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

79/11-17

In the Matter of the Accusation Against: **ADELINOS AUTO CLINIC** **ADEL S. ATALLAH, OWNER** **10302 Wells Avenue** **Riverside, CA 92505** **Automotive Repair Dealer Reg. No. ARD 209927** **Smog Check, Test and Repair, Station License No. RC 209927** **and** **ADEL S. ATALLAH** **8028 Citricado Lane** **Riverside, CA 92508** **Advanced Emission Specialist Technician License No. EA 136532** Respondents.	Case No. **ACCUSATION** **(Smog Check)**

Complainant alleges:

PARTIES

1. Sherry Mehl ("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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Adelinos Auto Clinic; Adel S. Atallah, Owner

2. In or about 2000, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 209927 (hereinafter "registration") to Adel S. Atallah ("Respondent"), owner of Adelinos Auto Clinic. Respondent's registration was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2011, unless renewed.

3. On or about November 6, 2001, the Director issued Smog Check, Test and Repair, Station License Number RC 209927 (hereinafter "smog check station license") to Respondent. Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2011, unless renewed.

Adel S. Atallah

4. In or about 1997, the Director issued Advanced Emission Specialist Technician License Number EA 136532 (hereinafter "technician license") to Respondent. Respondent's technician license was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2011, unless renewed.

JURISDICTION

5. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that the Director may revoke an automotive repair dealer registration.

6. Bus. & Prof. Code section 9884.13 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 temporarily or permanently invalidating (revoking or suspending) a registration.

7. Health and Safety Code ("Health & Saf. Code") section 44002 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. Health & Saf. Code section 44072.6 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

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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.

STATUTORY PROVISIONS

9. Bus. & Prof. Code section 9884.7 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.
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> (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
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> . . . .
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> (4) Any other conduct that constitutes fraud.
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> . . . .
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> (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.

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

11. Health & Saf. Code section 44072.2 states, in pertinent part:

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

12. Health & Saf. Code section 44072.8 states that 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

13. Bus. & Prof. 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.

VID DATA REVIEW

14. On or about April 12, 2010, the Bureau initiated an investigation against Respondent based on a review of information from the Bureau's Vehicle Information Database ("VID"), which indicated that Respondent may be engaging in fraudulent smog check activities.

15. On or about April 14, 2010, a representative of the Bureau conducted a detailed review of VID data for all smog inspections performed at Respondent's facility for the period of January 1, 2009, through April 13, 2010. The representative found that the 11 vehicles identified below, all of which were tested by Respondent, recorded certain diagnostic trouble codes (hereinafter "code") during the OBD II tests[1]. The representative obtained information indicating that the codes were not applicable to the vehicles. The Bureau concluded that Respondent performed the smog inspections on the vehicles using a different vehicle(s) during the OBD II

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[1] The On Board Diagnostics (OBD II) 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.

tests, a method known as "clean plugging",[2] resulting in the issuance of fraudulent certificates of compliance for the vehicles.

Date & Time of Inspection	Vehicle Certified & License or VIN No.	Certificate No.
1. 01/20/2009 17:24 – 17:34	2001 Volkswagen Jetta; License No. 4SNC723	VV989507C
2. 02/12/2009 16:39 – 16:51	2003 Toyota Tacoma; License No. 7C94318	VX249021C
3. 09/10/2009 13:02 – 13:18	1999 Honda Accord; License No. 6BCK175	WD225971C
4. 09/17/2009 13:17 – 13:43	1998 Chevrolet Tracker; License No. 5RIX065	WD225989C
5. 01/29/2010 14:19 – 14:31	2000 Toyota Celica; VIN #JTDDR32T6Y0026338	WF840049C
6. 01/29/2010 14:34 – 15:05	2002 Nissan Altima; License No. 4XAG043	WF840050C
7. 01/29/2010 17:18 – 17:57	2004 Ford F350; License No. 7K04967	WH104051C
8. 02/15/2010 15:27 – 15:40	2002 Dodge Intrepid; VIN #2B3HD46R52H277263	WH308207C
9. 02/17/2010 14:44 – 14:58	2002 Nissan Maxima; License No. 4WGF233	WH308217C
10. 02/18/2010 10:02 – 10:24	2002 Dodge Dakota; License No. 6W00475	WH308220C
11. 04/09/2010 11:08 – 11:14	2007 BMW 325CI; VIN #WBABD33464JY98016	WJ103278C

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

16. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that 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 11, identified in paragraph 15 above, had passed inspection and were in compliance with applicable laws and regulations. In fact,

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

Respondent conducted the inspections on the vehicles using clean-plugging methods in that he substituted or used a different vehicle(s) during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

17. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud by issuing electronic smog certificates of compliance for vehicles 1 through 11, identified in paragraph 15 above, 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.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

18. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent failed to perform the emission control tests on vehicles 1 through 11, identified in paragraph 15 above, in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued electronic smog certificates of compliance for vehicles 1 through 11, identified in paragraph 15 above, without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health & Saf. Code section 44012.

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FOURTH CAUSE FOR DISCIPLINE

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

19. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic smog certificates of compliance for vehicles 1 through 11, identified in paragraph 15 above.

b. **Section 3340.35, subdivision (c)**: Respondent issued electronic smog certificates of compliance for vehicles 1 through 11, identified in paragraph 15 above, even though the vehicles had not been inspected in accordance with section 3340.42.

c. **Section 3340.42**: Respondent failed to conduct the required smog tests on vehicles 1 through 11, identified in paragraph 15 above, in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

20. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 through 11, identified in paragraph 15 above, 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)

21. Respondent's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012 of that Code, in a material respect, as follows: Respondent failed to perform the emission

control tests on vehicles 1 through 11, identified in paragraph 15 above, in accordance with procedures prescribed by the department.

SEVENTH CAUSE FOR DISCIPLINE

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

22. Respondent's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic smog certificates of compliance for vehicles 1 through 11, identified in paragraph 15 above.

b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1 through 11, identified in paragraph 15 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1 through 11, identified in paragraph 15 above, in accordance with the Bureau's specifications.

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

23. Respondent's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 through 11, identified in paragraph 15 above, 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.

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OTHER MATTERS

24. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Respondent Adel S. Atallah, owner of Adelinos Auto Clinic, upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

25. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test and Repair, Station License Number RC 209927, issued to Adel S. Atallah, owner of Adelinos Auto Clinic, 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.

26. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 136532, issued to Adel S. Atallah, 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 Number ARD 209927, issued to Adel S. Atallah, owner of Adelinos Auto Clinic;

2. Revoking or suspending any other automotive repair dealer registration issued to Adel S. Atallah;

3. Revoking or suspending Smog Check, Test and Repair, Station License Number RC 209927, issued to Adel S. Atallah, owner of Adelinos Auto Clinic;

4. Revoking or suspending Advanced Emission Specialist Technician License Number EA 136532, issued to Adel S. Atallah;

5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Adel S. Atallah;

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6. Ordering Adel S. Atallah, individually, and as owner of Adelinos Auto Clinic, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 9/8/10

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

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