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

10 In the Matter of the Accusation Against:

Case No. 79/12-166

11 **THINH TRONG NGUYEN**
12 **8131 Larson Avenue #6**
13 **Garden Grove, CA 92844**

DEFAULT DECISION AND ORDER

14 **Advanced Emission Specialist Technician**
15 **License No. EA 149867**

[Gov. Code, §11520]

Respondent.

16 FINDINGS OF FACT

17 1. On or about June 15, 2012, Complainant John Wallauch, in his official capacity as the
18 Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation
19 No. 79/12-166 against Think Trong Nguyen (Respondent) before the Director of Consumer
20 Affairs. (Accusation attached as Exhibit A.)

21 2. On a date uncertain in 2004, the Bureau of Automotive Repair (Bureau) issued
22 Advanced Emission Specialist technician License No. EA 149867 to Respondent. The Advanced
23 Emission Specialist Technician License was in full force and effect at all times relevant to the
24 charges brought in Accusation No. 79/12-166 and will expire on March 31, 2013, unless renewed.

25 3. On or about June 27, 2012, Respondent was served by Certified and First Class Mail
26 copies of the Accusation No. 79/12-166, Statement to Respondent, Notice of Defense, Request
27 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
28 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code

1 section 136 and California Code of Regulations, title 16, section 3303.3, is required to be reported
2 and maintained with the Bureau. Respondent's address of record was and is:

3 8131 Larson Avenue #6
4 Garden Grove, CA 92844.

5 4. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
7 124.

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

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

14 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
15 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
16 79/12-166.

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

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

22 8. Pursuant to its authority under Government Code section 11520, the Director after
23 having reviewed the proof of service dated June 27, 2012 finds Respondent is in default. The
24 Director will take action without further hearing and, based on Accusation, No. 79/12-166, proof
25 of service and on the Affidavit of Bureau Representative Steven R. Miller, finds that the
26 allegations in Accusation are true.

27 DETERMINATION OF ISSUES

28 1. Based on the foregoing findings of fact, Respondent Think Trong Nguyen has
subjected his Advanced Emission Specialist technician License No. EA 149867 to discipline.

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

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

5 a. Respondent has subjected his technician license to discipline under Health and Safety
6 Code section 44072.2, subdivision (a), in that on or about November 10, 2011, regarding a smog
7 inspection he performed on a 1997 Cadillac Seville, he violated sections of that Code, as follows:

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

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

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

15 b. Respondent has subjected his technician license to discipline under Health and Safety
16 Code section 44072.2, subdivision (c), in that on or about November 10, 2011, regarding the
17 same 1997 Cadillac Seville, he violated sections of the California Code of Regulations, title 16, as
18 follows:

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

21 ii. **Section 3340.41, subdivision (c):** Respondent entered false information into
22 the Emission Inspection System for electronic Certificate of Compliance No. XB127156C by
23 entering "Pass" for the visual inspection of the PCV system when, in fact, the vehicle could not
24 pass that portion of the inspection because the vehicle's PCV system was missing.

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

27 c. Respondent has subjected his technician license to discipline under Health and Safety
28 Code section 44072.2, subdivision (d), in that on or about November 10, 2011, regarding the

1 same 1997 Cadillac Seville, he committed acts involving dishonesty, fraud or deceit whereby
2 another was injured by issuing electronic Certificate of Compliance No. XB127156C without
3 performing a bona fide inspection of the emission control devices and systems on that vehicle,
4 thereby depriving the People of the State of California of the protection afforded by the Motor
5 Vehicle Inspection Program.

6 d. Respondent's citation record with the Bureau includes the following:

7 i. On April 21, 2009, the Bureau issued Citation No. M09-1218 to Respondent
8 against his technician license for violations of Health and Safety Code section 44032, (qualified
9 technicians shall perform tests of emission control systems and devices in accordance with
10 section 44012 of that Code) and California Code of Regulations, title 16, section 3340.30,
11 subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with
12 sections 44012 and 44035 of the Health and Safety Code, and title 16, section 3340.42).

13 Respondent issued a certificate of compliance to a Bureau vehicle with the ignition
14 timing adjusted beyond the manufacturer's specifications. Respondent was required to attend an
15 8-hour training course. Respondent complied with this citation on June 3, 2009.

16 ii. On August 31, 2009, the Bureau issued Citation No. M2010-0166 to
17 Respondent against his technician license for violations of Health and Safety Code section 44032,
18 (qualified technicians shall perform tests of emission control systems and devices in accordance
19 with section 44012 of that Code) and California Code of Regulations, title 16, section 3340.30,
20 subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with
21 sections 44012 and 44035 of the Health and Safety Code, and title 16, section 3340.42).

22 Respondent issued a certificate of compliance to a Bureau vehicle with the ignition timing
23 adjusted beyond the manufacturer's specifications. Respondent was required to attend a 16-hour
24 training course. Respondent complied with this citation on October 26, 2009.

25 iii. On March 22, 2011, the Bureau issued Citation No. M2011-1126 to
26 Respondent against his technician license for violations of Health and Safety Code section 44032,
27 (qualified technicians shall perform tests of emission control systems and devices in accordance
28 with section 44012 of that Code) and California Code of Regulations, title 16, section 3340.30,

1 subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with
2 sections 44012 and 44035 of the Health and Safety Code, and title 16, section 3340.42).
3 Respondent issued a certificate of compliance to a Bureau vehicle with the ignition timing
4 adjusted beyond the manufacturer's specifications. Respondent was required to attend a Basic
5 Clean Air Car Course. Respondent complied with this citation on June 15, 2011.

6 ORDER

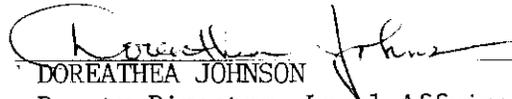
7 IT IS SO ORDERED that Advanced Emission Specialist Technician License No. EA
8 149867, heretofore issued to Respondent Think Trong Nguyen, is revoked.

9 IT IS FURTHER ORDERED under Health and Safety Code section 44072.8, any
10 additional license issued under Chapter 5 of the Motor Vehicle Inspection Program in the name of
11 Respondent Think Trong Nguyen is likewise revoked.

12 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
13 written motion requesting that the Decision be vacated and stating the grounds relied on within
14 seven (7) days after service of the Decision on Respondent. The motion should be sent to the
15 Bureau of Automotive Repair, ATTN: William D. Thomas, 10220 Systems Parkway,
16 Sacramento, CA 95827. The agency in its discretion may vacate the Decision and grant a
17 hearing on a showing of good cause, as defined in the statute.

18 This Decision shall become effective on 10/4/12.

19 It is so ORDERED September 18, 2012

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21 
22 DOREATHEA JOHNSON
23 Deputy Director, Legal Affairs
24 Department of Consumer Affairs

25 70598235.DOC
26 DOJ Matter ID: SJ2012802135

27 Attachment:
28 Exhibit A: Accusation

Exhibit A

Accusation

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3 JAMES M. LEDAKIS
Supervising Deputy Attorney General
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Attorneys for Complainant

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A C C U S A T I O N

S M O G C H E C K

15 **Advanced Emission Specialist Technician**
16 **License No. EA 149867**

17 Respondents.

18 Complainant alleges:

19 **PARTIES**

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

22 **Advanced Emission Specialist Technician License**

23 2. On a date uncertain in 2004, the Bureau issued Advanced Emission Specialist
24 Technician License Number EA 149867 ("technician license") to Think Trong Nguyen
25 ("Respondent"). The technician license was in full force and effect at all times relevant to the
26 charges brought herein and will expire on March 31, 2013, unless renewed.

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

3 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the
4 Emission Inspection System for electronic Certificate of Compliance No. XB127156C by
5 entering "Pass" for the visual inspection of the PCV system when, in fact, the vehicle could not
6 pass that portion of the inspection because the vehicle's PCV system was missing.

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

9 **THIRD CAUSE FOR DISCIPLINE**

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

11 12. Respondent has subjected his technician license to discipline under Health and Safety
12 Code section 44072.2, subdivision (d), in that on or about November 10, 2011, regarding the
13 1997 Cadillac Seville, he committed acts involving dishonesty, fraud or deceit whereby another
14 was injured by issuing electronic Certificate of Compliance No. XB127156C without performing
15 a bona fide inspection of the emission control devices and systems on that vehicle, thereby
16 depriving the People of the State of California of the protection afforded by the Motor Vehicle
17 Inspection Program.

18 **PRIOR CITATIONS**

19 13. To determine the degree of penalty, if any, to be imposed upon Respondent,
20 Complainant alleges, as follows:

21 a. On April 21, 2009, the Bureau issued Citation No. M09-1218 to Respondent against
22 his technician license for violations of Health and Safety Code section 44032, (qualified
23 technicians shall perform tests of emission control systems and devices in accordance with
24 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
25 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
26 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
27 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with the ignition

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1 timing adjusted beyond the manufacturer's specifications. Respondent was required to attend an
2 8-hour training course. Respondent complied with this citation on June 3, 2009.

3 b. On August 31, 2009, the Bureau issued Citation No. M2010-0166 to Respondent
4 against his technician license for violations of Health and Safety Code section 44032, (qualified
5 technicians shall perform tests of emission control systems and devices in accordance with
6 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
7 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
8 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
9 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with the ignition
10 timing adjusted beyond the manufacturer's specifications. Respondent was required to attend a
11 16-hour training course. Respondent complied with this citation on October 26, 2009.

12 c. On March 22, 2011, the Bureau issued Citation No. M2011-1126 to Respondent
13 against his technician license for violations of Health and Safety Code section 44032, (qualified
14 technicians shall perform tests of emission control systems and devices in accordance with
15 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
16 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
17 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
18 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with the ignition
19 timing adjusted beyond the manufacturer's specifications. Respondent was required to attend a
20 Basic Clean Air Car Course. Respondent complied with this citation on June 15, 2011.

21 OTHER MATTERS

22 14. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
23 Technician License Number EA 149867, issued to Thanh Trong Nguyen, is revoked or
24 suspended, any additional license issued under this chapter in the name of said licensee may be
25 likewise revoked or suspended by the director.

26 PRAYER

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

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1. Revoking or suspending Advanced Emission Specialist Technician License Number EA 149867, issued to Think Trong Nguyen;
2. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Think Trong Nguyen;
3. Ordering Think Trong 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: June 15-2012


JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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