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

11 In the Matter of the Accusation Against:

12 **SMOG HAVEN, INC.**
13 **MICHAEL HUYNH, President**
1037 Lakehaven Drive
Sunnyvale, CA 94089

14 **Automotive Repair Dealer Registration No.**
15 **ARD 238275**
16 **Smog Check, Test Only, Station License No.**
TC 238275

17 **MICHAEL HUYNH**
2234 W. 9th Street
18 Santa Ana, CA 92703

19 **Smog Check Inspector License No. EO**
150613
20 **Smog Check Repair Technician License No.**
EI150613
21 **(Formerly Advanced Emission Specialist**
22 **Technician License No. EA 150613)**

23
24 Respondents.

Case No. 79/13-59
ACCUSATION
(SMOG CHECK)

1 Complainant alleges:

2 **PARTIES**

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

5 **LICENSE INFORMATION**

6 **Automotive Repair Dealer Registration No. ARD 238275**

7 2. On or about April 28, 2005, the Bureau issued Automotive Repair Dealer
8 Registration Number ARD 238275 ("registration") to Smog Haven Inc, Michael Huynh -
9 President (Respondent), doing business as Smog Haven. The registration was in full force and
10 effect at all times relevant to the charges brought herein and will expire on March 31, 2013,
11 unless renewed.

12 **Smog Check Test Only Station License No. TC 238275**

13 3. On or about May 2, 2005, the Bureau issued Smog Check Test Only Station License
14 Number TC 238275 ("station license") to Respondent. The station license was in full force and
15 effect at all times relevant to the charges brought herein and will expire on March 31, 2013,
16 unless renewed.

17 **Advanced Emission Specialist Technician License EA 150613**

18 4. In or about 2005, the Director issued Advanced Emission Specialist Technician
19 License Number EA 150613 to Michael Huynh (Respondent Huynh), President of Smog Haven
20 Inc. Respondent's advanced emission specialist technician license was due to expire on September
21 30, 2012. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e),
22 said license was renewed, pursuant to Respondent's election, as Smog Check Inspector License
23 No. EO 150613 and Smog Check Repair Technician License No. EI 150613, effective August 15,
24 2012.¹ Respondent's smog check inspector license and smog check repair technician license will
25 expire on September 30, 2014, unless renewed.

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
(continued...)

JURISDICTION

- 1
- 2 4. Business and Professions Code ("Bus & Prof Code") section 9884.7 provides that the
- 3 Director may revoke an automotive repair dealer registration.
- 4 5. Bus & Prof Code section 9884.13 provides, in pertinent part: that the expiration of a
- 5 valid registration shall not deprive the Director of jurisdiction to proceed with a
- 6 disciplinary proceeding against an automotive repair dealer or to render a decision
- 7 temporarily or permanently invalidating (suspending or revoking) a registration.
- 8 Health and Safety Code ("Health and Saf. Code") section 44002, provides, in pertinent
- 9 part, that the Director has all the powers and authority granted under the Automotive
- 10 Repair Act for enforcing the Motor Vehicle Inspection Program.

STATUTORY PROVISIONS

- 11 6. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
- 12 part:
- 13 (a) The director, where the automotive repair dealer cannot show there was a bona fide
- 14 error, may deny, suspend, revoke, or place on probation the registration of an automotive
- 15 repair dealer for any of the following acts or omissions related to the conduct of the
- 16 business of the automotive repair dealer, which are done by the automotive repair dealer
- 17 or any automotive technician, employee, partner, officer, or member of the automotive
- 18 repair dealer.
- 19 (1) Making or authorizing in any manner or by any means whatever any statement written
- 20 or oral which is untrue or misleading, and which is known, or which the exercise of
- 21 reasonable care should be known, to be untrue or misleading.
- 22 (3) Failing or refusing to give to a customer a copy of any document requiring his or her
- 23 signature, as soon as the customer signs the document.
- 24 (4) Any other conduct that constitutes fraud.
- 25 (6) Failure in any material respect to comply with provisions of this chapter or regulations
- 26 adopted pursuant to it.
- 27 (b) Except as provided for in subdivision (c), if an automotive repair dealer operates more
- 28 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.

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

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

6 8. Code section 9884.9, subdivision (a), states, in pertinent part:

7 (a) The automotive repair dealer shall give to the customer a written estimated price for
8 labor and parts necessary for a specific job. No work shall be done and no charges shall
9 accrue before authorization to proceed is obtained from the customer. No charge shall be
10 made for work done or parts supplied in excess of the estimated price without the oral or
11 written consent of the customer that shall be obtained at some time after it is determined
12 that the estimated price is insufficient and before the work not estimated is done or the
13 parts not estimated are supplied. Written consent or authorization for an increase in the
14 original estimated price may be provided by electronic mail or facsimile transmission
15 from the customer. The bureau may specify in regulation the procedures to be followed by
16 an automotive repair dealer when an authorization or consent for an increase in the
17 original estimated price is provided by electronic mail or facsimile transmission. If that
18 consent is oral, the dealer shall make a notation on the work order of the date, time, name
19 of person authorizing the additional repairs and telephone number called, if any, together
20 with a specification of the additional parts and labor and the total additional cost . . .

21 9. Code section 118, subdivision (b) states:

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

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

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

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

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

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

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

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

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

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

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

11 COST RECOVERY

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

16 UNDERCOVER OPERATION – July 26, 2012

17 16. On or about July 26, 2012, a Bureau undercover operator (“operator”) drove a
18 Bureau documented 1993 Lexus SC300 to Smog Haven and requested a smog inspection. The
19 ignition timing had been adjusted beyond specifications, causing the vehicle to be incapable of
20 passing a smog inspection. The operator was not provided with a written estimate prior to the
21 smog inspection. Respondent performed the smog inspection and issued electronic Certificate of
22 Compliance No. [REDACTED], certifying that he had tested and inspected the vehicle and that it was
23 in compliance with applicable laws and regulations when, in fact, the vehicle could not have
24 passed the functional portion of the smog inspection because the vehicle’s ignition timing had
25 been adjusted beyond specifications. The operator paid Respondent \$65, and was provided with a
26 copy of Invoice and Estimate No. [REDACTED] and a Vehicle Inspection Report.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 17. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in
4 that on or about July 26, 2012, he made statements which he knew or which by exercise of
5 reasonable care should have known to be untrue or misleading by issuing electronic Certificate of
6 Compliance No. [REDACTED] for the 1993 Lexus SC300, certifying that the vehicle was in
7 compliance with applicable laws and regulations when, in fact, it could not have passed the
8 functional portion of the smog inspection because the vehicle's ignition timing had been adjusted
9 beyond specifications.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 18. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in
13 that on or about July 26, 2012, he committed acts constituting fraud by issuing electronic
14 Certificate of Compliance No. [REDACTED] for the 1993 Lexus SC300 without performing a bona
15 fide inspection of the emission control devices and systems on the vehicle, thereby depriving the
16 People of the State of California of the protection afforded by the Motor Vehicle Inspection
17 Program.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with Code)**

20 19. Respondent has subjected his registration to discipline pursuant to Code section
21 9884.7, subdivision (a)(6), in that on or about July 26, 2012, Respondent failed to comply with
22 the following section of that code:

23 a. **Section 9884.9, subdivision (a):** Respondent failed to provide the operator with a
24 written estimated price for parts and labor for a specific job.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 20. Respondent's station license is subject to discipline pursuant to Health & Safety Code
4 section 44072.2, subdivision (a), in that on or about July 26, 2012, regarding the 1993 Lexus
5 SC300 he failed to comply with the following sections of that Code:

6 a. **Section 44012, subdivision (f):** Respondent failed to perform emission control
7 inspections on the vehicle in accordance with procedures prescribed by the department.

8 b. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
9 Compliance No. [REDACTED] for the vehicle without properly inspecting the vehicle to determine
10 if it was in compliance with Health & Safety Code section 44012.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations)**

13 21. Respondent's station license is subject to discipline pursuant to Health & Safety Code
14 section 44072.2, subdivision (c), in that on or about July 26, 2012, regarding the 1993 Lexus
15 SC300, he failed to comply with provisions of California Code of Regulations, title 16, as
16 follows:

17 a. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
18 Compliance No. [REDACTED] for the vehicle even though the vehicle had not been inspected in
19 accordance with section 3340.42.

20 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the
21 Emission Inspection System unit by entering "Pass" for the functional portion of the inspection
22 when, in fact, the ignition timing had been adjusted beyond specifications.

23 c. **Section 3340.42:** Respondent failed to perform an emission control inspection on the
24 vehicle in accordance with procedures prescribed by the department.

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1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 22. Respondent's station license is subject to discipline pursuant to Health & Safety Code
4 section 44072.2, subdivision (d), in that on or about July 26, 2012, regarding the 1993 Lexus
5 SC300, he committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing
6 electronic Certificate of Compliance No. [REDACTED] for the vehicle without performing a bona
7 fide inspection of the emission control devices and systems on the vehicle, thereby depriving the
8 People of the State of California of the protection afforded by the Motor Vehicle Inspection
9 Program.

10 **SEVENTH CAUSE FOR DISCIPLINE**

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

12 23. Respondent Huynh's technician license is subject to discipline pursuant to Health
13 and Safety Code section 44072.2, subdivision (a), in that on or about July 26, 2012, regarding the
14 1993 Lexus SC300, he violated the following sections of that Code:

15 a. **Section 44012, subdivision (f):** Respondent failed to perform emission control
16 inspections on the vehicle in accordance with procedures prescribed by the department.

17 b. **Section 44032:** Respondent failed to perform an inspection of the emission control
18 devices and systems on the vehicle in accordance with section 44012 of that Code.

19 **EIGHTH CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Regulations)**

21 24. Respondent Huynh's technician license is subject to discipline pursuant to Health and
22 Safety Code section 44072.2, subdivision (c), in that on or about July 26, 2012, regarding the
23 1993 Lexus SC300, he violated the following sections of the California Code of Regulations, title
24 16:

25 a. **Section 3340.30, subdivision (a):** Respondent failed to perform the emission control
26 inspection in accordance with Health and Safety Code section 44012.

1 totaling \$1500 against Respondent for the violations. Respondent complied with this citation on
2 September 15, 2011.

3 c. On or about April 11, 2012, the Bureau issued Citation No. C2012-1342 against
4 Respondent for violation of Health and Safety Code section 44012(f) (Failure to determine that
5 emission control devices and systems required by State and Federal law are installed and
6 functioning correctly in accordance with test procedures.). The Bureau assessed civil penalties
7 totaling \$1,500 against Respondent for the violations. Respondent complied with this citation on
8 May 31, 2012.

9 d. On or about August 2, 2011, the Bureau issued Citation No. M2012-0106 to
10 Respondent Huynh for violation of Health and Safety Code section 44032 (failure to perform
11 tests of emission control systems and devices in accordance with section 44012). The citation
12 required Respondent Huynh to complete an eight (8) hour training course. Respondent Huynh
13 complied with the citation on August 12, 2011.

14 c. On or about April 11, 2012, the Bureau issued Citation No. M2012-1343 to
15 Respondent Huynh for violation of Health and Safety Code section 44032 (failure to perform
16 tests of emission control systems and devices in accordance with section 44012). The citation
17 required Respondent Huynh to complete a sixteen (16) hour training course. Respondent Huynh
18 complied with the citation on May 13, 2012.

19 **OTHER MATTERS**

20 27. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
21 probation the registrations for all places of business operated in this state by Smog Haven Inc.,
22 Michael Huynh - President, upon a finding that he has, or is, engaged in a course of repeated and
23 willful violation of the laws and regulations pertaining to an automotive repair dealer.

24 28. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
25 Station License Number TC 238275, issued to Smog Haven Inc., Michael Huynh - President,
26 doing business as Smog Haven, is revoked or suspended, any additional license issued under this
27 chapter in the name of said licensees may be likewise revoked or suspended by the director.

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

DATED: 3/15/13

John Wallauch by [Signature]
JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
DONALD BALATTI
Complainant

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