

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 355-5437
6 Facsimile: (415) 703-5480
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case No. *79/15-133*

12 **TOM H. NGUYEN**
13 **491 Feldspar Drive**
San Jose, CA 95111

ACCUSATION
Smog Check

14 **Smog Check Inspector No. EO 630734**
15 **Smog Check Repair Technician License No.**
EI 630734
16 **(Formerly Advanced Emission Specialist**
Technician License No. EA 630734)

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

21 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as
22 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

23 2. On or about January 12, 2009, the Bureau of Automotive Repair issued Advanced
24 Emission Specialist Technician License Number EA 630734 to Tom H. Nguyen (Respondent).
25 The Advanced Emissions Specialist (EA) License was due to expire on March 31, 2013. Pursuant
26 to California Code of Regulations, title 16, section 3340.28, subsection (e), the license was
27 renewed, pursuant to Respondent's election, as Smog Check Inspector License Number License
28

1 No. EO 630734 and Smog Check Repair Technician License No. EI 630734¹. The Smog Check
2 Inspector (EO) is set to expire on October 18, 2015 and the Smog Check Repair Technician (EI)
3 Licenses is expected to expire on March 31, 2017, unless renewed.

4 **JURISDICTION**

5 3. This Accusation is brought before the Director of Consumer Affairs (Director) for the
6 Bureau of Automotive Repair, under the authority of the following laws.

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

10 5. Section 44072.2 of the Health and Safety Code states:

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

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

17 . . .

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

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

20 . . ."

21 6. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
22 expiration or suspension of a license by operation of law, or by order or decision of the Director
23 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
24 the Director of jurisdiction to proceed with any investigation of, or action or disciplinary
25 proceedings against the licensee, or to render a decision suspending or revoking the license.

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, section 3340.28,
27 3340.29 and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and and/or Smog Check Repair Technician (EI) license.

1 Community College campuses and two vocational centers since 2004. Inspections are provided
2 by the Referee at no cost to the consumer. The consumer is only charged an \$8.25 Certificate fee
3 if the vehicle is issued a Certificate of Compliance.

4 12. Respondent was a referee at the Alameda State Smog Check Referee Center in
5 Alameda, Ca.

6 13. On or about July 24, 2014, Linda R. took her Mercedes Benz to the Alameda State
7 Smog Check Referee Center in Alameda, CA. Linda R took her Mercedes Benz to the Alameda
8 State Smog Check Referee Center because she had been informed her vehicle failed a smog
9 inspection because her vehicle did not have a check engine light. Respondent performed a smog
10 check inspection on Linda R.'s Mercedes Benz at the Alameda State Smog Check Referee Center.
11 Following the inspection, Respondent informed Linda R. that her vehicle did not require a check
12 engine light but had failed the inspection because of excessive tailpipe emissions. Following the
13 inspection, Respondent contacted Linda R. by phone and stated that he would pass her vehicle's
14 smog inspection if she paid him \$200.00 in cash.

15 14. On or about August 14, 2014, Linda R. returned to the Alameda State Smog Check
16 Referee Center and gave Respondent \$200 in cash. Respondent performed a smog inspection on
17 Linda R.'s vehicle. Respondent passed Linda R's vehicle. Respondent signed the vehicle
18 inspection report for the smog inspection performed on Linda R.'s vehicle. Smog Check
19 Certificate No. PG783691 was issued for Linda R.'s vehicle.

20 15. In 2014, Justin D. was informed his 2002 Volkswagen Passat would not pass a smog
21 inspection because the vehicle's computer would not communicate with the smog test equipment.
22 Justin D. subsequently made an appointment with the Alameda State Smog Check Referee Center
23 to have a smog inspection performed on his vehicle.

24 16. On or about November 13, 2014, Respondent performed a smog inspection on Justin
25 D.'s Volkswagen Passat at the Alameda State Smog Check Referee Center. Respondent informed
26 Justin D. that Respondent could not issue a passing certificate because of communication issues
27 between the vehicle and smog analyzer. After leaving the Alameda State Smog Check Referee
28

1 Center, Justin D. received a call from Respondent. Respondent offered to pass Justin D's
2 vehicle's smog inspection for \$160 in cash.

3 17. On or about December 2, 2014, Respondent admitted he had accepted cash payments to
4 pass consumer vehicles' smog inspections on six or seven occasions in the prior six months. On
5 or about December 8, 2014, Respondent signed a declaration stating he accepted cash payment to
6 pass consumer vehicles' smog inspections on six or seven occasions in the prior six months. In
7 the six months prior to December 2, 2104, Respondent accepted cash payments to pass consumer
8 vehicles' smog inspections on six or seven occasions.

9 **FIRST CAUSE FOR DISCIPLINE**

10 (Dishonesty, Fraud, Deceit)

11 18. Respondent is subject to disciplinary action under Health and Safety Code section
12 44072.2, subsection (d), in that Respondent committed acts involving dishonesty, fraud, or deceit
13 whereby another was injured. The circumstances are described in Paragraphs 11-17, above.

14 **SECOND CAUSE FOR DISCIPLINE**

15 (Violation of Regulation)

16 19. Respondent is subject to disciplinary action under section Health and Safety Code
17 section 44072.2, subsection (c), in that Respondent violated California Code of Regulations Title
18 16, section 3324, by falsely and fraudulently issuing a certificate of compliance. The
19 circumstances are described in Paragraphs 11-17, above.

20 **PRAYER**

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

23 1. Revoking or suspending Smog Check Inspector Number EO 630734, issued to Tom
24 H. Nguyen

25 2. Revoking or suspending Smog Check Repair Technician License Number EI 630734,
26 issued to Tom H. Nguyen;

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Ordering Tom H. Nguyen 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;

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

DATED: June 11, 2015 

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

SF2015400766
41234872.doc