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

13 In the Matter of the Accusation Against:

Case No. 79/10-11

14 **NORTH FAIRVIEW TEST ONLY CENTER**
15 **MELONY DAO, OWNER**
16 **203 N. Fairview St., #B1**
17 **Santa Ana, CA 92703**

FIRST AMENDED ACCUSATION
(Smog Check)

18 **Automotive Repair Dealer Reg. No. ARD 252256**
19 **Smog Check, Test Only, Station License**
20 **No. TC 252256**

21 **and**

22 **TRIET HOANG**
23 **14801 Givens Place**
24 **Westminster, CA 92683**

25 **Advanced Emission Specialist Technician**
26 **License No. EA 144495**

27 **and**

28 **KHANH HONG-TRONG PHAN**
4807 Keywood Lane
Santa Ana, CA 92703

Advanced Emission Specialist Technician
License No. EA 145639

Respondents.

1 Complainant alleges:

2 **PARTIES**

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

5 **Automotive Repair Dealer Registration No. ARD 252256**

6 2. On or about October 17, 2007, the Director of Consumer Affairs ("Director") issued
7 Automotive Repair Dealer Registration Number ARD 252256 to Melony Dao ("Respondent
8 Dao"), owner of North Fairview Test Only Center. Respondent's automotive repair dealer
9 registration was in full force and effect at all times relevant to the charges brought herein and will
10 expire on September 30, 2011, unless renewed.

11 **Smog Check, Test Only, Station License No. TC 252256**

12 3. On or about October 31, 2007, the Director issued Smog Check, Test Only, Station
13 License Number TC 252256 (hereinafter "smog check station license") to Respondent Dao.
14 Respondent's smog check station license was in full force and effect at all times relevant to the
15 charges brought herein and will expire on September 30, 2011, unless renewed.

16 **Advanced Emission Specialist Technician License No. EA 144495**

17 4. In or about 2001, the Director issued Advanced Emission Specialist Technician
18 License Number EA 144495 (hereinafter "technician license") to Triet Hoang ("Respondent
19 Hoang"). Respondent's technician license was in full force and effect at all times relevant to the
20 charges brought herein and will expire on March 31, 2012, unless renewed.

21 **Advanced Emission Specialist Technician License No. EA 145639**

22 5. In or about 2002, the Director issued Advanced Emission Specialist Technician
23 License Number EA 145639 (hereinafter "technician license") to Khanh Hong-Trong Phan
24 ("Respondent Phan"). Respondent's technician license was in full force and effect at all times
25 relevant to the charges brought herein and will expire on March 31, 2012, unless renewed.

26 **JURISDICTION**

27 6. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that
28 the Director may invalidate an automotive repair dealer registration.

1 "program," and "agency." "License" includes certificate, registration or other means to engage in
2 a business or profession regulated by the Bus. & Prof. Code.

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

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

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

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

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

15 13. Health & Saf. Code section 44072.10 states, in pertinent part:

16

17 (c) The department shall revoke the license of any smog check technician
18 or station licensee who fraudulently certifies vehicles or participates in the fraudulent
19 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
20 the following:

21

22 (4) Intentional or willful violation of this chapter or any regulation,
23 standard, or procedure of the department implementing this chapter . . .

24 14. Health & Saf. Code section 44072.8 states that when a license has been revoked or
25 suspended following a hearing under this article, any additional license issued under this chapter
26 in the name of the licensee may be likewise revoked or suspended by the director.

27 **COST RECOVERY**

28 15. 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.

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VIDEO SURVEILLANCE OPERATION OF FEBRUARY 3, 2009

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2 16. The Bureau reviewed test data obtained from their vehicle information database
3 (“VID”) pertaining to smog inspections conducted at Respondent Dao’s smog check facility. The
4 data showed that numerous vehicles tested in sequence at the facility used the same or similar
5 quantity of Nitrogen (N²) when the low pressure fuel evaporative (“EVAP”)¹ test was performed,
6 and that the vehicles tested were from many different years and had a variety of engine sizes,
7 emission control system configurations, and gas tank sizes.

8 17. On February 3, 2009, a representative of the Bureau conducted a video surveillance
9 operation of Respondent Dao’s facility. The surveillance video and information obtained from
10 the Bureau’s VID revealed that Respondent Hoang issued electronic smog certificates of
11 compliance on behalf of Respondent Dao, certifying that he had tested and inspected the vehicles
12 identified below and that the vehicles were in compliance with applicable laws and regulations.
13 In fact, Respondent Hoang failed to conduct the required EVAP test on three of the vehicles in
14 that the LPFET equipment was not connected to the vehicles during the smog inspections,
15 resulting in the issuance of fraudulent certificates of compliance for the vehicles. Further, the
16 VID data showed that 2 gallons of N² was used for the EVAP test on each vehicle, which is the
17 same amount of N² used in the facility’s LPFET calibration tank. In addition, Respondent failed
18 to perform the required functional fuel cap integrity test (pressure test of the gas cap) on any of
19 the vehicles.
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23 ¹ An EVAP test is performed on 1995 and older vehicles. The EVAP test information is
24 transmitted from the low pressure fuel evaporative tester (LPFET) to the databank, is stored by the
25 vehicle’s VIN (vehicle identification number), and is later down loaded to the VID and added to the
26 vehicle’s test history utilizing the VIN. The LPFET uses N² for calibration and to pressurize the vehicle’s
27 fuel evaporative system for testing. The amount of N² used to pressurize the fuel evaporative system
28 varies according to the size of the fuel tank and/or quantity of fuel at the time of the test. The LPFET
calibration tank has a volume range of approximately 1.8 to 2.2 gallons of N². One method used to
fraudulently certify a vehicle is to use the LPFET results derived from the calibration tank and/or another
source rather than the vehicle being tested in order to cause the Emission Inspection System to issue a
certificate of compliance for the vehicle.

NO.	TIME OF INSPECTION	VEHICLE CERTIFIED & LICENSE NO.	CERTIFICATE ISSUED & NO.	DETAILS
1	1030 to 1059	1997 Chevrolet; License #5EZM995	VX214805C	EVAP test not required on the vehicle. Respondent Hoang failed to perform the required functional fuel cap integrity test.
2	1228 to 1236	1987 Nissan; no plates	VX214806C	Respondent Hoang failed to perform the required EVAP and functional fuel cap integrity tests on the vehicle.
3	1252 to 1259	1995 Honda; License #6BCE236	VX214807C	Same as above.
4	1305 to 1311	1990 BMW; License #4DEX321	VX214808C	EVAP test not required on the vehicle. Respondent Hoang failed to perform the required functional fuel cap integrity test.
5	1314 to 1329	1992 Toyota; License #4S62100	None; vehicle failed inspection	Respondent Hoang failed to perform the required EVAP and functional fuel cap integrity tests on the vehicle.
6	1334 to 1340	2003 Ford; License #5XZN009	VX214809C	EVAP test not required on the vehicle. Respondent Hoang failed to perform the required functional fuel cap integrity test.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

18. Respondent Dao's automotive repair dealer 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 she knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Dao's technician, Respondent Hoang, certified that vehicles 1 through 4 and 6, identified in paragraph 17 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Hoang failed to perform the required EVAP test on vehicles 2 and 3, failed to perform the functional fuel cap integrity test on vehicles 1 through 4 and 6, and failed to test or inspect vehicles 1 through 4 and 6 as required by Health & Saf. Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

19. Respondent Dao's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent

1 committed acts which constitute fraud by issuing electronic smog certificates of compliance for
2 vehicles 1 through 4 and 6, identified in paragraph 17 above, without performing bona fide
3 inspections of the emission control devices and systems on the vehicles, thereby depriving the
4 People of the State of California of the protection afforded by the Motor Vehicle Inspection
5 Program.

6 **THIRD CAUSE FOR DISCIPLINE**

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

8 20. Respondent Dao's smog check station license is subject to disciplinary action
9 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
10 comply with provisions of that Code, as follows:

11 a. **Section 44012:** Respondent failed to perform emission control tests on vehicles 1
12 through 6, identified in paragraph 17 above, in accordance with procedures prescribed by the
13 department.

14 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
15 vehicles 1 through 4 and 6, identified in paragraph 17 above, without properly testing and
16 inspecting the vehicles to determine if they were in compliance with Health & Saf. Code section
17 44012.

18 **FOURTH CAUSE FOR DISCIPLINE**

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

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

24 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
25 electronic smog certificates of compliance for vehicles 1 through 4 and 6, identified in paragraph
26 17 above.

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1 vehicle was not adjusted to manufacturer's specifications. After the inspection was completed,
 2 the operator paid the facility \$40 and received copies of an invoice and a vehicle inspection report
 3 ("VIR"), signed by Respondent Hoang. The VIR indicated that the vehicle failed the functional
 4 ignition timing test and the overall inspection, but had passed the functional fuel cap integrity test.
 5 Later, the Bureau representative compared the surveillance video with information obtained from
 6 the Bureau's VID. The surveillance video and VID data revealed that Respondent Hoang issued
 7 electronic smog certificates of compliance on behalf of Respondent Dao, certifying that he had
 8 tested and inspected the two vehicles identified below and that the vehicles were in compliance
 9 with applicable laws and regulations. In fact, Respondent failed to conduct the required EVAP
 10 test on the vehicles in that the LPFET equipment was not connected to the vehicles during the
 11 smog inspections, resulting in the issuance of fraudulent certificates of compliance for the
 12 vehicles. Further, the VID data showed that 2 gallons of N² was used for the EVAP test on each
 13 vehicle, which is the same amount of N² used in the facility's LPFET calibration tank. The
 14 surveillance video also showed that Respondent Hoang failed to perform the required functional
 15 fuel cap integrity test on any of the vehicles, including the Bureau's 1989 Dodge Dynasty.

NO.	TIME OF INSPECTION	VEHICLE CERTIFIED & LICENSE NO.	CERTIFICATE ISSUED
1	09:07 to 09:17	1994 Chevrolet; License #4KXJ860	VX214814C
2	09:24 to 09:34	1992 Toyota Paseo, no plates	VX214815C

NINTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

21 27. Respondent Dao's automotive repair dealer registration is subject to disciplinary
 22 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made
 23 or authorized statements which she knew or in the exercise of reasonable care should have known
 24 to be untrue or misleading, as follows:

25 a. Respondent Dao's technician, Respondent Hoang, certified that vehicles 1 and 2,
 26 identified in paragraph 26 above, had passed inspection and were in compliance with applicable
 27 laws and regulations. In fact, Respondent Hoang failed to perform the required EVAP and
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1 functional fuel cap integrity tests on the vehicles and did not test or inspect the vehicles as
2 required by Health & Saf. Code section 44012.

3 b. Respondent Dao's technician, Respondent Hoang, represented on the VIR that he
4 performed the smog inspection on the Bureau's 1989 Dodge Dynasty in accordance with all
5 Bureau requirements. In fact, Respondent Hoang failed to perform the required functional fuel
6 cap integrity test on the vehicle and did not test or inspect the vehicle as required by Health &
7 Saf. Code section 44012.

8 **TENTH CAUSE FOR DISCIPLINE**

9 **(Fraud)**

10 28. Respondent Dao's automotive repair dealer registration is subject to disciplinary
11 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent
12 committed acts which constitute fraud by issuing electronic smog certificates of compliance for
13 vehicles 1 and 2, identified in paragraph 26 above, without performing bona fide inspections of
14 the emission control devices and systems on the vehicles, thereby depriving the People of the
15 State of California of the protection afforded by the Motor Vehicle Inspection Program.

16 **ELEVENTH CAUSE FOR DISCIPLINE**

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

18 29. Respondent Dao's smog check station license is subject to disciplinary action
19 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
20 comply with provisions of that Code, as follows:

21 a. **Section 44012:** Respondent failed to perform emission control tests on vehicles 1
22 and 2, identified in paragraph 26 above, and the Bureau's 1989 Dodge Dynasty in accordance
23 with procedures prescribed by the department.

24 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
25 vehicles 1 and 2, identified in paragraph 26 above, without properly testing and inspecting the
26 vehicles to determine if they were in compliance with Health & Saf. Code section 44012.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

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

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

- 7 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued
8 electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 26 above.
- 9 b. **Section 3340.35, subdivision (c)**: Respondent issued electronic smog certificates of
10 compliance for vehicles 1 and 2, identified in paragraph 26 above, even though those vehicles had
11 not been inspected in accordance with section 3340.42.
- 12 c. **Section 3340.42**: Respondent failed to conduct the required smog tests on vehicles 1
13 and 2, identified in paragraph 26 above, and the Bureau's 1989 Dodge Dynasty in accordance
14 with the Bureau's specifications.

15 **THIRTEENTH CAUSE FOR DISCIPLINE**

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

17 31. Respondent Dao's smog check station license is subject to disciplinary action
18 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
19 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog
20 certificates of compliance for vehicles 1 and 2, identified in paragraph 26 above, without
21 performing bona fide inspections of the emission control devices and systems on the vehicles,
22 thereby depriving the People of the State of California of the protection afforded by the Motor
23 Vehicle Inspection Program.

24 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

26 32. Respondent Hoang's technician license is subject to disciplinary action pursuant to
27 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
28 provisions of that Code, as follows:

1 a. **Section 44012:** Respondent failed to perform emission control tests on vehicles 1
2 and 2, identified in paragraph 26 above, and the Bureau's 1989 Dodge Dynasty in accordance
3 with procedures prescribed by the department.

4 b. **Section 44059:** Respondent willfully made false entries in the EIS, resulting in the
5 issuance of fraudulent certificates of compliance for vehicles 1 and 2, identified in paragraph 26
6 above.

7 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

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

13 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
14 electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 26 above.

15 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1
16 and 2, identified in paragraph 25 above, and the Bureau's 1989 Dodge Dynasty in accordance
17 with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16,
18 section 3340.42.

19 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1
20 and 2, identified in paragraph 26 above, and the Bureau's 1989 Dodge Dynasty in accordance
21 with the Bureau's specifications.

22 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

24 34. Respondent Hoang's technician license is subject to disciplinary action pursuant to
25 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
26 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
27 compliance for vehicles 1 and 2, identified in paragraph 26 above, without performing bona fide
28 inspections of the emission control devices and systems on the vehicles, thereby depriving the

1 People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program.

3 **VID DATA REVIEW**

4 35. In or about April 2010, the Bureau initiated an investigation against Respondent
5 based upon a review of information from the Bureau's VID, which indicated that Respondent
6 may be engaging in fraudulent smog check inspections.

7 36. On April 5, 2010, a representative of the Bureau conducted a detailed review of VID
8 data for all smog inspections performed at Respondent's facility for the period of October 1, 2008
9 through March 31, 2010. The representative found that the four vehicles identified below
10 recorded certain diagnostic trouble codes (hereinafter "code") during the OBD II tests². The
11 representative obtained information indicating that none of these codes were applicable to the
12 vehicles. The VID data also showed that Respondent Phan performed the inspections on these
13 four vehicles. The Bureau concluded that Respondent performed the smog inspections on the
14 vehicles using a different vehicle(s) during the OBD II tests, a method known as "clean
15 plugging",³ resulting in the issuance of fraudulent certificates of compliance for the vehicles.

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17 TEST TIME DATE	18 VEHICLE IN EIS DATA & LICENSE #	OBD II CODE	CERTIFICATE ISSUED	DETAILS
19 2/18/2010 15:48 – 16:04	1998 Ford Exhibition 6BWZ987	P1739	WH395862	Per OEM, Alldata and Mitchell information, OBD II code P1739 is not applicable for a 1998 Ford Expedition
21 2/18/2010 16:33 – 16:59	1996 Nissan Quest	P1739	WH395864	Per OEM, Alldata and Mitchell information, OBD II code P1739 is not

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23 ² The On Board Diagnostics (OBD II) functional test is an automated function of the Bar-97
24 analyzer. During the OBD II functional test, the technician is required to connect an interface cable from
25 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.

26 ³ Clean-plugging is the use of the OBD-II readiness monitor status and stored fault code (trouble
27 code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle
28 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 of
component failure.

	3RGY201			applicable for a 1996 Nissan Quest	
1	12/28/2009 16:48 – 17:01	1999 Honda CRV 4PSG304	P1405 P0125	WF665963	Per OEM, Alldata and Mitchell information, OBD II code P1455 & P0125 is not applicable for a 1999 Honda CRV
2					
3	9/8/2009 15:22 – 15:30	1996 Nissan Sentra 3MKY679	P0131 P0401	WD263075	Per OEM, Alldata and Mitchell information, OBD II code P0131 & P0401 is not applicable for a 1996 Nissan Sentra
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5					

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7 **SEVENTEENTH CAUSE FOR DISCIPLINE**

8 **(Untrue or Misleading Statements)**

9 37. Respondent Dao's automotive repair dealer registration is subject to

10 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that

11 Respondent made or authorized statements which she knew or in the exercise of reasonable care

12 should have known to be untrue or misleading, as follows: Respondent Dao's technician,

13 Respondent Phan, certified that the four vehicles identified in paragraph 36 above, had passed

14 inspection and were in compliance with applicable laws and regulations. In fact, Respondent

15 Phan conducted the inspections on the vehicles using clean-plugging methods in that he

16 substituted or used a different vehicle(s) during the OBD II functional tests in order to issue smog

17 certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by

18 Health & Saf. Code section 44012.

19 **EIGHTEENTH CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 38. Respondent Dao's automotive repair dealer registration is subject to disciplinary

22 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent

23 committed acts which constitute fraud by issuing electronic smog certificates of compliance for

24 the four vehicles identified in paragraph 36 above, without performing bona fide inspections of

25 the emission control devices and systems on the vehicles, thereby depriving the People of the

26 State of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **NINETEENTH CAUSE FOR DISCIPLINE**

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

3 39. Respondent Dao's smog check station license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
5 comply with provisions of that Code, as follows:

6 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
7 performed on the four vehicles identified in paragraph 36 above, in accordance with procedures
8 prescribed by the department.

9 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for the
10 four vehicles identified in paragraph 36 above, without ensuring that the vehicles were properly
11 tested and inspected to determine if they were in compliance with Health & Saf. Code section
12 44012.

13 **TWENTIETH CAUSE FOR DISCIPLINE**

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

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

19 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
20 electronic smog certificates of compliance for the four vehicles identified in paragraph 36 above.

21 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
22 compliance for the four vehicles identified in paragraph 36 above, even though those vehicles had
23 not been inspected in accordance with section 3340.42.

24 c. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
25 conducted on the four vehicles identified in paragraph 36 above, in accordance with the Bureau's
26 specifications.

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1 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

3 41. Respondent Dao's smog check station license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
5 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog
6 certificates of compliance for the four vehicles identified in paragraph 36 above, without
7 performing bona fide inspections of the emission control devices and systems on the vehicles,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program.

10 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

12 42. Respondent Phan's technician license is subject to disciplinary action pursuant to
13 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
14 section 44012 of that Code in a material respect, as follows: Respondent failed to perform the
15 emission control tests on the four vehicles identified in paragraph 36 above, in accordance with
16 procedures prescribed by the department.

17 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

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

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

- 23 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued
24 electronic smog certificates of compliance for the four vehicles identified in paragraph 36 above.
- 25 b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the four
26 vehicles identified in paragraph 36 above, in accordance with Health & Saf. Code sections 44012
27 and 44035, and California Code of Regulations, title 16, section 3340.42.

1 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the four
2 vehicles identified in paragraph 36 above, in accordance with the Bureau's specifications.

3 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

5 44. Respondent Phan's technician license is subject to disciplinary action pursuant to
6 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
7 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
8 compliance for the four vehicles identified in paragraph 36 above, without performing bona fide
9 inspections of the emission control devices and systems on the vehicles, thereby depriving the
10 People of the State of California of the protection afforded by the Motor Vehicle Inspection
11 Program.

12 **OTHER MATTERS**

13 45. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
14 refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of
15 business operated in this state by Respondent Melony Dao, owner of North Fairview Test Only
16 Center, upon a finding that said Respondent has, or is, engaged in a course of repeated and willful
17 violations of the laws and regulations pertaining to an automotive repair dealer.

18 46. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
19 License Number TC 252256, issued to Respondent Melony Dao, owner of North Fairview Test
20 Only Center, is revoked or suspended, any additional license issued under this chapter in the
21 name of said licensee may be likewise revoked or suspended by the Director.

22 47. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
23 Technician License Number EA 144495, issued to Triet Hoang, is revoked or suspended, any
24 additional license issued under this chapter in the name of said licensee may be likewise revoked
25 or suspended by the Director.

26 48. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
27 Technician License Number EA 145639, issued to Khanh Hong-Trong Phan, is revoked or
28

1 suspended, any additional license issued under this chapter in the name of said licensee may be
2 likewise revoked or suspended 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. Temporarily or permanently invalidating Automotive Repair Dealer Registration
7 Number ARD 252256, issued to Melony Dao, owner of North Fairview Test Only Center;

8 2. Temporarily or permanently invalidating any other automotive repair dealer
9 registration issued to Melony Dao;

10 3. Revoking or suspending Smog Check, Test Only, Station License Number
11 TC 252256, issued to Melony Dao, owner of North Fairview Test Only Center;

12 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
13 and Safety Code in the name of Melony Dao;

14 5. Revoking or suspending Advanced Emission Specialist Technician License Number
15 EA 144495, issued to Triet Hoang;

16 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
17 and Safety Code in the name of Triet Hoang;

18 7. Revoking or suspending Advanced Emission Specialist Technician License Number
19 EA 145639, issued to Khanh Hong-Trong Phan;

20 8. Revoking or suspending any additional license issued under Chapter 5 of the Health
21 and Safety Code in the name of Khanh Hong-Trong Phan;

22 9. Ordering Respondents Melony Dao, owner of North Fairview Test Only Center, Triet
23 Hoang and Khanh Hong-Trong Phan to pay the Bureau of Automotive Repair the reasonable
24 costs of the investigation and enforcement of this case, pursuant to Business and Professions
25 Code section 125.3;

26 ///

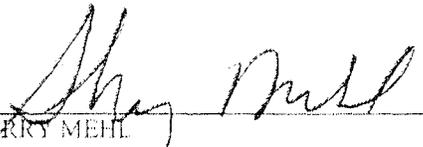
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10. Taking such other and further action as deemed necessary and proper.

DATED: 11/23/10


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

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