

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

In the Matter of the First Amended Accusation
Against:

DEL ROSA TEST CENTER
ANIL K. KUMAR, Owner

Automotive Repair Dealer Registration No.
ARD 215242
Smog Check Test Only Station License No.
TC 215242
Advanced Emission Technician License No.
EA 23301

**SUDHIR KUMAR KAMBOH, aka SID
KUMAR**

Advanced Emission Technician License No.
EA 039029

and

VAN ARTHUR NEAL

Advanced Emission Technician License
No. EA 106526

Respondents.

Case No. 79/12-08

OAH No. 2011100994

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. The following typographical errors are hereby revised to reflect that on page 3, paragraph 2, and page 21 of the Orders, "ARD 21542" should read "ARD 215242".

This Decision shall become effective

1/22/13

DATED: December 18, 2012


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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PROPOSED DECISION

On October 16, 2012, James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Riverside, California.

Gregory J. Salute, Supervising Deputy Attorney General, Department of Justice, State of California, represented complainant Sherry Mehl, Bureau of Automotive Repair, Department of Consumer Affairs, State of California.

Respondents Del Rosa Test Center, Anil K. Kumar and Van Arthur Neal were represented by Michael B. Levin, Attorney at Law. Respondent Anil K. Kumar was present throughout the hearing. Respondent Van Arthur Neal was present for a portion of the hearing and elected to leave the hearing after giving sworn testimony.

Respondent Sudhir Kumar Kamboh represented himself and was present throughout the hearing except for closing argument, when he elected to leave the hearing.

The matter was submitted on October 16, 2012.

PRELIMINARY STATEMENT

Anil K. Kumar (Mr. Kumar) owns Del Rosa Test Center, a licensed smog check test only station. He employed his brother, Sudhir Kumar Kamboh (Mr. Kamboh), as the station's manager and Van Arthur Neal (Mr. Neal) as the station's smog check technician.

On January 13, 2011, the Bureau of Automotive Repair (the BAR or Bureau) conducted undercover surveillance of Del Rosa Test Center's operations. The BAR captured the "clean piping" of a 1993 Dodge Stealth on videotape. BAR representatives thereafter established eight instances of "clean plugging" at Del Rosa Test Center. The clean piping and clean plugging involved dishonesty and fraud.

Respondents stipulated to the truth of the allegations set forth in the First Amended Accusation. Mr. Neal and Mr. Kamboh admitted they engaged in fraud. Mr. Kumar, the station owner, was not present when the wrongdoing occurred. Mr. Kumar conceded that he provided almost no supervision over the conduct of his employees. Mr. Kumar claimed it was reasonable for him to have trusted his brother and Mr. Neal, a longtime employee.

Mr. Neal and Mr. Kamboh engaged in dishonesty. Their advanced emission technician licenses must be revoked. Mr. Kumar was obligated to ensure that his employees did not use his registration and license in violation of law. Mr. Kumar's lack of supervision created a climate in which wrongdoing occurred both before and after the BAR notified him of the clean piping. Mr. Kumar's asserted lack of knowledge of the wrongdoing does not constitute a valid defense to the charges. Mr. Kumar's registration as an automotive repair dealer, his license as a smog check test only station, and his license as a smog check technician must be revoked.

FACTUAL FINDINGS

Jurisdictional Matters

1. On December 14, 2011, complainant Sherry Mehl, Chief, Bureau of Automotive Repair, signed First Amended Accusation Case No. 70/12-08. The first amended accusation was served on respondents Del Rosa Test Center (Del Rosa), Anil K. Kumar, Sudhir Kumar Kamboh, and Van Arthur Neal. New allegations were controverted by the notices of defense previously filed. The matter was set for a disciplinary hearing.

On October 16, 2012, the record in the disciplinary hearing was opened; jurisdictional documents were presented; all parties entered into a stipulation in which the allegations set forth in the first amended accusation were admitted (subject to respondents being permitted to introduce evidence in explanation, mitigation, and rehabilitation); documentary evidence was received; sworn testimony was provided; official notice was taken; closing arguments were given; the record was closed; and the matter was submitted.

License Histories

Anil K. Kumar

2. In 1996, the BAR issued Advanced Emission Specialist Technician License No. EA 023301 to Anil K. Kumar.

In 2001, the BAR issued Automotive Repair Dealer Registration No. ARD 21542 to Anil K. Kumar, the owner of Del Rosa Test Center, doing business at 2742 North Del Rosa Avenue, San Bernardino, CA 92404.

In 2001, the BAR issued Smog Check Test Only Station License No. TC 215242 to Anil K. Kumar, to conduct business at Del Rosa Test Center.

Van Arthur Neal

3. In 1997, the BAR issued Advanced Emission Specialist Technician License No. EA 106526 to Van Arthur Neal.

Sudhir Kumar Kamboh

4. In 2002, the BAR issued Advanced Emission Specialist Technician License No. EA 039029 to Sudhir Kumar Kamboh, also known as Sid Kumar.

California's Clean Air Legislation and Smog Check Inspections

5. The State of California enacted clean air legislation to reduce toxic emissions resulting from the operation of motor vehicles. This legislation requires most motor vehicles registered in California to pass a smog check inspection upon change of ownership and every two years in areas subject to the biennial smog certification program.

A licensed smog check station causes an electronic certificate of compliance to be issued when a vehicle being tested passes a smog check inspection. When a vehicle does not pass an inspection, it must be repaired and retested. A certificate of compliance cannot be issued legitimately until a vehicle passes an inspection. Only a licensed smog check technician working at licensed smog check station may conduct a smog check inspection.

6. A smog check inspection is conducted by using a computer-based device known as an emission inspection system (EIS). Each EIS has a unique identification number. Each EIS is capable of going online with a statewide database. Information entered into an EIS during a smog check inspection is stored immediately in the EIS and in the statewide database (known as the VID).

An EIS is activated when a licensed smog check technician enters his or her unique personal identification number. Care must be taken by smog check technicians to maintain

the security of their unique personal identification numbers. After activating an EIS, a licensed smog check technician inputs information pertaining to the identity of the vehicle that is being inspected.

After the required vehicle identification information is entered, the EIS prompts the smog check technician to insert a diagnostic probe into the tailpipe of the vehicle being tested. Exhaust emissions are measured while the vehicle is running at different loads.

After engine emissions are gathered and analyzed, the EIS leads the technician through a visual inspection in which the technician visually confirms that all required vehicle emission control systems and devices are present. The technician enters his observations about the emission control systems and devices into the EIS through a series of prompts.

After the results of the visual inspection are reported, the EIS leads the licensed smog check technician through functional tests of various emission control devices, including an on board diagnostics system, the results of which are entered into the EIS.

When a smog check inspection is completed, the EIS generates a written report – known as a vehicle inspection report (VIR) – that contains a description of the vehicle and the results of the testing and inspections. If the vehicle passes the smog check inspection, an electronic certificate of compliance is issued automatically to the California Department of Motor Vehicles. If the vehicle does not pass the smog check inspection, the vehicle must be repaired and retested.

Clean Piping and Clean Plugging

7. Several fraudulent practices exist which may be utilized to defeat a smog check inspection and cause the issuance of a fraudulent certificate of compliance. Two of these practices include “clean piping” and “clean plugging.”

8. “Clean piping” involves the use of a “clean” sample of exhaust emissions from one vehicle in place of an exhaust sample from the vehicle that is being tested. Most often, clean piping involves the smog check technician inserting the EIS’s diagnostic probe into the exhaust pipe of a second vehicle whose engine is running during the emissions testing phase of the smog check inspection. The fraudulent use of “clean” exhaust gasses results in the subject vehicle “passing” the emissions portion of the smog check inspection.

9. “Clean plugging” involves a similar kind of misconduct related to the functional testing of on board diagnostics (OBD II). With clean plugging, the smog check technician inserts the EIS’s interface cable into the on board diagnostic (OBD II) link connector of a second vehicle to retrieve information from that vehicle’s on-board computer concerning the status of indicators, trouble codes, and malfunction indicator lights. The fraudulent use of the second vehicle’s stored data results in the subject vehicle “passing” that functional portion of the smog check inspection.

The January 13, 2011, Undercover Surveillance

10. The BAR became interested in Del Rosa's operations because the pass rate for vehicles tested at Del Rosa and the emissions data obtained during testing, as reported to the VID, were somewhat abnormal.

Andrew Nyborg (Program Representative Nyborg), a BAR field office program representative, made arrangements to conduct undercover video videotape surveillance. The surveillance was difficult because of Del Rosa's location. Surveillance was conducted for one day only – on January 13, 2011.

Program Representative Nyborg and a fellow program representative, David Martindelcampo, arrived at the surveillance location at 8:00 AM and set up a clandestine surveillance camera. The camera had a direct view of Del Rosa's inspection bays. Videotaping began at 8:39 AM. The program representatives monitored what was going on inside the test only station during and after videotaping.

Mr. Neal performed numerous smog check inspections on January 13, 2011. He was assisted during some inspections by Mr. Kamboh. Seventeen vehicles were inspected at Del Rosa on January 13, 2011. Ten vehicles were inspected during the videotaped surveillance and seven inspections occurred after videotaping concluded. A review of data maintained in the VID revealed that Mr. Neal's unique personal identification number was used to access Del Rosa's EIS for 12 inspections and that Mr. Kumar's unique personal identification number was used to access the EIS for five inspections.¹

One inspection videotaped on January 13, 2011 – involving a 1993 Dodge Stealth – involved clean piping.

11. At 9:50 AM, Mr. Neal drove a 1993 Dodge Stealth into the inspection bay. He performed a smog check inspection for that vehicle. At 10:40 AM, Mr. Neal drove the 1993 Dodge out of the inspection bay. The data obtained from the VID established that the 1993 Dodge underwent an inspection from 10:16 AM through 10:32 AM, and that the 1993 Dodge failed the exhaust emissions portion of the smog check inspection as a result of excessive NOx (nitrogen oxides).

At 10:52 AM, a 2000 Mazda Millenia pulled into the inspection bay. Mr. Neal began inspecting that vehicle. He was assisted by Mr. Kamboh. The EIS was accessed and identifying information for the 1993 Dodge Stealth, and not the 2000 Mazda Millenia, was entered. Both Mr. Neal and Mr. Kamboh entered information into the EIS during this inspection. In addition to entering data, Mr. Kumar inserted the EIS's diagnostic probe into the tailpipe of the 2000 Mazda while Mr. Neal operated the Mazda on the dynamometer.

¹ Mr. Kamboh was a licensed smog check technician, but he was not authorized to access the EIS at Del Rosa.

The data obtained from the VID at the time of this inspection reflected that the 1993 Dodge was being inspected, and not the 2000 Mazda, and that the inspection lasted from 10:51 AM until 10:59 AM. At the conclusion of the testing, a certificate of compliance was issued for the 1993 Dodge. The BAR 97-Test Detail reflected that Anil K. Kumar's unique personal identification number had been used to access the EIS for that fraudulent inspection.

Data obtained from the VID after the fraudulent inspection was completed stated that Mr. Neal conducted a smog check inspection of the 2000 Mazda Millenia from 11:03 AM to 11:07 AM, that the 2000 Mazda passed the smog check inspection, and that a certificate of compliance was issued for the 2000 Mazda. At 11:26 AM, the 2000 Mazda was driven out of the inspection bay.

12. Mr. Kumar was not present at the Del Rosa facility on January 13, 2011.

Evidence of Clean Plugging

13. Because establishing videotape surveillance was difficult, Program Representative Nyborg decided to investigate whether clean plugging had taken place at Del Rosa. On January 21, 2011, he reviewed Del Rosa's VID information for the period from July 1, 2010, through January 21, 2011. Based on the data he reviewed, he determined that Del Rosa had issued certificates of compliance to eight vehicles whose on board data had not been accessed as represented during functional testing² and that clean plugging had occurred in each of those instances.

The dates and times of inspection and vehicles purportedly being inspected at Del Rosa included:

Date	Time	Vehicle
12/15/2012	4:11-4:15 PM	1997 Honda Civic
11/17/2010	11:51-12:01 PM	1999 Chevrolet Tahoe
11/12/2010	4:23-4:30 PM	1996 Mazda B
11/12/2010	10:24-10:32 AM	2002 Nissan Altima
10/01/2010	4:48-4:52 PM	2000 BMW 528i
08/24/2010	11:25-11:33 AM	2001 Mitsubishi Gallant
08/23/2010	11:18-11:25 AM	2001 Toyota Corolla
07/16/2010	12:38-12:45 PM	2000 Chevrolet Suburban

² Diagnostic trouble codes were reported in the course of the smog check inspections that could not be supported by the manufacturer codes contained in the vehicles that were purportedly being tested.

Mr. Neal's Testimony

14. Mr. Neal was born in January 1959. He grew up in San Bernardino, graduating from high school in 1977. He became a licensed smog check technician in 1979.

The BAR cited Mr. Neal on two occasions, once around 1995 for issuing a certificate of compliance to an undercover BAR vehicle that was missing a catalytic converter, and once in 2010 for issuing a certificate of compliance to an undercover BAR vehicle whose ignition timing was improperly advanced. On both occasions Mr. Neal was employed at Del Rosa. Mr. Neal was required to complete 8-hour training courses as a consequence of those citations. Del Rosa was cited for those violations and was fined.

15. Mr. Kumar hired Mr. Neal as a smog check technician in 1986 to work as a night cashier and smog check technician at another smog check station that Mr. Kumar owned. Mr. Neal worked at Del Rosa after Del Rosa opened for business. Mr. Neal was on duty from 9:00 AM until 6:00 PM, Mondays through Fridays, and from 9:00 AM until 5:00 PM on Saturdays. Mr. Neal was a loyal and diligent employee, often working through lunch. Mr. Neal estimated he conducted anywhere from one to 25 smog check inspections per day at Del Rosa. Mr. Neal earned \$3,000 per month. Health insurance was not provided.

Mr. Neal worked by himself much of the day, except for assistance from a cashier who collected fees and provided invoices and receipts. Mr. Neal was sometimes assisted by Sid Kamboh, Mr. Kumar's younger brother, who worked two to four hours per day on weekdays as the station manager. Mr. Kamboh was Mr. Neal's immediate supervisor.

Mr. Kumar had no regular hours, and he "showed up when and where he wanted." Mr. Kumar sometimes helped Mr. Neal with smog check inspections if Mr. Neal was very busy. Mr. Kumar did not supervise Mr. Neal or Mr. Kamboh.

Mr. Neal and Mr. Kamboh learned Mr. Kumar's unique EIS personal identification number around 1997 or 1998 because it was the same identification number that Mr. Kumar and others used to access Mr. Kumar's AOL account at the station.

16. Mr. Neal and Mr. Kamboh were present at Del Rosa during the fraudulent smog check inspection of the 1993 Dodge Stealth. Mr. Kumar was not. The 1993 Dodge belonged to Mr. Kamboh's friend.

The 1993 Dodge failed the first smog check inspection as a result of excessive NOx. After it failed, another vehicle came into the station for testing. Mr. Kamboh approached Mr. Neal and suggested that Mr. Neal use exhaust emissions from the vehicle that had just arrived in the retesting of his friend's 1993 Dodge Stealth. Mr. Neal agreed.

Mr. Neal or Mr. Kamboh used Mr. Kumar's unique personal identification number to access the EIS for the "retesting" of 1993 Dodge. Mr. Neal and Mr. Kumar used exhaust emissions from the vehicle that had just arrived in the retesting. Each of them entered data

into the EIS during retesting. As they hoped, the 1993 Dodge "passed" the smog check inspection. Del Rosa issued a fraudulent certificate of compliance for the 1993 Dodge.

17. Mr. Neal admitted that he may have "clean plugged" the eight vehicles referred to in Factual Finding 13. He thought the BMW might not have been clean plugged because BMWs often presented with faulty access codes. Mr. Neal testified that he sometimes used Mr. Kumar's unique personal identification number to access the EIS, and he said he did so without Mr. Kumar's consent. Mr. Neal testified that Mr. Kumar did not tell Mr. Neal not to use his unique personal access code after Mr. Kumar learned of the clean piping incident, which was inconsistent with Mr. Kamboh and Mr. Kumar's testimony.

18. Mr. Kumar fired Mr. Neal the late afternoon of October 15, 2012, the day before this disciplinary hearing began. Mr. Neal was certain he was fired so it would appear as if Mr. Kumar had taken some remedial action. Mr. Neal believed that Mr. Kumar did not have actual knowledge of the clean piping or the clean plugging. Despite being fired the day before the hearing, Mr. Neal remained a loyal employee, testifying that Mr. Kumar should retain his registration and license. He claimed, "Because I'm going to go down for my idiocy does not mean he should go down, too." Mr. Kumar signed a declaration on October 2, 2012, that confirmed his participation in the clean piping.

19. Mr. Neal testified that he did not want to retain his license: "I have no wish to get caught up in this kind of thing again."

20. Mr. Neal was unemployed on the day of the hearing. He rents the home in which and his family live for \$1,000 per month. He is married. His wife does not work outside the home. Three adult children live with Mr. Neal and his wife in the home; one of them pays \$200 per month for rent; the others pay nothing for rent. Mr. Neal and his wife have approximately \$500 in a savings account. Mr. Neal owns five vehicles, one of which runs; registration fees are due on most of those vehicles. Mr. Neal and his wife have no other assets or sources of income.

Sid Kamboh's Testimony

21. Mr. Kamboh was born in August 1973. He graduated from high school and attended Riverside Community College for two years, majoring in business.

Mr. Kamboh became a licensed smog check technician in 2002, but he was never employed at Del Rosa as a smog check technician. Mr. Kamboh did not have a unique personal identification number by which he could gain access to the EIS at Del Rosa, although he knew Mr. Kumar's unique EIS access number. His brother never gave him permission to use his access code. Mr. Kamboh admitted that he used his brother's access code on occasion, although he claimed he had not used it since April 2012.

Mr. Kamboh testified that he began working at Del Rosa in 1999 or 2000, and that he, too, was fired from employment at Del Rosa the afternoon before the disciplinary hearing

began. Mr. Kamboh testified that before he was fired, he was the station manager at Del Rosa and that he worked there two to four hours a day, Mondays through Fridays, but not on Saturdays. He was Mr. Neal's supervisor. Mr. Kamboh testified that his brother was rarely present at Del Rosa and that his brother did not supervise what took place there.

Mr. Kamboh testified that when Mr. Neal was busy, he would "help" Mr. Neal with smog check inspections. He claimed he "never got on the EIS," but when he was confronted with what was depicted on the videotape, Mr. Kamboh stated that he may have "hit a button" on the keyboard but he claimed that he never did more than that. On further examination, Mr. Kamboh testified that during the visual and functional portions of a smog check inspection, a technician is required to do nothing more to enter data into the EIS than "to hit a button" on the keyboard. Mr. Kamboh admitted he used his brother's unique personal identification number to access the EIS at Del Rosa, that he helped conduct smog check inspections of vehicles, that he entered data related to those inspections, and that he caused certificates of compliance to be issued. Mr. Kamboh denied having any knowledge about the clean plugging.

22. Mr. Kamboh testified that "a regular customer" owned the 1993 Dodge Stealth and that it did not "fail by much." He said that "another car came in and we just ran that car." Mr. Kamboh deliberately understated his involvement in the clean piping. It was his idea.

23. Mr. Kamboh testified that he had no desire to maintain his smog check technician license. He believed that his brother should be permitted to keep his registration and license because his brother did not know of the clean piping and "trusted us."

24. Mr. Kamboh testified that he lives in Corona, that he is married, that his wife does not work outside the home, that he had his wife have three children (ages 18 months, nine years, and 13 years of age), that he and his wife own the family home, that mortgage payments are \$1,900 per month, that he and his wife own one vehicle "free and clear," that they have \$1,500 in a bank account, that he earns \$2,500 per month working in his parents' gas station and convenience store, that he no longer earns \$1,000 per month for his work at Del Rosa, and that he and his wife have no other sources of income and no substantial assets.

Anil Kumar's Testimony

25. Mr. Kumar was born in September 1961. He graduated from Corona High School in 1979, attended Riverside Community College for one year, and then attended Cal Poly Pomona for three years, majoring in Electrical Engineering. He did not receive a college degree. Mr. Kumar is a bright and engaging individual.

Mr. Kumar is a self-employed businessman who owns Del Rosa Test Center as well as another gas station and convenience store known as Highland Valero. Mr. Kumar holds the registration and licenses identified in Factual Finding 2.

26. Mr. Kumar began employing Mr. Neal in 2000 or so as a night cashier at the Highland facility. Mr. Neal proved himself to be a trustworthy individual. Mr. Kumar thereafter employed Mr. Neal as a smog check technician at Del Rosa, where he remained trustworthy and very hardworking. Mr. Kumar's brother, Sid Kamboh, began working for Mr. Kumar, around 2000. According to Mr. Kumar, "Sid was there to help Neal and the cashier – he was the station manager – Sid had no set hours." Mr. Kamboh's duty was to supervise Mr. Neal and the cashier and to report any problems to Mr. Kumar. Del Rosa charged \$49 for each smog check inspection.

Mr. Kumar said he was busy upgrading another facility he owned, so he was rarely present at the Del Rosa facility. He stopped by Del Rosa on occasion in 2010 and 2011, and he performed no more than four smog check inspections there each month. Although there were two inspection bays and two EIS devices at the Del Rosa facility, only one inspection bay was used. Mr. Kumar testified that Mr. Kamboh did not perform smog check inspections at Del Rosa because he did not have access to an EIS. Mr. Kumar claimed that he had no idea that Mr. Neal and Mr. Kamboh knew his access number for the EIS at the Del Rosa facility until he was served with the accusation.³

Mr. Kumar was not present at the Del Rosa facility on January 13, 2011, when the clean piping occurred.⁴ He testified that he did not know anything about the allegations of clean piping and clean plugging until he was served with the accusation.

27. Mr. Kumar testified that he confronted Mr. Neal in September 2011 about the allegations set forth in the accusation, that Mr. Neal told him there must be a mistake, and that there was no clean piping and no clean plugging. Mr. Kumar testified that he instructed Mr. Neal to stop using his access number during their September 2011 meeting. Mr. Kumar testified that he had another meeting with Mr., Neal and Mr. Kamboh in December 2011, and that he told each of them at that time that they were not authorized to use his access number: He told Mr. Neal, "You need to stop using my license . . . You need to do smog inspections under your license."⁵ Mr. Kamboh recalled a meeting around December 2011 when his

³ The accusation was served at Del Rosa on August 25, 2011. Mr. Kumar signed a notice of defense dated September 13, 2011. The accusation alleged that Mr. Kumar was responsible for issuing a certificate of compliance to the 1993 Dodge Stealth on a date he was not present at Del Rosa. Mr. Kumar should have known that someone was using his unique personal identification number on or before September 13, 2011.

⁴ Mr. Kumar testified he had no idea what clean piping involved, that he had never seen clean piping, and that he learned of it through a BAR publication. He testified that he reviewed the BAR surveillance videotape of the smog check inspections taking place on January 13, 2011, but did not know what to look for and he did not realize that what he was observing was clean piping. He said he had not heard of "clean plugging" before the disciplinary hearing.

brother “was yelling and kind of pissed off” and demanded that Mr. Neal and Mr. Kamboh not use his access code.

28. Mr. Kumar neither changed his unique personal identification number nor reviewed the EIS data maintained at Del Rosa after December 2011 to determine if Mr. Neal and Mr. Kamboh complied with his demand that they not use his access code.

29. Mr. Kumar’s defense in this matter was, “I did not do anything wrong.” He believed his only error was in trusting his younger brother and a dependable and honest employee who had worked for him for more than 20 years. He testified that he had no idea “why Neal went in the wrong direction.” Mr. Kumar testified that he was unaware that his brother and Mr. Neal had ever engaged in any wrongdoing until the day before the disciplinary hearing when they admitted it. Mr. Kumar testified that when he learned of their wrongdoing, “My brain was ready to explode – these guys put me in this situation.” Mr. Kumar terminated their employment. Mr. Kumar testified that he did not direct wrongdoing, that he had no knowledge of it, and “since I did not do any of this I should not be liable for it.”

30. Based on the number of smog check inspections performed at Del Rosa and based upon Del Rosa’s charge of \$49 per inspection, it appears that Del Rosa received about \$19,500 per month for conducting smog check inspections.

31. Mr. Kumar testified that because of the difficult economic climate, he could not afford to pay costs of investigation and enforcement all at once, but he could pay any costs at the rate of \$500 per month. Mr. Kumar is not married. He has three children, ages seven, eighteen and twenty one years of age. The older children attend college. Mr. Kumar pays \$800 per month child support to the mother of the seven-year-old child. He lives in a condominium that he rents for \$700 per month. He owns a 2008 Lexus ES350 “free and clear.” He has a bank account with a balance of \$10,000-\$15,000, owns two businesses, owns the property on which his businesses are located, claims a net income of \$4,000-\$5,000 per month, and has “lots of debt” including lines of credit and credit card debt totaling more than \$100,000.

32. If Mr. Kumar were permitted to retain his registration and licenses, he promised that he would provide closer supervision of his employees and that he would perform smog inspections himself. He expressed remorse for his situation.

33. Mr. Kumar could not remember the last time he conducted a smog inspection at Del Rosa. He testified that he performed no smog check inspections at Del Rosa between September 16, 2012, and October 15, 2012. He had no idea if his unique EIS access number had been used to conduct such inspections.

⁵ Mr. Neal had no recollection of attending any meeting when Mr. Kumar told him not to use his access code.

Rebuttal Evidence

34. Program Representative Nyberg produced Bar97 Test data from Del Rosa Test Center for the period from September 17, 2012, through October 15, 2012. More than four hundred smog check inspections were conducted. Mr. Kumar's unique personal EIS access code was used to gain access to the EIS for 61 of the 404 inspections.

Disciplinary Guidelines

35. The BAR published disciplinary guidelines to foster uniformity of penalties and to make sure licensees and registrants understand the consequences of violating the Automotive Repair Act and the Smog Check Program. The guidelines provide a range of penalties. The BAR requests that Administrative Law Judges take into account "Factors in Aggravation and in Mitigation" when recommending a penalty. In determining the proper penalty, the following factors should be considered:

Relevant factors in aggravation include a prior history of citations, evidence that the unlawful act was part of a pattern of practice, and any other conduct which constitutes fraud or gross negligence.

Relevant factors in mitigation available to Del Rosa included voluntary participation in retraining for self or employees; evidence of a temporary medical condition that prevented a licensee from exercising supervision and control over employees or others; evidence that the shop has taken specific steps for retraining and has initiated steps to minimize recurrence; and/or evidence of internal control or audit designed to eliminate errors.

36. With regard to false and misleading statements - the cornerstone of complainant's case - the minimum recommended penalty is a 90 day suspension, 80 days stayed, with two years probation, and the maximum recommended penalty is an outright revocation.

Evaluation of the Evidence

37. California's clean air legislation is central to attaining and maintaining healthful air quality, protecting the public from exposure to toxic air contaminants, meeting federal clean air standards, and making California a more enjoyable place to live. Legitimate smog check inspections are an important component in the clean air calculus. Clean piping and clean plugging involve dishonesty and fraud, unfair business practices, and endanger the air we breathe.

Mr. Neal and Mr. Kamboh directly engaged in clean piping that was captured on surveillance videotape. At least eight acts of clean plugging occurred at the Del Rosa facility, all of which was due to fraudulent conduct by persons having access to the EIS

devices located there. Neither Mr. Neal nor Mr. Kamboh wished to retain their smog check technician licenses, and that was a wise decision because no sanction other than an outright revocation of their licenses will protect the public.

Mr. Kumar owned and operated Del Rosa. As the owner of Del Rosa, Mr. Kumar was obligated to see that his registration and licenses were not used in violation of the law. Mr. Kumar was responsible for his employees' conduct in the exercise of his business. Mr. Kumar turned a blind eye to his responsibilities. He failed to provide even the most minimal supervision. He permitted wrongdoing to occur even after he was placed on notice that an employee was using his personal access code. Mr. Kumar took no disciplinary action until the afternoon before the hearing began, and the action he took then was clearly no more than an effort to get out of trouble and make it appear as if he took his responsibilities seriously. Mr. Kumar's assertion that he did not think that Mr. Neal or his brother could be involved in any wrongdoing until they admitted wrongdoing the afternoon before the hearing was not believable; he saw the videotape. Mr. Kumar does not understand and appreciate his obligations as an employer and a licensee. He expressed no remorse other than regret for his personal situation. Only the outright revocation of Mr. Kumar's registration and licenses will protect the public.

Costs of Investigation and Enforcement

38. A declaration signed by a BAR Program Manager stated that the BAR incurred \$7,831 in investigative costs. There was no evidence or argument offered that suggested investigative costs were unreasonable.

A declaration signed by the Deputy Attorney General who prosecuted this matter was received in evidence. The billing summary attached to the declaration stated that the Attorney General's Office billed the BAR \$6,990 for legal fees and expenses. There was no evidence or argument offered that suggested that the enforcement costs were unreasonable.

The BAR's costs of investigation and enforcement total \$14,161. These costs were subject to reduction under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.

39. Neither Mr. Neal nor Mr. Kamboh has the ability to pay costs. Issuing an order requiring them to pay costs would be meaningless.

40. Although Mr. Kumar asserted that he lacks the present capacity to pay costs all at once, he has the ability to pay costs over time. Mr. Kumar attempted to use the hearing process to reduce the severity of the discipline that claimant proposed, but he did not raise a colorable challenge to the proposed discipline. Mr. Kumar's claim that he should not be responsible for the wrongdoing of his employees because he did not know about employee wrongdoing was not well founded. First, he had the responsibility to provide supervision over his employees and he failed to do so. Second, even after the BAR notified Mr. Kumar that wrongdoing was taking place at Del Rosa, he did nothing about it until the day before

the hearing. Under the circumstances, there is no compelling reason to reduce the Bureau's costs of investigation and prosecution attributable to Mr. Kumar under *Zukerman*.

LEGAL CONCLUSIONS

Purpose of the Law

1. The Automotive Repair Act and the Motor Vehicle Inspection Program are designed to protect the public. Administrative sanctions are not punitive. The purpose of an administrative proceeding concerning the revocation or suspension of a license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*People v. Damon* (1996) 51 Cal.App.4th 958, 981-982.)

Standard of Proof

2. Advanced Emission Technician License: Although an applicant for an advanced emission specialist technician license must complete certain coursework (Cal.Code Regs., tit. 16, § 3340.28, subd. (b)(3)) and pass an examination (Cal.Code Regs., tit. 16, § 3340.29), these requirements are not similar to the extensive education, training and testing requirements that are necessary to obtain a professional license. An advanced emission specialist technician license is a nonprofessional or occupational license and proceedings to revoke such a license are governed by the preponderance of evidence standard of proof. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.)

3. Smog Check Station License and Automotive Repair Dealer Registration: Obtaining a smog check station license (Health & Saf. Code, § 44014 and § 44072.2) and an automotive repair dealer registration (Bus. & Prof. Code, § 9884 and §9889) requires no more than a showing of good moral character, the absence of a prior disciplinary history related to the license or registration being sought, and proper zoning and the possession of required equipment and other devices; registration and licensure does not require extensive education, training or testing. Smog check station licenses and automotive repair dealer registrations are nonprofessional and proceedings to revoke them are governed by the preponderance of the evidence standard of proof. (Evidence Code section 115; *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.)

Relevant Disciplinary Statutes

4. Business and Professions Code section 9884.7 provides in part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may . . . revoke, or place on probation 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 that constitutes fraud.

[¶] . . . [¶]

(6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it . . .

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of 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 suspend, revoke, or place on probation 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.

5. Health and Safety Code section 44972.2 provides in 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 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.

[¶] . . . [¶]

(f) Aids or abets unlicensed persons to evade the provisions of this chapter. . . .

6. Health and Safety Code section 44072.10 provides in part:

[¶] . . . [¶]

(c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

(1) Clean piping, as defined by the department.

[¶] . . . [¶]

(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter. . . .

7. Health and Safety Code section 44072.8 provides:

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.

8. Health and Safety Code section 44012 requires a smog check inspection be performed in accordance with procedures prescribed by the Department.

9. Health and Safety Code section 44015 requires that a proper smog check inspection be performed before issuing a certificate of compliance.

Relevant Regulations

10. California Code of Regulations, title 16, section 3340.24, subdivision (c), prohibits the issuance of a fraudulent certificate of compliance.

11. California code of Regulations, title 16, section 3340.35, subdivision (c), prohibits the issuance of a certificate of compliance when a vehicle has not been inspected as required.

12. California Code of Regulations, title 16, section 3340.41, subdivision (c), prohibits the entry of false information into an EIS.

13. California Code of Regulations, title 16, section 3340.42, requires that a smog check inspection be conducted in accordance with the Bureau's specifications.

Employee Misconduct

14. The owner of a license is obligated to see that the license is not used in violation of the law. If a licensee elects to operate his business through employees he must be responsible to the licensing authority for their conduct in the exercise of his license and he is responsible for the acts of his agents or employees done in the course of his business in the operation of the license. A licensee may not insulate himself from regulation by electing to function through employees or independent contractors. (*Rob-Mac, Inc v. Department of Motor Vehicles* (1983) 148 Cal.App.3d 793, 797.) Where a licensee demonstrates unusual circumstances that negate the presumption of control, it might be unfair to hold the licensee liable for employee misconduct. Mere lack of knowledge does not suffice where a licensee appeared to have tolerated misleading statements in the past or created a climate in which such misstatements were likely to occur. A licensee might be able to defend against charges of employee wrongdoing by demonstrating that the licensee made every effort to discourage misrepresentations; had no knowledge of employee misconduct; and, when so informed, refused to accept the benefits of any sales based on misrepresentations and took action to prevent a reoccurrence. (*Rob-Mac, Inc v. Department of Motor Vehicles, supra*, at p. 799.)

Cause Exists to Impose Discipline

15. Del Rosa Test Center – Anil K. Kumar - Automotive Repair Dealer

Registration: Cause exists to revoke the automotive repair dealer registration issued to Anil K, Kumar, doing business as Del Rosa Test Center, for violations of Business and Professions code section 9884.7, subdivision (a)(1) [first cause for discipline and thirteenth cause for discipline] and section 9884.7, subdivision (a)(4) [second cause for discipline and fourteenth cause for discipline]. A preponderance of the evidence established that on January 13, 2011, Mr. Kumar's employees engaged in clean piping, a dishonest and fraudulent act, and that on eight occasions from July 16, 2010, through December 15, 2010, a Del Rosa employee engaged in clean plugging. Mr. Kumar did not establish a bona fide error. Nor did Mr. Kumar establish any unusual circumstances that negate the presumption of control, or that he did not create a climate in which such misstatements were likely to occur, or that he made every effort to discourage employee misrepresentations, or that he took action to prevent a similar reoccurrence after Mr. Kumar knew, or should have known, that others were using his unique personal identification number at Del Rosa to conduct smog check inspections. Each violation supports the outright revocation of Mr. Kumar's automotive dealer registration, and no measure of discipline other than an outright revocation is sufficient to protect the public.

16. Del Rosa Test Center – Anil K. Kumar – Smog Check Station License:

Cause exists to revoke the smog check station license issued to Anil K, Kumar, doing business as Del Rosa Test Center, for violations of Health and Safety Code section 44072.2, subdivisions (a), (c), and (d). A preponderance of the evidence established that on January 13, 2011, in connection with the inspection of the 1993 Dodge, Del Rosa violated the motor vehicle inspection program [third cause for discipline], failed to comply with applicable regulations [fourth cause for discipline], and engaged in clean piping, a dishonest and fraudulent act [fifth cause for discipline]. A preponderance of the evidence established that on eight occasions from July 16, 2010, through December 15, 2010, Del Rosa violated the Motor Vehicle Inspection Program [fifteenth cause for discipline], failed to comply with regulations [sixteenth cause for discipline], and engaged in dishonesty and fraud [seventeenth cause for discipline]. Del Rosa did not establish a bona fide error. Nor did Del Rosa establish any unusual circumstances that negate the presumption of control, or that he did not create a climate in which such misstatements were likely to occur, or that he made every effort to discourage employee misrepresentations, or that he took action to prevent a similar reoccurrence after Mr. Kumar knew, or should have known, that others were using his unique personal identification number at Del Rosa to conduct smog check inspections. Each violation supports the outright revocation of Del Rosa's smog check registration, and no measure of discipline other than an outright revocation is sufficient to protect the public.

17. Van Arthur Neal – Smog Check Technician License:

Cause exists to revoke the advanced emission specialist technician license issued to Van Arthur Neal for violations of Health and Safety Code section 44072.2, subdivisions (a) and (c). A preponderance of the evidence established that on January 13, 2011, in connection with the smog check inspection of the 1993 Dodge and from July 16, 2010, through December 15, 2010, in connection with

the smog check inspections of eight vehicles Mr. Neal violated the Motor Vehicle Inspection Program [sixth cause for discipline and twenty-first cause for discipline], failed to comply with regulations enacted under the Motor Vehicle Inspection Program [seventh cause for discipline and twenty-second cause for discipline], and engaged in dishonesty and fraud [eighth cause for discipline and twenty-third cause for discipline]. Mr. Neal does not wish to retain his advanced emission specialist technician license. Each violation supports the outright revocation of Mr. Neal's advanced emission specialist technician license, and no measure of discipline other than an outright revocation is sufficient to protect the public.

18. Sudhir Kumar Kamboh, aka Sid Kumar – Smog Check Technician License: Cause exists to revoke the advanced emission specialist technician license issued to Van Arthur Neal for violations of Health and Safety Code section 44072.2, subdivisions (a) and (c). A preponderance of the evidence established that on January 13, 2011, in connection with the smog check inspection of the 1993 Dodge, Mr. Kamboh violated the Motor Vehicle Inspection Program [tenth cause for discipline], failed to comply with regulations enacted under the Motor Vehicle Inspection Program [eleventh cause for discipline], and engaged in dishonesty and fraud [twelfth cause for discipline]. Mr. Kamboh does not wish to retain his advanced emission specialist technician license. Each violation supports the outright revocation of Mr. Kamboh's advanced emission specialist technician license, and no measure of discipline other than an outright revocation is sufficient to protect the public.

19. Anil K. Kumar – Smog Check Technician License: Cause exists to revoke the advanced emission specialist technician license issued to Anil K. Kumar for violations of Health and Safety Code section 44072.2. A preponderance of the evidence established that from at least January 13, 2011, through at least October 15, 2012, Mr. Kumar permitted Mr. Neal and Mr. Kamboh to access the EIS at Del Rosa by using Mr. Kumar's unique personal identification number. Mr. Kumar had the duty to keep his unique personal identification number confidential. His failure to do so allowed Mr. Neal and Mr. Kamboh to enter false information in the EIS [ninth cause for discipline]. While the other causes for discipline sought against Mr. Kumar's advanced emission specialist technician license were not established, a revocation is more than justified because the use by others of Mr. Kumar's unique personal identification number was a longstanding practice and was part of an ongoing pattern of misconduct. Mr. Kumar took no steps to stop the illegal practice except to direct Mr. Neal and Mr. Kamboh to discontinue the practice. Mr. Kumar did not initiate an audit to determine whether his unique personal identification number was being used; there were no internal controls. Mr. Kumar's termination of Mr. Neal and Mr. Kamboh on the afternoon before the hearing – almost a year after he had actual knowledge that his unique personal identification number was being used by others - was not done for any reason other than to try and establish that he was a concerned licensee. His effort was too little, too late. Mr. Kumar's indifference to his statutory and regulatory duties deprived the People of the State of California of the protections afforded under the Motor Vehicle Inspection Program. Only the outright revocation of Mr. Kumar's advanced emission specialist technician license will protect the public.

Costs of Investigation and Enforcement

20. Business and Professions Code section 125.3 provides in part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the entity bringing the proceeding 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.

[¶] . . . [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a)

21. *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 held that the imposition of costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5 (which is very similar to Bus. & Prof. Code, § 125.3) did not violate due process in a case involving the discipline of a chiropractor. But, the California Supreme Court held that it was incumbent upon the State Board of Chiropractic Examiners to exercise discretion to reduce or eliminate cost awards in a manner that ensured that the application of 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 that the agency was required 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 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.

Section 317.5 and Business and Professions Code section 3753.5 contain substantially the same language and seek the same kinds of cost recovery, *Zuckerman* must be extended to Business and Professions Code section 3753.5 to avoid constitutional pitfalls.

22. The *Zukerman* criteria were applied.

Issuing an order that directs Anil K. Kumar to pay \$14,161 to the Board for its investigation and enforcement costs is reasonable under all the circumstances.

ORDERS

Advanced Emission Specialist Technician License No. EA 023301 issued to Anil K. Kumar is revoked.

Automotive Repair Dealer Registration No. ARD 21542 issued to Anil K. Kumar is revoked.

Smog Check Test Only Station License No. TC 215242 issued to Anil K. Kumar is revoked.

Anil K, Kumar shall pay to the Bureau of Automotive Repair \$14,161 for its costs of investigation and enforcement.

Advanced Emission Specialist Technician License No. EA 106526 issued to Van Arthur Neal is revoked.

Advanced Emission Specialist Technician License No. EA 039029 issued to Sudhir Kumar Kamboh, also known as Sid Kumar, is revoked.

DATED: November 7, 2012



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the First Amended Accusation
Against:

Case No. 79/12-08

13 **DEL ROSA TEST CENTER**
14 **ANIL K. KUMAR, OWNER**
2742 N. Del Rosa Avenue
San Bernardino, CA 92404
15 Automotive Repair Dealer Reg. No. ARD 215242
16 Smog Check Test Only Station License No. TC
215242,

FIRST AMENDED ACCUSATION
(Smog Check)

17 **ANIL K. KUMAR**
3588 E. Highland Avenue
18 Highland, CA 92346
Advanced Emission Specialist Technician
19 License No. EA 23301,

20 **SUDHIR KUMAR KAMBOH, aka SID**
21 **KUMAR**
2925 Dorchester Circle,
22 Corona, Ca. 91719 Advanced Emission Specialist
23 Technician License No. EA 039029

24 **VAN ARTHUR NEAL**
P.O. Box 1062
25 Highland, CA 92346
Advanced Emission Specialist Technician
26 License No. EA 106526

27 Respondents.
28

1 Complainant alleges:

2 **PARTIES/LICENSE INFORMATION**

3 1. Sherry Mehl ("Complainant") brings this First Amended Accusation solely in her
4 official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of
5 Consumer Affairs.

6 **Del Rosa Test Center; Anil K. Kumar, Owner**

7 2. In or about 2001, the Director of Consumer Affairs ("Director") issued Automotive
8 Repair Dealer Registration Number ARD 215242 ("registration") to Anil K. Kumar ("Respondent
9 Kumar"), owner of Del Rosa Test Center. Respondent's registration was in full force and effect at
10 all times relevant to the charges brought herein and will expire on March 31, 2012, unless
11 renewed.

12 3. On or about March 29, 2001, the Director issued Smog Check Test Only Station
13 License Number TC 215242 ("smog check station license") to Respondent Kumar. Respondent's
14 smog check station license was in full force and effect at all times relevant to the charges brought
15 herein and will expire on March 31, 2012, unless renewed.

16 **Anil K. Kumar**

17 4. In or about 1996, the Director issued Advanced Emission Specialist Technician
18 License Number EA 23301 ("technician license") to Respondent Kumar. Respondent's technician
19 license was in full force and effect at all times relevant to the charges brought herein and will
20 expire on September 30, 2012, unless renewed.

21 **Sudhir Kumar Kamboh**

22 5. In or about 2002, the Director issued Advanced Emission Specialist Technician
23 License Number EA 039029 ("technician license") to Respondent Sudhir Kumar Kamboh aka Sid
24 Kumar ("Respondent Kamboh). Respondent's technician license was in full force and effect at all
25 times relevant to the charges brought herein and will expire on August 31, 2012, unless renewed.

26 **Van Arthur Neal**

27 6. In or about 1997, the Director issued Advanced Emission Specialist Technician
28 License Number EA 106526 ("technician license") to Van Arthur Neal ("Respondent Neal").

1 Respondent's technician license was in full force and effect at all times relevant to the charges
2 brought herein and will expire on January 31, 2013, unless renewed.

3 **JURISDICTION**

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

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

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

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

17 **STATUTORY PROVISIONS**

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

19 (a) The director, where the automotive repair dealer cannot show there
20 was a bona fide error, may deny, suspend, revoke or place on probation the
21 registration of an automotive repair dealer for any of the following acts or omissions
22 related to the conduct of the business of the automotive repair dealer, which are done
23 by the automotive repair dealer or any automotive technician, employee, partner,
24 officer, or member of the automotive repair dealer.

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

28

(4) Any other conduct that constitutes fraud.

. . . .

(c) Notwithstanding subdivision (b), the director may suspend, revoke or
place on probation the registration for all places of business operated in this state by

1 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
2 engaged in a course of repeated and willful violations of this chapter, or regulations
3 adopted pursuant to it.

4 12. Bus. & Prof. Code section 22, subdivision (a), states:

5 "Board" as used in any provision of this Code, refers to the board in
6 which the administration of the provision is vested, and unless otherwise expressly
7 provided, shall include "bureau," "commission," "committee," "department,"
8 "division," "examining committee," "program," and "agency."

9 13. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
10 "license" includes "registration" and "certificate."

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

12 The director may suspend, revoke, or take other disciplinary action
13 against a license as provided in this article if the licensee, or any partner, officer, or
14 director thereof, does any of the following:

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

18

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

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

23

24 (f) Aids or abets unlicensed persons to evade the provisions of this
25 chapter . . .

26 15. Health & Saf. Code section 44072.10 states, in pertinent part:

27

28 (c) The department shall revoke the license of any smog check technician
or station licensee who fraudulently certifies vehicles or participates in the fraudulent
inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
the following:

(1) Clean piping, as defined by the department.

. . . .

(4) Intentional or willful violation of this chapter or any regulation,
standard, or procedure of the department implementing this chapter . . .

1 a. **Section 44012**: Respondent failed to perform the emission control tests on the 1993
2 Dodge Stealth in accordance with procedures prescribed by the department.

3 b. **Section 44059**: Respondent willfully made false entries in the EIS, resulting in the
4 issuance of a fraudulent certificate of compliance for the 1993 Dodge Stealth.

5 **ELEVENTH CAUSE FOR DISCIPLINE**

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

8 29. Respondent Kamboh's technician license is subject to disciplinary action pursuant to
9 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
10 provisions of California Code of Regulations, title 16, as follows:

11 a. **Section 3340.24, subdivision (c)**: Respondent assisted in falsely or fraudulently
12 issuing an electronic smog certificate of compliance for the 1993 Dodge Stealth.

13 b. **Section 3340.30, subdivision (a)**: Respondent assisted Respondent Neal in failing to
14 inspect and test the 1993 Dodge Stealth in accordance with Health & Saf. Code sections 44012
15 and 44035, and California Code of Regulations, title 16, section 3340.42.

16 c. **Section 3340.41, subdivision (c)**: Respondent assisted in entering false information
17 into the EIS by entering vehicle identification information or emission control system
18 identification data for a vehicle other than the one being tested.

19 d. **Section 3340.42**: In assisting Respondent Neal, Respondent Kamboh failed to
20 conduct the required smog tests on the 1993 Dodge Stealth in accordance with the Bureau's
21 specifications.

22 **TWELFTH CAUSE FOR DISCIPLINE**

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

24 30. Respondent Kamboh's technician license is subject to disciplinary action pursuant to
25 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
26 fraudulent or deceitful act whereby another is injured by assisting in issuing an electronic smog
27 certificate of compliance for the 1993 Dodge Stealth without performing a bona fide inspection of
28

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

3 **VID DATA REVIEW**

4 31. On or about January 21, 2011, a representative of the Bureau conducted a detailed
5 review of VID data for all smog inspections performed at Respondent Kumar's facility for the
6 period of July 1, 2010, through January 21, 2011. The representative found that the 8 vehicles
7 identified below recorded certain diagnostic trouble codes (hereinafter "code") during the OBD II
8 tests². The representative obtained information indicating that the codes were not applicable to
9 the vehicles. The VID data revealed that Respondent Kumar performed the smog inspections on
10 vehicles 1 through 4 and 6 through 8 and that Respondent Neal performed the inspection on
11 vehicle 5. The Bureau concluded that Respondents Kumar and Neal performed the smog
12 inspections on the vehicles using a different vehicle(s) during the OBD II tests, a method known
13 as "clean plugging",³ resulting in the issuance of fraudulent certificates of compliance for the
14 vehicles.

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21 ² The On Board Diagnostics (OBD II) functional test is an automated function of the
22 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an
23 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is
24 located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves
information from the vehicle's on-board computer about the status of the readiness indicators,
trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II
functional test, it will fail the overall inspection.

25 ³ Clean-plugging is the use of the OBD II readiness monitor status and stored fault code
26 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
27 another vehicle that is not in compliance due to a failure to complete the minimum number of self
tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
control system or component failure.

Date & Time of Inspection	Vehicle Certified & License or VIN No.	Certificate No.
1. 12/15/2010 1611 - 1615	1997 Honda Civic; VIN #1HGEJ6577VL030096	WP897289C
2. 11/17/2010 1151 - 1201	1999 Chevrolet Tahoe; License No. 4GFT433	WP520246C
3. 11/12/2010 1623 - 1630	1996 Mazda B-Series; License No. 8T96815	WP459650C
4. 11/12/2010 1024 - 1032	2002 Nissan Altima; License No. 4XUB157	WP459635C
5. 10/01/2010 1648 - 1652	2000 BMW 528i; VIN #WBADM6342YGU14954	WN946526C
6. 08/24/2010 1125 - 1133	2001 Mitsubishi Galant; License No. 4UKU319	WN359128C
7. 08/23/2010 1118 - 1125	2001 Toyota Corolla; License No. 4MHL469	WN359113C
8. 07/16/2010 1238 - 1245	2000 Chevrolet Suburban; License No. 5APP508	WL665181C

THIRTEENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

32. Respondent Kumar's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondents Kumar and Neal certified that vehicles 1 through 8, identified in paragraph 29 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondents Kumar and Neal conducted the inspections on the vehicles using clean-plugging methods in that they substituted or used a different vehicle(s) during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

FOURTEENTH CAUSE FOR DISCIPLINE

(Fraud)

33. Respondent Kumar's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud by issuing electronic smog certificates of compliance for vehicles 1 through 8, identified in paragraph 29 above, without ensuring that bona fide inspections were performed of the emission

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

3 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

5 34. Respondent Kumar's smog check station license is subject to disciplinary action
6 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
7 comply with the following sections of that Code:

8 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
9 performed on vehicles 1 through 8, identified in paragraph 29 above, in accordance with
10 procedures prescribed by the department.

11 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
12 vehicles 1 through 8, identified in paragraph 29 above, without ensuring that the vehicles were
13 properly tested and inspected to determine if they were in compliance with Health & Saf. Code
14 section 44012.

15 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

18 35. Respondent Kumar's smog check station license is subject to disciplinary action
19 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
20 comply with provisions of California Code of Regulations, title 16, as follows:

21 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
22 electronic smog certificates of compliance for vehicles 1 through 8, identified in paragraph 29
23 above.

24 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
25 compliance for vehicles 1 through 8, identified in paragraph 29 above, even though the vehicles
26 had not been inspected in accordance with section 3340.42.

1 c. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
2 performed on vehicles 1 through 8, identified in paragraph 29 above, in accordance with the
3 Bureau's specifications.

4 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

6 36. Respondent Kumar's smog check station license is subject to disciplinary action
7 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
8 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog
9 certificates of compliance for vehicles 1 through 8, identified in paragraph 29 above, without
10 ensuring that bona fide inspections were performed of the emission control devices and systems
11 on the vehicles, thereby depriving the People of the State of California of the protection afforded
12 by the Motor Vehicle Inspection Program.

13 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

15 37. Respondent Kumar's technician license is subject to disciplinary action pursuant to
16 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
17 section 44012 of that Code, in a material respect, as follows: Respondent failed to perform the
18 emission control tests on vehicles 1 through 4 and 6 through 8, identified in paragraph 29 above,
19 in accordance with procedures prescribed by the department.

20 **NINETEENTH CAUSE FOR DISCIPLINE**

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

23 38. Respondent Kumar's technician license is subject to disciplinary action pursuant to
24 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
25 provisions of California Code of Regulations, title 16, as follows:

26 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
27 electronic smog certificates of compliance for vehicles 1 through 4 and 6 through 8, identified in
28 paragraph 29 above.

1 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued an
2 electronic smog certificate of compliance for vehicle 5, identified in paragraph 29 above.

3 b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test vehicle 5,
4 identified in paragraph 29 above, in accordance with Health & Saf. Code sections 44012 and
5 44035, and California Code of Regulations, title 16, section 3340.42.

6 c. **Section 3340.42**: Respondent failed to conduct the required smog tests on vehicle 5,
7 identified in paragraph 29 above, in accordance with the Bureau's specifications.

8 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

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

10 42. Respondent Neal's technician license is subject to disciplinary action pursuant to
11 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
12 fraudulent, or deceitful act whereby another is injured by issuing an electronic smog certificate of
13 compliance for vehicle 5, identified in paragraph 29 above, without performing a bona fide
14 inspection of the emission control devices and systems on the vehicle, thereby depriving the
15 People of the State of California of the protection afforded by the Motor Vehicle Inspection
16 Program.

17 **MATTERS IN AGGRAVATION**

18 43. To determine the degree of discipline, if any, to be imposed on Respondents Kumar
19 and Neal, Complainant alleges as follows:

20 **Respondent Kumar**

21 a. On or about August 22, 2008, the Bureau issued Citation No. C09-0174 against
22 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
23 determine that emission control devices and systems required by State and Federal law are
24 installed and functioning correctly in accordance with test procedures), and California Code of
25 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
26 compliance to a vehicle that was improperly tested). Respondent had issued a certificate of
27 compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond
28

1 specifications. The Bureau assessed civil penalties totaling \$500 against Respondent for the
2 violations. Respondent complied with the citation (paid the fine) on September 25, 2008.

3 **Respondent Neal**

4 b. On or about August 22, 2008, the Bureau issued Citation No. M09-0175 against
5 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
6 perform tests of emission control systems and devices in accordance with Health & Saf. Code
7 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
8 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
9 Regulation 3340.42). Respondent had issued a certificate of compliance to a Bureau undercover
10 vehicle with the ignition timing adjusted beyond specifications. Respondent was directed to
11 complete an 8 hour training course and to submit proof of completion to the Bureau within 30
12 days from receipt of the citation. Respondent complied with the citation (completed the required
13 training) on September 21, 2008.

14 **OTHER MATTERS**

15 44. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
16 suspend, revoke or place on probation the registration for all places of business operated in this
17 state by Respondent Anil K. Kumar, owner of Del Rosa Test Center, upon a finding that
18 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
19 regulations pertaining to an automotive repair dealer.

20 45. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
21 License Number TC 215242, issued to Respondent Anil K. Kumar, owner of Del Rosa Test
22 Center, is revoked or suspended, any additional license issued under this chapter in the name of
23 said licensee may be likewise revoked or suspended by the Director.

24 46. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
25 Technician License Number EA 23301, issued to Respondent Anil K. Kumar, is revoked or
26 suspended, any additional license issued under this chapter in the name of said licensee may be
27 likewise revoked or suspended by the Director.

28 47. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist

1 Technician License Number EA 106526, issued to Respondent Van Arthur Neal, is revoked or
2 suspended, any additional license issued under this chapter in the name of said licensee may be
3 likewise revoked or suspended by the Director.

4 48. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
5 Technician License Number EA 039029, issued to Respondent Kamboh, is revoked or
6 suspended, any additional license issued under this chapter in the name of said licensee may be
7 likewise revoked or suspended by the Director.

8 **PRAYER**

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

11 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
12 215242, issued to Anil K. Kumar, owner of Del Rosa Test Center;

13 2. Revoking or suspending any other automotive repair dealer registration issued to Anil
14 K. Kumar;

15 3. Revoking or suspending Smog Check Test Only Station License Number TC 215242,
16 issued to Anil K. Kumar, owner of Del Rosa Test Center;

17 4. Revoking or suspending Advanced Emission Specialist Technician License Number
18 EA 23301, issued to Anil K. Kumar;

19 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
20 and Safety Code in the Anil K. Kumar;

21 6. Revoking or suspending Advanced Emission Specialist Technician License Number
22 EA 106526, issued to Van Arthur Neal;

23 7. Revoking or suspending any additional license issued under Chapter 5 of the Health
24 and Safety Code in the name of Van Arthur Neal;

25 8. Revoking or suspending Advanced Emission Specialist Technician License Number
26 EA 039029, issued to Sudhir Kumar Kamboh aka Sid Kumar;

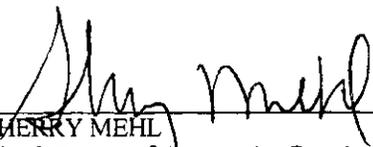
27 9. Revoking or suspending any additional license issued under Chapter 5 of the Health
28 and Safety Code in the name of Sudhir Kumar Kamboh;

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10. Ordering Anil K. Kumar, individually, and as owner of Del Rosa Test Center, Van Arthur Neal, and Sudhir Kumar Kamboh 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;

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

DATED: 12/14/11


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

LA2011600802