EDMUND G. BROWN JR.
Attorney General of California
ALFREDO TERRAZAS
Senior Assistant Attorney General
GREGORY J. SALUTE
Supervising Deputy Attorney General
State Bar No. 164015
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2520
Facsimile: (213) 897-2804
Attorneys for Complainant

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

In the Matter of the Accusation Against: **SAADA EMILE ABBOUD** **dba NORMANDIE TEST ONLY CENTER** 22621 S. Normandie Avenue Torrance, California 90501 **Automotive Repair Dealer Registration No. ARD 227899** **Smog Check Test Only Station License No. TC 227899** **EMILE YOUSSEF ABBOUD** 22621 S. Normandie Avenue Torrance, California 90501 **Advanced Emission Specialist Technician License No. EA 136420** Respondents.	Case No. 79/11-41 **ACCUSATION** SMOG CHECK

Sherry Mehl ("Complainant") alleges:

PARTIES

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

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Automotive Repair Dealer Registration No. ARD 227899

2. In or about 2003, the Bureau issued Automotive Repair Dealer Registration No. ARD 227899 ("registration") to Saada Emile Abboud ("Respondent"), doing business as Normandie Test Only Center. The registration will expire on or about May 31, 2011, unless renewed.

Smog Check Test Only Station License No. TC 227899

3. On or about August 5, 2003, the Bureau issued Smog Check Test Only Station License No. TC 227899 ("station license") to Respondent. The license will expire on or about May 31, 2011, unless renewed.

Advanced Emission Specialist Technician License No. EA 136420

4. In or about 1997, the Bureau issued Advanced Emission Specialist Technician License No. EA 136420 to Emile Youssef Abboud ("Respondent Abboud"). The license will expire on or about February 29, 2012, unless renewed.

STATUTORY PROVISIONS

5. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent part:

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

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

(4) Any other conduct that constitutes fraud.

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

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(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state 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 this chapter, or regulations adopted pursuant to it.

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

7. 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.

8. 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.

9. 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.

10. 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."

COST RECOVERY

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

FACTUAL BACKGROUND

12. On or about April 26, 2010, the Bureau conducted a detailed review of the Vehicle Information Database ("VID") for all smog inspections performed at Respondent's facility for the period of October 1, 2008, through March 31, 2010. The VID showed a pattern of various diagnostic trouble codes stored in the memory of the power train control module ("PCM") on different vehicles. Vehicles 1 through 6, set forth in Table 1 below, were all certified with various pending codes stored in the PCM memory while the original equipment manufacturer ("OEM") service information shows these vehicles do not support the pending codes stored in the PCM memory. The Bureau concluded the vehicles receiving smog certificates were not actually tested during the OBD II[1] functional test and instead, another vehicle(s) was used, constituting clean plugging[2]. All of the following inspections were performed by Respondent Abboud.

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[1] The On Board Diagnostics (OBDII) functional test is an automated function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves information from the vehicle's on-board computer about the status of the readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II functional test, it will fail the overall inspection.

[2] Clean plugging is the use of the OBD II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purposes of illegally issuing a smog certificate to another vehicle that is not in compliance due to a failure to complete the minimum number of self

(continued...)

TABLE 1

Date and Time of Inspection	Vehicle Certified License No.	Certificate No.	
1. 09/17/2009 1759 – 1807	1999 Chevrolet Tahoe License No. 4HHG766	WD382947C	
2. 03/09/2010 1634 – 1642	1999 Toyota Camry Solara License No. 4XOP733	WH738102C	
3. 03/10/2010 0718 – 0729	2000 Hyundai Elantra License No. 4MUC154	WH738110C	
4. 03/10/2010 1220 – 1227	1999 Jeep Grand Cherokee License No. 4GEK627	WH738121C	
5. 03/10/2010 1018 – 1027	2000 Volkswagen Jetta License No. 5NZC061	WH738116C	
6. 03/10/2010 0948 – 0955	1998 Infiniti I30 License No. 5NRB164	WH738114C	

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

13. Respondent's registration is subject to discipline pursuant to Code section 9884.7(a)(1), in that between September 17, 2009, and March 10, 2010, Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent certified that vehicles 1 through 6, set forth above in Table 1, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on the vehicles using the clean plugging method by substituting or using different vehicles during the OBD II functional tests in order to issue smog certificates of compliance for the 6 vehicles, and did not test or inspect the 6 vehicles as required by Health and Safety Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

14. Respondent's registration is subject to discipline pursuant to Code section 9884.7(a)(4), in that between September 17, 2009, and March 10, 2010, Respondent committed acts which constitute fraud by issuing electronic certificates of compliance for vehicles 1 through

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test, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

6, set forth above in Table 1, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with the Motor Vehicle Inspection Program)

15. Respondent's station license is subject to discipline pursuant to Health and Safety Code section 44072.2(a), in that between September 17, 2009, and March 10, 2010, regarding vehicles 1 through 6, set forth above in Table 1, Respondent failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent failed to ensure that the emission control tests were performed on vehicles 1 through 6, in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued electronic certificates of compliance for vehicles 1 through 6, without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health and Safety Code section 44012.

c. **Section 44059:** Respondent willfully made false entries for the electronic certificates of compliance by certifying that those vehicles had been inspected as required when, in fact, they had not.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

16. Respondent's station license is subject to discipline pursuant to Health and Safety Code section 44072.2(c), in that between September 17, 2009, and March 10, 2010, regarding vehicles 1 through 6, set forth above in Table 1, Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

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

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b. **Section 3340.35(c)**: Respondent issued electronic certificates of compliance even though those vehicles had not been inspected in accordance with section 3340.42 of that Code.

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

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

17. Respondent's station license is subject to discipline pursuant to Health and Safety Code section 44072.2(d), in that between September 17, 2009, and March 10, 2010, regarding vehicles 1 through 6, set forth above in Table 1, Respondent committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

18. Respondent Abboud's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2(a), in that between September 17, 2009, and March 10, 2010, regarding vehicles 1 through 6, set forth above in Table 1, he failed to comply with section 44012 of that Code in a material respect, as follows: Respondent Abboud failed to perform the emission control tests on those vehicles in accordance with procedures prescribed by the department.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

19. Respondent Abboud's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2(c), in that between September 17, 2009, and March 10, 2010, regarding vehicles 1 through 6, set forth above in Table 1, he failed to comply with provisions of California Code of Regulations, title 16, as follows:

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

b. **Section 3340.30(a)**: Respondent Abboud failed to inspect and test those vehicles in accordance with Health and Safety Code sections 44012.

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

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

20. Respondent Abboud's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2(d), in that between September 17, 2009, and March 10, 2010, regarding vehicles 1 through 6, set forth above in Table 1, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

OTHER MATTERS

21. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on probation the registrations for all places of business operated in this state by Saada Abboud, doing business as Normandie Test Only Center, upon a finding that he has, or is, engaged in a course of repeated and willful violation of the laws and regulations pertaining to an automotive repair dealer.

22. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only Station License Number TC 227899, issued to Saada Emile Abboud, doing business as Normandie Test Only Center, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

23. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 136420, issued to Emile Youssef Abboud, is revoked or

suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 227899, issued to Saada Emile Abboud, doing business as Normandie Test Only Center;

2. Revoking or suspending any other automotive repair dealer registration issued to Saada Emile Abboud;

3. Revoking or suspending Smog Check, Test Only, Station License Number TC 227899, issued to Saada Emile Abboud, doing business as Normandie Test Only Center;

4. Revoking or suspending Advanced Emission Specialist Technician License Number EA 136420, issued to Emile Youssef Abboud;

5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Emile Youssef Abboud;

6. Ordering Saada Emile Abboud and Emile Youssef Abboud to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 11/22/10

SHERRY MEHL
Chief
Bureau of Automotive Repair I/M Smog
Department of Consumer Affairs
State of California
Complainant

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