

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

In the Matter of the Accusation Against:

CARMICHAEL SMOG TEST ONLY CENTER
DONG V. NGUYEN, Owner
7846 C Fair Oaks Boulevard
Carmichael, CA 95608

Case No. 79/11-24

OAH No. 2011050777

Automotive Repair Dealer Registration
No. ARD 221811
Smog Check, Test Only, Station License
No. TC 221811

and

DONG V. NGUYEN
8229 Grisham Way
Elk Grove, CA 95758

Advanced Emission Specialist Technician
License No. EA 142407

Respondents.

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective 1/23/12.

DATED: December 15, 2011



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
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7 *Attorneys for Complainant*

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 Accusation Against:

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7846 C Fair Oaks Boulevard
13 Carmichael, CA 95608
DONG V. NGUYEN, OWNER
14 Automotive Repair Dealer Registration
No. ARD 221811
15 Smog Check Test Only Station License
No. TC 221811

OAH No. 2011050777

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 **and**

17 **DONG V. NGUYEN**
18 8229 Grisham Way
Elk Grove, CA 95758
19 Advanced Emission Specialist Technician License
No. EA 142407

20 Respondents.
21

22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
23 entitled proceedings that the following matters are true:

24 PARTIES

25 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair. She
26 brought this action solely in her official capacity, and is represented in this matter by Kamala D.
27 Harris, Attorney General of the State of California, by Patrick M. Kenady, Deputy Attorney
28 General.

1 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
2 Order.

3 8. Respondent is fully aware of his legal rights in this matter, including the right to a
4 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
5 his own expense; the right to confront and cross-examine the witnesses against him; the right to
6 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
7 the attendance of witnesses and the production of documents; the right to reconsideration and
8 court review of an adverse decision; and all other rights accorded by the California
9 Administrative Procedure Act and other applicable laws.

10 9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
11 every right set forth above.

12 CULPABILITY

13 10. Respondent understands and agrees that the charges and allegations in Accusation
14 No. 79/11-24, if proven at a hearing, constitute cause for imposing discipline upon his
15 Automotive Repair Dealer Registration as well as for his Smog Check Test Only Station License,
16 and his Advanced Emission Specialist Technician License.

17 11. For the purpose of resolving the Accusation without the expense and uncertainty of
18 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
19 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
20 those charges.

21 12. Respondent agrees that his Automotive Repair Dealer Registration, Smog Check
22 Station Test Only License, and Advanced Emission Specialist Technician License are subject to
23 discipline and he agrees to be bound by the Director's probationary terms as set forth in the
24 Disciplinary Order below.

25 RESERVATION

26 13. The admissions made by Respondent herein are only for the purposes of this
27 proceeding, or any other proceedings in which the Director of Consumer Affairs, Bureau of
28

1 Automotive Repair, or other professional licensing agency is involved, and shall not be
2 admissible in any other criminal or civil proceeding.

3 CONTINGENCY

4 14. This stipulation shall be subject to approval by the Director of Consumer Affairs or
5 his designee. Respondent understands and agrees that counsel for Complainant and the staff of
6 the Bureau of Automotive Repair may communicate directly with the Director and staff of the
7 Department of Consumer Affairs regarding this stipulation and settlement, without notice to or
8 participation by Respondent or his counsel. By signing the stipulation, Respondent understands
9 and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the
10 time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the
11 Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
12 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
13 and the Director shall not be disqualified from further action by having considered this matter.

14 15. The parties understand and agree that facsimile copies of this Stipulated Settlement
15 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
16 effect as the originals.

17 16. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
18 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
19 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
20 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
21 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
22 writing executed by an authorized representative of each of the parties.

23 17. In consideration of the foregoing admissions and stipulations, the parties agree that
24 the Director may, without further notice or formal proceeding, issue and enter the following
25 Disciplinary Order:

26 DISCIPLINARY ORDER

27 IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 221811,
28 and Smog Check Test Only Station License No. TC 221811, and Advanced Emission Specialist

1 Technician License No. EA 142407, issued to Respondent Carmichael Smog Test Only Center;
2 Dong V. Nguyen (Respondent) are revoked. However, the revocations are stayed and
3 Respondent is placed on probation for three (3) years on the following terms and conditions.

4 1. **Actual Suspension.** Automotive Repair Dealer Registration No. ARD 221811,
5 Smog Check Test Only Station License No. TC 221811, and Advanced Emission Specialist
6 Technician License are suspended 15 days, to begin on the effective date of the decision.

7 2. **Obey All Laws.** Comply with all statutes, regulations and rules governing
8 automotive inspections, estimates and repairs.

9 3. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning
10 and ending dates of the suspension and indicating the reason for the suspension. The sign shall be
11 conspicuously displayed in a location open to and frequented by customers and shall remain
12 posted during the entire period of actual suspension.

13 4. **Reporting.** Respondent or Respondent's authorized representative must report in
14 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the
15 Bureau, but no more frequently than each quarter, on the methods used and success achieved in
16 maintaining compliance with the terms and conditions of probation.

17 5. **Report Financial Interest.** Within 30 days of the effective date of this action, report
18 any financial interest which any partners, officers, or owners of the Respondent facility may have
19 in any other business required to be registered pursuant to Section 9884.6 of the Business and
20 Professions Code.

21 6. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect
22 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

23 7. **Jurisdiction.** If an accusation is filed against Respondent during the term of
24 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter
25 until the final decision on the accusation, and the period of probation shall be extended until such
26 decision.

27 8. **Advanced Clean Air Course.** Respondent is to take and complete a BAR approved
28 Advanced Clean Air Course within six (6) months of the effective date of the decision.

ENDORSEMENT

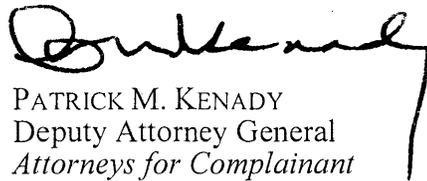
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The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: October 17, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General


PATRICK M. KENADY
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/11-24

1 EDMUND G. BROWN JR.
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2 ARTHUR D. TAGGART
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14 **DONG V. NGUYEN, OWNER**
Automotive Repair Dealer Registration
15 **No. ARD 221811**
Smog Check Test Only Station License
16 **No. TC 221811**

A C C U S A T I O N
S M O G C H E C K

17 **and**

18 **DONG V. NGUYEN**
8229 Grisham Way
19 **Elk Grove, CA 95758**
Advanced Emission Specialist Technician License
20 **No. EA 142407**

21 Respondents.

22
23 Complainant alleges:

24 **PARTIES**

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

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28 ///

1 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
2 place on probation the registration for all places of business operated in this state by
3 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
4 engaged in a course of repeated and willful violations of this chapter, or regulations
5 adopted pursuant to it.

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

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

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

17 9. Section 44072.2 of the Health and Safety Code states:

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

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

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

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

28 10. 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.

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

4 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests
5 on that vehicle in accordance with procedures prescribed by the department.

6 c. **Section 44032:** Respondent failed to perform tests of the emission control devices
7 and systems on that vehicle in accordance with section 44012 of that Code.

8 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of
9 Compliance No. NO932224, certifying that the vehicle had been inspected as required when, in
10 fact, it had not.

11 **SEVENTH CAUSE FOR DISCIPLINE**

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

13 20. Respondent has subjected his technician license to discipline under Health and Safety
14 Code section 44072.2, subdivision (c), in that on or about December 8, 2009, regarding the 1993
15 Ford Mustang, he violated sections of the California Code of Regulations, title 16, as follows:

16 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
17 electronic Certificate of Compliance No. NO932224 without performing a bona fide inspection of
18 the emission control devices and systems on that vehicle as required by Health and Safety Code
19 section 44012.

20 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test that vehicle
21 in accordance with Health and Safety Code section 44012.

22 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the
23 Emission Inspection System for electronic Certificate of Compliance No. NO932224 by entering
24 "Pass" for the visual inspection portion of the smog inspection when, in fact, the vehicle could
25 not have passed the visual portion of the smog inspection because the vehicle's PCV system was
26 missing.

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

1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 21. Respondent has subjected his technician license to discipline under Health and Safety
4 Code section 44072.2, subdivision (d), in that on or about December 8, 2009, regarding the 1993
5 Ford Mustang, he committed acts involving dishonesty, fraud or deceit whereby another was
6 injured by issuing electronic Certificate of Compliance No. NO932224 without performing a
7 bona fide inspection of the emission control devices and systems on that vehicle, thereby
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle
9 Inspection Program.

10 **PRIOR CITATIONS**

11 22. To determine the degree of penalty, if any, to be imposed upon Respondent,
12 Complainant alleges as follows:

13 a. On November 16, 2006, the Bureau issued Citation No. C07-0305 to Respondent
14 against his registration and station licenses for violations of Health and Safety Code section
15 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
16 and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c)
17 (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a
18 certificate of compliance to a Bureau vehicle with a missing air injection system. The Bureau
19 assessed a civil penalty of \$500. Respondent complied with this citation on December 15, 2006.

20 b. On March 4, 2009, the Bureau issued Citation No. C09-1037 to Respondent against
21 his registration and station licenses for violations of Health and Safety Code section 44012,
22 subdivision (f) (failure to perform a visual/functional check of emission control devices) and
23 Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
24 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a
25 missing thermostatic air cleaner. The Bureau assessed a civil penalty of \$500. Respondent
26 complied with this citation on April 9, 2009.

27 c. On May 27, 2009, the Bureau issued Citation No. C09-1353 to Respondent against
28 his registration and station licenses for violations of Health and Safety Code section 44012,

1 subdivision (f) (failure to perform a visual/functional check of emission control devices) and
2 Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
3 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a
4 nonfunctional exhaust gas recirculation system. The Bureau assessed a civil penalty of \$1,000.
5 Respondent complied with this citation on June 23, 2009.

6 d. On July 27, 2009, the Bureau issued Citation No. C2010-0077 to Respondent against
7 his registration and station licenses for violations of Health and Safety Code section 44012,
8 subdivision (f) (failure to perform a visual/functional check of emission control devices) and
9 Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
10 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with an
11 unapproved aftermarket exhaust header. The Bureau assessed a civil penalty of \$2,000.
12 Respondent complied with this citation on September 25, 2009.

13 e. On November 16, 2006, the Bureau issued Citation No. M07-0306 to Respondent
14 against his technician license for violations of Health and Safety Code section 44032, (qualified
15 technicians shall perform tests of emission control systems and devices in accordance with
16 section 44012 of that Code) and Regulation, section 3340.30, subdivision (a) (qualified
17 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
18 the Health and Safety Code, and Regulation section 3340.42. Respondent issued a certificate of
19 compliance to a Bureau vehicle with a missing air injection system. Respondent was required to
20 attend an 8-hour training course. Respondent complied with this citation on December 20, 2006.

21 f. On March 4, 2009, the Bureau issued Citation No. M09-1038 to Respondent against
22 his technician license for violations of Health and Safety Code section 44032, (qualified
23 technicians shall perform tests of emission control systems and devices in accordance with
24 section 44012 of that Code) and Regulation, section 3340.30, subdivision (a) (qualified
25 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
26 the Health and Safety Code, and Regulation, section 3340.42. Respondent issued a certificate of
27 compliance to a Bureau vehicle with a missing thermostatic air cleaner. Respondent was required
28 to attend an 8-hour training course. Respondent complied with this citation on April 24, 2009.

1 g. On May 27, 2009, the Bureau issued Citation No. M09-1354 to Respondent against
2 his technician license for violations of Health and Safety Code section 44032, (qualified
3 technicians shall perform tests of emission control systems and devices in accordance with
4 section 44012 of that Code) and Regulation, section 3340.30, subdivision (a) (qualified
5 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
6 the Health and Safety Code, and Regulation, section 3340.42. Respondent issued a certificate of
7 compliance to a Bureau vehicle with a nonfunctional exhaust gas recirculation system.
8 Respondent was required to attend a 16-hour training course. Respondent complied with this
9 citation on June 29, 2009.

10 h. On July 27, 2009, the Bureau issued Citation No. M2010-0078 to Respondent against
11 his technician license for violations of Health and Safety Code section 44032, (qualified
12 technicians shall perform tests of emission control systems and devices in accordance with
13 section 44012 of that Code) and Regulation, section 3340.30, subdivision (a) (qualified
14 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
15 the Health and Safety Code, and Regulation, section 3340.42. Respondent issued a certificate of
16 compliance to a Bureau vehicle with an unapproved aftermarket exhaust header. Respondent was
17 required to attend a clean air car course. Respondent complied with this citation on November 1,
18 2009.

19 OTHER MATTERS

20 23. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
21 or permanently or refuse to validate, the registrations for all places of business operated in this
22 state by to Dong V. Nguyen doing business as Carmichael Smog Test Only Center, upon a
23 finding that he has, or is, engaged in a course of repeated and willful violations of the laws and
24 regulations pertaining to an automotive repair dealer.

25 24. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
26 License Number TC 221811, issued to Dong V. Nguyen doing business as Carmichael Smog Test
27 Only Center, is revoked or suspended, any additional license issued under this chapter in the
28 name of said licensee including, but not limited to Advanced Emission Specialist Technician

1 License Number EA 142407 issued to Dong V. Nguyen, may be likewise revoked or suspended
2 by the director.

3 PRAYER

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

6 1. Revoking, suspending, or placing on probation, Automotive Repair Dealer
7 Registration Number ARD 221811, issued to Dong V. Nguyen doing business as Carmichael
8 Smog Test Only Center;

9 2. Revoking, suspending, or placing on probation any other automotive repair dealer
10 registration issued in the name of Dong V. Nguyen;

11 3. Revoking or suspending Smog Check Test Only Station License Number TC 221811,
12 issued to Dong V. Nguyen doing business as Carmichael Smog Test Only Center;

13 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
14 and Safety Code in the name Dong V. Nguyen including, but not limited to, Advanced Emission
15 Specialist Technician License Number EA 142407;

16 5. Ordering Dong V. Nguyen to pay the Bureau of Automotive Repair the reasonable
17 costs of the investigation and enforcement of this case, pursuant to Business and Professions
18 Code section 125.3; and,

19 2. Taking such other and further action as deemed necessary and proper.
20
21

22 DATED: _____

9/27/10


23 SHERRY MEHL
24 Chief
25 Bureau of Automotive Repair
26 Department of Consumer Affairs
27 State of California
28 Complainant

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