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

In the Matter of the Accusation and Petition to Revoke Probation Against: **JAMES NGUYEN, aka CHAU DUC NGUYEN,** Respondent.	Case No. 79/12-23 OAH No. 2011100215

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.

This Decision shall become effective 2/25/13.

DATED: January 18, 2013

DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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

In the Matter of the Accusation and Petition to Revoke Probation Against: JAMES NGUYEN, aka CHAU DUC NGUYEN, Respondent.	Case No. 79/12-23 OAH No. 2011100215

PROPOSED DECISION

This matter came on regularly for hearing on October 30, 2012, before Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, in Santa Ana, California.

Antoinette B. Cincotta, Deputy Attorney General, Department of Justice, State of California, represented complainant, Office of the Chief, Bureau of Automotive Repair (bureau).

James Nguyen, aka Chau Duc Nguyen (respondent) represented himself. Translator Ann Spiratos was present and translated the proceedings for respondent.

Oral and documentary evidence was presented. The record remained open until November 2, 2012, for the submission of additional documents, whereupon the record was closed and the matter was submitted.

FACTUAL FINDINGS

1. In 2003, the bureau issued Advanced Emission Specialist Technician License Number EA147522 to respondent. The license will expire on April 30, 2013, unless revoked or renewed.

2. On September 7, 2011, the Accusation and Petition to Revoke Probation (Accusation and Petition), Case No. 79/12-23, was signed by Sherry Mehl, in her official capacity as Chief of the bureau. The Accusation and Petition, and other required jurisdictional documents were served upon respondent.

The Accusation and Petition sought to vacate the stay of revocation issued against respondent on May 26, 2009, and reimpose the order of revocation of his license. The Accusation and Petition alleged that respondent violated various provisions of the Health and Safety Code on February 16, 2011, by issuing a Certificate of Compliance to a bureau undercover vehicle with a missing pulse air injection system and that respondent held a probationary license at the time of the violations.

The Accusation and Petition also requested that respondent pay costs incurred in the investigation and prosecution of the case.

3. Respondent requested a hearing.

Stipulations of the Parties

4. At hearing, the parties stipulated to the following:

   a. Respondent did not object to the introduction into evidence of the bureau's exhibits numbered 1 through 27.

   b. Respondent did not contest the facts or charges concerning his wrongful issuance, on February 16, 2011, of a Certificate of Compliance to the bureau's undercover vehicle that was missing a pulse air injection system.

2006 Stipulated Settlement and Disciplinary Order

5. On February 1, 2006, a thirty-two count Accusation, Case Number 79/06-27, was filed against respondent and his employer. The Accusation was issued following four surveillance operations conducted by the bureau in which respondent was observed by bureau representatives conducting smog inspections on ten vehicles using the clean-piping method.[1] As a result of using the clean-piping method, respondent falsely certified that he had properly inspected the two vehicles, that they had passed the smog inspection, and that they were in compliance with applicable laws and regulations.

On July 6, 2006, respondent and the bureau entered into a Stipulated Settlement and Disciplinary Order (Stipulation) in which respondent agreed that the bureau could establish a factual basis for the allegations in the Accusation, waived his right to contest the allegations and agreed to the revocation of his Advanced Emission Technician Specialist license. The Stipulation provided that respondent could reapply for his license one year after the effective date of the decision adopting the Stipulation, which was October 2, 2006.

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[1] Clean-piping is using a sample of the exhaust emissions of one vehicle in order to cause the Emission Inspection System (EIS) to issue a certificate of compliance for another vehicle.

6. On December 19, 2007, respondent filed an Application for Smog Check Technician License (application) with the bureau. On January 7, 2008, the bureau notified respondent that his application had been denied. Respondent requested a hearing on the denial and Accusation No. 79/06-27S was filed by the bureau. An administrative hearing was conducted on October 20, 2008. According to the proposed decision issued by the administrative law judge and adopted by the bureau, respondent candidly admitted that he clean-piped the ten cars, but stated that becoming a citizen of the United States caused him to realize the importance of following the laws of his new country. He also stated that his young children caused him to be more cognizant of the importance of clean air and the environment. In accordance with the adopted decision, respondent was issued a Smog Check Technician license. That license was immediately revoked and the revocation was stayed for a five year probationary period during which respondent was required to comply with certain terms and conditions, including that he "comply with all statues, regulations and rules governing automotive inspections, estimates and repairs."

The Bureau's Undercover Operation of February 16, 2011

7. Michael Stubblefield (Stubblefield) is a Program Representative I with the bureau and is assigned to the Anaheim Documentation Lab (lab).

One of the vehicles the department uses in its undercover inspection program is a 1991 Toyota truck. On February 1, 2011, Stubblefield performed a smog inspection on the 1991 Toyota truck. Stubblefield first referenced the Vehicle Emission Control Information Label found under the hood of the 1991 Toyota truck to determine the emission control components that are required for that vehicle. Stubblefield also referred to the 1991 Toyota Truck Repair Manual, Volume 1, published by the Toyota Motor Corporation to confirm the required components.

Stubblefield then visually inspected the 1991 Toyota truck and found that all the emission control systems were present and intact except that components of the air suction system had been removed. Stubblefield completed the smog inspection. The undercover vehicle failed the smog inspection because of the missing components. Stubblefield photographed the engine compartment to show where the missing components should be located and also photographed the components that had been removed.

8. On February 16, 2011, an undercover operative for the department, using an alias, took the vehicle to DL & A Smog Check Auto Repair, where respondent works, and requested a smog inspection.

9. Respondent performed a smog test on the undercover vehicle. After he completed the test, he gave the undercover operative an invoice and a VIR that indicated the vehicle had passed the inspection. The operative paid $45 for the smog check inspection.

On the Work Order, No. 00204176, respondent wrote "Pulse Air." Respondent stated he did this because he noticed the 1991 Toyota truck has a pulse air injection system and he

wanted to make sure to check that in the inspection. Nonetheless, respondent's notations did not aid him in properly inspecting the 1991 Toyota Truck since he certified the vehicle as having passed the inspection. The word "Pass" was typed next to the listing of "Air injection" on the VIR. Nguyen signed the VIR. Smog Check Certificate No. WRB70918 was electronically transmitted to the bureau and the DMV.

The VIR respondent provided for the 1991 Toyota truck was false in that the 1991 Toyota truck was required to have a pulse air injection system, but in this vehicle, the system had been removed.

10. After obtaining the VIR, the operative returned the vehicle to the department. Stubblefield documented that the vehicle was in the same condition as when it left, i.e., that the pulse air injection system was missing. Stubblefield conducted a smog test; the vehicle failed due to the absence of the pulse air injection system.

Evidence on Behalf of Respondent

11. Respondent testified at hearing and submitted a letter in evidence. In the letter and in his testimony, respondent stated that he has been working in automotive repair and smog check for ten years and "have always tried the best of my experience and knowledge to do all auto repairs and smog checks' (sic) technical jobs in accordance to all automotive and smog check regulations and laws. I have always believed in doing my jobs right as helping our community having clean air and California pollution also working as a good U.S. Citizen's duties." Respondent stated that he had repaired and performed smog tests on approximately 3000 cars during the last three years without incident or violation. He admitted failing to notice that the pulse air injection system was missing from the 1991 Toyota truck that was the subject of the bureau's undercover operation, but asserted that it was a "minor mistake." Respondent further stated that

> Apparently, this car runs very well without that air system. In other words, this car is still passed (sic) the ASM Emission test with 0% coming out from the tail pipe . . . This car means that its missing part of the air system really had no effect in the passing of the car's smog test. Without this air system's missing part, this car could still passed (sic) by itself the smog check from the Smog Check machine. In comparison the condition of this car could still pass and run very well even without this air system part just like the condition of a car could still run well without an AC system.

Respondent stated that he is proud of his work as a smog technician and tells his children that he helps to keep the skies clear of pollution and that his children believe that he is a "great man and a hero" because of the work he does.

12. Respondent further testified that his father, in Vietnam, passed away the week the undercover operative brought in the 1991 Toyota truck for a smog inspection. Respondent stated that he was sad and depressed by the loss of his father and believed that caused him to be unable to fully concentrate on performing his job duties.

13. Bureau records indicated that, at some time prior to February 25, 2010, respondent properly failed a different undercover vehicle that the bureau sent to the station where he works for a smog inspection.

14. Respondent further requested consideration of his financial hardship. Respondent earns $8.00 per hour and works 40 hours per day. His net pay is $596.10 twice per month. Respondent pays $312 per month in rent; utilities are an additional $25 per month. Respondent's wife had a serious automobile accident in the past and is afraid to drive. His job as a smog technician allows respondent to drive his children to school and pick them up. His income is the only source of income for his family of four and he wishes to continue working to support his family and not become a burden on society.

LEGAL CONCLUSIONS

Applicable Statutory and Regulatory Provisions

1. Health and Safety Code section 44032, in pertinent part, requires that smog check technicians perform smog inspections in accordance with the provisions contained in section 44012.

2. Health and Safety Code section 44012 requires smog check stations to perform inspections in accordance with the bureau's requirements. Subdivisions (a) and (f) provide that smog inspections must include a determination that emission control devices and systems that are required by state and federal law are installed and functioning correctly in accordance with test procedures in order to reduce excess emissions.

3. Health & Safety Code section 44059 prohibits the smog technician from willfully making false entries for an electronic Certificate of Compliance.

4. Health and Safety Code section 44072.2, subdivisions (a) and (b), provide authority for the bureau to suspend, revoke or take other disciplinary action against a licensee who violates the Motor Vehicle Inspection Program and/or regulations adopted by the bureau. Subdivision (d) authorizes disciplinary action if a licensee "[c]ommits any act involving dishonesty, fraud or deceit whereby another is injured."

5. Title 16, California Code of Regulations, section 3340.24, subsection (c), provides that the bureau may suspend or revoke a license if the licensee falsely or fraudulently issues a certificate of compliance.

6. California Code of Regulations, title 16, section 3340.30, subsection (a), provides that a "licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article."

7. California Code of Regulations, title 16, section 3340.35, subdivision (c), permits the issuance of a certificate of compliance only when a vehicle passes all aspects of a smog inspection.

8. Title 16, California Code of Regulations, section 3340.41, subsection (c), prohibits, among other things, the entry into the emissions inspection system of false information about a vehicle being tested.

9. Title 16, California Code of Regulations, section 3340.42 requires that smog check technicians conduct tests and inspections in accordance with bureau specifications as appropriate to the emission inspection system being utilized.

Disciplinary Guidelines

10. The bureau's current Guidelines for Disciplinary Penalties and Terms of Probation (Guidelines) provide the following factors to consider in determining the level of discipline to be imposed:

1. Factors in Aggravation

a. Prior warnings from BAR
b. Prior Notices of Violations
c. Prior Office Conference with BAR
d. Prior adverse Inspection Reports
e. Prior demonstrations of incompetence
f. Prior history of citations
g. Prior history of formal disciplinary action
h. Failure to permit BAR inspection of records
i. Abuse of mechanic's lien
j. Attempts to intimidate consumer
k. Negligent or willful improper repair work that endangers consumer
l. Evidence that the unlawful act was part of a pattern of practice
m. Failure to comply with BAR request for corrective action/retraining
n. Currently on probation for improper acts
o. Failure to successfully complete prior period of probation
p. Failure to pay court judgment to victim

q. Violation of previous court order
r. Any other conduct which constitutes fraud or gross negligence

2. Factors in Mitigation

a. Evidence that respondent accepted BAR's suggested resolution to consumer complaint
b. Evidence of voluntary participation in retraining for self or employees
c. Evidence of voluntary purchase of proper diagnostic equipment and manuals
d. Evidence of temporary medical condition that prevented respondent from exercising supervision and control over employees or others, which led to wrongdoing
e. No loss to consumer and no damage to consumer's property (Undercover cars are treated as if they were consumers' cars)
f. Evidence that shop has taken specific steps for retraining and has initiated steps to minimize recurrence
g. Evidence of resolution of all consumer complaints with a subsequent change in business practice
h. Evidence of internal control or audit designed to eliminate errors

Application of Facts and Law

11. Cause exists to discipline respondent's Advanced Emission Specialist Technician License Number EA147522 pursuant to Health and Safety Code section 44012, subdivisions (a) and (f), and section 44032 because he failed to properly perform an emission control test and failed to determine that the pulse air injection system was installed and functioning correctly in accordance with test procedures.

12. Cause does not exist to discipline respondent's license pursuant to Health and Safety Code section 44059 because respondent's conduct was not willful.

13. Cause exists to discipline respondent's Advanced Emission Specialist Technician License Number EA147522 pursuant to California Code of Regulations, title 16, sections 3340.24, subdivision (c), 3340, subdivision (a), 3340.41, subdivision (c), and 3340.42 because he failed to properly perform an emission control test, failed to determine that the pulse air injection system was installed and functioning correctly in accordance with test procedures, and entered false information into the Emission Inspection System which resulted in the erroneous issuance of a Certificate of Compliance for the bureau's 1991 Toyota truck.

14. Cause does not exist to discipline respondent's license pursuant to Health and Safety Code section 44072.2 because respondent's conduct did not constitute willful dishonesty, fraud or deceit whereby another was injured.

15. Cause exists to grant the Petition to Revoke Probation and to revoke respondent's Advanced Emission Specialist Technician License Number EA147522 because he failed to comply with all statutes, regulations and rules governing inspections as required by Term 1 of his probation under the Decision and Order, Case Number 79/06-27S.

Level of Discipline

16. The level of discipline imposed is determined by the application of the factors contained in the bureau's Guidelines. In aggravation, respondent was on probation for serious prior violations when he failed to detect the missing pulse air component. In mitigation, respondent takes pride in his work and was sincere in his stated desire to comply with the rules and regulations governing smog inspections which is demonstrated by respondent's correctly failing a bureau undercover vehicle sent for inspection prior to February 2011. Respondent's testimony that he had repaired and performed smog tests on approximately 3000 cars during the last three years without incident or violation was uncontroverted. Respondent did write "Pulse Air" on the work order which corroborated his testimony that he noticed the 1991 Toyota truck has a pulse air injection system and he wanted to make sure to check that in the inspection. Respondent's explanation that he may have been distracted by the recent death of his father was credible.

The present violation committed by respondent while on probation for prior serious violations is not acceptable; however, a commitment to properly perform smog inspections was demonstrated by respondent at hearing. Upon consideration of the entirety of the facts and the application of the disciplinary criteria, the protection of the public can be maintained by extending respondent's probationary license and imposing a 15 day period of suspension. Respondent is cautioned that no further violations will be tolerated.

Cost Recovery

17. The reasonable costs of investigation and prosecution of the instant matter against respondent total $7,565.00 and complainant is seeking recovery of those costs pursuant to Business and Professions Code section 125.3.

Zuckerman v. State Board of Chiropractic Examiners (2002) 29 Cal.4th 32 held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5 (which is similar to Bus. & Prof. Code, § 125.3) did not violate due process. But, it was incumbent on the State Board of Chiropractic Examiners to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed under section 317.5 did not "deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing."

The Supreme Court set forth four factors to consider in deciding whether to reduce or eliminate costs: (1) whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a "subjective" good faith belief in the merits of his/[her] position; (3) whether the licensee raised a "colorable challenge" to the proposed discipline; and (4) whether the licensee had the financial ability to make payments. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the cost recovery regulation in *Zuckerman* contains substantially the same language as that set forth in Business and Professions Code section 125.3.

The application of the *Zuckerman* factors to the merits of the Accusation against respondent does not support a reduction in the costs sought by complainant. However, respondent testified that he earns $8.00 per hour and works 40 hours per day. His net pay is $596.10 twice per month. Respondent pays $312 per month in rent; utilities are an additional $25 per month. Respondent's income is the only source of income for his family of four.

Respondent's lack of financial ability to make payments warrants a reduction in the amount of costs sought. After applying the *Zuckerman* criteria in the instant matter, it is concluded that respondent is required to pay costs in the amount of $500 as reasonable costs.

ORDER

1. Probation granted to James Nguyen, aka Chau Duc Nguyen by Decision and Order No. 79/06-27S is revoked.

2. Advanced Emission Specialist Technician License Number EA147522 issued to James Nguyen, aka Chau Duc Nguyen is revoked; however the revocation is stayed and respondent is placed on probation for a period of five years, with an actual suspension of 15 days, under the terms and conditions detailed below:

a. **Obey All Laws.** Respondent shall comply with all statues, regulations and rules governing automotive inspections, estimates and repairs.

b. **Suspension.** Advanced Emission Specialist Technician License Number EA147522 shall be suspended for a period of fifteen (15) days from the effective date of this Decision.

c. **Reimbursement of Costs.** Respondent shall pay to the Bureau costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of $500.

d. **Complete a Training Course.** Respondent shall attend and successfully complete a Bureau certified training course in diagnosis and repair of emission systems failures and engine performance, applicable to the class of license held by the

respondent. Said course shall be completed and proof of completion submitted to the Bureau within 60 days of the effective date of this decision and order. If proof of completion of the course is not furnished to the Bureau within the 60-day period, respondents' license shall be immediately suspended until such proof is received.

e. **Report to Bureau.** Respondent 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.

f. **Continuing Jurisdiction.** 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.

g. **Failure to Comply with Probation.** 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.

DATED: December 20, 2012

SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings

KAMALA D. HARRIS
Attorney General of California
ALFREDO TERRAZAS
Senior Assistant Attorney General
JAMES M. LEDAKIS
Supervising Deputy Attorney General
State Bar No. 132645
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2105
Facsimile: (619) 645-2061
Attorneys for Complainant

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

In the Matter of the Accusation and Petition to Revoke Probation Against: **JAMES NGUYEN, AKA** **CHAU DUC NGUYEN** **9101 Mays Avenue** **Garden Grove, CA 92844** **Advanced Emission Specialist License No. EA 147522** Respondent.	Case No. 79/12-23 **ACCUSATION AND PETITION TO REVOKE PROBATION** **SMOG CHECK**

Complainant alleges:

PARTIES

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

Advanced Emission Specialist Technician License

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

PRIOR DISCIPLINARY ACTION

3. Pursuant to the Decision and Order in the Stipulated Settlement and Disciplinary Order Only As To Chau Duc Nguyen, Accusation No. 79/06-27, attached hereto as **Exhibit "A"** effective October 2, 2006, the Director of Consumer Affairs ("Director") revoked Respondent's Advanced Emission Specialist Technician License No. EA 147522, allowing Respondent to reapply for his advanced emissions specialist technician license one year after the effective date of the decision.

4. On or about January 2, 2008, the Bureau received Respondent's application for a smog technician license. The application was denied on January 7, 2008.

5. Pursuant to the Decision and Order in Statement of Issues Case No. 79/06-27S, attached here to as **Exhibit "B"**, Respondent was issued Advanced Emission Specialist Technician License No. EA 147522 on May 26, 2009. Said license was immediately revoked; however the revocation was stayed and Respondent was placed on probation for five (5) years, effective May 26, 2009, with terms, including **Term 1** - Obey all Laws: Comply with all statutes, regulations, and rules governing automotive inspections, estimates, and repairs.

STATUTORY PROVISIONS

6. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Code.

7. Section 44002 of the Health and Safety Code provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

8. Section 44072.2 of the Health and Safety Code states, in pertinent part:

> The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:
>
> (a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.

(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.

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

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

"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

11. 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.

UNDERCOVER OPERATION FEBRUARY 16, 2011

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

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FIRST CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

13. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about February 16, 2011, regarding the 1991 Toyota truck, he violated sections of that Code, as follows:

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

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

c. **Section 44032**: Respondent failed to perform tests of the emission control devices and systems on that vehicle in accordance with section 44012 of that Code.

d. **Section 44059**: Respondent willfully made false entries for electronic Certificate of Compliance No. WR870918 by certifying that the vehicle had been inspected as required when, in fact, it had not.

SECOND CAUSE FOR DISCIPLINE

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

14. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about February 16, 2011, regarding the 1991 Toyota truck, he violated sections of the California Code of Regulations, title 16, as follows:

a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic Certificate of Compliance No. WR870918 without performing a bona fide inspection of the emission control devices and systems on that vehicle as required by Health and Safety Code section 44012.

b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test that vehicle in accordance with Health and Safety Code section 44012.

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

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

THIRD CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

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

PETITION TO REVOKE PROBATION

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

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

OTHER MATTERS

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

PRAYER

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

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

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

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

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

DATED: 9/7/11

SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
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 and **CHAU DUC NGUYEN** 9101 Mays Avenue Garden Grove, CA 92844 Advanced Emission Specialist Technician License No. EA 147522 Respondents.	Case No. 79/06-27 OAH No. L 2006030834

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

BILL LOCKYER, Attorney General
of the State of California
JAMES M. LEDAKIS, State Bar No. 132645
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2105
Facsimile: (619) 645-2061

Attorneys for Complainant

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE 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 and Smog Check Station License No. TB 209495, **CHAU DUC NGUYEN** 9101 Mays Avenue Garden Grove, CA 92844 Advanced Emission Specialist Tech. License No. EA 147522. Respondent.	Case No. 79/06-27 OAH No. L 2006030834 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

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

2. Respondent, CHAU DUC NGUYEN is representing himself and has chosen not to exercise his right to be represented by counsel.

3. On or about September 12, 2003, the Director issued Advanced Emission Specialist Technician License No. EA 147522 to CHAU DUC NGUYEN. The License expires on April 30, 2007, unless renewed.

JURISDICTION

4. Accusation No. 79/06-27 was filed before the Bureau, and is currently pending against Respondents. The Accusation and all other statutorily required documents were properly served on Respondents on March 2, 2006. Respondents timely filed its Notice of Defense contesting the Accusation. A copy of Accusation No. 79/06-27 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondents has carefully read, and understands the charges and allegations in Accusation No. 79/06-27. Respondents has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up

his right to contest those charges.

9. Respondent agrees that his Advanced Emission Specialist Technician license is subject to discipline and agrees to be bound by the Director's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

10. The statements made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Bureau or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Advanced Emission Technician Specialist license no. EA 147522 issued to CHAU DUC NGUYEN, is revoked. In exchange for the stipulated revocation, the Bureau waives its costs. Respondent may reapply for his EA license one year after the effective date of the decision CN

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director.

DATED: 7-6-06

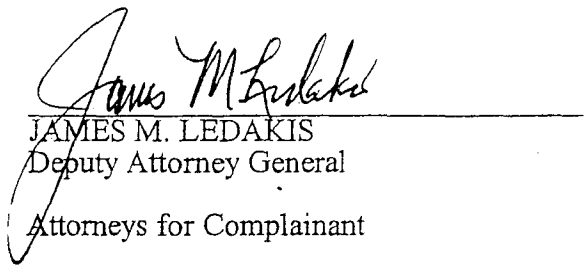
CHAU DUC NGUYEN, Advanced Emission Technician Specialist

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
80080657.wpd

BILL LOCKYER, Attorney General
of the State of California
JAMES M. LEDAKIS, State Bar No. 132645
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2105
Facsimile: (619) 645-2061

Attorneys for Complainant

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE 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 Reg. No. AB 209495 Smog Check (Test Only) Station License No. TB 209495 and **CHAU DUC NGUYEN** 9101 Mays Avenue Garden Grove, CA 92844 Advanced Emission Specialist Technician License No. EA 147522 Respondent.	Case No. 79/06-27 **A C C U S A T I O N** (Smog Check)

Complainant alleges:

PARTIES

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

Automotive Repair Dealer Reg. No. AB 209495

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

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

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

Advanced Emission Specialist Technician License No. EA 147522

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

JURISDICTION

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

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

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

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8. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

STATUTORY PROVISIONS

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

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

10. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Bus. & Prof. Code.

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

> The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:
>
> (a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.

. . . .

(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[1], 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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THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

17. 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 and 2, identified in paragraph 14 above, in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 14 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 and 2, identified in paragraph 14 above.

FOURTH CAUSE FOR DISCIPLINE

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

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

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

b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 14 above, even though those vehicles had not been inspected in accordance with California Code of Regulations, title 16, section 3340.42.

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

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

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

19. Respondent Hien Nguyen's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 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.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

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

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

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SEVENTH CAUSE FOR DISCIPLINE

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

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

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

b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1 and 2, identified in paragraph 14 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

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

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

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

22. Respondent Chau Nguyen's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 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.

SURVEILLANCE OPERATION OF JULY 14, 2005

23. On July 14, 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 EIS and the Bureau's 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, 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. 10:10 - 10:39	1986 Toyota Corolla; License #1SDE239	FW487358C	Nissan Altima
2. 12:28 - 12:52	1997 Chrysler Town & Country; no plates	FW487361C	Nissan Altima
3. 14:53 - 15:10	1985 Chevrolet S10 Blazer; License #5GYX062	FW487365C	Mercedes Benz

NINTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

24. 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 23 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.

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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TWELFTH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic smog certificates of compliance for vehicles 1 through 3, identified in paragraph 23 above.

b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of compliance for vehicles 1 through 3, identified in paragraph 23 above, even though those vehicles had not been inspected in accordance with California Code of Regulations, title 16, section 3340.42.

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

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

THIRTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

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

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

FOURTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

29. Respondent Chau Nguyen's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent 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 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.

FIFTEENTH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic smog certificates of compliance for vehicles 1 through 3, identified in paragraph 23 above.

b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1 through 3, identified in paragraph 23 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

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

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

SIXTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

31. Respondent Chau Nguyen's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 through 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.

SURVEILLANCE OPERATION OF AUGUST 24, 2005

32. On August 24, 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 EIS and the Bureau's 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, resulting in the issuance of fraudulent certificates of compliance for 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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NINETEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

35. 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 32 above, in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued electronic smog certificates of compliance for 1 through 3, identified in paragraph 32 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 32 above.

TWENTIETH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic smog certificates of compliance for vehicles 1 through 3, identified in paragraph 32 above.

b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of compliance for vehicles 1 through 3, identified in paragraph 32 above, even though those vehicles had not been inspected in accordance with California Code of Regulations, title 16, section 3340.42.

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

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

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

37. Respondent Hien Nguyen's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 through 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.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

38. Respondent Chau Nguyen's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent 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 32 above, in accordance with procedures prescribed by the department.

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

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TWENTY-THIRD CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic smog certificates of compliance for vehicles 1 through 3, identified in paragraph 32 above.

b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1 through 3, identified in paragraph 32 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

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

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

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

40. Respondent Chau Nguyen's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 through 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.

SURVEILLANCE OPERATION OF AUGUST 31, 2005

41. On August 31, 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 EIS and the Bureau's 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, 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. 11:27 - 11:55	1986 Toyota MR2; License #4VPF180	FX685869C	Mitsubishi truck
2. 12:00 - 12:25	1992 Mitsubishi Diamante; License #2XME720	FX685870C	Minivan

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

42. 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 and 2, identified in paragraph 41 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.

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TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Fraud)

43. 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 41 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TWENTY-SEVENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

44. 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 and 2, identified in paragraph 41 above, in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued electronic smog certificates of compliance for 1 and 2, identified in paragraph 41 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 and 2, identified in paragraph 41 above.

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TWENTY-EIGHTH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 41 above.

b. **Section 3340.35, subdivision (c)**: Respondent issued electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 41 above, even though those vehicles had not been inspected in accordance with California Code of Regulations, title 16, section 3340.42.

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

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

TWENTY-NINTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

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

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

THIRTIETH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

a. **Section 44012:** Respondent failed to perform emission control tests on vehicles 1 and 2, identified in paragraph 41 above, in accordance with procedures prescribed by the department.

b. **Section 44059:** Respondent willfully made false entries in order to issue electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 41 above.

THIRTY-FIRST CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic smog certificates of compliance for vehicles 1 and 2, identified in paragraph 41 above.

b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1 and 2, identified in paragraph 41 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

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

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

THIRTY-SECOND CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

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

OTHER MATTERS

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

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

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

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

PRAYER

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

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

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

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

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

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

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

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

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

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

DATED: 2.1.06.

RICHARD ROSS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California

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"[1] ten cars while working as a smog technician at Smog Test Only Center[2] 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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[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 the 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

EDMUND G. BROWN JR., Attorney General
of the State of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General
RON ESPINOZA, State Bar No. 176908
Deputy Attorney General
110 West "A" Street, Suite 1100
San Diego, CA 92101

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

Attorneys for Complainant

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

In the Matter of the Statement of Issues Against: CHAU DUC NGUYEN 9101 Mays Ave. Garden Grove, CA 92844 Respondent.	Case No. 79/06-27S STATEMENT OF ISSUES

Complainant alleges:

PARTIES

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

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

JURISDICTION

3. This Statement of Issues is brought before the Director of Consumer Affairs (Director), for the Bureau of Automotive Repair, under the authority of the following laws. All statutory references are to the Business and Professions Code (Code), unless otherwise specified.

4. Section 480 of the Code states:

> (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 in question, would be grounds for suspension or revocation of 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.
>
> . . . .

5. Section 482 of the Code states:

> 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.

6. Health and Safety Code section 44072 states:

> Any license issued under this chapter and the regulations adopted pursuant to it may be suspended or revoked by the director. The director may refuse to issue a license to any applicant for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

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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.

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(f) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the 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.

(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.

(h) The test procedures may authorize smog check stations to refuse the testing of a vehicle that would be unsafe to test, or that cannot physically be inspected, as 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.

9. Health and Safety Code section 44059 states:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application 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.

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

. . . .

(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.

. . . .

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

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

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

. . . .

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

. . . .

(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.

. . . .

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

(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) or crime(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) or crime(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.

. . . .

14. CCR, title 16, section 3395.2 states:

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. 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

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

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

SURVEILLANCE OPERATION OF JUNE 30, 2005

16. On June 30, 2005, a representative of the Bureau conducted a surveillance operation at Smog Test Only Center. 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, 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, resulting in the issuance of fraudulent certificates of compliance for the following vehicles:

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

SURVEILLANCE OPERATION OF JULY 14, 2005

17. On July 14, 2005, a representative of the Bureau conducted a surveillance operation at Smog Test Only Center. The Bureau determined through the surveillance operation and information obtained from the EIS and the Bureau's VID that Respondent issued electronic smog certificates of compliance, 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,

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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.

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

Time of Smog Inspection	Vehicle Certified	Certificate No.	Vehicle(s) Actually Tested
3. 10:10 - 10:39	1986 Toyota Corolla; License #1SDE239	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

SURVEILLANCE OPERATION OF AUGUST 24, 2005

18. On August 24, 2005, a representative of the Bureau conducted a surveillance operation at Smog Test Only Center. The Bureau determined through the surveillance operation and information obtained from the EIS and the Bureau's VID that Respondent issued electronic smog certificates of compliance, 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, resulting in the issuance of fraudulent certificates of compliance for the following vehicles:

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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SURVEILLANCE OPERATION OF AUGUST 31, 2005

19. On August 31, 2005, a representative of the Bureau conducted a surveillance operation at Smog Test Only Center, the smog check station of Respondent's former employer, Hien Nguyen, located in Garden Grove, California. The Bureau determined through the surveillance operation and information obtained from the EIS and the Bureau's VID that Respondent issued electronic smog certificates of compliance, 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, resulting in the issuance of fraudulent certificates of compliance for the following vehicles:

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

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

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

FIRST CAUSE FOR DENIAL OF APPLICATION

(Committed Acts Involving Dishonesty, Fraud or Deceit)

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

substantially injure another, when he clean-piped vehicles 1-10 identified 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.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Committed Acts Involving Dishonesty, Fraud or Deceit)

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

THIRD CAUSE FOR DENIAL OF APPLICATION

(Committed Acts Which Are Grounds for License Revocation)

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

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

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

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

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

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

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Previously Revoked License Holder)

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

PRAYER

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

1. Denying the application of Chau Duc Nguyen for an Advanced Emission Specialist Smog Check Technician License;

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

DATED: 7/28/08

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

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