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

10
11 In the Matter of the Accusation Against:
12 **A1 TEST ONLY CENTER**
906 W. Evelyn Ave
13 Sunnyvale, CA 94086
14 **WILLIAM TONG, OWNER**

15 **Mailing Address:**
1746 Galewood Ct.
16 San Jose, CA 95133

17 **Automotive Repair Dealer Registration No.**
ARD 269131
18 **Smog Check Test Only Station License No.**
TC 269131

19 and

20 **JOE HUNG NGUYEN**
3598 Cour Du Vin
21 San Jose, CA 95148

22 **Advanced Emission Specialist Technician**
License No. EA 634760, to be redesignated
23 upon renewal as EO634760 and/or EI634760

24 Respondent.

Case No. 79/14-12

A C C U S A T I O N
(Smog Check)

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26 Complainant alleges:
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PARTIES

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

Automotive Repair Dealer Registration

2. On or about May 16, 2012, the Bureau issued Automotive Repair Dealer Registration Number ARD 269131 (“registration”) to William Tong (“Respondent Tong”) doing business as A1 Test Only Center. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2014, unless renewed.

Smog Check Test Only Station License

3. On or about May 24, 2012, the Bureau issued Smog Check Test Only Station License Number TC 269131 (“station license”) to Respondent Tong. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2014, unless renewed.

Advanced Emission Specialist Technician License

4. On or about September 13, 2012, the Bureau issued Advanced Emission Specialist Technician License Number EA 634760 (“technician license”) to Joe Hung Nguyen (“Respondent Nguyen”). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2014, unless renewed. Upon renewal of the license, the license will be re-designated as EO 634760 and/or EI 634760.¹

5. Respondent Tong and Respondent Nguyen shall be collectively referred to as “Respondents.”

JURISDICTION

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

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.

1 A licensed smog check inspector and/or repair technician shall comply with the following
2 requirements at all times while licensed:

3 (a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
4 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
5 article.

6 ...

7 16. California Code of Regulations, title 16, section **3340.35(c)**, states, in pertinent part:

8 (c) A licensed station shall issue a certificate of compliance or noncompliance to the owner
9 or operator of any vehicle that has been inspected in accordance with the procedures specified in
10 section 3340.42 of this article and has all the required emission control equipment and devices
11 installed and functioning correctly.

12 ...

13 17. California Code of Regulations, title 16, section **3340.41(c)**, states:

14 No person shall enter into the emissions inspection system any vehicle identification
15 information or emission control system identification data for any vehicle other than the one
16 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
17 information about the vehicle being tested.

18 **FACTUAL SUMMARY**

19 18. On or about April 25, 2013, the Bureau's investigative staff conducted an undercover
20 surveillance operation at Respondent Tong's shop, A1 Test Only Center. Respondents² were
21 observed to perform fraudulent smog inspections, as follows:

22 a. Fraudulent Inspection 1: Respondents purported to test a 2001 Volkswagen Jetta,
23 license number 4SJZ840, entered information in the Emissions Inspection System
24 regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle
25 that Respondent Nguyen tested was a late 1990's Asian car. The 2001 Volkswagen
26 Jetta was not in the test bay of the facility at the time of the certification.

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28 ² Respondent Nguyen performed the smog tests on behalf of Respondent Tong.

- 1 b. Fraudulent Inspection 2: Respondents purported to test a 1995 BMW 3-Series, license
2 number 3LWG642, entered information in the Emissions Inspection System regarding
3 said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that
4 Respondent Nguyen tested was a late 1990's Asian car. The 1995 BMW 3-Series was
5 not in the test bay of the facility at the time of the certification.
- 6 c. Fraudulent Inspection 3: Respondents purported to test a 2001 Honda Prelude, license
7 number 4RYJ513, entered information in the Emissions Inspection System regarding
8 said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that
9 Respondent Nguyen tested was a late 1990's Asian car. The 2001 Honda Prelude was
10 not in the test bay of the facility at the time of the certification.
- 11 d. Fraudulent Inspection 4: Respondents purported to test a 1994 Toyota Corolla, license
12 number 6BGB469, entered information in the Emissions Inspection System regarding
13 said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that
14 Respondents tested was a late 1990's Asian car. The 1994 Toyota Corolla was not in
15 the test bay of the facility at the time of the certification.
- 16 e. Fraudulent Inspection 5: Respondents purported to test a 1996 Cadillac Seville, license
17 number 5EJR831, and entered information in the Emissions Inspection System
18 regarding said vehicle. In reality, the vehicle that Respondent tested was a 1999
19 Chevrolet Blazer, license number 5NZJ511. The 1996 Cadillac Seville was not in the
20 test bay of the facility at the time of the test.
- 21 f. Fraudulent Inspection 6: Respondents purported to test a Ford F250 truck, license
22 number 8E17751, entered information in the Emissions Inspection System regarding
23 said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that
24 Respondent tested was a 1999 Chevrolet Blazer, license number 5NZJ511. The Ford
25 F250 truck was not in the test bay of the facility at the time of the certification.
- 26 g. Fraudulent Inspection 7: Respondents purported to test a 1996 Jeep Cherokee, license
27 number 4XBB911, entered information in the Emissions Inspection System regarding
28 said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that

1 Respondents tested was a 1999 Chevrolet Blazer, license number 5NZJ511. The 1996
2 Jeep Cherokee was not in the test bay of the facility at the time of the certification.

3 h. Fraudulent Inspection 8: Respondents purported to test a 1995 Toyota T100 truck,
4 license number 7S99762, entered information in the Emissions Inspection System
5 regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle
6 that Respondents tested was a 1999 Chevrolet Blazer, license number 5NZJ511. The
7 1995 Toyota T100 truck, was not in the test bay of the facility at the time of the
8 certification.

9 i. Fraudulent Inspection 9: Respondents purported to test a 1994 Mercedes S420, license
10 number 3HEM265, entered information in the Emissions Inspection System regarding
11 said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that
12 Respondents tested was a 1999 Chevrolet Blazer, license number 5NZJ511. The 1994
13 Mercedes S420 was not in the test bay of the facility at the time of the certification.

14 j. Fraudulent Inspection 10: Respondents purported to test a 1995 Nissan Maxima,
15 license number 4UPN410, entered information in the Emissions Inspection System
16 regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle
17 that Respondents tested was a 1999 Chevrolet Blazer, license number 5NZJ511. The
18 1995 Nissan Maxima was not in the test bay of the facility at the time of the
19 certification.

20 k. Fraudulent Inspection 11: Respondents purported to test a 1980 Porsche 924, license
21 number 6MPP042, entered information in the Emissions Inspection System regarding
22 said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that
23 Respondents tested was a late 1990s Asian car. The 1980 Porsche 924 was not in the
24 test bay of the facility at the time of the certification.

25 l. Fraudulent Inspection 12: Respondents purported to test a 1977 Nissan truck, license
26 number 1F09988, entered information in the Emissions Inspection System regarding
27 said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that
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1 Respondent tested was a late 1990s Asian Car. The 1977 Nissan truck was not in the
2 test bay of the facility at the time of the certification.

- 3 m. Fraudulent Inspection 13: Respondents purported to test a 1994 Saturn SL, license
4 number 5KEZ254, entered information in the Emissions Inspection System regarding
5 said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that
6 Respondent tested was a late 1990's Asian car. The 1994 Saturn SL was not in the test
7 bay of the facility at the time of the certification.
- 8 n. Fraudulent Inspection 14: Respondents purported to test a 1993 Nissan 240SX, license
9 number 3SYX067, entered information in the Emissions Inspection System regarding
10 said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that
11 Respondent tested was a late 1990's Asian car. The 1993 Nissan 240SX was not in the
12 test bay of the facility at the time of the certification.
- 13 o. Fraudulent Inspection 15: Respondents purported to test a 1994 BMW 3-Series, license
14 number 6GUY632, entered information in the Emissions Inspection System regarding
15 said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that
16 Respondent tested was a late 1990's Asian car. The 1994 BMW 3-Series was not in the
17 test bay of the facility at the time of the certification.
- 18 p. Fraudulent Inspection 16: Respondents purported to test a 1997 BMW 7-Series, license
19 number 3VLX222, entered information in the Emissions Inspection System regarding
20 said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that
21 Respondents tested was a 1999 Chevrolet Blazer, license number 5NZJ511. The 1997
22 BMW 7-Series was not in the test bay of the facility at the time of the certification.
- 23 q. Fraudulent Inspection 17: Respondents purported to test a 1987 Chevrolet Camero,
24 license number 2FAM933, entered information in the Emissions Inspection System
25 regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle
26 that Respondents tested was a 1999 Chevrolet Blazer, license number 5NZJ511. The
27 1987 Chevrolet Camero was not in the test bay of the facility at the time of the
28 certification.

- 1 r. Fraudulent Inspection 18: Respondents purported to test a 1997 Chevrolet Astro,
2 license number 6SHY271, entered information in the Emissions Inspection System
3 regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle
4 that Respondents tested was a 1999 Chevrolet Blazer, license number 5NZJ511. The
5 1997 Chevrolet Astro was not in the test bay of the facility at the time of the
6 certification.
- 7 s. Fraudulent Inspection 19: Respondents purported to test a 1986 Dodge D350 truck,
8 license number 5B82263, entered information in the Emissions Inspection System
9 regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle
10 that Respondents tested was a 1999 Chevrolet Blazer, license number 5NZJ511. The
11 1986 Dodge D350 was not in the test bay of the facility at the time of the certification.
- 12 t. Fraudulent Inspection 20: Respondents purported to test a 1999 Chevrolet C1500,
13 license number 5VOT583, entered information in the Emissions Inspection System
14 regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle
15 that Respondents tested was a 1999 Chevrolet Blazer, license number 5NZJ511. The
16 1999 Chevrolet C1500 was not in the test bay of the facility at the time of the
17 certification.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Misleading Statements - Registration)**

20 19. Respondent Tong has subjected his registration to discipline under Code section
21 9884.7, subdivision (a)(1), in that he made statements which he knew or which by exercise of
22 reasonable care he should have known were untrue or misleading, as set forth above in paragraph
23 18. Respondent Tong fraudulently purported to test vehicles in Fraudulent Inspections 1-20, and
24 certified that the vehicles in Fraudulent Inspections 1-20 passed inspection and were in
25 compliance with applicable laws and regulations. In fact, Respondent conducted the inspections
26 on those vehicles using clean-piping methods.

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1 deceit, whereby another was injured by issuing electronic certificates of compliance for vehicles
2 without performing bona fide inspections of the emission control devices and systems on the
3 vehicles, thereby depriving the People of the State of California of the protection afforded by the
4 Motor Vehicle Inspection Program, as set forth above in paragraph 18.

5 **FIFTH CAUSE FOR DISCIPLINE**

6 **(Violations of the Motor Vehicle Inspection Program – Technician License)**

7 23. Respondent Nguyen has subjected his technician license to discipline under Health
8 and Safety Code section 44072.2, subdivisions (a) and (c), in that he violated sections of that
9 Code and applicable regulations, as set forth above in paragraph 18, as follows:

10 a. **Section 44012:** Respondent Nguyen failed to ensure that the emission control tests
11 were performed on those vehicles in accordance with procedures prescribed by the department.

12 b. **Section 44015:** Respondent Nguyen issued electronic certificates of compliance for
13 those vehicles without ensuring that the vehicles were properly tested and inspected to determine
14 if they were in compliance with Health and Safety Code section 44012.

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

18 d. **Section 3340.24, subdivision (c):** Respondent Nguyen falsely or fraudulently issued
19 electronic certificates of compliance for those vehicles without performing bona fide inspections
20 of the emission control devices and systems on the vehicles as required by Health and Safety
21 Code section 44012.

22 e. **Section 3340.30, subdivision (a):** Respondent Nguyen failed to inspect and test
23 those vehicles in accordance with Health and Safety Code section 44012.

24 f. **Section 3340.35, subdivision (c):** Respondent Nguyen issued electronic certificates
25 of compliance even though those vehicles had not been inspected in accordance with section
26 3340.42.

27 g. **Section 3340.42:** Respondent Nguyen failed to conduct the required smog tests and
28 inspections on those vehicles in accordance with the Bureau's specifications.

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud or Deceit – Technician License)**

3 24. Respondent Nguyen subjected his technician license to discipline under Health and
4 Safety Code section 44072.2, subdivision (d), in that he committed acts involving dishonesty,
5 fraud or deceit, whereby another was injured by issuing electronic certificates of compliance for
6 vehicles without performing bona fide inspections of the emission control devices and systems on
7 the vehicles, thereby depriving the People of the State of California of the protection afforded by
8 the Motor Vehicle Inspection Program, as set forth above in paragraph 18.

9 **PRAYER**

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

12 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
13 269131, issued to William Tong

14 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
15 269131, issued to William Tong;

16 3. Ordering William Tong to pay the Bureau of Automotive Repair the reasonable costs
17 of the investigation and enforcement of this case, pursuant to Business and Professions Code
18 section 125.3;

19 4. Revoking or suspending Advanced Emission Specialist Technician License No. EA
20 634760, to be redesignated upon renewal as EO634760 and/or EI634760, issued to Joe Hung
21 Nguyen;

22 5. Ordering Joe Hung Nguyen to pay the Bureau of Automotive Repair the reasonable
23 costs of the investigation and enforcement of this case, pursuant to Business and Professions
24 Code section 125.3;

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

DATED: September 6, 2013



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

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