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

In the Matter of the Accusation Against: **NORTH FAIRVIEW TEST ONLY CENTER** **MELONY DAO, OWNER** **203 N. Fairview Street, #B1** **Santa Ana, CA 92703** **Automotive Repair Dealer Registration No. ARD 252256** **Smog Check Test Only Station License No. TC 252256** **and** **TRIET HOANG** **14801 Givens Place** **Westminster, CA 92683** **Advanced Emission Specialist Technician License No. EA 144495** **and** **KHANH HONG-TRONG PHAN** **4807 Keywood Lane** **Santa Ana, CA 92703** **Advanced Emission Specialist Technician License No. EA 145639** Respondents.	Case No. 79/10-11 OAH No. 2010010789 **DEFAULT DECISION AND ORDER AS TO KHANH HONG-TRONG PHAN ONLY** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 23, 2010, Complainant Sherry Mehl, in her official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed First Amended Accusation No. 79/10-11 against Khnanh Hong-Trong Phan (Respondent) before the Director of Consumer Affairs. (First Amended Accusation attached as Exhibit A.)

2. On or about January 1, 2002, the Bureau of Automotive Repair (Bureau) issued Advanced Emission Specialist Technician License No. EA 145639 to Respondent. The Advanced Emission Specialist Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 79/10-11 and will expire on March 31, 2012, unless renewed.

3. On or about December 8, 2010, Respondent was served by Certified and First Class Mail copies of First Amended Accusation No. 79/10-11, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 136, is required to be reported and maintained with the Bureau, which was and is: 4807 Keywood Lane, Santa Ana, CA 92703.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

5. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

6. Respondent failed to file a Notice of Defense within 15 days after service upon him of the First Amended Accusation, and therefore waived his right to a hearing on the merits of First Amended Accusation No. 79/10-11.

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7. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

8. Pursuant to its authority under Government Code section 11520, the Director, after having reviewed the proof of service dated December 8, 2010, signed by Elsa Valdez, an employee of the Department of Justice, finds Respondent is in default. The Director will take action without further hearing and, based on First Amended Accusation, No. 79/10-11, proof of service and on the Affidavit of Bureau Representative Salvador Arreola, finds that the allegations in the First Amended Accusation are true.

9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is $31,171.04 as of August 10, 2011.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Khnanh Hong-Trong Phan has subjected his Advanced Emission Specialist Technician License No. EA 145639 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Director of Consumer Affairs is authorized to revoke Respondent's Advanced Emission Specialist Technician License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the affidavit of Bureau Representative Salvador Arreola in this case.:

a. Respondent committed multiple violations of Health & Safety Code section 44072.2 in that a total of four vehicles were clean plugged by Respondent Khnanh Hong-Trong Phan between September 8, 2009 and February 18, 2010.

ORDER

IT IS SO ORDERED that Advanced Emission Specialist Technician License No. EA 145639, heretofore issued to Respondent Khanh Hong-Trong Phan, is revoked.

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Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The motion should be sent to the Bureau of Automotive Repair, ATTN: Tim Corcoran, 10235 Systems Parkway, Sacramento, CA 95827. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on 10/13/11.

It is so ORDERED September 7, 2011

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

80536924.DOC
DOJ Matter ID:SD2009310650

Attachment:
Exhibit A: Accusation

Exhibit A

First Amended Accusation

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

In the Matter of the Accusation Against: **NORTH FAIRVIEW TEST ONLY CENTER** **MELONY DAO, OWNER** **203 N. Fairview St., #B1** **Santa Ana, CA 92703** **Automotive Repair Dealer Reg. No. ARD 252256** **Smog Check, Test Only, Station License No. TC 252256** **and** **TRIET HOANG** **14801 Givens Place** **Westminster, CA 92683** **Advanced Emission Specialist Technician License No. EA 144495** **and** **KHANH HONG-TRONG PHAN** **4807 Keywood Lane** **Santa Ana, CA 92703** **Advanced Emission Specialist Technician License No. EA 145639** Respondents.	Case No. 79/10-11 **FIRST AMENDED ACCUSATION** **(Smog Check)**

Complainant alleges:

PARTIES

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

Automotive Repair Dealer Registration No. ARD 252256

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

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

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

Advanced Emission Specialist Technician License No. EA 144495

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

Advanced Emission Specialist Technician License No. EA 145639

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

JURISDICTION

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

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

8. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

9. Health & Saf. Code section 44072.6 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.

STATUTORY PROVISIONS

10. Bus. & Prof. Code section 9884.7 states, in pertinent part:

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
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> (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
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> . . . .
>
> (4) Any other conduct which constitutes fraud.
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> . . . .
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> (c) Notwithstanding subdivision (b), the director may refuse to validate, or may invalidate temporarily or permanently, the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

11. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee,"

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

12. Health & Saf. 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:
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> (a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.
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> . . . .
>
> (c) Violates any of the regulations adopted by the director pursuant to this chapter.
>
> (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured . . .

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

> . . . .
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> (c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:
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> . . . .
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> (4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter . . .

14. Health & Saf. 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.

COST RECOVERY

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

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

17. On February 3, 2009, a representative of the Bureau conducted a video surveillance operation of Respondent Dao's facility. The surveillance video and information obtained from the Bureau's VID revealed that Respondent Hoang issued electronic smog certificates of compliance on behalf of Respondent Dao, certifying that he had tested and inspected the vehicles identified below and that the vehicles were in compliance with applicable laws and regulations. In fact, Respondent Hoang failed to conduct the required EVAP test on three of the vehicles in that the LPFET equipment was not connected to the vehicles during the smog inspections, resulting in the issuance of fraudulent certificates of compliance for the vehicles. Further, the VID data showed that 2 gallons of N^2 was used for the EVAP test on each vehicle, which is the same amount of N^2 used in the facility's LPFET calibration tank. In addition, Respondent failed to perform the required functional fuel cap integrity test (pressure test of the gas cap) on any of the vehicles.

[1] An EVAP test is performed on 1995 and older vehicles. The EVAP test information is transmitted from the low pressure fuel evaporative tester (LPFET) to the databank, is stored by the vehicle's VIN (vehicle identification number), and is later down loaded to the VID and added to the vehicle's test history utilizing the VIN. The LPFET uses N^2 for calibration and to pressurize the vehicle's fuel evaporative system for testing. The amount of N^2 used to pressurize the fuel evaporative system 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 N^2. 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

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

THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

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

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

FOURTH CAUSE FOR DISCIPLINE

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

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

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

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b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of compliance for vehicles 1 through 4 and 6, identified in paragraph 17 above, even though those vehicles had not been inspected in accordance with section 3340.42.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1 through 6, identified in paragraph 17 above, in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

22. Respondent Dao's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 through 4 and 6, identified in paragraph 17 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

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

b. **Section 44059:** Respondent willfully made false entries in the Emission Inspection System ("EIS"), resulting in the issuance of fraudulent certificates of compliance for vehicles 1 through 4 and 6, identified in paragraph 17 above.

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SEVENTH CAUSE FOR DISCIPLINE

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

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

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

b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1 through 6, identified in paragraph 17 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1 through 6, identified in paragraph 17 above, in accordance with the Bureau's specifications.

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

25. Respondent Hoang's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 through 4 and 6, identified in paragraph 17 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

VIDEO SURVEILLANCE OPERATION OF FEBRUARY 4, 2009

26. On February 4, 2009, a representative of the Bureau conducted a video surveillance operation of Respondent Dao's facility. During the surveillance, an undercover operator with the Bureau, using the alias "Anthony Ruiz", took the Bureau's 1989 Dodge Dynasty to the facility and requested a smog inspection on the vehicle. The ignition timing on the Bureau-documented

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

27. 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:

a. Respondent Dao's technician, Respondent Hoang, certified that vehicles 1 and 2, identified in paragraph 26 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Hoang failed to perform the required EVAP and

functional fuel cap integrity tests on the vehicles and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

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

TENTH CAUSE FOR DISCIPLINE

(Fraud)

28. 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 committed acts which constitute fraud by issuing electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 26 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

ELEVENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

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

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

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TWELFTH CAUSE FOR DISCIPLINE

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

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

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

b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 26 above, even though those vehicles had not been inspected in accordance with section 3340.42.

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

THIRTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

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

FOURTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

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

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

FIFTEENTH CAUSE FOR DISCIPLINE

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

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

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

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

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

SIXTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

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

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

VID DATA REVIEW

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

36. On April 5, 2010, a representative of the Bureau conducted a detailed review of VID data for all smog inspections performed at Respondent's facility for the period of October 1, 2008 through March 31, 2010. The representative found that the four vehicles identified below recorded certain diagnostic trouble codes (hereinafter "code") during the OBD II tests[2]. The representative obtained information indicating that none of these codes were applicable to the vehicles. The VID data also showed that Respondent Phan performed the inspections on these four vehicles. The Bureau concluded that Respondent performed the smog inspections on the vehicles using a different vehicle(s) during the OBD II tests, a method known as "clean plugging",[3] resulting in the issuance of fraudulent certificates of compliance for the vehicles.

TEST TIME DATE	VEHICLE IN EIS DATA & LICENSE #	OBD II CODE	CERTIFICATE ISSUED	DETAILS
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
2/18/2010 16:33 – 16:59	1996 Nissan Quest	P1739	WH395864	Per OEM, Alldata and Mitchell information, OBD II code P1739 is not

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

[3] Clean-plugging is the use of the OBD-II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle 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
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
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

SEVENTEENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

37. 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 Phan, certified that the four vehicles identified in paragraph 36 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Phan conducted the inspections on the vehicles using clean-plugging methods in that he substituted or used a different vehicle(s) during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Fraud)

38. 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 committed acts which constitute fraud by issuing electronic smog certificates of compliance for the four vehicles identified in paragraph 36 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

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NINETEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

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

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

TWENTIETH CAUSE FOR DISCIPLINE

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

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

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

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

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

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TWENTY-FIRST CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

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

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

TWENTY-THIRD CAUSE FOR DISCIPLINE

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

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

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

b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the four vehicles identified in paragraph 36 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

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

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

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

OTHER MATTERS

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

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

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

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

suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

PRAYER

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

1. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number ARD 252256, issued to Melony Dao, owner of North Fairview Test Only Center;

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

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

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

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

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

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

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

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

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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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