

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

In the Matter of the Petition For Interim
Suspension Order Against:

Case No. 79/12-51

ACCURATE SMOG TEST ONLY;
4969 Van Nuys Blvd., B
Sherman Oaks, CA 91403
EDMOND EYSSAKHANIAN, Owner

OAH No. 2011110222

Automotive Repair Dealer Registration No.
ARD 248004

Smog Check Station License No.
TC 248004

Advanced Emission Specialist Technician
License No. EA 140949

Respondent.

INTERIM SUSPENSION ORDER

Administrative Law Judge (ALJ) Amy C. Lahr-Yerkey heard the Petition for an Interim Suspension Order against Respondent on November 18, 2011, in Los Angeles, California. Michelle McCarron, Deputy Attorney General, represented Sherry Mehl (Petitioner), Chief of the Bureau of Automotive Repair (Bureau). Naser J. Khoury, Attorney at Law, represented Edmond Eyssakhanian (Respondent).

The Petition for Interim Suspension Order (Petition) and evidence was received, and considered.

The ALJ hereby makes the following factual findings, legal conclusions, and order.

FACTUAL FINDINGS

1. Petitioner brought the Petition in her official capacity.

2. Respondent owns and operates Accurate Smog Test Only, in Sherman Oaks. He holds Bureau-issued license number TC 248004, to operate a Smog Check Test Only Station. He also holds an Automotive Repair Dealer Registration (ARD), number ARD 248004. The registration and license will expire on October 31, 2011, unless renewed.

3. Respondent is a licensed Smog Check Technician, Advanced Emission Specialist. The Bureau issued license number EA 140949 to him in 1999. The license will expire on April 30, 2012, unless renewed.

4. Respondent performed multiple vehicle smog checks on July 24, 2011. Throughout that day, Bureau investigators conducted undercover surveillance of Respondent's business. The Bureau's investigation revealed that Respondent performed six fraudulent smog inspections, and issued four false electronic compliance certificates. Essentially, Respondent utilized the illegal technique of "clean piping," by entering information about a car allegedly being tested into the computer-based smog testing system, and then sampling and testing the exhaust emitted from a different vehicle.¹

5. The false smog certificates and related information were transmitted to a vehicle database. The Department of Motor Vehicles (DMV) accesses that database to establish that a car has passed a smog check before a car's registration is renewed. It is reasonably inferred that the owners of the automobiles for which false certificates issued were able to renew the registration of their vehicles, and that the DMV relied on the false information in the database in renewing the vehicle registrations.

6. The State of California's smog check program is designed to improve air quality and to protect the public health by reducing vehicle emissions.

7. Allowing Respondent to continue to engage in his licensed activity would endanger the public health, safety, and welfare.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter exists under Business and Professions Code sections 494 and 9884.7, California Code of Regulations, title 16, section 3340.24, subdivision (c), and Health and Safety Code section 44072.2, based on Factual Findings 1 through 3.

¹ This finding is based on the observations of the Bureau investigator, whose duties included making the observations in question. The investigator's declaration is akin to a record of a public employee, and thus is an exception to the hearsay rule under California Evidence Code §1280. (See *Lake v. Reed* (1997) 16 Cal.4th 448, 460-462.)

2. Respondent violated Health and Safety Code section 44072.2, subdivisions (a), (c), and (d), Business and Professions Code section 9884.7, subdivisions (a)(1) and (a)(4), and California Code of Regulations, title 16, sections 3340.24, subdivision (c), 3340.35, subdivision (c), and 3340.42, by clean piping vehicles, and by issuing false and fraudulent smog certificates, based on Factual Findings 4 and 5.

3. Permitting Respondent to continue in his licensed activity would endanger the public health, safety, and welfare, based on Factual Finding 4 through 7. As a matter of law, control and elimination of air pollutants is necessary to protect public health and well being, and to protect property and vegetation. (Health & Saf. Code, § 43000, subd. (b).) Further, the issuance of fraudulent documents by a licensee, which become part of a public record, and are relied upon by public agencies, also harms the public.

4. Based on the foregoing, cause has been established to issue an interim suspension order, suspending Respondent's licenses.

ORDER

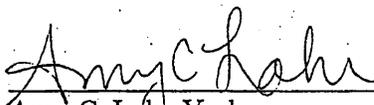
1. The ARD issued to Respondent Edmond Eyssakhanian, doing business as Accurate Smog Test Only, ARD number 248004, is hereby suspended pursuant to Business and Professions Code section 494.

2. The Smog Check Station license issued to Respondent Edmond Eyssakhanian, doing business as Accurate Smog Test Only, TC 248004, is hereby suspended pursuant to Business and Professions Code section 494.

3. The Smog Check Technician License number EA 140949 issued to Respondent Edmond Eyssakhanian is hereby suspended pursuant to Business and Professions Code section 494.

4. Petitioner shall file an accusation and set a hearing thereon in compliance with Business and Professions Code section 494, and other applicable law.

Dated: November 29, 2011



Amy C. Laht-Yerkey
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Interim Suspension Order
12 Against:

13 **ACCURATE SMOG TEST ONLY;**
14 **4969 Van Nuys Blvd., B**
15 **Sherman Oaks, Ca 91403**
16 **EDMOND EYSSAKHANIAN, Owner**

16 **Automotive Repair Dealer Registration No.**
17 **ARD 248004**
18 **Smog Check Test Only Station License No.**
19 **TC 248004**
20 **Advanced Emission Specialist Technician**
21 **License No. 140949**

21 Respondent.

Case No. 79/12-51

OAH Case No.

13 **PETITION FOR INTERIM SUSPENSION**
14 **ORDER**

[Business and Professions Code section 494]

(Filed concurrently with Memorandum of
Points and Authorities in Support of Interim
Suspension Order)

DATE: November 18, 2011

TIME: 1:30 P.M.

PLACE: Office of Administrative Hearings,
320 West Fourth Street, Suite 630
Los Angeles, CA 90013.

22 **INTRODUCTION**

23
24 Petitioner Sherry Mehl ("Petitioner"), Chief of the Bureau of Automotive Repair,
25 Department of Consumer Affairs ("Bureau"), State of California, by and through her counsel,
26 Kamala D. Harris, Attorney General of the State of California, by Deputy Attorney General
27 Michelle McCarron, hereby seeks an Interim Suspension Order pursuant to Business and
28 Professions Code section 494, in conjunction with Health and Safety Code section 44002, to

1 temporarily suspend the Automotive Repair Dealer Registration and Smog Check Test Only
2 Station License of Accurate Smog Test Only, Edmund Eyssakhanian as owner, and Edmund
3 Eyssakhanian's Advanced Emission Specialist Technician License until a hearing can be held on
4 an Accusation charging him with violations of the Motor Vehicle Inspection Program (Health and
5 Safety Code section 44000, et. seq.) This Petition is based upon this petition for interim
6 suspension order, the concurrently filed memorandum of points and authorities, supporting
7 declarations and exhibits, all documents on file in this matter, as well as any oral argument made
8 at the hearing.

9 **PARTIES**

10 1. Petitioner is duly appointed and serving as the Chief of the Bureau, and files
11 this Petition in her official capacity.

12 2. In or around the year 2006, the Bureau issued Automotive Repair Dealer
13 Registration Number ARD 248004 to Edmund Eyssakhanian doing business as Accurate Smog
14 Test Only ("Respondent Accurate Smog"). The registration was in full force and effect at all
15 times relevant to the charges brought herein and will expire on October 31, 2011, unless renewed.

16 3. In or around the year 2006, the Bureau issued Smog Check Test Only Station
17 License Number TC 248004 to Respondent Accurate Smog. The station license was in full force
18 and effect at all times relevant to the charges brought herein and will expire on October 31, 2011,
19 unless renewed.

20 4. In or around the year 1999, the Bureau issued Advanced Emission Specialist
21 Technician License Number EA 140949 to Edmund Eyssakhanian ("Respondent Eyssakhanian").
22 The technician license was in full force and effect at all times relevant to the charges brought
23 herein and will expire on April 30, 2012, unless renewed.

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JURISDICTION

5. Business and Professions Code section 494¹ provides, in pertinent part as follows:

(a) A board or administrative law judge sitting alone...may, upon petition, issue an interim order suspending any licentiate....The petition shall include affidavits that demonstrate, to the satisfaction of the board, both of the following:

(1) The licentiate has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the licensed activity.

(2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.

6. Health and Safety 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, including the powers and authority granted under Division 1 (commencing with Section 1) and Division 1.5 (commencing with Section 475) and Chapter 20.3 (commencing with Section 9880) of the Business and Professions Code.

7. Health and Safety Code section 44072.2 states, in pertinent part:

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

(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (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.

¹ Furthermore, the Director of the Department of Consumer Affairs, and by designation, the Bureau Chief, has specific authority to seek the temporary suspension of Respondent Accurate Smog's smog check station license and Respondent Eyssakhanian's advanced emission specialist technician license under Health and Safety Code section 44072.10, subdivision (a) for certain violations, including fraud, tampering, and/or intentional or willful violation of the Motor Vehicle Inspection Program. This authority is separate and beyond that enumerated under Business and Professions Code section 494.

**VIOLATIONS OF THE AUTOMOTIVE REPAIR ACT AND MOTOR
VEHICLE INSPECTION PROGRAM**

Respondents have engaged in acts or omissions constituting violations of the Motor Vehicle Inspection Program (Health and Safety Code section 44000 et. seq.) in the following respects:

8. On or about July 24, 2011, the Bureau performed a video-taped surveillance at Respondent's Accurate Smog facility. The surveillance operation and information obtained from the Bureau's Vehicle Information Database ("VID") revealed that between 1148 hours and 1619 hours, Respondent Eyssakhanian performed six (6) smog inspections that resulted in the issuance of four (4) electronic certificates of compliance for the vehicles set forth in Table 1, below, certifying that he had tested and inspected those vehicles and that the vehicles were in compliance with applicable laws and regulations.

Table 1

Date and Test Times	Vehicle in EIS DATA (License or VIN)	Vehicle Actually Tested (License or VIN)	Certificate Issued	Details
3 07/24/2011 1213 hours to 1220 hours	1997 Mercedes SL320 (no license plate)	1999 Mercedes CLK430 (4DNM449)	OE805454C	The 1999 Mercedes CLK430 was in the test bay and was used to certify a 1997 Mercedes SL320.
5 07/24/2011 1259 hours to 1304 hours	2002 Chrysler Sebring (no license plate)	2001 Ford Explorer (4UBR254)	OE805456C	The 2001 Ford Explorer was used to certify a 2002 Chrysler Sebring.
7 07/24/2011 1335 hours to 1357 hours	2003 Hummer H2 (no license plate)	2001 Nissan Pathfinder (4PRX767)	OE805458C	The 2001 Nissan Pathfinder was used to certify a 2003 Hummer H2.
11 07/24/2011 1459 hours to 1502 hours	2004 Mercedes C230 (no license plate)	2005 Audi A4 (5RFP428)	OE805461C	The 2005 Audi A4 was used to certify a 2004 Mercedes C230.

12 07/24/2011 1506 hours to 1508 hours	2004 Volkswagen Passat (no license plate)	2005 Audi A4 (5RFP428)	None	The 2005 Audi A4 was used to perform an aborted test for a 2004 Volkswagen Passat.
13 07/24/2011 1510 hours to 1511 hours	2004 Volkswagen Passat (no license plate)	2005 Audi A4 (5RFP428)	None	The 2005 Audi A4 was used to perform an aborted test for a 2004 Volkswagen Passat.

9. In fact, Respondent Eyssakhanian performed the smog inspections using the clean piping method by utilizing the tail pipe emissions of vehicles other than the vehicles being certified in order to issue the electronic certificates of compliance. The vehicles certified were not in the test bay at the time of the smog inspections.

10. The illegal smog inspections set forth in paragraph 8 above, subject Respondents to discipline pursuant to Health and Safety Code section 44072.2, subdivisions (a), (c), and (d) and Business and Professions Code section 9889.3, subdivisions (a), (c), and (d).

**CONTINUED PRACTICE BY RESPONDENTS WILL ENDANGER THE PUBLIC
HEALTH, SAFETY AND WELFARE**

11. Respondent is participating in a scheme to fraudulently certify vehicles that have not undergone the necessary testing to ensure that they have met California's strenuous emissions standards.

12. Allowing Respondent to continue to operate will endanger the public health, safety and welfare of the citizens of the State of California in that for each fraudulent smog inspection performed by Respondent, there is another vehicle placed on the road that has illegally circumvented California's Smog Check Program and disproportionately discharging noxious gasses that pollute the environment and contributes to the destruction of the ozone. Children, the elderly, people with pulmonary and respiratory disorders and the immune-suppressed are particularly susceptible to the health hazards caused by Respondents' conduct.

13. The concurrently-filed memorandum of points and authorities, declarations, and other evidence more fully document and establish the foregoing.

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PRAYER

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2 WHEREFORE, Petitioner prays that an Administrative Law Judge on behalf of the
3 Bureau of Automotive Repair issue an interim order suspending Respondent Accurate Smog's
4 automotive repair dealer registration and smog check station license as well as Respondent
5 Eyssakhanian's advanced emission specialist technician license pursuant to Business and
6 Professions Code section 494, in conjunction with Health and Safety Code section 44002, for
7 violations of the Motor Vehicle Inspection Program and further, order any other and further relief
8 deemed necessary to protect the public health, safety, and welfare.
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12 Dated: October 31, 2011

Respectfully submitted,

13 KAMALA D. HARRIS
14 Attorney General of California
15 MARC D. GREENBAUM
16 Supervising Deputy Attorney General



17 MICHELLE MCCARRON
18 Deputy Attorney General
19 *Attorneys for Complainant*
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