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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: **NAYARIT SMOG TEST ONLY** **3754 North Mission Rd., Unit B** **Los Angeles, CA 90031** **REMIGIO NIEBLAS, OWNER** **Automotive Repair Dealer Registration No. ARD 257321** **Smog Check Test Only Station License No. TC 257321** **and** **MICHAEL SALAZAR REYES** **1930 East Avenue, R4** **Palmdale, CA 93550** **Advanced Emission Specialist Technician License No. EA 630294** Respondents.	Case No. 79/10-46 **A C C U S A T I O N** **SMOG CHECK**

Complainant alleges:

PARTIES

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

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Automotive Repair Dealer Registration

2. On or about February 13, 2009, the Bureau issued Automotive Repair Dealer Registration Number ARD 257321 ("registration") to Remigio Nieblas ("Respondent Nayarit"), doing business as Nayarit Smog Test Only. The registration was in full force and effect at all times relevant to the charges brought herein and expired on October 31, 2009.

Smog Check Test Only Station License

3. On or about February 26, 2009, the Bureau issued Smog Check Test Only Station License Number TC 257321 ("station license") to Respondent Nayarit. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2010, unless renewed.

Advanced Emission Specialist Technician License

4. On or about June 30, 2008, the Bureau issued Advanced Emission Specialist Technician License Number EA 630294 ("technician license") to Michael Salazar Reyes ("Respondent Reyes"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2010, unless renewed.

STATUTORY PROVISIONS

5. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent part:

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
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> (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
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> (4) Any other conduct which constitutes fraud.
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> (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only invalidate temporarily or permanently the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

(c) Notwithstanding subdivision (b), the director may invalidate temporarily or permanently, the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

6. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

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

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

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

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

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

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

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

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

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

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

COST RECOVERY

12. 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.

SURVEILLANCE OPERATION – JUNE 4, 2009

13. On or about June 4, 2009, the Bureau performed a videotaped surveillance at Respondent Nayarit's facility. The surveillance operation and information obtained from the Bureau's Vehicle Information Database ("VID") revealed that from approximately 1028 hours to 1703 hours, Respondent Reyes performed six (6) smog inspections that resulted in the issuance of six (6) electronic certificates of compliance for the vehicles set forth in Table 1, below, certifying that he had tested and inspected those vehicles and that the vehicles were in compliance with applicable laws and regulations. In fact, Respondent Reyes performed the smog inspections using the clean piping method[1] by using the tail pipe emissions of vehicles other than the vehicles being certified in order to issue the electronic certificates of compliance. The vehicles certified were not in the test bay at the time of the smog inspections.

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[1] "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in compliance or are not present in the smog check area during the time of the certification.

Table 1

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued
6/4/2009 1028 hours to 1043 hours	1990 Ford Lic. No. 5DHK563	2003 Nissan Lic. No. 7B09576	VZ891797C
6/4/2009 1538 hours to 1548 hours	2005 Toyota No License Plate	2003 Honda Lic. No. 6HHH725	VZ991501C
6/4/2009 1557 hours to 1610 hours	1994 Toyota Lic. No. 3JAC063	2003 Nissan Lic. No. 7B09576	VZ991502C
6/4/2009 1615 hours to 1626 hours	2001 Lexus Lic. No. 5GIU817	2003 Honda Lic. No. 6HHH725	VZ991503C
6/4/2009 1637 hours to 1647 hours	1994 Toyota Lic. No. 4EGB757	2003 Nissan Lic. No. 7B09576	VZ991504C
6/4/2009 1651 hours to 1703 hours	2001 Chevrolet 3QSZ912	2003 Nissan Lic. No. 7B09576 and 2003 Honda Lic. No. 6HHH725	VZ991505C

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

14. Respondent Nayarit has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about June 4, 2009, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading when he issued electronic certificates of compliance for the vehicles set forth in Table 1, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

15. Respondent Nayarit has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about June 4, 2009, he committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table 1, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

16. Respondent Nayarit has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about June 4, 2009, regarding the vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent Nayarit failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f)**: Respondent Nayarit failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.

c. **Section 44015, subdivision (b)**: Respondent Nayarit issued electronic certificates of compliance without properly testing and inspecting those vehicles to determine if they were in compliance with section 44012 of that Code.

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

FOURTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

17. Respondent Nayarit has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about June 4, 2009, regarding the

vehicles set forth in Table 1, above, he violated sections of the California Code of Regulations, title 16, as follows:

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

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

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

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

18. Respondent Nayarit subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about June 4, 2009, regarding the vehicles set forth in Table 1, above, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

19. Respondent Reyes has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about June 4, 2009, regarding the vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

a. **Section 44012, subdivision (a)**: Respondent Reyes failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. **Section 44012, subdivision (f)**: Respondent Reyes failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.

c. **Section 44032**: Respondent Reyes failed to perform tests of the emission control devices and systems on those vehicles in accordance with section 44012 of that Code, in that the vehicles had been clean piped.

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

SEVENTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

20. Respondent Reyes has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (c), in that on or about June 4, 2009, regarding the vehicles set forth in Table 1, above, he violated sections of the California Code of Regulations, title 16, as follows:

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

b. **Section 3340.30, subdivision (a)**: Respondent Reyes failed to inspect and test those vehicles in accordance with Health and Safety Code section 44012.

c. **Section 3340.41, subdivision (c)**: Respondent Reyes entered false information into the Emission Inspection System for the electronic certificates of compliance by entering vehicle emission control information for vehicles other than the vehicles being certified.

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

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EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

21. Respondent Reyes has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that on or about June 4, 2009, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance for the vehicles set forth in Table 1, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

OTHER MATTERS

22. Pursuant to Code section 9884.7, subdivision (c), the Director may invalidate temporarily or permanently or refuse to validate, the registrations for all places of business operated in this state by Remigio Nieblas, doing business as Nayarit Smog Test Only, upon a finding that he has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

23. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station License Number TC 257321, issued to Remigio Nieblas, doing business as Nayarit Smog Test Only, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

24. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 630294, issued to Michael Salazar Reyes, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

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. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number ARD 257321, issued to Remigio Nieblas, doing business as Nayarit Smog Test Only;

2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to Remigio Nieblas;

3. Revoking or suspending Smog Check Test Only Station License Number TC 257321, issued to Remigio Nieblas, doing business as Nayarit Smog Test Only;

4. Revoking or suspending any additional license issued under this chapter in the name of Remigio Nieblas;

5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 630294, issued to Michael Salazar Reyes;

6. Revoking or suspending any additional license issued under this chapter in the name of Michael Salazar Reyes;

7. Ordering Remigio Nieblas and Michael Salazar Reyes to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 1/13/10

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

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