

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

In the Matter of the First Amended Accusation Against:

**7TH STREET TEST ONLY,
SHAELYN YO LE, OWNER,**
Automotive Repair Dealer Registration No.
ARD 263240
Smog Check Test Only Station License No.
TC 263240

PABLO SERGIO NEVAREZ,
Advanced Emission Specialist Technician
License No. EA 631779

**MONTEREY TEST ONLY,
SHAELYN YO LE, OWNER,**
Automotive Repair Dealer Registration No.
ARD 263325
Smog Check Test Only Station License No.
TC 263325

SHAELYN YO LE,
Advanced Emission Specialist Technician
License No. EA 633490

Respondents.

Case No. 79/12-148

OAH No. 2013040572

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.

This Decision shall become effective March 25, 2014.

DATED: FEB 14 2014



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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

In the Matter of the First Amended
Accusation Against:

7TH STREET TEST ONLY,
SHAELYN YO LE, OWNER,
Automotive Repair Dealer Registration No.
ARD 263240
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MONTEREY TEST ONLY,
SHAELYN YO LE, OWNER,
Automotive Repair Dealer Registration No.
ARD 263325
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Respondents.

Case No. 79/12-148

OAH No. 2013040572

PROPOSED DECISION

Administrative Law Judge Regina J. Brown, Office of Administrative Hearings, State of California, heard this matter on December 23, 2013, in Oakland, California.

Maretta Ward, Deputy Attorney General, represented complainant Patrick Dorais, Acting Chief of the Bureau of Automotive Repair.

Respondent Pablo Sergio Nevarez appeared and represented himself.

There was no appearance by or on behalf of respondent Shaelyn Yo Le, doing business as 7th Street Test Only, and also doing business as Monterey Test Only. Respondent Le was properly served with the Accusation and Notice of Hearing in compliance with the notice and service requirements of Government Code sections 11505 and 11509. This matter proceeded as a default hearing under Government Code section 11520, as to respondent Le, doing business as 7th Street Test Only and also doing business as Monterey Test Only.

The matter was submitted on December 23, 2013.

FACTUAL FINDINGS

1. Complainant Patrick Dorais filed the First Amended Accusation in his official capacity as Acting Chief, Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.
2. On February 22, 2010, the Bureau issued Advanced Emission Specialist Technician License Number EA 631779 to respondent Pablo Sergio Nevarez. This license is in full force and effect, and will expire on January 31, 2014, unless renewed. Upon renewal, the license will be redesignated as EO 631779 and/or EI 631779.¹
3. On September 9, 2010, the Bureau issued Automotive Repair Dealer Registration Number ARD 263240 to respondent Shaelyn Yo Le, doing business as 7th Street Test Only, located at 2331 South 7th Street, No. 7, San Jose, California. The registration expired on September 30, 2012, and has not been renewed.
4. On January 19, 2011, the Bureau issued Smog Check Test Only Station License Number TC 263240 to respondent Le, doing business as 7th Street Test Only. The station license expired on September 30, 2012, and has not been renewed.
5. On September 21, 2010, the Bureau issued Automotive Repair Dealer Registration Number ARD 263325 to respondent Le, doing business as Monterey Test Only, located at 2845 Monterey Road, No. 21, San Jose, California. The registration was cancelled on August 31, 2011, and has not been reinstated.
6. On January 19, 2011, the Bureau issued Smog Check Test Only Station License Number TC 263325 to respondent Le, doing business as Monterey Test Only. The registration was cancelled on August 31, 2011, and has not been reinstated.

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 (EA) Technician license to Smog Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

7. On August 10, 2011, the Bureau issued Advanced Emission Specialist Technician License Number EA 633490 to respondent Le. This license is in full force and effect, and will expire on January 31, 2014, unless renewed. Upon renewal, the license will be redesignated as EO 633490 and/or EI 633490.

8. "Clean piping" is the illegal practice of using the emissions readings of one "clean running" vehicle for the purpose of issuing a certificate of compliance to another vehicle that would not pass a smog inspection and/or is not present for testing. This is accomplished by entering identification data for the vehicle to be issued the certificate into a facility's test analyzer system (TAS) computer, but performing the smog inspection on the "clean" vehicle.

9. On August 2, 2011, the Bureau conducted an undercover surveillance operation at 7th Street Test Only. The activities at the station were recorded by video camera from a vehicle parked nearby. Information on vehicles tested at the facility was later compared with information regarding TAS data collected by the Bureau. The TAS data shows the vehicles for which certificates of compliance were issued and the test data for each certificate.

10. A comparison of the surveillance video and information from the TAS computer and the Bureau's Vehicle Information Database reveals certificates of compliance were issued by respondent Nevarez at 7th Street Test Only for the following two vehicles using clean piping:

a. Certificate of Compliance No. OE898296 was issued for a 1982 Buick Regal (license number 1EZM573) when, in fact, a 1988 Ford E150 Econoline Van was used as the "clean pipe" vehicle. Nevarez was observed on the videotape performing the emissions test on the 1988 Ford E150 Econoline Van. The emissions test was conducted on August 2, 2011, with test start time at 1631 hours and end time at 1644 hours. The 1982 Buick Regal was not inside the stall/smog bay during the time of certification.

b. Certificate of Compliance No. OE898300 was issued for a 1992 Ford Explorer (license number 4YJS643) when, in fact, the 1992 Ford Explorer was not inside the stall/smog bay during the time of certification. The emissions test was conducted on August 2, 2011, with test start time at 1738 hours and end time at 1744 hours. The type of vehicle that was used as the "clean pipe" vehicle is unknown.

11. A licensed technician must enter his name and license number into a particular smog check machine and have an access code from the Bureau to issue a smog test certification. It is the licensed technician's responsibility to safeguard his access code.

Respondents' Evidence

12. Respondent Nevarez maintains that he did not engage in clean piping of the vehicles. He denies that he input the access code into the computer to generate the

certifications and that it was not his signature on the certifications that were issued. Respondent offers as an explanation that he lost his card with his access code a few days earlier and obtained a new code prior to the undercover operation. He believes that one of the other technicians may have used his access code to generate the certifications.

13. Respondent Nevarez's testimony is not credible. His testimony is directly contradicted by the evidence which established that he did indeed sign the certifications. Furthermore, respondent pled no contest and was convicted for clean piping in the related criminal matter. His testimony that he did not engage in clean piping is dishonest and not persuasive.

14. Lance West, Bureau investigator, recognized respondent Nevarez's signature from documentation related to the investigation into an earlier citation issued against respondent Nevarez. West confirmed that respondent changed his access code on August 1, 2011, prior to the undercover operation. However, respondent Nevarez is still responsible for the safekeeping of his access code.

15. Respondent Nevarez worked at 7th Street Test Only in 2010 and 2011. He also worked at Monterey Test Only from July 2010 to August 2011.

16. Respondent Nevarez currently works for Champion Recovery, a towing service that does not require that he have a license issued by the Bureau. He works approximately 15-20 hours per week earning \$150-200 per week.

17. Respondent Nevarez is a single male with no dependents. He supports himself financially. He would like to continue to work as a licensed technician because he can work more hours and make better pay, earning approximately \$400 per week.

18. Respondent Le requested a hearing in this matter, but she did not appear at the hearing. There was no evidence of mitigation offered or considered on behalf of respondent Le.

Prior violations

19. On April 28, 2011, the Bureau issued citation M2011-1274 to respondent Nevarez for violation of Health and Safety Code section 44032 (qualified technicians shall perform tests of emission control systems and devices in accordance with section 44012 of that Code), and California Code of Regulations, title 16, section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the Health and Safety Code). The Bureau required that respondent Nevarez take an eight-hour training course. He appealed the citation.²

² On January 17, 2013, the Bureau adopted the proposed decision (OAH No. 2012041103) that sustained the citation.

20. On April 27, 2011, the Bureau issued citation C2011-1256 to respondent Le, doing business as 7th Street Test Only, for violation of Health and Safety Code section 44012, subdivision (f) (failure to determine that emission control devices and systems are installed and functioning correctly in accordance with test procedures), and California Code of Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). The Bureau assessed a penalty of \$500 for each violation. Respondent Le paid a total penalty of \$1,000.

Costs

21. The Board certifies that the following costs were incurred in connection with the investigation and enforcement of this matter:

Program Representative I costs	23.00 hours @ \$71.45/hour	\$1,643.35
Program Representative II costs	105.00 hours @ \$76.06/hour	\$7,986.30
Undercover Vehicle Operator costs	\$100/day	\$60.00
Total costs incurred:		\$9,689.65

22. Respondents did not dispute the costs. Complainant's costs are found to be reasonable.

LEGAL CONCLUSIONS

1. The expiration of respondents' registrations and licenses does not deprive the Bureau of its authority to pursue this disciplinary proceeding. (Bus. & Prof. Code, § 118, subd. (b); Health & Saf. Code, § 44072.6.)

Respondent Le, doing business as 7th Street Test Only

2. Business and Professions Code section 9884.7, subdivision (a)(1), authorizes the temporary or permanent invalidation of an automotive repair dealer registration if an automotive repair dealer makes or authorizes any statement that the dealer knows, or in the exercise of reasonable care should have known, is untrue or misleading. Cause exists, pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), to temporarily or permanently invalidate the Automotive Repair Dealer Registration issued to respondent Le, doing business as 7th Street Test Only, by reason of the matters set forth in Finding 10. Specifically, respondent Le, as owner of 7th Street Test Only, knew, or should have known, that untrue or misleading statements were made with respect to issuance of the certificates of compliance issued by her employee.

3. Business and Professions Code section 9884.7, subdivision (a)(4), authorizes the temporary or permanent invalidation of an automotive repair dealer registration if an automotive repair dealer engages in any conduct that constitutes fraud. Cause exists,

pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), to temporarily or permanently invalidate the Automotive Repair Dealer Registration issued to respondent Le, doing business as 7th Street Test Only, by reason of the matters set forth in Finding 10. Specifically, respondent Le, as owner of 7th Street Test Only, was responsible for issuance of the certificates of compliance issued by her employee.

4. Health and Safety Code section 44072.2, authorizes suspension, revocation, or other disciplinary action against a licensee who violates smog check laws. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (a), to discipline the Smog Check Station License issued to respondent Le, doing business as 7th Street Test Only, for a violation of each of the following provisions of the Health and Safety Code:

- a. Section 44012, subdivision (a): failure to determine all smog check devices and systems were installed and functioning properly on vehicles;
- b. Section 44012, subdivision (f): failure to perform visual or functional smog check tests on vehicles;
- c. Section 44015, subdivision (b): issuance of certificates of compliance without proper testing and inspection of vehicles.

5. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (c), to discipline the Smog Check Station License issued to respondent Le, doing business as 7th Street Test Only, for a violation of each of the following provisions of title 16 of the California Code of Regulations:

- a. Section 3340.35, subdivision (c): issuance of signed certificate of compliance without proper smog testing of vehicles;
- b. Section 3340.42: failure to perform mandatory smog check tests on vehicles.

6. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (d), to discipline the Smog Check Station License issued to respondent Le, doing business as 7th Street Test Only, by reason of the matters set forth in Finding 10. Specifically, respondent Le, as owner of 7th Street Test Only, allowed her employee to commit acts involving dishonesty, fraud and deceit in issuing certificates of compliance without the required mandatory inspections.

Respondent Le, doing business as Monterey Test Only

7. Business and Professions Code section 9884.7, subdivision (c), provides that: “the director may suspend, revoke, or place on probation the registration of 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 [Chapter 20.3 Automotive Repair].”

8. There is insufficient evidence to establish repeated and willful violations of the Automotive Repair Act. There is no cause for discipline, pursuant to Business and Professions Code section 9884.7, subdivision (c), against the automotive repair dealer registration issued to respondent Le, doing business as Monterey Test Only.

9. Health and Safety Code section 44072.8, provides that the suspension or revocation of a smog check station license or smog check technician license constitutes cause to suspend or revoke other such licenses held by the disciplined licensee. Cause exists, pursuant to Health and Safety Code section 44072.8, to revoke the Smog Check Test Only Station License issued to respondent Le, doing business as Monterey Test Only, because the smog check station license issued to respondent Le, doing business as 7th Street Test Only, is subject to discipline.

10. Cause exists, pursuant to Health and Safety Code section 44072.8, to revoke respondent Le’s Advanced Emission Specialist Technician License because the smog check technician license issued to respondent Le, doing business as 7th Street Test Only, is subject to discipline.

11. Cause exists, pursuant to Health and Safety Code section 44072.8, to revoke any other license issued to respondent Le under the Motor Vehicle Inspection Program.

12. Respondent Le made no showing of mitigation or rehabilitation. Considering all the facts and circumstances, including the prior citation, it is determined that it would be contrary to the public interest to permit respondent Le to retain her registrations and licenses set forth in Findings 3, 4, 6, and 7.

Respondent Nevarez

13. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (a), to discipline respondent Nevarez’s Advanced Emission Specialist Technician License, for each of the following provisions of the Health and Safety Code:

- a. Section 44012, subdivision (a): failure to determine all smog check devices and systems were installed and functioning properly on vehicles;
- b. Section 44012, subdivision (f): failure to perform visual or functional smog check tests on vehicles;
- c. Section 44032: failure to perform smog check tests on vehicles in accordance with section 44012.

14. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (c), to discipline respondent Nevarez's Advanced Emission Specialist Technician License, for each of the following provisions of Title 16 of the California Code of Regulations:

- a. Section 3340.30, subdivision (a): failure to inspect and test vehicles;
- b. Section 3340.41, subdivision (c): entering false information into the emission inspection system for the electronic certificates of compliance by entering vehicle information for vehicles other than the vehicles receiving the certificates;
- c. Section 3340.42: failure to perform mandatory smog check tests on vehicles.

15. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (d), to discipline respondent Nevarez's Advanced Emission Specialist Technician License, by reason of the matters set forth in Finding 10. Specifically, respondent Nevarez committed acts involving dishonesty, fraud and deceit in issuing certificates of compliance without the required mandatory inspections.

16. Cause exists, pursuant to Health and Safety Code section 44072.8, to revoke any other license issued to respondent Nevarez under the Motor Vehicle Inspection Program.

17. Respondent Nevarez was an active participant in the clean piping violations. Moreover, he was dishonest about his involvement in the clean piping violations. Considering all the facts and circumstances, including his prior citation, it is determined that it would be contrary to the public interest to permit respondent Nevarez to retain his Advanced Emission Specialist Technician License.

Cost Recovery

18. Section 125.3, provides that respondent may be ordered to pay the Board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The Board's certification of the actual costs constitutes prima facie evidence of the reasonable costs. The costs set forth in Finding 21 were established by such a certification. The reasonable costs of investigation and enforcement are determined to be \$9,689.65.

Respondent has not objected to the costs or provided any basis for reduction of those costs. (See *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32.) The Board is authorized to recover the reasonable costs of investigation and enforcement in the total amount of \$9,689.65. It is reasonable to require that responsibility for payment of costs be divided between respondents. Each respondent is responsible for a one-fourth share of the costs which is \$2,422.41.

ORDER

1. Automotive Repair Dealer Registration Number ARD 263240 issued to respondent Shaelyn Yo Le, doing business as 7th Street Test Only, is revoked.
2. Smog Check Test Only Station License Number TC 263240 issued to respondent Shaelyn Yo Le, doing business as 7th Street Test Only, is revoked.
3. Insofar as the Accusation seeks to impose discipline against Automotive Repair Dealer Registration Number ARD 263325 issued to respondent Shaelyn Yo Le, doing business as Monterey Test Only, the Accusation is dismissed.
4. Smog Check Test Only Station License Number TC 263325 issued to respondent Shaelyn Yo Le, doing business as Monterey Test Only, is revoked.
5. Advanced Emission Specialist Technician License Number EA 633490 issued to respondent Shaelyn Yo Le is revoked.
6. Any additional license issued under the Motor Vehicle Inspection Program to respondent Shaelyn Yo Le is revoked.
7. Advanced Emission Specialist Technician License Number EA 631779 issued to respondent Pablo Sergio Nevarez is revoked.
8. Any additional license issued under the Motor Vehicle Inspection Program to respondent Pablo Sergio Nevarez is revoked.
9. Respondent Pablo Sergio Nevarez shall pay the Bureau for his share of the costs of investigation and enforcement in the amount of \$2,422.41. This amount shall be paid to the Bureau within 60 days of the effective date of this decision, unless the Bureau, upon a request from respondent, allows payment to be made in installments.
10. Respondent Shaelyn Yo Le, doing business as 7th Street Test Only, shall pay the Bureau for her share of the costs of investigation and enforcement in the amount of \$2,422.41. This amount shall be paid to the Bureau within 60 days of the effective date of this decision, unless the Bureau, upon a request from respondent, allows payment to be made in installments.
11. Respondent Shaelyn Yo Le, doing business as Monterey Test Only, shall pay the Bureau for her share of the costs of investigation and enforcement in the amount of \$2,422.41. This amount shall be paid to the Bureau within 60 days of the effective date of this decision, unless the Bureau, upon a request from respondent, allows payment to be made in installments.

12. Respondent Shaelyn Yo Le, Advanced Emission Specialist Technician, shall pay the Bureau for her share of the costs of investigation and enforcement in the amount of \$2,422.41. This amount shall be paid to the Bureau within 60 days of the effective date of this decision, unless the Bureau, upon a request from respondent, allows payment to be made in installments.

DATED: January 22, 2014


REGINA J. BROWN
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

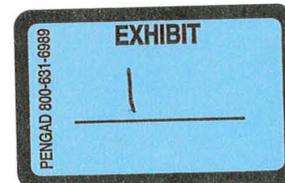
Case No. 79/12-148

13 **7TH STREET TEST ONLY**
2331 South 7th Street #7
San Jose, CA 95112
SHAELYN YO LE, OWNER
14 **Automotive Repair Dealer Registration No.**
ARD 263240
15 **Smog Check Test Only Station License No.**
TC 263240,

FIRST AMENDED ACCUSATION
SMOG CHECK

17 **PABLO SERGIO NEVAREZ**
3710 El Camino Real, Unit K
18 **Santa Clara, CA 95051**
Advanced Emission Specialist Technician
19 **License No. EA 631779 (to be redesignated**
upon renewal as EO 631779 and/or EI
20 **631779)**

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23 **MONTEREY TEST ONLY**
2845 Monterey Road, #21
San Jose, CA 95111
24 **SHAELYN YO LE, OWNER**
25 **Automotive Repair Dealer Registration No.**
ARD 263325
26 **Smog Check Test Only Station License No.**
TC 263325



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SHAELYN YO LE
2076 Lucretia Avenue, Apt. 205
San Jose, CA 95122
Advanced Emission Specialist Technician
License No. EA 633490 (to be redesignated
upon renewal as EO 633490 and/or EI
633490)

Respondents.

Complainant alleges:

PARTIES

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

Automotive Repair Dealer Registration 7th Street Test Only

2. On or about September 9, 2010, the Bureau issued Automotive Repair Dealer Registration Number ARD 263240 (“registration”) to Shaelyn Yo Le (“Respondent 7th Street”), doing business as 7th Street Test Only. The registration was in full force and effect at all times relevant to the charges brought herein and expired on September 30, 2012.

Smog Check Test Only Station License 7th Street Test Only

3. On or about January 19, 2011, the Bureau issued Smog Check Test Only Station License Number TC 263240 (“station license”) to Respondent 7th Street. The station license was in full force and effect at all times relevant to the charges brought herein and expired on September 30, 2012.

Advanced Emission Specialist Technician License

4. On or about February 22, 2010, the Bureau issued Advanced Emission Specialist Technician License Number EA 631779 (“technician license”) to Pablo Sergio Nevarez (“Respondent Nevarez”). The technician license was in full force and effect at all times relevant

1 to the charges brought herein and will expire on January 31, 2014, unless renewed. Upon renewal
2 of the license, the license will be redesignated as EO 631779 and/or EI 631779.¹

3 **Automotive Repair Dealer Registration Monterey Test Only**

4 5. On or about September 21, 2010, the Bureau issued Automotive Repair Dealer
5 Registration Number ARD 263325 (“registration”) to Shaelyn Yo Le, doing business as Monterey
6 Test Only. The registration was in full force and effect at all times relevant to the charges
7 brought herein and was due to expire on September 30, 2011; however, on August 31, 2011, the
8 registration was cancelled.

9 **Smog Check Test Only Station License Monterey Test Only**

10 6. On or about January 19, 2011, the Bureau issued Smog Check Test Only Station
11 License Number TC 263325 (“station license”) to Shaelyn Yo Le, doing business as Monterey
12 Test Only. The station license was in full force and effect at all times relevant to the charges
13 brought herein and was due to expire on September 30, 2011; however, the registration was
14 cancelled on August 31, 2011.

15 **Advanced Emission Specialist Technician License**

16 7. On or about August 10, 2011, the Bureau issued Advanced Emission Specialist
17 Technician License Number EA 633490 to Shaelyn Yo Le. The Advanced Emission Specialist
18 Technician License was in full force and effect at all times relevant to the charges brought herein
19 and will expire on January 31, 2014, unless renewed. Upon renewal of the license, the license will
20 be redesignated as EO 633490 and/or EI 633490.

21 **STATUTORY PROVISIONS**

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

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

1 9. Section 9884.7 of the Business and Professions Code (“Code”) states, in pertinent
2 part:

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

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

12 (4) Any other conduct that constitutes fraud.

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

19 ///

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

25 10. Section 118, subdivision (b) of the Business and Professions Code states:

26 The suspension, expiration, or forfeiture by operation of law of a license
27 issued by a board in the department, or its suspension, forfeiture, or cancellation by
28 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.

29 11. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
30 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
31 proceeding against an automotive repair dealer or to render a decision invalidating a registration
32 temporarily or permanently.

1 12. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
2 "commission," "committee," "department," "division," "examining committee," "program," and
3 "agency." "License" includes certificate, registration or other means to engage in a business or
4 profession regulated by the Code.

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

8 14. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

23 16. Section 44072.8 of the Health and Safety Code states:

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

27 COST RECOVERY

28 17. 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.

1 **SURVEILLANCE OPERATION – AUGUST 2, 2011**

2 18. On or about August 2, 2011, the Bureau performed a video-taped surveillance at
3 Respondent 7th Street’s facility, located at 2331 South 7th Street, #7, San Jose, California. The
4 surveillance operation and information obtained from the Bureau’s Vehicle Information Database
5 (“VID”) revealed that between 1631 hours and 1744 hours, Respondent Nevarez, performed two
6 (2) smog inspections that resulted in the issuance of electronic certificates of compliance for the
7 vehicles set forth in Table 1, below, certifying that they had tested and inspected those vehicles
8 and that the vehicles were in compliance with applicable laws and regulations. In fact,
9 Respondent Nevarez performed the smog inspections using the clean piping method² by using the
10 tail pipe emissions of vehicles other than the vehicles being certified in order to issue the
11 electronic certificates of compliance. The vehicles certified were not in the test bay at the time of
12 the smog inspections.

13
14 **Table 1**

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Date and Test Times	Vehicle Certified	Vehicle Actually Tested	Certificate Issued
1 8/2/2011 1631 hours to 1644 hours	1982 Buick Regal, License No. 1EZM573	1988 Ford E150 Econoline Van	OE898296
2 8/2/2011 1738 hours to 1744 hours	1992 Ford Explorer, License No. 4YJS643	Unknown	OE898300

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23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Misleading Statements)**

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26 ² “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 **FOURTH CAUSE FOR DISCIPLINE**

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

3 22. Respondent 7th Street has subjected her station license to discipline under Health and
4 Safety Code section 44072.2, subdivision (c), in that on or about August 2, 2011, regarding the
5 vehicles set forth in Table 1, above, she violated sections of the California Code of Regulations,
6 title 16, as follows:

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

10 b. **Section 3340.42:** Respondent 7th Street failed to conduct the required smog tests and
11 inspections on those vehicles in accordance with the Bureau's specifications.

12 **FIFTH CAUSE FOR DISCIPLINE**

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

14 23. Respondent 7th Street subjected her station license to discipline under Health and
15 Safety Code section 44072.2, subdivision (d), in that on or about August 2, 2011, regarding the
16 vehicles set forth in Table 1, above, she 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 systems 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 **SIXTH CAUSE FOR DISCIPLINE**

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

23 24. Respondent Nevarez has subjected his technician license to discipline under Health
24 and Safety Code section 44072.2, subdivision (a), in that on or about August 2, 2011, regarding
25 the vehicles set forth in Table 1, above, he violated sections of that Code, as follows:

26 a. **Section 44012, subdivision (a):** Respondent Nevarez 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 **PRIOR CITATION**

2 27. To determine the degree of penalty, if any, to be imposed upon Respondent Nevarez,,
3 Complainant alleges as follows:

4 a. On April 28, 2011, the Bureau issued Citation No. M2011-1274 to Respondent
5 Nevarez against his technician license for violations of Health and Safety Code section 44032,
6 (qualified technicians shall perform tests of emission control systems and devices in accordance
7 with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation")
8 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
9 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
10 3340.42). Respondent Nevarez issued a certificate of compliance to a Bureau vehicle with a
11 missing PCV valve. Respondent Nevarez was required to attend an 8-hour training course.
12 Respondent Nevarez appealed this citation on May 23, 2011. The matter is currently pending.

13 **OTHER MATTERS**

14 28. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,
15 or may invalidate temporarily or permanently, the registrations for all places of business operated
16 in this state by Shaelyn Yo Le, doing business 7th Street Test Only, upon a finding that she has,
17 or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining
18 to an automotive repair dealer, including but not limited to Automotive Repair Dealer
19 Registration Number ARD 263325, issued to Shaelyn Yo Le, doing business as Monterey Test
20 Only.

21 29. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station
22 License Number TC 263240, issued to Shaelyn Yo Le, doing business as 7th Street Test Only is
23 revoked or suspended, any additional license issued under this chapter in the name of said
24 licensee may be likewise revoked or suspended by the director including but not limited to Smog
25 Check Test Only Station License Number TC 263325, issued to Shaelyn Yo Le, doing business
26 as Monterey Test Only, and Advanced Emission Specialist Technician License Number EA
27 633490, issued to Shaelyn Yo Le (to be redesignated upon renewal as EO 633490 and/or EI
28 633490).

1 30. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist
2 Technician License Number EA 631779, (to be redesignated upon renewal as EO 631779 and/or
3 EI 631779.) issued to Pablo Sergio Nevarez, is revoked or suspended, any additional license
4 issued under this chapter in the name of said licensee may be likewise revoked or suspended by
5 the director.

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1 PRAYER

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

4 1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration
5 Number ARD 263240, issued to Shaelyn Yo Le, doing business as 7th Street Test Only;

6 2. Revoking, suspending or placing on probation any other automotive repair dealer
7 registration issued to Shaelyn Yo Le, including Automotive Repair Dealer Registration Number
8 ARD 263325, issued to Shaelyn Yo Le, doing business as Monterey Test Only;

9 3. Revoking or suspending Smog Check Test Only Station License Number TC 263240,
10 issued to Shaelyn Yo Le, doing business as 7th Street Test Only;

11 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
12 and Safety Code in the name of Shaelyn Yo Le, including but not limited to Smog Check Test
13 Only Station License Number TC 263325, issued to Shaelyn Yo Le, doing business as Monterey
14 Test Only, and Advanced Emission Specialist Technician License Number EA 633490, issued to
15 Shaelyn Yo Le (to redesignated upon renewal as EO 633490 and/or EI 633490).;

16 5. Revoking or suspending Advanced Emission Specialist Technician License Number
17 EA 631779, (to be redesignated as EO 631779 and/or EI 631779 upon renewal) issued to Pablo
18 Sergio Nevarez;

19 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
20 and Safety Code in the name of Pablo Sergio Nevarez;

21 7. Ordering Shaelyn Yo Le and Pablo Sergio Nevarez to pay the Bureau of Automotive
22 Repair the reasonable costs of the investigation and enforcement of this case, pursuant to
23 Business and Professions Code section 125.3; and,

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

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DATED: October 30, 2013

Patrick Dorais

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

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7th A Street Accusation Amended 10892616.doc