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

In the Matter of the Accusation Against: **DESERT JUNCTION SMOG TEST ONLY** **CHARLES RONALD TAYLOR, OWNER** **390 S. San Gorgonio Avenue, Unit B** **Banning, CA 92220** **Automotive Repair Dealer Reg. No. ARD 263844** **Smog Check, Test Only, Station License No. TC 263844** **and** **JOHN LOUIS BARROW, JR.** **448 East 15th Street, Unit 8** **Beaumont, CA 92223** **Advanced Emission Specialist Technician License No. EA 632391 (to be designated upon renewal as EO 632391 and/or EI 632391)** **Respondents.**	Case No. 79/12-163 OAH No. 2012070809 **DEFAULT DECISION AND ORDER AS TO RESPONDENT BARROW** [Gov. Code, §11520]

FINDINGS OF FACT

1. On June 8, 2012, Complainant John Wallauch, in his official capacity as the Acting Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, filed Accusation No. 79/12-163 against Charles Ronald Taylor, Owner, dba Desert Junction Smog Test Only (Respondent Taylor), and John Louis Barrow, Jr. (Respondent) before the Director of Consumer Affairs. On June 24, 2013, Complainant filed First Amended Accusation No. 79/12-163 against these same Respondents. (First Amended Accusation attached as Exhibit A.) Complainant and Respondent Taylor have since settled this matter, and the Stipulated Settlement and Disciplinary Order as to Respondent Taylor is currently under review and awaiting approval by the Director of Consumer Affairs (Director).

2. On August 16, 2010, the Bureau issued Advanced Emission Specialist Technician License Number EA 632391 (technician license) to Respondent. Respondent's technician license

was in full force and effect at all times relevant to the charges brought herein, expired on August 31, 2012, and has remained delinquent since. This lapse in licensure, however, pursuant to Business & Professions Code (Code) section 118(b) does not deprive the Bureau of its authority to institute or continue this disciplinary proceeding. Upon renewal of the license, the license will be redesignated as EO 632392 and/or EI 632391.[1]

3. On June 15, 2012, Respondent was served with copies of Accusation No. 79/12-163, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at his address of record which, pursuant to Code section 136, is required to be reported and maintained with the Bureau. Respondent's address of record was and is 448 East 15th Street, Unit 8, Beaumont, CA 92223. On June 24, 2013, Respondent was served with copies of First Amended Accusation No. 79/12-163, Supplemental Statement to Respondent, and Request for Discovery at his same address of record.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Code section 124.

5. On June 21, 2012, Respondent signed and returned a Notice of Defense, requesting a hearing in this matter. On July 27, 2012, a Notice of Hearing was served by mail at Respondent's address of record and it informed him that an administrative hearing in this matter was scheduled for February 27, 2013. On March 7, 2013, the Office of Administrative Hearings continued the hearing date to December 5, 2013. On March 11, 2013, a Notice of Hearing was served by mail at Respondent's address of record and it informed him that the continued hearing was scheduled for December 5, 2013. Respondent failed to appear at that hearing.

6. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall

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

constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

7. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

8. Pursuant to its authority under Government Code section 11520, the Director after having reviewed the proofs of service dated June 15, 2012, and June 24, 2013, finds Respondent is in default. The Director will take action without further hearing and, based on First Amended Accusation No. 79/12-163, proof of service and on the Affidavit of Bureau Representative Program Representative I Ron D. Headlee, finds that the allegations in First Amended Accusation No. 790/12-163 are true.

9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is $32,662.14 as of December 4, 2013.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent John Louis Barrow has subjected his Advanced Emission Specialist Technician License Number EA 632391 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Director of Consumer Affairs is authorized to revoke Respondent's Advanced Emission Specialist Technician License Number EA 632391 based upon the following violations alleged in the Accusation to have been committed on December 29, 2011, January 5, 2012, and January 17, 2012, which are supported by the evidence contained in the affidavit of Bureau Representative Program Representative I Ron D. Headlee in this case.

a. Respondent's technician license is subject to discipline under Health & Safety (H&S) Code section 44072.2, subdivision (a), in that he violated the following sections of that Code:

i. Section 44012: Respondent failed to ensure that the emission control tests were performed on vehicles in accordance with procedures prescribed by the department.

ii. Section 44014, subdivision (a): Respondent permitted an unlicensed person to participate in the smog inspection of a vehicle.

b. Respondent 's technician license is subject to discipline under Code section 480 and H&S Code section 44072.2, subdivision (b), in that he was convicted of a crime substantially related to the qualifications, functions, and duties of a licensed smog technician. The circumstances are that on April 30, 2013, in the case of *People v. John Louis Barrow*, Riverside County Superior Court Case No. RIF1203380, Respondent was convicted by his plea of guilty of violating Penal Code (PC) sections 502, subdivision (c)(1) (alter, damage, delete, destroy, or use data, computers, computer systems, etc., in order to devise or execute a scheme/artifice to defraud, deceive, or extort, or wrongfully control or obtain money, property, or data); and Vehicle Code (VC) section 4463, subdivision (a)(1) (false evidences and uses of documents, licenses, devices, placards, or plates), misdemeanors. The July 11, 2012, criminal complaint charged Respondent with two counts each of violating PC sections 118 (perjury) and 502, subdivision (c)(1) (willfully accessing/ altering computer data with fraudulent intent), and VC section 4463, subdivision (a)(1) (willfully forge/falsify smog check certificates with fraudulent intent), but the PC section 118 counts and one of each of the two PC section 502 (c)(1) and VC section 4463(a)(1) counts were dismissed in the interest of justice. The remaining PC section 502(c)(1) and VC 4463(a)(1) counts were reduced to misdemeanors, per Respondent's April 30, 2013 plea agreement.

c. Respondent's technician license is subject to discipline under H&S Code section 44072.2, subdivision (c), in that he failed to materially comply with the following sections of the Regulations:

i. Section 3340.30, subdivision (a): Respondent failed to perform tests and inspections of vehicles in accordance with H&S Code sections 44012 and 44035, and Regulations section 3340.42.

ii. Section 3340.41, subdivision (c): Respondent falsely entered into an EIS unit vehicle identification information or emission control system information for vehicles other than the ones being tested.

iii. Section 3340.42: Respondent failed to conduct required smog tests and inspections of vehicles in accordance with the Bureau's specifications.

d. Respondent's technician license is subject to discipline under H&S Code section 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud, or deceit, by issuing electronic certificates of compliance for vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

e. Respondent's technician license is subject to disciplinary action under H&S Code section 44072.2, subdivision (f), in that Respondent aided an unlicensed person to evade the provisions of the Motor Vehicle Inspection Program,

ORDER

IT IS SO ORDERED that Advanced Emission Specialist Technician License Number EA 632391, heretofore issued to Respondent John Louis Barrow, Jr., is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven days after service of the Decision on Respondent. The motion should be sent to the Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on January 23, 2014.

It is so ORDERED December 31, 2013

DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

Exhibit A: First Amended Accusation
70792271.DOC
SD2012703090

Exhibit A

First Amended Accusation No. 79/12-163

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Complainant alleges:

PARTIES/LICENSE INFORMATION

1. Complainant John Wallauch brings this First Amended Accusation solely in his official capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

Desert Junction Smog Test Only; Charles Ronald Taylor, Owner

2. On or about January 20, 2011, the Bureau issued Automotive Repair Dealer Registration Number ARD 263844 (registration) to Charles Ronald Taylor, owner of Desert Junction Smog Test Only. Respondent Taylor's registration was in full force and effect at all times relevant to the charges brought herein, expired on January 31, 2013, and has remained delinquent since.

3. On or about January 21, 2011, the Bureau issued Smog Check, Test Only, Station License Number TC 263844 (smog check station license) to Respondent Taylor. Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein, expired on January 31, 2013, and has remained delinquent since.

John Louis Barrow, Jr.

4. On or about August 16, 2010, the Bureau issued Advanced Emission Specialist Technician License Number EA 632391 (technician license) to John Louis Barrow, Jr. Respondent Barrow's technician license was in full force and effect at all times relevant to the charges brought herein, expired on August 31, 2012, and has remained delinquent since. Upon renewal of the license, the license will be redesignated as EO 632392 and/or EI 632391.[1]

Douglas James

5. In or about 1997, the Bureau issued Advanced Emission Specialist Technician License Number EA 137415 to Douglas James. On August 13, 2007, James' technician license was revoked.

6. On August 13, 2009, in Riverside County Superior Court, Case No. RIF149288, James pled guilty to violating Penal Code section 502, subdivision (c)(1) (alter, damage, delete, destroy, or use data, computers, computer systems, etc., in order to devise or execute a scheme/artifice to defraud, deceive, or extort, or wrongfully control or obtain money, property, or data), a felony. The imposition of James' sentence was suspended and James was placed on

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

probation for 36 months on terms and conditions. Condition 6 of James' probation states that he may work in an automotive repair shop, but may not personally conduct or supervise smog testing.

7. On April 30, 2013, in Riverside County Superior Court, Case No. RIF1203380, James pled guilty to violating Penal Code sections 119 (perjury) and 502, subdivision (c)(1) (alter, damage, delete, destroy, or use data, computers, computer systems, etc., in order to devise or execute a scheme/artifice to defraud, deceive, or extort, or wrongfully control or obtain money, property, or data); and Vehicle Code section 4463, subdivision (a)(1), felonies all. The imposition of James' sentence was suspended and James was granted probation and placed on supervised release for 36 months on terms and conditions. Condition 2 of James' probation required him to pay victim restitution in the amount of $12,008.21, pursuant to Penal Code section 1203.1, subdivision (A)(3), and Condition 12 of James' probation forbids him from working, directly or indirectly, for any automotive repair or smog shop, or engaging in performing smog checks.

JURISDICTION

8. Business and Professions Code (Code) section 118, subdivision (b), states:

> The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

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

10. Health and Safety (H&S) Code section 44002 provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

11. H&S Code section 44072.6 provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

12. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

STATUTORY AND REGULATORY PROVISIONS

13. Code section 490 states:

> (a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
>
> (b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
>
> (c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.
>
> (d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.

14. Code section 493 states:

> Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person

who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

15. Code section 9884.7 states, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

. . . .

(4) Any other conduct that constitutes fraud.

. . . .

(6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

. . . .

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

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

16. Code section 22, subdivision (a), states:

"Board" as used in any provision of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

17. Code section 477, subdivision (b), states, in pertinent part, that a "license" includes "registration" and "certificate."

18. H&S Code section 44072.2 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.
>
> (b) Is convicted of any crime substantially related to the qualifications, functions, or duties of the license-holder in question.
>
> (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.
>
> . . . .
>
> (f) Aids or abets unlicensed persons to evade the provisions of this chapter
>
> . . . .

19. H&S Code section 44072.10 states, in pertinent 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.
>
> . . . .
>
> (4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter . . .

20. H&S Code section 44072.8 states that 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.

21. California Code of Regulations, title 16 (CCR), section 3340.1 states, in pertinent part:

"Clean piping," for the purposes of Health and Safety Code section 44072.10(c)(1), means the use of a substitute exhaust emissions sample in place of the actual test vehicle's exhaust in order to cause the EIS to issue a certificate of compliance for the test vehicle . . .

COST RECOVERY

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

VIDEO SURVEILLANCE OPERATION OF DECEMBER 29, 2011

23. On December 29, 2011, representatives of the Bureau conducted a video surveillance operation of Respondent Taylor's smog check facility. The Bureau's VID (vehicle information database) data showed that Taylor's technician, Respondent Barrow, performed smog inspections on vehicles 1 through 8, identified in Table 1, below, and that electronic smog certificates of compliance were issued for vehicles 3 through 5 and 7. The surveillance video revealed that Barrow conducted the inspections on vehicles 1 through 6 and 8 using clean-piping methods and "clean-plugging" methods[2], resulting in the issuance of fraudulent smog certificates of compliance for vehicles 3 through 5. The surveillance video also revealed that James, whose technician license was revoked on August 13, 2007, participated in the clean-piping of vehicle 7 with an unidentified person, and that Respondent Barrow's technician license number and confidential access code were used during the inspection to certify the vehicle.

TABLE 1

Time of Inspection	Vehicle Certified & License No.	Vehicle Actually Tested	Certificate No.	Violation
1. 1314 - 1324	1999 GMC Sierra C1500 pickup; License # 596563X	2001 Mazda 626; License # 4WUF065	None; smog test aborted	Vehicle was clean piped
2. 1328 - 1337	1999 GMC Sierra C1500 pickup; License # 596563X	2001 Mazda 626; License # 4WUF065	None; smog test aborted	Vehicle was clean piped
3. 1408 - 1421	2003 Toyota Camry; License # 5MBK426	2001 Mazda 626; License # 4WUF065	XB155898C	Vehicle was clean-plugged

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

4. 1434 - 1442	1999 GMC Sierra C1500 pickup; License # 596563X	2003 Toyota Camry; License # 5MBK426	XB155899C	Vehicle was clean piped
5. 1451 - 1515	1988 Ford Ranger; License # 3N16375	1994 Ford Escort; License # 3HPM654	XB155900C	Vehicle was clean piped
6. 1524- 1542	1990 Chrysler New Yorker; License # 2TMD107	1994 Ford Escort; License # 3HPM654	None; vehicle failed inspection	Vehicle was clean piped
7. 1554 - 1600	1998 Ford Explorer; License # 3XLV699	2004 Chrysler PT Cruiser; License # 5FQJ876	XB902051C	Vehicle was clean piped
8. 1607 - 1624	1984 Dodge D350 pickup; License # 2L64532	1994 Ford Escort; License # 3HPM654	None; vehicle failed inspection	Vehicle was clean piped

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

24. Respondent Taylor's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

a. Respondent Taylor's technician, Respondent Barrow, certified that vehicle 3, identified in paragraph 23 above, had passed inspection and was in compliance with applicable laws and regulations. In fact, Barrow conducted the inspection on vehicle 3 using clean-plugging methods in that he substituted or used a different vehicle during the OBD II functional test[3] in order to issue a smog certificate of compliance for the vehicle, and did not test or inspect the vehicle as required by H&S Code section 44012.

b. Respondent Taylor's technician, Respondent Barrow, certified that vehicles 4 and 5, identified in paragraph 23 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Barrow used clean-piping methods in order to issue certificates for the vehicles and did not test or inspect the vehicles as required by H&S Code section 44012.

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

c. Respondent Taylor's technician, Respondent Barrow, certified that vehicle 7, identified in paragraph 23 above, had passed inspection and was in compliance with applicable laws and regulations, when, in fact, the vehicle was clean piped. Further, James, whose technician license was revoked on August 13, 2007, participated in the clean-piping of the vehicle, and Barrow's technician license number and confidential access code were used during the inspection to certify the vehicle.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

25. Respondent Taylor's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud by issuing electronic smog certificates of compliance for vehicles 3 through 5 and 7, identified in paragraph 23 above, without ensuring that bona fide inspections were performed of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

26. Respondent Taylor's smog check station license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (a), in that Respondent failed to comply with provisions of that Code, as follows:

a. **Section 44012:** Respondent failed to ensure that the emission control tests were performed on vehicles 1 through 8, identified in paragraph 23 above, in accordance with procedures prescribed by the department.

b. **Section 44014, subdivision (a):** Respondent authorized or permitted James to participate in the smog inspection on vehicle 7, identified in paragraph 23 above, when, in fact, James' technician license was revoked.

c. **Section 44015:** Respondent issued electronic smog certificates of compliance for vehicles 3 through 5 and 7, identified in paragraph 23 above, without ensuring that the vehicles

were properly tested and inspected to determine if they were in compliance with H&S Code section 44012.

FOURTH CAUSE FOR DISCIPLINE

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

27. Respondent Taylor's smog check station license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of the CCR, as follows:

a. **Section 3340.35, subdivision (c):** Respondent Taylor issued electronic smog certificates of compliance for vehicles 3 through 5, and 7, identified in paragraph 23 above, even though those vehicles had not been inspected in accordance with section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent Taylor permitted Respondent Barrow to enter false information into the Emissions Inspection System (EIS) unit by entering vehicle identification information or emission control system identification data for vehicles other than the ones being tested.

c. **Section 3340.42:** Respondent Taylor failed to ensure that the required smog tests were conducted on vehicles 1 through 8, identified in paragraph 23 above, in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

28. Respondent Taylor's smog check station license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 3 through 5 and 7, identified in paragraph 23 above, without ensuring that bona fide inspections were performed of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Aiding or Abetting Unlicensed Persons)

29. Respondent Taylor's smog check station license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (f), in that Respondent aided and abetted James, whose technician license was revoked on August 13, 2007, to evade the provisions of the Motor Vehicle Inspection Program, as set forth above.

SEVENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

30. Respondent Barrow's technician license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (a), in that Respondent failed to comply with provisions of that Code, as follows:

a. **Section 44012:** Respondent failed to ensure that the emission control tests were performed on vehicles 1 through 8, identified in paragraph 23 above, in accordance with procedures prescribed by the department.

b. **Section 44014, subdivision (a):** Respondent permitted James to participate in the smog inspection on vehicle 7, identified in paragraph 23 above, when, in fact, James' technician license was revoked on August 13, 2007.

EIGHTH CAUSE FOR DISCIPLINE

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

31. Respondent Barrow's technician license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of the CCR, as follows:

a. **Section 3340.30, subdivision (a):** Respondent failed to ensure that vehicles 1 through 8, identified in paragraph 23 above, were inspected and tested in accordance with H&S Code sections 44012 and 44035, and the CCR, section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS by entering vehicle identification information or emission control system identification data for vehicles other than the ones being tested.

c. **Section 3340.42:** Respondent failed to ensure that the required smog tests were conducted on vehicles 1 through 8, identified in paragraph 23 above, in accordance with the Bureau's specifications.

NINTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

32. Respondent Barrow's technician license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 3 through 5 and 7, identified in paragraph 23 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TENTH CAUSE FOR DISCIPLINE

(Aiding or Abetting Unlicensed Persons)

33. Respondent Barrow's technician license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (f), in that Respondent aided and abetted James, whose technician license was revoked on August 13, 2007, to evade the provisions of the Motor Vehicle Inspection Program, as set forth above in paragraph 23 above.

VIDEO SURVEILLANCE OPERATION OF JANUARY 5, 2012

34. On January 5, 2012, representatives of the Bureau conducted a video surveillance operation of Respondent Taylor's smog check facility. The surveillance video and information obtained from the Bureau's VID revealed that Respondent Barrow issued electronic smog certificates of compliance on behalf of Taylor, certifying that he had tested and inspected the vehicles identified in Table 2 below and that the vehicles were in compliance with applicable laws and regulations. In fact, Barrow conducted the inspections using clean-piping methods, resulting in the issuance of fraudulent certificates of compliance for the vehicles. Further, vehicles 1 through 3 were not present at the station during the smog inspections.

TABLE 2

Time of Inspection	Vehicle Certified & License No.	Vehicle Actually Tested	Certificate No.
1. 1105- 1120	1997 Toyota 4 Runner; License # 5CJC628	2001 Mazda 626; License # 4WUF065	XB902073C
2. 1206 - 1219	2005 Kia Sorento; License # 5LJR324	2001 Mazda 626; License # 4WUF065	XB902074C
3. 1251 - 1302	2000 Ford Focus sedan; License # 5TIG944	2001 Mazda 626; License # 4WUF065	XB902075C
4. 1511 - 1524	2005 Chevrolet Impala; License # 5VQT38	2001 Mazda 626; License # 4WUF065	XB902076C

ELEVENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

35. Respondent Taylor's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Taylor's technician, Respondent Barrow, certified that vehicles 1 through 4, identified in paragraph 34 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Barrow used clean piping methods in order to issue certificates for the vehicles and did not test or inspect the vehicles as required by H&S Code section 44012.

TWELFTH CAUSE FOR DISCIPLINE

(Fraud)

36. Respondent Taylor's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that constitute fraud by issuing electronic smog certificates of compliance for vehicles 1 through 4, identified in paragraph 34 above, without ensuring that bona fide inspections were performed of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

37. Respondent Taylor's smog check station license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (a), in that Respondent failed to comply with provisions of that Code, as follows:

a. **Section 44012:** Respondent failed to ensure that the emission control tests were performed on vehicles 1 through 4, identified in paragraph 34 above, in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued electronic smog certificates of compliance for vehicles 1 through 4, identified in paragraph 34 above, without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with H&S Code section 44012.

FOURTEENTH CAUSE FOR DISCIPLINE

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

38. Respondent Taylor's smog check station license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of the CCR, as follows:

a. **Section 3340.35, subdivision (c):** Respondent Taylor issued electronic smog certificates of compliance for vehicles 1 through 4, identified in paragraph 34 above, even though those vehicles had not been inspected in accordance with section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent Taylor permitted Respondent Barrow to enter false information into the EIS by entering vehicle identification information or emission control system identification data for vehicles other than the ones being tested.

c. **Section 3340.42:** Respondent Taylor failed to ensure that the required smog tests were conducted on vehicles 1 through 4, identified in paragraph 34 above, in accordance with the Bureau's specifications.

FIFTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

39. Respondent Taylor's smog check station license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 through 4, identified in paragraph 34 above, without ensuring that bona fide inspections were performed of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTEENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

40. Respondent Barrow's technician license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012 of that Code, as follows: Respondent failed to perform emission control tests on vehicles 1 through 4, identified in paragraph 34 above, in accordance with procedures prescribed by the department.

SEVENTEENTH CAUSE FOR DISCIPLINE

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

41. Respondent Barrow's technician license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of the CCR, as follows:

a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test vehicles 1 through 4, identified in paragraph 34 above, in accordance with H&S Code sections 44012 and 44035, and the CCR, section 3340.42.

b. **Section 3340.41, subdivision (c)**: Respondent entered false information into the EIS by entering vehicle identification information or emission control system identification data for vehicles other than the ones being tested.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1 through 4, identified in paragraph 34 above, in accordance with the Bureau's specifications.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

42. Respondent Barrow's technician license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 through 4, identified in paragraph 34 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SURVEILLANCE OPERATION OF JANUARY 17, 2012

43. On January 17, 2012, at approximately 1230 hours, representatives of the Bureau began visual surveillance of Respondent Taylor's smog check facility. At 1241 hours, a Mazda 626 (Mazda) entered the facility's testing bay. At 1247 hours, one of the representatives observed Respondent Barrow removing the EIS exhaust sample probe from the rear of the Mazda (the Mazda remained in the testing bay until 1302 hours). The Bureau's VID data showed that between 1234 and 1301 hours, Barrow performed a smog inspection on a 1978 Dodge truck (Dodge truck), License No. 6N41029, resulting in the issuance of electronic smog Certificate of Compliance No. XB902096C. At 1302 hours, the representatives drove into the facility and parked their vehicle behind the Mazda. Later, one of the representatives questioned Barrow about the smog inspection on the Dodge truck. Barrow admitted that he clean-piped the Dodge truck using the Mazda, that the Dodge truck was not present at the facility, and that the paperwork for the Dodge truck had been faxed to the station.

NINETEENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

44. Respondent Taylor's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made a statement which he knew or in the

exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Taylor's technician, Respondent Barrow, certified that the Dodge truck had passed inspection and was in compliance with applicable laws and regulations. In fact, Barrow used clean piping methods in order to issue a certificate for the vehicle and did not test or inspect the vehicle as required by H&S Code section 44012.

TWENTIETH CAUSE FOR DISCIPLINE

(Fraud)

45. Respondent Taylor's registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that constitutes fraud by issuing an electronic smog certificates of compliance for the Dodge truck without ensuring that a bona fide inspection was performed of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

46. Respondent Taylor's smog check station license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (a), in that Respondent failed to comply with provisions of that Code, as follows:

a. **Section 44012**: Respondent failed to ensure that the emission control tests were performed on the Dodge truck in accordance with procedures prescribed by the department.

b. **Section 44015**: Respondent issued an electronic smog certificate of compliance for the Dodge truck without ensuring that the vehicle was properly tested and inspected to determine if it was in compliance with H&S Code section 44012.

TWENTY-SECOND CAUSE FOR DISCIPLINE

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

47. Respondent Taylor's smog check station license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of the CCR, as follows:

a. **Section 3340.35, subdivision (c):** Respondent Taylor issued an electronic smog certificate of compliance for the Dodge truck even though the vehicle had not been inspected in accordance with section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent Taylor permitted Respondent Barrow to enter false information into the EIS by entering vehicle identification information or emission control system identification data for a vehicle other than the one being tested.

c. **Section 3340.42:** Respondent Taylor failed to ensure that the required smog tests were conducted on the Dodge truck in accordance with the Bureau's specifications.

TWENTY-THIRD CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

48. Respondent Taylor's smog check station license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the Dodge truck without ensuring that a bona fide inspection was performed of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

49. Respondent Barrow's technician license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012 of that Code, as follows: Respondent failed to perform the emission control tests on the Dodge truck in accordance with procedures prescribed by the department.

TWENTY-FIFTH CAUSE FOR DISCIPLINE

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

50. Respondent Barrow's technician license is subject to disciplinary action pursuant to H&S Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of the CCR, as follows:

a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Dodge truck in accordance with H&S Code sections 44012 and 44035, and the CCR, section 3340.42.

b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS by entering vehicle identification information or emission control system identification data for a vehicle other than the one being tested.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the Dodge truck in accordance with the Bureau's specifications.

TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

51. Respondent Barrow's technician license is subject to disciplinary action pursuant to H&SCode section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the Dodge truck without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

TWENTY-SEVENTH CAUSE FOR DISCIPLINE

(Conviction of a Crime Substantially Related to Respondent's Technician License)

52. Respondent Barrow's technician license is subject to discipline under Code section 490 and H&S Code section 44072.2, subdivision (b), in that he was convicted of a crime substantially related to the qualifications, functions, and duties of a licensed smog technician. The circumstances are as follows:

a. On April 30, 2013, in the case of *People v. John Louis Barrow*, Riverside County Superior Court Case No. RIF1203380, Respondent Barrow was convicted by his plea of guilty of violating Penal Code (PC) sections 502, subdivision (c)(1) (alter, damage, delete, destroy, or use data, computers, computer systems, etc., in order to devise or execute a scheme/artifice to defraud, deceive, or extort, or wrongfully control or obtain money, property, or data); and Vehicle Code (VC) section 4463, subdivision (a)(1) (false evidences and uses of documents, licenses, devices, placards, or plates), misdemeanors. The July 11, 2012, criminal complaint charged

Respondent Barrow with two counts each of violating PC sections 118 (perjury) and 502, subdivision (c)(1) (willfully accessing/ altering computer data with fraudulent intent), and VC section 4463, subdivision (a)(1) (willfully forge/falsify smog check certificates with fraudulent intent), but the PC section 118 counts and one of each of the two PC section 502 (c)(1) and VC section 4463(a)(1) counts were dismissed in the interest of justice. The remaining PC section 502(c)(1) and VC 4463(a)(1) counts were reduced to misdemeanors, per Respondent's April 30, 2013 plea agreement.

b. As a result of the conviction, on May 7, 2013 Respondent Barrow was granted summary probation for 36 months on terms and conditions. Condition 2 of Barrow's probation committed him to the custody of the Riverside County Sheriff for 90 days, 58 days of which were to be served in the work release program, and Condition 4 required him to pay victim restitution in the amount of $12,008.21, pursuant to PC section 1203.1, subdivision (A)(3).

c. The circumstances of the crime were that on December 29, 2011, and January 5 and 17, 2012, Respondent Barrow willfully, unlawfully, and with the intent to defraud, prejudice and damage, alter, forge, counterfeit, and falsify issued smog check certificates to and for vehicles, as detailed in Tables 1 and 2, and paragraphs 23, 34, and 43 above.

OTHER MATTERS

53. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke or place on probation the registration for all places of business operated in this state by Respondent Charles Ronald Taylor, owner of Desert Junction Smog Test Only, upon a finding that said Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

54. Pursuant to H&S Code section 44072.8, if Smog Check, Test Only, Station License Number TC 263844, issued to Charles Ronald Taylor, owner of Desert Junction Smog Test Only, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

55. Pursuant to H&S Code section 44072.8, if Advanced Emission Specialist Technician License currently designated as EA 632391 and as redesignated upon timely renewal as EO

632391 and/or EI 632391, is/are revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 263844, issued to Charles Ronald Taylor, owner of Desert Junction Smog Test Only;

2. Revoking or suspending any other automotive repair dealer registration issued to Charles Ronald Taylor;

3. Revoking or suspending Smog Check, Test Only, Station License Number TC 263844, issued to Charles Ronald Taylor, owner of Desert Junction Smog Test Only;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Charles Ronald Taylor;

5. Revoking or suspending Advanced Emission Specialist Technician License Number currently designated as EA 632391 and as redesignated upon timely renewal as EO 632391 and/or EI 632391, issued to John Louis Barrow, Jr.;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of John Louis Barrow, Jr.;

7. Ordering Charles Ronald Taylor, owner of Desert Junction Smog Test Only, and John Louis Barrow, Jr. to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3;

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

DATED: June 29, 2013

JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

SD2012703090