

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

In the Matter of the Accusation Against:

Case No.: 79/12-06

ADVANCED SMOG TEST ONLY CENTER
FERNANDO JACINTO, OWNER
Automotive Repair Dealer Registration No. ARD 254132
Smog Check Test Only Station License No. TC 254132

OAH No.: 2011100420

and

PETER ALFONSO
Advanced Emission Specialist Technician License
No. EA 632902,

and

GHEVOND VAHE AVEDIAN
Advanced Emission Specialist Technician License
No. EA 631628,

Respondents.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective 2/23/12.

IT IS SO ORDERED January 18, 2012.



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

ref

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

In the Matter of the Accusation Against:

**ADVANCED SMOG TEST ONLY CENTER
FERNANDO JACINTO, OWNER**
Automotive Repair Dealer Registration No. ARD 254132
Smog Check Test Only Station License No. TC 254132

Case No. 79/12-06

OAH No. 2011100420

and

PETER ALFONSO
Advanced Emission Specialist Technician License
No. EA 632902,

and

GHEVOND VAHE AVEDIAN
Advanced Emission Specialist Technician License
No. EA 631628,

Respondents.

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 18, 2011, in Los Angeles.

Thomas L. Rinaldi, Deputy Attorney General, represented petitioner Sherry Mehl, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department), State of California.

Alejandro Menchaca, attorney at law, appeared on behalf of respondent Fernando Jacinto, doing business as Advanced Smog Test Only Center (Jacinto); Jacinto was not present. Respondent Peter Alfonso appeared and represented himself. Respondent Ghevond Vahe Avedian appeared and represented himself.

At the commencement of the hearing, all respondents stipulated that all facts alleged in the Accusation are true. Respondent Jacinto further stipulated to the revocation of

Automotive Repair Dealer Registration No. ARD 254132 and Smog Check Test Only Station License No. TC 254132.

Oral and documentary evidence was received. The record was held open to allow respondent Jacinto to file and serve, by November 30, 2011, a declaration re: ability to pay costs, and to allow complainant to file and serve a response by December 7, 2011. Respondent Jacinto filed his declaration on December 5, 2011; although untimely, it was marked for identification as Exhibit E and received in evidence. Complainant did not file a response.

The record was closed and the matter was submitted for decision on December 7, 2011.

FACTUAL FINDINGS

1. Petitioner filed the Accusation in her official capacity. Respondents timely filed notices of defense.
2. By stipulation of the parties, all facts alleged in the Accusation are established as true. The salient facts in the Accusation, as well as additional facts adduced at the hearing, are as set forth below.
3. On March 19, 2008, the Bureau issued Automotive Repair Dealer Registration Number ARD 254132 to respondent Fernando Jacinto, doing business as Advanced Smog Test Only Center (Advanced Smog). The registration was in full force and effect at all times relevant and will expire on February 29, 2012, unless renewed.
4. On March 20, 2003, the Bureau issued Smog Check Test Only Station License Number TC 254132 to respondent Advanced Smog. The registration and license were in full force and effect at all times relevant and will expire on February 29, 2012, unless renewed.
5. On January 7, 2010, the Bureau issued Advanced Emission Specialist Technician License Number EA 631628 to respondent Ghevond Vahe Avedian. The Advanced Emission Specialist Technician license was in full force and effect at all times relevant and will expire on January 31, 2012, unless renewed.
6. On March 2, 2011, the Bureau issued Advanced Emission Specialist Technician License Number EA 632902 to respondent Peter Alfonso. The Advanced Emission Specialist Technician license was in full force and effect at all times relevant and will expire on March 31, 2013, unless renewed.
7. On May 17, 2011, between 11:09 a.m. and 5:07 p.m., the Bureau conducted a videotaped surveillance of smog inspections performed at Advanced Smog. The surveillance operation and information obtained from the Bureau's Vehicle Information Database (VID) revealed that during the period of the surveillance, respondents Alfonso and Avedian, with the

assistance of respondent Jacinto, who is not a licensed smog technician, performed five smog inspections that resulted in the issuance of electronic certificates of compliance, certifying that five vehicles had been inspected and were in compliance with applicable law.

8. In fact, respondents Alfonso and Avedian, at the direction of and with the assistance and participation of respondent Jacinto, performed those inspections using the “clean-piping” method, certifying vehicles that were not, in fact, tested. The “clean-piping” method involves using an exhaust gas sample that will pass the smog check emissions test while entering data into the analyzer for the purpose of fraudulently certifying another vehicle. None of the five vehicles certified was even in the test bay at the time of the smog inspections.

Mitigation and Rehabilitation

9. Respondents Jacinto and Alfonso submitted no evidence of mitigation or rehabilitation.

10. Respondent Avedian is a 19-year-old student taking economics and business courses at Glendale Community College, and hopes to transfer to UCSD in 2012. There has been no other disciplinary action against his license. He has volunteered with the Los Angeles County Sheriff’s Department Law Enforcement Explorer Program, and is interested in a career in law enforcement. He testified that he engaged in clean-piping at the direction of respondent Jacinto, who threatened to fire him if he did not do so. He testified without credibility that, due to economic duress, he had been “brainwashed” into performing what he knew to be illegal acts. He was volunteering with the Sheriff’s Explorer Program when respondent Jacinto asked him to perform the clean-piping, but he did not call law enforcement because he did not want to put his job at risk. He also testified, without credibility, that he wishes to retain his license so he does not contribute to increasing the nation’s unemployment rate. Respondent Avedian submitted no credible evidence to support the proposition that he would act differently were a subsequent employer to make the same demands on him that respondent Jacinto did.

Other Findings

11. Motor vehicle emissions are a significant contributor to air pollution levels in California. California’s smog check program is designed to improve air quality and to protect the public health by reducing vehicle emissions. It is also designed to comply with the federal Clean Air Act. (See, e.g., Health & Saf. Code, § 44001.5, subs. (a), (b); see also §§ 43000, subd. (c), 43000.5, subd. (b), and 43018.5, subd. (a).)¹

12. Allowing any of the respondents Jacinto, Alfonso, and Avedian to continue to engage in their licensed or registered activities would endanger the public health, safety, and welfare.

¹ All further statutory references are to the Health and Safety Code unless otherwise stated.

Costs of Investigation and Prosecution

13. The Bureau incurred reasonable investigation and prosecution costs totaling \$16,003.49, consisting of \$4,982.50 in Attorney General fees and \$11,020.99 in investigative costs.

14. Respondent Jacinto is currently unable to pay the Bureau's investigation and prosecution costs. As of the date of hearing he was incarcerated; he had been placed on an Immigration and Customs Enforcement hold and anticipated that deportation proceedings would shortly commence against him. He had not made any income since an Interim Suspension Order issued against his license and registration in September 2011; since that date he had depleted any funds he had. He lacks a college education, which may limit his prospects for future employment should he be allowed to remain in this country. (Ex. E.)

15. There was some evidence at hearing of respondent Avedian's inability to pay costs. He is unemployed, is making some money babysitting, and lives at home; his only expenses are for school, food, telephone, and gasoline. There was no evidence as to respondent Alfonso's ability to pay costs. Given uncontested evidence that the clean-piping was done at the direction of and with the active participation of respondent Jacinto, it is appropriate to allocate a smaller portion of the costs to respondents Alfonso and Avedian than to respondent Jacinto. Therefore, respondents Alfonso and Avedian are each responsible for paying \$3,000 in costs, and respondent Jacinto is responsible for paying the remaining \$10,003.49.

LEGAL CONCLUSIONS

1. Enforcing the motor vehicle inspection program "is vested in the chief of the bureau who is responsible to the director." (§§ 44001.5, 44002.)

2. Section 44072.2 provides for suspension, revocation, or other disciplinary action against a license if the licensee:

(a) Violates any section of this chapter² 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 Chapter 5, section 44000, et seq.

[¶] . . . [¶]

(f) Aids or abets unlicensed persons to evade the provisions of this chapter.

[¶] . . . [¶]

3. “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.” (§ 44072.8.)

4. The expiration or suspension or voluntary surrender of a license “shall not deprive the Director of jurisdiction to proceed with disciplinary action.” (§ 44072.6.)

5. Each illegal smog inspection performed puts another vehicle on the road that disproportionately discharges noxious gases that pollute the environment. Respondents' illegal conduct creates a serious and ongoing threat to the health, safety, and welfare of the public. (Factual Findings 1-9, 11, and 12.) Clean-piping is considered so egregious that the Legislature has mandated that a single instance of clean-piping committed by a smog station or technician shall result in the outright revocation of his or her license under section 44072.10, subdivision (c).

Respondent Jacinto

6. Respondent Jacinto having stipulated to all facts set forth in the Accusation, the evidence establishes that respondent Jacinto:

a. Made misleading statements and committed fraud, subjecting Automotive Repair Dealer Registration No. ARD 254132 to discipline under section 9884.7, subdivision (a)(1) and (4);

b. Committed fraud, subjecting Automotive Repair Dealer Registration No. ARD 254132 to discipline under section 9884.7, subdivision (a)(1) and (4);

c. Violated sections 44012, subdivisions (a) and (f), 44015, subdivision (b), and 44059, subjecting Smog Check Test Only Station License No. TC 254132 to discipline under Health and Safety Code section 44072.2, subdivision (a);

d. Violated California Code of Regulations, title 16, sections 3340.24, subdivision (c), 3340.35, subdivision (c), and 3340.42, subjecting Smog Check Test Only Station License No. TC 254132 to discipline under section 44072.2, subdivision (c);

e. Committed acts involving dishonesty, fraud, or deceit whereby another was injured, subjecting Smog Check Test Only Station License No. TC 254132 to discipline under section 44072.2, subdivision (d).

7. Respondent Jacinto having also stipulated to the registration's and license's revocation, cause exists to revoke respondent Jacinto's Automotive Repair Dealer Registration No. ARD 254132 and Smog Check Test Only Station License No. TC 254132, based on Factual Findings 1-9, 11, and 12, and Legal Conclusions 1-6.

8. Cause exists to invalidate temporarily or permanently or refuse to validate the registrations for all places of business operated in California by respondent Jacinto, under section 9884.7, subdivision (c), as respondent Jacinto has engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer, as set forth in Factual Findings 1-9, 11, and 12, and Legal Conclusions 1-7.

9. Cause exists under chapter 5 of the Health and Safety Code to revoke or suspend any additional license issued in the name of respondent Jacinto, under Health and Safety Code section 44072.8, as set forth in Factual Findings 1-9, 11, and 12, and Legal Conclusions 1-7.

Respondent Alfonso

10. Respondent Alfonso having stipulated to all facts set forth in the Accusation, the evidence establishes that respondent Alfonso:

a. Violated sections 44012, subdivisions (a) and (f), 44014, 44032, and 44059, subjecting his technician license to discipline under section 44072.2, subdivision (a);

b. Violated California Code of Regulations, title 16, sections 3340.24, subdivision (c), 3340.30, subdivision (a), 3340.41, subdivision (c), and 3340.42, subjecting his technician license to discipline under section 44072.2, subdivision (c);

c. Committed acts involving dishonesty, fraud, or deceit whereby another was injured, subjecting his technician license to discipline under section 44072.2, subdivision (d);

d. Aided and abetted an unlicensed person, respondent Jacinto, to evade the provisions of the motor vehicle inspection program, subjecting his technician license to discipline under section 44072.2, subdivision (f).

11. Cause exists to revoke respondent Alfonso's Advanced Emission Specialist Technician License Number EA 632902, based on Factual Findings 1-9, 11, and 12, and Legal Conclusions 1-5 and 10.

12. Cause exists under chapter 5 of the Health and Safety Code to revoke or suspend any additional license issued in the name of respondent Alfonso, under section 44072.8, as set forth in Factual Findings 1-9, 11, and 12, and Legal Conclusions 1-5, 10, and 11.

//

//

Respondent Avedian

13. Respondent Avedian having stipulated to all facts set forth in the Accusation, the evidence establishes that respondent Avedian:

a. Violated sections 44012, subdivisions (a) and (f), 44014, 44032, and 44059, subjecting his technician license to discipline under section 44072.2, subdivision (a);

b. Violated California Code of Regulations, title 16, sections 3340.24, subdivision (c), 3340.30, subdivision (a), 3340.41, subdivision (c), and 3340.42, subjecting his technician license to discipline under section 44072.2, subdivision (c);

c. Committed acts involving dishonesty, fraud, or deceit whereby another was injured, subjecting his technician license to discipline under section 44072.2, subdivision (d);

d. Aided and abetted an unlicensed person, respondent Jacinto, to evade the provisions of the motor vehicle inspection program, subjecting his technician license to discipline under section 44072.2, subdivision (f).

14. Cause exists to revoke respondent Avedian's Advanced Emission Specialist Technician License Number EA 631628, based on Factual Findings 1-8 and 10-12 and Legal Conclusions 1-5 and 13. Given respondent Avedian's willingness to follow respondent Jacinto's instructions to engage in clean-piping, and the absence of compelling evidence of mitigation or rehabilitation, there is insufficient reason to believe that respondent Avedian would refrain from engaging in the same or similar misconduct if pressured to do so by another employer. (Factual Findings 1-8, 10-12.)

15. Cause exists under chapter 5 of the Health and Safety Code to revoke or suspend any additional license issued in the name of respondent Avedian, under section 44072.8, as set forth in Factual Findings 1-8 and 10-12 and Legal Conclusions 1-5, 13, and 14.

Costs

16. Under Business and Professions Code section 125.3, complainant is entitled to recover reasonable costs of investigation and prosecution of this matter in the amount of \$16,003.49, as set forth in Factual Finding 13. Responsibility for paying that amount shall be allocated to respondents as follows: to respondent Jacinto, \$10,003.49; to respondent Alfonso, \$3,000.00; and to respondent Avedian, \$3,000.00. (Factual Findings 14 and 15.) As reflected in the Order, below, because respondents Jacinto and Avedian have shown financial hardship, the Bureau may allow them to pay costs over time or take other measures it deems appropriate. (See *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 [Bureau may not assess full costs without considering a respondent's ability to pay].) Upon a showing of financial hardship by respondent Alfonso, the Bureau may take similar measures as to him.

ORDER

Automotive Repair Dealer Registration Number ARD 254132 and Smog Check Test Only Station License Number TC 254132, issued to respondent Fernando Jacinto, owner, doing business as Advanced Smog Test Only Center, are revoked. Any other automotive repair dealer registration issued in the name of Fernando Jacinto is revoked. Any additional license issued under Chapter 5 of the Health and Safety Code in the name of Fernando Jacinto is revoked.

Advanced Emission Specialist Technician License Number EA 632902, issued to respondent Peter Alfonso, is revoked. Any additional license issued under Chapter 5 of the Health and Safety Code in the name of Peter Alfonso is revoked.

Advanced Emission Specialist Technician License Number EA 631628, issued to respondent Ghevond Vahe Avedian, is revoked. Any additional license issued under Chapter 5 of the Health and Safety Code in the name of Ghevond Vahe Avedian is revoked.

Respondents shall pay the Bureau the reasonable costs of the investigation and enforcement of this case, as follows. Respondent Jacinto shall pay the Bureau \$10,003.49. Respondent Alfonso shall pay the Bureau \$3,000.00. Respondent Avedian shall pay the Bureau \$3,000.00. The Bureau may allow respondents Jacinto and Avedian to pay costs over time or take other measures it deems appropriate. Upon a showing of financial hardship by respondent Alfonso, the Bureau may allow respondent Alfonso to pay costs over time or take other measures it deems appropriate.

DATED: December 28, 2011



HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 THOMAS L. RINALDI
Deputy Attorney General
4 State Bar No. 206911
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2541
6 Facsimile: (213) 897-2804
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. 79/12-06

12 **ADVANCED SMOG TEST ONLY CENTER**
9614 East Garvey, Unit C
13 El Monte, CA 91733
FERNANDO JACINTO, OWNER
14 **Automotive Repair Dealer Registration No.**
ARD 254132
15 **Smog Check Test Only Station License No.**
TC 254132

A C C U S A T I O N
S M O G C H E C K

16 and

17
18 **PETER ALFONSO**
25344 Pennsylvania Ave, #1
Lomita, CA 90717
19 **Advanced Emission Specialist Technician**
License No. EA 632902,

20 and

21
22 **GHEVOND VAHE AVEDIAN**
1940 Hilldale Drive
La Canada, CA 91011
23 **Advanced Emission Specialist Technician**
License No. EA 631628

24 Respondents.

25
26
27 Complainant alleges:
28

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 March 19, 2008, the Bureau issued Automotive Repair Dealer
6 Registration Number ARD 254132 ("registration") to Fernando Jacinto doing business as
7 Advanced Smog Test Only Center ("Respondent Advanced Smog"). The registration was in full
8 force and effect at all times relevant to the charges brought herein and will expire on February 29,
9 2012, unless renewed.

10 **Smog Check Test Only Station License**

11 3. On or about March 20, 2008, the Bureau issued Smog Check Test Only Station
12 License Number TC 254132 ("station license") to Respondent Advanced Smog. The station
13 license was in full force and effect at all times relevant to the charges brought herein and will
14 expire on February 29, 2012, unless renewed.

15 **Advanced Emission Specialist Technician License**

16 4. On or about March 2, 2011, the Bureau issued Advanced Emission Specialist
17 Technician License Number EA 632902 ("technician license") to Peter Alfonso ("Respondent
18 Alfonso"). The technician license was in full force and effect at all times relevant to the charges
19 brought herein and will expire on March 31, 2013, unless renewed.

20 **Advanced Emission Specialist Technician License**

21 5. On or about January 7, 2010, the Bureau issued Advanced Emission Specialist
22 Technician License Number EA 631628 ("technician license") to Ghevond Vahe Avedian
23 ("Respondent Avedian"). The technician license was in full force and effect at all times relevant
24 to the charges brought herein and will expire on January 31, 2012, unless renewed.

25 ///

26 ///

27 ///

28 ///

1 compliance with applicable laws and regulations. In fact, Respondent Alfonso and Respondent
 2 Avedian performed the smog inspections using the clean piping method¹ by using the tail pipe
 3 emissions of vehicles other than the vehicles being certified in order to issue the electronic
 4 certificates of compliance. The vehicles certified were not in the test bay at the time of the smog
 5 inspections.

6 **Table 1**

7 Date and Test Times	8 Vehicle Certified	9 Vehicle Actually Tested	10 Certificate Issued	11 Details
12 1 5/17/2011 1109 hours to 1126 hours	13 2009 Toyota Yaris, VIN No. JTD8T903491300436	14 1999 Ford Escort, License No. 5GBU744	15 WV409899C	16 Respondent Alfonso and Jacinto performed inspection.
17 2 5/17/2011 1339 hours to 1344 hours	18 2009 Toyota Yaris VIN No. JTDBT903491300436	19 1999 Ford Escort, License No. 5GBU744	20 WV471602C	21 Respondent Alfonso and Jacinto performed the inspection a second time. The VIN # was entered into the EIS incorrectly for the first test.
22 3 5/17/2011 1347 hours to 1353 hours	23 2000 Hyundai Accent License No. 4LVM098	24 1999 Ford Escort, License No. 5GBU744	25 WV471603C	26 Respondent Alfonso and Jacinto performed the inspection.
27 4 5/17/2011 1625 hours to 1641 hours	28 1995 Acura Integra, License No. 3LCW263	1999 Mazda 626, License No. 4FXV803 or 1999 Ford Escort, License No. 5GBU744	WV471605C	Respondent Avedian and Jacinto performed the inspection.
29 5 5/17/2011 1651 hours To 1707 hours	1991 Mercedes 300SL, License No. 5ROZ487	2001 Toyota Sienna, License No. 4MRP772	WV471606C	Respondent Avedian and Jacinto performed the inspection.

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

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

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

7 **FOURTH CAUSE FOR DISCIPLINE**

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

9 18. Respondent Advanced Smog has subjected his station license to discipline under
10 Health and Safety Code section 44072.2, subdivision (c), in that on or about May 17, 2011,
11 regarding the vehicles set forth in Table 1, above, he violated sections of the California Code of
12 Regulations, title 16, as follows:

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

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

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

22 **FIFTH CAUSE FOR DISCIPLINE**

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

24 19. Respondent Advanced Smog subjected his station license to discipline under Health
25 and Safety Code section 44072.2, subdivision (d), in that on or about May 17, 2011, regarding the
26 vehicles set forth in Table 1, above, he committed acts involving dishonesty, fraud or deceit
27 whereby another was injured by issuing electronic certificates of compliance for those vehicles
28 without performing bona fide inspections of the emission control devices and system on those

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

3 **SIXTH CAUSE FOR DISCIPLINE**

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

5 20. Respondent Alfonso has subjected his technician license to discipline under Health
6 and Safety Code section 44072.2, subdivision (a), in that on or about May 17, 2011, regarding
7 vehicles 1, 2, and 3, set forth in Table 1, above, he violated sections of that Code, as follows:

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

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

13 c. **Section 44014:** Respondent Alfonso allowed Fernando Jacinto, who is not a licensed
14 smog technician, to participate in the smog inspections of those vehicles.

15 d. **Section 44032:** Respondent Alfonso 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
17 those vehicles had been clean piped.

18 e. **Section 44059:** Respondent Alfonso 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 **SEVENTH CAUSE FOR DISCIPLINE**

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

23 21. Respondent Alfonso has subjected his technician license to discipline under Health
24 and Safety Code section 44072.2, subdivision (c), in that on or about May 17, 2011, regarding
25 vehicles 1, 2, and 3, set forth in Table 1, above, he violated sections of the California Code of
26 Regulations, title 16, as follows:

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

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

3 b. **Section 3340.30, subdivision (a):** Respondent Alfonso 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 Alfonso entered false information into
6 the Emission Inspection System ("EIS") for the electronic certificates of compliance by entering
7 vehicle emission control information for vehicles other than the vehicles being certified.

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

10 **EIGHTH CAUSE FOR DISCIPLINE**

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

12 22. Respondent Alfonso has subjected his technician license to discipline under Health
13 and Safety Code section 44072.2, subdivision (d), in that on or about May 17, 2011, he
14 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
15 electronic certificates of compliance for vehicles 1, 2, and 3, set forth in Table 1, above, without
16 performing bona fide inspections of the emission control devices and systems on those vehicles,
17 thereby depriving the People of the State of California of the protection afforded by the Motor
18 Vehicle Inspection Program.

19 **NINTH CAUSE FOR DISCIPLINE**

20 **(Aiding and Abetting an Unlicensed Person)**

21 23. Respondent Alfonso has subjected his technician license to discipline under Health
22 and Safety Code section 44072.2, subdivision (f), in that on or about May 17, 2011, he aided and
23 abetted Fernando Jacinto, who is not licensed as a smog technician, to evade the provisions of this
24 chapter by allowing Jacinto to participate in the performance of the smog inspections on vehicles
25 1, 2, and 3, set forth in Table 1, above.

26 ///

27 ///

28 ///

1 TENTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 24.. Respondent Avedian has subjected his technician license to discipline under Health
4 and Safety Code section 44072.2, subdivision (a), in that on or about May 17, 2011, regarding
5 vehicles 4 and 5, set forth in Table 1, above, he violated sections of that Code, as follows:

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

11 c. **Section 44014:** Respondent Avedian allowed Fernando Jacinto, who is not a licensed
12 smog technician, to participate in the smog inspections of those vehicles.

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

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

19 ELEVENTH CAUSE FOR DISCIPLINE

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

21 25. Respondent Avedian has subjected his technician license to discipline under Health
22 and Safety Code section 44072.2, subdivision (c), in that on or about May 17, 2011, regarding
23 vehicles 4 and 5, set forth in Table 1, above, he violated sections of the California Code of
24 Regulations, title 16, as follows:

25 a. **Section 3340.24, subdivision (c):** Respondent Avedian falsely or fraudulently issued
26 electronic certificates of compliance without performing bona fide inspections of the emission
27 control devices and systems on those vehicles as required by Health and Safety Code section
28 44012.

1 that he has, or is, engaged in a course of repeated and willful violations of the laws and
2 regulations pertaining to an automotive repair dealer.

3 29. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
4 License Number TC 254132, issued to Fernando Jacinto doing business as Advanced Smog Test
5 Only Center, is revoked or suspended, any additional license issued under this chapter in the
6 name of said licensee may be likewise revoked or suspended by the director.

7 30. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
8 Technician License Number EA 632902, issued to Peter Alfonso, is revoked or suspended, any
9 additional license issued under this chapter in the name of said licensee may be likewise revoked
10 or suspended by the director.

11 31. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
12 Technician License Number EA 631628, issued to Ghevond Vahe Avedian, is revoked or
13 suspended, any additional license issued under this chapter in the name of said licensee may be
14 likewise revoked or suspended by the director.

15 **PRAYER**

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

18 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
19 Registration Number ARD 254132, issued to Fernando Jacinto doing business as Advanced
20 Smog Test Only Center;

21 2. Revoking, suspending, or placing on probation any other automotive repair dealer
22 registration issued in the name Fernando Jacinto;

23 3. Revoking or suspending Smog Check Test Only Station License Number TC 254132,
24 issued to Fernando Jacinto doing business as Advanced Smog Test Only Center;

25 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
26 & Safety Code in the name of Fernando Jacinto;

27 5. Revoking or suspending Advanced Emission Specialist Technician License Number
28 EA 632902, issued to Peter Alfonso;

- 1 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 & Safety Code in the name of Peter Alfonso;
- 3 7. Revoking or suspending Advanced Emission Specialist Technician License Number
4 EA 631628, issued to Ghevond Vahe Avedian;
- 5 8. Revoking or suspending any additional license issued under Chapter 5 of the Health
6 & Safety Code in the name of Ghevond Vahe Avedian;
- 7 9. Ordering Fernando Jacinto, Peter Alfonso, and Ghevond Vahe Avedian to pay the
8 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this
9 case, pursuant to Business and Professions Code section 125.3; and,
- 10 10. Taking such other and further action as deemed necessary and proper.

11
12
13 DATED: 7/20/11

14 
15 SHERRY MEHL
16 Chief
17 Bureau of Automotive Repair
18 Department of Consumer Affairs
19 State of California
20 *Complainant*