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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. 79/11-24

13 **CARMICHAEL SMOG TEST ONLY CENTER**
14 **7846 C Fair Oaks Boulevard**
15 **Carmichael, CA 95608**
16 **DONG V. NGUYEN, OWNER**
Automotive Repair Dealer Registration
No. ARD 221811
Smog Check Test Only Station License
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**
19 **8229 Grisham Way**
20 **Elk Grove, CA 95758**
Advanced Emission Specialist Technician License
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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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 11. Section 44072.8 of the Health and Safety Code states:

2 "When a license has been revoked or suspended following a hearing under this article, any
3 additional license issued under this chapter in the name of the licensee may be likewise revoked
4 or suspended by the director."

5 **COST RECOVERY**

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

10 **UNDERCOVER OPERATION – DECEMBER 8, 2009**

11 13. On or about December 8, 2009, a Bureau undercover operator ("operator") drove a
12 Bureau-documented 1993 Ford Mustang to Respondent's facility and requested a smog
13 inspection. The vehicle could not pass the visual portion of a smog inspection because the
14 vehicle's positive crankcase ventilation ("PCV") system was missing. The operator signed a
15 work order and was provided with a copy of the document. Respondent performed the smog
16 inspection and issued electronic Certificate of Compliance No. NO932224 for that vehicle;
17 however, Respondent failed to perform a proper visual inspection of the vehicle. The operator
18 paid \$54.20 for the smog inspection and received a copy of an unnumbered invoice and the
19 Vehicle Inspection Report.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Misleading Statements)**

22 14. Respondent has subjected his registration to discipline under Code section 9884.7,
23 subdivision (a)(1), in that on or about December 8, 2009, he made statements which he knew or
24 which by exercise of reasonable care he should have known were untrue or misleading when he
25 issued electronic Certificate of Compliance No. NO932224 for the 1993 Ford Mustang, certifying
26 that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle
27 could not have passed the visual portion of the smog inspection because the vehicle's PCV
28 system was missing.

1 SECOND CAUSE FOR DISCIPLINE

2 (Fraud)

3 15. Respondent has subjected his registration to discipline under Code section 9884.7,
4 subdivision (a)(4), in that on or about December 8, 2009, he committed acts which constitute
5 fraud by issuing electronic Certificate of Compliance No. NO932224 for the 1993 Ford Mustang
6 without performing a bona fide inspection of the emission control devices and systems on that
7 vehicle, thereby depriving the People of the State of California of the protection afforded by the
8 Motor Vehicle Inspection Program.

9 THIRD CAUSE FOR DISCIPLINE

10 (Violation of the Motor Vehicle Inspection Program)

11 16. Respondent has subjected his station license to discipline under Health and Safety
12 Code section 44072.2, subdivision (a), in that on or about December 8, 2009, regarding the 1993
13 Ford Mustang, he violated sections of that Code, as follows:

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

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

19 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
20 Compliance No. NO932224 without properly testing and inspecting the vehicle to determine if it
21 was in compliance with section 44012 of that Code.

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

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

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

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

10 b. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
11 Compliance No. NO932224 even though that vehicle had not been inspected in accordance with
12 section 3340.42 of that Code.

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

15 **FIFTH CAUSE FOR DISCIPLINE**

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

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

24 **SIXTH CAUSE FOR DISCIPLINE**

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

26 19. Respondent has subjected his technician license to discipline under Health and Safety
27 Code section 44072.2, subdivision (a), in that on or about December 8, 2009, regarding the 1993
28 Ford Mustang, he violated sections of that Code, as follows:

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.
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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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