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

In the Matter of the Accusation Against:

FADEL CHAHO
7711 Reseda Blvd, Unit 36
Reseda, CA 91335
Advanced Emission Specialist Technician
License No. EA 630093,

Respondent

Case No. 79/11-16

OAH No. L-2011120932

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

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FINDINGS OF FACT

1. On or about September 2, 2010, Complainant Sherry Mehl, in her official capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/11-16 against Fadel Chaho (Respondent) before the Director of Consumer Affairs. (The Accusation is attached hereto as Exhibit A.)

2. On or about March 20, 2008, the Bureau of Automotive Repair (Bureau) issued Advanced Emission Specialist Technician License No. EA 630093 to Respondent. The Advanced Emission Specialist Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 79/11-16. It expired on October 31, 2011, and has not been renewed.

3. On or about September 28, 2010, Respondent was served by Certified and First Class Mail with copies of the Accusation No. 79/11-16, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions

1 Code section 136, is required to be reported and maintained with the Bureau. Respondent's
2 address of record was and is: 7711 Reseda Blvd, Unit 36, Reseda, CA 91335.

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

6 5. On or about October 4, 2010, the aforementioned documents were returned by the
7 U.S. Postal Service marked "Not Deliverable as Addressed, Unable to Forward."

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

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

14 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
15 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
16 79/11-16.

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

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

22 9. Pursuant to its authority under Government Code section 11520, the Director after
23 having reviewed the proof of service dated September 28, 2010, signed by Teresa Sutton and the
24 returned envelopes finds Respondent is in default. The Director will take action without further
25 hearing and, based on Accusation, No. 79/11-16, proof of service and on the Affidavit of Bureau
26 Representative Curtis McClenny, finds that the allegations in Accusation No. 79/11-16 are true.

27 DETERMINATION OF ISSUES

28 1. Based on the foregoing findings of fact, Respondent Fadel Chaho has subjected his
Advanced Emission Specialist Technician License No. EA 630093 to discipline.

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

Exhibit A

Accusation

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

79/11-16

In the Matter of the Accusation Against:

Case No.

AKRAM S. SEAGHAT
dba ERICS SMOG TEST ONLY
18102 Victory Blvd., #B
Reseda, California 91335
Automotive Repair Dealer Registration No. ARD 240241
Smog Check Test Only Station License No. TC 240241

AKRAM S. SEAGHAT
18102 Victory Blvd., Unit B
Reseda, California 91335
Advanced Emission Specialist Technician License No.
EA 148483

FADEL CHAHO
7711 Reseda Blvd., Unit 36
Reseda, California 91335
Advanced Emission Specialist Technician License No.
EA 630093

ACCUSATION

SMOG CHECK

Respondents.

Sherry Mehl ("Complainant") alleges:

PARTIES

1. Complainant brings this Accusation solely in her official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"); Department of Consumer Affairs.

1 (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more
2 than one place of business in this state, the director pursuant to subdivision (a) shall only suspend,
3 revoke, or place on probation the registration of the specific place of business which has violated
4 any of the provisions of this chapter. This violation, or action by the director, shall not affect in
5 any manner the right of the automotive repair dealer to operate his or her other places of business.

6 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on
7 probation the registration for all places of business operated in this state by an automotive repair
8 dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated
9 and willful violations of this chapter, or regulations adopted pursuant to it.

10 7. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a
11 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
12 proceeding against an automotive repair dealer or to render a decision invalidating a registration
13 temporarily or permanently.

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

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

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

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

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

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

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

3 11. Section 44072.8 of the Health and Safety Code states:

4 "When a license has been revoked or suspended following a hearing under this article, any
5 additional license issued under this chapter in the name of the licensee may be likewise revoked
6 or suspended by the director."

7 COST RECOVERY

8 12. Code section 125.3 provides, in pertinent part, that a Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 FACTUAL BACKGROUND

13 13. On or about April 26, 2010, the Bureau conducted a detailed review of the Vehicle
14 Information Database ("VID") for all smog inspections performed at Respondent's facility for the
15 period of June 6, 2009, through November 28, 2009. The VID showed a pattern of various
16 random diagnostic trouble codes stored in the memory of the power train control module
17 ("PCM") on different vehicles. Vehicles 1 through 12, set forth in Table 1 below, were all
18 certified with various pending codes stored in the PCM memory while the original equipment
19 manufacturer ("OEM") service information shows these vehicles do not support the pending
20 codes stored in the PCM memory. The vehicles receiving smog certificates were not tested
21 during the OBD II¹ functional test and another vehicle(s) was used, constituting clean plugging².
22 All of the following inspections were performed by Respondent Seaghat and Respondent Chaho.

23 ¹ The On Board Diagnostics (OBDII) functional test is an automated function of the
24 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an
25 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is
26 located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves
27 information from the vehicle's on-board computer about the status of the readiness indicators,
28 trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II
functional test, it will fail the overall inspection.

² Clean plugging is the use of the OBD II readiness monitor status and stored fault code
(trouble code) status of a passing vehicle for the purposes of illegally issuing a smog certificate to
another vehicle that is not in compliance due to a failure to complete the minimum number of

(continued...)

TABLE 1

Date and Time of Inspection	Vehicle Certified License No.	Certificate No.	Technician
1. 06/06/2009 1135 - 1146	2005 Kia Optima License No. (no plates)	NK632821C	Respondent Seaghat
2. 06/13/2009 1116 - 1130	1998 Ford E350 License No. 7U20019	NK729423C	Respondent Seaghat
3. 07/03/2009 1030 - 1039	1999 Toyota Avalon License No. 4GNJ640	NK952373C	Respondent Seaghat
4. 07/03/2009 1633 - 1642	1997 Kia Sportage License No. 3VJK532	NK952380C	Respondent Seaghat
5. 07/05/2009 1223 - 1231	2000 Ford F150 License No. (no plates)	NK952384C	Respondent Seaghat
6. 07/05/2009 1306 - 1312	2001 Infiniti I30 License No. (no plates)	NK952387C	Respondent Seaghat
7. 07/16/2009 1608 - 1614	1998 Lincoln Navigator License No. (no plates)	NM155835C	Respondent Seaghat
8. 07/17/2009 1201 - 1212	2002 Hyundai Santa Fe License No. 4XYC837	NM155838C	Respondent Seaghat
9. 07/18/2009 1501 - 1514	1999 Toyota Camry License No. 4GPU444	NM225302C	Respondent Seaghat
10. 08/15/2009 1300 - 1306	2003 Nissan Altima License No. (no plates)	NM543881C	Respondent Seaghat
11. 11/28/2009 0957 - 1010	2002 Ford F250 License No. (no plates)	NO803772C	Respondent Chaho
12. 11/28/2009 1020 - 1028	2001 Toyota Tundra License No. (no plates)	NO803773C	Respondent Chaho

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

14. Respondent's registration is subject to discipline pursuant to Code section 9884.7(a)(1), in that between June 6, 2009, and November 28, 2009, 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: Respondent certified that vehicles 1 through 12, set forth above in Table 1, had passed inspection and were in compliance with applicable laws and

self test, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

1 regulations. In fact, Respondent conducted the inspections on the vehicles using the clean
2 plugging method, in that he substituted or used a different vehicle(s) during the OBD II functional
3 tests in order to issue smog certificates of compliance for the 12 vehicles, and did not test or
4 inspect the 12 vehicles as required by Health and Safety Code section 44012.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Fraud)**

7 15. Respondent's registration is subject to discipline pursuant to Code section
8 9884.7(a)(4), in that between June 6, 2009, and November 28, 2009, Respondent committed acts
9 which constitute fraud by issuing electronic certificates of compliance for vehicles 1 through 12,
10 set forth above in Table 1, without performing bona fide inspections of the emission control
11 devices and systems on those vehicles, thereby depriving the People of the State of California of
12 the protection afforded by the Motor Vehicle Inspection Program.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Failure to Comply with the Motor Vehicle Inspection Program)**

15 16. Respondent's station license is subject to discipline pursuant to Health and Safety
16 Code section 44072.2(a), in that between June 6, 2009, and November 28, 2009, regarding
17 vehicles 1 through 12, set forth above in Table 1, Respondent failed to comply with the following
18 sections of that Code:

19 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
20 performed on vehicles 1 through 12, in accordance with procedures prescribed by the department.

21 b. **Section 44015:** Respondent issued electronic certificates of compliance for
22 vehicles 1 through 12, without ensuring that the vehicles were properly tested and inspected to
23 determine if they were in compliance with Health and Safety Code section 44012.

24 c. **Section 44059:** Respondent willfully made false entries for the electronic
25 certificates of compliance by certifying that those vehicles had been inspected as required when,
26 in fact, they had not.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

4 17. Respondent's station license is subject to discipline pursuant to Health and Safety
5 Code section 44072.2(c), in that between June 6, 2009, and November 28, 2009, regarding
6 vehicles 1 through 12, set forth above in Table 1, Respondent failed to comply with provisions of
7 California Code of Regulations, title 16, as follows:

8 a. **Section 3340.24(c)**: Respondent falsely or fraudulently issued electronic certificates of
9 compliance for those vehicles without performing bona fide inspections of the emission control
10 devices and systems on the vehicles as required by Health and Safety Code section 44012.

11 b. **Section 3340.35(c)**: Respondent issued electronic certificates of compliance even
12 though those vehicles had not been inspection in accordance with section 3340.42 of that Code.

13 c. **Section 3340.42**: Respondent failed to conduct the required smog tests and inspections
14 on those vehicle sin accordance with the Bureau's specifications.

15 **FIFTH CAUSE FOR DISCIPLINE**

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

17 18. Respondent's station license is subject to discipline pursuant to Health and Safety
18 Code section 44072.2(d), in that between June 6, 2009, and November 28, 2009, regarding
19 vehicles 1 through 12, set forth above in Table 1, Respondent committed acts involving
20 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of
21 compliance for those vehicles without performing bona fide inspections of the emission control
22 devices and systems on the vehicles, thereby depriving the People of the State of California of the
23 protection afforded by the Motor Vehicle Inspection Program.

24 **SIXTH CAUSE FOR DISCIPLINE**

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

26 19. Respondent Seaghat's technician license is subject to discipline pursuant to Health
27 and Safety Code section 44072.2(a), in that between June 6, 2009, and August 15, 2009,
28 regarding vehicles 1 through 10, set forth above in Table 1, he failed to comply with section

1 44012 of that Code in a material respect, as follows: Respondent Seaghat failed to perform the
2 emission control tests on those vehicles in accordance with procedures prescribed by the
3 department.

4 **SEVENTH CAUSE FOR DISCIPLINE**

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

7 20. Respondent Seaghat's technician license is subject to discipline pursuant to Health
8 and Safety Code section 44072.2(c), in that between June 6, 2009, and August 15, 2009,
9 regarding vehicles 1 through 10, set forth above in Table, he failed to comply with provisions of
10 California Code of Regulations, title 16, as follows:

11 a. **Section 3340.24(c)**: Respondent Seaghat falsely or fraudulent issued electronic
12 certificates of compliance without performing bona fide inspections of the emission control
13 devices and systems on those vehicles as required by Health and Safety Code section 44012.

14 b. **Section 3340.30(a)**: Respondent Seaghat failed to inspect and test those vehicles in
15 accordance with Health and Safety Code sections 44012.

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

18 **EIGHTH CAUSE FOR DISCIPLINE**

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

20 21. Respondent Seaghat's technician license is subject to discipline pursuant to Health
21 and Safety Code section 44072.2(d), in that between June 6, 2009, and August 15, 2009,
22 regarding vehicles 1 through 10, set forth above in Table 1, he committed acts involving
23 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of
24 compliance without performing bona fide inspections of the emission control devises and systems
25 on those vehicles, thereby depriving the People of the State of California of the protection
26 afforded by the Motor Vehicle Inspection Program.

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1 depriving the People of the State of California of the protection afforded by the Motor Vehicle
2 Inspection Program.

3 OTHER MATTERS

4 25. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
5 probation the registrations for all places of business operated in this state by Akram S. Seaghat,
6 doing business as Eric's Smog Test Only, upon a finding that he has, or is, engaged in a course of
7 repeated and willful violation of the laws and regulations pertaining to an automotive repair
8 dealer.

9 26. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
10 Station License Number TC 240241, issued to Akram S. Seaghat, doing business as Eric's Smog
11 Test Only, is revoked or suspended, any additional license issued under this chapter in the name
12 of said licensee may be likewise revoked or suspended by the director.

13 27. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission Specialist
14 Technician License Number EA 148483, issued to Akram S. Seaghat, is revoked or suspended,
15 any additional license issued under this chapter in the name of said licensee may be likewise
16 revoked or suspended by the director.

17 28. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission Specialist
18 Technician License Number EA 630093, issued to Fadel Chaho, is revoked or suspended, any
19 additional license issued under this chapter in the name of said licensee may be likewise revoked
20 or suspended by the director.

21 PRAYER

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

24 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD
25 240241, issued to Akram S. Seaghat, doing business as Eric's Smog Test Only;

26 2. Revoking or suspending any other automotive repair dealer registration issued to
27 Akram S. Seaghat;

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3. Revoking or suspending Smog Check, Test Only, Station License Number TC 240241, issued to Akram S. Seaghat, doing business as Eric's Smog Test Only;

4. Revoking or suspending Advanced Emission Specialist Technician License Number EA 148483, issued to Akram S. Seaghat;

5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Akram S. Seaghat;

6. Revoking or suspending Advanced Emission Specialist Technician License Number EA 630093, issued to Fadel Chaho;

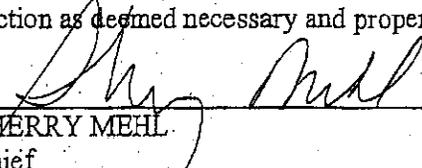
7. Revoking or suspending any additional license issued under Chapter 5 of Health and Safety Code in the name of Fadel Chaho;

8. Ordering Akram S. Seaghat and Fadel Chaho to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED:

9/2/10


SHERRY MEHL
Chief
Bureau of Automotive Repair I/M Smog
Department of Consumer Affairs
State of California
Complainant

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