

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

Received in BAR EPO
SEP 14 2015

In the Matter of the Accusation Against:

**NATIONAL CITY SMOG CHECK,
MICHELLE T. HUYNH, OWNER**
105 West 18th Street
San Diego, CA 91950

Automotive Repair Dealer Registration No.
ARD 261929
Smog Check-Test Only Station License No.
TC 261929,

KENNY N. HUYNH
1008 Via Sinuoso
Chula Vista, CA 91910

Smog Check Inspector License No. EO 151008
Smog Check Repair Technician License No. EI
151008 (formerly Advanced Emission Specialist
Technician License No. EA 151008),

and

JUAN CARLOS PEREZ
700 North First Street
El Cajon, CA 92021

Smog Check Inspector License No. EO 632204
Smog Check Repair Technician License No. EI
632204 (formerly Advanced Emission
Specialist Technician License No. EA
632204)

Respondents.

Case No. 79/15-98

OAH No. 2015050118

DECISION

The attached Stipulated Settlement and Disciplinary Order as to Respondent Juan Carlos Perez Only is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter, only as to respondent Juan Carlos Perez, Smog Check Inspector License No. EO 632204, Smog Check Repair Technician License No. EI 632204 (formerly Advanced Emission Specialist Technician License No. EA 633204); except that the following typographical error is corrected as follows:

Page 2, line 16: The expiration date of "October 30, 2016" is corrected to "June 30, 2016."

The suspension of Smog Check Inspector License No. EO 632204 and Smog Check Repair Technician License No. EI 632204, issued to Juan Carlos Perez, shall commence on the effective date of this Decision.

This Decision shall become effective October 8, 2015.

DATED: September 9, 2015



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

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2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
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9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 79/15-98

12 **NATIONAL CITY SMOG CHECK,**
13 **MICHELLE T. HUYNH, OWNER**
14 **105 West 18th Street**
San Diego, CA 91950

OAH No. 2015050118

15 **Automotive Repair Dealer Registration No. ARD**
261929
16 **Smog Check-Test Only Station License No. TC**
261929,

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
RESPONDENT JUAN CARLOS
PEREZ ONLY

17 **KENNY N. HUYNH**
18 **1008 Via Sinuoso**
Chula Vista, CA 91910

19 **Smog Check Inspector License No. EO 151008**
20 **Smog Check Repair Technician License No. EI**
151008 (formerly Advanced Emission Specialist
21 **Technician License No. EA 151008),**

22 **and**

23 **JUAN CARLOS PEREZ**
700 North First Street
24 **El Cajon, CA 92021**

25 **Smog Check Inspector License No. EO 632204**
Smog Check Repair Technician License No. EI
26 **632204 (formerly Advanced Emission Specialist**
Technician License No. EA 632204)

27 Respondents.

1 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
2 entitled proceedings that the following matters are true:

3 PARTIES

4 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He
5 brought this action solely in his official capacity and is represented in this matter by Kamala D.
6 Harris, Attorney General of the State of California, by Nicole R. Trama, Deputy Attorney
7 General.

8 2. Respondent Juan Carlos Perez ("Respondent") is representing himself in this
9 proceeding and has chosen not to exercise his right to be represented by counsel.

10 3. On June 24, 2010, the Director issued Advanced Emission Specialist Technician
11 License Number EA 632204 to Juan Carlos Perez (Respondent Perez). Respondent Perez's
12 advanced emission specialist technician license was due to expire on June 30, 2014. Pursuant to
13 California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was
14 renewed, in accordance with Respondent Perez's election, as Smog Check Inspector License
15 Number EO 632204 and Smog Check Repair Technician License Number EI 632204, effective
16 June 2, 2014. Respondent Perez's smog check licenses will expire on October 30, 2016, unless
17 renewed.

18 JURISDICTION

19 4. Accusation No. 79/15-98 was filed before the Director of Consumer Affairs
20 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
21 Respondent. The Accusation and all other statutorily required documents were properly served
22 on Respondent on March 12, 2015. Respondent timely filed his Notice of Defense contesting the
23 Accusation.

24 5. A copy of Accusation No. 79/15-98 is attached as exhibit A and incorporated herein
25 by reference.

1 ADVISEMENT AND WAIVERS

2 6. Respondent has carefully read, and understands the charges and allegations in
3 Accusation No. 79/15-98. Respondent has also carefully read, and understands the effects of this
4 Stipulated Settlement and Disciplinary Order.

5 7. Respondent is fully aware of his legal rights in this matter, including the right to a
6 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
7 his own expense; the right to confront and cross-examine the witnesses against him; the right to
8 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
9 the attendance of witnesses and the production of documents; the right to reconsideration and
10 court review of an adverse decision; and all other rights accorded by the California
11 Administrative Procedure Act and other applicable laws.

12 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
13 every right set forth above.

14 CULPABILITY

15 9. Respondent admits the truth of each and every charge and allegation in Accusation
16 No. 79/15-98.

17 10. Respondent agrees that his licenses are subject to discipline and he agrees to be bound
18 by the Director's probationary terms as set forth in the Disciplinary Order below.

19 CONTINGENCY

20 11. This stipulation shall be subject to approval by the Director of Consumer Affairs or
21 the Director's designee. Respondent understands and agrees that counsel for Complainant and the
22 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of
23 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
24 or participation by Respondent. By signing the stipulation, Respondent understands and agrees
25 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the
26 Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision
27 and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except
28

1 for this paragraph, it shall be inadmissible in any legal action between the parties, and the
2 Director shall not be disqualified from further action by having considered this matter.

3 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
4 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
5 signatures thereto, shall have the same force and effect as the originals.

6 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
7 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
8 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
9 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
10 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
11 writing executed by an authorized representative of each of the parties.

12 14. In consideration of the foregoing admissions and stipulations, the parties agree that
13 the Director may, without further notice or formal proceeding, issue and enter the following
14 Disciplinary Order:

15 **DISCIPLINARY ORDER**

16 IT IS HEREBY ORDERED that Smog Check Inspector License Number EO 632204 and
17 Smog Check Repair Technician License Number EI 632204 issued to Respondent Juan Carlos
18 Perez (Respondent) are revoked. However, the revocation is stayed and Respondent is placed on
19 probation for three (3) years on the following terms and conditions.

20 1. **Actual Suspension.** that Smog Check Inspector License Number EO 632204 and
21 Smog Check Repair Technician License Number EI 632204 issued to Respondent Juan Carlos
22 Perez is suspended for five (5) days.

23 2. **Obey All Laws.** Comply with all statutes, regulations and rules governing
24 automotive inspections, estimates and repairs.

25 3. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning
26 and ending dates of the suspension and indicating the reason for the suspension. The sign shall be
27 conspicuously displayed in a location open to and frequented by customers and shall remain
28 posted during the entire period of actual suspension.

1 4. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect
2 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

3 5. **Jurisdiction.** If an accusation is filed against Respondent during the term of
4 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter
5 until the final decision on the accusation, and the period of probation shall be extended until such
6 decision.

7 6. **Violation of Probation.** Should the Director of Consumer Affairs determine that
8 Respondent has failed to comply with the terms and conditions of probation, the Department may,
9 after giving notice and opportunity to be heard suspend or revoke the license.

10 7. **Continuing Education Courses.** During the period of probation, Respondent shall
11 attend and successfully complete a Bureau approved Level 1, 68 hour training course within 180
12 days of the effective date of the Decision and order. If proof of completion of the course is not
13 furnished to the Bureau within the 180-day period, Respondents' license shall be immediately
14 suspended until such proof is received.

15 8. **Cost Recovery.** Respondent shall pay to the Bureau costs associated with its
16 investigation and enforcement in the amount of \$5,000 in twenty four (24) equal monthly
17 installments. Payment to the Bureau of the full amount of cost recovery shall be received no later
18 than twelve (12) months before probation terminates. Failure to complete payment of cost
19 recovery within this time frame shall constitute a violation of probation which may subject
20 Respondent's licenses to outright revocation; however, the Director or the Director's Bureau of
21 Automotive Repair designee may elect to continue probation until such time as reimbursement of
22 the entire cost recovery amount has been made to the Bureau.

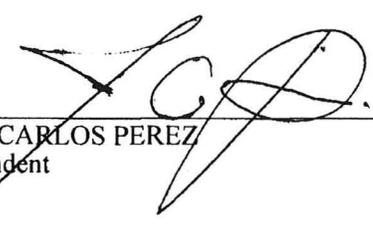
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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Smog Check Inspector License and Smog Check Repair Technician License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED:

6/19/15



JUAN CARLOS PEREZ
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated:

6/23/2015

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General


NICOLE R. TRAMA
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/15-98

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17 **261929,**
18 **KENNY N. HUYNH**
1008 Via Sinuoso
19 **Chula Vista, CA 91910**
20 **Smog Check Inspector License No. EO 151008**
Smog Check Repair Technician License No. EI
21 **151008 (formerly Advanced Emission**
Specialist Technician License No. EA 151008),
22 **and**
23 **JUAN CARLOS PEREZ**
700 North First Street
24 **El Cajon, CA 92021**
25 **Smog Check Inspector License No. EO 632204**
Smog Check Repair Technician License No. EI
26 **632204 (formerly Advanced Emission**
Specialist Technician License No. EA 632204)
27
28 Respondents.

Case No. **79/15-98**
ACCUSATION

1 Complainant alleges:

2 **PARTIES**

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

5 **Automotive Repair Dealer Registration of Respondent Michelle T. Huynh**

6 2. On May 12, 2010, the Bureau of Automotive Repair issued Automotive Repair
7 Dealer Registration Number ARD 261929 to Michelle T. Huynh (Respondent Owner), owner of
8 National City Smog Check. The Automotive Repair Dealer Registration was in full force and
9 effect at all times relevant to the charges brought herein and will expire on April 30, 2015, unless
10 renewed.

11 **Smog Check Test Only Station License of Respondent Michelle T. Huynh**

12 3. On June 2, 2010, the Bureau of Automotive Repair issued Smog Check-Test Only
13 Station License Number TC 261929 to Michelle T. Huynh (Respondent Owner), owner of
14 National City Smog Check. The Smog Check-Test Only Station License was in full force and
15 effect at all times relevant to the charges brought herein and will expire on April 23, 2015, unless
16 renewed.

17 **Smog Check Licenses of Respondent Kenny N. Huynh**

18 4. In 2007, the Director issued Advanced Emission Specialist Technician License
19 Number EA 151008 to Kenny N. Huynh (Respondent Manager). Respondent Manager's
20 advanced emission specialist technician license was due to expire on February 28, 2013.
21 Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license
22 was renewed, in accordance with Respondent Manager's election, as Smog Check Inspector
23 License Number EO 151008 and Smog Check Repair Technician License Number EI 151008,
24 effective November 15, 2012.¹ Respondent Manager's Smog Check Repair Technician License
25

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 Number EI 151008 expired on February 28, 2015, and has not been renewed. Respondent
2 Manager's Smog Check Inspector License Number EO 151008 will expire on February 28,
3 2017, unless renewed

4 **Smog Check Licenses of Respondent Juan Carlos Perez**

5 5. On June 24, 2010, the Director issued Advanced Emission Specialist Technician
6 License Number EA 632204 to Juan Carlos Perez (Respondent Perez). Respondent Perez's
7 advanced emission specialist technician license was due to expire on June 30, 2014. Pursuant to
8 California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was
9 renewed, in accordance with Respondent Perez's election, as Smog Check Inspector License
10 Number EO 632204 and Smog Check Repair Technician License Number EI 632204, effective
11 June 2, 2014. Respondent Perez's smog check licenses will expire on October 30, 2016, unless
12 renewed.

13 **JURISDICTION**

14 6. This Accusation is brought before the Director of Consumer Affairs (Director) for
15 the Bureau of Automotive Repair, under the authority of the following laws. All section
16 references are to the Business and Professions Code (Code) unless otherwise indicated.

17 7. Code section 22, subdivision (a), states:

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

22 8. Code section 118, subdivision (b) states:

23 The suspension, expiration, or forfeiture by operation of law of a license
24 issued by a board in the department, or its suspension, forfeiture, or cancellation by
25 order of the board or by order of a court of law, or its surrender without the written
26 consent of the board, shall not, during any period in which it may be renewed,
27 restored, reissued, or reinstated, deprive the board of its authority to institute or
28 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 477 provides, in pertinent part, that "Board" includes "bureau,"
"commission," "committee," "department," "division," "examining committee," "program," and

1 "agency." "License" includes certificate, registration or other means to engage in a business or
2 profession regulated by the Code.

3 10. Code section 9884.5 provides in pertinent part that a registration that is not
4 renewed within three years following its expiration shall not be renewed, restored, or reinstated
5 thereafter, and the delinquent registration shall be canceled immediately upon expiration of the
6 three-year period.

7 11. Code section 9884.7 provides that the Director may revoke an automotive repair
8 dealer registration.

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

13 13. Code section 9889.1 provides, in pertinent part, that the Director may suspend or
14 revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the
15 Automotive Repair Act.

16 14. Code section 9889.7 provides, in pertinent part, that the expiration or suspension
17 of a license by operation of law or by order or decision of the Director or a court of law, or the
18 voluntary surrender of a license shall not deprive the Director of jurisdiction to proceed with any
19 disciplinary proceedings.

20 15. Health and Safety Code (H & S Code) 44001 states:

21 (a) The Legislature hereby finds and declares that California has been
22 required, by the amendments enacted to the Clean Air Act in 1990, and by
23 regulations adopted by the Environmental Protection Agency, to enhance
24 California's existing motor vehicle inspection and maintenance program to meet
25 new, more stringent emission reduction targets. Therefore, the Legislature
26 declares that the 1994 amendments to this chapter are adopted to implement
27 further improvements in the existing inspection and maintenance program so that
28 California will meet or exceed the new emission reduction targets.

26 (b) The Legislature further finds and declares all of the following:

27 (1) California is recognized as a leader in establishing performance
28 standards for its air quality programs and those standards have been adopted by
many other states and countries.

1 (2) Studies show that a minority of motor vehicles produce a
2 disproportionate amount of the pollution caused by vehicle emissions. Those
3 vehicles are referred to as gross polluters.

4 (3) The concept of periodic testing alone does not act as a
5 sufficient deterrent to tampering, or as a sufficient incentive for vigilant vehicle
6 maintenance by a significant percentage of motorists. Gross polluters continue to
7 be driven on the roadways of California.

8 (4) (A) New technology, known as remote sensing, offers great
9 promise as a cost-effective means to detect vehicles emitting excess emissions as
10 the vehicles are being driven. This type of detection offers many valuable
11 applications, especially its use between scheduled tests, as an inexpensive,
12 random, and pervasive means of identifying vehicles which are gross polluters
13 and targeting those vehicles for repair or other methods of emission reduction.

14 (B) Another new technology, the development of emissions
15 profiles for motor vehicles, allows the motor vehicle inspection program to
16 accurately identify both high- and low-emitting vehicles. This technology may
17 allow the full or partial exception of certain vehicles from biennial certification
18 requirements to the extent determined by the department.

19 (5) California continues to seek strict adherence to federal and state
20 performance standards and to results-based evaluations that meet the state's
21 unique circumstances, and which consist of all of the following:

22 (A) Acceptance of the shared obligation and personal
23 responsibility required to successfully inspect and maintain millions of motor
24 vehicles. Specifically, that obligation begins with this chapter, and extends
25 through those regulators charged with its implementation and enforcement.
26 Through the enactment of the 1994 amendments to this chapter, the Legislature
27 hereby recognizes and seeks to encourage, through a number of innovative and
28 significant steps, the critical role that each California motorist must play in
maintaining his or her vehicle's emission control systems in proper working
order, in such a way as to continuously meet mandated emission control standards
and ensure for California the clean air essential to the health of its citizens, its
communities, and its economy.

(B) A focus on the detection, diagnosis, and repair of broken,
tampered, or malfunctioning vehicle emission control systems.

(C) Flexibility to incorporate and implement future new
scientific findings and technological advances.

(D) Consideration of convenience and costs to those who are
required to participate, including motorists, smog check stations, and technicians.

(E) An enforcement program which is vigorous and effective
and includes monitoring of the performance of the smog check test or repair
stations and technicians, as well as the monitoring of vehicle emissions as
vehicles are being driven.

///

1 (c) The Legislature further finds and declares that California is, as of
2 the effective date of this section, implementing a number of motor vehicle
3 emission reduction strategies far beyond the effort undertaken by any other state,
4 including all of the following:

5 (1) California certification standards exceed those of the other 49
6 states, increasing the cost of a new car to a California consumer by one hundred
7 fifty dollars (\$150) or more.

8 (2) State board regulations mandate increasing availability for sale
9 of low-emission, ultra-low emission, and zero-emission vehicles, including, by
10 2003, 10 percent zero-emission vehicles.

11 (3) Effective in 1996, state board regulations mandate the
12 reformulation of gasoline for reduced emissions, at an estimated increased
13 production cost of 5 to 15 cents per gallon due to refinery modifications and
14 higher production costs.

15 (4) Cleaner diesel fuel regulations, more stringent than federal
16 standards, took effect in California in October 1993, increasing diesel fuel costs
17 by 4 to 6 cents per gallon.

18 (5) California law provides for vehicle registration surcharges of
19 up to four dollars (\$4) per vehicle in nonattainment areas for air quality-related
20 projects.

21 (6) California law taxes cleaner fuels at one-half the rate of
22 gasoline and diesel fuel.

23 (7) California law provides tax credits for the purchase of low-
24 emission vehicles.

25 (8) California requires smog checks and repairs whenever a vehicle
26 changes ownership, some 3 million vehicles annually, in addition to the regular
27 biennial tests.

28 (9) Low-value vehicles are discouraged from entering California
due to the imposition of a three hundred dollar (\$300) smog impact fee on
vehicles that are not manufactured to California certification standards.

(10) California imposes sales taxes on motor vehicle fuels and
dedicates most of those revenues to mass transit. This increases the cost of fuels
by seven cents (\$.07) per gallon.

(11) Transportation sales taxes in most urban counties also
generate substantial funding for transit and other congestion-reduction measures,
costing the average urban California resident fifty dollars (\$50) to one hundred
dollars (\$100) annually, which would be the equivalent of another 8 to 16 cents
per gallon of fuel.

16. 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.

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17. H & S Code section 44072.2 states:

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 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 licenseholder 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.
- (e) Has misrepresented a material fact in obtaining a license.
- (f) Aids or abets unlicensed persons to evade the provisions of this chapter.
- (g) Fails to make and keep records showing his or her transactions as a licensee, or fails to have those records available for inspection by the director or his or her duly authorized representative for a period of not less than three years after completion of any transaction to which the records refer, or refuses to comply with a written request of the director to make the records available for inspection.
- (h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

18. H & S Code section 44072.4 states:

The director may take disciplinary action against any licensee after a hearing as provided in this article by any of the following:

- (a) Imposing probation upon terms and conditions to be set forth by the director.
- (b) Suspending the license.
- (c) Revoking the license.

19. 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.

20. H & S Code section 44072.7 provides that all accusations against licensees shall be filed within three years after the act or omission alleged as the ground for disciplinary action,

1 except that with respect to an accusation alleging a violation of subdivision (d) of Section
2 44072.2, the accusation may be filed within two years after the discovery by the Bureau of the
3 alleged facts constituting the fraud or misrepresentation prohibited by that section.

4 21. H & S Code section 44072.8 states:

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

8 22. H & S Code section 44072.10 states, in pertinent part:

9

10 (c) The department shall revoke the license of any smog check
11 technician or station licensee who fraudulently certifies vehicles or participates in
12 the fraudulent inspection of vehicles. A fraudulent inspection includes, but is not
13 limited to, all of the following:

14 (1) Clean piping², as defined by the department.

15

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

21 STATUTORY PROVISIONS

22 24. Code section 482 states:

23 Each board under the provisions of this code shall develop criteria to
24 evaluate the rehabilitation of a person when:

25 (a) Considering the denial of a license by the board under Section 480; or

26 (b) Considering suspension or revocation of a license under Section 490.

27 Each board shall take into account all competent evidence of rehabilitation
28 furnished by the applicant or licensee.

² Clean-piping" is a method used to fraudulently certify vehicles that will not pass a
Smog Check test on their own and/or, are not present for testing. To "Clean Pipe" the Technician
uses a "clean" exhaust gas sample that will pass the Smog Check emission test, while entering
data into the EIS for the vehicle to be fraudulently certified.

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25. 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*. Any 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 the provisions of 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 Senate Bill 797 of the 2007-08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

26. 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.

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27. 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.

....

(3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.

(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.

....

28. Code section 9884.9 states, in pertinent part:

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

(1) Make a notation on the invoice of the same facts set forth in the notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs, in the following language:

1 "I acknowledge notice and oral approval of an increase in the original
2 estimated price.

3 (signature or initials)"

4 Nothing in this section shall be construed as requiring an automotive
5 repair dealer to give a written estimated price if the dealer does not agree to
6 perform the requested repair.

7 29. H & S Code section 44012 states:

8 The test at the smog check stations shall be performed in accordance with
9 procedures prescribed by the department and may require loaded mode
10 dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a
11 vehicle's onboard diagnostic system, or other appropriate test procedures as
12 determined by the department in consultation with the state board. The
13 department shall implement testing using onboard diagnostic systems, in lieu of
14 loaded mode dynamometer or two-speed idle testing, on model year 2000 and
15 newer vehicles only, beginning no earlier than January 1, 2013. However, the
16 department, in consultation with the state board, may prescribe alternative test
17 procedures that include loaded mode dynamometer or two-speed idle testing for
18 vehicles with onboard diagnostic systems that the department and the state board
19 determine exhibit operational problems. The department shall ensure, as
20 appropriate to the test method, the following:

21 (a) Emission control systems required by state and federal law are
22 reducing excess emissions in accordance with the standards adopted pursuant to
23 subdivisions (a) and (c) of Section 44013.

24 (b) Motor vehicles are preconditioned to ensure representative and
25 stabilized operation of the vehicle's emission control system.

26 (c) For other than diesel-powered vehicles, the vehicle's exhaust emissions
27 of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an
28 idle mode or loaded mode are tested in accordance with procedures prescribed by
the department. In determining how loaded mode and evaporative emissions
testing shall be conducted, the department shall ensure that the emission reduction
targets for the enhanced program are met.

(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative
system and crankcase ventilation system are tested to reduce any nonexhaust
sources of volatile organic compound emissions, in accordance with procedures
prescribed by the department.

(e) For diesel-powered vehicles, a visual inspection is made of emission
control devices and the vehicle's exhaust emissions are tested in accordance with
procedures prescribed by the department, that may include, but are not limited to,
onboard diagnostic testing. The test may include testing of emissions of any or all
of the pollutants specified in subdivision (c) and, upon the adoption of applicable
standards, measurement of emissions of smoke or particulates, or both.

1 (f) A visual or functional check is made of emission control devices
2 specified by the department, including the catalytic converter in those instances in
3 which the department determines it to be necessary to meet the findings of
4 Section 44001. The visual or functional check shall be performed in accordance
5 with procedures prescribed by the department.

6 (g) A determination as to whether the motor vehicle complies with the
7 emission standards for that vehicle's class and model-year as prescribed by the
8 department.

9 (h) An analysis of pass and fail rates of vehicles subject to an onboard
10 diagnostic test and a tailpipe test to assess whether any vehicles passing their
11 onboard diagnostic test have, or would have, failed a tailpipe test, and whether
12 any vehicles failing their onboard diagnostic test have or would have passed a
13 tailpipe test.

14 (i) The test procedures may authorize smog check stations to refuse the
15 testing of a vehicle that would be unsafe to test, or that cannot physically be
16 inspected, as specified by the department by regulation. The refusal to test a
17 vehicle for those reasons shall not excuse or exempt the vehicle from compliance
18 with all applicable requirements of this chapter.

19 30. H&S Code section 44013 states, in pertinent part:

20 (a) (1) The department, in cooperation with the state board, shall prescribe
21 maximum emission standards to be applied in inspecting motor vehicles under
22 this chapter.

23 (2) In prescribing the standards, the department shall undertake studies
24 and experiments which are necessary and feasible, evaluate available data, and
25 confer with automotive engineers.

26 (3) The standards shall be set at a level reasonably achievable for each
27 class and model of motor vehicle when operating in a reasonably sound
28 mechanical condition, allowing for the effects of installed motor vehicle pollution
control devices and the motor vehicle's age and total mileage.

(4) The standards shall be designed so that motor vehicles failing the
test specified in Section 44012 will be operated, as soon as possible, with a
substantial reduction in emissions, and shall be revised from time to time as
experience justifies.

....
(c) Notwithstanding any other provision of this chapter, the maximum
emission standards and test procedures prescribed in subdivisions (a) and (b) for a
motor vehicle class and model-year shall not be more stringent than the emission
standards and test procedures under which that motor vehicle's class and model-
year was certified. Emission standards and test procedures prescribed by the
department shall ensure that not more than 5 percent of the vehicles or engines,
which would otherwise meet the requirements of this part, will fail the inspection
and maintenance test for that class of vehicle or engine.
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31. H & S Code section 44015 states, in pertinent part:

(a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle that meets the following criteria:

(1) A vehicle that has been tampered with.

....

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

....

32. H & S Code section 44032 states:

No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smog check station. Qualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.

33. H & S Code section 44059 states:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.

REGULATORY PROVISIONS

34. California Code of Regulations, title 16 (CCR), section 3340.24 states in pertinent part:

....

(c) The burcau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falscly or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance.

35. CCR section 3340.30 states, in pertinent part:

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

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

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36. CCR section 3340.35 states, in pertinent part:

....

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

(1) Customers shall be charged the same price for certificates as that paid by the licensed station; and

(2) Sales tax shall not be assessed on the price of certificates.

....

37. CCR section 3340.41 states, in pertinent part:

....

(b) No person shall enter into the emissions inspection system any access or qualification number other than as authorized by the bureau, nor in any way tamper with the emissions inspection system.

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

....

38. Regulations, section 3340.42 states:

Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45.

(a) All vehicles subject to a smog check inspection, shall receive one of the following test methods:

(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the bureau's specifications referenced in subsection (a) of Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection shall be measured and compared to the emissions standards shown in the Vehicle Look-up Table (VLT) Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby incorporated by reference. If the emissions standards for a specific vehicle are not included in this

1 table then the exhaust emissions shall be compared to the emissions standards set
2 forth in TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode
3 test if all of its measured emissions are less than or equal to the applicable
emission standards specified in the applicable table.

4 (2) A two-speed idle mode test shall be the test method used to
inspect 1976 - 1999 model-year vehicles, except diesel-powered, registered in all
5 program areas of the state, except in those areas of the state where the enhanced
6 program has been implemented. The two-speed idle mode test shall measure
hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and
7 again at idle RPM, as contained in the bureau's specifications referenced in
subsection (a) of Section 3340.17 of this article. Exhaust emissions from a vehicle
8 subject to this inspection shall be measured and compared to the emission
standards set forth in this section and as shown in TABLE III. A vehicle passes
9 the two-speed idle mode test if all of its measured emissions are less than or equal
to the applicable emissions standards specified in Table III.

10 (3) An OBD-focused test, shall be the test method used to inspect
11 gasoline-powered vehicles 2000 model-year and newer, and diesel-powered
vehicles 1998 model-year and newer. The OBD test failure criteria are specified
12 in section 3340.42.2.

13 (b) In addition to subsection (a), all vehicles subject to the smog check
program shall receive the following:

14 (1) A visual inspection of emission control components and
15 systems to verify the vehicle's emission control systems are properly installed.

16 (2) A functional inspection of emission control systems as
17 specified in the Smog Check Manual, referenced by section 3340.45, which may
include an OBD test, to verify their proper operation.

18 (c) The bureau may require any combination of the inspection
methods in sections (a) and (b) under any of the following circumstances:

19 (1) Vehicles that the department randomly selects pursuant to
20 Health and Safety Code section 44014.7 as a means of identifying potential
operational problems with vehicle OBD systems.

21 (2) Vehicles identified by the bureau as being operationally or
22 physically incompatible with inspection equipment.

23 (3) Vehicles with OBD systems that have demonstrated operational
problems.

24 (d) Pursuant to section 39032.5 of the Health and Safety Code, gross
polluter standards are as follows:

25 (1) A gross polluter means a vehicle with excess hydrocarbon,
26 carbon monoxide, or oxides of nitrogen emissions pursuant to the gross polluter
emissions standards included in the tables described in subsection (a), as
27 applicable.

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1 (2) Vehicles with emission levels exceeding the emission standards
2 for gross polluters during an initial inspection will be considered gross polluters
3 and the provisions pertaining to gross polluting vehicles will apply, including, but
not limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

4 (3) A gross polluting vehicle shall not be passed or issued a
5 certificate of compliance until the vehicle's emissions are reduced to or below the
6 applicable emissions standards for the vehicle included in the tables described in
7 subsection (a), as applicable. However, the provisions described in section 44017
8 of the Health and Safety Code may apply.

9 (4) This subsection applies in all program areas statewide to
10 vehicles requiring inspection pursuant to sections 44005 and 44011 of the Health
11 and Safety Code.

12 COST RECOVERY

13 39. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request
14 the administrative law judge to direct a licentiate found to have committed a violation or
15 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
16 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not
17 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
18 may be included in a stipulated settlement.

19 BACKGROUND

20 40. Based on a report that Kenny N. Huynh (Respondent Manager) was performing
21 unauthorized smog check inspections using the license of Juan Carlos Perez (Respondent Perez),
22 on May 20, June 11, and June 25, 2014, the Bureau of Automotive Repair (BAR) investigated
23 the smog check activities of Michelle T. Huynh (Respondent Owner), owner of National City
24 Smog Check and found five serious instances of fraud. As a smog check inspector, Respondent
25 Perez is required to properly smog test a vehicle to ensure that it is in good operating condition
26 and meets emissions standards. During three days of surveillance, Respondent Manager and
27 Respondent Perez were video recorded on five separate occasions falsifying entries and smog
28 test results. In four occasions, Respondent Manager performed smog check inspections on the
undercover vehicle and two other vehicles using Respondent Perez's license and access code to
operate the Emission Inspection System (EIS) or BAR 97. In one occasion, Respondent Perez
utilized the clean-piping method to perform a smog check of a vehicle.

1 1988 Toyota had met the requirements of H & S Code section 44012 when, in fact, it had not.
2 Respondent Owner's employee should have instead issued a Certificate of Non-Compliance.

3 **SEVENTH CAUSE FOR DISCIPLINE**
4 **Smog Check Inspector License**
5 **(Failure to Comply with Regulations)**

6 50. Respondent Manager has subjected his Smog Check Inspector License to
7 discipline under H & S Code section 44072.2, subdivision (c), in that Respondent Manager failed
8 to comply with California Code of Regulations, Title 16, section 3340.41, subdivision (c), by
9 entering false vehicle identification information or emissions control system identification into
10 the EIS on the 1988 Toyota referenced in paragraphs 41-43, above.

11 a. **Section 44012:** Respondent Manager failed to perform complete smog
12 tests on the 1988 Toyota in accordance with test procedures prescribed by the department.

13 b. **Section 44012, subdivision (f):** Respondent Manager failed to perform a
14 visual or functional check on the emission control devices of the 1988 Toyota in accordance with
15 procedures prescribed by the department.

16 c. **Section 44015, subdivision (b):** Respondent Manager willfully made false
17 entries for electronic Certificate of Compliance No. [REDACTED], certifying that the 1988 Toyota
18 had met the requirements of H & S Code section 44012 when, in fact, it had not. Respondent
19 Manager should have instead issued a Certificate of Non-Compliance.

20 d. **Section 44032:** Respondent Manager failed to perform tests of the
21 emission control devices and systems on the 1988 Toyota in accordance with section 44012 of
22 that Code, in that he was not the designated qualified smog check technician authorized to have
23 access to the station's EIS.

24 **EIGHTH CAUSE FOR DISCIPLINE**
25 **Smog Check Inspector License**
26 **(Violations of Regulations)**

27 51. Respondent Manager has subjected his Smog Check Inspector License to
28 discipline under Health and Safety Code section 44072.2, subdivision (c), in that on May 20,
2014, as referenced in paragraphs 41-43, above, he violated sections of the California Code of
Regulations, Title 16, as follows:

1 a. **Section 3340.30, subdivision (a):** Respondent Manager failed to inspect
2 and test the 1988 Toyota as the designated licensed smog check inspector in accordance with
3 Health and Safety Code sections 44012 and 44035, and section 3340.42, as detailed in
4 subparagraph (d), below.

5 b. **Section 3340.41, subdivision (b):** Respondent Manager fraudulently
6 issued electronic Certificate of Compliance No. [REDACTED] for the 1988 Toyota by entering
7 into the emissions inspection system the access code and qualification number of Respondent
8 Perez, the only licensed smog inspector authorized by the bureau.

9 c. **Section 3340.41, subdivision (c):** Respondent Manager entered false
10 information into the EIS for electronic Certificate of Compliance No. [REDACTED] for the 1988
11 Toyota by entering vehicle information indicating that the vehicle passed the inspection when it
12 did not.

13 d. **Section 3340.42:** Respondent Manager failed to conduct the required
14 smog tests on the 1988 Toyota in accordance with the Bureau's specifications.

15 **CLEAN PIPED VEHICLE – 1989 TOYOTA COROLLA**

16 **Undercover Surveillance – Inspection Number 2 on June 11, 2014**

17 52. On June 11, 2014, Juan Carlos Perez (Respondent Perez), a licensed smog
18 inspector technician at National City Smog Check, owned by Michelle T. Huynh (Respondent
19 Owner), issued a smog Certificate of Compliance for a 1989 Toyota Corolla, VIN
20 1NXAB92E1KZ054661, CA License 2NZZ091 (1989 Toyota). According to the information
21 provided to BAR by Respondent Perez, the 1989 Toyota was smog tested between 9:15 a.m. and
22 9:28 a.m., on June 11, 2014.

23 53. A BAR representative observed and video recorded Respondent Perez using the
24 clean-piping method to fraudulently certify the 1989 Toyota. The BAR representative observed
25 and recorded that at 9:04 a.m. Respondent Perez's car arrived at Respondent Owner's facility. At
26 9:17 a.m., Respondent Perez was observed driving a 1991 Honda Accord (1991 Honda) into the
27 testing bay. Thereafter, Respondent Perez was observed inserting the analyzer probe into the
28 tailpipe of the 1991 Honda. At 9:29 a.m., the 1991 Honda left the facility. Respondent Perez

1 represented to BAR that he was testing the 1989 Toyota from 9:15 a.m. to 9:28 a.m., when in
2 reality he was testing the 1991 Honda. Respondent Perez used the "clean" exhaust from the 1991
3 Honda to certify the exhaust of the 1989 Toyota. In reality, the 1989 Toyota was not even
4 present at Respondent Owner's testing bay during the smog test on record. Respondent Perez
5 certified to BAR that he had smog tested the 1989 Toyota and issued smog Certificate of
6 Compliance No. YH042312C for the 1989 Toyota Corolla, CA License 2NZZ091, when in fact
7 this was not true.

8 **UNAUTHORIZED SMOG CHECK – 1998 BMW**

9 **Undercover Surveillance – Inspection Number 2 on June 11, 2014**

10 54. On June 11, 2014, Respondent Manager issued a smog Certificate of Compliance
11 for a 1998 BMW 3-Series, CA License 5HER943. According to the information provided to
12 BAR by Respondent Manager, Respondent Perez smog tested the 1998 BMW between 8:37 a.m.
13 and 8:52 a.m., on June 11, 2014.

14 55. A BAR representative observed and videotaped Respondent Manager using
15 Respondent Perez's license and access code to perform an unauthorized smog check inspection
16 on the 1998 BMW. The BAR representative observed and recorded that between 8:37 a.m. and
17 8:52 a.m., Respondent Owner's testing bay was manned by Respondent Manager. The BAR
18 representative also observed and recorded that at 9:05 a.m., Respondent Perez arrived at
19 Respondent Owner's facility. Respondent Manager represented to BAR that Respondent Perez
20 was testing the 1988 BMW from 8:37 a.m. to 8:52 a.m., when in actuality it was Respondent
21 Manager who was testing the 1998 BMW. Respondent Manager used the license and access code
22 of Respondent Perez to certify the 1998 BMW. In actuality, Respondent Perez did not perform
23 any test at Respondent Owner's test bay until 9:05 a.m. Respondent Manager certified to BAR
24 that Respondent Perez had smog tested the 1998 BMW and issued passing smog Certificate of
25 Compliance No. YH042311C for the 1998 BMW 3-Series, CA License 5HER943, when in fact
26 this was not true.

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1 **UNAUTHORIZED SMOG CHECK – 2004 TOYOTA**

2 **Undercover Surveillance – Inspection Number 3 on June 25, 2014**

3 56. On June 25, 2014, Respondent Manager attempted to issue a smog Certificate of
4 Compliance for a 2004 Toyota Sienna, CA License 5JKZ168. According to the information
5 provided to BAR by Respondent Manager, the 2004 Toyota was smog tested between 10:15 a.m.
6 and 10:26 a.m., on June 25, 2014, by Respondent Perez.

7 57. A BAR representative videotaped and recorded Respondent Manager using
8 Respondent Perez's license and access code to perform an unauthorized smog check inspection
9 on the 2004 Toyota. The BAR representative observed and recorded that between 10:14 a.m. and
10 10:27 a.m., Respondent Owner's testing bay was manned by Respondent Manager. The BAR
11 representative also observed and recorded that at 10:49 a.m., Respondent Perez arrived at
12 Respondent Owner's facility. Respondent Manager represented to BAR that Respondent Perez
13 was testing the 2004 Toyota from 10:15 a.m. to 10:26 a.m., when in actuality it was Respondent
14 Manager who was testing the 2004 Toyota. Respondent Manager used the license and access
15 code of Respondent Perez in attempting to certify the 2004 Toyota. In actuality, Respondent
16 Perez was not even present at Respondent Owner's test bay during the ASM test of the 2004
17 Toyota. Respondent Manager certified to BAR that Respondent Perez had attempted to perform
18 an ASM test, which was aborted, on the 2004 Toyota Sienna, CA License 5JKZ168, when in fact
19 this was not true.

20 **UNAUTHORIZED SMOG CHECK – 2004 TOYOTA**

21 **Undercover Surveillance – Inspection Number 3 on June 25, 2014**

22 58. On June 25, 2014, Respondent Manager issued a smog Certificate of Compliance
23 for a 2004 Toyota Sienna, CA License 5JKZ168. According to the information provided to BAR
24 by Respondent Manager, the 2004 Toyota was smog tested between 10:28 a.m. and 10:33 a.m.,
25 on June 25, 2014, by Respondent Perez.

26 59. A BAR representative videotaped and recorded Respondent Manager using
27 Respondent Perez's license and access code to perform unauthorized smog check inspection on
28 the 2004 Toyota. The BAR representative observed and recorded that between 10:28 a.m. and

1 10:36 a.m., Respondent Owner's testing bay was manned by Respondent Manager. The BAR
 2 representative also observed and recorded that at 10:49 a.m., Respondent Perez arrived at
 3 Respondent Owner's facility. Respondent Manager represented to BAR that Respondent Perez
 4 was testing the 2004 Toyota from 10:28 a.m. to 10:33 a.m., when in actuality it was Respondent
 5 Manager who was testing the 2004 Toyota. Respondent Manager used the license and access
 6 code of Respondent Perez to certify the 2004 Toyota. In actuality, Respondent Perez was not
 7 even present at Respondent Owner's test bay during the two-speed idle (TSI) test. Respondent
 8 Manager certified to BAR that Respondent Perez had performed a TSI test on the 2004 Toyota,
 9 and issued smog Certificate of Compliance No. YH288062C for the 2004 Toyota Sienna, CA
 10 License 5JKZ168, when in fact this was not true.

11 60. All four fraudulent smog check inspections set forth below, were performed by
 12 Respondent Manager using Respondent Perez's smog check inspector license number:

Date & Time of Inspection	Vehicle Certified and License Number	Certificate No.
1. 6/11/2014 8:37 to 8:52 a.m.	1998 BMW 3-Series, VIN WBACD4322WAV65758, CA License 5HER943	YH042311C
15 2. 6/11/2014 9:15 to 9:28 a.m.	1989 Toyota Corolla, VIN INXAE92E1KZ054661, CA License 2NZZ091	YH042312C
16 3. 6/25/2014 10:15 to 10:26 am	2004 Toyota Sienna, with VIN 5TDZA23C74S191053, CA License 5JKZ168	Aborted ASM Test
17 4. 6/25/2014 10:28 to 10:33 am	2004 Toyota Sienna, with VIN 5TDZA23C74S191053, CA License 5JKZ168	YH288062C

18
 19 **NINTH CAUSE FOR DISCIPLINE**
 20 **Automotive Repair Dealer Registration**
 21 **(Untrue or Misleading Statements)**

22 61. Respondent Owner has subjected her Automotive Repair Dealer Registration to
 23 discipline under Code section 9884.7, subdivision (a)(1), in that she made or authorized
 24 statements which she knew or in the exercise of reasonable care should have known to be untrue
 25 or misleading, as follows:

26 a. Respondent Owner's employee certified under penalty of perjury on
 27 Certificate of Compliance No. YH042311C that qualified smog check technician Respondent
 28 Perez performed the test required on the emission control devices or systems of the 1998 BMW

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1 3-Series, CA License 5HER943. In fact, it was Respondent Manager who performed the test
2 required on the vehicle's emission control devices or systems.

3 b. Respondent Owner's employee certified under penalty of perjury on
4 Certificate of Compliance No. YH042312C that the 1989 Toyota Corolla, CA License 2NZZ091
5 had passed inspection and was in compliance with applicable laws and regulations. Respondent
6 Perez used the "clean-piping" method in order to issue the smog certificate of compliance for the
7 1998 Toyota which had not been tested or inspected as required by H & S Code section 44012.
8 In fact, Respondent Perez never road tested the vehicle.

9 c. Respondent Owner's employee certified under penalty of perjury that
10 Respondent Perez was the only licensed smog technician employed by National City Smog
11 Check and that had access to EIS analyzer ES022542. In fact, it was Respondent Manager who
12 performed an aborted ASM test required on the emission control devices or systems of the 2004
13 Toyota Sienna, CA License 5JKZ168.

14 d. Respondent Owner's employee certified under penalty of perjury on
15 Certificate of Compliance No. YH288062C that qualified smog check technician Respondent
16 Perez performed the test required on the emission control devices or systems of 2004 Toyota
17 Sienna, VIN 5TDZA23C74S191053, CA License 5JKZ168. In fact, it was Respondent Manager
18 who performed the test required on the vehicle's emission control devices or systems.

19 **TENTH CAUSE FOR DISCIPLINE**
20 **Automotive Repair Dealer Registration**
21 **(Fraud)**

22 62. Respondent Owner has subjected her Automotive Repair Dealer Registration to
23 discipline under Code section 9884.7, subdivision (a)(4), in that Respondent Owner committed
24 acts which constitute fraud by issuing electronic smog certificates of compliance for the three
25 vehicles referenced in paragraphs 54-60, above, without performing a bona fide inspection of the
26 emission control devices and systems on the vehicles by the designated licensed smog
27 technician, thereby depriving the People of the State of California of the protection afforded by
28 the Motor Vehicle Inspection Program (H & S Code section 44000, et seq.).

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1 54-60, above, Respondent Owner failed to comply with provisions of California Code of
2 Regulations, Title 16, as follows:

3 a. **Section 3340.35, subdivision (c):** Respondent Owner's employee issued
4 electronic smog certificates of compliance for the three vehicles even though the vehicles had not
5 been inspected in accordance with section 3340.42.

6 b. **Section 3340.42:** Respondent Owner's employee failed to conduct the
7 required smog tests on the three vehicles in accordance with the Bureau's specifications.

8 **FOURTEENTH CAUSE FOR DISCIPLINE**

9 **Smog Check Inspector License
(Failure to Comply with Regulations)**

10 66. Respondent Manager has subjected his Smog Check Inspector License to
11 discipline under H & S Code section 44072.2, subdivision (c), in that Respondent Manager failed
12 to comply with California Code of Regulations, Title 16, section 3340.41, subdivision (c), by
13 entering false vehicle identification information or emissions control system identification into
14 the EIS on the three vehicles referenced in paragraphs 54-60, above.

15 a. **Section 44012:** Respondent Manager failed to perform complete smog
16 tests on the three vehicles in accordance with test procedures prescribed by the department.

17 b. **Section 44012, subdivision (f):** Respondent Manager failed to perform
18 visual or functional check on the emission control devices of the three vehicles in accordance
19 with procedures prescribed by the department.

20 c. **Section 44015, subdivision (b):** Respondent Manager willfully made false
21 entries for the electronic Certificates of Compliance, certifying that the three vehicles had met
22 the requirements of H & S Code section 44012 when, in fact, they had not.

23 d. **Section 44032:** Respondent Manager failed to perform tests of the
24 emission control devices and systems on the two vehicles in accordance with section 44012 of
25 that Code, in that he was not the designated qualified smog check technician authorized to have
26 access to the station's EIS machine.

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1 **FIFTEENTH CAUSE FOR DISCIPLINE**

2 **Smog Check Inspector License**
3 **(Violations of Regulations)**

4 67. Respondent Manager has subjected his Smog Check Inspector License to
5 discipline under Health and Safety Code section 44072.2, subdivision (c), in that on June 11 and
6 25, 2014, as referenced in paragraphs 54-60, above, he violated sections of the California Code
7 of Regulations, Title 16, as follows:

8 a. **Section 3340.30, subdivision (a):** Respondent Manager failed to inspect
9 and test the three vehicles identified in paragraph 60 as the designated licensed smog check
10 inspector in accordance with Health and Safety Code sections 44012 and 44035, and section
11 3340.42, as detailed in subparagraph (d), below.

12 b. **Section 3340.41, subdivision (b):** Respondent Manager falsely or
13 fraudulently issued electronic Certificates of Compliance by entering into the EIS the access
14 code and qualification number of Respondent Perez, the only licensed smog inspector authorized
15 by the bureau.

16 c. **Section 3340.42:** Respondent Manager failed to conduct the required
17 smog tests and inspections on three vehicles in accordance with the Bureau's specifications.

18 **SIXTEENTH CAUSE FOR DISCIPLINE**

19 **Smog Check Inspector License**
20 **(Failure to Comply with Regulations)**

21 68. Respondent Perez has subjected his Smog Check Inspector License to discipline
22 under H & S Code section 44072.2, subdivision (c), in that on June 11, 2014, Respondent Perez
23 failed to comply with California Code of Regulations, Title 16, section 3340.41, subdivision (c),
24 by entering false vehicle identification information or emissions control system identification
25 into the EIS on the 1989 Toyota Corolla, CA License 2NZZ091, referenced in paragraphs 52-53.

26 a. **Section 44012:** Respondent Perez failed to perform complete smog tests
27 on the 1989 Toyota in accordance with test procedures prescribed by the department.

28 b. **Section 44012, subdivision (f):** Respondent Perez failed to perform a
visual or functional check on the emission control devices of the 1989 Toyota in accordance with
procedures prescribed by the department.

1 c. **Section 44032:** Respondent Perez failed to perform tests of the emission
2 control devices and systems on the 1989 Toyota in accordance with section 44012 of that Code,
3 in that the vehicle had been clean piped.

4 d. **Section 44059:** Respondent Perez made false entries for electronic
5 Certificate of Compliance No. YH042312C, certifying that the 1989 Toyota had been inspected
6 as required when, in fact, it had not.

7 **SEVENTEENTH CAUSE FOR DISCIPLINE**

8 **Smog Check Inspector License**
9 **(Violations of Regulations)**

10 69. Respondent Perez has subjected his Smog Check Inspector License to discipline
11 under Health and Safety Code section 44072.2, subdivision (c), in that on June 11, 2014,
12 referenced in paragraphs 52-53, above, he violated sections of the California Code of
13 Regulations, Title 16, as follows:

14 a. **Section 3340.30, subdivision (a):** Respondent Perez failed to inspect and
15 test the 1989 Toyota, in compliance with the requirements of Health and Safety Code section
16 44012 and 44035; and section 3340.42, as detailed in subparagraph (d), below.

17 b. **Section 3340.41, subdivision (c):** Respondent Perez entered false
18 information into the EIS for electronic Certificate of Compliance No. YH042312C, by entering
19 vehicle identification information and emission control system identification for the 1989 Toyota
20 when he was testing a 1991 Honda.

21 c. **Section 3340.42:** Respondent Perez failed to conduct the required smog
22 tests and inspections on the 1989 Toyota in accordance with the Bureau's specifications.

23 **MATTERS IN AGGRAVATION**

24 70. To determine the degree of discipline, if any, to be imposed on Respondent,
25 Complainant alleges as follows:

26 a. On January 21, 2011, the Bureau issued Citation No. C2011-0833 to
27 Respondent Owner, for violations of H & S Code section 44012, subdivision (f) (failure to
28 determine that emission control devices and systems required by State and Federal law are
installed and functioning correctly in accordance with test procedures); and California Code of

1 Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a
2 vehicle that was improperly tested). On December 8, 2010, Respondent Owner's employee
3 issued Certificate of Compliance No. [REDACTED] to a Bureau undercover vehicle with the
4 ignition timing adjusted beyond specifications and failed to perform the required low-pressure
5 fuel evaporative test (LPFET)³. The Bureau assessed civil penalties totaling \$1,500.00 against
6 Respondent Owner for the violations. Respondent Owner paid the fine on March 29, 2012.

7 b. On January 21, 2011, the Bureau issued Citation No. M2011-0834 to
8 Respondent Manager, for violations of H & S Code section 44032 (qualified technicians shall
9 perform tests of emission control systems and devices in accordance with section 44012 H & S);
10 and California Code of Regulations, title 16, section 3340.30, subdivision (a) (qualified
11 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 H & S,
12 44035 H & S, and 3340.42 CCR). On December 8, 2010, Respondent Manager issued Certificate
13 of Compliance No. [REDACTED] to a Bureau undercover vehicle with the ignition timing adjusted
14 beyond specifications and failed to perform the required LPFET. The Bureau required
15 Respondent Manager to enroll in a 16-hour training course for the violations. Respondent
16 Manager completed the training on August 9, 2011.

17 c. On April 28, 2011, the Bureau issued Citation No. M2011-1282 to
18 Respondent Manager, for violation of H & S Code section 44032 (qualified technicians shall
19 perform tests of emission control systems and devices in accordance with section 44012 of the H
20 & S Code). On April 7, 2011, Respondent Manager issued Certificate of Compliance No.
21 WT770523 to a Bureau undercover vehicle with a missing evaporator canister. The Bureau
22 required Respondent Manager to enroll in a 16-hour training course for the violations.
23 Respondent Manager completed the training on August 9, 2011.

24 d. On April 28, 2011, the Bureau issued Citation No. C2011-1281 to
25 Respondent Owner, for violation of H & S Code section 44012, subdivision (f) (failure to
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27 ³ The LPFET functional test is performed on most 1995 and older vehicles. The
28 technician is required to follow the procedures set forth in the Bureau's Smog Check Inspection
Procedures Manual to determine if the vehicle requires an LPFET test.

1 determine that emission control devices and systems required by State and Federal law are
2 installed and functioning correctly in accordance with test procedures). On April 7, 2011,
3 Respondent Owner's employee issued Certificate of Compliance No. [REDACTED] to a Bureau
4 undercover vehicle with a missing evaporator canister. The Bureau assessed civil penalties
5 totaling \$1,500.00 against Respondent Owner for the violation. Respondent Owner paid the fine
6 on March 29, 2012.

7 **OTHER MATTERS**

8 71. Under Health and Safety Code section 44072.8, if Smog Check-Test Only Station
9 License Number TC 261929, issued to Michelle T. Huynh, owner of National City Smog Check,
10 is revoked or suspended, Automotive Repair Dealer Registration Number ARD 261929, and any
11 additional license issued under this chapter in the name of said licensee may be likewise revoked
12 or suspended by the director.

13 72. Under Health and Safety Code section 44072.8, if Smog Check Inspector License
14 Number EO 151008 issued to Kenny N. Huynh, is revoked or suspended, Smog Check Repair
15 Technician License Number EI 151008, and any additional license issued under this chapter in
16 the name of said licensee may be likewise revoked or suspended by the director.

17 73. Under Health and Safety Code section 44072.8, if Smog Check Inspector License
18 Number EO 632204 issued to Juan Carlos Perez, is revoked or suspended, Smog Check Repair
19 Technician License Number EI 632204, and any additional license issued under this chapter in
20 the name of said licensee may be likewise revoked or suspended by the director.

21 **PRAYER**

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

24 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
25 261929, issued to Michelle T. Huynh, owner of National City Smog Check;

26 2. Revoking or suspending Smog Check-Test Only Station License Number TC
27 261929, issued to Michelle T. Huynh, owner of National City Smog Check;

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1 3. Revoking or suspending Smog Check Inspector License Number EO 151008,
2 issued to Kenny N. Huynh;

3 4. Revoking or suspending Smog Check Repair Technician License Number EI
4 151008, issued to Kenny N. Huynh;

5 5. Revoking or suspending Smog Check Inspector License Number EO 632204,
6 issued to Juan Carlos Perez;

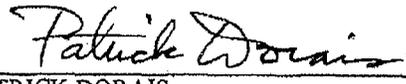
7 6. Revoking or suspending Smog Check Repair Technician License Number EI
8 632204, issued to Juan Carlos Perez;

9 7. Ordering Michelle T. Huynh, Kenny N. Huynh, and Juan Carlos Perez to pay the
10 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this
11 case, pursuant to Business and Professions Code section 125.3; and

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

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DATED: March 12, 2015



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

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