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*Attorneys for Complainant*

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

11  
12 In the Matter of the Accusation and Petition to  
Revoke Probation Against:

Case No. 79/12-23

13 **JAMES NGUYEN, AKA**  
14 **CHAU DUC NGUYEN**  
9101 Mays Avenue  
15 Garden Grove, CA 92844  
Advanced Emission Specialist License No.  
16 EA 147522

**ACCUSATION AND PETITION TO  
REVOKE PROBATION**  
**SMOG CHECK**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Sherry Mehl ("Complainant") brings this Accusation and Petition to Revoke  
22 Probation solely in her official capacity as the Chief of the Bureau of Automotive Repair  
23 ("Bureau"), Department of Consumer Affairs.

24 **Advanced Emission Specialist Technician License**

25 2. On a date uncertain in 2003, the Bureau issued Advanced Emission Specialist License  
26 Number EA 147522 ("technician license") to James Nguyen, also known as Chau Duc Nguyen  
27 ("Respondent"). The Advanced Emission Specialist License was in full force and effect at all  
28 times relevant to the charges brought herein and will expire on April 30, 2013, unless renewed.



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

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

4 9. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
5 expiration or suspension of a license by operation of law, or by order or decision of the Director  
6 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive  
7 the Director of jurisdiction to proceed with disciplinary action.

8 10. Section 44072.8 of the Health and Safety Code states:

9 "When a license has been revoked or suspended following a hearing under this article, any  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

12 **COST RECOVERY**

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

17 **UNDERCOVER OPERATION FEBRUARY 16, 2011**

18 12. On or about February 16, 2011, a Bureau undercover operator ("operator") drove a  
19 Bureau-documented 1991 Toyota truck to DL & A Smog Check Auto Repair, located at 10151  
20 Garden Grove Boulevard, Garden Grove, California, for a smog inspection. The vehicle could  
21 not pass the visual portion of the smog inspection because the vehicle's pulse air injection system  
22 was missing. The operator signed and received a copy of the work order. Respondent completed  
23 the smog inspection and issued electronic Certificate of Compliance No. WR870918, certifying  
24 that he had tested and inspected that vehicle and that the vehicle was in compliance with  
25 applicable laws and regulations. The operator paid \$45 for the smog inspection and received a  
26 copy of Invoice No. 00204176 and the Vehicle Inspection Report.

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1 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the  
2 Emission Inspection System for electronic Certificate of Compliance No. WR870918 by entering  
3 "Pass" for the air injection system. In fact, the vehicle's pulse air injection system was missing.

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

6 **THIRD CAUSE FOR DISCIPLINE**

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

8 15. Respondent has subjected his technician license to discipline under Health and Safety  
9 Code section 44072.2, subdivision (d), in that on or about February 16, 2011, he committed acts  
10 involving dishonesty, fraud or deceit whereby another was injured by issuing electronic  
11 Certificate of Compliance No. WR870918 for the 1991 Toyota truck without performing a bona  
12 fide inspection of the emission control devices and systems on that vehicle, thereby depriving the  
13 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
14 Program.

15 **PETITION TO REVOKE PROBATION**

16 16. The allegations of paragraphs 1 through 15 of the accusation above are incorporated  
17 herein by reference as though fully set forth and are realleged.

18 17. Grounds exist to revoke the probation and reimpose the order of revocation of  
19 Respondent's Advanced Emission Specialist Technician License No. EA 147522, in that  
20 Respondent failed to comply with all statutes, regulations, and rules governing estimates and  
21 inspections as required by **Term 1** of the terms of the probation under Decision and Order, Case  
22 No. 79/06-27S, as set forth in paragraphs 12 through 15 of the accusation above.

23 **OTHER MATTERS**

24 18. Under section 44072.8 of the Health and Safety Code, if Advanced Emission  
25 Specialist Technician License No. EA 147522, issued to James Nguyen, also known as Chau Duc  
26 Nguyen, is revoked or suspended, any additional license issued under this chapter in the name of  
27 said licensee may be likewise revoked or suspended by the director.

28

1 PRAYER

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

4 1. Vacating the stay and reimposing the order of revocation of Advanced Emission  
5 Specialist Technician License Number EA 147522, issued to James Nguyen, also known as Chau  
6 Duc Nguyen;

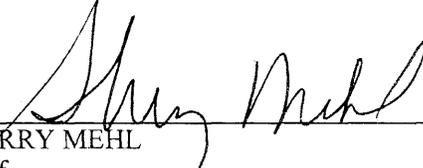
7 2. Revoking or suspending any additional license issued under Chapter 5 of the Health  
8 and Safety Code in the name of James Nguyen, also known as Chau Duc Nguyen;

9 3. Ordering James Nguyen, also known as Chau Duc Nguyen to pay the Bureau of  
10 Automotive Repair the reasonable costs of the investigation and enforcement of this case,  
11 pursuant to Business and Professions Code section 125.3; and,

12 4. Taking such other and further action as deemed necessary and proper.

13  
14  
15 DATED: \_\_\_\_\_

9/7/11

16   
17 SHERRY MEHL  
18 Chief  
19 Bureau of Automotive Repair  
20 Department of Consumer Affairs  
21 State of California  
22 Complainant

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

In the Matter of the Accusation Against: )

SMOG TEST ONLY CENTER )  
HIEN H. NGUYEN )  
aka HIEN HUU NGUYAN, Owner )  
13052 Century Boulevard, #A )  
Garden Grove, CA 92843 )  
Automotive Repair Dealer Registration )  
No. AB 209495 )  
Smog Check Station License No. TB 209495 )

Case No. 79/06-27

OAH No. L 2006030834

and )

CHAU DUC NGUYEN )  
9101 Mays Avenue )  
Garden Grove, CA 92844 )  
Advanced Emission Specialist Technician )  
License No. EA 147522 )

Respondents. )

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter only as to respondent Chau Duc Nguyen, Advanced Emission Specialist Technician License No. EA 147522.

This Decision shall become effective October 2, 2006.

DATED: August 28, 2006

  
\_\_\_\_\_  
DOREATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

1 BILL LOCKYER, Attorney General  
of the State of California  
2 JAMES M. LEDAKIS, State Bar No. 132645  
Deputy Attorney General  
3 California Department of Justice  
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8 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

12 **SMOG TEST ONLY CENTER, HIEN H.**  
13 **NGUYEN aka HIEN HUU NGUYAN, Owner**  
14 13052 Century Boulevard, #A  
Garden Grove, CA 92843

15 Automotive Repair Dealer Registration No. AB  
209495 and Smog Check Station License No. TB  
16 209495,

17 **CHAU DUC NGUYEN**  
18 9101 Mays Avenue  
Garden Grove, CA 92844

19 Advanced Emission Specialist Tech. License No.  
20 EA 147522.

Respondent.

Case No. 79/06-27

OAH No. L 2006030834

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

21  
22 IT IS HEREBY STIPULATED AND AGREED by and between the Bureau of  
23 Automotive Repair and Chau Duc Nguyen only, that the following matters are true:

24 **PARTIES**

25 1. Richard Ross (Complainant) is the Bureau Chief of the Bureau of  
26 Automotive Repair (I/M Smog). He brought this action solely in his official capacity and is  
27 represented in this matter by Bill Lockyer, Attorney General of the State of California, by James  
28 M. Ledakis, Deputy Attorney General.





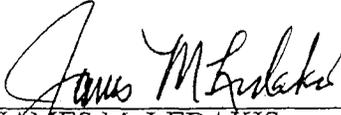
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ENDORSEMENT

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

DATED: July 7, 2006

BILL LOCKYER, Attorney General  
of the State of California

  
\_\_\_\_\_  
JAMES M. LEDAKIS  
Deputy Attorney General  
Attorneys for Complainant

DOJ Matter ID: SD2005800433  
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of the State of California  
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7 Attorneys for Complainant  
8

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

12 In the Matter of the Accusation Against:  
13 **SMOG TEST ONLY CENTER**  
**HIEN H. NGUYEN**  
14 aka **HIEN HUU NGUYAN**, Owner  
13052 Century Boulevard, #A  
15 Garden Grove, CA 92843  
Automotive Repair Dealer Reg. No. AB 209495  
16 Smog Check (Test Only)  
Station License No. TB 209495  
17  
and  
18 **CHAU DUC NGUYEN**  
19 9101 Mays Avenue  
Garden Grove, CA 92844  
20 Advanced Emission Specialist Technician  
License No. EA 147522  
21  
Respondent.

Case No. 79/06-27

**ACCUSATION**  
(Smog Check)

22  
23 Complainant alleges:

24 **PARTIES**

25  
26 1. Richard Ross ("Complainant") brings this Accusation solely in his official  
27 capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer  
28 Affairs.

1                                   **Automotive Repair Dealer Reg. No. AB 209495**

2                   2.       On or about June 21, 2000, the Director of Consumer Affairs ("Director")  
3 issued Automotive Repair Dealer Registration Number AB 209495 to Hien H. Nguyen, also  
4 known as Hien Huu Nguyen ("Respondent Hien Nguyen"), owner of Smog Test Only Center.  
5 Respondent's automotive repair dealer registration was in full force and effect at all times  
6 relevant to the charges brought herein and will expire on February 28, 2006, unless renewed.

7                                   **Smog Check (Test Only) Station License No. TB 209495**

8                   3.       On or about July 7, 2000, the Director issued Smog Check (Test Only)  
9 Station License Number TB 209495 to Respondent Hien Nguyen. Respondent's smog check  
10 station license was in full force and effect at all times relevant to the charges brought herein and  
11 will expire on February 28, 2006, unless renewed.

12                                   **Advanced Emission Specialist Technician License No. EA 147522**

13                   4.       On or about September 12, 2003, the Director issued Advanced Emission  
14 Specialist Technician License Number EA 147522 to Chau Duc Nguyen ("Respondent Chau  
15 Nguyen"). Respondent's advanced emission specialist technician license was in full force and  
16 effect at all times relevant to the charges brought herein and will expire on April 30, 2007, unless  
17 renewed.

18                                   **JURISDICTION**

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

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

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

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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 . . .

12. 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

13. 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.

SURVEILLANCE OPERATION OF JUNE 30, 2005

14. On June 30, 2005, a representative of the Bureau conducted a surveillance operation at Respondent Hien Nguyen's smog check station located in Garden Grove, California. The Bureau determined through the surveillance operation and information obtained from the Emission Inspection System ("EIS") and the Bureau's Vehicle Information Database ("VID") that Respondent Chau Nguyen issued electronic smog certificates of compliance on behalf of Respondent Hien Nguyen, 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 Chau Nguyen conducted the inspections using clean-piping methods<sup>1</sup>, resulting in the issuance of fraudulent certificates of compliance for the vehicles.

Time of Smog Inspection	Vehicle Certified	Certificate No.	Vehicle(s) Actually Tested
1. 09:00 - 09:34	1996 Chevrolet S10 Blazer; License #6W65438	FW047138C	Minivan

1. Pursuant to California Code of Regulations, title 16, section 3340.1, "clean piping" means the use of a sample of the exhaust emissions of one vehicle in order to cause the Test Analyzer System or EIS to issue a certificate of compliance for another vehicle.

Time of Smog Inspection	Vehicle Certified	Certificate No.	Vehicle(s) Actually Tested
2. 10:04 - 10:37	1991 Geo Metro; License #4LBB914	FW047139C	1997 Chevrolet Cavalier

**FIRST CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

15. Respondent Hien Nguyen'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 statements which he knew, or in the exercise of reasonable care, should have known to be untrue or misleading. Respondent certified that vehicles 1 and 2, identified in paragraph 14 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Chau Nguyen used clean-piping methods in order to issue certificates for the vehicles and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

**SECOND CAUSE FOR DISCIPLINE**

**(Fraud)**

16. Respondent Hien Nguyen'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 14 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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1 c. Section 3340.41, subdivision (c): Respondent entered false information  
2 into the EIS unit by entering vehicle identification information or emission  
3 control system identification data for vehicles other than the ones being  
4 tested.

5 d. Section 3340.42: Respondent failed to conduct the required smog tests on  
6 vehicles 1 and 2, identified in paragraph 14 above, in accordance with the  
7 Bureau's specifications.

8 **FIFTH CAUSE FOR DISCIPLINE**

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

10 19. Respondent Hien Nguyen's smog check station license is subject to  
11 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that  
12 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by  
13 issuing electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 14  
14 above, without performing bona fide inspections of the emission control devices and systems on  
15 the vehicles, thereby depriving the People of the State of California of the protection afforded by  
16 the Motor Vehicle Inspection Program.

17 **SIXTH CAUSE FOR DISCIPLINE**

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

19 20. Respondent Chau Nguyen's advanced emission specialist technician  
20 license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2,  
21 subdivision (a), in that Respondent failed to comply with the following sections of that Code:

22 a. Section 44012: Respondent failed to perform emission control tests on  
23 vehicles 1 and 2, identified in paragraph 14 above, in accordance with  
24 procedures prescribed by the department.

25 b. Section 44059: Respondent willfully made false entries in order to issue  
26 electronic smog certificates of compliance for vehicles 1 and 2, identified  
27 in paragraph 14 above.



1 control devices and systems on the vehicles, thereby depriving the People of the State of  
2 California of the protection afforded by the Motor Vehicle Inspection Program.

3 **SURVEILLANCE OPERATION OF JULY 14, 2005**

4 23. On July 14, 2005, a representative of the Bureau conducted a surveillance  
5 operation at Respondent Hien Nguyen's smog check station located in Garden Grove, California.  
6 The Bureau determined through the surveillance operation and information obtained from the  
7 EIS and the Bureau's VID that Respondent Chau Nguyen issued electronic smog certificates of  
8 compliance on behalf of Respondent Hien Nguyen, certifying that he had tested and inspected the  
9 vehicles identified below and that the vehicles were in compliance with applicable laws and  
10 regulations. In fact, Respondent Chau Nguyen conducted the inspections using clean-piping  
11 methods, resulting in the issuance of fraudulent certificates of compliance for the vehicles.

12

13 Time of Smog Inspection	Vehicle Certified	Certificate No.	Vehicle(s) Actually Tested
14 1. 10:10 - 10:39	1986 Toyota Corolla; License #1SDE239	FW487358C	Nissan Altima
15 2. 12:28 - 12:52	1997 Chrysler Town & Country; no plates	FW487361C	Nissan Altima
16 3. 14:53 - 15:10	1985 Chevrolet S10 Blazer; License #5GYX062	FW487365C	Mercedes Benz

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19 **NINTH CAUSE FOR DISCIPLINE**

20 **(Untrue or Misleading Statements)**

21 24. Respondent Hien Nguyen's automotive repair dealer registration is subject  
22 to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that  
23 Respondent made statements which he knew, or in the exercise of reasonable care, should have  
24 known to be untrue or misleading. Respondent Hien Nguyen certified that vehicles 1 through 3,  
25 identified in paragraph 23 above, had passed inspection and were in compliance with applicable  
26 laws and regulations. In fact, Respondent Chau Nguyen used clean-piping methods in order to  
27 issue certificates for the vehicles and did not test or inspect the vehicles as required by Health &  
28 Saf. Code section 44012.

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**TENTH CAUSE FOR DISCIPLINE**

**(Fraud)**

25. Respondent Hien Nguyen'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 3, identified in paragraph 23 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)**

26. Respondent Hien Nguyen's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with the following sections of that Code:

- a. **Section 44012:** Respondent failed to perform emission control tests on vehicles 1 through 3, identified in paragraph 23 above, in accordance with procedures prescribed by the department.
- b. **Section 44015:** Respondent issued electronic smog certificates of compliance for vehicles 1 through 3, identified in paragraph 23 above, without properly testing and inspecting the vehicles to determine if they were in compliance with Health & Saf. Code section 44012.
- c. **Section 44059:** Respondent willfully made false entries in order to issue electronic smog certificates of compliance for vehicles 1 through 3, identified in paragraph 23 above.

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1 TWELFTH CAUSE FOR DISCIPLINE

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

4 27. Respondent Hien Nguyen's smog check station license is subject to  
5 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he  
6 failed to comply with the following sections of California Code of Regulations, title 16:

- 7 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently  
8 issued electronic smog certificates of compliance for vehicles 1 through 3,  
9 identified in paragraph 23 above.
- 10 b. Section 3340.35, subdivision (c): Respondent issued electronic smog  
11 certificates of compliance for vehicles 1 through 3, identified in paragraph  
12 23 above, even though those vehicles had not been inspected in  
13 accordance with California Code of Regulations, title 16, section 3340.42.
- 14 c. Section 3340.41, subdivision (c): Respondent entered false information  
15 into the EIS unit by entering vehicle identification information or emission  
16 control system identification data for vehicles other than the ones being  
17 tested.
- 18 d. Section 3340.42: Respondent failed to conduct the required smog tests on  
19 vehicles 1 through 3, identified in paragraph 23 above, in accordance with  
20 the Bureau's specifications.

21 THIRTEENTH CAUSE FOR DISCIPLINE

22 (Dishonesty, Fraud or Deceit)

23 28. Respondent Hien Nguyen's smog check station license is subject to  
24 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that  
25 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by  
26 issuing electronic smog certificates of compliance for vehicles 1 through 3, identified in  
27 paragraph 23 above, without performing bona fide inspections of the emission control devices

1 and systems on the vehicles, thereby depriving the People of the State of California of the  
2 protection afforded by the Motor Vehicle Inspection Program.

3 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

5 29. Respondent Chau Nguyen's advanced emission specialist technician  
6 license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2,  
7 subdivision (a), in that Respondent failed to comply with the following sections of that Code:

- 8 a. **Section 44012:** Respondent failed to perform emission control tests on  
9 vehicles 1 through 3, identified in paragraph 23 above, in accordance with  
10 procedures prescribed by the department.  
11 b. **Section 44059:** Respondent willfully made false entries in order to issue  
12 electronic smog certificates of compliance for vehicles 1 through 3,  
13 identified in paragraph 23 above.

14 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

17 30. Respondent Chau Nguyen's advanced emission specialist technician  
18 license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2,  
19 subdivision (c), in that Respondent failed to comply with the following sections of California  
20 Code of Regulations, title 16:

- 21 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently  
22 issued electronic smog certificates of compliance for vehicles 1 through 3,  
23 identified in paragraph 23 above.  
24 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test  
25 vehicles 1 through 3, identified in paragraph 23 above, in accordance with  
26 Health & Saf. Code sections 44012 and 44035, and California Code of  
27 Regulations, title 16, section 3340.42.

1 c. Section 3340.41, subdivision (c): Respondent entered false  
2 information into the EIS unit by entering vehicle identification  
3 information or emission control system identification data for vehicles  
4 other than the ones being tested.

5 d. Section 3340.42: Respondent failed to conduct the required smog tests on  
6 vehicles 1 through 3, identified in paragraph 23 above, in accordance with  
7 the Bureau's specifications.

8 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

10 31. Respondent Chau Nguyen's advanced emission specialist technician  
11 license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2,  
12 subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby  
13 another is injured by issuing electronic smog certificates of compliance for vehicles 1 through 3,  
14 identified in paragraph 23 above, without performing bona fide inspections of the emission  
15 control devices and systems on the vehicles, thereby depriving the People of the State of  
16 California of the protection afforded by the Motor Vehicle Inspection Program.

17 **SURVEILLANCE OPERATION OF AUGUST 24, 2005**

18 32. On August 24, 2005, a representative of the Bureau conducted a  
19 surveillance operation at Respondent Hien Nguyen's smog check station located in Garden  
20 Grove, California. The Bureau determined through the surveillance operation and information  
21 obtained from the EIS and the Bureau's VID that Respondent Chau Nguyen issued electronic  
22 smog certificates of compliance on behalf of Respondent Hien Nguyen, certifying that he had  
23 tested and inspected the vehicles identified below and that the vehicles were in compliance with  
24 applicable laws and regulations. In fact, Respondent Chau Nguyen conducted the inspections  
25 using clean-piping methods, resulting in the issuance of fraudulent certificates of compliance for  
26 the vehicles.

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Time of Smog Inspection	Vehicle Certified	Certificate No.	Vehicle(s) Actually Tested
1. 11:52 - 12:38	1997 Ford Escort; no plates	FX515812C	Toyota pickup; License #5D57456
2. 12:43 - 13:02	1992 Toyota pickup; License #7C40125	FX515813C	Toyota pickup; License #5D57456
3. 14:25 - 15:03	1993 Toyota Camry; License #3WID805	FX515815C	Toyota pickup; License #5D57456

**SEVENTEENTH CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

33. Respondent Hien Nguyen'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 statements which he knew, or in the exercise of reasonable care, should have known to be untrue or misleading. Respondent Hien Nguyen certified that vehicles 1 through 3, identified in paragraph 32 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Chau Nguyen used clean-piping methods in order to issue certificates for the vehicles and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

**EIGHTEENTH CAUSE FOR DISCIPLINE**

**(Fraud)**

34. Respondent Hien Nguyen'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 3, identified in paragraph 32 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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1 NINETEENTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 35. Respondent Hien Nguyen's smog check station license is subject to  
4 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he  
5 failed to comply with the following sections of that Code:

- 6 a. Section 44012: Respondent failed to perform emission control tests on  
7 vehicles 1 through 3, identified in paragraph 32 above, in accordance with  
8 procedures prescribed by the department.
- 9 b. Section 44015: Respondent issued electronic smog certificates of  
10 compliance for 1 through 3, identified in paragraph 32 above, without  
11 properly testing and inspecting the vehicles to determine if they were in  
12 compliance with Health & Saf. Code section 44012.
- 13 c. Section 44059: Respondent willfully made false entries in order to issue  
14 electronic smog certificates of compliance for vehicles 1 through 3,  
15 identified in paragraph 32 above.

16 TWENTIETH CAUSE FOR DISCIPLINE

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

19 36. Respondent Hien Nguyen's smog check station license is subject to  
20 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he  
21 failed to comply with the following sections of California Code of Regulations, title 16:

- 22 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently  
23 issued electronic smog certificates of compliance for vehicles 1 through 3,  
24 identified in paragraph 32 above.
- 25 b. Section 3340.35, subdivision (c): Respondent issued electronic smog  
26 certificates of compliance for vehicles 1 through 3, identified in paragraph  
27 32 above, even though those vehicles had not been inspected in  
28 accordance with California Code of Regulations, title 16, section 3340.42.

1 c. Section 3340.41, subdivision (c): Respondent entered false information  
2 into the EIS unit by entering vehicle identification information or emission  
3 control system identification data for vehicles other than the ones being  
4 tested.

5 d. Section 3340.42: Respondent failed to conduct the required smog tests on  
6 vehicles 1 through 3, identified in paragraph 32 above, in accordance with  
7 the Bureau's specifications.

8 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

10 37. Respondent Hien Nguyen's smog check station license is subject to  
11 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that  
12 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by  
13 issuing electronic smog certificates of compliance for vehicles 1 through 3, identified in  
14 paragraph 32 above, without performing bona fide inspections of the emission control devices  
15 and systems on the vehicles, thereby depriving the People of the State of California of the  
16 protection afforded by the Motor Vehicle Inspection Program.

17 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

19 38. Respondent Chau Nguyen's advanced emission specialist technician  
20 license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2,  
21 subdivision (a), in that Respondent failed to comply with the following sections of that Code:

22 a. Section 44012: Respondent failed to perform emission control tests on  
23 vehicles 1 through 3, identified in paragraph 32 above, in accordance with  
24 procedures prescribed by the department.

25 b. Section 44059: Respondent willfully made false entries in order to issue  
26 electronic smog certificates of compliance for vehicles 1 through 3,  
27 identified in paragraph 32 above.

1 TWENTY-THIRD CAUSE FOR DISCIPLINE

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

4 39. Respondent Chau Nguyen's advanced emission specialist technician  
5 license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2,  
6 subdivision (c), in that Respondent failed to comply with the following sections of California  
7 Code of Regulations, title 16:

- 8 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently  
9 issued electronic smog certificates of compliance for vehicles 1 through 3,  
10 identified in paragraph 32 above.
- 11 b. Section 3340.30, subdivision (a): Respondent failed to inspect and test  
12 vehicles 1 through 3, identified in paragraph 32 above, in accordance with  
13 Health & Saf. Code sections 44012 and 44035, and California Code of  
14 Regulations, title 16, section 3340.42.
- 15 c. Section 3340.41, subdivision (c): Respondent entered false  
16 information into the EIS unit by entering vehicle identification  
17 information or emission control system identification data for vehicles  
18 other than the ones being tested.
- 19 d. Section 3340.42: Respondent failed to conduct the required smog tests on  
20 vehicles 1 through 3, identified in paragraph 32 above, in accordance with  
21 the Bureau's specifications.

22 TWENTY-FOURTH CAUSE FOR DISCIPLINE

23 (Dishonesty, Fraud or Deceit)

24 40. Respondent Chau Nguyen's advanced emission specialist technician  
25 license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2,  
26 subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby  
27 another is injured by issuing electronic smog certificates of compliance for vehicles 1 through 3,  
28 identified in paragraph 32 above, without performing bona fide inspections of the emission

1 control devices and systems on the vehicles, thereby depriving the People of the State of  
2 California of the protection afforded by the Motor Vehicle Inspection Program.

3 SURVEILLANCE OPERATION OF AUGUST 31, 2005

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

13

14 Time of Smog Inspection	Vehicle Certified	Certificate No.	Vehicle(s) Actually Tested
15 1. 11:27 - 11:55	1986 Toyota MR2; License #4VPF180	FX685869C	Mitsubishi truck
16 2. 12:00 - 12:25	1992 Mitsubishi Diamante; License #2XME720	FX685870C	Minivan

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18 TWENTY-FIFTH CAUSE FOR DISCIPLINE

19 (Untrue or Misleading Statements)

20 42. Respondent Hien Nguyen's automotive repair dealer registration is subject  
21 to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that  
22 Respondent made statements which he knew, or in the exercise of reasonable care, should have  
23 known to be untrue or misleading. Respondent Hien Nguyen certified that vehicles 1 and 2,  
24 identified in paragraph 41 above, had passed inspection and were in compliance with applicable  
25 laws and regulations. In fact, Respondent Chau Nguyen used clean-piping methods in order to  
26 issue certificates for the vehicles and did not test or inspect the vehicles as required by Health &  
27 Saf. Code section 44012.

28 ///



1 TWENTY-EIGHTH CAUSE FOR DISCIPLINE

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

4 45. Respondent Hien Nguyen's smog check station license is subject to  
5 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he  
6 failed to comply with the following sections of California Code of Regulations, title 16:

- 7 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently  
8 issued electronic smog certificates of compliance for vehicles 1 and 2,  
9 identified in paragraph 41 above.
- 10 b. Section 3340.35, subdivision (c): Respondent issued electronic smog  
11 certificates of compliance for vehicles 1 and 2, identified in paragraph  
12 41 above, even though those vehicles had not been inspected in  
13 accordance with California Code of Regulations, title 16, section 3340.42.
- 14 c. Section 3340.41, subdivision (c): Respondent entered false information  
15 into the EIS unit by entering vehicle identification information or emission  
16 control system identification data for vehicles other than the ones being  
17 tested.
- 18 d. Section 3340.42: Respondent failed to conduct the required smog tests on  
19 vehicles 1 and 2, identified in paragraph 41 above, in accordance with  
20 the Bureau's specifications.

21 TWENTY-NINTH CAUSE FOR DISCIPLINE

22 (Dishonesty, Fraud or Deceit)

23 46. Respondent Hien Nguyen's smog check station license is subject to  
24 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that  
25 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by  
26 issuing electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 41  
27 above, without performing bona fide inspections of the emission control devices and systems on

1 the vehicles, thereby depriving the People of the State of California of the protection afforded by  
2 the Motor Vehicle Inspection Program.

3 **THIRTIETH CAUSE FOR DISCIPLINE**

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

5 47. Respondent Chau Nguyen's advanced emission specialist technician  
6 license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2,  
7 subdivision (a), in that Respondent failed to comply with the following sections of that Code:

- 8 a. **Section 44012:** Respondent failed to perform emission control tests on  
9 vehicles 1 and 2, identified in paragraph 41 above, in accordance with  
10 procedures prescribed by the department.
- 11 b. **Section 44059:** Respondent willfully made false entries in order to issue  
12 electronic smog certificates of compliance for vehicles 1 and 2, identified  
13 in paragraph 41 above.

14 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

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

17 48. Respondent Chau Nguyen's advanced emission specialist technician  
18 license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2,  
19 subdivision (c), in that Respondent failed to comply with the following sections of California  
20 Code of Regulations, title 16:

- 21 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently  
22 issued electronic smog certificates of compliance for vehicles 1 and 2,  
23 identified in paragraph 41 above.
- 24 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test  
25 vehicles 1 and 2, identified in paragraph 41 above, in accordance with  
26 Health & Saf. Code sections 44012 and 44035, and California Code of  
27 Regulations, title 16, section 3340.42.

1 c. Section 3340.41, subdivision (c): Respondent entered false  
2 information into the EIS unit by entering vehicle identification  
3 information or emission control system identification data for vehicles  
4 other than the ones being tested.

5 d. Section 3340.42: Respondent failed to conduct the required smog tests on  
6 vehicles 1 and 2, identified in paragraph 41 above, in accordance with  
7 the Bureau's specifications.

8 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

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

10 49. Respondent Chau Nguyen's advanced emission specialist technician  
11 license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2,  
12 subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby  
13 another is injured by issuing electronic smog certificates of compliance for vehicles 1 and 2,  
14 identified in paragraph 41 above, without performing bona fide inspections of the emission  
15 control devices and systems on the vehicles, thereby depriving the People of the State of  
16 California of the protection afforded by the Motor Vehicle Inspection Program.

17 **OTHER MATTERS**

18 50. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the  
19 Director may invalidate temporarily or permanently, the registrations for all places of business  
20 operated in this state by Respondent Hien Nguyen, owner of Smog Test Only Center, upon a  
21 finding that said Respondent has, or is, engaged in a course of repeated and willful violations of  
22 the laws and regulations pertaining to an automotive repair dealer.

23 51. Pursuant to Health & Saf. Code section 44072.8, if Smog Check (Test  
24 Only) Station License Number TB 209495, issued to Respondent Hien Nguyen, owner of Smog  
25 Test Only Center, is revoked or suspended, any additional license issued under this chapter in the  
26 name of said licensee may be likewise revoked or suspended by the director.

27 52. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission  
28 Specialist Technician License Number EA 147522, issued to Respondent Chau Duc Nguyen, is

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

3 PRAYER

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

6 1. Temporarily or permanently invalidating Automotive Repair Dealer  
7 Registration Number AB 209495, issued to Hien H. Nguyen, also known as Hien Huu Nguyen,  
8 owner of Smog Test Only Center;

9 2. Temporarily or permanently invalidating any other automotive repair  
10 dealer registration issued to Hien H. Nguyen, also known as Hien Huu Nguyen;

11 3. Revoking or suspending Smog Check (Test Only) Station License Number  
12 TB 209495, issued to Hien H. Nguyen, also known as Hien Huu Nguyen, owner of Smog Test  
13 Only Center;

14 4. Revoking or suspending any additional license issued under Chapter 5 of  
15 the Health and Safety Code in the name of Hien H. Nguyen, also known as Hien Huu Nguyen;

16 5. Revoking or suspending Advanced Emission Specialist Technician  
17 License Number EA 147522, issued to Chau Duc Nguyen,

18 6. Revoking or suspending any additional license issued under Chapter 5 of  
19 the Health and Safety Code in the name of Chau Duc Nguyen;

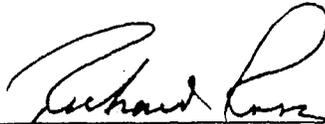
20 7. Ordering Respondents Hien H. Nguyen, also known as Hien Huu Nguyen,  
21 owner of Smog Test Only Center, and/or Chau Duc Nguyen to pay the Director of Consumer

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1 Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to  
2 Business and Professions Code section 125.3;

3 8. Taking such other and further action as deemed necessary and proper.

4 DATED: 2.1.06

5   
6 RICHARD ROSS  
7 Chief  
8 Bureau of Automotive Repair  
9 Department of Consumer Affairs  
10 State of California

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28 Complainant

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"<sup>1</sup> ten cars while working as a smog technician at Smog Test Only Center<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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 licentiate 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.

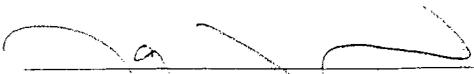
5. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

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  
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2 JAMES M. LEDAKIS  
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8 Attorneys for Complainant

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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  
5 standards for that vehicle's class and model-year as prescribed by the department.

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

11 9. Health and Safety Code section 44059 states:

12 The willful making of any false statement or entry with regard to a material matter  
13 in any oath, affidavit, certificate of compliance or noncompliance, or application  
14 form which is required by this chapter or Chapter 20.3 (commencing with Section  
15 9880) of Division 3 of the Business and Professions Code, constitutes perjury and  
16 is punishable as provided in the Penal Code.

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

19 . . . .  
20 (c) The bureau may suspend or revoke the license of or pursue other legal action  
21 against a licensee, if the licensee falsely or fraudulently issues or obtains a  
22 certificate of compliance or a certificate of noncompliance.

23 . . . .  
24 11. CCR, title 16, section 3340.30 states, in pertinent part:

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

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

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

14 . . . .  
15 (c) No person shall enter into the emissions inspection system any vehicle  
16 identification information or emission control system identification data for any  
17 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.

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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"<sup>1</sup> 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 <b>Time of Smog</b>	<b>Vehicle Certified</b>	<b>Certificate No.</b>	<b>Vehicle(s) Actually</b>
14 <b>Inspection</b>			<b>Tested</b>
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 <sup>1</sup> 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 <b>Time of Smog</b>	<b>Vehicle Certified</b>	<b>Certificate No.</b>	<b>Vehicle(s) Actually</b>
12 <b>Inspection</b>			<b>Tested</b>
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

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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)

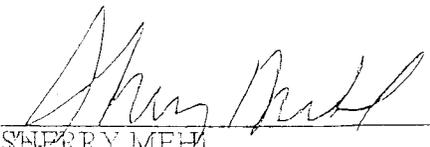
11 25. Respondent's application is subject to denial under Health and Safety Code  
12 section 44072.1, subdivision (b), in that Respondent was previously the holder of a license  
13 (Advanced Emission Specialist Technician License No. EA 147522) issued by the Bureau under  
14 the Motor Vehicle Inspection 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

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