

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

In the Matter of the Accusation Against:

**PANCHO'S SMOG TEST ONLY,
LUIS O. ALVARADO, OWNER**
4060 Riverview Drive
Riverside, CA 92509

Automotive Repair Dealer Registration No.
ARD 268144
Smog Check-Test Only Station License No.
TC 268144,

and

SON NGUYEN
8753 Tourmaline
Riverside, CA 92509

Smog Check Inspector License No.
EO 634891

Respondents.

Case No. 79/15-80

OAH No. 2015040949

DECISION

The attached Stipulated Settlement and Disciplinary Order Only as to Pancho's Smog Test Only, Luis O. Alvarado, Owner is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondent Pancho's Smog Test Only, Luis O. Alvarado, Automotive Repair Dealer Registration No. ARD 268144, and Smog Check-Test Only Station License No. TC 268144.

This Decision shall become effective June 24, 2016.

DATED: May 31, 2016


TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 RON ESPINOZA
Deputy Attorney General
4 State Bar No. 176908
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2100
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
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 **PANCHO'S SMOG TEST ONLY,**
LUIS O. ALVARADO, OWNER
14 4060 Riverview Drive
Riverside, CA 92509
15 Automotive Repair Dealer Registration No.
16 ARD 268144
Smog Check-Test Only Station License No.
17 TC 268144,
18 and
19 **SON NGUYEN**
8753 Tourmaline
20 Riverside, CA 92509
21 Smog Check Inspector License No. EO 634891
22
23 Respondents.

Case No. 79/15-80

OAH No. 2015040949

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER ONLY AS TO
PANCHO'S SMOG TEST ONLY,
LUIS O. ALVARADO, OWNER**

24
25 In the interest of a prompt and speedy settlement of this matter, consistent with the public
26 interest and the responsibilities of the Director of Consumer Affairs and the Bureau of
27 Automotive Repair the parties hereby agree to the following Stipulated Settlement and
28 Disciplinary Order which will be submitted to the Director for the Director's approval and

1 adoption as the final disposition of the Accusation solely with respect to Pancho's Smog Test
2 Only, Luis O. Alvarado, owner.

3 PARTIES

4 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He
5 brought this action solely in his official capacity and is represented in this matter by Kamala D.
6 Harris, Attorney General of the State of California, by Ron Espinoza, Deputy Attorney General.

7 2. Pancho's Smog Test Only, Luis O. Alvarado, owner ("Respondent") is represented in
8 this proceeding by attorney William D. Ferreira, Esq., whose address is: Automotive Defense
9 Specialists, 582 Market Street, Suite 1608, San Francisco, California, 94104.

10 3. On March 1, 2012, the Bureau of Automotive Repair issued Automotive Repair
11 Dealer Registration Number ARD 268144 to Respondent. The Automotive Repair Dealer
12 Registration was in full force and effect at all times relevant to the charges brought in Accusation
13 No. 79/15-80 and will expire on March 31, 2016, unless renewed.

14 4. On March 20, 2012, the Bureau of Automotive Repair also issued Smog Check-Test
15 Only Station License Number TC 268144 to Respondent. The Smog Check-Test Only Station
16 License was in full force and effect at all times relevant to the charges brought in Accusation No.
17 79/15-80 and will expire on March 31, 2016, unless renewed.

18 JURISDICTION

19 5. Accusation No. 79/15-80 was filed before the Director of Consumer Affairs
20 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
21 Respondent. The Accusation and all other statutorily required documents were properly served
22 on Respondent on December 4, 2014. Respondent timely filed his Notice of Defense contesting
23 the Accusation.

24 6. A copy of Accusation No. 79/15-80 is attached as Exhibit A and incorporated herein
25 by reference.

26 ADVISEMENT AND WAIVERS

27 7. Respondent has carefully read, fully discussed with counsel, and understands the
28 charges and allegations in Accusation No. 79/15-80. Respondent has also carefully read, fully

1 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
2 Order.

3 8. Respondent is fully aware of his legal rights in this matter, including the right to a
4 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
5 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
6 to the issuance of subpoenas to compel the attendance of witnesses and the production of
7 documents; the right to reconsideration and court review of an adverse decision; and all other
8 rights accorded by the California Administrative Procedure Act and other applicable laws.

9 9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
10 every right set forth above.

11 CULPABILITY

12 10. Respondent admits the truth of each and every charge and allegation in Accusation
13 No. 79/15-80.

14 11. Respondent agrees that his Automotive Repair Dealer Registration and Smog Check-
15 Test Only Station License are subject to discipline and he agrees to be bound by the Director's
16 imposition of discipline as set forth in the Disciplinary Order below.

17 RESERVATION

18 12. The admissions made by Respondent herein are only for the purposes of this
19 proceeding, or any other proceedings in which the Director of Consumer Affairs, Bureau of
20 Automotive Repair, or other professional licensing agency is involved, and shall not be
21 admissible in any other criminal or civil proceeding.

22 CONTINGENCY

23 13. This stipulation shall be subject to approval by the Director of Consumer Affairs or
24 the Director's designee. Respondent understands and agrees that counsel for Complainant and the
25 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of
26 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
27 or participation by Respondent or his counsel. By signing the stipulation, Respondent
28 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation

1 prior to the time the Director considers and acts upon it. If the Director fails to adopt this
2 stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
3 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
4 the parties, and the Director shall not be disqualified from further action by having considered
5 this matter.

6 14. The parties understand and agree that copies of this Stipulated Settlement and
7 Disciplinary Order, including the signatures thereto, shall have the same force and effect as the
8 originals.

9 15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
10 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
11 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
12 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
13 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
14 writing executed by an authorized representative of each of the parties.

15 16. In consideration of the foregoing admissions and stipulations, the parties agree that
16 the Director may, without further notice or formal proceeding, issue and enter the following
17 Disciplinary Order:

18 **DISCIPLINARY ORDER**

19 **IT IS HEREBY ORDERED** that Automotive Repair Dealer Registration No. ARD
20 268144 and Smog Check-Test Only Station License Number TC 268144 issued to Pancho's Smog
21 Test Only, Luis O. Alvarado, owner, are revoked.

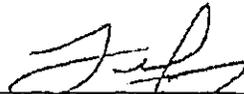
22 **IT IS HEREBY FURTHER ORDERED** that the Bureau's costs of investigation and
23 enforcement of this matter in the amount of \$12,617.97 are waived as to Luis O. Alvarado, unless
24 and until he ever applies for licensure or petitions for reinstatement for any license or registration
25 from the Bureau of Automotive Repair, in which case he shall pay these costs to the Bureau in
26 full at the time when such application or petition is made.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, William D. Ferreira, Esq. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration and Smog Check-Test Only Station License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 2/09/10 

LUIS O. ALVARADO, Owner
PANCHO'S SMOG TEST ONLY
Respondent

I have read and fully discussed with Luis O. Alvarado the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 2.29.10 

WILLIAM D. FERREIRA, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

RON ESPINOZA
Deputy Attorney General
Attorneys for Complainant

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, William D. Ferreira, Esq. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration and Smog Check-Test Only Station License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: _____
LUIS O. ALVARADO, Owner
PANCHO'S SMOG TEST ONLY
Respondent

I have read and fully discussed with Luis O. Alvarado the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____
WILLIAM D. FERREIRA, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 2-29-16

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General



RON ESPINOZA
Deputy Attorney General
Attorneys for Complainant

SD2014707954

Exhibit A

Accusation No. 79/15-80

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 JAMES M. LEDAKIS
Supervising Deputy Attorney General
4 State Bar No. 132645
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2105
7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

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

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Case No. **79/15-80**

13 **PANCHO'S SMOG TEST ONLY,**
14 **LUIS O. ALVARADO, OWNER**
4060 Riverview Drive
Riverside, CA 92509

ACCUSATION
SMOGCHECK

15 Automotive Repair Dealer Registration No.
16 ARD 268144
17 Smog Check-Test Only Station License No.
TC 268144,

18 and

19 **SON NGUYEN**
8753 Tourmaline
20 Riverside, CA 92509

21 Smog Check Inspector License No. EO 634891
(formerly Advanced Emission Specialist
22 Technician License No. EA 634891)

23 Respondents.

24

25 Complainant alleges:

26 **PARTIES**

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

1 jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to
2 render a decision temporarily or permanently invalidating, suspending, or revoking a registration.

3 8. Health and Safety Code (H & S Code) section 44002 provides, in pertinent part,
4 that the Director has all the powers and authority granted under the Automotive Repair Act for
5 enforcing the Motor Vehicle Inspection Program.

6 9. H & S Code section 44072.6 provides, in pertinent part, that the expiration or
7 suspension of a license by operation of law, or by order or decision of the Director, or a court of
8 law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to
9 proceed with disciplinary action.

10 10. H & S Code section 44072.8 states:

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

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

18 STATUTORY PROVISIONS

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

23 13. Code section 9884.7 states, in pertinent part:

24 (a) The director, where the automotive repair dealer cannot show there
25 was a bona fide error, may deny, suspend, revoke, or place on probation the
26 registration of an automotive repair dealer for any of the following acts or
27 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.

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(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.

....

(6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

....

14. Code section 9884.9 states, in pertinent part:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer if an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs,

....

15. H & S Code section 44012 states, in pertinent part:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department and may require loaded mode dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other appropriate test procedures as determined by the department in consultation with the state board. The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle testing, on model year 2000 and

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newer vehicles only, beginning no earlier than January 1, 2013. However, the department, in consultation with the state board, may prescribe alternative test procedures that include loaded mode dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems that the department and the state board determine exhibit operational problems. The department shall ensure, as appropriate to the test method, the following:

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

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

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

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

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

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

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

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

(i) The test procedures may authorize smog check stations to refuse the testing of a vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by the department by regulation. The refusal to test a

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vehicle for those reasons shall not excuse or exempt the vehicle from compliance with all applicable requirements of this chapter.

16. H & S Code section 44013 states, in pertinent part:

(a) (1) The department, in cooperation with the state board, shall prescribe maximum emission standards to be applied in inspecting motor vehicles under this chapter.

(2) In prescribing the standards, the department shall undertake studies and experiments which are necessary and feasible, evaluate available data, and confer with automotive engineers.

(3) The standards shall be set at a level reasonably achievable for each class and model of motor vehicle when operating in a reasonably sound mechanical condition, allowing for the effects of installed motor vehicle pollution control devices and the motor vehicle's age and total mileage.

(4) The standards shall be designed so that motor vehicles failing the test specified in Section 44012 will be operated, as soon as possible, with a substantial reduction in emissions, and shall be revised from time to time as experience justifies.

....

(c) Notwithstanding any other provision of this chapter, the maximum emission standards and test procedures prescribed in subdivisions (a) and (b) for a motor vehicle class and model-year shall not be more stringent than the emission standards and test procedures under which that motor vehicle's class and model-year was certified. Emission standards and test procedures prescribed by the department shall ensure that not more than 5 percent of the vehicles or engines, which would otherwise meet the requirements of this part, will fail the inspection and maintenance test for that class of vehicle or engine.

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17. H & S Code section 44015, subdivision (b) states:

If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

18. H & S Code section 44032 states:

No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smog check station. Qualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.

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19. H & S 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 (H & S 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.

....

REGULATORY PROVISIONS

20. Regulations, section 3340.1 states in pertinent part:

A licensed smog check inspector and/or repair technician shall comply with the following requirements at all times while licensed:

(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

....

21. Regulations, section 3340.3 states in pertinent part:

A licensed smog check inspector and/or repair technician shall comply with the following requirements at all times while licensed:

(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

....

22. Regulations, section 3340.30 states in pertinent part:

A licensed smog check inspector and/or repair technician shall comply with the following requirements at all times while licensed:

(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

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23. Regulations, section 3340.35 states in pertinent part:

.....

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

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

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

.....

24. Regulations, section 3340.41, subdivision (c), states:

No person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested.

25. Regulations, section 3340.42 states:

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

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

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

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

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

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

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

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

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

23 (c) The bureau may require any combination of the inspection
24 methods in sections (a) and (b) under any of the following circumstances:

25 (1) Vehicles that the department randomly selects pursuant to
26 Health and Safety Code section 44014.7 as a means of identifying potential
27 operational problems with vehicle OBD systems.

28 (2) Vehicles identified by the bureau as being operationally or
physically incompatible with inspection equipment.

(3) Vehicles with OBD systems that have demonstrated operational
problems.

(d) Pursuant to section 39032.5 of the Health and Safety Code, gross
polluter standards are as follows:

(1) A gross polluter means a vehicle with excess hydrocarbon,
carbon monoxide, or oxides of nitrogen emissions pursuant to the gross polluter
emissions standards included in the tables described in subsection (a), as
applicable.

(2) Vehicles with emission levels exceeding the emission standards
for gross polluters during an initial inspection will be considered gross polluters
and the provisions pertaining to gross polluting vehicles will apply, including, but
not limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

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(3) A gross polluting vehicle shall not be passed or issued a certificate of compliance until the vehicle's emissions are reduced to or below the applicable emissions standards for the vehicle included in the tables described in subsection (a), as applicable. However, the provisions described in section 44017 of the Health and Safety Code may apply.

(4) This subsection applies in all program areas statewide to vehicles requiring inspection pursuant to sections 44005 and 44011 of the Health and Safety Code.

26. Regulations, section 3353 states, in pertinent part:

No work for compensation shall be commenced and no charges shall accrue without specific authorization from the customer in accordance with the following requirements:

(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written estimated price for parts and labor for a specific job.

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23. Regulations, section 3373 states:

No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or information which will cause any such document to be false or misleading, or where the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public.

COST RECOVERY

27. Section 125.3 of the Code provides, in pertinent part, that the Bureau 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

UNDERCOVER OPERATION: 1996 Chevrolet

28. On April 30, 2014, the Bureau conducted an undercover operation at Respondent Pancho's smog check-test only station, Pancho's Smog Test Only. The Bureau's vehicle, a 1996

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1 Chevrolet, was modified to fail a proper smog inspection due to the removal of the internal
2 substrate from inside the catalytic converter. The hollow catalytic converter was then reinstalled.

3 29. A Bureau undercover operator took the vehicle to Respondent Ponchos' smog
4 check-test only station. The operator requested a smog inspection. The operator paid \$180.00 for
5 the inspection. After payment, the operator received a written estimate and an invoice, which he
6 did not sign, both numbered [REDACTED] and indicating a charge of only \$60.00. The operator was
7 also issued a Vehicle Inspection Report (VIR) bearing Certificate of Compliance Number
8 [REDACTED] and Respondent Nguyen's name as the smog inspector who had performed the smog
9 test.

10 30. On May 2, 2013, Bureau personnel re-inspected the vehicle after the smog test at
11 Respondent Pancho's smog check-test only station. The condition of the vehicle as modified
12 before testing at Respondent Pancho's smog check-test only station had not changed. A smog
13 inspection was performed and the vehicle failed both the ASM and TSI California Smog Check
14 inspections for excessive tailpipe emission levels.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Misleading Statements)**

17 31. Respondent Pancho's has subjected his registration to discipline under Code
18 section 9884.7, subdivision (a)(1), in that on April 30, 2014, he made statements which he knew
19 or which by exercise of reasonable care he should have known were untrue or misleading when
20 he issued electronic Certificate of Compliance [REDACTED] for the 1996 Chevrolet, certifying
21 that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle
22 had a hollow catalytic converter.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Fraud)**

25 32. Respondent Pancho's registration is subject to disciplinary action under Code
26 section 9884.7, subdivision (a)(4), in that Respondent committed an act which constitutes fraud
27 by issuing electronic Certificate of Compliance [REDACTED] for the 1996 Chevrolet, without
28 performing a bona fide inspection of the emission control devices and systems on the vehicle,

1 thereby depriving the People of the State of California of the protection afforded by the Motor
2 Vehicle Inspection Program (H & S Code section 44000, et seq.).

3 **THIRD CAUSE FOR DISCIPLINE**

4 (Violation of the Code)

5 33. Respondent Pancho's has subjected his registration to discipline under Code
6 section 9884.7, subdivision (a)(6), in that on April 30, 2014, he failed to comply with provisions
7 of that Code in the following material respects:

8 a. **Section 9884.9, subdivision (a)**: Respondent Pancho's failed to provide
9 the operator with an itemized written estimate for all parts and labor for the inspection of the
10 1996 Chevrolet and obtain authorization before proceeding with any work and accruing charges.

11 h. **Section 17200**: Respondent Pancho's engaged in unlawful, unfair, or
12 fraudulent business practice when he charged an extra \$120.00 that was not reflected in the
13 written estimate and in the invoice, which constitutes unfair competition.

14 c. **Section 17500**: Respondent Pancho's induced a customer to enter into an
15 obligation relating to issuance of a Certificate of Compliance to the 1996 Chevrolet that could
16 not pass a smog test, as part of a scheme with the intent to not conduct a bona fide smog
17 inspection, which constitute untrue statements that were known to Respondent to be misleading.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 (Violations of the Motor Vehicle Inspection Program)

20 34. Respondent Pancho's has subjected his station license to discipline under H & S
21 Code section 44072.2, subdivision (a), in that on April 30, 2014, regarding the 1996 Chevrolet,
22 he violated the following sections of that Code:

23 a. **Section 44012**: Respondent Pancho's failed to perform the emission
24 control tests on the vehicle in accordance with procedures prescribed by the Department,
25 pursuant to Health and Safety Code section 44013.

26 b. **Section 44012, subdivision (f)**: Respondent Pancho's failed to perform
27 visual or functional tests on the vehicle in accordance with procedures prescribed by the
28 Department, pursuant to Health and Safety Code section 44013.

1 fide inspection of the emission control devices and systems on the vehicle, thereby depriving the
2 People of the State of California of the protections afforded under the Motor Vehicle Inspection
3 Program (H & S Code section 44000, et seq.).

4 **SEVENTH CAUSE FOR DISCIPLINE**

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

6 37. Respondent Nguyen has subjected his inspector license to discipline under H & S
7 Code section 44072.2, subdivision (a), in that on April 30, 2014, regarding the 1996 Chevrolet,
8 he violated the following sections of that Code:

9 a. Section 44012: Respondent Nguyen failed to perform the emission control
10 tests on the vehicle in accordance with procedures prescribed by the Department, pursuant to
11 Health and Safety Code section 44013.

12 b. Section 44012, subdivision (f): Respondent Nguyen failed to perform
13 visual or functional tests on the vehicle in accordance with procedures prescribed by the
14 Department, pursuant to Health and Safety Code section 44013.

15 c. Section 44032: Respondent Nguyen failed to perform tests of the emission
16 control devices and systems on that vehicle in accordance with H & S Code section 44012, in
17 that the vehicle had a hollow catalytic converter.

18 d. Section 44059: Respondent Nguyen willfully made false entries for
19 electronic Certificate of Compliance [REDACTED] by certifying that the vehicle had been
20 inspected as required when, in fact, it had not.

21 **EIGHTH CAUSE FOR DISCIPLINE**

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

23 38. Respondent Nguyen has subjected his inspector license to discipline under H & S
24 Code section 44072.2, subdivision (c), in that on April 30, 2014, regarding the 1996 Chevrolet,
25 he violated the following sections of the California Code of Regulations, title 16:

26 a. Section 3340.24, subdivision (c): Respondent Nguyen falsely or
27 fraudulently issued electronic Certificate of Compliance [REDACTED] without performing a

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1 bona fide inspection of the emission control devices and systems on that vehicle as required by H
2 & S Code section 44012.

3 b. Section 3340.30, subdivision (a): Respondent Nguyen failed to inspect
4 and test that vehicle in accordance with H & S Code section 44012.

5 c. Section 3340.42: Respondent Nguyen failed to conduct the required smog
6 tests and inspections on that vehicle in accordance with the Bureau's specifications.

7 **NINTH CAUSE FOR DISCIPLINE**

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

9 39. Respondent Nguyen has subjected his inspector license to discipline under H & S
10 Code section 44072.2, subdivision (d), in that on April 30, 2014, he committed acts involving
11 dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of
12 Compliance [REDACTED] for the 1996 Chevrolet without performing a bona fide inspection of
13 the emission control devices and systems on that vehicle, thereby depriving the People of the
14 State of California of the protections afforded under the Motor Vehicle Inspection Program (H &
15 S Code section 44000, et seq.).

16 **UNDERCOVER OPERATION: 1994 Honda**

17 40. On May 28, 2014, the Bureau conducted an undercover operation at Respondent
18 Pancho's smog check-test only station, Pancho's Smog Test Only. The Bureau's vehicle, a 1994
19 Honda, was modified to fail a proper smog inspection due to the removal of the internal substrate
20 from inside the catalytic converter. The hollow catalytic converter was then reinstalled.

21 41. A Bureau undercover operator took the vehicle to Respondent Pancho's smog
22 check-test only station. The operator requested a smog inspection and was told to pay \$180.00 for
23 the service, without a written estimate. After the inspection, the operator paid \$180.00 and was
24 provided a written estimate and an invoice, which he did not sign, both numbered [REDACTED] and
25 indicating a charge of only \$60.00. The operator was also issued a Vehicle Inspection Report
26 (VIR) bearing Certificate of Compliance Number [REDACTED] and Respondent Nguyen's name as
27 the smog inspector who had performed the smog test.

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1 b. Section 17200: Respondent Pancho's engaged in unlawful, unfair, or
2 fraudulent business practice when he charged an extra \$120.00 that was not reflected in the
3 written estimate and in the invoice, which constitutes unfair competition.

4 c. Section 17500: Respondent Pancho's induced a customer to enter into an
5 obligation relating to issuance of Certificate of Compliance [REDACTED] for the 1994 Honda
6 that could not pass a smog test, as part of a scheme with the intent to not conduct a bona fide
7 smog inspection, which constitute untrue statements that were known to Respondent to be
8 misleading.

9 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

11 46. Respondent Pancho's has subjected his station license to discipline under H & S
12 Code section 44072.2, subdivision (a), in that on May 28, 2014, regarding the 1994 Honda, he
13 violated the following sections of that Code:

14 a. Section 44012: Respondent Pancho's failed to perform the emission
15 control tests on the vehicle in accordance with procedures prescribed by the Department,
16 pursuant to Health and Safety Code section 44013.

17 b. Section 44012, subdivision (f): Respondent Pancho's failed to perform
18 visual or functional tests on the vehicle in accordance with procedures prescribed by the
19 Department, pursuant to Health and Safety Code section 44013.

20 c. Section 44015, subdivision (b): Respondent Pancho's issued electronic
21 Certificate of Compliance [REDACTED] without properly testing and inspecting the vehicle to
22 determine if it was in compliance with section 44012 of that Code.

23 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

25 47. Respondent Pancho's has subjected his station license to discipline under H & S
26 Code section 44072.2, subdivision (c), in that on May 28, 2014, regarding the 1994 Honda, he
27 violated the following sections of the California Code of Regulations, title 16:

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1 a. Section 3340.35, subdivision (c): Respondent Pancho's issued electronic
2 Certificate of Compliance [REDACTED] even though the vehicle had not been inspected in
3 accordance with H & S Code section 3340.42.

4 b. Section 3340.42: Respondent Pancho's failed to conduct the required
5 smog tests and inspections on the vehicle in accordance with the Bureau's specifications.

6 c. Section 3353, subdivision (a): Respondent Pancho's failed to give his
7 customer a written estimated price for parts and labor to obtain specific authorization for the
8 smog inspection of the 1994 Honda as required prior to commencement of any work for
9 compensation or accrual of charges.

10 d. Section 3373: Respondent Pancho's made false or misleading records
11 with respect to the 1994 Honda, by issuing Certificate of Compliance [REDACTED] without
12 performing bona fide inspections of the emission control devices and systems on the 1994
13 Honda, thereby depriving the People of the State of California of the protections afforded under
14 the Motor Vehicle Inspection Program (H & S Code section 44000, et seq.).

15 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

17 48. Respondent Pancho's has subjected his station license to discipline under H & S
18 Code section 44072.2, subdivision (d), in that on May 28, 2014, regarding the 1994 Honda, he
19 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
20 electronic Certificate of Compliance [REDACTED] for that vehicle without performing a bona
21 fide inspection of the emission control devices and systems on the vehicle, thereby depriving the
22 People of the State of California of the protections afforded under the Motor Vehicle Inspection
23 Program (H & S Code section 44000, et seq.).

24 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

26 49. Respondent Nguyen has subjected his inspector license to discipline under H & S
27 Code section 44072.2, subdivision (a), in that on May 28, 2014, regarding the 1994 Honda, he
28 violated the following sections of that Code:

1 a. Section 44012: Respondent Nguyen failed to perform the emission control
2 tests on the vehicle in accordance with procedures prescribed by the Department, pursuant to
3 Health and Safety Code section 44013.

4 b. Section 44012, subdivision (f): Respondent Nguyen failed to perform
5 visual or functional tests on the vehicle in accordance with procedures prescribed by the
6 Department, pursuant to Health and Safety Code section 44013.

7 c. Section 44032: Respondent Nguyen failed to perform tests of the emission
8 control devices and systems on that vehicle in accordance with H & S Code section 44012, in
9 that the vehicle had a hollow catalytic converter.

10 d. Section 44059: Respondent Nguyen willfully made false entries for
11 electronic Certificate of Compliance No. YF790741 by certifying that the vehicle had been
12 inspected as required when, in fact, it had not.

13 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

15 50. Respondent Nguyen has subjected his inspector license to discipline under H & S
16 Code section 44072.2, subdivision (c), in that on May 28, 2014, regarding the 1994 Honda, he
17 violated the following sections of the California Code of Regulations, title 16:

18 a. Section 3340.24, subdivision (c): Respondent Nguyen falsely or
19 fraudulently issued electronic Certificate of Compliance [REDACTED] without performing a
20 bona fide inspection of the emission control devices and systems on that vehicle as required by H
21 & S Code section 44012.

22 b. Section 3340.30, subdivision (a): Respondent Nguyen failed to inspect
23 and test that vehicle in accordance with H & S Code section 44012.

24 c. Section 3340.42: Respondent Nguyen failed to conduct the required smog
25 tests and inspections on that vehicle in accordance with the Bureau's specifications.

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1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

3 51. Respondent Nguyen has subjected his inspector license to discipline under H & S
4 Code section 44072.2, subdivision (d), in that on May 28, 2014, he committed acts involving
5 dishonesty, fraud or deceit whereby another was injured by issuing electronic Certificate of
6 Compliance [REDACTED] for the 1994 Honda without performing a bona fide inspection of the
7 emission control devices and systems on that vehicle, thereby depriving the People of the State
8 of California of the protections afforded under the Motor Vehicle Inspection Program (H & S
9 Code section 44000, et seq.).

10 **OTHER MATTERS**

11 52. Under Code section 9884.7, subdivision (c), the Director may deny, suspend,
12 revoke, or place on probation the registration for all places of business operated in this state by
13 Luis O. Alvarado, owner of Pancho's Smog Test Only, upon a finding that he has, or is, engaged
14 in a course of repeated and willful violations of the laws and regulations pertaining to an
15 automotive repair dealer.

16 53. Under Health and Safety Code section 44072.8, if Smog Check-Test Only Station
17 License Number TC 268144, issued to Luis O. Alvarado, owner of Pancho's Smog Test Only, is
18 revoked or suspended, any additional license issued under Chapter 5 of the Health and Safety
19 Code (Motor Vehicle Inspection Program) in the name of said licensee may be likewise revoked
20 or suspended by the Director.

21 54. Under Health and Safety Code section 44072.8, if Smog Check Inspector License
22 Number EO 634891 issued to Son Nguyen, is revoked or suspended, any additional license
23 issued under this chapter in the name of said licensee may be likewise revoked or suspended by
24 the Director.

25 **PRAYER**

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

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- 1 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
2 268144, issued to Luis O. Alvarado, owner of Pancho's Smog Test Only;
3 2. Revoking or suspending Smog Check-Test Only Station License Number TC
4 268144, issued to Luis O. Alvarado, owner of Pancho's Smog Test Only;
5 3. Revoking or suspending Smog Check Inspector License Number EO 634891,
6 issued to Son Nguyen;
7 4. Ordering Luis O. Alvarado and Son Nguyen to pay the Bureau of Automotive
8 Repair the reasonable costs of the investigation and enforcement of this case, pursuant to
9 Business and Professions Code section 125.3; and
10 5. Taking such other and further action as deemed necessary and proper.

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DATED: December 1, 2014


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

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