

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 KAREN B. CHAPPELLE, State Bar No. 141267
Supervising Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-8944
Facsimile: (213) 897-1071

6 Attorneys for Complainant

7
8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 79/08-75

12 **CENTRAL AUTO CARE**
1075 E. Holt Avenue
13 Pomona, California 91767
TAN DUY PHAM, OWNER

A C C U S A T I O N

S M O G C H E C K

14 Automotive Repair Dealer Registration
15 No. AE 227881
Smog Check Station License No. RE 227881
16 Lamp Station License No. LE 227881, Class A
Brake Station License No. BE 227881, Class C

17 and

18 **TAN DUY PHAM**
12356 Lime Place
19 Chino, California 91710

20 Advanced Emission Specialist Technician
21 License No. EA 026420

22 Respondents.

23
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.

28 ///

1 **Automotive Repair Dealer Registration**

2 2. On or about June 4, 2003, the Bureau issued Automotive Repair Dealer
3 Registration Number AE 227881 (“registration”) to Tan Duy Pham (“Respondent”), doing
4 business as Central Auto Care. The registration will expire on May 31, 2008, unless renewed.

5 **Smog Check Station License**

6 3. On or about July 8, 2003, the Bureau issued Smog Check Station License
7 Number RE 227881 (“station license”) to Respondent. The station license will expire on
8 May 31, 2008, unless renewed.

9 **Lamp Station License**

10 4. On or about August 1, 2003, the Bureau issued Lamp Station License
11 Number LE 227881 (“lamp station license”) to Respondent. The lamp station license will expire
12 on July 31, 2008, unless renewed.

13 **Brake Station License**

14 5. On or about August 1, 2003, the Bureau issued Brake Station License
15 Number BE 227881 (“brake station license”) to Respondent. The lamp station license will
16 expire on July 31, 2008, unless renewed.

17 **Advanced Emission Specialist Technician License**

18 6. On or about January 30, 2003, the Bureau issued Advanced Emission
19 Specialist Technician License Number EA 026420 (“technician license”) to Respondent. The
20 technician license will expire on April 30, 2009.

21 **STATUTORY PROVISIONS**

22 7. Section 9884.7 of the Business and Professions Code (“Code”) states, in
23 pertinent part:

24 (a) The director, where the automotive repair dealer cannot show there was
25 a bona fide error, may refuse to validate, or may invalidate temporarily or
26 permanently, the registration of an automotive repair dealer for any of the
27 following acts or omissions related to the conduct of the business of the
28 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.

28 ///

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

(4) Any other conduct which constitutes fraud.

5 (b) Except as provided for in subdivision (c), if an automotive repair
6 dealer operates more than one place of business in this state, the director pursuant
7 to subdivision (a) shall only invalidate temporarily or permanently the registration
8 of the specific place of business which has violated any of the provisions of this
9 chapter. This violation, or action by the director, shall not affect in any manner
10 the right of the automotive repair dealer to operate his or her other places of
11 business.

(c) Notwithstanding subdivision (b), the director may invalidate
12 temporarily or permanently, the registration for all places of business operated in
13 this state by an automotive repair dealer upon a finding that the automotive repair
14 dealer has, or is, engaged in a course of repeated and willful violations of this
15 chapter, or regulations adopted pursuant to it.

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

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

24 10. Code section 9889.1 provides, in pertinent part, that the Director may
25 suspend or revoke any license issued under Articles 5 and 6 (commencing with Code section
26 9887.1) of the Automotive Repair Act.

27 11. Code section 9889.7 provides, in pertinent part, that the expiration or
28 suspension of a license by operation of law or by order or decision of the Director or a court of
law, or the voluntary surrender of a license shall not deprive the Director of jurisdiction to
proceed with any disciplinary proceedings.

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. Code section 9889.3, 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:

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

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

14. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

(f) Aids or abets unlicensed persons to evade the provisions of this chapter.

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

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

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

///

///

1 **COST RECOVERY**

2 17. Code section 125.3 provides, in pertinent part, that a Board may request
3 the administrative law judge to direct a licentiate found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
5 and enforcement of the case.

6 **SURVEILLANCE OPERATION - OCTOBER 16, 2007**

7 18. On or about October 16, 2007, the Bureau performed a videotaped
8 surveillance at Respondent's facility. The surveillance operation and information obtained from
9 the Bureau's Vehicle Identification Data ("VID") revealed that at approximately 1152 to 1201
10 hours, Respondent performed one (1) smog inspection that resulted in the issuance of electronic
11 Certificate of Compliance No. VL065342, certifying that he had tested and inspected a 1995
12 Mitsubishi, California License Plate No. 4GIJ021 and that the vehicle was in compliance with
13 applicable laws and regulations. In fact, Respondent performed the smog inspection using the
14 clean-piping method by using the tail pipe emissions of a 1998 Honda, California License Plate
15 No. 4BTB937, in order to issue the certificate of compliance. The vehicle certified was not in
16 the test bay at the time of the smog inspection.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Misleading Statements)**

19 19. Respondent has subjected his registration to discipline under Code section
20 9884.7, subdivision (a)(1), in that on or about October 16, 2007, he made statements which he
21 knew or which by exercise of reasonable care he should have known were untrue or misleading
22 by issuing electronic Certificate of Compliance No. VL065342 for the 1995 Mitsubishi,
23 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,
24 the vehicle had been clean-piped.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Fraud)**

27 20. Respondent has subjected his registration to discipline under Code section
28 9884.7, subdivision (a)(4), in that on or about October 16, 2007, he committed acts which

1 constitute fraud by issuing electronic Certificate of Compliance No. VL065342 for the 1995
2 Mitsubishi without performing a bona fide inspection of the emission control devices and
3 systems on that vehicle, thereby depriving the People of the State of California of the protection
4 afforded by the Motor Vehicle Inspection Program.

5 **THIRD CAUSE FOR DISCIPLINE**

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

7 21. Respondent has subjected his station license to discipline under Health and
8 Safety Code section 44072.2, subdivision (a), in that on or about October 16, 2007, regarding
9 electronic Certificate of Compliance No. VL065342 for the 1995 Mitsubishi, he violated sections
10 of that Code, as follows:

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

13 b. **Section 44015, subdivision (b):** Respondent issued the electronic
14 certificate of compliance for that vehicle without properly testing and inspecting the vehicle to
15 determine if it was in compliance with section 44012 of that Code.

16 c. **Section 44059:** Respondent willfully made false entries for the
17 electronic certificate of compliance by certifying that the vehicle had been inspected as required
18 when, in fact, it had not.

19 **FOURTH CAUSE FOR DISCIPLINE**

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

21 22. Respondent has subjected his station license to discipline under Health and
22 Safety Code section 44072.2, subdivision (c), in that on or about October 16, 2007, regarding
23 electronic Certificate of Compliance No. VL065342 for the 1995 Mitsubishi, he violated sections
24 of the California Code of Regulations, title 16, as follows:

25 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
26 issued the electronic certificate of compliance for the vehicle without performing a bona fide
27 inspection of the emission control devices and systems on that vehicle as required by Health and
28 Safety Code section 44012.

1 c. **Section 44059:** Respondent entered false information into the Emission
2 Inspection System ("EIS") for the electronic certificate of compliance by certifying that the
3 vehicle had been inspected as required when, in fact, it had not.

4 **SEVENTH CAUSE FOR DISCIPLINE**

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

6 25. Respondent has subjected his technician license to discipline under Health
7 and Safety Code section 44072.2, subdivision (c), in that on or about October 16, 2007, regarding
8 electronic Certificate of Compliance No. VL065342 for the 1995 Mitsubishi, he violated sections
9 of the California Code of Regulations, title 16, as follows:

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

12 b. **Section 3340.41, subdivision (c):** Respondent entered false information
13 into the EIS for the electronic certificate of compliance by entering vehicle identification
14 information or emission control information for a vehicle other than the vehicle being tested.

15 c. **Section 3340.42:** Respondent failed to conduct the required smog tests
16 and inspections on the vehicle in accordance with the Bureau's specifications.

17 **EIGHTH CAUSE FOR DISCIPLINE**

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

19 26. Respondent has subjected his technician license to discipline under Health
20 and Safety Code section 44072.2, subdivision (d), in that on or about October 16, 2007, he
21 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
22 electronic Certificate of Compliance No. VL065342 for the 1995 Mitsubishi without performing
23 a bona fide inspection of the emission control devices and systems on that vehicle, thereby
24 depriving the People of the State of California of the protection afforded by the Motor Vehicle
25 Inspection Program.

26 **SURVEILLANCE OPERATION - OCTOBER 18, 2007**

27 27. On or about October 18, 2007, the Bureau performed a videotaped
28 surveillance at Respondent's facility. The surveillance operation and information obtained from

1 the Bureau's VID revealed that at approximately 1424 to 1437 hours, Binh Phuoc Vuong
2 ("Vuong"), an unlicensed male, performed one (1) smog inspection, using the confidential access
3 number of Respondent to access the EIS. The smog inspection resulted in the issuance of
4 electronic Certificate of Compliance No. VL065347, wherein Respondent certified that he had
5 tested and inspected a 2000 Mitsubishi, no license plate, and that the vehicle was in compliance
6 with applicable laws and regulations. In fact, Vuong performed the smog inspection using the
7 clean-piping method by using the tail pipe emissions of a 1998 Honda, California License Plate
8 No. 4BTB937, in order to issue the certificate of compliance. The vehicle certified was not in
9 the test bay at the time of the smog inspection.

10 **NINTH CAUSE FOR DISCIPLINE**

11 **(Misleading Statements)**

12 28. Respondent has subjected his registration to discipline under Code section
13 9884.7, subdivision (a)(1), in that on or about October 18, 2007, regarding electronic Certificate
14 of Compliance No. VL065347 for the 2000 Mitsubishi, he made statements which he knew or
15 which by exercise of reasonable care he should have known were untrue or misleading, as
16 follows:

17 a. Respondent issued the electronic certificate of compliance for the vehicle,
18 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,
19 the vehicle had been clean-piped.

20 b. Respondent issued the electronic certificate of compliance for the vehicle,
21 certifying that the vehicle had been tested and inspected by a licensed technician when, in fact,
22 Vuong performed the tests and inspections when Vuong was not licensed to do so.

23 **TENTH CAUSE FOR DISCIPLINE**

24 **(Fraud)**

25 29. Respondent has subjected his registration to discipline under Code section
26 9884.7, subdivision (a)(4), in that on or about October 16, 2007, he committed acts which
27 constitute fraud by issuing electronic Certificate of Compliance No. VL065347 for the 2000
28 Mitsubishi without performing a bona fide inspection of the emission control devices and

1 systems on that vehicle, thereby depriving the People of the State of California of the protection
2 afforded by the Motor Vehicle Inspection Program.

3 **ELEVENTH CAUSE FOR DISCIPLINE**

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

5 30. Respondent has subjected his station license to discipline under Health and
6 Safety Code section 44072.2, subdivision (a), in that on or about October 18, 2007, regarding
7 electronic Certificate of Compliance No. VL065347 for the 2000 Mitsubishi, he violated sections
8 of that Code, as follows:

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

11 b. **Section 44014, subdivision (a):** Respondent allowed Vuong to perform
12 the smog inspection when Vuong was not licensed to do so.

13 c. **Section 44015, subdivision (b):** Respondent issued the electronic
14 certificate of compliance for that vehicle without properly testing and inspecting the vehicle to
15 determine if it was in compliance with section 44012 of that Code.

16 d. **Section 44059:** Respondent willfully made false entries for the
17 electronic certificate of compliance by certifying that the vehicle had been inspected as required
18 when, in fact, it had not.

19 **TWELFTH CAUSE FOR DISCIPLINE**

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

21 31. Respondent has subjected his station license to discipline under Health and
22 Safety Code section 44072.2, subdivision (c), in that on or about October 18, 2007, regarding
23 electronic Certificate of Compliance No. VL065347 for the 2000 Mitsubishi, he violated sections
24 of the California Code of Regulations, title 16, as follows:

25 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
26 issued the electronic certificate of compliance for the vehicle without performing a bona fide
27 inspection of the emission control devices and systems on that vehicle as required by Health and
28 Safety Code section 44012.

1 b. Section 3340.35, subdivision (c): Respondent issued the electronic
2 certificate of compliance for the vehicle even though the vehicle had not been inspected in
3 accordance with section 3340.42 of that Code.

4 c. Section 3340.41, subdivision (b): Respondent allowed Vuong to
5 perform the smog inspection when Vuong was not licensed to do so.

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

8 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

10 32. Respondent has subjected his station license to discipline under Health and
11 Safety Code section 44072.2, subdivision (d), in that on or about October 18, 2007, regarding
12 electronic Certificate of Compliance No. VL065347 for the 2000 Mitsubishi, he committed acts
13 involving dishonesty, fraud or deceit whereby another was injured by issuing the electronic
14 certificate of compliance for the vehicle when, in fact, the vehicle had not been properly tested
15 and inspected, thereby depriving the People of the State of California of the protection afforded
16 by the Motor Vehicle Inspection Program.

17 **FOURTEENTH CAUSE FOR DISCIPLINE**

18 **(Aiding and Abetting Unlicensed Activity)**

19 33. Respondent has subjected his station license to discipline under Health and
20 Safety Code section 44072.2, subdivision (f), in that on or about October 18, 2007, he aided and
21 abetted Vuong, an unlicensed person, to evade the provisions of the Motor Vehicle Inspection
22 Program by allowing Vuong to perform the smog tests and inspections on the 2000 Mitsubishi
23 when Vuong was not licensed to do so.

24 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

26 34. Respondent has subjected his technician license to discipline under Health
27 and Safety Code section 44072.2, subdivision (a), in that on or about October 18, 2007, regarding

28 ///

1 electronic Certificate of Compliance No. VL065347 for the 2000 Mitsubishi, he violated sections
2 of that Code, as follows:

3 a. **Section 44012, subdivision (f):** Respondent failed to determine that all
4 emission control devices and systems required by law were installed and functioning correctly on
5 the vehicle in accordance with test procedures.

6 b. **Section 44032:** Respondent failed to perform tests of the emission
7 control devices and systems on the vehicle in accordance with section 44012 of that Code, in that
8 the vehicle had been clean-piped.

9 c. **Section 44059:** Respondent entered false information for the electronic
10 certificate of compliance by certifying that the vehicle had been inspected as required when, in
11 fact, it had not.

12 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

14 35. Respondent has subjected his technician license to discipline under Health
15 and Safety Code section 44072.2, subdivision (c), in that on or about October 18, 2007, regarding
16 electronic Certificate of Compliance No. VL065347 for the 2000 Mitsubishi, he violated sections
17 of the California Code of Regulations, title 16, as follows:

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

20 b. **Section 3340.41, subdivision (c):** Respondent entered false information
21 for the electronic certificate of compliance by certifying that he had inspected the vehicle when,
22 in fact, Vuong performed the smog tests and inspections when Vuong was not licensed to do so.

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

25 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

27 36. Respondent has subjected his technician license to discipline under Health
28 and Safety Code section 44072.2, subdivision (d), in that on or about October 18, 2007, he

1 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
2 electronic Certificate of Compliance No. VL065347 for the 2000 Mitsubishi without performing
3 a bona fide inspection of the emission control devices and systems on that vehicle, thereby
4 depriving the People of the State of California of the protection afforded by the Motor Vehicle
5 Inspection Program.

6 **SURVEILLANCE OPERATION - OCTOBER 22, 2007**

7 37. On or about October 22, 2007, the Bureau performed a videotaped
8 surveillance at Respondent's facility. The surveillance operation and information obtained from
9 the Bureau's VID revealed that at approximately 1412 to 1416 hours, Respondent performed one
10 (1) smog inspection that resulted in the issuance of electronic Certificate of Compliance No.
11 VL270454, certifying that he had tested and inspected a 1997 Honda, California License Plate
12 No. 5PGM757, and that the vehicle was in compliance with applicable laws and regulations. In
13 fact, Respondent performed the smog inspection using the clean-piping method by using the tail
14 pipe emissions of a 1998 Honda, California License Plate No. 4BTB937, in order to issue the
15 certificate of compliance. The vehicle certified was not in the test bay at the time of the smog
16 inspection.

17 38. On the same day from 1546 to 1551 hours, Vuong, an unlicensed person,
18 performed an official pretest smog inspection on a 1990 Nissan, California License Plate No.
19 2UXG440; however, no certificate of compliance was issued.

20 **EIGHTEEN CAUSE FOR DISCIPLINE**

21 **(Misleading Statements)**

22 39. Respondent has subjected his registration to discipline under Code section
23 9884.7, subdivision (a)(1), in that on or about October 22, 2007, he made statements which he
24 knew or which by exercise of reasonable care he should have known were untrue or misleading
25 by issuing electronic Certificate of Compliance No. VL270454 for the 1997 Honda, certifying
26 that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle
27 had been clean-piped.

28 ///

1 NINETEENTH CAUSE FOR DISCIPLINE

2 (Fraud)

3 40. Respondent has subjected his registration to discipline under Code section
4 9884.7, subdivision (a)(4), in that on or about October 22, 2007, he committed acts which
5 constitute fraud by issuing electronic Certificate of Compliance No. VL270454 for the 1997
6 Honda without performing a bona fide inspection of the emission control devices and systems on
7 that vehicle, thereby depriving the People of the State of California of the protection afforded by
8 the Motor Vehicle Inspection Program.

9 TWENTIETH CAUSE FOR DISCIPLINE

10 (Violation of the Motor Vehicle Inspection Program)

11 41. Respondent has subjected his station license to discipline under Health and
12 Safety Code section 44072.2, subdivision (a), in that on or about October 22, 2007, regarding
13 electronic Certificate of Compliance No. VL270454 for the 1997 Honda, he violated sections of
14 that Code, as follows:

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

17 b. Section 44015, subdivision (b): Respondent issued the electronic
18 certificate of compliance for that vehicle without properly testing and inspecting the vehicle to
19 determine if it was in compliance with section 44012 of that Code.

20 c. Section 44059: Respondent willfully made false entries for the
21 electronic certificate of compliance by certifying that the vehicle had been inspected as required
22 when, in fact, it had not.

23 TWENTY-FIRST CAUSE FOR DISCIPLINE

24 (Violation of the Motor Vehicle Inspection Program)

25 42. Respondent has subjected his station license to discipline under Health and
26 Safety Code section 44072.2, subdivision (a), in that on or about October 22, 2007, regarding the
27 1990 Nissan, he violated section 44014, subdivision (b), of that Code by allowing Vuong to

28 ///

1 perform an official pretest smog inspection on that vehicle when Vuong was not licensed to do
2 so.

3 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

5 43. Respondent has subjected his station license to discipline under Health and
6 Safety Code section 44072.2, subdivision (c), in that on or about October 22, 2007, regarding
7 electronic Certificate of Compliance No. VL270454 for the 1997 Honda, he violated sections of
8 the California Code of Regulations, title 16, as follows:

9 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
10 issued the electronic certificate of compliance for the vehicle without performing a bona fide
11 inspections of the emission control devices and systems on that vehicle as required by Health and
12 Safety Code section 44012.

13 b. **Section 3340.35, subdivision (c):** Respondent issued the electronic
14 certificate of compliance for the vehicle even though the vehicle had not been inspected in
15 accordance with section 3340.42 of that Code.

16 c. **Section 3340.42:** Respondent failed to conduct the required smog tests
17 and inspections on the vehicle in accordance with the Bureau's specifications.

18 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

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

20 44. Respondent has subjected his station license to discipline under Health and
21 Safety Code section 44072.2, subdivision (d), in that on or about October 22, 2007, regarding
22 electronic Certificate of Compliance No. VL270454 for the 1997 Honda, he committed acts
23 involving dishonesty, fraud or deceit whereby another was injured by issuing the electronic
24 certificate of compliance for the vehicle when, in fact, the vehicle had not been properly tested
25 and inspected, thereby depriving the People of the State of California of the protection afforded
26 by the Motor Vehicle Inspection Program.

27 ///

28 ///

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

3 b. **Section 3340.41, subdivision (c):** Respondent entered false information
4 into the EIS for the electronic certificate of compliance by entering vehicle identification
5 information or emission control information for a vehicle other than the vehicle being tested.

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

8 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

10 48. Respondent has subjected his technician license to discipline under Health
11 and Safety Code section 44072.2, subdivision (d), in that on or about October 22, 2007, he
12 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
13 electronic Certificate of Compliance No. VL270454 for the 1997 Honda without performing a
14 bona fide inspection of the emission control devices and systems on that vehicle, thereby
15 depriving the People of the State of California of the protection afforded by the Motor Vehicle
16 Inspection Program.

17 **SURVEILLANCE OPERATION - OCTOBER 23, 2007**

18 49. On or about October 23, 2007, the Bureau performed a videotaped
19 surveillance at Respondent's facility. The surveillance operation and information obtained from
20 the Bureau's VID revealed that at approximately 1625 to 1636 hours, Vuong, an unlicensed
21 person, performed one (1) smog inspection using the confidential access number of Respondent
22 to access the EIS. The smog inspection resulted in the issuance of electronic Certificate of
23 Compliance No. VL270457, wherein Respondent certified that he had tested and inspected a
24 2000 GMC, California License Plate No. 4HZF945, and that the vehicle was in compliance with
25 applicable laws and regulations.

26 ///

27 ///

28 ///

1 c. **Section 44015, subdivision (b):** Respondent issued the electronic
2 certificate of compliance for that vehicle without properly testing and inspecting the vehicle to
3 determine if it was in compliance with section 44012 of that Code.

4 d. **Section 44059:** Respondent willfully made false entries for the
5 electronic certificate of compliance by certifying that the vehicle had been inspected as required
6 when, in fact, it had not.

7 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

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

9 53. Respondent has subjected his station license to discipline under Health and
10 Safety Code section 44072.2, subdivision (c), in that on or about October 23, 2007, regarding
11 electronic Certificate of Compliance No. VL270457 for the 2000 GMC, he violated sections of
12 the California Code of Regulations, title 16, as follows:

13 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
14 issued the electronic certificate of compliance for the vehicle without performing a bona fide
15 inspection of the emission control devices and systems on that vehicle as required by Health and
16 Safety Code section 44012.

17 b. **Section 3340.35, subdivision (c):** Respondent issued the electronic
18 certificate of compliance for the vehicle even though the vehicle had not been inspected in
19 accordance with section 3340.42 of that Code.

20 c. **Section 3340.41, subdivision (b):** Respondent allowed Vuong to
21 perform the smog tests and inspections when Vuong was not licensed to do so.

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

24 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

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

26 54. Respondent has subjected his station license to discipline under Health and
27 Safety Code section 44072.2, subdivision (d), in that on or about October 23, 2007, regarding
28 electronic Certificate of Compliance No. VL270457 for the 2000 GMC, he committed acts

1 involving dishonesty, fraud or deceit whereby another was injured by issuing the electronic
2 certificate of compliance for the vehicle when, in fact, the vehicle had not been properly tested
3 and inspected, thereby depriving the People of the State of California of the protection afforded
4 by the Motor Vehicle Inspection Program.

5 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

6 **(Aiding and Abetting Unlicensed Activity)**

7 55. Respondent has subjected his station license to discipline under Health and
8 Safety Code section 44072.2, subdivision (f), in that on or about October 23, 2007, he aided and
9 abetted Vuong, an unlicensed person, to evade the provisions of the Motor Vehicle Inspection
10 Program by allowing Vuong to perform the smog test and inspection on the 2000 GMC when
11 Vuong was not licensed to do so.

12 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

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

14 56. Respondent has subjected his technician license to discipline under Health
15 and Safety Code section 44072.2, subdivision (a), in that on or about October 23, 2007, regarding
16 electronic Certificate of Compliance No. VL270457 for the 2000 GMC, he violated sections of
17 that Code, as follows:

18 a. **Section 44012, subdivision (f):** Respondent failed to determine that all
19 emission control devices and systems required by law were installed and functioning correctly on
20 the vehicle in accordance with test procedures.

21 b. **Section 44032:** Respondent failed to perform tests of the emission
22 control devices and systems on the vehicle in accordance with section 44012 of that Code, in that
23 the vehicle had been clean-piped.

24 c. **Section 44059:** Respondent entered false information for the electronic
25 certificate of compliance by certifying that the vehicle had been inspected as required when, in
26 fact, it had not.

27 ///

28 ///

1 compliance for the vehicles set forth in Table One, below. Respondent certified that he had
2 tested and inspected the vehicles and that the vehicles were in compliance with applicable laws
3 and regulations. In fact, Vuong performed the smog inspections using the clean-piping method
4 by using the tail pipe emissions of a 1998 Honda, California License Plate No. 4BTB937 in order
5 to issue the certificates of compliance. The vehicles certified were not seen in the test bay at the
6 time of the smog inspections.

7 **Table One**

8

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Cert Issued
10/29/2007 1218 hours to 1229 hours	1990 Mazda No license plate	1998 Honda Lic. No. 4BTB937	VL270469
10/29/2007 1253 hours to 1259 hours	2000 Acura Lic. No. 5UAE365	1998 Honda Lic. No. 4BTB937	VL270470

14

15 **THIRTY-SEVENTH CAUSE FOR DISCIPLINE**

16 **(Misleading Statements)**

17 60. Respondent has subjected his registration to discipline under Code section
18 9884.7, subdivision (a)(1), in that on or about October 29, 2007, regarding the electronic
19 certificates of compliance for the vehicles set forth in Table One, above, he made statements
20 which he knew or which by exercise of reasonable care he should have known were untrue or
21 misleading, as follows:

22 a. Respondent issued the electronic certificates of compliance for those
23 vehicles, certifying that the vehicles were in compliance with applicable laws and regulations
24 when, in fact, the vehicles had been clean-piped.

25 b. Respondent issued the electronic certificates of compliance for those
26 vehicles, certifying that the vehicles had been tested and inspected by a licensed technician when,
27 in fact, Vuong performed those tests and inspections when Vuong was not licensed to do so.

28 ///

1 electronic certificates of compliance for the vehicles set forth in Table One, above, he violated
2 sections of the California Code of Regulations, title 16, as follows:

3 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
4 issued the electronic certificates of compliance for the vehicles without performing bona fide
5 inspections of the emission control devices and systems on those vehicles as required by Health
6 and Safety Code section 44012.

7 b. **Section 3340.35, subdivision (c):** Respondent issued the electronic
8 certificates of compliance for the vehicles even though the vehicles had not been inspected in
9 accordance with section 3340.42 of that Code.

10 c. **Section 3340.41, subdivision (b):** Respondent allowed Vuong to
11 perform the smog tests and inspections when Vuong was not licensed to do so.

12 d. **Section 3340.42:** Respondent failed to conduct the required smog tests
13 and inspections on the vehicles in accordance with the Bureau's specifications.

14 **FORTY-FIRST CAUSE FOR DISCIPLINE**

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

16 64. Respondent has subjected his station license to discipline under Health and
17 Safety Code section 44072.2, subdivision (d), in that on or about October 29, 2007, regarding the
18 electronic certificates of compliance for the vehicles set forth in Table One, above, he committed
19 acts involving dishonesty, fraud or deceit whereby another was injured by issuing the electronic
20 certificates of compliance for those vehicles when, in fact, the vehicles had not been properly
21 tested and inspected, thereby depriving the People of the State of California of the protection
22 afforded by the Motor Vehicle Inspection Program.

23 **FORTY-SECOND CAUSE FOR DISCIPLINE**

24 **(Aiding and Abetting Unlicensed Activity)**

25 65. Respondent has subjected his station license to discipline under Health and
26 Safety Code section 44072.2, subdivision (f), in that on or about October 29, 2007, he aided and
27 abetted Vuong, an unlicensed person, to evade the provisions of the Motor Vehicle Inspection

28 ///

1 Program by allowing Vuong to perform the smog tests and inspections on the vehicles set forth
2 in Table One, above, when Vuong was not licensed to do so.

3 **FORTY-THIRD CAUSE FOR DISCIPLINE**

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

5 66. Respondent has subjected his technician license to discipline under Health
6 and Safety Code section 44072.2, subdivision (a), in that on or about October 29, 2007, regarding
7 the electronic certificates of compliance for the vehicles set forth in Table One, above, he
8 violated sections of that Code, as follows:

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

12 b. **Section 44032:** Respondent failed to perform tests of the emission
13 control devices and systems on the vehicles in accordance with section 44012 of that Code, in
14 that the vehicles had been clean-piped.

15 c. **Section 44059:** Respondent entered false information for the electronic
16 certificates of compliance by certifying that the vehicles had been inspected as required when, in
17 fact, they had not.

18 **FORTY-FOURTH CAUSE FOR DISCIPLINE**

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

20 67. Respondent has subjected his technician license to discipline under Health
21 and Safety Code section 44072.2, subdivision (c), in that on or about October 29, 2007, regarding
22 the electronic certificates of compliance for the vehicles set forth in Table One, above, he
23 violated sections of the California Code of Regulations, title 16, as follows:

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

26 b. **Section 3340.41, subdivision (c):** Respondent entered false information
27 for the electronic certificates of compliance by certifying that he had inspected those vehicles
28 when, in fact, Vuong performed the smog inspections when Vuong was not licensed to do so.

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

3 **FORTY-FIFTH CAUSE FOR DISCIPLINE**

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

5 68. Respondent has subjected his technician license to discipline under Health
6 and Safety Code section 44072.2, subdivision (d), in that on or about October 29, 2007, he
7 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing the
8 electronic certificates of compliance for the vehicles set forth in Table One, above, without
9 performing bona fide inspections of the emission control devices and systems on those vehicles,
10 thereby depriving the People of the State of California of the protection afforded by the Motor
11 Vehicle Inspection Program.

12 **FORTY-SIXTH CAUSE FOR DISCIPLINE**

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

14 69. Respondent has subjected his brake and lamp station licenses to discipline
15 under Code section 9889.3, subdivision (d), in that Respondent committed acts involving
16 dishonesty, fraud or deceit, as more particularly set forth in paragraphs 20, 23, 29, 32, 40, 44, 54,
17 52, 61, and 64, above.

18 **OTHER MATTERS**

19 70. Under Code section 9884.7, subdivision (c), the director may invalidate
20 temporarily or permanently or refuse to validate, the registrations for all places of business
21 operated in this state by Tan Duy Pham, doing business as Central Auto Care, upon a finding that
22 he has, or is, engaged in a course of repeated and willful violations of the laws and regulations
23 pertaining to an automotive repair dealer.

24 71. Under Health and Safety Code section 44072.8, if Smog Check Station
25 License Number RE 227881, issued to Tan Duy Pham, doing business as Central Auto Care, is
26 revoked or suspended, any additional license issued under this chapter in the name of said
27 licensee may be likewise revoked or suspended by the director.

28 ///

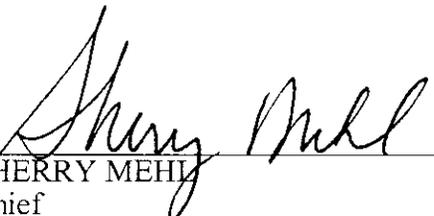
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9. Revoking or suspending any additional license issued under this chapter in the name of Tan Duy Pham;

10. Ordering Tan Duy Pham to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 4/21/08


SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant