

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517(c)(2)(C), the typographical errors in the Order found on pages 20 and 21 of the Proposed Decision are corrected as follows:

The numbering in the Order is incorrect. The number "3" is repeated twice. Thus, the number "3." at the bottom of page 20 should be "4." and the number "4." on page 21 should be "5."

This Decision shall become effective 3/2/09.

IT IS SO ORDERED this 22nd day of January, 2009.



PATRICIA HARRIS
Deputy Director, Board/Bureau Support
Department of Consumer Affairs

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

In the Matter of the Accusation and Petition to
Revoke Probation Against:

**HEAUSERS PLAZA TIRE CO., INC.,
dba HEAUSERS PLAZA TIRE & AUTO
SERVICE**

531 Searls Avenue
Nevada City, CA 95959-3003
MARK HEAUSER, President

Automotive Repair Dealer Registration
No. ARD 061817
Smog Check Station License No. RC 061817

and

In the Matter of the Accusation Against:

DANIEL PATRICK OLSON

Basic Area Technician License No. EB 149155

Respondents.¹

Case No. 79/18-03

OAH No. 2008040264

In the Matter of the Statement of Issues
Against:

HEAUSER'S PLAZA TIRE CO., INC.

1774 S. Canyon Way
Colfax, CA 95713

MARK F. HEAUSER, President
MICHAEL F. HEAUSER, Secretary
Automotive Repair Dealer Registration
No. AC 252613

Respondent.

Case No. 79/05-10S

OAH No. 2008070397

¹ The accusation incorrectly identified respondent Heauser's automotive repair dealer registration number as AA 061817 and his smog check station license as RA 061817. The caption has been corrected.

PROPOSED DECISION

This matter was heard before Judith A. Kopec, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, on October 14 and 15, 2008, in Sacramento California.

Lorrie M. Yost, Deputy Attorney General, represented Sherry Mehl (complainant), Chief of the Bureau of Automotive Repair (bureau), Department of Consumer Affairs (department).

Louis J. Anapolsky, Attorney at Law, represented Mark F. Heauser (respondent Heauser), individually and as President of Heusers Plaza Tire Co., Inc. dba Heauser Plaza Tire & Auto Service, and Heauser's Plaza Tire Co., Inc.

Daniel Patrick Olson (respondent Olson) was present and represented himself.

On July 14, 2008, OAH granted complainant's request to consolidate these matters for hearing. Evidence was received, the record was closed, and the matter was submitted on October 15, 2008. On November 12, 2008, the ALJ reopened the record for the submission of additional evidence and argument concerning complainant's request for cost recovery. On November 25, 2008, OAH received additional evidence from complainant, which was admitted as exhibit 17. On December 10, 2008, OAH received respondent Heauser's argument regarding additional evidence submitted by complainant concerning request for cost recovery, which was marked for identification as exhibit K. The record was closed and the matter was submitted on December 10, 2008.

FACTUAL FINDINGS

1. On July 16, 2007, complainant made an accusation against both respondents and a petition to revoke probation against respondent Heauser.
2. On June 18, 2008, complainant made a statement of issues against respondent Heauser. The statement of issues alleged that respondent Heauser had an automotive repair dealer registration number AC 252612 for Heauser's Plaza Tire Co., Inc., located at 1774 S. Canyon Way, Colfax, CA (Colfax shop), and applied for a smog check station license for that location. The statement of issues further alleged that the bureau denied the application on April 8, 2008, for the facts alleged in the accusation and petition to revoke probation. Complainant did not offer any evidence of the licensure or application status of the Colfax shop. However, respondent Heauser testified generally about these areas. Based on this, it is found that the facts alleged in the statement of issues concerning the license history of the Colfax shop are true as alleged.

3. On January 27, 1978, the department issued automotive repair dealer registration number ARD 061817 (registration) to respondent Heuser, doing business as Heusers Plaza Tire & Auto Service, located at 531 Searls Avenue, Nevada City, CA (Heusers). The registration will expire on January 31, 2009, unless renewed.

4. On May 19, 1993, the department issued smog check station license number RC 061817 (station license) to respondent Heuser, doing business as Heusers Plaza Tire & Auto Service, located at 531 Searls Avenue, Nevada City, CA. Respondent's license will expire on January 31, 2009, unless renewed.

5. On May 19, 2004, the department issued basic area technician license number EB 149155 (technician license) to respondent Olson, which will expire on March 31, 2010, unless renewed.

Prior Discipline

6. On August 19, 2004, the bureau made an accusation against respondent Heuser's registration and station license and John Glinka's basic area technician license. The grounds for revocation of the registration and licenses included making misleading statements; dishonesty, fraud, or deceit; and failing to comply with statutes and regulations. The accusation was based on one incident of "clean piping" in which Mr. Glinka conducted a smog test on a vehicle which passed, and then issued a certificate of compliance for a vehicle that was not tested and was unable to pass the inspection. Respondent Heuser entered into a stipulated settlement of the matter and admitted that the factual allegations were true. Effective July 25, 2005, the registration was revoked and stayed for two years, subject to the following terms and conditions:

Obey all laws. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

... [¶] ...

Jurisdiction. If an accusation is filed against [respondent Heuser] during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

Violation of Probation. Should the Director of Consumer Affairs determine that [responder Heuser] has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard temporarily or permanently invalidate the registration.

The station license was also revoked and the revocation was stayed for three years subject to the same terms and conditions. In addition, the station license was actually suspended for 10 days.

Background

7. There are three parts to a California emissions inspection test, also known as a smog check or smog inspection: a tail pipe emissions test to ensure that the vehicle's emissions are within acceptable levels; a visual inspection of the vehicle's emission control components to ensure that they are present and connected properly; and a functional test of certain components to ensure they are working properly. A vehicle must pass all three parts of the emissions inspection test before an emission inspection certificate of compliance may be issued. The undercover operations resulting in the allegations at issue concerned the visual inspection portion of the smog test.

8. The technician must determine which components of the emission control system are required on the vehicle being tested. The primary reference for this is the emission control system label, which is usually found underneath the front hood, but can be in other locations. There are other available resources that also identify the components required for each vehicle model, such as an emission control application guide.

9. The emission control system label also identifies whether the vehicle meets federal emissions standards or California emissions standards. Any vehicle manufactured to be sold in California must meet the stricter California standards (commonly referred to as a California vehicle). A vehicle that was not manufactured to be sold in California, but is later registered in California, must meet only the federal standards (commonly referred to as a federal vehicle). Depending on the model of the vehicle, the same emissions control equipment may be required for both federal vehicles and California vehicles, or certain components may be required only if the vehicle is a California vehicle.

10. During a smog inspection, the vehicle is connected to an analyzer that prompts the technician throughout the inspection. During the visual inspection, the analyzer prompts the technician to check for various components of the emission control system.

Undercover Operation with 2000 Chevrolet Malibu

11. William Espinosa has been a program representative II in the bureau's Sacramento documentation lab for 18 years. As part of his job duties, Mr. Espinosa prepares undercover vehicles for smog inspections and inspects those vehicles when they are returned. Mr. Espinosa prepared a 2000 Chevrolet Malibu (Malibu) for an undercover run that was conducted by Kenneth Besson at Heausers. Mr. Espinosa erased any diagnostic trouble codes that were stored in the onboard computer and road tested the car to make sure the onboard computer system was operating correctly. After the road test, he performed a vehicle smog inspection, which it passed.

12. Mr. Espinosa modified the Malibu to fail the visual inspection by removing the air injection system, which is commonly referred to as the AIR system. The AIR system helps reduce carbon dioxide and hydrocarbon emissions when the car is started when it is cold. A car typically emits most of its undesirable emissions during a cold start, before it warms up. Mr. Espinosa removed the air injection pump, inserted plugs into the cylinder head, and removed the related plumbing. The air injection control solenoid was not removed. According to Mr. Espinosa, he left the solenoid so the technician would see that part of the AIR system was present, and realize that the rest of the system should also be present.

13. On December 8, 2006, Jessica Atkins posed as a customer and drove the Malibu with the missing AIR system to Heausers for a smog inspection. Respondent Olson performed the smog inspection. During the visual inspection portion of the test, Olson incorrectly indicated that the air injection system and pump air injection, two components of the AIR system that were removed, were not applicable to the Malibu. He also incorrectly noted that the vacuum line sensors/switches passed the visual exam. Respondent Olson correctly indicated that the Malibu passed the functional test and emissions test. Respondent Olson signed the smog check vehicle inspection report under penalty of perjury that he performed the inspection in accordance with all bureau requirements, and that the information in the report was true and correct. Respondent Olson issued a smog check certificate indicating that the Malibu passed the smog inspection. Ms. Atkins paid \$59.95 for the inspection and certificate.

14. Before performing the visual inspection, respondent Olson checked the Malibu's emission control system label, which indicated that the Malibu met California emission standards and the AIR system should be installed. He entered into the analyzer that the Malibu was a California vehicle. He noticed that the AIR system was not present on the car. He checked to make sure that the onboard computer was working, and found it did not show any diagnostic trouble codes indicating that there was a problem with the AIR system. He researched an on-line database and confirmed that the Malibu's onboard computer used diagnostic trouble codes to indicate a problem with the AIR system. Respondent Olson checked an emission control application guide and found that an AIR system was required on the Malibu to meet California emission standards, but was not required to meet the federal standards.

15. From the information he had, respondent Olson wrongly concluded that the Malibu was a federal car, not a California car. He reasoned that since the onboard computer did not issue any diagnostic trouble codes even though the Malibu did not have an AIR system, the car must be required to meet only federal emission standards. Based on his conclusion that the Malibu was a federal car, respondent Olson indicated on the smog inspection report that the air injection and pump air injection components of the AIR system did not apply to the Malibu. Therefore, he wrongly determined that the Malibu passed the visual inspection.

16. After respondent Olson determined that the Malibu was a federal car, he did not change the entry he earlier made in the analyzer that the car was a California car. The only way that he could change that entry would be to abort the test and start over. However, in August 2005 during a bureau performance audit, respondent Olson was warned that he had a high number of aborted tests. Because of this, he did not want to abort the test.

17. According to Mr. Espinosa, if a technician is uncertain about, or unable to determine which components are required for a specific vehicle, the technician should not certify the vehicle. In Mr. Espinosa's view, the technician should either abort the test or fail the vehicle, and advise the customer to take it to one of the bureau's referee stations for a smog inspection.

18. Respondent Olson testified in a straightforward manner. His explanation of how he conducted the visual inspection of the Malibu, and his reasoning behind the steps he took, are reasonable and consistent with the evidence presented, even though his conclusion was incorrect. He followed the board's procedure for the inspection. While the board instructs technicians that the emissions control system label is the primary source of information about the required components on a vehicle, the board does not require that it be the only source of information a technician uses. While Mr. Espinosa opined that a technician should refer a customer to one of the bureau's referee station if there was an uncertainty, there was no showing that this was required by the bureau's procedures or the law. Respondent Olson relied upon and utilized his training and experience to evaluate what he reasonably perceived to be inconsistent information about whether the Malibu was a California or a federal car. There is no evidence of deceit, dishonesty, or an improper motive for his actions. The weight of the evidence established that respondent Olson made a bona fide error in judgment in the course of taking reasonable steps to conduct a lawful smog inspection of the Malibu.

Undercover Operation with 1994 Ford Ranger

19. William Cooper was a lab technician in the bureau's documentation lab and prepared a 1994 Ford Ranger (Ranger) for Mr. Besson to use in an undercover operation at Heausers. Mr. Cooper modified the Ranger so that it would not pass the visual portion of the smog inspection. He removed the Ranger's positive crankcase ventilation (PCV) system, which routes harmful gases from the crankcase into the engine to be burned. Mr. Cooper removed the Ranger's PCV valve, shortened the hoses, and inserted caps into the ends of the hoses.

20. On December 27, 2006, Les Johnson posed as a customer and drove the Ranger with the missing PCV system to Heausers for a smog inspection. Respondent Olson performed the inspection. He indicated that the PCV system passed the visual inspection, and passed the Ranger on all three portions of the smog inspection. Respondent Olson signed the smog check vehicle inspection report under penalty of perjury that he performed the inspection in accordance with all bureau requirements and that the information in the report was true and correct. Respondent Olson issued a smog check certificate indicating

that the Ranger passed the smog inspection. Mr. Johnson paid \$78.95 for the inspection and certificate. According to respondent Olson, he visually inspected the Ranger and did not see that the PCV valve was missing.

21. In contrast with his testimony about the Malibu, respondent Olson offered no explanation for why he passed the Ranger when it was missing the PCV system. According to respondent Olson, he followed the required procedures on the Ranger. However, this testimony is not supported by the evidence. In order to determine if the Ranger's PCV system passed the visual inspection, respondent Olson was required to visually inspect the PCV system to ensure that it was on the vehicle. He could not have conducted an adequate visual inspection of a system that was absent. The weight of the evidence established that respondent Olson did not perform the smog inspection in the manner required by the bureau's procedures or the law.

22. Nevertheless, the evidence supports at least two reasonable inferences. First, respondent Olson could have failed to take the necessary time to make sure that the PCV system was present. As a result, he could have quickly looked for it, saw the hoses, and wrongly believe that it was present. Second, respondent Olson could quickly looked for the PCV system and passed the car knowing the PCV valve was missing. Respondent Olson did not have a financial incentive to improperly pass the vehicles. In fact, any financial incentive would have pushed him in the other direction. If respondent Olson had failed the vehicles, and the customers had agreed to have Heausers repair them, respondent Olson would have been paid eight percent of the resulting bill for labor in addition to his regularly hourly wage. Because the evidence supports several reasonable inferences, there is insufficient evidence of deceit, dishonesty, or an improper motive.

Other Undercover Operations

23. In January 2007, Mr. Besson performed an undercover operation at Heausers using a 1991 Toyota pickup truck (Toyota) that had a missing pulse air injection system. An undercover customer drove the Toyota to Heausers for a smog inspection. Respondent Olson performed the inspection. He correctly failed the Toyota during the visual inspection because of the missing pulse air injection system.

24. In January 2007, Mr. Besson performed an undercover operation with a 1991 Chevrolet Corsica (Corsica) that had an exhaust gas recirculation system (EGR) that did not work properly. An undercover customer drove the Corsica to Heausers for a smog inspection. Respondent Olson performed the inspection. He correctly failed the Corsica because the EGR did not pass the functional test.

Evidence of Mitigation or Rehabilitation

25. Michael Bratton, owner of a State Farm insurance agency, has known respondent Heauser since he began taking his cars to Heausers for service over 25 years ago. He has recommended respondent Heauser's shops to hundreds of his clients. Mr. Bratton

worked with respondent Heuser on community activities, including the Rotary Club and building a high school football field. Mr. Bratton regularly consults with him regarding business issues and community concerns. Mr. Bratton spoke highly of respondent Heuser, his business, and his personal and professional integrity.

26. Clifford Newall has served for six years as the district attorney of Nevada County. He began taking his vehicles to Heusers when he first moved to the area, including vehicles he used for his prior business. Mr. Newall spoke highly of respondent Heuser, his business, and his personal and professional integrity.

27. Heusers was originally purchased and operated by respondent Heuser's father, Fred Heuser, and had four employees. In 1989, Fred Heuser purchased a shop in Penn Valley. In December 2007, respondent Heuser purchased the Colfax shop. There are currently about 35 employees for all three shops. They have numerous fleet accounts, some of which they have had for many years, including Sierra Nevada Ambulance, CalFire, and the Nevada City and Grass Valley police departments.

28. In July 2005, as a result of the prior disciplinary action, respondent Heuser informed the employees at Heusers in a memo that they were to comply with all statutes, regulations, and rules governing automotive inspections, estimates, and repairs. The employees, including respondent Olson, signed the memo. Respondent Heuser established a system to track invoices for smog inspections and smog certificates. This was implemented to ensure that the conduct that resulted in the prior disciplinary action would not occur again. Respondent Heuser conducts spot checks on his employees by observing them when they are performing smog inspections or repair work.

29. Respondent Heuser has three children, two of whom are attending high school, and a son who is attending the University of Nevada, Reno. Respondent Heuser was elected as a trustee of the Nevada Union High School District in 2004, and has served as president of the board of trustees for two years. He has been very active in a wide variety of community activities, including 4H, Little League, Rotary Club, the Grass Valley Fire Department, and the high school football program. In addition, respondent Heuser's automotive shops have sponsored a wide variety of community activities, such as youth sports programs.

30. While respondent Heuser implemented measures in response to the prior disciplinary action, there is little evidence that he took any steps to either prevent the conduct at issue, or, once it occurred, to minimize a recurrence. While respondent Heuser testified that he conducted spot checks of his employees, there was no evidence about how often they were performed, or how comprehensive they were. There is no evidence about any spot checks or other evaluation of respondent Olson's work.

31. Respondent Olson's technician license has no prior history of discipline.

Evidence of Aggravation

32. The conduct at issue occurred while respondent Heuser was on probation for the prior disciplinary case. Respondent Heuser testified that he did not understand how he can be held responsible for the actions of employees when he was neither involved in, nor aware of their conduct. His comments suggest a lack of understanding of, or an unwillingness to take complete responsibility for, his legal obligations as the holder of a registration and station license. Respondent Heuser did not discipline or counsel respondent Olson for his conduct that is at issue. There is no evidence that respondent Heuser participated in any retraining of himself or his employees.

Costs of Investigation and Enforcement

33. Complainant requested costs of investigation and enforcement in the total amount of \$25,570.14. The only evidence in support of the requested investigation costs was a declaration from Curtis Worden, enforcement manager for the bureau's smog check program. The requested costs include \$5,135.64 for the investigative services of bureau staff, including travel, investigative time, evidence, report writing and clerical services. There was no further substantiation of these expenses, such as the particular actions taken, the number of hours spent on those actions, or the costs attributed to those actions. Complainant did not submit sufficient substantiation of the requested investigation costs to determine whether they were reasonable.

34. Also included in the requested costs is \$19,434.50 for legal services, including consultation, case preparation, and filing fees. Complainant submitted a declaration and a "Cost-of-Suit Summary" from the Office of the Attorney General indicating that from fiscal year 2006-2007 through fiscal year 2008-2009, 117.25 hours of attorneys' services were provided, at \$158 an hour, and 9 hours of paralegal's services at \$101 an hour, for a total of \$19,434.50. There was no further substantiation of these expenses, such as the particular actions taken, the number of hours spent on those actions, or the costs attributed to those actions. Complainant did not submit sufficient substantiation of the requested legal costs to determine whether they were reasonable.

LEGAL CONCLUSIONS

Burden and Standards of Proof

1. Absent a statute to the contrary, the burden of proof in a license disciplinary proceeding is on the party filing the accusation, which is ordinarily the agency. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In disciplinary cases involving the suspension or revocation of a professional license (i.e., a license requiring a significant showing of education, training, experience and/or testing to qualify for the issuance of the license), the standard of proof is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857 [physician's license].)

In disciplinary cases involving the suspension or revocation of an occupational license obtained upon a showing of good moral character, the standard of proof required to suspend or revoke such a license is a preponderance of the evidence. (*Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, 318-320 [vehicle salesperson's license].)

2. The issuance of a basic area technician license requires a showing of education, training, and experience. An applicant must pass a licensing examination before the technician license is issued. For these reasons, the clear and convincing evidence standard of proof applies in disciplinary matters seeking to revoke or suspend such a license. There is some uncertainty about what standard of proof applies in an action to suspend or revoke an automotive dealer registration and a smog check station license. The operation of these enterprises requires considerable expertise to properly supervise subordinate licensees, and a substantial investment of time and capital. Despite this, it appears a preponderance of the evidence standard applies to a disciplinary matter seeking the suspension or revocation of an automotive dealer registration and a smog check station license. Regardless of the burden of proof that is applied, the results in this matter are the same.

Cause to Discipline Respondent Heauser's Registration

3. Where the automotive repair dealer cannot show that there was a "bona fide error," an automotive repair dealer registration may be invalidated when the automotive repair dealer, or any technician employed by the dealer, has made "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." (Bus. & Prof. Code, § 98847, subd. (a)(1).) Neither the Automotive Repair Act (Bus. & Prof. Code, § 9880 et seq.), nor the regulations promulgated under it, define "bona fide error." A bona fide error is generally defined as a mistake that is unintentional, inadvertent, and in good faith. (Black's Law Dict. (5th ed. 1979) p. 161, col. 1.) Good faith is generally defined as "that state of mind denoting honesty of purpose, freedom from intention to defraud, and ... being faithful to one's duty or obligation." (*Id.* at p. 624, col. 1; *Merrill v. Department of Motor Vehicles* (1969) 71 Cal.2d 907, 920-921.)

4. Based on Factual Findings 12 through 18, respondent Olson issued a smog check vehicle inspection report indicating that the Malibu passed the visual inspection, and issued a smog check certificate that it passed the smog inspection. These statements were untrue. However, based on Factual Finding 18, respondent Olson exercised reasonable care during the inspection. The weight of the evidence established that these statements resulted from bona fide error. Accordingly, cause does not exist to discipline respondent Heauser's registration under Business and Professions Code section 9884.7, subdivision (a)(1), as a result of the smog inspection of the Malibu.

5. Based on Factual Findings 19 through 22, respondent Olson issued a smog check vehicle inspection report indicating that the Ranger passed the visual inspection, and issued a smog check certificate that it passed the smog inspection. These statements were untrue. Based on Factual Findings 21 and 22, respondent Olson failed to exercise reasonable

care during the inspection. The weight of the evidence established that these statements did not result from bona fide error. Accordingly, cause exists to discipline respondent Heuser's registration under Business and Professions Code section 9884.7, subdivision (a)(1), as a result of the smog inspection of the Ranger.

6. Where the automotive repair dealer cannot show that there was a "bona fide error," an automotive repair dealer registration may be invalidated when the automotive repair dealer, or any technician employed by the dealer, has engaged in conduct that constitutes fraud. Neither the Automotive Repair Act nor the regulations promulgated under it include a definition of "fraud." In general, fraud will be found when an individual "intentionally, or by design, misrepresents a material fact, or produces a false impression in order to mislead another, or to entrap or cheat him, or to obtain an undue advantage of him." (*Wayne v. Bureau of Private Investigators & Adjusters* (1962) 201 Cal.App.2d 427, 438; see Civ. Code, § 1572.)

7. Based on Factual Findings 12 through 18, and 20 through 22, and Legal Conclusions 4, 15, and 35, the evidence did not establish that either respondent engaged in any conduct that constituted fraud in connection with the smog inspections of the Malibu and Ranger. Accordingly, cause does not exist to discipline respondent Heuser's registration under Business and Professions Code section 9884.7, subdivision (a)(4).

Cause to Discipline Respondent Heuser's Station License and Respondent Olson's Technician License

8. A station license and a technician license may be suspended, revoked or otherwise disciplined if the licensee, or any partner, officer, or director, violates any section of the Motor Vehicle Inspection Program (Health & Saf. Code, § 44000 et seq.) or the regulations promulgated under it which related to the licensed activities. (Health & Saf. Code, § 44072.2, subd. (a).)

9. The test at a smog check station shall be performed in accordance with procedures prescribed by the department. The department shall ensure that a visual or functional check is made of emission control devices specified by the department. The visual or functional check shall be performed in accordance with procedures prescribed by the department. (Health & Saf. Code, § 44012, subd. (f).)

10. Based on Factual Findings 12 through 18, and Legal Conclusions 18, 27, and 30, the evidence did not establish that either respondent failed to perform emission control tests on the Malibu as required by the department's procedures and the law. Accordingly, cause does not exist to discipline either respondent Heuser's station license or respondent Olson's technician license under Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health and Safety Code section 44012, subdivision(f).

11. Based on Factual Findings 20 through 22, and Legal Conclusions 19, 28, and 31, the evidence established that respondent Heuser and respondent Olson failed to perform

emission control tests on the Ranger as required by the department's procedures and the law. Accordingly, cause exists to discipline respondent Heuser's station license and respondent Olson's technician license under Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health and Safety Code section 44012, subdivision (f).

12. If a vehicle meets the requirements of Health and Safety Code section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance. (Health & Saf. Code, § 44015, subd. (b).)

13. Based on Factual Findings 12 through 18, and 19 through 22, and Legal Conclusions 5, 22, and 24, respondent Heuser issued certificates of compliance to the Malibu and the Ranger when they did not have all of the required emission control devices required by law. Accordingly, cause exists, individually and jointly, to discipline respondent Heuser's station license under Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health and Safety Code section 44015, subdivision (b).

14. The willful making of any false statement or entry with regard to a material matter in any certificate of compliance or noncompliance which is required by the Motor Vehicle Inspection Program or the Automotive Repair Act, constitutes perjury. (Health & Saf. Code, § 44059.) The term "willful" as used in perjury statutes requires criminal intent, i.e., the intention to make a false statement. (*People v. Von Tiedeman* (1898) 120 C. 128, 134.) Otherwise, "a person with the most honest intentions could be convicted." (*Ibid.*)

15. Based on Factual Findings 12 through 18, and 20 through 22, and Legal Conclusions 4, 7, and 35, the evidence did not establish that either respondent willfully made a false statement or entry in connection with the certificate of compliance that was issued for the Malibu. Accordingly, cause does not exist to discipline either respondent Heuser's station license or respondent Olson's technician license under Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health and Safety Code section 44059.

16. Based on Factual Findings 19 through 22, and Legal Conclusions 5, 7, and 35, the evidence established that respondent Olson entered false information concerning the visual inspection of the Ranger as a result of failing to exercise due care. There was insufficient evidence that he entered the false information knowing that the entry was false. Therefore, the evidence did not establish that either respondent willfully made a false statement or entry in connection with the certificate of compliance that was issued for the Ranger. Accordingly, cause does not exist to discipline either respondent Heuser's station license or respondent Olson's technician license under Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health and Safety Code section 44059.

17. Qualified technicians shall perform tests of emission control devices and systems according to Health and Safety Code section 44012. (Health & Saf. Code, § 44032.)

18. Based on Factual Findings 12 through 18 and Legal Conclusions 10, 27, and 30, the evidence did not establish that respondent Olson failed to perform emission control

tests on the Malibu as required by the department's procedures and the law. Accordingly, cause does not exist to discipline respondent Olson's technician license under Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health and Safety Code section 44032.

19. Based on Factual Findings 19 through 22, and Legal Conclusion 11, the evidence established that respondent Olson failed to perform emission control tests on the Ranger as required by the department's procedures and the law. Accordingly, cause exists to discipline respondent Olson's technician license under Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health and Safety Code section 44032.

20. A station license and a technician license may be suspended, revoked or otherwise disciplined if a licensee, or any partner, officer, or director violates any of the regulations adopted under the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44072.2, subd. (c).)

21. The bureau may suspend or revoke the license if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance. (Cal. Code Regs., tit. 16, § 3340.24, subd. (c).) A licensee violates this requirement when a certificate of compliance is issued based on false information, which does not require a willfulness, or when a certificate of compliance is issued fraudulently, which requires a showing of wrongful intent.

22. Based on Factual Findings 12 through 22, and Legal Conclusions 5 and 13, respondent Heuser issued smog certificates of compliance that falsely represented that the Malibu and Ranger each passed smog tests. Accordingly, cause exists, individually and jointly, to discipline respondent Heuser's station license under Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 15, section 3340.24, subdivision (c).

23. 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 by law, and has all the required emission control equipment and devices installed and functioning correctly. (Cal. Code Regs., tit. 16, § 3340.35, subd. (c).)

24. Based on Factual Findings 12 through 18, and Legal Conclusions 12 and 22, respondent Heuser issued a certificate of compliance for the Malibu when it did not have all the required emission control equipment installed. Accordingly, cause exists to discipline respondent Heuser's station license under Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.35, subdivision (c).

25. Based on Factual Findings 19 through 22, and Legal Conclusions 11, 13, 19, and 22, respondent Heuser issued a certificate of compliance for the Ranger when it had not been inspected in accordance with procedures required by law, and did not have all the

required emission control equipment installed. Accordingly, cause exists to discipline respondent Heauser's station license under Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.35, subdivision (c).

26. Smog check stations and smog check technicians shall conduct tests and inspections according to the bureau's specifications. (Cal. Code Regs., tit. 16, § 3340.42.)

27. Based on Factual Findings 12 through 18, and Legal Conclusions 10 and 18, the evidence did not establish that respondent Heauser failed to conduct the visual inspection of the Malibu according to the bureau's specifications. Accordingly, cause does not exist to discipline respondent Heauser's station license under Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.42.

28. Based on Factual Findings 19 through 22, and Legal Conclusions 11 and 19, respondent Heauser did not conduct the visual inspection of the Ranger according to the bureau's specifications. Accordingly, cause exists to discipline respondent Heauser's station license under Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.42.

29. A smog check technician shall inspect, test and repair vehicles according to Health and Safety Code, sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42. (Cal. Code Regs., tit. 16, § 3340.30.)

30. Based on Factual Findings 12 through 18, and Legal Conclusions 11, 19, and 28, the evidence did not establish that respondent Olson failed to conduct the visual inspection of the Malibu according to the legal requirements. Accordingly, cause does not exist to discipline respondent Olson's technician license under Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.42.

31. Based on Factual Findings 19 through 22, and Legal Conclusions 11, 19, and 28, respondent Olson did not conduct the visual inspection of the Ranger according to the legal requirements. Accordingly, cause exists to discipline respondent Olson's technician license under Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.42.

32. No person shall enter into the emissions inspection system any false information about the vehicle being tested. (Cal. Code Regs., tit. 16, § 3340.41, subd. (c).)

33. Based on Factual Findings 12 through 22, respondent Olson entered false information into the emissions inspection system about the Malibu and Ranger. Accordingly, cause exists, individually and jointly, to discipline respondent Olson's

technician license under Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.41, subdivision (c).

34. A station license and technician license may be suspended, revoked or otherwise disciplined if the licensee, or any partner, officer, or director commits any act involving dishonesty, fraud, or deceit whereby another is injured. (Health & Saf. Code, § 44072.2, subd. (d).)

35. Based on Factual Findings 12 through 22, and Legal Conclusions 4, 7, and 15, the evidence did not establish that either respondent committed any act involving dishonesty, fraud, or deceit. Accordingly, cause does not exist to discipline either respondent Heauser's station license or respondent Olson's technician license under Health and Safety Code section 44072.2, subdivision (d).

Cause to Revoke Probation of Respondent Heauser

36. Based on Factual Finding 6, respondent Heauser's registration and station license were each on probation at the time of the conduct at issue in this matter. A term and condition of respondent Heauser's probation was that he was to comply with all statutes, regulations, and rules governing automotive inspections. Based on Legal Conclusions 5, 11, 13, 22, 24, 25, and 28, respondent Heauser violated Business and Professions Code section 9884.7, subdivision (a)(1); Health and Safety Code sections 44012, subdivision (f), 44015, subdivision (b), and 44072.2, subdivisions (a) and (c); and California Code of Regulations, title 15, sections 3340.24, subdivision (c), 3340.35, subdivision (c), and 3340.42. Accordingly, cause exists to revoke the probation of respondent Heauser's registration and station license.

Cause to Deny Application for Smog Check Station License for Colfax Shop

37. An application for a license may be denied if the applicant has committed any act involving dishonesty, fraud, or deceit whereby another is injured or whereby the applicant has benefited. (Health & Saf. Code, § 44072.1, subd. (d).)

38. Based on Factual Findings 12 through 22, and Legal Conclusions 4, 7, 15, and 35, the evidence did not establish that respondent Heauser committed any act involving dishonesty, fraud, or deceit whereby another is injured or respondent Heauser has benefited. Accordingly, cause does not exist to deny respondent Heauser's application for a smog check station license for the Colfax shop under Health and Safety Code section 44072.1, subdivision (d).

39. An application for a license may be denied if the applicant has committed any act which, if committed by any licensee, would be grounds for the suspension or revocation of a license issued under the Motor Vehicle Inspection Program. (Health & Saf. Code, § 44072.1, subd. (c).)

40. Based on Factual Findings 12 through 22 and Legal Conclusions 11, 13, 22, 24, 25, and 28, respondent Heauser has committed acts, which if committed by a licensee, would be grounds for the suspension or revocation of a license under the Motor Vehicle Inspection Program. Accordingly, cause exists, individually and jointly, to deny respondent Heauser's application for a smog check station license for the Colfax shop under Health and Safety Code section 44072.1, subdivision (c).

Appropriate Discipline

41. A person whose registration has previously been refused validation or who has committed acts prohibited by Business and Professions Code section 9884.7 shall submit evidence which is deemed to be sufficient to establish his rehabilitation. (Cal. Code Regs., tit. 16, § 3395.1.) The bureau's disciplinary guidelines shall be considered when reaching a decision concerning a disciplinary action. (Cal. Code Regs., tit. 16, § 3395.4.)

42. The bureau's disciplinary guidelines provide that the following factors shall be considered as factors in aggravation: prior history of disciplinary action, currently being on probation for improper acts, and failing to successfully complete a prior period of probation. (Bureau of Automotive Repair Guidelines for Disciplinary Penalties and Terms of Probation, revised May 1997, para. II.1.) The disciplinary guidelines provide that the following factors shall be considered as factors in mitigation: evidence of voluntary participation in retraining for self or employees; no loss to consumer and no damage to consumer's property (undercover cars are treated as consumers); evidence that the shop has taken specific steps for retraining and has initiated steps to minimize recurrence; and evidence of internal control or audit designed to eliminate errors. (*Id.* at para. II.2.)

43. The disciplinary guidelines provide the following minimum and maximum penalties: For a violation of Business and Professions Code section 9884.7, subdivision (a) (false or misleading statements), the minimum penalty is 90 days' suspension, 80 days of it stayed, and two years' probation; the maximum penalty is revocation. For a violation of Health and Safety Code sections 44012 (improper inspections), 44015 (improper certificate of compliance), and 44032 (improper tests), the minimum penalty for each violation is revocation of registration and station license, stayed, 30 days' suspension of the station license, and two years' probation; the maximum penalty for each violation is revocation. For a violation of Health and Safety Code section 3340.41, subdivision (c) (false entry into system), the minimum penalty is revocation of the licensees, stayed, 30 days' suspension of the station license, and two years' probation, and the maximum penalty is revocation of the registration, stayed, and three years' probation, and revocation of the station license.

Respondent Heauser's Registration and Station License for Heausers

44. A licensee who elects to operate the business through employees is responsible to the licensing authority for their conduct in the exercise of the license. (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 295.) A licensed owner has a responsibility to see the license is not used in violation of the law. (*Ibid.*) The

objective of an administrative proceeding relating to the discipline of a licensee is to protect the public and to determine whether a licensee has exercised the privilege of having a license in derogation of the public interest. (*Id.* at p. 296.) If a licensee were not liable for the actions of his or her employees, effective regulation would be impossible. (*Ibid.*) The licensee could contract away the daily operations of his or her business and become immune to any disciplinary action brought by the licensing authority. (*Ibid.*) The principle that a licensee will be held liable for the acts of his or her agents is one that has been applied whether the agent is an independent contractor or an employee. (*Ibid.*) This principle is based on the assumption that a licensee is in a position to oversee and control the actions of employees. (*Rob-Mac Inc. v. Department of Motor Vehicles* (1983) 148 Cal.App.3d 793, 798.)

45. Several factors in aggravation are present. Respondent Heauser's registration and station license were revoked in 2005 and placed on probation. The current violations occurred while respondent Heauser was still on probation. In mitigation, respondent Heauser took steps to minimize recurrence of clean-piping, which was the violation that resulted in the prior discipline. Respondent Heauser and his businesses have contributed significantly to their communities, and have earned the loyalty and support of their customers.

46. However, the steps respondent Heauser took were inadequate. There is scant evidence that respondent Heauser took a more active role in monitoring or supervising his employees while on probation. Respondent Heauser took no action in response to respondent Olson's conduct that is at issue in this proceeding. While a significant number of the allegations concerning respondent Olson's inspection of the Malibu were not established, his conduct concerning the Ranger resulted in a variety of serious violations. Respondent Heauser is not yet able or willing to exercise the supervisory control over his employees necessary to ensure that he complies with the requirements of the Motor Vehicle Inspection Program. While he may not believe that it is fair to be held responsible for the conduct of his employees, this is the law. Respondent Heauser offered little evidence and no assurance that he now understands and accepts his responsibility. Because of this, the evidence established that revocation of respondent Heauser's station license is required to adequately protect the public.

47. None of the past or current violations involved respondent Heauser's automotive repair business. Without overlooking the serious nature of respondent Heauser's violations while still on probation, and taking into consideration the disciplinary guidelines, the evidence did not establish that permanent invalidation of respondent Heauser's registration is required to adequately protect the public. Weighing all of the evidence, and considering the bureau's guidelines and the law, a stayed permanent invalidation of respondent Heauser's registration, subject to terms and conditions can adequately protect the public.

Respondent Olson's Technician License

48. Respondent Olson has no prior history of discipline. However, his current license was issued just two and one-half years prior to the conduct at issue. Taking into consideration the disciplinary guidelines and weighing all of the evidence, revocation of respondent Olson's license is required to adequately protect the public. The evidence did establish that he could benefit from additional training to properly perform smog inspections.

Application for Station License for Colfax Shop

49. Respondent Heauser has been unable to adequately monitor and supervise the employees at Heausers in order to ensure that he successfully complete his probation. His lack of oversight resulted in the prior disciplinary action and the current one. The evidence established that respondent Heauser cannot be relied upon to ensure compliance with the law in another smog check station.

Discipline of Other Registrations or License

50. The director of the department (director) may invalidate, temporarily or permanently, the registrations for all the places of business in California operated by an automotive repair dealer upon a finding that the automotive repair dealer has or is engaged in a course of repeated and willful violations of the laws pertaining to an automotive repair dealer. (Bus. & Prof. Code, § 9884.7, subd. (c)) Complainant did not show that invalidating any other registrations held by respondent Heauser is necessary to protect the public.

51. When a license has been revoked or suspended following a hearing under the Motor Vehicle Inspection Program, any additional license issued under the Motor Vehicle Inspection Program in the name of the licensee may be revoked or suspended by the director. (Health & Saf. Code, § 44072.8.) Complainant did not show that revocation of any other license held by either respondent Heauser or respondent Olson is necessary to protect the public.

Cost Recovery

52. A licensee found to have violated the licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. (Bus. & Prof. Code, § 125.3.) An agency may prove the costs by submitting a declaration that contains specific and sufficient facts to support findings regarding the actual costs incurred and the reasonableness of the costs. (Cal. Code Regs., tit. 1, § 1042, subd. (b).) For services provided by an agency employee, the declaration shall describe the general tasks performed, the time spent on each task, and the method of calculating the costs. (*Id.* at subd. (b)(1).) For other costs, the bill, invoice or other supporting document shall be attached to the declaration. (*Ibid.*)

53. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court established several factors to be considered in determining the

reasonableness of the costs sought under statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

54. At hearing, neither respondent offered any evidence as to his financial ability to pay the requested costs. However, respondents were successful in getting some, but not all, of the charges included in the accusation dismissed. Respondent Heauser also raised a colorable challenge to the level of proposed discipline. Based upon all the factors set forth in *Zuckerman*, the limited nature and scope of the charges, and complainant's failure to provide adequate justification for the requested costs, complainant's request to recover the cost of investigation and prosecuting this matter is denied.

ORDER

1. Automotive repair dealer registration number ARD 061817 issued to Heausers Plaza Tire Co., Inc., dba Heausers Plaza Tire & Auto Service, Mark Heauser, President, is permanently invalidated. However, the permanent invalidation is stayed and the registration is placed on probation for four years, subject to the following terms and conditions:

a. Comply with all statutes, regulations and rules governing automotive inspections and estimates.

b. Report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

c. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Business and Professions Code section 9884.6.

d. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

e. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard, temporarily or permanently invalidate the registration.

2. Smog check station license number RC 061817 issued to Heausers Plaza Tire Co., Inc., dba Heausers Plaza Tire & Auto Service, Mark Heuser, President is revoked.

3. Basic area technician station license number EB 149155 issued to Daniel Patrick Olson is revoked. However, the revocation is stayed and the license is placed on probation for two years, subject to the following terms and conditions:

a. Comply with all statutes, regulations and rules governing automotive inspections and estimates.

b. Report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

c. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Business and Professions Code section 9884.6.

d. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

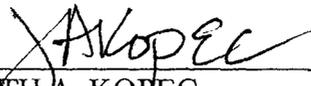
e. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard, temporarily or permanently invalidate the registration.

f. During the period of probation, respondent Olson shall attend and successfully complete a Bureau certified training course in diagnosis and repair of emission systems failures and engine performance, applicable to the class of license held by the respondent. The course shall be completed and proof of completion submitted to the Bureau within 60 days of the effective date of this decision and order. If proof of completion of the course is not furnished to the Bureau within the 60-day period, respondent's license shall be immediately suspended until such proof is received.

3. The application for a smog check station license submitted for Heuser's Plaza Tire Co., Inc., located at 1774 S. Canyon Way, Colfax, CA 95713, Mark F. Heuser, President, is denied.

4. Complainant's request for the costs of investigating and prosecuting this matter is denied.

Dated: January 6, 2009



JUDITH A. KOPEC
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General
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8
9 **BEFORE THE**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
12 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/08-03

13 **HEAUSERS PLAZA TIRE CO., INC., dba**
14 **HEAUSER PLAZA TIRE & AUTO SERVICE**

531 Searls Avenue

Nevada City, California 95959-3003

15 **MARK HEAUSER, PRES.**

16 Automotive Repair Dealer Registration

No. AA 061817

17 Smog Check Station License No. RA 061817

18 and

19 **DANIEL PATRICK OLSON**

13256 Long Valley Road

20 Penn Valley, California 95946

21 Basic Area Technician License No. EB 149155

22 Respondents.

ACCUSATION AGAINST
RESPONDENTS HEAUSER AND
OLSON

PETITION TO REVOKE
PROBATION AGAINST
RESPONDENT HEAUSER ONLY

24 Sherry Mehl ("Complainant") alleges:

25 **PARTIES**

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

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Automotive Repair Dealer Registration

2. On or about January 27, 1978, the Bureau issued Automotive Repair Dealer Registration No. AA 061817 (“registration”) to Heausers Plaza Tire Co., Inc., doing business as Heuser Plaza Tire & Auto Service (“Respondent Heuser”). The registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2008, unless renewed.

Smog Check Station License

3. On or about May 19, 1993, the Bureau issued Smog Check Station License No. RA 061817 (“station license”) to Respondent. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2008, unless renewed.

Basic Area Technician License

4. On or about May 11, 2004, the Bureau issued Basic Area Technician License No. EB 149155 (“technician license”) to Daniel Patrick Olson (“Respondent Olson”). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2008, unless renewed.

PRIOR DISCIPLINARY ACTION

5. Pursuant to the Decision and Order in Accusation No. 79/05-10, attached hereto as **Exhibit “A”** and incorporated herein by reference, effective July 25, 2005, the Director of Consumer Affairs (“Director”) revoked Respondent’s Automotive Repair Dealer Registration No. AA 061817, revocation was stayed, and Respondent was placed on probation for two (2) years with terms, including Term 1, set forth below. Further, pursuant to said Decision and Order, Respondent’s Smog Check Station License No. RA 061817 was revoked, revocation stayed and Respondent was placed on probation for three (3) years with terms, including Term 1, set forth as follows:

Term 1 - Obey all Laws: Respondent shall comply with all statutes, regulations, and rules governing automotive inspections, estimates, and repairs.

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1 inspection. The vehicle could not pass a smog inspection because the vehicle's air injection
2 system ("AIR") was missing. The operator signed and received a copy of Work Order No.
3 3088714. Respondent Olson performed the smog inspection and issued electronic Certificate of
4 Compliance No. MM675947, certifying that the vehicle was in compliance with all applicable
5 laws and regulations. In fact, the vehicle could not pass the visual portion of the smog inspection
6 because the vehicle's AIR system was missing.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Untrue or Misleading Statements)**

9 15. Respondent Heuser has subjected its registration to discipline under Code
10 section 9884.7, subdivision (a)(1), in that on or about December 8, 2006, it made statements
11 which it knew or which by exercise of reasonable care it should have known were untrue or
12 misleading by issuing electronic Certificate of Compliance No. MM675947 for the 2000
13 Chevrolet Malibu, certifying that it was in compliance with applicable laws and regulations. In
14 fact, the vehicle could not have passed the visual portion of the smog inspection because its AIR
15 system was missing.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Fraud)**

18 16. Respondent Heuser has subjected its registration to discipline under Code
19 section 9884.7, subdivision (a)(4), in that on or about December 8, 2006, it committed acts which
20 constitute fraud by issuing electronic Certificate of Compliance No. MM675947 for the 2000
21 Chevrolet Malibu without performing a bona fide inspection of the emission control devices and
22 systems on the vehicle, thereby depriving the People of the State of California of the protection
23 afforded by the Motor Vehicle Inspection Program.

24 **THIRD CAUSE FOR DISCIPLINE**

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

26 17. Respondent Heuser has subjected its station license to discipline under
27 Health and Safety Code section 44072.2, subdivision (a), in that on or about December 8, 2006,
28 with regard to the 2000 Chevrolet Malibu, it violated sections of that Code, as follows:

1 a. **Section 44012, subdivision (f):** Respondent Heuser failed to perform
2 emission control tests on the vehicle in accordance with procedures prescribed by the department.

3 b. **Section 44015, subdivision (b):** Respondent Heuser issued electronic
4 Certificate of Compliance No. MM675947 for the vehicle without properly testing and inspecting
5 the vehicle to determine if it was in compliance with section 44012 of that Code.

6 c. **Section 44059:** Respondent willfully made false entries for electronic
7 Certificate of Compliance No. MM675947 by certifying that the vehicle had been inspected as
8 required when, in fact, it had not.

9 **FOURTH CAUSE FOR DISCIPLINE**

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

11 18. Respondent Heuser has subjected its station license to discipline under
12 Health and Safety Code section 44072.2, subdivision (c), in that on or about December 8, 2006,
13 regarding the 2000 Chevrolet Malibu, it violated sections of the California Code of Regulations,
14 title 16, as follows:

15 a. **Section 3340.24, subdivision (c):** Respondent Heuser falsely or
16 fraudulently issued electronic Certificate of Compliance No. MM675947 for the vehicle without
17 performing a bona fide inspection of the emission control devices and systems on the vehicle as
18 required by Health and Safety Code section 44012.

19 b. **Section 3340.35, subdivision (c):** Respondent Heuser issued electronic
20 Certificate of Compliance No. MM675947 for the vehicle even though the vehicle had not been
21 inspected in accordance with section 3340.42 of that Code.

22 c. **Section 3340.42:** Respondent Heuser failed to conduct the required
23 smog tests and inspections of the vehicle in accordance with the Bureau's specifications.

24 **FIFTH CAUSE FOR DISCIPLINE**

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

26 19. Respondent Heuser has subjected its station license to discipline under
27 Health and Safety Code section 44072.2, subdivision (d), in that on or about December 8, 2006,
28 regarding the 2000 Chevrolet Malibu, it committed acts involving dishonesty, fraud or deceit

1 whereby another was injured by issuing electronic Certificate of Compliance No. MM675947 for
2 the vehicle when, in fact, the vehicle had not been properly tested and inspected, thereby
3 depriving the People of the State of California of the protection afforded by the Motor Vehicle
4 Inspection Program.

5 **SIXTH CAUSE FOR DISCIPLINE**

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

7 20. Respondent Olson has subjected his technician license to discipline under
8 Health and Safety Code section 44072.2, subdivision (a), in that on or about December 8, 2006,
9 regarding the 2000 Chevrolet Malibu, he violated sections of that Code, as follows:

10 a. **Section 44012, subdivision (f):** Respondent Olson failed to determine
11 that all emission control devices and systems required by law were installed and functioning
12 correctly in accordance with test procedures.

13 b. **Section 44032:** Respondent Olson failed to perform tests of the emission
14 control devices and systems on the vehicle in accordance with section 44012 of that Code.

15 c. **Section 44059:** Respondent Olson entered false information into the
16 Emission Inspection System ("EIS") unit by entering "N/A" for the AIR system when in fact, the
17 AIR system is a required emission control device for this vehicle.

18 **SEVENTH CAUSE FOR DISCIPLINE**

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

20 21. Respondent Olson has subjected his technician license to discipline under
21 Health and Safety Code section 44072.2, subdivision (c), in that on or about December 8, 2006,
22 regarding the 2000 Chevrolet Malibu, he violated sections of the California Code of Regulations,
23 title 16, as follows:

24 a. **Section 3340.30, subdivision (a):** Respondent Olson failed to inspect
25 and test the vehicle in accordance with Health and Safety Code section 44012.

26 b. **Section 3340.41, subdivision (c):** Respondent Olson entered false
27 information into the EIS unit by entering "N/A" for the AIR system when in fact, the AIR system
28 is a required emission control device for this vehicle.

1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 22. Respondent Olson has subjected his technician license to discipline under
4 Health and Safety Code section 44072.2, subdivision (d), in that on or about December 8, 2006,
5 he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
6 electronic Certificate of Compliance No. MM675947 for the 2000 Chevrolet Malibu without
7 performing a bona fide inspection of the emission control devices and systems on the vehicle,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program.

10 **UNDERCOVER OPERATION - DECEMBER 27, 2006**

11 23. On or about December 27, 2006, a Bureau undercover operator using the
12 alias "Lester McCoy" ("operator") drove a Bureau documented 1994 Ford Ranger, California
13 License Plate No. 5B57772, to Respondent Heuser's facility and requested a smog inspection.
14 The vehicle could not pass a smog inspection because the vehicle's positive crankcase ventilation
15 system ("PCV") was missing. The operator signed and received a copy of Work Order No.
16 3089224. Respondent Olson performed the smog inspection and issued electronic Certificate of
17 Compliance No. MO063718, certifying that the vehicle was in compliance with all applicable
18 laws and regulations. In fact, the vehicle could not pass the visual portion of the smog inspection
19 because the vehicle's PCV system was missing.

20 **NINTH CAUSE FOR DISCIPLINE**

21 **(Untrue or Misleading Statements)**

22 24. Respondent Heuser has subjected its registration to discipline under Code
23 section 9884.7, subdivision (a)(1), in that on or about December 27, 2006, it made statements
24 which it knew or which by exercise of reasonable care it should have known were untrue or
25 misleading by issuing electronic Certificate of Compliance No. MO063718 for the 1994 Ford
26 Ranger, certifying that it was in compliance with applicable laws and regulations when, in fact,
27 the vehicle could not have passed the smog inspection because its PCV system was missing.

28 ///

1 **TENTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 25. Respondent Heuser has subjected its registration to discipline under Code
4 section 9884.7, subdivision (a)(4), in that on or about December 27, 2006, it committed acts
5 which constitute fraud by issuing electronic Certificate of Compliance No. MO063718 for the
6 1994 Ford Ranger without performing a bona fide inspection of the emission control devices and
7 systems on the vehicle, thereby depriving the People of the State of California of the protection
8 afforded by the Motor Vehicle Inspection Program.

9 **ELEVENTH CAUSE FOR DISCIPLINE**

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

11 26. Respondent Heuser has subjected its station license to discipline under
12 Health and Safety Code section 44072.2, subdivision (a), in that on or about December 27, 2006,
13 with regard to the 1994 Ford Ranger, it violated sections of that Code, as follows:

14 a. **Section 44012, subdivision (f):** Respondent Heuser failed to perform
15 emission control tests on the vehicle in accordance with procedures prescribed by the department.

16 b. **Section 44015, subdivision (b):** Respondent Heuser issued electronic
17 Certificate of Compliance No. MO063718 for the vehicle without properly testing and inspecting
18 the vehicle to determine if it was in compliance with section 44012 of that Code.

19 c. **Section 44059:** Respondent Heuser willfully made false entries for
20 electronic Certificate of Compliance No. MO063718, by certifying that the vehicle had been
21 inspected as required when, in fact, it had not.

22 **TWELFTH CAUSE FOR DISCIPLINE**

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

24 27. Respondent Heuser has subjected its station license to discipline under
25 Health and Safety Code section 44072.2, subdivision (c), in that on or about December 27, 2006,
26 regarding the 1994 Ford Ranger, it violated sections of the California Code of Regulations, title
27 16, as follows:

28 ///

1 a. **Section 3340.24, subdivision (c):** Respondent Heuser falsely or
2 fraudulently issued electronic Certificate of Compliance No. MO063718 for the vehicle without
3 performing a bona fide inspection of the emission control devices and systems on the vehicle as
4 required by Health and Safety Code section 44012.

5 b. **Section 3340.35, subdivision (c):** Respondent Heuser issued electronic
6 Certificate of Compliance No. MO063718 for the vehicle even though the vehicle had not been
7 inspected in accordance with section 3340.42 of that Code.

8 c. **Section 3340.42:** Respondent Heuser failed to conduct the required
9 smog tests and inspections of the vehicle in accordance with the Bureau's specifications.

10 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

12 28. Respondent Heuser has subjected its station license to discipline under
13 Health and Safety Code section 44072.2, subdivision (d), in that on or about December 27, 2006,
14 regarding the 1994 Ford Ranger, it committed acts involving dishonesty, fraud or deceit whereby
15 another was injured by issuing electronic Certificate of Compliance No. MO063718 for the
16 vehicle when, in fact, the vehicle had not been properly tested and inspected, thereby depriving
17 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
18 Program.

19 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

21 29. Respondent Olson has subjected his technician license to discipline under
22 Health and Safety Code section 44072.2, subdivision (a), in that on or about December 27, 2006,
23 regarding the 1994 Ford Ranger, he violated sections of that Code, as follows:

24 a. **Section 44012, subdivision (f):** Respondent Olson failed to determine
25 that all emission control devices and systems required by law were installed and functioning
26 correctly in accordance with test procedures.

27 b. **Section 44032:** Respondent Olson failed to perform tests of the emission
28 control devices and systems on the vehicle in accordance with section 44012 of that Code.

1 c. **Section 44059:** Respondent Olson entered false information into the EIS
2 unit by entering "Pass" for the PCV system when in fact, the vehicle could not have passed the
3 visual portion of the smog inspection because the PCV system was missing from the vehicle.

4 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

6 30. Respondent Olson has subjected his technician license to discipline under
7 Health and Safety Code section 44072.2, subdivision (c), in that on or about December 27, 2006,
8 regarding the 1994 Ford Range, he violated sections of the California Code of Regulations, title
9 16, as follows:

10 a. **Section 3340.30, subdivision (a):** Respondent Olson failed to inspect
11 and test the vehicle in accordance with Health and Safety Code section 44012.

12 b. **Section 3340.41, subdivision (c):** Respondent Olson entered false
13 information into the EIS unit by entering "Pass" for the PCV system when, in fact, the vehicle
14 could not have passed the visual portion of the smog inspection because the PCV system was
15 missing from the vehicle.

16 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

18 31. Respondent Olson has subjected his technician license to discipline under
19 Health and Safety Code section 44072.2, subdivision (d), in that on or about December 27, 2006,
20 he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
21 electronic Certificate of Compliance No. MO063718 for the 1994 Ford Ranger without
22 performing a bona fide inspection of the emission control devices and systems on the vehicle,
23 thereby depriving the People of the State of California of the protection afforded by the Motor
24 Vehicle Inspection Program.

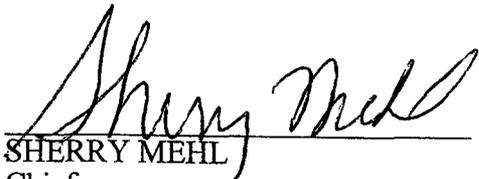
25 **PETITION TO REVOKE PROBATION**

26 32. The allegations of paragraphs 1 through 31 of the accusation above are
27 incorporated herein by reference as though fully set forth and are realleged.

28 ///

- 1 2. Temporarily or permanently invalidating any other automotive repair
- 2 dealer registration issued in the name of Heuser's Plaza Tire Co., Inc., dba Heuser Plaza Tire &
- 3 Auto Service;
- 4 3. Vacating the stay and reimposing the order of revocation of Smog Check
- 5 Station License No. RA 061817, issued to Heuser's Plaza Tire Co., Inc., dba Heuser Plaza Tire
- 6 & Auto Service;
- 7 4. Revoking or suspending any other license issued under this chapter in the
- 8 name of Heuser's Plaza Tire Co., Inc., dba Heuser Plaza Tire & Auto Service;
- 9 5. Revoking or suspending Basic Area Technician License No. EB 149155,
- 10 issued to Daniel Patrick Olson;
- 11 6. Revoking or suspending any other license issued under this chapter in the
- 12 name of Daniel Patrick Olson;
- 13 7. Ordering Heuser's Plaza Tire Co., Inc., dba Heuser Plaza Tire & Auto
- 14 Service and Daniel Patrick Olson to pay the Bureau of Automotive Repair the reasonable costs of
- 15 the investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 16 8. Taking such other and further action as deemed necessary and proper.
- 17

18 DATED: 7-16-07

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21 
22 SHERRY MEHL
23 Chief
24 Bureau of Automotive Repair
25 Department of Consumer Affairs
26 State of California
27 Complainant