

13 53. DMVEE's Station license is subject to disciplinary action for clean piping under  
14 Health & Safety Code, § 44072.10, subdivision (c)(1), as defined in California Code of  
15 Regulations, title 16, section 3340.1, in that DMVEE used a substitute exhaust emission sample  
16 of one vehicle in place of another vehicle's exhaust emission sample in order to cause the  
17 Emissions Inspection System to issue certificates of compliance for the inspection(s) described in  
18 paragraphs 38-51.

19 **SIXTH CAUSE FOR DISCIPLINE**

20 **(October 15, 2015, Criminal Conviction for Uttering a False Smog Certificate**  
21 **on October 3, 2014)**

22 54. Complainant re-alleges and incorporates by reference the allegations set forth above  
23 in paragraphs 38-53.

24 55. DMVEE's Station license and Registration are subject to disciplinary action under  
25 section 490 of the Code and Health and Safety Code section 44072.2, subdivision (b) in that  
26 DMVEE's owner, Lam, was convicted of a crime substantially related to the qualifications,  
27 functions, and duties of a licensee in the following respect:  
28



1 inspections on the vehicle(s) described in paragraphs 38-58 or certifying that such test(s) had been  
2 properly performed, when in fact they were not properly performed.

3 **EIGHTH CAUSE FOR DISCIPLINE**

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

5 61. Complainant re-alleges and incorporates by reference the allegations set forth above  
6 in paragraphs 38-60.

7 62. Lam's technician licenses are subject to disciplinary action under Health and Safety  
8 Code sections 44072.10, subdivision (c) and 44072.2, subdivision (a) in that he failed to comply  
9 with the following sections of California Code of Regulations, title 16:

10 a. **Section 3340.35, subdivision (c)**: Lam failed to inspect and test the vehicle(s)  
11 described in paragraphs 38-60 in accordance with the procedures specified in section 3340.42 of  
12 the Regulations and failed to ensure that the vehicle(s) had all the required emission control  
13 equipment and devices installed and functioning correctly.

14 b. **Section 3340.41, subdivision (c)**: Lam knowingly entered into the Emissions  
15 Inspection System false information about the vehicle(s) described in paragraphs 38-60 providing  
16 results for smog inspection(s) which were not properly performed.

17 c. **Section 3340.42**: Lam failed to conduct the required smog tests on the  
18 vehicle(s) in paragraphs 38-60 in accordance with the Bureau's specifications.

19 **NINTH CAUSE FOR DISCIPLINE**

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

21 63. Complainant re-alleges and incorporates by reference the allegations set forth above  
22 in paragraphs 38-62.

23 64. Lam's technician licenses are subject to disciplinary action under Health and Safety  
24 Code sections 44072.10, subdivision (c) and 44072.2, subdivision (d), in that he committed  
25 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing smog inspection  
26 certificate(s) for the vehicle(s) described in paragraphs 38-62 without performing bona fide  
27 inspections of the emission control devices and systems on them, thereby depriving the People of  
28 the State of California of the protection afforded by the Motor Vehicle Inspection Program.

1 **TENTH CAUSE FOR DISCIPLINE**

2 **(Clean Piping)**

3 65. Complainant re-alleges and incorporates by reference the allegations set forth above  
4 in paragraphs 38-64.

5 66. Lam's technician licenses are subject to disciplinary action under Health & Safety  
6 Code, § 44072.10, subdivision (c)(1), as defined in California Code of Regulations, title 16,  
7 section 3340.1, in that Lam used a substitute exhaust emission sample of one vehicle in place of  
8 another vehicle's exhaust emission sample in order to cause the Emissions Inspection System to  
9 issue certificate(s) of compliance for the inspection(s) described in paragraphs 38-64.

10 **ELEVENTH CAUSE FOR DISCIPLINE**

11 **(October 15, 2015, Criminal Conviction for Uttering a False Smog Certificate**  
12 **on October 3, 2014)**

13 67. Complainant re-alleges and incorporates by reference the allegations set forth above  
14 in paragraphs 38-66.

15 68. Lam's technician licenses are subject to disciplinary action under Health and Safety  
16 Code section 44072.2, subdivision (b) in that Lam was convicted of a crime substantially related  
17 to the qualifications, functions, and duties of a licensee in the following respect:

18 69. On or about October 15, 2015, in a criminal proceeding entitled *People v. Lam*, in  
19 California Superior Court, Orange County, case number 15NF0830, Lam was convicted on his  
20 plea of guilty of violating Vehicle Code section 4463, subdivision (a)(1), uttering a false smog  
21 certificate, a misdemeanor. As a result of a plea agreement, one count of violating Penal Code  
22 section 502, subdivision (c)(1), unauthorized access to computer systems with intent to defraud, a  
23 felony, was dismissed.

24 70. As a result of the conviction, on or about October 15, 2015, Lam was sentenced to  
25 three years informal probation and ordered to pay restitution and to complete twenty days of  
26 Caltrans/physical labor.

27 ///

28 ///



1 issued Citation Number M2014-0104 to Lam. The Citation charged Lam with a violation of  
2 Health and Safety Code section 44032. It alleged that on July 23, 2013, Lam issued a smog  
3 certificate of compliance to a Bureau-documented vehicle with missing Pulse Secondary Air  
4 (PAIR) components. The Citation was paid on September 13, 2013. The training was completed  
5 on September 24, 2013. That Citation is now final and is incorporated by reference as if fully set  
6 forth in this paragraph.

#### 7 **OTHER MATTERS**

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

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

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

#### 18 **PRAYER**

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

- 21 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
22 264796, issued to Vu Phong Lam, Owner, doing business as DMVEE Smog & Test Only;
- 23 2. Revoking or suspending Smog Check-Test Only Station License Number TC 264796,  
24 issued to Vu Phong Lam, Owner, doing business as DMVEE Smog & Test Only;
- 25 3. Revoking or suspending Smog Check Inspector License Number EO 633821, issued  
26 to Vu Phong Lam;
- 27 4. Revoking or suspending Smog Check Repair Technician License Number EI 633821,  
28 issued to Vu Phong Lam;

- 1           5.    Revoking or suspending the registration for all places of business operated in this
- 2 state by Vu Phong Lam, Owner, doing business as DMVEE Smog & Test Only;
- 3           6.    Revoking or suspending any additional license issued under Chapter 5 of the Health
- 4 and Safety Code in the name of Vu Phong Lam;
- 5           7.    Ordering Vu Phong Lam and Vu Phong Lam, Owner, doing business as DMVEE
- 6 Smog & Test Only, to pay the Bureau of Automotive Repair the reasonable costs of the
- 7 investigation and enforcement of this case, pursuant to Business and Professions Code section
- 8 125.3; and
- 9           8.    Taking such other and further action as deemed necessary and proper.

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DATED: *November 9, 2015* *Patrick Dorais*

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

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