

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

In the Matter of the Accusation Against:

JIMMY PHAM,
DBA JP SMOG CHECK TEST ONLY
403 W. Walnut Avenue
Orange, CA 92867

Automotive Repair Dealer Registration No.
ARD 231340
Smog Check Test Only Station License No.
TC 231340

JIMMY PHAM,
15142 Yawl Street
Garden Grove, CA 92843

Advanced Emission Specialist Technician License No.
EA 151680 (to be redesignated upon renewal as EO
151680 and/or EI 151680)

CONG PHAM,
P.O. Box 1525
Garden Grove, CA 92842

Advanced Emissions Specialist Technician License
No. EA 631737 (to be redesignated upon renewal
as EO 631737 and/or EI 631737)

Respondents.

Case No. 79/13-66

OAH No. 2013 05 0901

DECISION

The attached Stipulated Settlement and Order as to Only Respondent Jimmy Pham 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 Jimmy Pham, dba JP Smog Check Test Only, Automotive Repair Dealer Registration No. ARD 231340, Smog Check, Test Only, Station License No. TC 231340, and Advanced Emission Specialist Technician License No. EA 151680 (to be redesignated upon renewal as EO 151680 and/or EI 151680).

This Decision shall become effective AUG 28 2013 .

DATED: August 5, 2013



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 LAURO A. PAREDES
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Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 79/13-66

13 **JIMMY PHAM,**
14 **DBA JP SMOG CHECK TEST ONLY**
403 W. Walnut Avenue
15 Orange, CA 92867

OAH No. 2013 05 0901

**STIPULATED SETTLEMENT AND
ORDER AS TO ONLY RESPONDENT
JIMMY PHAM**

16 **Automotive Repair Dealer Registration No.**
ARD 231340
17 **Smog Check Test Only Station**
License No. TC 231340

18 **JIMMY PHAM,**
19 **15142 Yawl Street, Garden Grove, CA**
92843.

20 **Advanced Emission Specialist Technician**
21 **License No. EA 151680 (to be redesignated**
upon renewal as EO 151680 and/or EI
22 **151680)**

23 **CONG PHAM,**
24 **P.O. Box 1525**
Garden Grove, CA 92842

25 **Advanced Emissions Specialist Technician**
26 **License No. EA 631737 (to be redesignated**
upon renewal as EO 631737 and/or EI
27 **631737)**

28 Respondents.

1 In the interest of a prompt and speedy resolution of this matter, consistent with the public
2 interest and the responsibilities of the Director of Consumer Affairs (Director) and the Bureau of
3 Automotive Repair, the parties hereto agree to the following Stipulated Settlement and Order
4 which will be submitted to the Director for the Director's approval and adoption as the final
5 disposition of the Accusation.

6 PARTIES

7 1. John Wallauch (Complainant) is the Chief of the Bureau of Automotive Repair. He
8 brought this action solely in his official capacity and is represented in this matter by Kamala D.
9 Harris, Attorney General of the State of California, by Lauro A. Paredes, Deputy Attorney
10 General.

11 2. Jimmy Pham, individually and doing business as JP Smog Check Test Only
12 (Respondent) is represented in this proceeding by attorney Michael B. Levin, Esq., whose address
13 is 3727 Camino del Rio South, Suite 200 San Diego, CA 92108.

14 3. In 2004 the Bureau of Automotive Repair (BAR), issued Automotive Repair Dealer
15 Registration Number ARD 231340 to Jimmy Pham (Respondent) doing business as JP Smog
16 Check Test Only (JP). The registration was in full force and effect at all times relevant to the
17 charges brought herein and will expire on December 31, 2013, unless renewed.

18 4. In 2004, the Bureau of Automotive Repair issued Smog Check, Test Only, License
19 Number TC 231340 (smog station license) to Respondent Jimmy Pham for JP Smog Check Test
20 Only. Respondent's smog check station license was in full force and effect at all times relevant to
21 the charges brought herein and will expire on December 31, 2013, unless renewed.

22 5. On or about January 1, 2005, the Bureau of Automotive Repair issued Advanced
23 Emission Specialist Technician License No. EA 151680 (technician license) to Respondent
24 Jimmy Pham. Respondent's technician license was in full force and effect at all times relevant to
25 the charges brought herein and will expire on September 30, 2013, unless renewed. Upon timely
26 renewal of the license, the license will be redesignated as EO 151680 and/or EI 151680.

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1 1. The revocation of Respondent's Automotive Repair Dealer Registration and Smog
2 Check, Test Only, Station License and the acceptance of the revoked licenses by the Director
3 shall constitute the imposition of discipline against Respondent. This stipulation constitutes a
4 record of the discipline and shall become a part of Respondent's license history with the Bureau
5 of Automotive Repair.

6 2. Respondent shall lose the right to operate an automotive repair facility and smog test
7 station in California as of the effective date of the Director's Decision and Order.

8 3. If Respondent ever files an application for licensure or a petition for reinstatement in
9 the State of California, the Bureau shall treat it as a petition for reinstatement. Respondent must
10 comply with all laws, regulations and procedures for reinstatement of a revoked license in effect
11 at the time the petition is filed, and all of the charges and allegations contained in Accusation No.
12 79/13-66 shall be deemed to be true, correct and admitted by Respondent when the Director
13 determines whether to grant or deny the petition.

14 IT IS FURTHER HEREBY ORDERED that Advanced Emission Specialist Technician
15 License No. EA 151680¹ issued to Respondent Jimmy Pham is revoked, however, the revocation
16 is stayed and Respondent is placed on probation for three (3) years on the following terms and
17 conditions.

18 4. **Obey All Laws.** Comply with all statutes, regulations and rules governing
19 automotive inspections, estimates and repairs.

20 5. **Reporting.** Respondent must report in person or in writing as prescribed by the
21 Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each
22 quarter, on the methods used and success achieved in maintaining compliance with the terms and
23 conditions of probation.

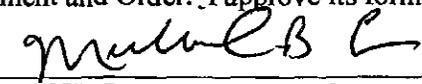
24 ///

25 ///

26
27 ¹ All Advanced Emission Specialist Technician License are being phased out and
28 redesignated as EO and/or EI licenses. Upon timely renewal of his license, Respondent will
choose either an EI and/or EO license. Such license(s) will continue on probation under the same
terms and conditions of this Stipulated Settlement and Order.

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I have read and fully discussed with Respondent Jimmy Pham the terms and conditions and other matters contained in this Stipulated Settlement and Order. I approve its form and content.

DATED: 6/12/13 
MICHAEL B. LEVIN, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated: 7/18/13

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General


LAURO A. PAREDES
Deputy Attorney General
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 79/ 13-66

12 **JIMMY PHAM;**
13 **DBA JP SMOG CHECK TEST ONLY**
14 **403 W. Walnut Avenue**
Orange, CA 92867

ACCUSATION

(SMOG CHECK)

15 **Automotive Repair Dealer Registration No.**
ARD 231340
16 **Smog Check Test Only Station**
License No. TC 231340

17 **JIMMY PHAM,**
18 **15142 Yawl Street, Garden Grove, CA**
92843.

19 **Advanced Emission Specialist Technician**
20 **License No. EA 151680 (to be redesignated**
21 **upon renewal as EO 151680 and/or EI**
151680)

22 **CONG PHAM,**
23 **P.O. Box 1525**
Garden Grove, CA 92842

24 **Advanced Emissions Specialist Technician**
25 **License No. EA 631737(to be redesignated**
26 **upon renewal as EO 631737 and/or EI**
631737)

27 Respondents.
28

1 Complainant alleges:

2 **PARTIES**

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

5 **Automotive Repair Dealer Registration**

6 2. In 2004 the Bureau of Automotive Repair (BAR), issued Automotive Repair Dealer
7 Registration Number ARD 231340 to Jimmy Pham (Respondent Jimmy Pham) doing business as
8 JP Smog Check Test Only (JP). The registration was in full force and effect at all times relevant
9 to the charges brought herein and will expire on December 31, 2013, unless renewed.

10 **Smog Check Test Only Station License**

11 3. In 2004, the Bureau of Automotive Repair issued Smog Check, Test Only, License
12 Number TC 231340 (smog station license) to Respondent Jimmy Pham for JP Smog Check Test
13 Only. Respondent Jimmy Pham's smog check station license was in full force and effect at all
14 times relevant to the charges brought herein and will expire on December 31, 2013, unless
15 renewed.

16 **Advanced Emission Specialist Technician License**

17 4. In 2005, the BAR issued Advanced Emission Specialist Technician License No. EA
18 151680 (technician license) to Respondent Jimmy Pham. Respondent's technician license was in
19 full force and effect at all times relevant to the charges brought herein and will expire on
20 September 30, 2013, unless renewed. Upon timely renewal of the license, the license will be
21 redesignated as EO 151680 and/or EI 151680.¹

22 **Advanced Emission Specialist Technician License**

23 5. On or about February 3, 2010, the BAR issued Advanced Emission Specialist
24 Technician License No. EA 631737 to Cong Pham (Respondent Cong Pham). Respondent's
25 technician license was in full force and effect at all times relevant to the charges brought herein

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 and will expire on October 31, 2013, unless renewed. Upon timely renewal of the license, the
2 license will be redesignated as EO 631737 and/or EI 631737.

3 **JURISDICTION**

4 6. This Accusation is brought before the Director of Consumer Affairs (Director) for the
5 Bureau of Automotive Repair, under the authority of the following laws.

6 7. Business and Professions Code ("Code") section 477 provides, in pertinent part, that
7 "Board" includes "bureau," ... and "agency." "License" includes certificate, registration or other
8 means to engage in a business or profession regulated by the Code.

9 8. Section 9884.7 of the Code states, in pertinent part:

10 (a) The director, where the automotive repair dealer cannot show there
11 was a bona fide error, may refuse to validate, or may invalidate temporarily
12 or permanently, the registration of an automotive repair dealer for any of the
13 following acts or omissions related to the conduct of the business of the
14 automotive repair dealer, which are done by the automotive repair dealer or
15 any automotive technician, employee, partner, officer, or member of the
16 automotive repair dealer.

17 (1) Making or authorizing in any manner or by any means whatever
18 any statement written or oral which is untrue or misleading, and which is
19 known, or which by the exercise of reasonable care should be known, to be
20 untrue or misleading.

21 ...

22 (4) Any other conduct which constitutes fraud.

23 ...

24 (b) Except as provided for in subdivision (c), if an automotive repair
25 dealer operates more than one place of business in this state, the director
26 pursuant to subdivision (a) shall only invalidate temporarily or permanently
27 the registration of the specific place of business which has violated any of
28 the provisions of this chapter. This violation, or action by the director, shall
not affect in any manner the right of the automotive repair dealer to operate
his or her other places of business.

(c) Notwithstanding subdivision (b), the director 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.

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

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

8 11. H&S Code section 44012 states:
9

10 The test at the smog check stations shall be performed in accordance
11 with procedures prescribed by the department and may require loaded mode
12 dynamometer testing in enhanced areas, two-speed idle testing, testing
13 utilizing a vehicle's onboard diagnostic system, or other appropriate test
14 procedures as determined by the department in consultation with the state
15 board. The department shall implement testing using onboard diagnostic
16 systems, in lieu of loaded mode dynamometer or two-speed idle testing, on
17 model year 2000 and newer vehicles only, beginning no earlier than January
18 1, 2013. However, the department, in consultation with the state board, may
19 prescribe alternative test procedures that include loaded mode dynamometer
20 or two-speed idle testing for vehicles with onboard diagnostic systems that
21 the department and the state board determine exhibit operational problems.
22 The department shall ensure, as appropriate to the test method, the
23 following:

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

27 (b) If a vehicle meets the requirements of Section 44012, a smog check
28 station licensed to issue certificates shall issue a certificate of compliance or
a certificate of noncompliance.

...

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

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34 ///

35 ///

36 ///

1 12. H&S Code section 44015 states:

2 (a) A licensed smog check station shall not issue a certificate of
3 compliance, except as authorized by this chapter, to any vehicle that meets
4 the following criteria:

5 ...

6 (b) If a vehicle meets the requirements of Section 44012, a smog check
7 station licensed to issue certificates shall issue a certificate of compliance or
8 a certificate of noncompliance.

9 ...

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

14 14. H&S Code section 44072.8 states that when a license has been revoked or suspended
15 following a hearing under this article, any additional license issued under this chapter in the name
16 of the licensee may be likewise revoked or suspended by the director.

17 15. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
18 "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
19 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
20 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

21 STATUTORY PROVISIONS

22 16. H&S Code section 44032 states:

23 No person shall perform, for compensation, tests or repairs of emission
24 control devices or systems of motor vehicles required by this chapter unless
25 the person performing the test or repair is a qualified smog check technician
26 and the test or repair is performed at a licensed smog check station.
27 Qualified technicians shall perform tests of emission control devices and
28 systems in accordance with Section 44012.

17. H&S 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:

1 (a) Violates any section of this chapter [the Motor Vehicle Inspection
2 Program (Health and Safety Code, § 44000, et seq.)] and the regulations
3 adopted pursuant to it, which related to the licensed activities.

4 ...

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

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

9 18. H&S Code section 44072.4 states, in pertinent part:

10 The director may take disciplinary action against any licensee after a
11 hearing as provided in this article by any of the following:

12 (a) Imposing probation upon terms and conditions to be set forth by
13 the director.

14 (b) Suspending the license.

15 (c) Revoking the license.

16 REGULATORY PROVISIONS

17 19. California Code of Regulations, title 16, (CCR), section 3340.30 states in pertinent
18 part:

19 A licensed smog check inspector and/or repair technician shall comply
20 with the following requirements at all times while licensed:

21 (a) Inspect, test and repair vehicles, as applicable, in accordance with
22 section 44012 of the Health and Safety Code, section 44035 of the Health
23 and Safety Code, and section 3340.42 of this article.

24 ...

25 20. CCR section 3340.35 states in pertinent part:

26 ...

27 (c) A licensed station shall issue a certificate of compliance or
28 noncompliance to the owner or operator of any vehicle that has been
inspected in accordance with the procedures specified in section 3340.42 of
this article and has all the required emission control equipment and devices
installed and functioning correctly. . . .

...

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1 21. CCR section 3340.42 states:

2 With the exception of diesel-powered vehicles addressed in subsection
3 (f) of this section, the following emissions test methods and standards apply
4 to all vehicles:

5 (a) A loaded-mode test, except as otherwise specified, shall be the test
6 method used to inspect vehicles registered in the enhanced program areas of
7 the state. The loaded-mode test shall measure hydrocarbon, carbon
8 monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in
9 the bureau's specifications referenced in subsection (b) of Section 3340.17
10 of this article. The loaded-mode test shall use Acceleration Simulation Mode
11 (ASM) test equipment, including a chassis dynamometer, certified by the
12 bureau.

13 On and after March 31, 2010, exhaust emissions from a vehicle subject
14 to this inspection shall be measured and compared to the emissions standards
15 shown in the VLT Row Specific Emissions Standards (Cutpoints) Table,
16 dated March 2010, which is hereby incorporated by reference. If the
17 emissions standards for a specific vehicle is not included in this table then
18 the exhaust emissions shall be compared to the emissions standards set forth
19 in TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode
20 test if all of its measured emissions are less than or equal to the applicable
21 emission standards specified in the applicable table.

22 (b) A two-speed idle mode test, unless a different test is otherwise
23 specified in this article, shall be the test method used to inspect vehicles
24 registered in all program areas of the state, except in those areas of the state
25 where the enhanced program has been implemented. The two-speed idle
26 mode test shall measure hydrocarbon, carbon monoxide and carbon dioxide
27 emissions at high RPM and again at idle RPM, as contained in the bureau's
28 specifications referenced in subsection (b) of Section 3340.17 of this article.
Exhaust emissions from a vehicle subject to this inspection shall be
measured and compared to the emission standards set forth in this section
and as shown in TABLE III. A vehicle passes the two-speed idle mode test if
all of its measured emissions are less than or equal to the applicable
emissions standards specified in Table III.

....

(e) In addition to the test methods prescribed in this section, the
following tests shall apply to all vehicles, except diesel-powered vehicles,
during the Smog Check inspection:

(1) A visual inspection of the vehicle's emissions control systems.
During the visual inspection, the technician shall verify that the following
emission control devices, as applicable, are properly installed on the vehicle:

(A) air injection systems,

(B) computer(s) and related sensors and switches,

(C) crankcase emissions controls, including positive crankcase
ventilation,

(D) exhaust gas after treatment systems, including catalytic converters,

- 1 (E) exhaust gas recirculation (EGR) systems,
2 (F) fuel evaporative emission controls,
3 (G) fuel metering systems, including carburetors and fuel injection,
4 (H) ignition spark controls, and
5 (I) any emissions control systems that are not otherwise prompted by
6 the Emissions Inspection System, but listed as a requirement by the vehicle
7 manufacturer.

7 ...

8 COST RECOVERY

9 22. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
10 administrative law judge to direct a licentiate found to have committed a violation or violations of
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
13 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
14 included in a stipulated settlement.

15 SURVEILLANCE OPERATION – OCTOBER 12, 2012

16 23. On October 12, 2012, the Bureau of Automotive Repair (BAR) investigated JP Smog
17 Check Test Only station and found multiple instances of fraud. During the day of surveillance
18 Respondent Cong Pham was video recorded falsifying smog test results using the clean-piping
19 method and issuing fraudulent electronic certificates of compliance.

20 A. Undercover Surveillance – Inspection Number 1 on October 12, 2012

21 On October 12, 2012, JP Smog Check Test Only and Respondent Cong Pham issued a
22 passing smog certificate to a 1996 Chrysler. Respondent Cong Pham used the “clean-piping”²
23 method to fraudulently issue a passing smog certificate for the Chrysler which was not on the
24 premises. According to the information provided to BAR by JP Smog Check Test Only and
25 Respondent Cong Pham, the Chrysler was smog tested between 5:18 p.m. and 5:26 p.m., on

26 ² Clean-piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of
27 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
28 compliance or are not present in the smog check area during the time of the certification.

1 October 12, 2012. Respondent Cong placed the EIS machines gas analyzer sample probe inside
2 the tail pipe of a Lexus sedan. Respondent Cong Pham used the “clean” exhaust for the Lexus
3 tailpipe to certify the exhaust from the Chrysler, which was not at the shop at the time of the test.
4 After the fraudulent test, Smog Certificate #XN140486C was issued for the Chrysler. Respondent
5 Cong Pham certified to BAR that he had smog tested the Chrysler and issued a passing smog
6 certificate for the Chrysler.

7 **B. Undercover Surveillance – Inspection Number 2 on October 12, 2012**

8 On October 12, 2012, JP Smog Check Test Only and Respondent Cong Pham issued a
9 passing smog certificate to a 1994 Jeep. According to the information provided to BAR by JP
10 Smog Check Test Only and Respondent Cong, the Jeep was smog tested between 5:43 p.m. and
11 5:52 p.m., on October 12, 2012. Respondent Cong again used the clean-piping method to
12 fraudulently certify the Jeep. At the time the Jeep was supposedly being smog tested the EIS
13 machine probe was inserted into the tailpipe of the Lexus. In fact, the Jeep was not present at JP
14 Smog Check Test Only at all during the testing. Respondent Cong Pham certified to BAR that he
15 had smog tested the Jeep and issued passing smog certificate number XN140487C for the Jeep.

16 **C. Undercover Surveillance – Inspection Number 3 on October 12, 2012**

17 On October 12, 2012, JP Smog Check Test Only and Respondent Cong Pham issued a
18 passing smog certificate to a 2000 Honda. According to the information provided to BAR by JP
19 Smog Check Test Only and Respondent Cong Pham, the Honda was smog tested between 5:57
20 p.m. and 6:01 p.m., on October 12, 2012. Respondent Cong again used the clean-piping method
21 to fraudulently certify the Honda. During the time the Honda was allegedly being tested, the
22 Lexus occupied the sole smog testing bay at JP Smog Check Test Only. In fact, there was no
23 Honda even present at JP Smog Check Test Only during the smog test. Respondent Cong Pham
24 certified to BAR that he had smog tested the Honda and issued passing smog certificate number
25 XN140488C for a vehicle that was not present at the station.

26 **D. Undercover Surveillance – Inspection Number 4 on October 12, 2012**

27 On October 12, 2012, JP Smog Check Test Only and Respondent Cong Pham issued a
28 passing smog certificate to a 1987 Toyota. According to the information provided to BAR by JP

1 Smog Check Test Only and Respondent Cong Pham, the 1987 Toyota was smog tested between
 2 6:05 p.m. and 6:12 p.m., on October 12, 2012. Respondent Cong again used the clean-piping
 3 method to fraudulently certify the 1987 Toyota. During the time the 1987 Toyota was allegedly
 4 being tested a Chevy, which had been driven to JP Smog Check Test Only by Respondent Jimmy
 5 Pham, occupied the sole smog testing bay. In fact, there was no 1987 Toyota present at JP Smog
 6 Check Test Only during the smog test. Respondent Cong Pham certified to BAR that he had
 7 smog tested the 1987 Toyota and issued passing smog certificate number XN140489C for a
 8 vehicle that was not present at the station.

9 **E. Undercover Surveillance – Inspection Number 5 on October 12, 2012**

10 On October 12, 2012, JP Smog Check Test Only and Respondent Cong Pham issued a
 11 passing smog certificate to a 1990 Toyota. According to the information provided to BAR by JP
 12 Smog Check Test Only and Respondent Cong Pham, the 1990 Toyota was smog tested between
 13 6:15 p.m. and 6:24 p.m., on October 12, 2012.

14 Respondent Cong Pham again used the clean-piping method to fraudulently certify the 1990
 15 Toyota. During the time the 1990 Toyota was allegedly being tested, the Chevy occupied the sole
 16 smog test bay in JP Smog Check Test Only. In fact, there was no 1990 Toyota even present at JP
 17 Smog Check Test Only during the smog test. Respondent Cong Pham certified to BAR that he
 18 had smog tested the 1990 Toyota and issued passing smog certificate number XN140490C for the
 19 1990 Toyota that was not present at the station.

20 **TABLE**

21 Test Dates/ Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
22 A. 10/12/2012 5:18 p.m.to 23 5:26 p.m.	1996 Chrysler	Lexus	XN140486C	1996 Chrysler not present at the facility
24 B. 10/12/2012 25 5:43 p.m.to 26 5:52 p.m.	1994 Jeep	Lexus	XN140487C	1994 Jeep not present at the facility
27 C. 10/12/2012 5:57 p.m.to 28 6:01 p.m.	2000 Honda	Lexus	XN140488C	2000 Honda not present at the facility

Test Dates/ Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
D. 10/12/2012 6:05 p.m.to 6:12 p.m.	1987 Toyota	Chevy	XN140489C	1987 Toyota not present at the facility
E. 10/12/2012 6:15 p.m.to 6:24 p.m.	1990 Toyota	Chevy	XN140490C	1990 Toyota not present at the facility

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

24. Respondent Jimmy Pham has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on October 12, 2012 Respondent made statements which he knew, or which by exercise of reasonable care should have known, were untrue or misleading when electronic certificates of compliance for the vehicles set forth in the table above, were issued certifying that the vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean-piped and were not smog tested at all.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

25. Respondent Jimmy Pham has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about October 12, 2012 Respondent committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in the table above, without performing bona fide inspections of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

26. Respondent Jimmy Pham has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about October 12, 2012 regarding the vehicles set forth in the table above, Respondent violated sections of that Code, as follows:

1 a. **Section 44012:** Respondent failed to ensure that the emission control tests
2 were performed on the vehicles in accordance with procedures prescribed by the department.

3 b. **Section 44015, subdivision (b):** Respondent issued electronic certificates of
4 compliance without properly testing and inspecting the vehicles to determine if they were in
5 compliance with section 44012 of that Code.

6 **FOURTH CAUSE FOR DISCIPLINE**

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

8 27. Respondent Jimmy Pham has subjected his station license to discipline under Health
9 and Safety Code section 44072.2, subdivision (c), in that on or about October 12, 2012 regarding
10 the vehicles set forth in the table above, Respondent violated sections of the California Code of
11 Regulations, title 16, as follows:

12 a. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of
13 compliance even though the vehicles had not been inspected in accordance with section 3340.42
14 of that Code.

15 b. **Section 3340.42:** Respondent failed to conduct the required smog tests and
16 inspections on the vehicles in accordance with the Bureau's specifications.

17 **FIFTH CAUSE FOR DISCIPLINE**

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

19 28. Respondent Cong Pham has subjected his technician license to discipline under
20 Health and Safety Code section 44072.2, subdivision (a), in that on or about October 12, 2012
21 regarding the vehicles set forth in the table above, he violated sections of that Code, as follows:

22 a. **Section 44012:** Respondent failed to ensure that the emission control tests
23 were performed on the vehicles in accordance with procedures prescribed by the department.

24 b. **Section 44032:** Respondent failed to perform tests of the emission control
25 devices and systems on the vehicles in accordance with section 44012 of that Code, in that the
26 vehicles had been clean-piped.

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1 SIXTH CAUSE FOR DISCIPLINE

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

3 29. Respondent Cong Pham has subjected his technician license to discipline under
4 Health and Safety Code section 44072.2, subdivision (c), in that on or about October 12, 2012
5 regarding the vehicles set forth in the table above, he violated sections of the California Code of
6 Regulations, title 16, as follows:

7 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the
8 vehicles in accordance with Health and Safety Code section 44012.

9 b. **Section 3340.41, subdivision (c):** Respondent entered false information into
10 the Emission Inspection System for the electronic certificates of compliance by entering vehicle
11 emission control information for vehicles other than the vehicles being certified.

12 c. **Section 3340.42:** Respondent failed to conduct the required smog tests and
13 inspections on the vehicles in accordance with the Bureau's specifications.

14 **MATTERS IN AGGRAVATION**

15 30. Respondent Jimmy Pham has been cited for violations of the smog check laws and
16 regulations prior to October 12, 2012 as follows:

17 a. March 9, 2007, the Bureau issued to Respondent Jimmy Pham Citation No.
18 C07-0630 for violating H&S Code section 44012(f) (failure to determine that emission control
19 devices and systems required by State and Federal laws are installed and functioning correctly in
20 accordance with test procedures) and CCR section 3340.35(c) (issuing a certificate of compliance
21 to a vehicle that was improperly tested); and Citation No. M07-0631 for violating H&S Code
22 section 44032 (failure to perform tests of emissions control systems and devices in accordance
23 with H&S Code section 44012), and CCR section 3340.30(a) (failure to inspect, test, and repair
24 vehicles in accordance with H&S Code sections 44012 and 44035, and CCR sections 3340.42).
25 The Bureau assessed civil penalties totaling \$500 against Respondent and required him to
26 complete an eight-hour training course.

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1 7. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 and Safety Code in the name of Cong Pham;

3 8. Ordering Jimmy Pham and Cong Pham to pay the Bureau of Automotive Repair the
4 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
5 Professions Code section 125.3; and,

6 9. Taking such other and further action as deemed necessary and proper.

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8 DATED: 5/1/13

John Wallauch by Doug Balshi
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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