

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

In the Matter of the Statement of Issues Against:

CHAU DUC NGUYEN

Respondent.

CASE No. 79/06-27S

OAH No. 2008080425

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517(c)(2)(C), the typographical error on page 6, first paragraph under "Order," of the Proposed Decision is corrected as follows:

The paragraph erroneously stated that the respondent shall be issued a Smog Check Station license. The respondent applied for a technician license, not a station license. Therefore, that paragraph is corrected to read:

"Respondent shall be issued a Smog Check Technician license and that license shall be revoked and the revocation stayed pending a five-year probationary period. During the probationary period, Respondent shall comply with the following terms and conditions of probation:"

This Decision shall become effective 5/26/09.

IT IS SO ORDERED this 17th day of April, 2009.



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

In the Matter of the Statement of Issues
Against:

CHAU DUC NGUYEN,

Respondent.

Case No. 79/06-27S

OAH No. 2008080425

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter at San Diego, California on October 20, 2008.

Ron Espinoza, Deputy Attorney General, Office of the Attorney General, State of California, represented complainant Sherry Mehl, Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, State of California.

Respondent Chau Duc Nguyen, represented himself and was present throughout the hearing.

The matter was submitted on October 20, 2008.

FACTUAL FINDINGS

Jurisdictional Matters

1. On December 19, 2008, Chau Duc Nguyen (respondent) filed an Application for Smog Check Technician License (application) with the Bureau of Automotive Repair (Bureau). On January 7, 2008, the Bureau notified respondent that his application had been denied. On January 16, 2008, respondent filed a request for a hearing. On July 28, 2008, complainant filed the statement of issues against respondent. Thereafter, required jurisdictional documents were served on respondent.

2. On October 20, 2008, the record in the administrative action was opened. Jurisdictional documents were presented, documentary evidence and sworn testimony were received, closing arguments were given, the record was closed, and the matter was submitted.

Prior License History

3. The Bureau previously issued Advanced Emission Specialist Technician License No. EA 147522 to respondent on September 12, 2003.

On February 1, 2006, the Bureau filed an accusation in Case No. 79/06-27 against respondent alleging he had "clean piped"¹ ten cars while working as a smog technician at Smog Test Only Center² between June and August 2005. Respondent entered into a stipulated settlement with the Bureau wherein the Bureau revoked his license and he agreed the Bureau "could establish a factual basis for the charges in the Accusation." The stipulation became effective October 2, 2006, and permitted respondent to re-apply for a license one year after the effective date.

Respondent's Testimony

4. Respondent admitted that he had "clean piped" the ten cars while working at Smog Test Only Center. He claimed the owner had no knowledge he had "clean piped" the cars and did not ask him to do it. Respondent testified that he was the sole smog check technician at Smog Test Only Center and did not want to lose his job or upset the customers if their vehicles failed the smog check tests, so, on his own, he "clean piped" the vehicles. Respondent took full responsibility for his past actions.

Much has changed in the two years since respondent lost his license. Respondent explained that since surrendering his license, he has become a United States citizen and that he now realizes the importance in a special way of following the laws of his country and wants to be a good citizen. Respondent testified that he previously "did not fully comprehend the consequences of pollution that automobiles can cause to the environment" and that now that he is a U.S. citizen, he has a "responsibility to protect the air of the United States and not to contribute to global warming."

Respondent also explained that his children are now five and three years old and he has come to realize the importance of protecting the air and being a role model to his children. Respondent testified that his young children make him realize the importance of clean air and the environment more so than he did in the past. Respondent testified that he now understands "that the environment is something to be protected even more than my own job."

Since his license was revoked, respondent has taken and passed all smog check courses required to apply for a license. He is currently employed as an auto mechanic and

¹ California Code of Regulations, title 16, section 3340.1, defines the term "clean piping" as using the sample of the exhaust emissions from one vehicle so as to cause a certificate of compliance to be issued for another vehicle.

² The owner of Smog Test Only Center was also charged in the Accusation but no evidence was introduced at hearing as to the outcome of the allegations against that individual.

his employer is aware of his license history. He desires to obtain his license again in order to "apply his understanding and experience to repair automobiles so as not to cause harmful effects in California and to provide clean air in California."

Respondent testified he had "made mistakes in the past" and described his "clean piping" as "the worst mistake I ever made in my life." Respondent testified that he had never been in trouble with the law prior to the "clean piping" and that he desires an opportunity to "do the work he likes to do and to make up for the mistakes he made in the past." Respondent testified that he can "only make an honest promise that he will never [clean pipe] again."

Argument

5. Complainant argued that respondent had not offered sufficient rehabilitation and that public protection requires he not be licensed at this time. In the alternative, complainant argued that respondent could be issued a probationary license.

Respondent expressed remorse for his prior acts and requested an opportunity to make up for his past mistakes.

LEGAL CONCLUSIONS

Jurisdiction

1. Business and Professions Code section 480 provides:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following"

...

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licensee of the business or profession would be grounds for suspension or revocation of the license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made."

2. Health and Safety Code section 44072.1 provides:

"The director may deny a license if the applicant, or any partner, officer, or director thereof, does any of the following:

(a) Fails to meet the qualifications established by the bureau pursuant to Articles 2 (commencing with Section 44010) and 3 (commencing with Section 44030) and the regulations adopted for the issuance of the license applied for.

(b) Was previously the holder of a license issued under this chapter, which license has been revoked and never reissued or which license was suspended and the terms of the suspension have not been fulfilled.

(c) Has committed any act which, if committed by any licensee, would be grounds for the suspension or revocation of a license issued pursuant to this chapter.

(d) Has committed any act involving dishonesty, fraud, or deceit whereby another is injured or whereby the applicant has benefited”

3. California Code of Regulations, title 16, section 3340.24 provides:

“(c) The bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance”

Duties of a Smog Technician

4. California Code of Regulations, title 16, section 3340.41 provides

“(c) No person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested”

Substantial Relationship Criteria

5. California Code of Regulations, title 16, section 3395.2 provides:

“A crime or act shall be considered to be substantially related to the qualifications, functions, or duties of a registrant if to a substantial degree it shows that the registrant is presently or potentially unfit to perform the functions authorized by the registration in a manner consistent with the public health, safety, or welfare”

Evidence of Rehabilitation

6. Business and Professions Code section 482 provides:

“Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.”

7. California Code of Regulations, title 16, section 3395 provides:

“(a) When considering the denial of a license or a registration under Section 480 of the Business and Professions Code, the bureau, in evaluating the rehabilitation of the applicant, will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) . . . under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) . . . referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

(c) When considering a petition for reinstatement of a license or a registration, the bureau shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in subsection (b).”

Evaluation

8. Respondent's fraudulent acts of “clean piping” ten vehicles were substantially related to the qualifications, functions, or duties of a smog technician. Respondent knowingly entered false information about these ten vehicles into the emission control

system. The issue for the bureau is whether or not respondent has demonstrated sufficient rehabilitation to warrant the issuance of a second license to him.

Respondent expressed sincere remorse for his actions and took full responsibility for them. In fact, although the accusation that previously led to the revocation of his license also named the shop owner as a participant in the fraud, respondent testified that he, alone, was to blame. He did not lay any of the blame at his former employer's feet, although he could have done so.

Respondent also credibly testified that being a father has altered his way of thinking. He now realizes that his children will inherit this planet and he must play a part in helping prevent pollution. It was evident from his testimony that fatherhood has made him more aware of the role smog checks play in global warming and pollution and he now fully appreciates the importance of accurate smog testing. His testimony regarding how fatherhood has taught him this in ways that his clean air classes did not was both credible and sincere. There are many intangible things that only parenthood can make one appreciate and it has resonated with respondent the role he plays.

Respondent's testimony regarding the importance he now feels to respecting the laws of the United States and insuring it has clean air and less pollution was also credible. Respondent expressed an awareness of the importance of being a good citizen and a role model to his family. While it is true that the acts which led to respondent's license being revoked were serious and substantial, there can be little doubt that obtaining his United States citizenship and having children have had a profound affect on him. Moreover, he has no prior criminal history and expressed sincere remorse for his prior actions. In short, the evidence did not demonstrate that issuing respondent a probationary license would endanger the public.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

ORDER

Respondent shall be issued a Smog Check Station license and that license shall be revoked and the revocation stayed pending a five-year probationary period. During the probationary period, Respondent shall comply with the following terms and conditions of probation.

1. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
2. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

3. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

4. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

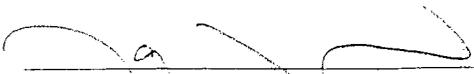
5. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

6. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard (temporarily or permanently invalidate the registration) (suspend or revoke the license).

7. If the accusation involves false and misleading advertising, during the period of probation, respondent shall submit any proposed advertising copy, whether revised or new, to the Bureau at least thirty (30) days prior to its use.

8. During the period of probation, respondent shall not perform any form of smog inspection, or emission system diagnosis or repair, until respondent has purchased, installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to properly perform such work, and BAR has been given ten days notice of the availability of the equipment for inspection by a BAR representative.

DATED: 11-7-09



MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 JAMES M. LEDAKIS
Supervising Deputy Attorney General

3 RON ESPINOZA, State Bar No. 176908
Deputy Attorney General

4 110 West "A" Street, Suite 1100
San Diego, CA 92101

5 P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2100
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

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

12 In the Matter of the Statement of Issues Against:

Case No. 79/06-27S

13 CHAU DUC NGUYEN
9101 Mays Ave.
14 Garden Grove, CA 92844

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Sherry Mehl (Complainant) brings this Statement of Issues solely in her
20 official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer
21 Affairs, State of California.

22 2. On or about January 2, 2008, the Bureau of Automotive Repair (Bureau)
23 received an application for an Advanced Emission Specialist Smog Check Technician License
24 from Chau Duc Nguyen (Respondent). On or about December 19, 2007, Respondent certified
25 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Bureau denied the application on January 7, 2008. On or about January 16,
27 2008, Respondent made a written request to the Bureau for a hearing on the denial of his license
28 application.

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7. Health and Safety Code section 44072.1 provides:

The director may deny a license if the applicant, or any partner, officer, or director thereof, does any of the following:

(b) Was previously the holder of a license issued under this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, § 44000, et seq.)], which license has been revoked and never reissued or which license was suspended and the terms of the suspension have not been fulfilled.

(c) Has committed any act which, if committed by any licensee, would be grounds for the suspension or revocation of a license issued pursuant to this chapter.

(d) Has committed any act involving dishonesty, fraud, or deceit whereby another is injured or whereby the applicant has benefitted.

8. Health and Safety Code section 44012 states:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas, and shall ensure all of the following:

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

(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

(e) For diesel-powered vehicles, if the department determines that the inclusion of those vehicles is technologically and economically feasible, a visual inspection is made of emission control devices and the vehicle's exhaust emissions in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. The test may include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

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

4 (g) A determination as to whether the motor vehicle complies with the emission
standards for that vehicle's class and model-year as prescribed by the department.

5 (h) The test procedures may authorize smog check stations to refuse the testing of
6 a vehicle that would be unsafe to test, or that cannot physically be inspected, as
7 specified by the department by regulation. The refusal to test a vehicle for those
reasons shall not excuse or exempt the vehicle from compliance with all
applicable requirements of this chapter.

8 9. Health and Safety Code section 44059 states:

9
10 The willful making of any false statement or entry with regard to a material matter
11 in any oath, affidavit, certificate of compliance or noncompliance, or application
12 form which is required by this chapter or Chapter 20.3 (commencing with Section
9880) of Division 3 of the Business and Professions Code, constitutes perjury and
is punishable as provided in the Penal Code.

13 10. California Code of Regulations (CCR), title 16, section 3340.24 states, in
14 pertinent part:

15
16 (c) The bureau may suspend or revoke the license of or pursue other legal action
17 against a licensee, if the licensee falsely or fraudulently issues or obtains a
certificate of compliance or a certificate of noncompliance.

18
19 11. CCR, title 16, section 3340.30 states, in pertinent part:

20 A smog check technician shall comply with the following requirements at all
21 times while licensed.

22 (a) A licensed technician shall inspect, test and repair vehicles in accordance with
23 section 44012 of the Health and Safety Code, section 44035 of the Health and
24 Safety Code, and section 3340.42 of this article.

25 12. CCR, title 16, section 3340.41 states, in pertinent part:

26
27 (c) No person shall enter into the emissions inspection system any vehicle
28 identification information or emission control system identification data for any
vehicle other than the one being tested. Nor shall any person knowingly enter into

1 the emissions inspection system any false information about the vehicle being
2 tested.

3
4 13. CCR, title 16, section 3395 states, in pertinent part:

5 (a) When considering the denial of a license or a registration under Section 480 of
6 the Business and Professions Code, the bureau, in evaluating the rehabilitation of
7 the applicant, will consider the following criteria:

8 (1) The nature and severity of the act(s) or crime(s) under consideration as
9 grounds for denial.

10 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
11 consideration as grounds for denial which also could be considered as grounds for
12 denial under Section 480 of the Business and Professions Code.

13 (3) The time that has elapsed since commission of the act(s) or crime(s) referred
14 to in subdivision (1) or (2).

15 (4) The extent to which the applicant has complied with any terms of parole,
16 probation, restitution, or any other sanctions lawfully imposed against the applicant.

17 (5) Evidence, if any, of rehabilitation submitted by the applicant.
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23 14. CCR, title 16, section 3395.2 states:

24 A crime or act shall be considered to be substantially related to the qualifications,
25 functions, or duties of a registrant if to a substantial degree it shows that the
26 registrant is presently or potentially unfit to perform the functions authorized by
27 the registration in a manner consistent with the public health, safety, or welfare.
28 Such crimes or acts shall include, but not be limited to, any violation of the
provisions of Article 3 of Chapter 20.3 of Division 3 of the Business and
Professions Code.

STATEMENT OF FACTS

23 15. Respondent Chau Duc Nguyen was previously licensed by the Bureau as a
24 smog check technician. The Bureau originally issued Advanced Emission Specialist Technician
25 License No. EA 147522 to Respondent Nguyen on or about September 12, 2003. On February 1,
26 2006, an Accusation (Case No. 79/06-27) was filed against Respondent alleging, *inter alia*, fraud

1 when Respondent "clean-piped"¹ 10 cars while working as a smog technician at a facility called
2 Smog Test Only Center, the smog check station of Respondent's former employer, Hien Nguyen,
3 located in Garden Grove, California. The circumstances are as follows:

4 SURVEILLANCE OPERATION OF JUNE 30, 2005

5 16. On June 30, 2005, a representative of the Bureau conducted a surveillance
6 operation at Smog Test Only Center. The Bureau determined through the surveillance operation
7 and information obtained from the Emission Inspection System ("EIS") and the Bureau's Vehicle
8 Information Database ("VID") that Respondent Chau Nguyen issued electronic smog certificates
9 of compliance, certifying that he had tested and inspected the vehicles identified below, and that
10 the vehicles were in compliance with applicable laws and regulations. In fact, Respondent Chau
11 Nguyen conducted the inspections using clean-piping methods, resulting in the issuance of
12 fraudulent certificates of compliance for the following vehicles:

13 Time of Smog	Vehicle Certified	Certificate No.	Vehicle(s) Actually
14 Inspection			Tested
15 1. 09:00 - 09:34	1996 Chevrolet S10; License #6W65438	FW047138C	Minivan
16 2. 10:04 - 10:37	1991 Geo Metro; License #4LBB914	FW047139C	1997 Chevrolet 17 Cavalier

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19 SURVEILLANCE OPERATION OF JULY 14, 2005

20 17. On July 14, 2005, a representative of the Bureau conducted a surveillance
21 operation at Smog Test Only Center. The Bureau determined through the surveillance operation
22 and information obtained from the EIS and the Bureau's VID that Respondent issued electronic
23 smog certificates of compliance, certifying that he had tested and inspected the vehicles
24 identified below, and that the vehicles were in compliance with applicable laws and regulations.
25 In fact, Respondent Chau Nguyen conducted the inspections using clean-piping methods,
26

27
28 ¹ California Code of Regulations, title 16, section 3340.1, defines the term "clean piping," for purposes of
Health and Safety Code section 44072.10, subdivision (c)(1), to mean the use of a sample of the exhaust
emissions of one vehicle in order to cause the TAS or EIS to issue a certificate of compliance for another vehicle.

1 resulting in the issuance of fraudulent certificates of compliance for the following vehicles:

2	3	4	5	6
Time of Smog Inspection	Vehicle Certified	Certificate No.	Vehicle(s) Actually Tested	
3. 10:10 - 10:39	1986 Toyota Corolla; License #ISDE239	FW487358C	Nissan Altima	
4. 12:28 - 12:52	1997 Chrysler Town & Country; no plates	FW487361C	Nissan Altima	
5. 14:53 - 15:10	1985 Chevrolet S10; License #5GYX062	FW487365C	Mercedes Benz	

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10 SURVEILLANCE OPERATION OF AUGUST 24, 2005

11 18. On August 24, 2005, a representative of the Bureau conducted a
12 surveillance operation at Smog Test Only Center. The Bureau determined through the
13 surveillance operation and information obtained from the EIS and the Bureau's VID that
14 Respondent issued electronic smog certificates of compliance, certifying that he had tested and
15 inspected the vehicles identified below, and that the vehicles were in compliance with applicable
16 laws and regulations. In fact, Respondent Chau Nguyen conducted the inspections using clean-
17 piping methods, resulting in the issuance of fraudulent certificates of compliance for the
18 following vehicles:

19	20	21	22	23
Time of Smog Inspection	Vehicle Certified	Certificate No.	Vehicle(s) Actually Tested	
6. 11:52 - 12:38	1997 Ford Escort; no plates	FX515812C	Toyota pickup; License #5D57456	
7. 12:43 - 13:02	1992 Toyota pickup; License #7C40125	FX515813C	Toyota pickup; License #5D57456	
8. 14:25 - 15:03	1993 Toyota Camry; License #3WID805	FX515815C	Toyota pickup; License #5D57456	

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1 SURVEILLANCE OPERATION OF AUGUST 31, 2005

2 19. On August 31, 2005, a representative of the Bureau conducted a
3 surveillance operation at Smog Test Only Center, the smog check station of Respondent's former
4 employer, Hien Nguyen, located in Garden Grove, California. The Bureau determined through
5 the surveillance operation and information obtained from the EIS and the Bureau's VID that
6 Respondent issued electronic smog certificates of compliance, certifying that he had tested and
7 inspected the vehicles identified below, and that the vehicles were in compliance with applicable
8 laws and regulations. In fact, Respondent Chau Nguyen conducted the inspections using clean-
9 piping methods, resulting in the issuance of fraudulent certificates of compliance for the
10 following vehicles:

11 Time of Smog	Vehicle Certified	Certificate No.	Vehicle(s) Actually
12 Inspection			Tested
13 9. 11:27 - 11:55	1986 Toyota MR2; License #4VPF180	FX685869C	Mitsubishi truck
14 10.12:00 - 12:25	1992 Mitsubishi Diamante; License #2XME720	FX685870C	Minivan

15
16 20. On August 28, 2006, Respondent Chau Nguyen's smog check technician
17 license was revoked by the Bureau pursuant to a stipulated settlement on the Accusation. The
18 owner of Smog Test Only Center, Hien Nguyen, also stipulated to revocation of his Automotive
19 Repair Dealer Registration (No. AB209495) and Smog Check Station License (No. TB 209495)
20 in regard to the Accusation.

21 21. Approximately one year and 4 months after having his license revoked by
22 the Bureau (under the stipulated settlement, Respondent was required to wait at least one year
23 before re-applying), Respondent filed the instant application for a smog check technician license.

24 FIRST CAUSE FOR DENIAL OF APPLICATION

25 (Committed Acts Involving Dishonesty, Fraud or Deceit)

26 22. Respondent's application is subject to denial under Business and
27 Professions Code section 480, subdivision (a)(2), in that Respondent committed acts involving
28 dishonesty, fraud and deceit, with the intent to substantially benefit himself or another, or

1 substantially injure another, when he clean-piped vehicles 1-10 identified above, without
2 performing bona fide inspections of the emission control devices and systems on the vehicles,
3 thereby depriving the People of the State of California of the protection afforded by the Motor
4 Vehicle Inspection Program.

5 **SECOND CAUSE FOR DENIAL OF APPLICATION**

6 **(Committed Acts Involving Dishonesty, Fraud or Deceit)**

7 23. Respondent's application is subject to denial under Health and Safety Code
8 section 44072.1, subdivision (d), in that Respondent committed acts involving dishonesty, fraud
9 and deceit, whereby another was injured, when he clean-piped vehicles 1-10 identified above,
10 without performing bona fide inspections of the emission control devices and systems on the
11 vehicles, thereby depriving the People of the State of California of the protection afforded by the
12 Motor Vehicle Inspection Program.

13 **THIRD CAUSE FOR DENIAL OF APPLICATION**

14 **(Committed Acts Which Are Grounds for License Revocation)**

15 24. Respondent's application is subject to denial under Business and
16 Professions Code section 480, subdivision (a)(3), and Health and Safety Code section 44072.1,
17 subdivision (c), in that Respondent has committed acts which, if done by a licentiate of the
18 profession, would be grounds for suspension or revocation of a license as follows:

19 a. Respondent violated the provisions of Health and Safety Code section
20 44012 when he failed to perform emission control tests on vehicles 1-10 identified above, in
21 accordance with procedures prescribed by the Department.

22 b. Respondent violated the provisions of Health and Safety Code section
23 44059 when he willfully made false entries in order to issue electronic smog certificates of
24 compliance for vehicles 1-10 identified above.

25 c. Respondent violated the provisions of California Code of Regulations, title
26 16, section 3340.24, subdivision (c), in that he falsely or fraudulently issued electronic smog
27 certificates of compliance for vehicles 1-10 identified above.

1 d. Respondent violated the provisions of California Code of Regulations, title
2 16, section 3340.30, subdivision (a), in that he failed to inspect and test vehicles 1-10, identified
3 above, in accordance with Health & Safety Code sections 44012 and 44035, and California Code
4 of Regulations, title 16, section 3340.42.

5 e. Respondent violated the provisions of California Code of Regulations, title
6 16, section 3340.41, subdivision (c), in that he entered false information into the EIS unit by
7 entering vehicle identification information or emission control system identification data for
8 vehicles other than the ones being tested (vehicles 1-10 identified above).

9 FOURTH CAUSE FOR DENIAL OF APPLICATION

10 (Previously Revoked License Holder)

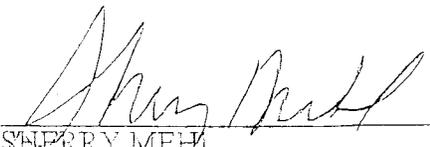
11 25. Respondent's application is subject to denial under Health and Safety Code
12 section 44072.1, subdivision (b), in that Respondent was previously the holder of a license
13 (Advanced Emission Specialist Technician License No. EA 147522) issued by the Bureau under
14 the Motor Vehicle Inspection Program (Health and Saf. Code, § 44000, et seq.), which license
15 has been revoked and never reissued.

16 PRAYER

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

- 19 1. Denying the application of Chau Duc Nguyen for an Advanced Emission
20 Specialist Smog Check Technician License;
- 21 2. Taking such other and further action as deemed necessary and proper.

22 DATED: 7/28/08

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