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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 Accusation Against:

Case No. 79/12-117

13 **DONG Q. PHAM**  
14 **3046 Hostetter Road**  
**San Jose, CA 95132**  
15 **Advanced Emission Specialist Technician**  
**License No. EA 630098**

**ACCUSATION**  
**(Smog Check)**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about March 21, 2008, the Director of Consumer Affairs ("Director") issued  
22 Advanced Emission Specialist Technician License Number EA 630098 to Dong Q. Pham  
23 ("Respondent"). Respondent's advanced emission specialist technician license was in full force  
24 and effect at all times relevant to the charges brought herein and will expire on November 30,  
25 2013, unless renewed.

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1 **JURISDICTION**

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

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

9 **STATUTORY PROVISIONS**

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

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

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

15 . . . .

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

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

19 6. Health & Saf. Code section 44072.8 states that when a license has been revoked or  
20 suspended following a hearing under this article, any additional license issued under this chapter  
21 in the name of the licensee may be likewise revoked or suspended by the director.

22 7. Business and Professions Code ("Bus. & Prof. Code") section 22, subdivision (a),  
23 states:

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

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**COST RECOVERY**

8. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board 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.

**UNDERCOVER OPERATION: 1999 MAZDA PICKUP**

9. On November 9, 2011, an undercover operator with the Bureau ("operator") took the Bureau's 1999 Mazda pickup to I Do Smog located in Sunnyvale, California, and requested a smog inspection. The positive crankcase ventilation (PCV) valve had been removed from the Bureau-documented vehicle. After the inspection was completed, the operator paid the facility \$58 and received copies of an invoice and a vehicle inspection report. The vehicle inspection report indicated that the smog inspection was performed by Respondent. That same day, electronic smog Certificate of Compliance No. OI225599C was issued for the vehicle.

10. On December 8, 2011, the Bureau inspected the vehicle and found that the PCV valve was still missing.

**FIRST CAUSE FOR DISCIPLINE**

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

11. Respondent is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the visual inspection of the emission control systems and devices on the Bureau's 1999 Mazda pickup in accordance with procedures prescribed by the department in that Respondent failed to determine that the PCV valve was missing.

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1 2009, Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a  
2 missing thermostatic air cleaner. Respondent was directed to complete an 8 hour training course  
3 and to submit proof of completion to the Bureau within 30 days from receipt of the citation.  
4 Respondent completed the training on November 20, 2009.

5 b. On or about March 14, 2011, the Bureau issued Citation No. M2011-1062 against  
6 Respondent for violations of Health & Saf. Code sections 44032 (qualified technicians shall  
7 perform tests of emission control systems and devices in accordance with Health & Saf. Code  
8 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test  
9 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and  
10 Regulation 3340.42). On or about February 17, 2011, Respondent had issued a certificate of  
11 compliance to a Bureau undercover vehicle with a missing PCV valve. Respondent was directed  
12 to complete a 16 hour training course and to submit proof of completion to the Bureau within 30  
13 days from receipt of the citation. Respondent appealed the citation on April 12, 2011; the citation  
14 is currently pending.

15 c. On or about July 12, 2011, the Bureau issued Citation No. M2012-0027 against  
16 Respondent for violating Health & Saf. Code section 44032 (qualified technicians shall perform  
17 tests of emission control systems and devices in accordance with Health & Saf. Code section  
18 44012). On or about June 21, 2011, Respondent had issued a certificate of compliance to a  
19 Bureau undercover vehicle with a missing fuel evaporative canister. Respondent was directed to  
20 complete the Basic Clean Air Care Course and to submit proof of completion to the Bureau.  
21 Respondent appealed the citation on August 12, 2011; the citation is currently pending.

#### 22 **OTHER MATTERS**

23 15. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist  
24 Technician License Number EA 630098, issued to Respondent Dong Q. Pham, is revoked or  
25 suspended, any additional license issued under this chapter in the name of said licensee may be  
26 likewise revoked or suspended by the Director.

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**PRAYER**

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

1. Revoking or suspending Advanced Emission Specialist Technician License Number EA 630098, issued to Dong Q. Pham;
2. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Dong Q. Pham;
3. Ordering Dong Q. Pham to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
4. Taking such other and further action as deemed necessary and proper.

DATED: 4/5/12

*John Wallauch by Dong Q. Pham*  
JOHN WALLAUCH  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*DONG BALATH*  
*Complainant*