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

12 In the Matter of the Accusation Against:

Case No. 79/13-75

13 **VAN THANH DUONG, OWNER;**
14 **DBA AUTOMOTIVE SMOG CHECK**
15 **TEST ONLY**
16 **13642 Euclid Street, #B**
17 **Garden Grove, CA 92843**

ACCUSATION
(SMOG CHECK)

18 **Automotive Repair Dealer Registration No.**
19 **ARD 222323**
20 **Smog Check Test Only Station License No.**
21 **TC 222323**

22 **VAN THANH DUONG**
23 **9552 Ball Road #3**
24 **Anaheim, CA 92804**

25 **Advanced Emission Specialist Technician**
26 **Registration No. EA 141375 (to be**
27 **designated upon renewal as EO 141375**
28 **and/or EI 141375)**

Respondents.

Complainant alleges:

PARTIES

1. Complainant John Wallauch brings this Accusation solely in his official capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.
2. In 2002, the Bureau issued Automotive Repair Dealer Registration Number ARD 222323 to Respondent Van Thanh Duong, Owner, dba Automotive Smog Check Test Only. The

1 registration was in full force and effect at all times relevant to the charges brought herein and
2 expired on June 30, 2012.

3 3. On September 25, 2002, the Bureau issued Smog Check Test Only Station License
4 No. TC 222323 to Respondent Van Thanh Duong, Owner, dba Automotive Smog Check Test
5 Only. The station license was in full force and effect at all times relevant to the charges brought
6 herein and expired on June 30, 2012.

7 4. In 1999, the Bureau issued Advanced Emission Specialist Technician License
8 Number EA 141375 to Respondent Van Thanh Duong. The technician license was in full force
9 and effect at all times relevant to the charges brought herein and will expire on September 30,
10 2013, unless renewed. Upon timely renewal of the license, the license will be redesignated as EO
11 141375 and/or EI 141375.¹

12 JURISDICTION

13 5. Business and Professions Code (Code) section 9884.7 provides that the Director may
14 revoke an automotive repair dealer registration.

15 6. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
16 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
17 against an automotive repair dealer or to render a decision temporarily or permanently
18 invalidating (suspending or revoking) a registration.

19 7. Health and Safety Code (H&S Code) section 44002 provides, in pertinent part, that
20 the Director has all the powers and authority granted under the Automotive Repair Act for
21 enforcing the Motor Vehicle Inspection Program.

22 8. H&S Code section 44072.6 provides, in pertinent part, that the expiration or
23 suspension of a license by operation of law, or by order or decision of the Director of Consumer
24 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
25 of jurisdiction to proceed with disciplinary action.

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

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12. H&S Code section 44012 states:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department and may require loaded mode dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other appropriate test procedures as determined by the department in consultation with the state board. The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning no earlier than January 1, 2013. However, the department, in consultation with the state board, may prescribe alternative test procedures that include loaded mode dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems that the department and the state board determine exhibit operational problems. The department shall ensure, as appropriate to the test method, the following:

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

....

(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

....

13. H&S Code section 44032 states:

No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smog check station. Qualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.

14. H&S Code section 44035, subdivision (a) states:

(a) A smog check station's license or a qualified smog check technician's qualification may be suspended or revoked by the department, after a hearing, for failure to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct. The department shall adopt rules and regulations governing the suspension, revocation, and reinstatement of licenses and qualifications and the conduct of the hearings.

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15. H&S Code section 44072 states:

Any license issued under this chapter and the regulations adopted pursuant to it may be suspended or revoked by the director. The director may refuse to issue a license to any applicant for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

16. H&S 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 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.

....

17. H&S 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.

REGULATORY PROVISIONS

18. California Code of Regulations, title 16, (CCR), Section 3340.30 states in pertinent part:

A licensed smog check inspector and/or repair technician shall comply with the following requirements at all times while licensed:

(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

....

19. CCR Section 3340.35 states in pertinent part:

....

(c) A licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly. . . .

....

- 1 (F) fuel evaporative emission controls,
2 (G) fuel metering systems, including carburetors and fuel injection,
3 (H) ignition spark controls, and
4 (I) any emissions control systems that are not otherwise prompted by the
Emissions Inspection System, but listed as a requirement by the vehicle manufacturer.
5

6 21. CCR Section 3356 provides in pertinent part:

7 (a) All invoices for service and repair work performed, and parts supplied, as
8 provided for in Section 9884.8 of the Business and Professions Code, shall comply
with the following:

9 (1) The invoice shall show the automotive repair dealer's registration number
10 and the corresponding business name and address as shown in the Bureau's records. If
11 the automotive repair dealer's telephone number is shown, it shall comply with the
requirements of subsection (b) of Section 3371 of this chapter.

12

COST RECOVERY

13 22. Code section 125.3 provides that a Board or Bureau may request the administrative
14 law judge to direct a licentiate found to have committed a violation or violations of the licensing
15 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
16 case, and that nothing in this section shall preclude a board from including the recovery of the
17 costs of investigation and enforcement of a case in any stipulated settlement.

UNDERCOVER OPERATION NO. 1 – 1989 DODGE

18 23. On January 11, 2011, a Bureau undercover operator drove a 1989 Dodge with its
19 ignition timing adjusted beyond specifications so that it could not pass a smog inspection to
20 Respondent's facility and requested a smog inspection. A video system was installed on the
21 vehicle to record the inspection procedure. The operator signed the estimate for the inspection
22 given her by Respondent, but did not receive a copy of the signed estimate before the inspection
23 started. The ARD number shown on the estimate and invoice, AF 222323, differed from the
24 correct ARD number in the Bureau's records, ARD 222323. Respondent performed the
25 inspection and issued electronic smog certificate of compliance no. [REDACTED], as indicated by
26 the Vehicle Inspection Report (VIR) he gave the operator, and the information he input into the
27 Vehicle Information Database (VID) for the 1989 Dodge.
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FIRST CAUSE FOR DISCIPLINE

(Failure to Comply with Invoice Requirements)

24. Respondent's registration is subject to disciplinary action pursuant to Code section 9884.8, in that Respondent failed to show his correct ARD registration number on the invoice for the smog inspection performed on the 1989 Dodge on January 11, 2011.

SECOND CAUSE FOR DISCIPLINE

(Failure to Copy Customer with Signed Estimate)

25. Respondent's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(3), in that Respondent failed to give to the operator a copy of the estimate, a document requiring her signature, as soon as she signed the estimate for the smog inspection.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

a. Section 44012, subdivision (f): Respondent failed to ensure that a visual/functional check of emission control devices was performed on the 1989 Dodge in accordance with procedures prescribed by the department.

b. Section 44015, subdivision (b): Respondent issued an electronic smog certificate of compliance for the 1989 Dodge without ensuring that the vehicle was properly inspected in accordance with H&S Code section 44012.

FOURTH CAUSE FOR DISCIPLINE

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

27. Respondent's smog check station license is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6) and H&S Code section 44072.2, subdivision (c), in that Respondent failed to comply with the provisions of the CCR, as follows:

1 a. Section 3340.35, subdivision (c): Respondent issued an electronic smog certificate of
2 compliance for the 1989 Dodge even though the vehicle had not been inspected in accordance
3 with section 3340.42.

4 b. Section 3340.42: Respondent failed to ensure that the required smog tests were
5 conducted on the 1989 Dodge in accordance with Bureau specifications.

6 c. Section 3356, subdivision (a)(1): Respondent failed to show his correct ARD
7 registration number on the estimate and invoice for the smog inspection of the 1989 Dodge.

8 **FIFTH CAUSE FOR DISCIPLINE**

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

10 28. Respondent's technician license(s) is subject to disciplinary action pursuant to H&S
11 Code section 44072.2, subdivision (a), in that he failed to comply with the following sections of
12 that Code:

13 a. Section 44012, subdivision (f): Respondent failed to ensure that a visual/functional
14 check of emission control devices was performed on the 1989 Dodge in accordance with
15 procedures prescribed by the department.

16 b. Section 44035: Respondent failed to meet or maintain the standards prescribed for
17 qualification, equipment, performance, or conduct of a smog technician.

18 **SIXTH CAUSE FOR DISCIPLINE**

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

20 29. Respondent's technician license(s) is subject to disciplinary action pursuant to H&S
21 Code section 44072.2, subdivision (c), in that he failed to comply with the provisions of the CCR
22 as follows:

23 a. Section 3340.30, subdivision (a): Respondent failed to inspect and test the 1989 Dodge
24 in accordance with H&S Code section 44012.

25 b. Section 3340.42: Respondent failed to ensure that the required smog tests were
26 conducted on the 1989 Dodge in accordance with Bureau specifications.

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1 **NINTH CAUSE FOR DISCIPLINE**

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

3 33. Respondent's technician license(s) is subject to disciplinary action pursuant to H&S
4 Code section 44072.2, subdivision (a), in that he failed to comply with the following sections of
5 that Code:

6 a. Section 44012, subdivision (f): Respondent failed to ensure that a visual/functional
7 check of emission control devices was performed on the 1991 Toyota in accordance with
8 procedures prescribed by the department.

9 b. Section 44035: Respondent failed to meet or maintain the standards prescribed for
10 qualification, equipment, performance, or conduct of a smog technician.

11 **TENTH CAUSE FOR DISCIPLINE**

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

13 34. Respondent's technician license(s) is subject to disciplinary action pursuant to H&S
14 Code section 44072.2, subdivision (c), in that he failed to comply with the provisions of the CCR
15 as follows:

16 a. Section 3340.30, subdivision (a): Respondent failed to inspect and test the 1991 Toyota
17 in accordance with H&S Code section 44012.

18 b. Section 3340.42: Respondent failed to ensure that the required smog tests were
19 conducted on the 1991 Toyota in accordance with Bureau specifications.

20 **UNDERCOVER OPERATION NO. 3 – 1997 GMC**

21 35. On February 1, 2012, a Bureau undercover operator drove a 1997 GMC missing its
22 positive crankcase ventilation (PCV) system so that it could not a pass a smog inspection to
23 Respondent's facility and requested a smog inspection. Respondent performed the inspection and
24 issued electronic smog certificate of compliance no. [REDACTED], as indicated by the VIR he gave
25 the operator and the information he input into the VID for the 1997 GMC.

1 **MATTERS IN AGGRAVATION**

2 39. Respondent had been cited for violations of the smog check laws and regulations
3 prior to January 11, 2011 as follows:

4 a. On August 25, 2005, the Bureau issued to Respondent Citation No. C06-0120 for
5 violating H&S Code section 44012(f) (failure to determine that emission control devices and
6 systems required by State and Federal laws are installed and functioning correctly in accordance
7 with test procedures) and CCR section 3340.35(c) (issuing a certificate of compliance to a vehicle
8 that was improperly tested); and Citation No. M06-0121 for violating H&S Code section 44032
9 (failure to perform tests of emissions control systems and devices in accordance with H&S Code
10 section 44012), and CCR section 3340.30(a) (failure to inspect, test, and repair vehicles in
11 accordance with H&S Code sections 44012 and 44035, and CCR sections 3340.42). On August
12 11, 2005, Respondent issued a certificate of compliance to a Bureau-documented 1994 Toyota
13 undercover vehicle with its ignition timing adjusted beyond specifications. During the Citation
14 Conference, Respondent was advised that the failure to show the dealer name and registration
15 number on the invoice as it appears in Bureau's records is a violation of Code, section 9884.8 and
16 CCR, section 3356(a); failure to provide a copy of a signed document to the customer is a
17 violation of Code, section 9884.7(a)(3); and failure to provide a written estimate for a specific job
18 is a violation of Code section 9884.9(a) and CCR section 3353(a). The Bureau assessed civil
19 penalties totaling \$500 against Respondent and required him to complete an eight-hour training
20 course. Respondent paid the fine on October 18, 2005, and completed the training on October 20,
21 2005.

22 b. On March 3, 2006, the Bureau issued to Respondent Citation No. C06-0518 for
23 violating H&S Code section 44012(f) (failure to perform a visual/ functional check of emission
24 control devices according to procedures prescribed by the department) and CCR section
25 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested). On
26 December 19, 2005, Respondent issued a certificate of compliance to a 1999 Toyota without
27 performing the functional gas cap portion of the smog check inspection. Respondent used the
28 green colored (Passing) gas cap provided by the EIS manufacturer for system calibration to avoid

1 testing the actual cap on the Toyota. The Bureau assessed a civil penalty of \$500 against
2 Respondent for the violation. Respondent paid the fine on April 11, 2006.

3 c. On July 21, 2009, the Bureau issued to Respondent Citation No. C2010-0069 for
4 violating H&S Code section 44012(f) (failure to perform a visual/functional check of emission
5 control devices according to procedures prescribed by the department) and CCR section
6 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly tested); and
7 Citation No. M2010-0070 for violating H&S Code section 44032 (failure to perform tests of
8 emissions control systems and devices in accordance with H&S Code section 44012), and CCR
9 section 3340.30(a) (failure to inspect, test, and repair vehicles in accordance with H&S Code
10 sections 44012 and 44035, and CCR sections 3340.42). On June 23, 2009, Respondent issued a
11 certificate of compliance to a 1984 Ford with a non-approved "Off Road" carburetor with
12 disconnected evaporative emission hoses. During the Citation Conference, Respondent was again
13 advised that the failure to show the dealer name and registration number on the invoice as it
14 appears in Bureau's records is a violation of Code, section 9884.8 and CCR, section 3356(a). The
15 Bureau assessed civil penalties totaling \$500 against Respondent and required him to complete
16 and eight-hour training course. Respondent paid the fine on September 9, 2009, and completed
17 the training on September 18, 2009.

18 **OTHER MATTERS**

19 40. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke or
20 place on probation the registration for all places of business operated in this state by Respondent
21 Duong upon a finding that Respondent has, or is, engaged in a course of repeated and willful
22 violations of the laws and regulations pertaining to an automotive repair dealer.

23 41. Pursuant to H&S Code section 44072.8, if Respondent's Smog Check, Test Only,
24 Station License Number TC 222323, is revoked or suspended, any additional license issued under
25 the same chapter in the name of said licensee may be likewise revoked or suspended by the
26 Director.

27 42. Pursuant to H&S Code section 44072.8, if Respondent's Advanced Emissions
28 Specialist Technician License(s), currently designated as EA 141375 and as redesignated upon

1 timely renewal as EO 141375 and/or EI 141375, is/are revoked or suspended, any additional
2 license(s) under this chapter in the name of said licensee may be likewise revoked or suspended
3 by the director.

4 **PRAYER**

5 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
6 Accusation, and that following the hearing, the Director of Consumer Affairs issue a decision:

- 7 1. Revoking or suspending Automotive Repair Dealer Registration Number
8 ARD 222323, issued to Respondent Van Thanh Duong, Owner, dba Automotive Smog Check
9 Test Only;
- 10 2. Revoking or suspending any other automotive repair dealer registration issued to
11 Respondent;
- 12 3. Revoking or suspending Smog Check Station License Number TC 222323, issued to
13 Respondent;
- 14 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
15 and Safety Code in the name of Respondent;
- 16 5. Revoking or suspending Respondent Van Thanh Duong's Advanced Emission
17 Specialist Technician License(s), currently designated as EA 141375 and as redesignated upon
18 timely renewal as EO 141375 and/or EI 141375;
- 19 6. Ordering Respondent to pay the Bureau of Automotive Repair the reasonable costs of
20 the investigation and enforcement of this case, pursuant to Business and Professions Code section
21 125.3; and
- 22 7. Taking such other and further action as deemed necessary and proper.

23
24 DATED: 5/2/13

John Wallauch by Doug Balah
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
DOUG BALAH

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