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

11 In the Matter of the Petition to Revoke
12 Probation Against:

13 **PAUL SUPOTE VIRIYAPUNT**
14 5363 Barbados Circle
Stockton, CA 95210

15 **Smog Check Inspector EO License No.**
16 **630183**
17 **Smog Check Repair Technician EI License**
18 **No. 630183**
(Formerly Advanced Emission Specialist EA
Technician License No. 630183)

19 Respondent.

Case No. 79/15-129

PETITION TO REVOKE PROBATION
(SMOG CHECK)

20 Patrick Dorais ("Complainant") alleges:

21 **PARTIES**

22 1. Complainant brings this Petition to Revoke Probation solely in his official capacity as
23 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

24 2. On or about May 5, 2008, the Director of Consumer Affairs ("Director") issued
25 Advanced Emission Specialist Technician EA License No. 630183 to Paul Supote Viriyapunt
26 ("Respondent"). Respondent's technician license was due to expire on September 30, 2012.
27 Pursuant to California Code of Regulations, title 16 ("Regulations"), section 3340.28(e), effective
28 September 13, 2012, Respondent elected to renew the license as Smog Check Inspector EO

1 License No. 630183 and Smog Check Repair Technician EI License No. 630183.¹ The smog
2 check inspector and smog check repair technician licenses expired on September 30, 2014, and
3 have not been renewed. The advanced emission specialist technician license was cancelled on
4 September 13, 2012.

5 **Disciplinary History**

6 3. In a disciplinary action entitled *In the Matter of the Accusation Against: Smog Tech*
7 *and. . . Paul Supote Viriyapunt*, Case No. 79/11-99, the Director issued a *Final Decision After*
8 *Remand From Superior Court* (the “decision”), effective May 23, 2014, in which Respondent’s
9 Advanced Emission Specialist Technician EA License No. 630183, designated upon renewal as
10 Smog Check Inspector EO License No. 630183 and Smog Check Repair Technician EI License
11 No. 630183 (the “licenses”), were revoked. However, the revocation was stayed and
12 Respondent’s licenses were placed on probation for a period of three years of probation with
13 certain terms and conditions, including a five day suspension that commenced on May 23, 2014.
14 A copy of that decision is attached as **Exhibit A** and is incorporated by reference.

15 **JURISDICTION**

16 4. Probation Term and Condition Number 5.b.vi of the decision states:

17 Should the Director of the Department of Consumer Affairs determine
18 that respondent Viriyapunt has failed to comply with the terms and conditions
19 of probation, the department may, after giving notice and opportunity to be
heard, lift the stay of revocation causing respondent’s licenses to be revoked.

20 5. Grounds exist to revoke Respondent’s probation and reimpose the order of revocation
21 of his smog check inspector and smog check repair technician licenses (formerly advanced
22 emission specialist technician license).

23 ///

24 ///

25 ///

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

1 **FIRST CAUSE TO REVOKE PROBATION**

2 (Failure to Report in Person as Prescribed by the Bureau)

3 6. At all times after the effective date of Respondent's probation, Condition 5,b.iii of the
4 Decision stated that Respondent shall:

5 Report in person or in writing as prescribed by the Bureau of
6 Automotive Repair, on a schedule set by the bureau, but no more frequently
7 than each quarter, on the methods used and success achieved in maintaining
8 compliance with the terms and conditions of probation.

8 7. Respondent's probation is subject to revocation in that he failed to report as
9 prescribed and scheduled by the Bureau. The facts and circumstances regarding this violation are
10 as follows:

11 a. On or about May 27, 2014, Respondent was notified during a probation conference
12 prescribed by the Bureau that the next probation conference was scheduled for September 2,
13 2014, at 11:00 a.m. Respondent failed to appear on September 2, 2014.

14 b. On or about September 2, 2014, the Bureau sent notice to Respondent that, due to his
15 failure to appear at the probation conference scheduled for September 2, 2014, it had been
16 rescheduled for September 11, 2014, at 10:00 a.m. Respondent failed to appear on September 11,
17 2014.

18 **SECOND CAUSE TO REVOKE PROBATION**

19 (Failure to Provide Proof of Completion of Prescribed Course)

20 8. At all times after the effective date of Respondent's probation, Condition 5,b.vii of
21 the Decision stated that Respondent shall:

22 Attend and successfully complete the bureau's advanced air/clean air
23 car course. Said course shall be completed and proof of completion submitted
24 to the bureau within 180 days of the effective date of this Decision and Order.
25 If proof of completion of the course is not furnished to the bureau within the
26 180-day period, the department may, until such proof is received and after
27 giving notice and opportunity to be heard, lift the stay of revocation causing
28 respondent's licenses to be revoked.

9. Respondent's probation is subject to revocation in that he failed to furnish to the
Bureau proof of completion of the Bureau's advanced air/clean air car course.

///

1 OTHER MATTERS

2 10. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector EO
3 License No. 630183 and/or Smog Check Repair Technician EI License No. 630183 issued to Paul
4 Supote Viriyapunt is revoked or suspended, any additional license issued under this chapter in the
5 name of said licensee may be likewise revoked or suspended by the Director.

6 PRAYER

7 **WHEREFORE**, Complainant requests that a hearing be held on the matters alleged in this
8 Accusation and Petition to Revoke Probation, and that following the hearing, the Director of
9 Consumer Affairs issue a decision:

10 1. Revoking probation and reimposing the order of revocation of Smog Check Inspector
11 EO License No. 630183 and Smog Check Repair Technician EI License No. 630183 (formerly
12 Advanced Emission Specialist Technician EA License No. 630183), issued to Paul Supote
13 Viriyapunt;

14 2. Revoking or suspending any additional license issued under Chapter 5 of the Health
15 and Safety Code in the name of Paul Supote Viriyapunt; and,

16 3. Taking such other and further action as deemed necessary and proper.

17
18 DATED: June 12, 2015



PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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20
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22 SA2015101337
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Exhibit A

Final Decision After Remand From Superior Court

Bureau of Automotive Repair Case No. 79/11-99

Exhibit A

Final Decision After Remand From Superior Court

Bureau of Automotive Repair Case No. 79/11-99

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

In the Matter of the Accusation Against:

SMOG TECH
Stockton, California 95205
HARJIT SINGH, PARTNER
JASJIT KAUR BAIN, PARTNER

Automotive Repair Dealer Registration
No. ARD 243698
Smog Check, Test Only, Station License
No. TC 243698

and

HARJIT SINGH
Lodi, California 95242

Advanced Emission Specialist Technician
License No. EA 137249

and

PAUL SUPOTE VIRIYAPUNT
Stockton, California 95210

Advanced Emission Specialist Technician
License No. EA 630183

Respondents.

Case No. 79/11-99

OAH No. 2011100307

FINAL DECISION AFTER REMAND FROM SUPERIOR COURT

This matter was heard before Rebecca M. Westmore, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on July 19, 2012, in Sacramento, California.

Patrick M. Kenady, Deputy Attorney General, represented complainant, Sherry Mehl, Chief of the Bureau of Automotive Repair (bureau), Department of Consumer Affairs (department).

Christopher A. DeWys, Attorney at Law, Automotive Defense Specialists, represented respondents Smog Tech, Harjit Singh, individually and as partner of Smog Tech, and Paul Supote Viriyapunt, who were present throughout the hearing.

There was no appearance by or on behalf of respondent Jasjit Kaur Bain, Partner of Smog Tech.

Evidence was received, the record was closed, and the matter was submitted for decision on July 19, 2012.

On August 14, 2012, the ALJ submitted her proposed decision to the Bureau of Automotive Repair, Department of Consumer Affairs. The Director of the Department of Consumer Affairs ("Director") adopted the ALJ's proposed decision on September 4, 2012, to become effective on October 15, 2012.

Thereafter, on or about October 9, 2012, respondents filed a Petition for Writ of Mandamus in the County of San Francisco, Superior Court, Case No. CPF-12-512516. The court heard the matter on May 30, 2013. On July 9, 2013 the court issued its Statement of Decision Granting Writ of Administrative Mandamus in Part and Denying in Part. The San Francisco Superior Court, pursuant to its ruling of July 9, 2013, set aside the Decision and remanded the matter to the Director to reconsider the Decision dated September 4, 2012, with regard to discipline in light of its decision that the factual findings of clean plugging are not supported by the weight of the evidence.

The Director advised both parties that any written argument that the parties wish to present must be filed with the Director by October 25, 2013, but that no new evidence may be submitted. Both parties provided written argument in the time set by the Director for receiving such argument prior to its deliberations. Those written arguments have been read and considered by the Director.

Pursuant to the Superior Court's ruling to reconsider the aforementioned parts of the Director's September 4, 2012 Decision, the Director now makes the following Final Decision after Remand in compliance with the Superior Court's ruling.

FACTUAL FINDINGS

1. In 2006, the bureau issued automotive repair dealer registration number ARD 243698 (registration) to respondents Harjit Singh and Jasjit Kaur Bain, doing business as Smog Tech, located in Stockton, California. The registration expired on February 28, 2013 and has not been renewed.

2. On March 17, 2006, the bureau issued smog check, test only, station license number TC 243698 (station license) to respondents Harjit Singh and Jasjit Kaur Bain, doing business as Smog Tech, located in Stockton, California. The license expired on February 28, 2013 and has not been renewed.

3. In 2002, the bureau issued advanced emission specialist (EA) technician license number EA 137249 to respondent Harjit Singh. This license was renewed and was designated upon renewal as Smog Check Inspector License No. EO 137249. The license will expire on March 31, 2016.

4. On May 5, 2008, the bureau issued advanced emission specialist (EA) technician license number EA 630183 to respondent Paul Supote Viriyapunt. This license was renewed and was designated upon renewal as Smog Check Inspector License No. EO 630183 and Smog Check Repair Technician License No. EI 630183. These licenses will expire on September 30, 2014, unless renewed.

5. At all times referenced herein, John Ya was not registered with the bureau under the Automotive Repair Act of 1971, or licensed under the biennial Smog Check Program implemented by the bureau on January 1, 1990.

6. On June 15, 2011, complainant filed the accusation in her official capacity. Complainant seeks to revoke respondents' registration, licenses and licensing rights on the grounds that respondents Harjit Singh and Jasjit Kaur Bain, d.b.a. Smog Tech, and Paul Supote Viriyapunt issued electronic certificates of compliance on two vehicles without performing a bona fide inspection of the emission control devices and systems on those vehicles. In addition, complainant seeks to revoke respondent Paul Supote Viriyapunt's licenses and licensing rights on the grounds that he aided and abetted an unlicensed person to participate in the smog test and inspection of a vehicle.

Prior Citations

7. On July 20, 2005, the bureau issued Citation No. M06-0027 to respondent Harjit Singh, for issuing a Certificate of Compliance on June 27, 2005; to a bureau undercover vehicle with a missing Positive Crankcase Ventilation (PCV) system. A Citation Office Conference was held on August 23, 2005, in which respondent Singh agreed to:

(a) Comply with all laws and regulations pertaining to the Automotive Repair Act and the Smog Check Program.

(b) Perform all smog check inspections and tests on motor vehicles in accordance with Bureau procedures.

(c) Follow the inspection steps as outlined in the Smog Check Inspection Manual, and as prompted by the Emissions Inspection System.

(d) Only certify a vehicle as being in compliance after it is determined that the vehicle meets the criteria set forth in Health and Safety Code section 44012.

On September 11, 2005, respondent Singh completed an eight-hour training course.

8. On December 1, 2005, the bureau issued Citation No. M06-0271 to respondent Harjit Singh, for issuing a Certificate of Compliance on November 18, 2005, to a bureau undercover vehicle with a missing Air Injection (AIR) system. A Citation Office Conference was held on January 10, 2006. Respondent Singh signed the Citation Office Conference Memorandum in which he agreed to comply with the same terms outlined in Factual Finding 7. On January 29, 2006, respondent Singh completed a 16-hour training course.

9. On April 19, 2006, the bureau issued Citation No. M06-0658 to respondent Harjit Singh, for issuing a Certificate of Compliance on March 27, 2006, to a bureau undercover vehicle with a missing Positive Crankcase Ventilation (PCV) system. A Citation Office Conference was held on June 8, 2006. Respondent Singh appealed the citation on June 8, 2006. No evidence was introduced to establish the outcome of that appeal.

10. On December 27, 2006, the bureau issued Citation No. C07-0426 to respondents Harjit Singh and Jasjit K. Bain, Partners, d.b.a. Smog Tech, for issuing a Certificate of Compliance on November 8, 2006, to a bureau undercover vehicle with a non-functional Exhaust Gas Recirculation (EGR) system. A Citation Office Conference was held on February 6, 2007. Respondent Bain signed the Citation Office Conference Memorandum in which respondent Bain agreed that:

(a) Respondents and all facility employees shall comply with all laws and regulations pertaining to the Automotive Repair Act and the Smog Check Program.

(b) All smog check inspections and tests on motor vehicles shall be performed in accordance with Bureau procedures.

(c) Inspection steps shall be followed as outlined in the "Smog Check Inspection Manual" and as prompted by the Emissions Inspection System.

(d) A vehicle shall be certified as being in compliance only after it is determined that the vehicle meets the criteria set forth in Health and Safety Code section 44012.

(e) The estimate shall show the vehicle's *odometer reading* at the time of repair(s) /-service. [Bolding and italics in original.]

On February 22, 2007, respondents paid the \$500 Citation.

11. On May 13, 2009, the bureau issued Citation No. C09-1299 to respondents Harjit Singh and Jasjit K. Bain, Partners, d.b.a. Smog Tech, for issuing a Certificate of Compliance on May 1, 2009, to a bureau undercover vehicle with the ignition timing adjusted beyond specifications. A Citation Office Conference was held on June 16, 2009, in which respondents agreed to terms (a) through (d) outlined in Factual Finding 10. On June 30, 2009, respondents paid the \$500 Citation.

Video Surveillance – April 30, 2010 – 1995 Buick Skylark

12. Tim Bowden is a Program Representative II Specialist with the bureau. As part of his job duties, Mr. Bowden performs surveillance operations at smog inspection facilities.

13. On April 30, 2010, at 07:46 hours, Mr. Bowden began a video surveillance across the street from the Smog Tech facility located on Airport Way in Stockton, California. At approximately 14:46 hours, a 1995 Buick Skylark (Skylark), California license plate number 3MBX738 was repositioned in the smog test bay. Data captured on the BAR97 Test form for April 30, 2010, indicates that an aborted smog inspection was performed on the Skylark at Smog Tech between 14:46 hours and 15:09 hours. Mr. Bowden believes that the test was aborted because the vehicle ran out of gas. Beginning at 15:19 hours and continuing through 15:31 hours, a second smog inspection was performed on the Skylark at Smog Tech, resulting in the issuance of a Certificate of Compliance.

14. The video surveillance recorded respondent Viriyapunt backing a 1999 Buick, California license plate number 4EAK811 up to the rear of the Skylark on the north side of the smog test bay at 15:18 hours. He was guided by respondent Singh. Between 15:19 hours and 15:25 hours, an unidentified individual added gas to the fuel tank. At 15:26 hours, respondent Viriyapunt removed the emissions sample probe from its hanger on the front door frame of the smog test bay, and inserted it into the tailpipe of the Skylark. At 15:27 hours, respondent Viriyapunt removed the emissions sample probe from the tailpipe of the Skylark, carried it to the rear of the 1999 Buick,

and bent down out of sight. The video does not show respondent Viriyapunt inserting the emissions sample probe into the tailpipe of the 1999 Buick; however, after he stood up and returned to the Skylark, his body language suggested that he was monitoring the area as if to determine if someone was watching. Thereafter, at 15:28:52 hours, respondent Viriyapunt returned to the rear of the 1999 Buick, bent down out of sight, and was next seen at 15:28:54 hours placing the emissions sample probe on the hanger on the front door frame of the smog test bay. It was clear from these actions that respondent Viriyapunt removed the emissions sample probe from the tailpipe of the 1999 Buick. Immediately thereafter, at 15:28:57 hours, respondent Singh exited the Skylark, and between 15:29:04 hours and 15:29:23 hours; respondent Viriyapunt entered the 1999 Buick, drove it forward towards Airport Way, and backed it up towards the south side of the smog test bay, where it remained until it was driven away from the facility at 15:40 hours. At no time during the video surveillance was the rear license plate of the 1999 Buick visible. At 15:31 hours, respondent Singh completed the smog inspection of the Skylark. At 15:31:47 hours, respondent Singh used his cellular telephone in the smog test bay. At 15:32 hours, respondent Singh coiled up the OBD cable and returned it to the side of the smog test analyzer. At 15:33:50 hours, respondent Singh went into the office, and exited at 15:35:52 hours. At approximately 15:39 hours, respondent Viriyapunt entered the office, and exited at 15:39:52 hours. Respondent Viriyapunt had no paperwork in his hands when he exited the office. At 15:40:16 hours, the 1999 Buick was driven away from the facility.

15. At hearing, Mr. Bowden referred to respondents' act of using the tailpipe emissions of one vehicle to register the tailpipe emissions of a vehicle that cannot pass the tailpipe emissions test portion of the smog inspection as "clean piping."

16. During a meeting at the bureau's Sacramento Field Office on July 16, 2010, Mr. Bowden showed the April 30, 2010-surveillance video to respondent Viriyapunt, and informed him that his license would be in jeopardy. Mr. Bowden denied threatening respondent Viriyapunt's license if he did not turn in or testify against respondent Singh. Mr. Bowden requested information from respondent Viriyapunt regarding the clean piping of the Skylark, and contends that respondent Viriyapunt admitted that he clean piped the Skylark, asserted that he was doing his job, and denied receiving additional money to perform the smog inspection of the Skylark.

17. Christopher Pryor is a Program Representative for the bureau, and attended the meeting at the bureau's Sacramento Field Office on July 16, 2010 with Mr. Bowden and respondent Viriyapunt. Mr. Pryor asserted that the video surveillance was exhibited to respondent Viriyapunt who admitted that he performed the smog inspection of the Skylark. Mr. Pryor denied that Mr. Bowden threatened respondent Viriyapunt, or threatened his career if he did not turn in respondent Singh. According to Mr. Pryor, respondent Viriyapunt gave no explanation for what happened during the smog inspection of the Skylark, and did not sign any documents during the meeting.

18. At hearing, respondent Viriyapunt asserted that Airport Way is a busy street, and there is only 20 feet between the smog test bays and the sidewalk.

According to respondent Viriyapunt, he was getting ready to drop off the 1999 Buick at the S&S Dealership on Wilson Way in Stockton; however he did not have all the paperwork for the vehicle. Because the facility parking lot was full; he backed the 1999 Buick towards the smog test bay, and exited the vehicle to go to the office and retrieve the paperwork from respondent Singh. During a conversation with respondent Singh, respondent Viriyapunt learned that S&S Dealership had called and asked respondents to make sure that the license plate was on the 1999 Buick. Respondent Viriyapunt denied that he inserted the emissions sample probe into the tailpipe of the 1999 Buick, and asserted that he bent over to check the bolts on the license plate of the 1999 Buick. According to respondent Viriyapunt, he finally received the paperwork for the 1999 Buick after the smog inspection on the Skylark was completed. However, respondent Viriyapunt's testimony regarding the paperwork for the 1999 Buick contradicted his actions as shown on the surveillance video.

19. Respondent Viriyapunt also asserted that during the July 16, 2010 meeting at the Sacramento Field Office with Mr. Bowden and Mr. Pryor, he never admitted to clean piping the Skylark, or telling them that respondent Singh paid him to clean pipe vehicles. He contends, however, that he was threatened by Mr. Bowden to turn in his boss; or they would take his license that day. Respondent Viriyapunt claims that he "was a little intimidated" at that meeting.

20. Respondent Singh confirmed that the smog inspection was restarted after the customer put gas in the fuel tank. Respondent Singh contends that he received a call from S&S Dealership asking him to check the brakes and the air in the tires on the 1999 Buick because a customer wanted to look at the vehicle. As respondent Viriyapunt was standing next to the office door, he asked respondent Viriyapunt to check the brakes and air in the tires on the 1999 Buick. Respondent Singh denied that he demanded or asked respondent Viriyapunt to insert the emissions sample probe into the 1999 Buick, denied seeing respondent Viriyapunt place the emissions sample probe into the 1999 Buick, and denied that he offered an incentive to respondent Viriyapunt to clean pipe or clean plug vehicles.

Video Surveillance – May 21, 2010 – Unlicensed Activity

21. On May 21, 2010, at 09:38 hours, Mr. Bowden began a video surveillance across the street from the Smog Tech facility located on Airport Way in Stockton, California. At 10:31:56 hours, a 2006 Chevrolet Tahoe (Chevrolet), California license plate number 5SJC337, was driven into the smog test bay of Smog Tech. Data captured on the BAR97 Test form for May 21, 2010, indicates that a smog inspection of the Chevrolet was performed at Smog Tech between 10:39 hours and 10:49 hours, resulting in the issuance of a Certificate of Compliance.

22. Mr. Bowden asserted that during the smog inspection of the Chevrolet, respondent Viriyapunt allowed John Ya, an unlicensed individual, to enter data into the smog test analyzer between 10:48 hours and 10:49 hours. According to Mr. Bowden, respondent Viriyapunt was wearing black gloves during the smog inspection, and the

video surveillance tape shows that Mr. Ya, who was not wearing gloves, entered data into the smog test analyzer.

23. Respondent Viriyapunt denied that he instructed Mr. Ya to perform any functions of the smog inspection, and denied that he allowed Mr. Ya to enter data into the smog test analyzer during the smog inspection of the Chevrolet. Mr. Viriyapunt contends that he was "just showing" Mr. Ya the prompts on the smog test analyzer screen for the visual test portion of the smog inspection. According to respondent Viriyapunt, he performed the visual, functional and tailpipe emissions portions of the smog inspection and made all the entries into the smog test analyzer. Respondent Viriyapunt also asserted that during the July 16, 2010 meeting at the Sacramento Field Office with Mr. Bowden and Mr. Pryor, he never admitted to aiding and abetting Mr. Ya in performing unlicensed activities.

24. The video surveillance recorded John Ya driving the Chevrolet into the smog test bay at 10:31 hours. He exited the vehicle at 10:32:12 hours. At 10:48:29 hours, Mr. Ya began filling out paperwork. At 10:48:41 hours, Mr. Ya placed his hand in front of the smog test analyzer on what appeared to be the keyboard. Assuming Mr. Ya placed his hand on the keyboard, however, it was unclear from the video if Mr. Ya then pressed any keys on the keyboard. It is equally plausible that Mr. Ya placed his hand on the shelf where the keyboard was located.

Video Surveillance – May 21, 2010 – 2003 Lincoln Aviator

25. On May 21, 2010 at 17:53 hours, a 2003 Lincoln Aviator (Lincoln), California license plate number 5UBM985, was driven into the smog test bay of Smog Tech. Data captured on the BAR97 Test form for May 21, 2010, indicates that a smog inspection of the Lincoln was performed at Smog Tech between 17:58 hours and 18:04 hours, resulting in the issuance of a Certificate of Compliance.

26. The video surveillance recorded respondent Viriyapunt driving the Lincoln into the smog test bay at 17:53:56 hours, and beginning the smog inspection of the Lincoln at 17:55 hours. At 17:59 hours, respondent Viriyapunt removed the on-board diagnostic (OBD) cable from the side of the smog test analyzer, and connected it to the Lincoln. At 18:02 hours, an unidentified individual made a motion to retrieve something from respondent Viriyapunt, who was in the front driver's seat of the Lincoln. However, respondent Viriyapunt exited the Lincoln without handing anything to the unidentified individual. When respondent Viriyapunt exited the Lincoln, he was holding the OBD cable. At 18:02:03 hours, respondent Viriyapunt rolled up the OBD cable and made two tossing motions with the cable. At 18:02:12, respondent Viriyapunt tossed the OBD cable over to the adjacent smog test bay. At 18:02:16, respondent Viriyapunt retrieved the OBD cable from the adjacent smog test bay and rolled it up. At 18:02:25 hours, respondent Viriyapunt again threw the OBD cable to the adjacent smog test bay, and at 18:02:29 hours, the cable became taut. At 18:03:06, respondent Viriyapunt retrieved the OBD cable from the adjacent smog test bay, and replaced it on the side of the smog test analyzer at 18:03:21 hours. At

18:05:59 hours, paperwork was handed to an unidentified individual, and at 18:07:52, the Lincoln was driven out of the smog test bay. It is not visible on the video that someone inserted the OBD cable into a vehicle in the adjacent smog test bay. The video evidence is not conclusive. The surveillance camera is limited to a single angle, shot across a street, with no sound.

27. At hearing, Mr. Bowden, described respondents' act as using the OBD cable in one vehicle to register the OBD data of a vehicle that cannot pass the functional test portion of the smog inspection and described it as "clean plugging." Mr. Bowden also admitted there was no computer-related evidence suggesting clean plugging on the Lincoln, and that the sole evidence about this incident is the video surveillance.

28. At hearing, respondent Viriyapunt asserted that respondent Singh was experiencing intermittent communication problems with the OBD interface in the north smog test bay, so respondent Viriyapunt removed his OBD cable from the Lincoln and threw it over to the adjacent smog test bay so they could determine what the problem was. According to respondent Viriyapunt, after he threw the cable the first time, respondent Singh indicated to him that he did not need it. But then respondent Singh asked for the cable again so he tossed it back to him. According to respondent Viriyapunt, after respondent Singh caught the cable, he "put it aside." Respondent Viriyapunt denied that he asked respondent Singh or anyone to insert the OBD cable in another vehicle to complete the smog inspection on the Lincoln. Respondent Viriyapunt also asserted that during the July 16, 2010 meeting at the Sacramento Field Office with Mr. Bowden and Mr. Pryor, he never admitted to clean plugging the Lincoln, or telling them that respondent Singh paid him to clean plug vehicles.

29. At hearing, respondent Singh asserted that the cable in the smog test bay in which he was working on May 21, 2010, was old, and the connecting pins were missing. According to respondent Singh, he asked respondent Viriyapunt to throw him his cable, but then his analyzer started communicating with the vehicle in his smog test bay. A few seconds later, however, the analyzer "threw a red flag and showed no communication," so he asked respondent Viriyapunt to throw him the cable again. Respondent Singh denied plugging the OBD cable into another vehicle to complete the smog test on the Lincoln, or seeing or instructing someone else to plug the OBD cable into another vehicle. On cross-examination, when asked why he did not ask respondent Viriyapunt to also throw him the other end of the cable, respondent Singh admitted that it was attached to respondent Viriyapunt's smog test analyzer and requires the loosening of two screws. According to Mr. Singh, had he got to that point, he would have asked respondent Viriyapunt to unscrew the other end of his cable and toss that to him also.

Factors in Aggravation, Mitigation and Rehabilitation

30. Respondent Singh has been a smog technician for 10 years. He explained that Smog Tech has five smog tests bay, each of which perform

approximately 30 to 40 smog inspections each day, for a total of approximately 150 smog inspections each day. He has not been a co-owner of Smog Tech since March 2012. Respondent Singh continues to own the building, but leases the business to another owner, who has notified the bureau of the change in ownership and displays his license on the wall. While respondent Singh agreed to implement measures in response to the prior citations, as set forth in Factual Findings 7, 8, 10 and 11, there is no evidence that he took any steps to either prevent the conduct at issue, or, once it occurred, to minimize a recurrence.

31. Respondent Viriyapunt has been a licensed smog technician specialist for four years. He has no history of prior citations or prior discipline against his license.

Costs of Investigation and Prosecution

32. Pursuant to Business and Professions Code section 125.3, complainant has requested costs of investigation and prosecution in the total amount of \$9,590.53. This total amount consists of the following:

a. Complainant submitted a Certification of Costs and Fees, which requests \$4,138.03 for the investigative services of program representatives from the bureau. Business and Professions Code section 125.3, subdivision (c), permits a bureau seeking costs to submit a "certified copy of the actual costs." In this case, however, the bureau did not submit a breakdown of the time spent by bureau staff on this matter or provide any evidentiary support for its costs during the hearing.¹ Consequently, it did not provide sufficient evidence of the "actual costs" as required under Business and Professions Code section 125.3, subdivision (c), and California Code of Regulations, title 1, section 1042, to find that the amount requested is reasonable. These requested costs will, therefore, not be awarded.

b. Complainant submitted a Certification of Prosecution Costs and the Declaration of the Deputy Attorney General, which requests costs in the amount of \$5,452.50. Attached to the Deputy Attorney General's Declaration are printouts of documents entitled "Cost of Suit Summary," and "Matter Time Activity By Professional Type." These documents describe the work performed by Deputies Attorney General and a paralegal. The amount requested by the Office of the Attorney General is reasonable in light of the description of the work performed and the nature of this case.

¹ California Code of Regulations, title 1, section 1042.

33. At hearing, respondents did not offer any evidence as to their financial ability to pay the costs. The costs of investigation and prosecution are addressed in Legal Conclusions 46 through 47 below.

LEGAL CONCLUSIONS

Clean Piping – the Skylark

The weight of the evidence supports the factual findings that the Skylark was clean piped. (Factual Findings 13-14.)

Clean Plugging – the Lincoln

Given the limitations of the video surveillance as described above, Respondents' denial of clean plugging, and their explanations at hearing, the weight of the evidence does not support findings that the Lincoln was clean plugged. (Factual Findings 25-27.)

Unlicensed Activity – the Chevrolet

As set forth in Factual Findings 21 through 24, complainant did not establish that respondent Viriyapunt aided and abetted an unlicensed technician in the performance of certain aspects of the smog inspection of the Chevrolet.

Smog Tech's Registration

1. Pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), where the automotive repair dealer cannot show that there was a "bona fide error," an automotive repair dealer registration may be invalidated when the automotive repair dealer, or any automotive technician, employee, partner, officer, or member of the automotive repair dealer, has made "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." As set forth in Factual Findings 13 through 15, 18, and 20, by certifying under penalty of perjury that the Skylark had passed the California Emissions Inspection Test, respondents Singh and Viriyapunt made statements that were untrue and, which by the exercise of reasonable care, they should have known were untrue. Therefore, cause exists to discipline respondent Smog Tech's registration for violation of Business and Professions Code section 9884.7, subdivision (a)(1).

2. As set forth in Factual Findings 21 through 24, complainant did not establish that respondent Viriyapunt aided and abetted an unlicensed technician in the performance of certain aspects of the smog inspection of the Chevrolet. Therefore, cause does not exist to discipline respondent Smog Tech's registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(1) for this set of facts.

3. Pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), an automotive repair dealer registration may be invalidated when the automotive repair dealer, or any automotive technician, employee, partner, officer, or member of the automotive repair dealer, has engaged in conduct that constitutes fraud. In general, fraud will be found when an individual "intentionally, or by design, misrepresents a material fact, or produces a false impression in order to mislead another, or to entrap or cheat him, or to obtain an undue advantage of him." (*Wayne v. Bureau of Private Investigators & Adjusters* (1962) 201 Cal.App.2d 427, 438.) As set forth in Factual Findings 13 through 15, 18, and 20, respondents engaged in fraudulent conduct when they issued an electronic Certificate of Compliance for the Skylark, without performing a bona fide inspection of the emission control devices and systems on those vehicles. Therefore, cause exists to discipline respondent Smog Tech's registration for violation of Business and Professions Code section 9884.7, subdivision (a)(4).

Smog Tech's Smog Check Test Only Station License

4. Pursuant to Health and Safety Code section 44072.2, subdivision (a), a station license may be suspended, revoked or otherwise disciplined if the licensee violates any section of the Motor Vehicle Inspection Program, Health and Safety Code section 44000 et seq.

5. Pursuant to Health and Safety Code section 44012, subdivision (a), a smog check shall ensure that "[e]mission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013." As set forth in Factual Findings 13 through 15, 18, and 20, respondents Singh and Viriyapunt failed to determine that all emission control devices and systems required by law were installed and functioning correctly on the Skylark in accordance with test procedures. Therefore, cause exists to discipline respondent Smog Tech's station license for violation of Health and Safety Code sections 44072.2, subdivision (a), and 44012, subdivision (a).

6. Pursuant to Health and Safety Code section 44012, subdivision (f), a smog check shall ensure that a "visual or functional check is made of emission control devices specified by the department" As set forth in Factual Findings 13 through 15, 18, and 20, respondents Singh and Viriyapunt failed to perform emission control tests on the Skylark in accordance with procedures prescribed by the department. Therefore, cause exists to discipline respondent Smog Tech's station license for violation of Health and Safety Code sections 44072.2, subdivision (a), and 44012, subdivision (f).

7. Pursuant to Health and Safety Code section Health and Safety Code section 44015, subdivision (b), "[i]f a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance." Health and Safety Code section 44012 provides; that smog tests "shall be performed in accordance with procedures

prescribed by the department." As set forth in Factual Findings 13 through 15, 18, and 20, respondents Singh and Viriyapunt issued electronic certificates of compliance for the Skylark without properly testing and inspecting those vehicles to determine if they were in compliance with Health and Safety Code section 44012. Therefore, cause exists to discipline respondent Smog Tech's station license for violation of Health and Safety Code sections 44072.2, subdivision (a) and 44015, subdivision (b).

8. Pursuant to Health and Safety Code section 44059, the "willful making of any false statement or entry with regard to a material matter in any ... certificate of compliance ... constitutes perjury." As set forth in Factual Findings 13 through 15, 18, and 20, respondents Singh and Viriyapunt "willfully" made false entries when they issued electronic certificates of compliance for the Skylark. Therefore, cause exists to discipline respondent Smog Tech's station license for violation of Health and Safety Code sections 44072.2, subdivision (a), and 44059.

9. Pursuant to Health and Safety Code section 44072.2, subdivision (c), a station license may be suspended, revoked or otherwise disciplined if a licensee "[v]iolates any of the regulations adopted by the director."

10. Pursuant to California Code of Regulations, title 16, section 3340.24, subdivision (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." As set forth in Factual Findings 13 through 15, 18, and 20, respondents Singh and Viriyapunt issued electronic smog certificates of compliance that falsely represented that the Skylark passed the California Emissions Inspection Test. Therefore, cause exists to discipline respondent Smog Tech's station license for violation of Health and Safety Code sections 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.24, subdivision (c).

11. Pursuant to California Code of Regulations, title 16, section 3340.35, subdivision (c), a "licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly." As set forth in Factual Findings 13 through 15, 18, and 20, respondents Singh and Viriyapunt issued electronic smog certificates of compliance for the Skylark, although these vehicles had not been inspected in accordance with California Code of Regulations, title 16, section 3340.42. Therefore, cause exists to discipline respondent Smog Tech's station license for violation of Health and Safety Code sections 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.35, subdivision (c).

12. California Code of Regulations, title 16, section 3340.42, sets forth the mandatory emissions inspection standards and test procedures that a licensed station must follow. As set forth in Factual Findings 13 through 15, 18, and 20,

respondents Singh and Viriyapunt failed to conduct the required smog tests on the Skylark in accordance with the bureau's specifications. Therefore, cause exists to discipline respondent Smog Tech's station license for violation of Health and Safety Code sections 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.42.

13. Pursuant to Health and Safety Code section 44072.2, subdivision (d), a station license may be suspended, revoked or otherwise disciplined if the licensee "[c]ommits any act involving dishonesty, fraud, or deceit whereby another is injured." As set forth in Factual Findings 13 through 15, 18, and 20, respondents Singh and Viriyapunt engaged in acts involving dishonesty, fraud, or deceit when they issued an electronic Certificate of Compliance on the Skylark without performing a bona fide inspection of the emission control devices and systems on those vehicles. Therefore, cause exists to discipline respondent Smog Tech's station license for violation of Health and Safety Code section 44072.2, subdivision (d).

14. As set forth in Factual Findings 21 through 24, complainant did not establish that respondent Viriyapunt aided and abetted an unlicensed technician in the performance of certain aspects of the smog inspection of the Chevrolet. Therefore, cause does not exist to discipline respondent Smog Tech's station license pursuant to Health and Safety Code section 44072.2, subdivision (f).

Harjit Singh's Advanced Emission Specialist Technician License

15. Pursuant to Health and Safety Code section 44072.2, subdivision (a), an advanced emission specialist technician license may be suspended, revoked or otherwise disciplined if the licensee violates any section of the Motor Vehicle Inspection Program, Health and Safety Code section 44000 et seq.

16. Pursuant to Health and Safety Code section 44012, subdivision (a), a smog check shall ensure that "[e]mission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013." As set forth in Factual Findings 13 through 15, 18 and 20, respondent Singh failed to determine that all emission control devices and systems required by law were installed and functioning correctly on the Skylark in accordance with test procedures. Therefore, cause exists to discipline respondent Singh's advanced emission specialist technician license pursuant to Health and Safety Code sections 44072.2, subdivision (a), and 44012, subdivision (a).

17. Pursuant to Health and Safety Code section 44012, subdivision (f), a smog check shall ensure that a "visual or functional check is made of emission control devices specified by the department" As set forth in Factual Findings 13 through 15, 18 and 20, respondent Singh failed to perform emission control tests on the Skylark in accordance with procedures prescribed by the department. Therefore, cause exists to discipline respondent Singh's advanced emission specialist technician

license pursuant to Health and Safety Code sections 44072.2, subdivision (a), and 44012, subdivision (f).

18. Pursuant to Health and Safety Code section 44032, "[q]ualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012." As set forth in Factual Findings 13 through 15, 18 and 20, respondent Singh failed to determine that all emission control devices and systems required by law were installed and functioning correctly on the Skylark in accordance with test procedures. Therefore, cause exists to discipline respondent Singh's advanced emission specialist technician license pursuant to Health and Safety Code sections 44072.2, subdivision (a), and 44032.

19. Pursuant to Health and Safety Code section 44059, the "willful making of any false statement or entry with regard to a material matter in any ... certificate of compliance ... constitutes perjury." As set forth in Factual Findings 13 through 15, 18 and 20, respondent Singh "willfully" made false entries when he issued an electronic certificate of compliance for the Skylark. Therefore, cause exists to discipline respondent Singh's advanced emission specialist technician license pursuant to Health and Safety Code sections 44072.2, subdivision (a), and 44059.

20. Pursuant to Health and Safety Code section 44072.2, subdivision (c), an advanced technician license may be suspended, revoked or otherwise disciplined if a licensee "[v]iolates any of the regulations adopted by the director pursuant to" the Motor Vehicle Inspection Program.

21. Pursuant to California Code of Regulations, title 16, section 3340.24, subdivision (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." As set forth in Factual Findings 13 through 15, 18 and 20, respondent Singh issued an electronic smog certificate of compliance that falsely represented that the Skylark passed the California Emissions Inspection Test. Therefore, cause exists to discipline respondent Singh's advanced emission specialist technician license pursuant to Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.24, subdivision (c).

22. Pursuant to California Code of Regulations, title 16, section 3340.30, subdivision (a), a "licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code." As set forth in Factual Findings 13 through 15, 18 and 20, respondent Singh failed to inspect and test the Skylark in accordance with Health and Safety Code section 44012. Therefore, cause exists to discipline respondent Singh's advanced emission specialist technician license pursuant to Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.30, subdivision (a).

23. Pursuant to California Code of Regulations, title 16, section 3340.41,

subdivision (c), a person shall not "knowingly enter into the emissions inspection system any false information about the vehicle being tested." As set forth in Factual Findings 13 through 15, 18 and 20, respondent Singh knowingly entered false information into the emissions inspection system. Therefore, cause exists to discipline respondent Singh's advanced emission specialist technician license pursuant to Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.41, subdivision (c).

24. Pursuant to California Code of Regulations, title 16, section 3340.42, smog check technicians shall conduct tests and inspections in accordance with the bureau's BAR-97 Emissions Inspection System Specifications. As set forth in Factual Findings 13 through 15, 18 and 20, respondent Singh failed to conduct the required smog tests and inspections on the Skylark in accordance with the bureau's specifications. Therefore, cause exists to discipline respondent Singh's advanced emission specialist technician license pursuant to Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.42.

25. Pursuant to Health and Safety Code section 44072.2, subdivision (d), an advanced emission specialist technician license may be suspended, revoked or otherwise disciplined if the licensee "[c]ommits any act involving dishonesty, fraud, or deceit whereby another is injured." As set forth in Factual Findings 13 through 15, 18 and 20, respondent Singh engaged in acts involving dishonesty, fraud, or deceit when he issued an electronic Certificate of Compliance for the Skylark without performing a bona fide inspection of the emission control devices and systems on that vehicle. Therefore, cause exists to discipline respondent Singh's advanced emission specialist technician license pursuant to Health and Safety Code section 44072.2, subdivision (d).

Paul Supote Viriyapunt's Advanced Emission Specialist Technician License

26. Pursuant to Health and Safety Code section 44072.2, subdivision (a), an advanced emission specialist technician license may be suspended, revoked or otherwise disciplined if the licensee violates any section of the Motor Vehicle Inspection Program, Health and Safety Code section 44000 et seq.

27. Pursuant to Health and Safety Code section 44012, subdivision (a), a smog check shall ensure that "[e]mission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013." As set forth in Factual Findings 13 through 15, 18, and 20, respondent Viriyapunt failed to determine that all emission control devices and systems required by law were installed and functioning correctly on the Skylark in accordance with test procedures. Therefore, cause exists to discipline respondent Viriyapunt's advanced emission specialist technician license pursuant to Health and Safety Code sections 44072.2, subdivision (a), and 44012, subdivision (a).

28. Pursuant to Health and Safety Code section 44012, subdivision (f), a smog check shall ensure that a "visual or functional check is made of emission control devices specified by the department ..." As set forth in Factual Findings 13 through 15, 18, and 20, respondent Viriyapunt failed to perform emission control tests on the Skylark in accordance with procedures prescribed by the department. Therefore, cause exists to discipline respondent Viriyapunt's advanced emission specialist technician license pursuant to Health and Safety Code sections 44072.2, subdivision (a), and 44012, subdivision (f).

29. Pursuant to Health and Safety Code section 44032, "[q]ualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012." As set forth in Factual Findings 13 through 15, 18, and 20, respondent Viriyapunt failed to determine that all emission control devices and systems required by law were installed and functioning correctly on the Skylark in accordance with test procedures. Therefore, cause exists to discipline respondent Viriyapunt's advanced emission specialist technician license pursuant to Health and Safety Code sections 44072.2, subdivision (a), and 44032.

30. Pursuant to Health and Safety Code section 44072.2, subdivision (c), an advanced technician license may be suspended, revoked or otherwise disciplined if a licensee "[v]iolates any of the regulations adopted by the director pursuant to" the Motor Vehicle Inspection Program.

31. Pursuant to California Code of Regulations, title 16, section 3340.30, subdivision (a), a "licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code." As set forth in Factual Findings 13 through 15, 18, and 20, respondent Viriyapunt failed to inspect and test the Skylark in accordance with Health and Safety Code section 44012. Therefore, cause exists to discipline respondent Viriyapunt's advanced emission specialist technician license pursuant to Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.30, subdivision (a).

32. Pursuant to California Code of Regulations, title 16, section 3340.42, smog check technicians shall conduct tests and inspections in accordance with the bureau's BAR-97 Emissions Inspection System Specifications. As set forth in Factual Findings 13 through 15, 18, and 20, respondent Viriyapunt failed to conduct the required smog tests and inspections on the Skylark in accordance with the bureau's specifications. Therefore, cause exists to discipline respondent Viriyapunt's advanced emission specialist technician license pursuant to Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.42.

33. As set forth in Factual Findings 21 through 24, complainant did not establish that respondent Viriyapunt aided and abetted an unlicensed technician in the

performance of certain aspects of the smog inspection of the Chevrolet. Therefore, cause does not exist to discipline respondent Viriyapunt's advanced emission specialist technician license pursuant to Health and Safety Code sections 44014 and 44072.2, subdivision (f).

Fitness for Continued Registration and Licensure – Smog Tech

34. A licensee who elects to operate his business through employees is responsible to the licensing authority for their conduct in the exercise of the license. (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 295.) A licensed owner has a responsibility to see the license is not used in violation of the law. (*Ibid.*) If a licensee were not liable for the actions of his or her employees, effective regulation would be impossible. (*Ibid.*) The licensee could contract away the daily operations of his or her business and become immune to any disciplinary action brought by the licensing authority. (*Ibid.*) The principle that a licensee will be held liable for the acts of his or her agents is one that has been applied whether the agent is an independent contractor or an employee. (*Ibid.*) This principle is based on the assumption that a licensee is in a position to oversee and control the actions of employees. (*Rob-Mac Inc. v. Department of Motor Vehicles* (1983) 148 Cal.App.3d 793, 798.)

35. As set forth in Factual Findings 10 and 11, respondent Smog Tech's registration and licenses have been subject to prior discipline for issuing certificates of compliance to vehicles without performing the smog check inspections and tests in accordance with Bureau procedures. No evidence was presented to establish that respondents Jasjit Kaur Bain and Harjit Singh took an active role in monitoring or supervising respondent Viriyapunt between the time of the first video surveillance on April 2010 and March 2012, when respondent Singh sold his ownership interest in Smog Tech. Their lack of oversight resulted in the prior disciplinary actions and the current one. They offered no assurances that they now understand and accept responsibility for the conduct of their employees.

36. In addition, respondent's Jasjit Kaur Bain and Harjit Singh attended Citation Office Conferences with the bureau in 2007 and 2009, in which they agreed to comply with the bureau's procedures for smog inspections and tests. Despite these agreements, however, respondents Bain and Singh continued to violate the rules and regulations designed to protect the health of all Californians. They offered no assurances that they now understand and accept responsibility for their conduct. Therefore, respondents Jasjit Kaur Bain and Harjit Singh, d.b.a. Smog Tech, cannot be relied upon to comply with the law.

37. As respondents Jasjit Kaur Bain and Harjit Singh, d.b.a. Smog Tech were unable to comply with the terms and conditions of their prior disciplinary actions, terms and conditions of probation will not ensure that the public interest and welfare will be adequately protected. Given this history, revocation of respondent Smog Tech's

registration and smog check station license is required to protect the public interest and welfare.

38. Pursuant to Business and Professions Code section 9884.7, subdivision (c), "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 [t]."

39. Pursuant to Health and Safety Code section 44072.8, "[w]hen 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."

Fitness for Continued Licensure – Harjit Singh

40. As set forth in Legal Conclusions 16 through 25, respondent Singh has engaged in multiple violations of the rules and regulations pertaining to the Motor Vehicle Inspection Program by performing a smog inspection on a vehicle using clean piping methods. Respondent Singh has also engaged in dishonesty and fraud by issuing a certificate of compliance for a vehicle which was clean piped.

41. As set forth in Factual Findings 7 through 9, respondent Singh's license has been subject to prior discipline for issuing certificates of compliance to vehicles without performing the smog check inspections and tests in accordance with Bureau procedures. In addition, respondent Singh attended Citation Office Conferences with the bureau in 2005 and once in 2006, in which he agreed to comply with the bureau's procedures for smog inspections and tests. Despite these agreements, however, respondent Singh continued to violate the rules and regulations designed to protect the health of all Californians. He offered no assurances that he now understands and accepts responsibility for his conduct. Therefore, respondent Singh cannot be relied upon to comply with the law.

42. As respondent Singh was unable to comply with the terms and conditions of his prior disciplinary actions, terms and conditions of probation will not ensure that the public interest and welfare will be adequately protected. Given this history, revocation of respondent Singh's advanced emission specialist technician's license is required to protect the public interest and welfare.

43. Pursuant to Health and Safety Code section 44072.8, "[w]hen 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."

Fitness for Continued Licensure – Paul Supote Viriyapunt

44. As set forth in Legal Conclusions 27 through 33, respondent Viriyapunt has engaged in multiple violations of the rules and regulations pertaining to the Motor Vehicle Inspection Program by performing a smog inspection on vehicles using clean piping methods.

45. As respondent Viriyapunt's advanced emission specialist technician's license has not been subject to prior disciplinary action by the bureau, it would not be against the public interest and welfare to issue a probationary license to respondent Viriyapunt, subject to terms and conditions designed to protect the public and monitor his practice.

Cost Recovery

46. Pursuant to Business and Professions Code section 125.3, subdivision (a), an administrative law judge may direct a licensee found to have violated the licensing act to "pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth the following factors to be considered in determining the reasonableness of the costs sought pursuant to regulatory and statutory provisions like Business and Professions Code section 125.3:

The Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that regulation 317.5 does not deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing. Thus, the Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a chiropractor who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The Board must consider the chiropractor's "subjective good faith belief in the merits of his or her position" [citation] and whether the chiropractor has raised a "colorable challenge" to the proposed discipline [citation]. Furthermore, as in cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation [citation], the Board must determine that the chiropractor will be financially able to make later payments. Finally, the Board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a chiropractor engaged in relatively innocuous misconduct.

47. As set forth in Factual Findings 32 and 33, there was sufficient evidence to substantiate that the \$5,452.50 in costs charged by the Attorney General's office were reasonable. Respondents did not provide evidence of their financial ability to pay the requested costs. Therefore, respondents shall be ordered to pay to the bureau \$5,452.50 in costs for the investigation and prosecution.

ORDER

1. Automotive Repair Dealer Registration Number ARD 243698 issued to respondents, Jasjit Kaur Bain and Harjit Singh, doing business as Smog Tech, located in Stockton, California, is permanently invalidated.

2. Smog Check Test Only Station License Number TC 243698 issued to respondents, Jasjit Kaur Bain and Harjit Singh, doing business as Smog Tech, located in Stockton, California, is revoked.

3. Advanced Emission Specialist Technician License Number EA 137249, designated upon renewal as Smog Check Inspector License No. EO 137249, issued to respondent Harjit Singh, is revoked.

4. Respondents Jasjit Kaur Bain and Harjit Singh, jointly and severally, are ordered to pay to the bureau the costs of investigation and prosecution of this matter, in the amount of \$5,452.50, pursuant to Factual Findings 32 and 33, and Legal Conclusions 46 and 47.

5. Advanced Emission Specialist Technician License Number EA 630183, designated upon renewal as Smog Check Inspector License No. EO 630183 and Smog Check Repair Technician License No. EI 630183, issued to respondent Paul Supote Viriyapunt, are revoked. However, the revocation is STAYED and respondent Viriyapunt's licenses are placed on PROBATION for a period of three (3) years, subject to the following terms and conditions:

a. Respondent Viriyapunt's licenses are suspended for a period of five (5) business days commencing on the effective date of this Decision.

b. During the period of probation, respondent Viriyapunt shall:

i. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

ii. Post a prominent sign, provided by the bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

- iii. Report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the bureau; but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
- iv. Provide bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing smog inspections, up to and including the point of completion.
- v. If an accusation is filed against respondent Viriyapunt during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.
- vi. Should the Director of the Department of Consumer Affairs determine that respondent Viriyapunt has failed to comply with the terms and conditions of probation, the department may, after giving notice and opportunity to be heard, lift the stay of revocation causing respondent's licenses to be revoked.
- vii. Attend and successfully complete the bureau's advanced air/clean air car course. Said course shall be completed and proof of completion submitted to the bureau within 180 days of the effective date of this Decision and Order. If proof of completion of the course is not furnished to the bureau within the 180-day period, the department may, until such proof is received and after giving notice and opportunity to be heard, lift the stay of revocation causing respondent's licenses to be revoked.

This Decision shall become effective on May 23, 2014.

IT IS SO ORDERED this 18th day of April, 2014.



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs