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8  
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. 79/13-04

12 **Z AND T TEST ONLY**  
13 **FLORIDA N. ZEIT, OWNER**  
14 **6094 Mission Blvd #A**  
**Riverside, CA 92509**

**A C C U S A T I O N**

Smog Check

15 **Automotive Repair Dealer Registration No.**  
**ARD 234019**  
16 **Smog Check, Test Only, Station License No.**  
**TC 234019**

17 **and**

18 **JEHAD M. EL-ABED**  
19 **21307 Shakespeare Court**  
20 **Moreno Valley, CA 92557**

21 **Advanced Emission Specialist Technician**  
**License No. EA 24535**

22 Respondents.

23  
24  
25 Complainant alleges:

26 **PARTIES**

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



1 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director  
2 of jurisdiction to proceed with disciplinary action.

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

7 10. Section 9884.7 of the Code states:

8  
9 (a) The director, where the automotive repair dealer cannot show there was a  
10 bona fide error, may deny, suspend, revoke, or place on probation the registration  
11 of an automotive repair dealer for any of the following acts or omissions related to  
12 the conduct of the business of the automotive repair dealer, which are done by the  
13 automotive repair dealer or any automotive technician, employee, partner, officer,  
14 or member of the automotive repair dealer.

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

19 .....

20 (4) Any other conduct that constitutes fraud.

21 .....

22 (6) Failure in any material respect to comply with the provisions of this  
23 chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or  
24 regulations adopted pursuant to it.

25 .....

26 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or  
27 place on probation the registration for all places of business operated in this state  
28 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.

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

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

(a) Violates any section of this chapter [the Motor Vehicle Inspection  
Program (Health and Safety Code, § 44000, et seq.)] and the regulations adopted

pursuant to it, which related to the licensed activities.

....

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

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

....

12. Health & Saf. Code section 44072.8 states:

"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."

#### STATUTORY PROVISIONS

13. Health & Saf. Code section 44072.10 states, in pertinent 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:

....

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

14. Health & Saf. Code section 44012 provides, in pertinent part, that the test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013.

#### REGULATORY PROVISIONS

15. California Code of Regulations, title 16, section 3340.24 (c), states:

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

///

1 16. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

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

4 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section  
5 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section  
6 3340.42 of this article.

7 "..."

8 17. California Code of Regulations, title 16, section 3340.35, provides, in pertinent part,  
9 that a licensed station shall issue a certificate of compliance . . . to the owner or operator of any  
10 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of  
11 this article and has all the required emission control equipment and devices installed and  
12 functioning correctly.

13 18. California Code of Regulations, title 16, section 3340.41 (c), states:

14 "No person shall enter into the emissions inspection system any vehicle identification  
15 information or emission control system identification data for any vehicle other than the one  
16 being tested. Nor shall any person knowingly enter into the emissions inspection system any false  
17 information about the vehicle being tested."

18 19. California Code of Regulations, title 16, section 3340.42, provides, in pertinent part,  
19 that smog check stations and smog check technicians shall conduct tests and inspections in  
20 accordance with the bureau's BAR 97 Emissions Inspection System Specifications referenced in  
21 subsections (a) and (b) of Section 3340.17.

22 **COSTS**

23 20. Section 125.3 of the Code provides, in pertinent part, that the Director may request  
24 the administrative law judge to direct a licentiate found to have committed a violation or  
25 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
26 and enforcement of the case.

27 ///

28 ///

## VID DATA REVIEW

1  
2 21. In or about January 2012, the BAR initiated an investigation of Respondents based on  
3 a review of information from the BAR's vehicle information database (VID), which indicated that  
4 Respondents may be engaging in fraudulent smog check inspections.

5 22. Beginning in January of 2012, a representative of the BAR conducted a detailed  
6 review of VID data for all smog inspections performed at Respondent's automotive repair  
7 dealership for the period of October 13, 2011, through January 13, 2012. The review showed a  
8 pattern of OBD II test<sup>1</sup> diagnostic trouble codes stored in the memory of the power train control  
9 module (PCM) on different vehicles that received smog certificates in the four month period. The  
10 BAR specifically examined the VID data, in detail, for five of the vehicles that were certified  
11 from December 12, 2011 to December 29, 2011 and it was determined that none of them support  
12 the OBD II code. Vehicles 1 through 5, set forth in Table 1 in paragraph 23 below, were all  
13 certified with various pending codes stored in the PCM memory while the original equipment  
14 manufacturer (OEM) service information shows these vehicles do not support the pending codes  
15 stored in the PCM memory.

16 23. The BAR representative obtained information indicating that none of these codes  
17 were applicable to the five vehicles. The VID data also showed that the inspections on all of the  
18 vehicles were performed under the technician license of Respondent EI-Abed. The BAR  
19 concluded that Respondents performed the smog inspections on the vehicles using a different  
20 vehicle(s) during the OBD II tests, a method known as "clean plugging,"<sup>2</sup> resulting in the

21 <sup>1</sup> The On Board Diagnostic, generation II ("OBD II"), functional test is an automated  
22 function of the BAR-97 Emissions Inspection System analyzer ("EIS"). The EIS includes a  
23 computer based, five-gas analyzer that tests vehicles under simulated driving conditions to detect  
24 oxides of nitrogen, hydrocarbons, and carbon monoxide emissions. During the OBD II functional  
25 test, the technician is required to connect an interface cable from the EIS to a Diagnostic Link  
26 Connector (DLC) which is located inside the vehicle. Through the DLC, the EIS automatically  
27 retrieves information from the vehicle's on-board computer about the status of the readiness  
28 indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD  
II functional test, it will fail the overall inspection.

<sup>2</sup> Clean-plugging is the use of the OBD II readiness monitor status and stored code status  
of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that  
is not in compliance due to the noncompliant vehicle's failure to complete the minimum number  
of self tests, known as monitors, or due to the presence of a stored code that indicates an emission  
(continued...)

1 issuance of fraudulent certificates of compliance for the vehicles that were tested as outlined in  
 2 the following table.

3  
 4 **TABLE 1**

Date & Time of Inspection	Vehicle Certified & License or VIN No.	Certificate No.
1. 12/12/2011 14:34 – 14:43	2000 Toyota Echo; License No. 4KCE443	XB569741C
2. 12/14/2011 16:02 – 16:10	2002 Toyota Corolla; License No. 4VQA296	XB668656C
3. 12/15/2011 14:08 – 14:17	1997 Toyota 4Runner; License No. 3UBY980	XB668662C
4. 12/21/2011 14:44 – 14:51	2003 Toyota Corolla; License No. 5AIF595	XB767158C
5. 12/29/2011 16:42 – 16:49	1997 Hyundai Elantra; License No. 5BLD177	XB853671C

12  
 13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Untrue or Misleading Statements)**

15 24. Respondent Zeit's registration is subject to disciplinary action pursuant to Bus. &  
 16 Prof. Code section 9884.7, subdivision (a)(1), in that they made or authorized statements which  
 17 they knew or in the exercise of reasonable care should have known to be untrue or misleading as  
 18 follows: Respondent certified that vehicles 1 through 5, identified in Table 1 above, had passed  
 19 inspection and were in compliance with applicable laws and regulations. In fact, Respondent  
 20 conducted the inspections on the vehicles using clean-plugging methods in that, a different  
 21 vehicle(s) was substituted during the OBD II functional tests in order to issue smog certificates of  
 22 compliance for the vehicles, and the vehicles were not tested or inspected, as required by Health  
 23 and Safety Code section 44012.

24 ///

25  
 26 control system or component failure. Clean plugging occurs during the inspection of a vehicle  
 27 that has an OBD II system. To clean plug a vehicle, the smog technician enters information into  
 28 the EIS for the vehicle the technician wishes to certify and then plugs the OBD II system  
 connection from the EIS into another vehicle that has a properly functioning OBD II system,  
 rather than plugging the connection into the vehicle that was originally identified for testing.

1 SECOND CAUSE FOR DISCIPLINE

2 (Fraud)

3 25. Respondent Zeit's registration is subject to disciplinary action under pursuant to Bus.  
4 & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute  
5 fraud by issuing electronic smog certificates of compliance for the vehicles 1 through 5, identified  
6 in Table 1 above, without performing bona fide inspections of the emission control devices and  
7 systems on the vehicles, thereby depriving the People of the State of California of the protection  
8 afforded by the Motor Vehicle Inspection Program.

9 THIRD CAUSE FOR DISCIPLINE

10 (Violations of the Motor Vehicle Inspection Program)

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

14 a. **Section 44012, subdivision (a):** Respondent failed to ensure that all emission control  
15 devices and systems required by law for vehicles 1 through 5, identified in Table 1 above, were  
16 installed and functioning correctly in accordance with test procedures.

17 b. **Section 44012, subdivision (f):** Respondent failed to ensure that the emission  
18 control tests were performed on vehicles 1 through 5, identified in Table 1 above, in accordance  
19 with procedures prescribed by the department.

20 c. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of  
21 compliance for vehicles 1 through 5, identified in Table 1 above, without ensuring that the  
22 vehicles were properly tested and inspected to determine if they were in compliance with Health  
23 & Saf. Code section 44012.

24 d. **Section 44059:** Respondent willfully made false entries for electronic certificates of  
25 compliance for vehicles 1 through 5, identified in Table 1 above, by certifying that the vehicles  
26 had been inspected as required when, in fact, they had not.

27 ///

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 27. Respondent Zeit's smog check station license is subject to disciplinary action  
4 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to  
5 comply with provisions of California Code of Regulations, title 16, as follows:

6 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
7 electronic smog certificates of compliance for vehicles 1 through 5, identified in Table 1 above.

8 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of  
9 compliance for vehicles 1 through 5, identified in Table 1 above, even though the vehicles had  
10 not been inspected in accordance with section 3340.42.

11 c. **Section 3340.42:** Respondent failed to ensure that the required smog tests were  
12 conducted on vehicles 1 through 5, identified in Table 1 above, in accordance with the BAR's  
13 specifications.

14 **FIFTH CAUSE FOR DISCIPLINE**

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

16 28. Respondent Zeit's smog check station license is subject to disciplinary action  
17 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed  
18 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog  
19 certificates of compliance for the vehicles 1 through 5, identified in Table 1 above, without  
20 performing bona fide inspections of the emission control devices and systems on the vehicles,  
21 thereby depriving the People of the State of California of the protection afforded by the Motor  
22 Vehicle Inspection Program.

23 **SIXTH CAUSE FOR DISCIPLINE**

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

25 29. Respondent El-Abed's technician license is subject to disciplinary action pursuant to  
26 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the  
27 following sections of that Code:  
28

1 a. **Section 44012, subdivision (a):** Respondent failed to ensure that all emission control  
2 devices and systems required by law for vehicles 1 through 5, identified in Table 1 above, were  
3 installed and functioning correctly in accordance with test procedures.

4 b. **Section 44012, subdivision (f):** Respondent failed to perform the emission control  
5 tests on vehicles 1 through 5, identified in Table 1 above, in accordance with procedures  
6 prescribed by the department.

7 c. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of  
8 compliance for vehicles 1 through 5, identified in Table 1 above, without properly testing and  
9 inspecting the vehicles to determine if they were in compliance with Health & Saf. Code section  
10 44012.

11 d. **Section 44059:** Respondent willfully made false entries for electronic certificates of  
12 compliance for vehicles 1 through 5, identified in Table 1 above, by certifying that the vehicles  
13 had been inspected as required when, in fact, they had not.

14 **SEVENTH CAUSE FOR DISCIPLINE**

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

16 30. Respondent El-Abed's technician license is subject to disciplinary action pursuant to  
17 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with  
18 provisions of California Code of Regulations, title 16, as follows:

19 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
20 electronic smog certificates of compliance for vehicles 1 through 5, identified in Table 1 above.

21 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1  
22 through 5, identified in Table 1 above, in accordance with Health & Saf. Code sections 44012 and  
23 44035, and California Code of Regulations, title 16, section 3340.42.

24 c. **Section 3340.41, subdivision (c):** Respondent entered into the emissions inspection  
25 system vehicle identification information or emission control system identification data for a  
26 vehicle other than the one being tested for vehicles 1 through 5, identified in Table 1 above.

27 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1  
28 through 5, identified in Table 1 above, in accordance with the Bureau's specifications.

1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 31. Respondent El-Abed's technician license is subject to disciplinary action pursuant to  
4 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,  
5 fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of  
6 compliance for the vehicles 1 through 5, identified in Table 1 above, without performing bona  
7 fide inspections of the emission control devices and systems on the vehicles, thereby depriving  
8 the People of the State of California of the protection afforded by the Motor Vehicle Inspection  
9 Program.

10 **OTHER MATTERS**

11 32. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
12 suspend, revoke or place on probation the registration for all places of business operated in this  
13 state by Respondent, Florida N. Zeit, owner of Z and T Test Only, upon a finding that Respondent  
14 has, or is, engaged in a course of repeated and willful violations of the laws and regulations  
15 pertaining to an automotive repair dealer.

16 33. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station  
17 License Number TC 234019, issued to Respondent, Florida N. Zeit, owner of Z and T Test Only,  
18 is revoked or suspended, any additional license issued under the same chapter in the name of said  
19 licensee may be likewise revoked or suspended by the Director.

20 34. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist  
21 Technician License Number EA 24535, issued to Respondent Jehad M. El-Abed, is revoked or  
22 suspended, any additional license issued under the same chapter in the name of said licensee may  
23 be likewise revoked or suspended by the Director.

24 **DISCIPLINE CONSIDERATIONS**

25 35. To determine the degree of discipline, if any, to be imposed on Respondent Zeit,  
26 Complainant alleges that on or about April 13, 2010, Citation No. C2010-1080 was issued to  
27 Respondent Zeit in the amount of \$500.00 for a violation of Health and Safety Code section  
28 44012, subdivision (f). The Citation was paid on May 20, 2010.

1 36. Complainant further alleges that on or about April 13, 2010, Citation No. M2010-  
2 1081 was issued to Respondent El-Abed, which ordered him to enroll in and complete an eight  
3 hour training class for a violation of Health and Safety Code section 44032. Proof of completion  
4 of the class was submitted on May 20, 2010.

5 **PRAYER**

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

- 8 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
9 234019, issued to Florida N. Zeit, Owner of Z and T Test Only;
- 10 2. Revoking or suspending Smog Check, Test Only, Station License Number TC  
11 234019, issued to Florida N. Zeit, Owner of Z and T Test Only;
- 12 3. Revoking or suspending any additional license issued under Chapter 5 of the Health  
13 and Safety Code in the name of Florida N. Zeit;
- 14 4. Revoking or suspending Advanced Emission Specialist Technician License Number  
15 EA 24535, issued to Jehad M. El-Abed;
- 16 5. Revoking or suspending any additional license issued under Chapter 5 of the Health  
17 and Safety Code in the name of Jehad M. El-Abed;
- 18 6. Ordering Respondents Florida N. Zeit, Owner of Z and T Test Only and Jehad M. El-  
19 Abed to pay the Director the reasonable costs of the investigation and enforcement of this case,  
20 pursuant to Business and Professions Code section 125.3; and
- 21 7. Taking such other and further action as deemed necessary and proper.

22  
23 DATED: 7/18/12

24 John Wallauch by [Signature]  
25 JOHN WALLAUCH  
26 Chief  
27 Bureau of Automotive Repair  
28 Department of Consumer Affairs  
State of California  
*Complainant*

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