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

79/11-38

In the Matter of the Accusation Against:	Case No.
DIANA ZAIT **dba CHRIS TEST ONLY SMOG** 8788 Cypress Riverside, California 92503 **Automotive Repair Dealer Registration No. ARD 234565** **Smog Check, Test Only, Station License No. TC 234565** **JOHN J. MOAMAR** 4740 Crest Avenue Riverside, California 92503 **Advanced Emission Specialist Technician License No. EA 630635** Respondents.	**ACCUSATION** SMOG CHECK

Sherry Mehl ("Complainant") alleges:

PARTIES

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

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Automotive Repair Dealer Registration No. ARD 234565

2. In or about 2004, the Bureau issued Automotive Repair Dealer Registration Number ARD 234565 ("registration") to Diana Zait ("Respondent"), doing business as Chris Test Only Smog. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2011, unless renewed.

Smog Check Test Only Station License No. TC 234565

3. On or about September 7, 2004, the Bureau issued Smog Check, Test Only, Station License Number TC 234565 ("station license") to Respondent. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2011, unless renewed.

Advanced Emission Specialist Technician License No. EA 630635

4. On or about November 20, 2008, the Bureau issued Advanced Emission Specialist Technician License No. EA 630635 ("technician license") to John J. Moamar ("Respondent Moamar"). The license will expire on or about December 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 deny, suspend, revoke, or place on probation 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.

(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.

(4) Any other conduct that constitutes fraud.

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

(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 suspend, revoke, or place on probation 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 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 it.

6. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director 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. 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.

8. 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.

9. 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.

10. 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

11. 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.

FACTUAL BACKGROUND

12. On or about April 13, 2010, the Bureau conducted a detailed review of the Vehicle Information Database ("VID") for all smog inspections performed at Respondent's facility for the period of April 1, 2009, through March 31, 2010. The VID showed a pattern of various random diagnostic trouble codes stored in the memory of the power train control module ("PCM") on different vehicles. Vehicles 1 through 9, set forth in Table 1 below, were all certified with various pending codes stored in the PCM memory while the original equipment manufacturer ("OEM") service information shows these vehicles do not support the pending codes stored in the PCM memory. The vehicles receiving smog certificates were not tested during the OBD II[1]

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

functional test and another vehicle(s) was used, constituting clean plugging.[2] All of the following inspections were performed by Respondent Moamar.

TABLE 1

Date and Time of Inspection	Vehicle Certified License No.	Certificate No.
1. 04/14/2009 1651 – 1700	1996 Volkswagen Jetta III License No. 5YIY693	VZ256024C
2. 05/16/2009 1007 – 1016	1996 Honda Civic License No. 3VNC170	VZ702362C
3. 07/24/2009 1015 – 1030	2003 Nissan Altima License No. 5EMY398	WB675867C
4. 07/24/2009 1138 – 1153	2002 Dodge Neon License No. (no plates)	WB675870C
5. 08/10/2009 1129 – 1143	1996 Pontiac Bonneville License No. 3RAC826	WB872039C
6. 08/10/2009 1552 – 1600	1996 Toyota Corolla License No. 3TBB511	WB872046C
7. 11/04/2009 1700 – 1710	1997 Ford Explorer License No. 5JCB721	WF036022C
8. 02/10/2010 0932 – 0939	2000 Ford F150 License No. 7G35902	WH271566C
9. 02/23/2010 1130 – 1140	1999 Ford Windstar License No.4RBF038	WH454927C

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

13. Respondent's registration is subject to discipline pursuant to Code section 9884.7(a)(1), in that between April 14, 2009, and February 23, 2010, Respondent made or authorized statements which she knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent certified that vehicles 1 through 9, set forth above in Table 1, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles using the clean plugging method by substituting or using different vehicles during the OBD II functional tests in

[2] Clean plugging is the use of the OBD II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purposes of illegally issuing a smog certificate to another vehicle that is not in compliance due to a failure to complete the minimum number of self test, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

order to issue smog certificates of compliance for the 9 vehicles, and did not test or inspect the 9 vehicles as required by Health and Safety Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

14. Respondent's registration is subject to discipline pursuant to Code section 9884.7(a)(4), in that between April 14, 2009, and February 23, 2010, Respondent committed acts which constitute fraud by issuing electronic certificates of compliance for vehicles 1 through 9, set forth above in Table 1, 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

(Failure to Comply with the Motor Vehicle Inspection Program)

15. Respondent's station license is subject to discipline pursuant to Health and Safety Code section 44072.2(a), in that between April 14, 2009, and February 23, 2010, regarding vehicles 1 through 9, set forth above in Table 1, Respondent failed to comply with the following sections of that Code:

a. **Section 44012:** Respondent failed to ensure that the emission control tests were performed on vehicles 1 through 9, in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued electronic certificates of compliance for vehicles 1 through 9, without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health and Safety Code section 44012.

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

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FOURTH CAUSE FOR DISCIPLINE

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

16. Respondent's station license is subject to discipline pursuant to Health and Safety Code section 44072.2(c), in that between April 14, 2009, and February 23, 2010, regarding vehicles 1 through 9, set forth above in Table 1, Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

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

b. **Section 3340.35(c)**: Respondent 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 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)

17. Respondent's station license is subject to discipline pursuant to Health and Safety Code section 44072.2(d), in that between April 14, 2009, and February 23, 2010, regarding vehicles 1 through 9, set forth above in Table 1, Respondent 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 the 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)

18. Respondent Moamar's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2(a), in that between April 14, 2009, and February 23, 2010, regarding vehicles 1 through 9, set forth above in Table 1, he failed to comply with section 44012

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

SEVENTH CAUSE FOR DISCIPLINE

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

19. Respondent Moamar's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2(c), in that between April 14, 2009, and February 23, 2010, regarding vehicles 1 through 9, set forth above in Table 1, he failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.24(c)**: Respondent Moamar falsely or fraudulent 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(a)**: Respondent Moamar failed to inspect and test those vehicles in accordance with Health and Safety Code sections 44012.

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

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

20. Respondent Moamar's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2(d), in that between April 14, 2009, and February 23, 2010, regarding vehicles 1 through 9, set forth above in Table 1, he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of compliance 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.

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OTHER MATTERS

21. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on probation the registrations for all places of business operated in this state by Diana Zait, doing business as Chris Smog Test Only, upon a finding that she has, or is, engaged in a course of repeated and willful violation of the laws and regulations pertaining to an automotive repair dealer.

22. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only Station License Number TC 234565, issued to Diana Zait, doing business as Chris 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.

23. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 630635, issued to John J. Moamar, 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. Revoking or suspending Automotive Repair Dealer Registration No. ARD 234565, issued to Diana Zait, doing business as Chris Smog Test Only;

2. Revoking or suspending any other automotive repair dealer registration issued to Diana Zait;

3. Revoking or suspending Smog Check, Test Only, Station License Number TC 234565, issued to Diana Zait, doing business as Chris Smog Test Only;

4. Revoking or suspending Advanced Emission Specialist Technician License Number EA 630635, issued to John J. Moamar;

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

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6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of John J. Moamar;

7. Ordering Diana Zait and John J. Moamar to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 11-18-10

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

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