

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

In the Matter of the Accusation Against:

CROWN TEST ONLY
ALFRED MARTIN ESCOBAR, Owner
170 North Arrowhead, Unit B
Rialto, CA 92376
Automotive Repair Dealer Registration
No. ARD 257299
Smog Check Test Only Station License
No. TC 257299

and

MICHAEL BRYAN KIRK
13110 Riesling Drive
Rancho Cucamonga, CA 91739
Advanced Emissions Specialist Technician
License No. EA 630465

and

MARK NAGY SAAD HABIB
7817 Celeste Avenue
Fontana, CA 92336
Advanced Emission Specialist Technician
License No. EA 630833

Respondents.

Case No. 79/11-22

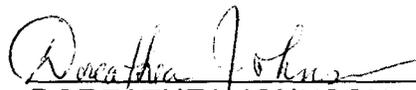
OAH No. 2010120717

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter only as to respondent Mark Nagy Saad Habib, Advanced Emission Specialist Technician License No. EA 630833.

This Decision shall become effective 9-19-11.

DATED: August 16, 2011


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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MICHAEL BRYAN KIRK

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License No. EA 630465

And

MARK NAGY SAAD HABIB

Advance Emissions Specialist Technician
License No. EA 630833

Respondents

Case No. 79/11-22

OAH No. 2010120717

PROPOSED DECISION

On July 13, 2011, in Riverside, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Gregory J. Salute, Deputy Attorney General, represented the complainant.

William Ferreira, Attorney at Law, represented respondent Mark Nagy Saad Habib.

Respondents Crown Test Only, Alfred Martin Escobar, Owner, and Michael Bryan Kirk did not appear at the hearing.

The matter was submitted on July 15, 2011.

FACTUAL FINDINGS

1. On September 16, 2010, Sherry Mehl, Chief, Bureau of Automotive Repair, Department of Consumer Affairs, State of California (Bureau), filed Accusation No. 79/11-22 in her official capacity. Respondent Mark Nagy Saad Habib filed a timely Notice of Defense. Respondents Crown Test Only, Alfred Martin Escobar, Owner, and Michael Bryan Kirk did not file Notices of Defense to the Accusation. Accordingly, the matter against these respondents was remanded to the Department of Consumer Affairs for further proceedings and the hearing proceeded solely against respondent Habib.

After the hearing, the record was left open to permit respondent Habib to submit additional evidence. On July 15, 2011, respondent submitted letter which was marked Exhibit E and admitted into evidence.

2. Respondent Habib is a licensed smog check technician under SB 1997, the biennial Smog Check Program implemented January 1, 1990 and holds Advanced Emission Specialist (EA) Technician License number EA 630833. The license was issued on February 18, 2009 and expires on November 30, 2012.

3. At the hearing on July 13, 2011, respondent Habib admitted the truth of a number of the allegations contained in the accusation and appeared at the hearing to present a case in mitigation. He also denied committing some of the allegations contained in the accusation.

4. Based on respondent Habib's admission of the truth of several allegations and evidence introduced at the hearing, the following was established:

Respondent Habib was one of two licensed smog check technicians employed by respondent Crown Test Only in June and July 2009. The other was Michael Kirk.

On July 21, 2009, between 12:00 p.m. and 12:48 p.m., respondent Habib performed three smog inspections on three different vehicles, a 2001 GMC C1500 Yukon, a 1996 Acura 2.5 TL, and a 2003 Chevrolet Monte Carlo at the Crown Test Only facility in Rialto, California. Respondent Habib used the personal access code of Mr. Kirk and his technician license number. Mr. Kirk was not present at the facility that day. The smog inspections respondent Habib performed resulted in the issuance of three electronic certificates of compliance: certificate number NM221009C for the Yukon, certificate number NM221010C for the Acura, and certificate number NM221011C for the Monte Carlo. The certificates of

compliance certified that respondent Habib had tested these vehicles and they were in compliance with applicable anti-smog laws and regulations.

“Cleanpiping” is a method used to fraudulently certify a vehicle that will not pass a smog check on its own or is not even present during the smog check. In order to “cleanpipe” a vehicle, the technician uses a “clean” exhaust gas sample that will pass the smog check emissions test while entering data into the Emissions Inspection System (EIS) for the vehicle to be fraudulently certified.

“Cleanplugging” involves plugging the EIS’s OBD II interface cable into a different OBD II certified vehicle than the one being inspected during the functional portion of the smog check. To “cleanplug,” the technician plugs the EIS’s OBD II interface cable into the vehicle that has passing OBD II data.

Respondent Habib performed the smog inspections of the Yukon, Acura, and Monte Carlo using the cleanpiping and/or cleanplugging methods. He used his own 2000 Toyota Corolla for the smog checks by using the tail pipe emissions and/or OBD II data of the Corolla in order to issue certificates of compliance for the Yukon, Acura, and Monte Carlo. None of these vehicles was present in the test bay at the time respondent Habib performed the smog inspections.

5. Steve Koch is a program representative with the Bureau and conducted a video surveillance of the Crown Test Only facility on July 21, 2009. At approximately 12:44 p.m., he ended the video surveillance and a few minutes later entered the front of the building that housed the service bay in which the cars were tested. He confirmed that the station had just certified the 2003 Monte Carlo and when he entered the testing area, he observed a 2000 Toyota Corolla on the dynamometer and respondent Habib standing in the testing bay of the station. Mr. Kirk was not present.

Respondent Habib told Mr. Koch that Mr. Kirk had told him to use his (Mr. Kirk’s) technician license and access code to certify the vehicles. Respondent Habib also said the 2000 Toyota Corolla was his personal vehicle. Mr. Koch did not see the Yukon, Acura, or Monte Carlo in the service bay and never saw them at the facility during the time that the smog inspections of those vehicles took place.

The next day, Mr. Koch and Raymond Gottenbos, another program representative with the Bureau, interviewed respondent Habib at the Riverside field office. Respondent Habib said he knew what “cleanpiping” was, he had worked as a mechanic for three and a half years, and had been a licensed technician for six months. He said Mr. Kirk had recruited him to work at Crown Test Only and that most of the customers for Crown Test Only were used car dealers. Respondent Habib said it was a regular practice for Mr. Kirk to scan his own EA license and enter his own access code into the EIS but then have respondent Habib perform the smog inspection. Regarding the inspections on July 21, 2009, respondent Habib told the program representatives that Mr. Kirk had directed him by telephone to perform the

illegal smog inspections on the three vehicles using the "cleanpiping" method, to use Mr. Kirk's technician license number and access code to perform the illegal inspections, and to sign Mr. Kirk's name on the vehicle inspection reports. Respondent Habib said he knew that "cleanpiping" was wrong but said that Mr. Kirk told him that he would not get in trouble because he was using someone else's (i.e., Mr. Kirk's) license. He said Mr. Kirk also told him to complete the invoices for these smog inspections using false information and that this was the only time he had performed illegal smog inspections using the "cleanpiping" method. Respondent Habib also said he believed that his employment would be terminated.

6. On June 26, 2009, between 2:13 p.m. and 3:48 p.m., respondent Habib performed three smog inspections on three different vehicles at the Crown Test Only facility: a 1999 BMW 5 Series, a 2002 Acura RSX, and a 2001 Saturn L300. Respondent Habib used the personal access code of Mr. Kirk. Mr. Kirk was not present at the facility that day. The smog inspections respondent Habib performed resulted in the issuance of three electronic certificates of compliance: certificate number WB202840B for the BMW, certificate number WB202841C for the Acura, and certificate number WB202843C for the Saturn. The certificates of compliance certified that respondent Habib had tested these vehicles and they were in compliance with applicable anti-smog laws and regulations.

Respondent Habib performed the smog inspections of the BMW, Acura, and Saturn using the cleanpiping and/or cleanplugging methods. He tested a Dodge Neon, a Toyota pickup, and/or a Nissan Altima and used the tail pipe emissions and/or OBD II data of those vehicles in order to issue certificates of compliance for the BMW, Acura, and Saturn. None of these vehicles (BMW, Acura, and Saturn) was present in the test bay at the time respondent Habib performed the smog inspections.

7. Respondent Habib testified in his own behalf and admitted performing the illegal smog inspections on July 21, 2009 but denied performing the inspections on June 26, 2009. He testified he began working at Crown Test Only in January 2009 after Mr. Kirk talked to him about working there. He indicated they had met at school and Mr. Kirk actually hired him and served as the manager of the facility.

According to respondent Habib, on July 21, 2009, Mr. Kirk did not come to the facility but called and told respondent Habib to perform smog inspections on three vehicles and for respondent Habib to use his own car. Mr. Kirk said the paperwork for the vehicles was at the facility. Respondent Habib testified he told Mr. Kirk he could not do this, but Mr. Kirk said they were out of state cars, they would pass the inspection, and he (respondent Habib) had to do them because it was his job and he would not be responsible for the inspections. Respondent Habib testified Mr. Kirk told him to use Mr. Kirk's license number and access code, and if he did not perform the inspections, he would be fired and not to come to work the next day.

Based on this conversation, respondent Habib performed the three inspections using Mr. Kirk's technician number and access code and his own car. Respondent Habib testified

he was scared and afraid he would be fired, he was concerned about finding another job, and he was financially responsible for the support of his family. He explained he did not contact the Bureau or the police because Mr. Kirk convinced him that he would not be held responsible and that he felt Mr. Kirk knew more about the smog business than he did.

Regarding the smog inspections performed on June 26, 2009, respondent Habib denied that he performed them. He was unsure whether he worked that day, although test data showed that he performed one smog inspection using his own technician license number earlier in the day. He thought he might have left after he performed this inspection. He denied owning a Dodge Neon and believed a friend of Mr. Kirk's by the name of "Steve" owned it. He testified "Steve" would come around the shop and knew how to operate the EIS. Respondent Habib testified that he was not any of the people appearing in the video taken on June 26, 2009.

Respondent presently works for Akram Ibrahim who owns Test Only Smog in Rancho Cucamonga, California. He started there a year ago. Respondent testified that while he was working there, the Bureau ran an undercover operation there with a car whose timing was off and he caught it and refused to pass the car.

8. Respondent Habib's defense that he performed the illegal smog inspections on July 21, 2009 because he was threatened with the loss of his job if he refused to perform them is rejected. Respondent Habib presented no evidence to corroborate this defense, and it rested solely on his own testimony. Respondent Habib's testimony at the hearing was not credible in numerous respects. He lied about the ownership of the Toyota Corolla, about appearing on the video taken on June 26, about wearing shorts to work, and about signing the vehicle inspection reports. He admitted he lied when he certified that the three vehicles had passed the smog inspections on July 21. The video of June 26, 2009 and the testimony of Mr. Koch clearly establish that respondent Habib was present at the facility at the time the smog inspections of the BMW, Acura, and Saturn were performed. His testimony is insufficient to establish that he was threatened with the loss of his job if he did not perform the illegal smog inspections. Therefore, respondent's Habib's illegal conduct cannot be excused and the severity of the conduct cannot be considered mitigated.

9. Respondent submitted two declarations attesting to his good qualities as an employee and as a student.

10. The Bureau incurred costs of investigation totaling \$13,335.89. These costs included \$4,172.50 in attorney's fees for the Office of the Attorney General. Given the complexity of this case, the amount of the costs is reasonable.

LEGAL CONCLUSIONS

1. Health and Safety Code section 44072.2 provides in 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 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. . . .”

2. Health and Safety Code section 44072.10 provides in part:

“(c) The department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

(1) Clean piping, as defined by the department.

(2) Tampering with a vehicle emission control system or test analyzer system.

(3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or falsely fail an inspection.

(4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter.”

3. Cause to revoke respondent Habib’s technician license pursuant to Health and Safety Code section 44072, subdivision (a) was established for violation of:

a. Health and Safety Code section 44012, subdivision (a) in that respondent Habib failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures. Factual Findings 3, 4, 5, 6, and 8.

b. Health and Safety Code section 44012, subdivision (f) in that respondent Habib failed to perform emission control tests on six vehicles in accordance with procedures prescribed by the department. Factual Findings 3, 4, 5, 6, and 8.

c. Health and Safety Code section 44032 in that respondent Habib failed to perform tests of the emission control devices and systems on six vehicles in accordance with section 44012 of the Health and Safety Code by cleanpiping and/or cleanplugging the vehicles. Factual Findings 3, 4, 5, 6, and 8.

d. Health and Safety Code section 44059 in that respondent Habib willfully made false entries for the electronic certificates of compliance by certifying that six vehicles had been inspected as required when, in fact, they had not. Factual Findings 3, 4, 5, 6, and 8.

4. Cause to revoke respondent Habib's technician license pursuant to Health and Safety Code section 44072, subdivision (c) was established for violation of:

a. Title 16, California Code of Regulations, section 3340.24, subdivision (c) in that respondent Habib falsely or fraudulently issued electronic certificates of compliance without performing bona fide inspections of the emission control devices and systems on six vehicles as required by Health and Safety Code section 44012. Factual Findings 3, 4, 5, 6, and 8.

b. Title 16, California Code of Regulations, section 3340.30, subdivision (a) in that respondent Habib failed to inspect and test six vehicles in accordance with Health and Safety Code section 44012. Factual Findings 3, 4, 5, 6, and 8.

c. Title 16, California Code of Regulations, section 3340.41, subdivision (c) in that respondent Habib entered false information into the EIS for the electronic certificates of compliance by entering vehicle emission control information for vehicles other than the vehicles being certified. Factual Findings 3, 4, 5, 6, and 8.

d. Title 16, California Code of Regulations, section 3340.42, in that respondent Habib failed to conduct the required smog tests and inspections on six vehicles in accordance with Bureau specifications. Factual Findings 3, 4, 5, 6, and 8.

5. Cause to revoke respondent Habib's technician license pursuant to Health and Safety Code section 44072, subdivision (d) in that respondent Habib committed acts involving dishonesty, fraud, or deceit whereby another was injured by issuing electronic certificates of compliance for six vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles. This violation was established by Factual Findings 3, 4, 5, 6, and 8.

6. Health and Safety Code section 44072.10 requires revocation of a technician license if the technician performs acts constituting cleanpiping. Respondent Habib admitted performing three such acts and sought to mitigate his misconduct on the ground that he was forced to commit the illegal inspections or face the loss of this job. His testimony at the hearing was filled with falsehoods and was rejected. Factual Finding 8. He in fact committed six such acts on two separate occasions. Respondent Habib presented no sufficient justification to depart from the Legislature's intent that illegal acts of cleanpiping must be dealt with severely. It is clear respondent Habib cannot be entrusted with an advanced emission specialist technician license and it must be revoked.

7. Cause to require respondent Habib to reimburse the Bureau for its costs of investigation was established by reason of Factual Finding 10. Since there were three respondents charged with multiple acts of illegal cleanpiping, respondent Habib should be held responsible for one-third of the costs. That amount is \$4,445.30.

ORDER

1. Advanced Emission Specialist Technician License Number EA 630833 issued to respondent Mark Nagy Saad Habib is revoked.

2. Respondent Habib shall reimburse the Bureau for its costs of investigation in the amount of \$4,445.30.

DATED: July 21, 2011



ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

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

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and
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License No. EA 630833

Respondents.

Case No. 79/11-22

ACCUSATION

SMOG CHECK

Complainant alleges:

1 PARTIES

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

4 **Automotive Repair Dealer Registration**

5 2. On or about February 10, 2009, the Bureau issued Automotive Repair Dealer
6 Registration Number ARD 257299 ("registration") to Alfred Martin Escobar ("Respondent
7 Crown") doing business as Crown Test Only. The registration was in full force and effect at all
8 times relevant to the charges brought herein and will expire on January 31, 2010, unless renewed.

9 **Smog Check Test Only Station License**

10 3. On or about February 26, 2009, the Bureau issued Smog Check Test Only Station
11 License Number TC 257299 ("station license") to Respondent Crown. The station license was in
12 full force and effect at all times relevant to the charges brought herein and will expire on January
13 31, 2011, unless renewed.

14 **Advanced Emission Specialist Technician License**

15 4. On or about September 12, 2008, the Bureau issued Advanced Emission Specialist
16 Technician License Number EA 630465 ("technician license") to Michael Bryan Kirk. The
17 technician license was in full force and effect at all times relevant to the charges brought herein
18 and expired on June 30, 2010.

19 **Advanced Emission Specialist Technician License**

20 5. On or about February 18, 2009, the Bureau issued Advanced Emission Specialist
21 Technician License Number EA 630833 ("technician license") to Mark Nagy Saad Habib. The
22 technician license was in full force and effect at all times relevant to the charges brought herein
23 and will expire on November 30, 2012, unless renewed.

24 STATUTORY PROVISIONS

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

27 (a) The director, where the automotive repair dealer cannot show there
28 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

1 related to the conduct of the business of the automotive repair dealer, which are done
2 by the automotive repair dealer or any automotive technician, employee, partner,
3 officer, or member of the automotive repair dealer.

4 (1) Making or authorizing in any manner or by any means whatever any
5 statement written or oral which is untrue or misleading, and which is known, or which
6 by the exercise of reasonable care should be known, to be untrue or misleading.

7 (4) Any other conduct which constitutes fraud.

8 (b) Except as provided for in subdivision (c), if an automotive repair
9 dealer operates more than one place of business in this state, the director pursuant to
10 subdivision (a) shall only invalidate temporarily or permanently the registration of the
11 specific place of business which has violated any of the provisions of this chapter.
12 This violation, or action by the director, shall not affect in any manner the right of the
13 automotive repair dealer to operate his or her other places of business.

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

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

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

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

10. 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.

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

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

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

8 12. Section 44072.8 of the Health and Safety Code states:

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

12 COST RECOVERY

13 13. Code section 125.3 provides, in pertinent part, that a Board may request the
14 administrative law judge to direct a licensee found to have committed a violation or violations of
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case.

17 SURVEILLANCE OPERATION – JUNE 26, 2009

18 14. On or about June 26, 2009, the Bureau performed a videotaped surveillance at
19 Respondent Crown's facility. The surveillance operation and information obtained from the
20 Bureau's Vehicle Information Database ("VID") revealed that between 1413 hours and 1548
21 hours, Respondent Habib, using the personal access code of Respondent Kirk, performed three
22 (3) smog inspections that resulted in the issuance of electronic certificates of compliance for the
23 vehicles set forth in Table 1, below, certifying that he had tested and inspected those vehicles and
24 that the vehicles were in compliance with applicable laws and regulations. In fact, Respondent
25 performed the smog inspections using the clean piping method¹ by using the tail pipe emissions

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

1 of vehicles other than the vehicles being certified in order to issue the electronic certificates of
2 compliance. The vehicles certified were not in the test bay at the time of the smog inspections.

3 **Table 1**

4

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
5 6 7 6/26/2009 1413 hours to 1419 hours	1999 BMW 5 series	Dodge Neon	WB202840C	Respondent Habib performed test using Respondent Kirk's access code
8 9 6/26/2009 1427 hours to 1434 hours	2002 Acura RSX	Dodge Neon	WB202841C	Respondent Habib performed test using Respondent Kirk's access code
10 11 12 6/26/2009 1540 hours to 1548 hours	2001 Saturn L300	Dodge Neon	WB202843C	Respondent Habib performed test using Respondent Kirk's access code

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Misleading Statements)**

15 15. Respondent Crown has subjected his registration to discipline under Code section
16 9884.7, subdivision (a)(1), in that on or about June 26, 2009, he made statements which he knew
17 or which by exercise of reasonable care he should have known were untrue or misleading when
18 he issued electronic certificates of compliance for the vehicles set forth in Table 1, above,
19 certifying that those vehicles were in compliance with applicable laws and regulations when, in
20 fact, the vehicles had been clean piped.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Fraud)**

23 16. Respondent Crown has subjected his registration to discipline under Code section
24 9884.7, subdivision (a)(4), in that on or about June 26, 2009, he committed acts which constitute
25 fraud by issuing electronic certificates of compliance for the vehicles set forth in Table 1, above,
26 without performing bona fide inspections of the emission control devices and systems on those
27 vehicles, thereby depriving the People of the State of California of the protection afforded by the
28 Motor Vehicle Inspection Program.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Violation of the Motor Vehicle Inspection Program)**

3 17. Respondent Crown has subjected his station license to discipline under Health and
4 Safety Code section 44072.2, subdivision (a), in that on or about June 26, 2009, regarding the
5 vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

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

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

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

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

17 **FOURTH CAUSE FOR DISCIPLINE**

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

19 18. Respondent Crown has subjected his station license to discipline under Health and
20 Safety Code section 44072.2, subdivision (c), in that on or about June 26, 2009, regarding the
21 vehicles set forth in Table 1, above, he violated sections of the California Code of Regulations,
22 title 16, as follows:

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

27 ///

28 ///

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

4 **SEVENTH CAUSE FOR DISCIPLINE**

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

6 21. Respondent Habib has subjected his technician license to discipline under Health
7 and Safety Code section 44072.2, subdivision (c), in that on or about June 26, 2009, regarding the
8 vehicles set forth in Table 1, above, he violated sections of the California Code of Regulations,
9 title 16, as follows:

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

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

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

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

21 **EIGHTH CAUSE FOR DISCIPLINE**

22 **(Dishonesty, Fraud or Deceit)**

23 22. Respondent Habib has subjected his technician license to discipline under Health
24 and Safety Code section 44072.2, subdivision (d), in that on or about June 26, 2009, he
25 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
26 electronic certificates of compliance for the vehicles set forth in Table 1, above, without
27 performing bona fide inspections of the emission control devices and systems on those vehicles,
28

1 thereby depriving the People of the State of California of the protection afforded by the Motor
2 Vehicle Inspection Program.

3 **NINTH CAUSE FOR DISCIPLINE**

4 **(Violation of Regulations Pursuant to the Motor Vehicle Inspection Program)**

5 23. Respondent Kirk has subjected his technician license to discipline under Health
6 and Safety Code section 44072.2, subdivision (c), in that on or about June 26, 2009, he violated
7 California Code of Regulations, title 16, section 3340.41, subdivision (b) by allowing Respondent
8 Habib to use Kirk's personal access code to perform the inspections set forth in Table 1, above.

9 **SURVEILLANCE OPERATION – JULY 21, 2009**

10 24. On or about July 21, 2009, the Bureau performed a second videotaped surveillance
11 at Respondent Crown's facility. The surveillance operation and information obtained from the
12 Bureau's VID revealed that between 1200 hours and 1248 hours, Respondent Habib, using the
13 personal access code of Respondent Kirk, performed three (3) smog inspections that resulted in
14 the issuance of electronic certificates of compliance for the vehicles set forth in Table 2, below,
15 certifying that he had tested and inspected those vehicles and that the vehicles were in compliance
16 with applicable laws and regulations. In fact, Respondent Habib performed the smog inspections
17 using the clean piping method by using the tail pipe emissions of vehicles other than the vehicles
18 being certified in order to issue the electronic certificates of compliance. The vehicles certified
19 were not in the test bay at the time of the smog inspections.

20 **Table 2**

21

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued	Details
7/21/2009 1200 hours to 1207 hours	2001 GMC C1500 Yukon	2000 Toyota Corolla	NM221009C	Respondent Habib performed test using Respondent Kirk's access code
7/21/2009 1216 hours to 1220 hours	1996 Acura 2.5 TL	2000 Toyota Corolla	NM221010C	Respondent Habib performed test using Respondent Kirk's access code

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1 whereby another was injured by issuing electronic certificates of compliance without performing
2 bona fide inspections of the emission control devices and systems on those vehicles, thereby
3 depriving the People of the State of California of the protection afforded by the Motor Vehicle
4 Inspection Program.

5 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

7 30. Respondent Habib has subjected his technician license to discipline under Health
8 and Safety Code section 44072.2, subdivision (a), in that on or about July 21, 2009, regarding the
9 vehicles set forth in Table 2, above, he violated sections of that Code, as follows:

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

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

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

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

21 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

23 31. Respondent Habib has subjected his technician license to discipline under Health
24 and Safety Code section 44072.2, subdivision (c), in that on or about July 21, 2009, regarding the
25 vehicles set forth in Table 2, above, he violated sections of the California Code of Regulations,
26 title 16, as follows:

27 a. **Section 3340.24, subdivision (c)**: Respondent Habib falsely or fraudulently
28 issued the electronic certificates of compliance without performing bona fide inspections of the

1 emission control devices and systems on those vehicles as required by Health and Safety Code
2 section 44012.

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

5 c. **Section 3340.41, subdivision (c):** Respondent Habib entered false information
6 into the EIS for the electronic certificates of compliance by entering vehicle emission control
7 information for vehicles other than the vehicles being certified.

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

10 **SEVENTEENTH CAUSE FOR DISCIPLINE**

11 **(Dishonesty, Fraud or Deceit)**

12 32. Respondent Habib has subjected his technician license to discipline under Health
13 and Safety Code section 44072.2, subdivision (d), in that on or about July 21, 2009, regarding the
14 vehicles set forth in Table 2, above, he committed acts involving dishonesty, fraud or deceit
15 whereby another was injured by issuing electronic certificates of compliance without performing
16 bona fide inspections of the emission control devices and systems on those vehicles, thereby
17 depriving the People of the State of California of the protection afforded by the Motor Vehicle
18 Inspection Program.

19 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

21 33. Respondent Kirk has subjected his technician license to discipline under Health
22 and Safety Code section 44072.2, subdivision (c), in that on or about July 21, 2009, he violated
23 California Code of Regulations, title 16, section 3340.41, subdivision (b) by allowing Respondent
24 Habib to use Kirk's personal access code to perform the inspections set forth in Table 2, above.

25 **SURVEILLANCE OPERATION – SEPTEMBER 2, 2009**

26 34. On or about September 2, 2009, the Bureau performed a third videotaped
27 surveillance at Respondent Crown's facility. The surveillance operation and information
28 obtained from the Bureau's VID revealed that between 2010 hours and 2056 hours, Respondent

1 Kirk performed four (4) smog inspections that resulted in the issuance of electronic certificates of
2 compliance for the vehicles set forth in Table 3, below, certifying that he had tested and inspected
3 those vehicles and that the vehicles were in compliance with applicable laws and regulations. In
4 fact, Respondent Kirk performed the smog inspections using the clean piping method by using the
5 tail pipe emissions of vehicles other than the vehicles being certified in order to issue the
6 electronic certificates of compliance. The vehicles certified were not in the test bay at the time of
7 the smog inspections.

8 **Table 3**

9

Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued
10 9/2/2009 11 2010 hours 12 to 13 2017 hours	1992 Chevrolet C1500	Chevrolet S10	WD147116C
14 9/2/2009 15 2025 hours 16 to 17 2036 hours	2001 Nissan Pathfinder	Honda Accord	WD147117C
18 9/2/2009 19 2040 hours 20 to 21 2046 hours	1991 Honda Accord	Chevrolet S10	WD147118C
22 9/2/2009 23 2050 hours 24 To 25 2056 hours	1987 Toyota pickup	Chevrolet S10	WD147119C

26 **NINETEENTH CAUSE FOR DISCIPLINE**

27 **(Misleading Statements)**

28 35. Respondent Crown has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about September 2, 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 3, above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.

1 TWENTIETH CAUSE FOR DISCIPLINE

2 (Fraud)

3 36. Respondent Crown has subjected his registration to discipline under Code section
4 9884.7, subdivision (a)(4), in that on or about September 2, 2009, he committed acts which
5 constitute fraud by issuing electronic certificates of compliance for the vehicles set forth in Table
6 3, above, without performing bona fide inspections of the emission control devices and systems
7 on those vehicles, thereby depriving the People of the State of California of the protection
8 afforded by the Motor Vehicle Inspection Program.

9 TWENTY-FIRST CAUSE FOR DISCIPLINE

10 (Violation of the Motor Vehicle Inspection Program)

11 37. Respondent Crown has subjected his station license to discipline under Health and
12 Safety Code section 44072.2, subdivision (a), in that on or about September 2, 2009, regarding
13 the vehicles set forth in Table 3, above, he violated sections of that Code, as follows:

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

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

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

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

25 TWENTY-SECOND CAUSE FOR DISCIPLINE

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

27 38. Respondent Crown has subjected his station license to discipline under Health and
28 Safety Code section 44072.2, subdivision (c), in that on or about September 2, 2009, regarding

1 the vehicles set forth in Table 3, above, he violated sections of the California Code of
2 Regulations, title 16, as follows:

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

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

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

12 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

13 **(Dishonesty, Fraud or Deceit)**

14 39. Respondent Crown subjected his station license to discipline under Health and
15 Safety Code section 44072.2, subdivision (d), in that on or about September 2, 2009, regarding
16 the vehicles set forth in Table 3, above, he committed acts involving dishonesty, fraud or deceit
17 whereby another was injured by issuing electronic certificates of compliance for those vehicles
18 without performing bona fide inspections of the emission control devices and system on those
19 vehicles, thereby depriving the People of the State of California of the protection afforded by the
20 Motor Vehicle Inspection Program.

21 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

23 40. Respondent Kirk has subjected his technician license to discipline under Health
24 and Safety Code section 44072.2, subdivision (a), in that on or about September 2, 2009,
25 regarding the vehicles set forth in Table 3, above, he violated sections of that Code, as follows:

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

1 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud or Deceit)**

3 42. Respondent Kirk has subjected his technician license to discipline under Health
4 and Safety Code section 44072.2, subdivision (d), in that on or about September 2, 2009, he
5 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
6 electronic certificates of compliance for the vehicles set forth in Table 3, above, without
7 performing bona fide inspections of the emission control devices and systems on those vehicles,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program.

10 **OTHER MATTERS**

11 43. Under Code section 9884.7, subdivision (c), the director may deny, suspend, revoke,
12 or place on probation, the registrations for all places of business operated in this state by Alfred
13 Martin Escobar, doing business as Crown Test Only, upon a finding that he has, or is, engaged in
14 a course of repeated and willful violations of the laws and regulations pertaining to an automotive
15 repair dealer.

16 44. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
17 License Number TC 257299, issued to Alfred Martin Escobar, doing business as Crown Test
18 Only, is revoked or suspended, any additional license issued under this chapter in the name of
19 said licensee may be likewise revoked or suspended by the director.

20 45. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
21 Technician License Number EA 630465, issued to Michael Bryan Kirk, is revoked or suspended,
22 any additional license issued under this chapter in the name of said licensee may be likewise
23 revoked or suspended by the director.

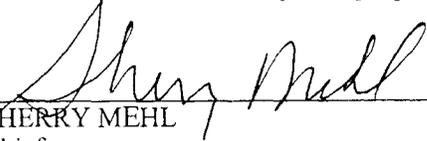
24 46. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
25 Technician License Number EA 630833, issued to Mark Nagy Saad Habib, is revoked or
26 suspended, any additional license issued under this chapter in the name of said licensee may be
27 likewise revoked or suspended 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. Suspend, revoke, or place on probation Automotive Repair Dealer Registration Number ARD 257299, issued to Alfred Martin Escobar, doing business as Crown Test Only;
2. Suspend, revoke, or place on probation any other automotive repair dealer registration issued in the name of Alfred Martin Escobar;
3. Revoking or suspending Smog Check Test Only Station License Number TC 257299, issued to Alfred Martin Escobar, doing business as Crown Test Only;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Alfred Martin Escobar;
5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 630465, issued to Michael Bryan Kirk;
6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Michael Bryan Kirk;
7. Revoking or suspending Advanced Emission Specialist Technician License Number EA 630833, issued to Mark Nagy Saad Habib;
8. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Mark Nagy Saad Habib;
9. Ordering Alfred Martin Escobar, Michael Bryan Kirk, and Mark Nagy Saad Habib 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,
10. Taking such other and further action as deemed necessary and proper.

DATED: 9/16/10



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