

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

In the Matter of the First Amended Accusation Against:

**ACCURATE DIAGNOSTICS AND SMOGS**

Dixon, CA 95620

**LUIS C. NAVARRO, OWNER**

Automotive Repair Dealer Registration

No. ARD 248267

Smog Check Station License No. RC

248267

Dixon, California

and

**RICARDO GALLARDO**

Dixon, CA 95620

Advanced Emission Specialist Technician

License No. EA 146134 (re-designated upon

Renewal as EI/EO License No. 146134)

Dixon, California

Case No. 79/11-97

OAH No. 2013031034

Respondents.

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, pursuant to Government Code section 11517(c)(2)(C), the typographical errors in the Proposed Decision are corrected as follows:

1. Page 3, paragraph 2, last sentence, under Factual Findings: The sentence "The ARD registration expired on November 30, 2013." is corrected to read "The ARD registration expires on November 30, 2014."
2. Page 3, paragraph 3, last sentence, under Factual Findings: The sentence "The Smog Check Station license expired on November 30, 2013." is corrected to read "The Smog Check Station license expires on November 30, 2014."
3. Page 46, paragraph #4 under Order: Advanced Emission Specialist (Smog Check) Technician License Number EA 146134 issued to respondent Ricardo Gallardo has been re-designated upon renewal as EI/EO license. Therefore, the reference to "Advanced Emission Specialist (Smog Check) Technician License Number EA 146134" is corrected to read "Smog Check Repair Technician License No. EI 146134 and Smog Check Inspector License No. EO 146134."

This Decision shall become effective

August 1, 2014

DATED: June 26, 2014



DONALD CHANG

Assistant Chief Counsel

Department of Consumer Affairs

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

In the Matter of the First Amended Accusation  
Against:

ACCURATE DIAGNOSTICS AND SMOGS  
Dixon, CA 95620  
LUIS C. NAVARRO, OWNER  
Automotive Repair Dealer Registration  
No. ARD 248267  
Smog Check Station License No. RC 248267,  
Dixon, California,

and

RICARDO GALLARDO  
Dixon, CA 95620  
Advanced Emission Specialist Technician  
License No. EA 146134,  
Dixon, California,

Respondents.

Case No. 79/11-97

OAH No. 2013031034

**PROPOSED DECISION**

Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings, State of California (OAH), heard this matter on July 11, 2013, and February 12, 2014, in Oakland, California.

Deputy Attorney General Maretta D. Ward represented complainant Sherry Mehl, Chief, Bureau of Automotive Repair, Department of Consumer Affairs, State of California.

On July 11, 2013, Attorney at Law William D. Ferreira represented both respondent Luis C. Navarro, owner of Accurate Diagnostics and Smogs, and respondent Ricardo Gallardo, a smog check technician. On February 6, 2014, however, Mr. Ferreira filed with OAH a letter captioned "Withdrawal of William Ferreira [as] Respondent[s]' Attorney [for] Continued Hearing Date-February 12, 2014," as well as a "Notice of Motion and Motion for

Leave to Withdraw as Counsel.” Before February 12, 2014, which was the prescribed date for the second day of the hearing, respondents provided no notice of the identity of an attorney hired to prospectively represent their interests.

On February 12, 2014, neither respondent Luis C. Navarro, nor any attorney or other representative, appeared, on his behalf or on behalf of Accurate Diagnostics and Smogs, for the hearing in this matter.

Although on February 12, 2014, Ricardo Gallardo arrived at the site of the hearing several minutes after the time set for commencement of the proceeding, he exited the hearing room in protest<sup>1</sup> at approximately 9:40 a.m. upon denial of his motion for continuance of the hearing.

The record was held open to afford an opportunity to complainant to file a written closing argument. On May 19, 2014, complainant filed with OAH complainant’s “Closing Argument,” which was marked as exhibit “33.” After receipt of complainant’s written closing argument, respondents were given five business days to file a reply brief. But, no document was filed by either respondent by Tuesday, May 28, 2014.

On May 28, 2014, the parties were deemed to have submitted the matter for decision and the record closed.

## FACTUAL FINDINGS

1. On November 28, 2011, Sherry Mehl (complainant), in her official capacity as Chief, Bureau of Automotive Repair (the bureau), Department of Consumer Affairs (the department), State of California, made the First Amended Accusation against respondent Luis C. Navarro, owner of, and doing business as, Accurate Diagnostics and Smogs, and respondent Ricardo Gallardo.

### *License History*

#### AUTOMOTIVE REPAIR DEALER REGISTRATION – RESPONDENT NAVARRO

2. On December 8, 2006, the bureau issued Automotive Repair Dealer (ARD) Registration Number ARD 248267 to respondent Luis C. Navarro (respondent Navarro), owner and doing business as Accurate Diagnostics and Smogs (respondent’s licensed establishment, respondent’s facility or respondent Accurate Diagnostics). Respondent’s

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<sup>1</sup> Ricardo Gallardo argued a need for an open-ended period of time so that he might hire a lawyer to represent his individual interest at the instant administrative adjudication proceeding. The denial of the continuance request was grounded upon the authority of *Shipitar v. Munro* (1959) 175 Cal.App.2d 1, at pages 3 through 7.

licensed establishment has a principal place of business at 390 Industrial Way, Suite C, Dixon, California 95620. The ARD registration expired on November 30, 2013.

SMOG CHECK STATION LICENSE – RESPONDENT NAVARRO

3. On February 2, 2007, respondent Navarro was issued Smog Check Station license number RC 248267 for smog check inspection operations at respondent Accurate Diagnostics. The Smog Check Station license expired on November 30, 2013.

SMOG CHECK TECHNICIAN LICENSE – RESPONDENT GALLARDO

4. In the year 2002, the bureau issued Advanced Emission Specialist (EA) Technician (smog check technician) license number EA 146134 to Ricardo Gallardo (Respondent Gallardo). That smog check technician's license expired on April 30, 2013.

*Respondents' Default*

5. Upon a determination that the First Amended Accusation, Notice of Hearing and other jurisdictional documents had been properly served and filed in accordance with Government Code sections 11503, 11505, 11506 and 11509, on February 12, 2014, the matter proceeded as a default hearing under Government Code section 11520 as to each respondent.

Rather than the agency exercising its statutory prerogative to internally execute default proceedings after February 12, 2014, complainant, however, requested, through her counsel, that evidence should be presented, with witnesses being placed under oath, and that the preparation of a proposed decision be effected through OAH.

*Instances of Unlawful Acts by Respondent Navarro's Agent or Employee*

A. FIRST UNDERCOVER OPERATION –JUNE 14, 2010 –  
1995 CHEVROLET IMPALA

6. Bureau Program Representative I David Mummert (PR Mummert) provided compelling testimonial evidence at the hearing of this matter. By his demeanor while testifying, his clear unhesitating presentation of evidence, and his solemn attitude towards the proposed action against respondents, PR Mummert was shown to be a credible<sup>2</sup> and trustworthy witness.

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<sup>2</sup> Government Code section 11425.50, subdivision (b), third sentence.

### *PREPARATION OF THE VEHICLE*

7. Between May 13, 2010, and May 18, 2010, PR Mummert prepared a 1995 Chevrolet Impala SS (Chevrolet Impala) for use in undercover operations contemplated by the bureau.

PR Mummert understood that the Chevrolet Impala was to be prepared for use in bureau's undercover operations, which are an accepted method to investigate questions of whether licensed establishments were faithfully performing smog check inspections in accordance with California law. Before placing the Chevrolet Impala into the possession of other bureau program representatives for use in undercover operations, PR Mummert first conducted a smog inspection test and found that the Chevrolet Impala met all standards for compliance with the anti-smog laws. PR Mummert then removed from the automobile's engine the PCV (positive crankcase ventilation) valve and a related hose. Thereafter he installed a plug where the PCV valve normally rests. The removal of the PCV valve and insertion of the plug adversely affected the engine's vacuum source for the PCV system.

On May 19, 2010, PR Mummert released the Chevrolet Impala to another program representative, who set out to place the vehicle into undercover operations through various bureau field offices.

On July 13, 2010, PR Mummert regained possession of the Chevrolet Impala through the Sacramento Documentation Lab. On his inspection of the vehicle after mid-July 2010, PR Mummert found that the undercover vehicle lacked a PCV valve and a plug remained in place where the PCV valve should have been positioned.

### *USE OF THE 1995 CHEVROLET IMPALA IN THE UNDERCOVER OPERATION*

#### *I. BUREAU PROGRAM REPRESENTATIVE MATTHEW RODRIGUEZ*

8. Program Representative II (Supervisor) Matthew Rodriguez (PR II Rodriguez) offered testimonial evidence at the hearing of this matter. PR II Rodriguez was persuasive and credible at the hearing.

PR II Rodriguez is a supervising program representative, who is assigned to the bureau's San Jose Field Office. While performing official duties, PR II Rodriguez led the undercover operation at respondent's facility on June 14, 2010.

Upon receiving the vehicle from the bureau's storage facility on June 14, 2010, PR II Rodriguez examined and verified that the PCV valve was absent, and that a plug was installed onto the engine of the Chevrolet Impala. And, PR II Rodriguez took digital photographs of portions of the undercover vehicle's engine that lacked the PCV valve and the area of a plug as fixed in place of the missing PCV valve. The digital images also depicted the location of the under-hood emission-control labels and the under-hood emission

hose routing label. PR II Rodriguez then determined the subject vehicle, with the impaired engine, was suitable to test the proficiency of respondent's licensed establishment.

9. On June 14, 2010, PR II Rodriguez appointed Michael BonAnno (Mr. BonAnno) to drive the Chevrolet Impala to the premises of respondent Accurate Diagnostics as part of the bureau's undercover investigation of the subject licensed establishment.

## II. MR. MICHAEL BONANNO

10. Mr. Michael BonAnno provided compelling testimonial evidence at the hearing of this matter. By his demeanor while testifying, Mr. BonAnno was shown to be a credible and trustworthy witness.

11. On the morning of June 14, 2010, Mr. BonAnno took custody of the bureau's 1995 Chevrolet Impala. He used the Chevrolet Impala for an undercover operation at respondent Navarro's licensed establishment.

At the time of the assignment, PR II Rodriguez gave Mr. BonAnno instructions, including a directive that the undercover operator use an alias in the presence of the personnel at respondent's licensed facility. Before leaving the meeting, Mr. BonAnno observed PR II Rodriguez examine the engine area of the Chevrolet Impala, and he saw the supervising program representative take photographs of the vehicle's engine area. Then PR II Rodriguez prompted Mr. BonAnno to study a photograph of respondent Gallardo.

12. Without disclosing his mission as a bureau undercover operative and using a fictitious name, Mr. BonAnno presented the Chevrolet Impala to respondent's establishment in order to test the facility's proficiency and lawful pursuit of smog inspection testing. He encountered, and then closely observed, respondent Gallardo at the licensed establishment.

13. At the premises of respondent Accurate Diagnostics, Mr. BonAnno signed a work order, which respondent Gallardo presented to him in a blank form. The establishment's personnel, however, did not deliver to the putative consumer a document having a completely legible, written price estimate for the smog check service.

Nor did respondent Gallardo give Mr. BonAnno a written description of the contemplated smog check inspection before commencement of work required for a smog check inspection.

14. After the provision of a supposed smog check inspection by respondent Gallardo, that smog check technician presented Mr. BonAnno with a smog check vehicle inspection report (VIR) and an invoice for payment of the \$65 fee charged for the smog check inspection. Also, respondent owner Navarro's establishment issued to Mr. BonAnno Smog Certificate of Compliance No. [REDACTED]. Then after paying the fee and receiving the

documents after the smog inspection, Mr. BonAnno drove the Chevrolet Impala away from respondent Navarro's licensed establishment.

Later on June 14, 2010, Mr. BonAnno returned control and custody of the Chevrolet Impala to PR II Rodriguez.

15. On June 14, 2010, when PR II Rodriguez received control of the Chevrolet Impala after Mr. BonAnno returned from the undercover operation at respondent Navarro's establishment, the supervising program representative re-inspected the Chevrolet Impala. At that time, PR II Rodriguez took additional digital images to the automobile's engine area. Then, PR II Rodriguez's inspection of the vehicle's engine area revealed to the bureau's agent that the introduced malfunction remained unchanged from the defect that the documentation lab had introduced. That finding was made by way of PR II Rodriguez's observation that vehicle's engine lacked a PCV value.

Based on his findings, PR II Rodriguez reasonably determined that respondent establishment's agent or employee should not have passed the vehicle as a result of a smog check inspection. And the supervising program representative concluded that Smog Certificate of Compliance No. [REDACTED] was an unlawful document with regard to the certificate's false claim that the subject Chevrolet Impala met the requirements of the smog inspection laws and regulations through the smog inspection performed by respondent Gallardo.

*RESULTS OF BUREAU INSPECTION OF THE 1995 CHEVROLET IMPALA AFTER THE UNDERCOVER OPERATION*

16. After the June 2010 undercover operation was completed, the Chevrolet Impala was returned on July 13, 2010, to PR Mummert for the latter program representative's inspection.

17. On July 14, 2010, PR Mummert conducted a thorough examination of the Chevrolet Impala that had been used in the bureau's undercover operation. During his examination, the bureau's program representative performed both of the authorized California Emission Inspection tests on the vehicle. PR Mummert determined that the Chevrolet Impala failed the visual portion of both smog tests because of the missing PCV valve and its related hose.

*First Cause for Discipline: Respondent Navarro  
Untrue or Misleading Statements  
Regarding the Undercover Operation and the 1995 Chevrolet Impala*

18. On June 14, 2010, respondent Navarro, doing business as respondent Accurate Diagnostics, through his agent or employee, made statements that the licensed facility's personnel knew, or by exercise of reasonable care, the subject licensed facility's employee or

agent should have known were untrue or misleading, by the issuance of electronic Certificate of Compliance number [REDACTED] for a 1995 Chevrolet Impala. The issuance of the certificate of compliance untruthfully and misleadingly certified that the vehicle's smog suppression system conformed with applicable laws and regulations of this state. The 1995 Chevrolet Impala could not have passed the visual portion of the smog inspection because the vehicle's PCV system and related hose were missing.

As a smog check station licensee, respondent Navarro's acts or omissions, doing business as respondent Accurate Diagnostics, in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(1).

*Second Cause for Discipline: Respondent Navarro  
Failure to Provide a Copy of a Signed Work Order  
Regarding the Undercover Operation and the 1995 Chevrolet Impala*

19. Respondent Accurate Diagnostics, through his agent or employee, failed to provide the bureau's undercover operator on June 14, 2010, with a completely filled out work order, even though the consumer signed a blank work order form, before the smog check technician, respondent Gallardo, commenced the smog check inspection.

In this regard, as a smog check station licensee, doing business as respondent Accurate Diagnostics, respondent Navarro, through the acts or omissions of his employee or agent, violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(3).

*Third Cause for Discipline: Respondent Navarro  
Fraud Regarding the Undercover Operation and the 1995 Chevrolet Impala*

20. On June 14, 2010, respondent Navarro, doing business as respondent Accurate Diagnostics, through his agent or employee, committed acts that constitute fraud by issuing electronic Certificate of Compliance [REDACTED] for a 1995 Chevrolet Impala without the assigned licensed smog check technician performing a bona fide visual inspection of the emission control devices and systems on the vehicle. Respondent Navarro's acts or omissions, through his agent or employee, on that day deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Respondent Navarro's acts or omissions in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(4).

*Fourth Cause for Discipline: Respondent Navarro  
Failure to Provide a Written Estimate  
Regarding the Undercover Operation and the 1995 Chevrolet Impala*

21. Respondent Accurate Diagnostics, through his agent or employee, failed to provide the bureau's undercover operator on June 14, 2010, with a written estimated price for the labor associated with the smog check inspection that was to be performed on the bureau's 1995 Chevrolet Impala. This failure occurred when the undercover operator dropped off the vehicle for a requested smog check inspection and then he departed from the establishment's premises without respondent Gallardo presenting the supposed consumer with a document reflecting a price estimate.

In this regard, doing business as respondent Accurate Diagnostics, respondent Navarro, through the acts or omissions of his employee or agent, violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(6), as that statute interacts with Code section 9884.9, subdivision (a).

*Fifth Cause for Discipline: Respondent Navarro  
Violation of the Motor Vehicle Inspection Program  
Regarding the Undercover Operation and the 1995 Chevrolet Impala*

22. On June 14, 2010, regarding the 1995 Chevrolet Impala, respondent Navarro, doing business as respondent Accurate Diagnostics, failed to comply with sections of the Health and Safety Code as follows:

a. *Section 44012, subdivision (a):* Respondent Navarro, through his agent or employee, failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures;

b. *Section 44012, subdivision (f):* Respondent Navarro failed to perform emission control tests on the vehicle in accordance with procedures prescribed by the bureau.

c. *Section 44015, subdivision (b):* Respondent Navarro issued electronic Certificate of Compliance No. [REDACTED] for a 1995 Chevrolet Impala without properly testing and inspecting the vehicle to determine if it was in compliance with Health and Safety Code section 44012.

In this regard, as a smog check station licensee and doing business as respondent Accurate Diagnostics, respondent Navarro, through the acts or omissions of his employee or agent, violated the aforesaid provisions of Health and Safety Code sections 44012 and 44015, subdivision (b), as those statutes respectively interact with Health and Safety Code section 44072.2, subdivision (a).

*Sixth Cause for Discipline: Respondent Navarro  
Violation of Regulations Pursuant to the Motor Vehicle Inspection Program  
Regarding the First Undercover Operation and the 1995 Chevrolet Impala*

23. On June 14, 2010, regarding the 1995 Chevrolet Impala, respondent Navarro doing business as respondent Accurate Diagnostics, failed to comply with the following provisions of California Code of Regulations, title 16:

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

b. *Section 3340.42*: Respondent failed to conduct the required smog tests on the vehicle in accordance with the bureau's specifications.

In this regard, as a smog check station licensee and doing business as respondent Accurate Diagnostics, respondent Navarro, through the acts or omissions of his employee or agent, violated the aforesaid provisions of California Code of Regulations, title 16, sections 3340.35 and 3340.42, as those regulations respectively interact with Health and Safety Code section 44072.2, subdivision (c).

*Seventh Cause for Discipline: Respondent Navarro  
Dishonesty, Fraud or Deceit  
Regarding the Undercover Operation and the 1995 Chevrolet Impala*

24. On June 14, 2010, respondent Navarro, doing business as respondent Accurate Diagnostics, committed dishonest, fraudulent or deceitful acts whereby another person, or the state's citizenry, may be injured by respondent's personnel having issued electronic Certificate of Compliance No. [REDACTED]. Such injury occurred in issuing the certificate of compliance for the 1995 Chevrolet Impala without a licensed smog check technician first performing a bona fide inspection of the emission control devices and systems on the vehicle. By dishonestly, fraudulently and deceitfully issuing a false certificate of compliance, respondent Navarro's acts or omissions, through his employee or agent, deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Respondent Navarro's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (d).

*Eighth Cause for Discipline: Respondent Gallardo  
Violations of the Motor Vehicle Inspection Program  
Regarding the Undercover Operation and the 1995 Chevrolet Impala*

25. On June 14, 2010, regarding the 1995 Chevrolet Impala, respondent Gallardo, in his capacity as a smog check technician, failed to comply with sections of the Health and Safety Code as follows:

- a. *Section 44012, subdivision (a)*: Respondent Gallardo failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures;
- b. *Section 44012, subdivision (f)*: Respondent Gallardo failed to perform emission control tests on the vehicle in accordance with procedures prescribed by the bureau.
- c. *Section 44032*: Respondent Gallardo failed to perform tests of the emission control devices and systems on that vehicle in accordance with section 44012 of the Health and Safety Code.

In this regard, as a smog check technician, respondent Gallardo violated the aforesaid provisions of Health and Safety Code sections 44012 and 44032, as those statutes respectively interact with Health and Safety Code section 44072.2, subdivision (a).

*Ninth Cause for Discipline: Respondent Gallardo  
Violations of the Regulations Pursuant to the Motor Vehicle Inspection Program  
Regarding the Undercover Operation and the 1995 Chevrolet Impala*

26. On June 14, 2010, regarding the 1995 Chevrolet Impala, respondent Gallardo failed to comply with the following provisions of California Code of Regulations, title 16:

- a. *Section 3340.30, subdivision (a)*: Respondent Gallardo failed to inspect and test those vehicles in accordance with Health and Safety Code section 44012.
- b. *Section 3340.41, subdivision (c)*: Respondent Gallardo entered false information into the Emission Inspection System for electronic Certificate of Compliance number [REDACTED] by entering "Pass" for the visual inspection regarding the existence of the PCV system when, in fact, the 1995 Chevrolet Impala could not have passed the visual inspection because the subject vehicle's PCV system had been modified.
- c. *Section 3340.42*: Respondent Gallardo failed to conduct the required smog tests and inspection on the 1995 Chevrolet Impala in accordance with the bureau's specifications.

In the capacity as an advanced emission specialist technician (smog check technician) licensee, respondent Gallardo's acts or omissions in the foregoing matters violated the provisions of Health & Safety Code section 44072.2, subdivision (c).

*Tenth Cause for Discipline: Respondent Gallardo  
Dishonesty, Fraud or Deceit  
Regarding the Undercover Operation and the 1995 Chevrolet Impala*

27. On June 14, 2010, as a smog check technician, respondent Gallardo committed dishonest, fraudulent or deceitful acts whereby another person, or the state's citizenry, may be injured by the issuance of electronic Certificate of Compliance No. [REDACTED]. Such injury occurred by the subject smog check technician enabling the licensed establishment to issue the unlawful certificate of compliance for the Chevrolet Impala without performing a bona fide inspection of the emission control devices and systems on the vehicle. By dishonestly, fraudulently and deceitfully enabling the issuance of a false certificate of compliance, respondent Gallardo's acts or omissions deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Respondent Gallardo's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (d).

B. RECORD INSPECTION -  
1999 PORSCHE BOXTER

*MR. MORRIS HOOD*

28. Mr. Morris Hood (Mr. Hood) provided compelling testimonial evidence at the hearing of this matter. By his demeanor while testifying and his solemn attitude towards the proposed action against respondents, Mr. Hood was shown to be a credible and trustworthy witness.

29. On November 13, 2010, Mr. Hood purchased a 1999 Porsche Boxter (Porsche Boxter) from Super Amigos Auto Plaza, a vehicle sales dealer, located in Sacramento, California.

At the time of his purchase of the Porsche Boxter, Mr. Hood perceived that the vehicle's malfunction indicator light (MIL), also called the "check engine light," remained illuminated after the engine was engaged and the vehicle was being driven. Also Mr. Hood was aware that the vehicle's engine leaked coolant. Vehicle sales personnel at Super Amigos Auto Plaza promised Mr. Hood that the engine problems would be repaired. After he completed the purchase and in expecting of having the vehicle patent problems repaired, Mr. Hood left the Porsche Boxter in the possession of Super Amigos Auto Plaza until November 30, 2010. (That period of time reflected a period of approximately two weeks after the date of purchase.) But after he secured the vehicle from the vehicle sales dealer and upon

reaching his residence, Mr. Hood noticed that the MIL was illuminated and engine coolant continued to leak.

30. The Porsche Boxter remained in Mr. Hood's garage at his residence from November 30 through December 3, 2010. (On the latter date, Mr. Hood took the automobile to reputable automobile repair dealer to have the engine's coolant leak repaired. )

31. On December 2, 2010, Mr. Hood's complaint regarding the failure to make the automotive repairs was received by the bureau.

32. The bureau's program representative who first interacted with Mr. Hood regarding his complaints was Program Representative Terry O'Neil. PR O'Neil turned to bureau supervising program representative John Dingman.

*PROGRAM REPRESENTATIVE JOHN DINGMAN*

33. John Dingman (PR II Dingman) offered credible and persuasive testimonial evidence at the hearing of this matter.

34. The bureau employed PR II Dingman from October 1987 until September 2012. His last civil service position with the bureau was a Program Representative II (Specialist). He is now retired.

35. During his tenure as a program representative, PR II Dingman engaged in an expansive investigation of respondents in this matter. The catalyst to PR II Dingman's investigation on behalf of the bureau was the complaint filed by Mr. Hood in December 2010.

36. Upon securing Mr. Hood's complaint and conferring with PR Terry O'Neil, PR II Dingman accessed the bureau's Vehicle Information Database (VID) regarding recent smog check inspections for the Porsche Boxter. The VID showed that respondent's establishment, through the work of respondent Gallardo as the smog check technician, had issued Certificate of Compliance number NY684324C on December 1, 2010, through a smog check inspection at respondent's Navarro's licensed establishment.

37. Further detailed study by PR II Dingman of respondent Navarro's licensed establishment's smog check inspections on December 1, 2010, revealed that respondent Gallardo had conducted an inspection of a 1998 Toyota Camry (Toyota Camry) immediately before the time of the issuance of the Certificate of Compliance for the Porsche Boxter. The records of respondent Accurate Diagnostics for the Toyota Camry, as made on December 1, 2010, showed that the respondent Gallardo, through equipment belonging to respondent licensed establishment, acquired two incomplete On Board Diagnostic II (OBDII) monitoring test results (monitors). The two incomplete monitors revealed the following

codes: D-Catalyst and F-Evap system. And, the drive axle weight for the Toyota Camry as measured by the Emissions Inspection System (EIS) at 2,015 pounds.

38. PR II Dingman noted that respondent establishment's test printout on December 1, 2010, which resulted from the supposed smog test by respondent Gallardo, for the Porsche Boxter showed identical pending monitors (D-Catalyst and F-Evap system) and nearly an exact weight (2,014 pounds) as the Toyota Camry. But, when a test was later performed at a State Referee station, the Porsche Boxter had a measured drive axle weight at 1,240 pounds.

39. Based upon the findings made by PR II Dingman, the bureau's former program representative was reasonable in making a determination that respondent Gallardo had used the Toyota Camry to unlawfully "Clean Pipe" the Porsche Boxter.

40. On December 15, 2010, PR II Dingman made a field visit to respondent Navarro's establishment in Dixon, California, where he interviewed respondent Gallardo. PR II Dingman was accompanied by PR O'Neil and PR II Jesus Mora. During the interview, respondent Gallardo said to the bureau's representatives that he recalled his smog check inspection of Porsche Boxter and that his employer smog check station had issued Certificate of Compliance number NY684324C for the vehicle on December 1, 2010. Respondent Gallardo claimed that the Porsche Boxter had no color because its metal had been stripped in preparation for a new paint job. (The Porsche Boxter purchased by Mr. Hood had an original factory painted exterior surface. Further, for a period of several days that included December 1, 2010, Mr. Hood maintained possession of the Porsche Boxter by way of storing that automobile in the garage to his residence.)

41. On December 15, 2010, PR II Dingman and the bureau's other program representatives presented respondent Gallardo with the facts that suggested the subject smog check technician's unlawful act of "Clean Piping" for the purpose of improperly issuing a fraudulent and illegal certificate of compliance.

When he heard the charges by the bureau's representatives, respondent Gallardo declared that he wanted to consult with a lawyer and he refused to answer further questions by the program representatives. Although the program representative promptly terminated the questioning of respondent Gallardo regarding his unlawful conduct, the bureau's personnel requested that the actual vehicle inspection reports, as produced by the subject smog check technician at respondent Navarro's establishment on December 1, 2010, be immediately delivered to the bureau for study. Respondent Gallardo in time provided PR II Dingman with the requested smog check-oriented records, including the VIR for the Porsche Boxter.

42. On December 22, 2010, PR II Dingman and PR O'Neil traveled to the Sacramento, California site of Super Amigos Auto Plaza. (On the date of the meeting at Super Amigos Auto Plaza, investigators with the Department of Motor Vehicles conducted a

simultaneous investigation of the subject automobile sales dealership.) The bureau's personnel interviewed Martin Vazquez, the owner of Super Amigos Auto Plaza. PR II Dingman and PR O'Neil presented Mr. Vazquez with the documents assembled by the bureau's agents regarding the Porsche Boxter. PR II Dingman pointedly stated to Martin Vazquez that the bureau had determined the Porsche Boxter was the subject of "Clean Piping" at respondent's establishment.

43. Mr. Vazquez acknowledged being acquainted with respondent Gallardo because the vehicle sales dealer resided in Dixon, California, and that the smog check technician was his neighbor.

When first confronted with the bureau's determination, Mr. Vazquez made an admission to the bureau's agents that he knew that the Porsche Boxter had been "Clean Piped." But, he claimed that the Porsche Boxter had been the only vehicle that he had ever allowed to undergo an unlawful "Clean Piping" scheme.

44. On December 22, 2010, Mr. Vazquez declined to sign a statement that day; however, he promised to sign on the following day a written document acknowledging the fact of knowing about the unlawful "Clean Piping" activity. But, on December 23, 2010, when PR II Dingman and PR O'Neil returned to Super Amigos Auto Plaza business premises, Mr. Vasquez proclaimed that he wished to retract his admission. On the second day of meeting with the bureau's agent, Mr. Vazquez claimed ignorance regarding the Porsche Boxter being involved in a "Clean Piping" scheme. But Mr. Vasquez noted that he had "sent" the Porsche Boxter to respondent Gallardo for smog inspection; and that respondent Gallardo told Mr. Vasquez that the smog test results would show up on the bureau's website.

45. On December 10, 2010, a state referee facility performed a smog check inspection of the Porsche Boxter at the request of PR II Dingman in his capacity as a bureau program representative. During the state referee's inspection, the Porsche Boxter failed the functional portion of the smog inspection because the MIL remained illuminated, which indicated failures in the vehicle's emission control systems. The correctly administered smog check inspection revealed seven manufacturer's specific fault codes that related to the illuminated MIL, which were:

1126 – Oxygen sensing area 1 (cylinders 4 and 6);

1313 – Misfire of Cylinder 1, emission relevant;

1314 - Misfire of Cylinder 2, emission relevant;

1315- Misfire of Cylinder 3, emission relevant;

1319 - Misfire, emission relevant;

1340 – Timing chain out of position, bank one; and

1531 – Camshaft adjustment, bank one.

The MIL codes, which were identified by the state referee's smog check test, were not the codes that were identified in the smog tests results produced at respondent Accurate Diagnostics through the smog inspection performed by respondent Gallardo.

*PROGRAM REPRESENTATIVE TERRY O'NEIL*

46. Program Representative Terry O'Neil (PR O'Neil) provided credible, compelling and persuasive testimony at the hearing of this matter.

PR O'Neil assisted and participated in the investigation of records generated by respondent Gallardo through respondent Accurate Diagnostics.

47. On December 15, 2010, PR O'Neil accompanied PR II Dingman to respondent Navarro's establishment in Dixon, California. At respondent Accurate Diagnostics, respondent Gallardo engaged in an interview as initiated by the bureau's agents. Respondent Gallardo made admissions including a statement that the VIN for the subject Porsche Boxter was taken from insurance papers that the owner of Super Amigos Auto Plaza had transmitted from the Sacramento vehicle sales dealership to the site of respondent Navarro's establishment in Dixon, California. (The distance between the two business exceeds 32 miles.)

48. PR O'Neil was also present when PR II Dingman interviewed Martin Valquez, the owner of Super Amigos Auto Plaza. PR O'Neil heard Martin Valquez make admissions regarding his acts of soliciting respondent Gallardo to deliver to the automobile sales dealer certificates of compliance. Martin Valquez specifically referred to having solicited respondent Gallardo to perform the clean-piping activities.

*Eleventh Cause for Discipline: Respondent Navarro  
Untrue or Misleading Statements  
Regarding Record Inspection and a 1999 Porsche Boxter*

49. On December 1, 2010, respondent Navarro, doing business as respondent Accurate Diagnostics, through its agents or employees, made statements that the licensed establishment's personnel knew, or by exercise of reasonable care, the subject licensed facility's employee or agent should have known were untrue or misleading, by issuing electronic Certificate of Compliance number NY684324C for a 1999 Porsche Boxter. The issuance of the certificate of compliance untruthfully and misleadingly certified that the vehicle's smog suppression system conformed with applicable laws and regulations of this state. The 1999 Porsche Boxter could not have passed the visual portion of the smog inspection because the vehicle's MIL remained illuminated. Moreover, respondent

perpetuated false statements because the 1999 Porsche Boxter had been involved in an unlawful Clean Pipe scheme.

As a smog check station licensee, respondent Navarro's acts or omissions, doing business as respondent Accurate Diagnostics, in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(1).

*Twelfth Cause For Discipline: Respondent Navarro  
Fraud Regarding Record Inspection and a 1999 Porsche Boxter*

50. On December 1, 2010, respondent Navarro, doing business as respondent Accurate Diagnostics, through his agent or employee, committed acts that constitute fraud by issuing electronic Certificate of Compliance Certificate of Compliance NY684324C for a 1999 Porsche Boxter without the assigned licensed smog check technician performing a bona fide visual inspection of the emission control devices and systems on the vehicle. Respondent Navarro's acts or omissions, through his agent or employee, on that day deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Respondent Navarro's acts or omissions in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(4).

*Thirteenth Cause for Discipline: Respondent Navarro  
Violation of the Motor Vehicle Inspection Program  
Regarding Record Inspection and a 1999 Porsche Boxter*

51. On December 1, 2010, regarding the 1999 Porsche Boxter, respondent Navarro, doing business as respondent Accurate Diagnostics, failed to comply with the sections of the Health and Safety Code as follows:

a. *Section 44012, subdivision (a):* Respondent Navarro, through his agent or employee, failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures;

b. *Section 44012, subdivision (f):* Respondent Navarro failed to perform emission control tests on the vehicle in accordance with procedures prescribed by the bureau.

c. *Section 44015, subdivision (b):* Respondent Navarro issued electronic Certificate of Compliance No. NY684324C for a 1999 Porsche Boxter without properly testing and inspecting the vehicle to determine if it was in compliance with Health and Safety Code section 44012.

In this regard, as a smog check station licensee and doing business as respondent Accurate Diagnostics, respondent Navarro, through the acts or omissions of his employee or

agent, violated the aforesaid provisions of Health and Safety Code sections 44012 and 44015, subdivision (b), as those statutes respectively interact with Health and Safety Code section 44072.2, subdivision (a).

*Fourteenth Cause for Discipline: Respondent Navarro  
Violation of Regulations Pursuant to the Motor Vehicle Inspection Program  
Regarding Record Inspection and a 1999 Porsche Boxter*

52. On December 1, 2010, regarding the 1999 Porsche Boxter, respondent Navarro, doing business as Accurate Diagnostics, failed to comply with the sections of the failed to comply with the following provisions of California Code of Regulations, title 16:

a. *Section 3340.35, subdivision (c):* Respondent Navarro issued electronic Certificate of Compliance No. NY684324C for the vehicle even though the vehicle had not been inspected in accordance with section 3340.42.

b. *Section 3340.42:* Respondent Navarro failed to conduct the required smog tests on the vehicle in accordance with the bureau's specifications.

In this regard, as a smog check station licensee and doing business as respondent Accurate Diagnostics, respondent Navarro, through the acts or omissions of his employee or agent, violated the forestated provisions of California Code of Regulations, title 16, sections 3340.35 and 3340.42, as those regulations respectively interact with Health and Safety Code section 44072.2, subdivision (d).

*Fifteenth Cause for Discipline: Respondent Navarro  
Dishonesty, Fraud or Deceit  
Regarding Record Inspection and a 1999 Porsche Boxter*

53. On December 1, 2010, respondent Navarro, doing business as respondent Accurate Diagnostics, committed dishonest, fraudulent or deceitful acts, in the capacity of a smog check station, whereby another person, or the state's citizenry, may be injured by the issuance of electronic Certificate of Compliance No. NY684324C. Such injury occurred by issuing the certificate of compliance for the 1999 Porsche Boxter without a licensed smog check technician first performing a bona fide inspection of the emission control devices and systems on the vehicle. By dishonestly, fraudulently and deceitfully issuing a false certificate of compliance, respondent Navarro's acts or omissions deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Hence, respondent Navarro violated Health and Safety Code section 44072, subdivision (d).

*Sixteenth Cause for Discipline: Respondent Gallardo  
Violations of the Motor Vehicle Inspection Program  
Regarding Record Inspection and a 1999 Porsche Boxter*

54. On December 1, 2010, regarding the 1999 Porsche Boxter, respondent Gallardo failed to comply with the sections of the Health and Safety Code as follows:

- a. *Section 44012, subdivision (a)*: Respondent Gallardo failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures;
- b. *Section 44012, subdivision (f)*: Respondent Gallardo failed to perform emission control tests on the vehicle in accordance with procedures prescribed by the bureau.
- c. *Section 44032*: Respondent Gallardo failed to perform tests of the emission control devices and systems on that vehicle in accordance with section 44012 of the Health and Safety Code.

In this regard, respondent Gallardo violated the aforesaid provisions of Health and Safety Code sections 44012 and 44032, as those statutes respectively interact with Health and Safety Code section 44072.2, subdivision (c).

*Seventeenth Cause for Discipline: Respondent Gallardo  
Violations of Regulations Pursuant to the Motor Vehicle Inspection Program  
Regarding Record Inspection and a 1999 Porsche Boxter*

55. On December 1, 2010, regarding the 1999 Porsche Boxter, respondent Gallardo failed to comply with the following provisions of California Code of Regulations, title 16:

- a. *Section 3340.30, subdivision (a)*: Respondent Gallardo failed to inspect and test those vehicles in accordance with Health and Safety Code section 44012.
- b. *Section 3340.41, subdivision (c)*: Respondent Gallardo entered false information into the Emission Inspection System for electronic Certificate of Compliance number NY684324C by entering "Pass" for the visual inspection for the existence of the PCV system when, in fact, the 1999 Porsche Boxter could not have passed the visual inspection because the subject vehicle's PCV system had been modified. Moreover, VID or emission control information for a vehicle other than the Porsche Boxter was used for issuance of the certificate of compliance.
- c. *Section 3340.42*: Respondent Gallardo failed to conduct the required smog tests and inspection on the 1999 Porsche Boxter in accordance with the bureau's specifications.

In the capacity as a smog check station licensee, respondent Gallardo's acts or omissions in the foregoing matters violated the provisions of Health & Safety Code section 44072.2, subdivision (c).

*Eighteenth Cause for Discipline: Respondent Gallardo  
Dishonesty, Fraud or Deceit  
Regarding Record Inspection and a 1999 Porsche Boxter*

56. On December 1, 2010, respondent Gallardo committed dishonest, fraudulent or deceitful acts whereby another person, or the state's citizenry, may be injured by the issuance of electronic Certificate of Compliance No. NY684324C. Such injury occurred in issuing the certificate of compliance for the 1999 Porsche Boxter without a bona fide inspection of the emission control devices and systems on the vehicle. By dishonestly, fraudulently and deceitfully issuing a false certificate of compliance, respondent Gallardo's acts or omissions deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Respondent Gallardo's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (d).

C. RECORD INSPECTION -  
2005 NISSAN QUEST

57. PR II Dingman, while performing duties as a bureau program representative, investigated a complaint of Mrs. Norma Garcia regarding the malfunctions of a 2005 Nissan Quest. The bureau's agents were able to locate Mrs. Garcia through records of the Department of Motor Vehicles and through the VID related to respondent's establishment. PR II Dingman's findings and determinations, regarding the participation of respondent establishment and respondent Gallardo in unlawful conduct, were credible and persuasive.

58. On January 16, 2010, Mrs. Garcia and her husband purchased a Nissan Quest from Super Amigos Auto Plaza. During a test drive of the vehicle, Mrs. Garcia and her husband observed that the MIL remained illuminated. The owner of Super Amigos Auto Plaza, Martin Vasquez, promised the couple that the vehicle sales dealership would repair the malfunction. The sales transaction was completed and the couple drove the 2005 Nissan away from the premises of the automobile sales dealer. The couple returned the vehicle to Super Amigos Auto Plaza on three consecutive days, in order to receive the benefit of the promise that the malfunctioning condition would be repaired. But the problem, which caused the MIL illumination, was never repaired. Finally, Martin Vasquez told the couple that he had no intention to repair the function because they had bought the vehicle "as is."

59. PR II Dingman learned from Mrs. Garcia that on January 26, 2010, the vehicle was not in the possession of Super Amigos Auto Plaza. The Nissan Quest was never taken

by Mrs. Garcia to the facility of respondent Accurate Diagnostics in Dixon, California. And within the city of Dixon, respondent Gallardo never laid his hand on the Nissan Quest on January 26, 2010, because on that date the vehicle remained in the custody of Mrs. Garcia at her residence in Sacramento.

60. PR II Dingman reasonably concluded that on January 26, 2010, the Nissan Quest could not have passed a correctly and lawfully administered smog check inspection. The vehicle would have failed the functional portion of the smog test on January 26, 2010, because of the MIL remained illuminated.

61. PR II Dingman showed that vehicle test information included in the VID demonstrated that at respondent's licensed establishment Certificate of Compliance number NQ299000C was issued by respondent Gallardo for the Nissan Quest on January 26, 2010.

62. On May 9, 2011, the Nissan Quest underwent a smog check inspection at the State Referee Facility. The referee's test resulted in the vehicle's failure of the functional portion of the smog inspection because of the illumination of the MIL. The trouble code was determined by the referee to be "PO420," which means that the engine's catalytic efficiency was below the acceptable threshold.

And again on May 15, 2011, the Nissan Quest was given a smog check inspection. That inspection was performed by Smog King in Sacramento. The vehicle failed the functional portion of the smog inspection because of the MIL problem. The trouble code was again shown to be "PO420." A further diagnosis indicated that the vehicle's "bank one catalytic converter" was defective and useless.

Ms. Garcia and her husband paid \$800 to repair the problem regarding the engine that respondent had supposedly passed during a smog inspection on January 26, 2010.

63. As a result of his investigation of the complaint by Mrs. Garcia regarding the Nissan Quest, PR II Dingman reached two conclusions regarding the unlawful, fraudulent and corrupt conduct of respondents. First, he determined that respondents had engaged in Clean Piping with regard to the Nissan Quest in order to generate Certificate of Compliance number NQ299000C. And, PR II Dingman concluded that respondent Navarro, through respondent Accurate Diagnostics, had created smog inspection records for the Nissan Quest several days after the date of the actual sale of the vehicle to Mrs. Garcia and her husband.

*Nineteenth Cause for Discipline: Respondent Navarro  
Untrue or Misleading Statements  
Regarding Record Inspection and a 2005 Nissan Quest*

64. On January 26, 2010, respondent Navarro, doing business as respondent Accurate Diagnostics, through his agent or employee, made statements that the licensed establishment's personnel knew, or by exercise of reasonable care, the subject licensed

facility's employee or agent should have known were untrue or misleading, by issuance of electronic Certificate of Compliance number NQ299000C for a 2005 Nissan Quest. The issuance of the certificate of compliance untruthfully and misleadingly certified that the vehicle's smog suppression system conformed with applicable laws and regulations of this state. The 2005 Nissan Quest could not have passed the visual portion of the smog inspection because the vehicle's MIL remained illuminated. Moreover, respondent perpetuated false statements because the 2005 Nissan Quest had been involved in an unlawful Clean Pipe scheme.

As a smog check station licensee, respondent Navarro's acts or omissions, doing business as respondent Accurate Diagnostics, in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(1).

*Twentieth Cause for Discipline: Respondent Navarro  
Fraud Regarding Record Inspection and a 2005 Nissan Quest*

65. On January 26, 2010, respondent Navarro, doing business as respondent Accurate Diagnostics, through his agent or employee, committed acts that constitute fraud by issuing electronic Certificate of Compliance NQ299000C for a 2005 Nissan Quest without the assigned licensed smog check technician performing a bona fide visual inspection of the emission control devices and systems on the vehicle. Respondent's acts or omissions, through his agent or employee, on that day deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Respondent Navarro's acts or omissions in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(4).

*Twenty-First Causes for Discipline: Respondent Navarro  
Violation of the Motor Vehicle Inspection Program  
Regarding Record Inspection and a 2005 Nissan Quest*

66. On January 26, 2010, regarding the 2005 Nissan Quest, respondent Navarro, doing business as respondent Accurate Diagnostics, failed to comply with the sections of the Health and Safety Code as follows:

a. *Section 44012, subdivision (a):* Respondent Accurate Diagnostics, through his agent or employee, failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures;

b. *Section 44012, subdivision (f):* Respondent Accurate Diagnostics failed to perform emission control tests on the vehicle in accordance with procedures prescribed by the bureau.

c. *Section 44015, subdivision (b):* Respondent Accurate Diagnostics issued electronic Certificate of Compliance No. NQ299000C for a 2005 Nissan Quest without properly testing and inspecting the vehicle to determine if it was in compliance with Health and Safety Code section 44012.

In this regard, as a smog check station licensee, doing business as respondent Accurate Diagnostics, respondent Navarro, through the acts or omissions of his employee or agent, violated the forestated provisions of Health and Safety Code sections 44012 and 44015, subdivision (b), as those statutes respectively interact with Health and Safety Code section 44072.2, subdivision (c).

*Twenty-Second Causes for Discipline: Respondent Navarro  
Violations of Regulation Pursuant to the Motor Vehicle Inspection Program  
Regarding Record Inspection and a 2005 Nissan Quest*

67. On January 26, 2010, regarding the 2005 Nissan Quest, respondent Navarro doing business as Accurate Diagnostics, failed to comply with the sections of the failed to comply with the following provisions of California Code of Regulations, title 16:

a. *Section 3340.35, subdivision (c):* Respondent Navarro, through his agent or employee, issued electronic Certificate of Compliance No. NQ299000C for the vehicle even though the vehicle had not been inspected in accordance with section 3340.42.

b. *Section 3340.42:* Respondent Navarro, through his agent or employee, failed to conduct the required smog tests on the vehicle in accordance with the bureau's specifications.

In this regard, as a smog check station licensee, doing business as respondent Accurate Diagnostics, respondent Navarro, through the acts or omissions of his employee or agent, violated the forestated provisions of California Code of Regulations, title 16, sections 3340.35 and 3340.42, as those regulations respectively interact with Health and Safety Code section 44072.2, subdivision (c).

*Twenty-Third Causes for Discipline: Respondent Navarro  
Dishonesty, Fraud or Deceit  
Regarding Record Inspection and a 2005 Nissan Quest*

68. On January 26, 2010, respondent Navarro, doing business as respondent Accurate Diagnostics, committed dishonest, fraudulent or deceitful acts whereby another person, or the state's citizenry, may be injured by the issuance of electronic Certificate of Compliance No. NQ299000C. Such injury occurred in issuing the certificate of compliance for the 2005 Nissan Quest without a licensed smog check technician first performing a bona fide inspection of the emission control devices and systems on the vehicle. By dishonestly, fraudulently and deceitfully issuing a false certificate of compliance, respondent Navarro's

acts or omissions deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. These acts violated Health and Safety Code section 44072.2, subdivision (d).

*Twenty-Fourth Cause for Discipline: Respondent Gallardo  
Violations of the Motor Vehicle Inspection Program  
Regarding Record Inspection and a 2005 Nissan Quest*

69. On January 26, 2010, regarding the 2005 Nissan Quest, respondent Gallardo failed to comply with the sections of the Health and Safety Code as follows:

a. *Section 44012, subdivision (a)*: Respondent Gallardo failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures;

b. *Section 44012, subdivision (f)*: Respondent Gallardo failed to perform emission control tests on the vehicle in accordance with procedures prescribed by the bureau.

c. *Section 44032*: Respondent Gallardo failed to perform tests of the emission control devices and systems on that vehicle in accordance with section 44012 of the Health and Safety Code.

In this regard, respondent Gallardo violated the forestated provisions of Health and Safety Code sections 44012 and 44032, as those statutes respectively interact with Health and Safety Code section 44072.2, subdivision (a).

*Twenty-Fifth Cause for Discipline: Respondent Gallardo  
Violations of Regulations Pursuant to the Motor Vehicle Inspection Program  
Regarding Record Inspection and a 2005 Nissan Quest*

70. On January 26, 2010, regarding the 2005 Nissan Quest, respondent Gallardo failed to comply with the following provisions of California Code of Regulations, title 16:

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

b. *Section 3340.41, subdivision (c)*: Respondent Gallardo entered false information into the Emission Inspection System for electronic Certificate of Compliance number NQ299000C by entering "Pass" vehicle identification information for a vehicle other than the 2005 Nissan Quest. Hence the Nissan Quest could not have passed the smog check inspection.

c. *Section 3340.42*: Respondent Gallardo failed to conduct the required smog tests and inspection on the 2005 Nissan Quest in accordance with the bureau's specifications.

In the capacity as a specialist technician licensee, respondent Gallardo's acts or omissions in the foregoing matters violated the provisions of Health & Safety Code section 44072.2, subdivision (c).

*Twenty-Sixth Cause for Discipline: Respondent Gallardo  
Dishonesty, Fraud or Deceit  
Regarding Record Inspection and a 2005 Nissan Quest*

71. On January 26, 2010, respondent Gallardo committed dishonest, fraudulent or deceitful acts whereby another person, or the state's citizenry, may be injured by the issuance of electronic Certificate of Compliance No. NQ299000C. Such injury occurred in issuing the certificate of compliance for the 2005 Nissan Quest without a bona fide inspection of the emission control devices and systems on the vehicle. By dishonestly, fraudulently and deceitfully issuing a false certificate of compliance, respondent Gallardo's acts or omissions deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Respondent Gallardo's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (d).

D. RECORD INSPECTION -  
1997 BMW 528I

72. PR II Dingman, while performing duties as a bureau program representative, investigated a complaint to the bureau by Mr. Judiel Arreola regarding the malfunctions of a 1997 BMW 528I automobile. PR II Dingman's findings and determinations regarding the participation of respondent establishment and respondent Gallardo in unlawful acts regarding the 1997 BMW 528I were credible and persuasive.

73. On July 27, 2010, Mr. Arreola and his father, Manuel Garcia, purchased a 1997 BMW 528I from Super Amigos Auto Plaza. During a test drive of the vehicle, Mr. Arreola and his father observed the "check engine light" as well as the dashboard's brake light remained illuminated. Also, a door handle on the vehicle was damaged. The owner of Super Amigos Auto Plaza, Martin Vasquez, promised Mr. Arreola and Mr. Garcia that the vehicle sales dealership would repair the malfunctions. The sales transaction was completed and the father and son drove the 1997 BMW 528I away from the automobile sales dealer's premises. Then the father and son returned the vehicle to Super Amigos Auto Plaza one week after the purchase date, in order to receive the benefit of the promise that the malfunctioning conditions would be repaired. Although Super Amigos Auto Plaza's employee or agent repaired the automobile's door handle, the problems with the illuminated dashboard lights, and especially the MIL, were never repaired.

74. PR II Dingman learned from Mr. Arreola that on July 29, 2010, the vehicle was not in the possession of Super Amigos Auto Plaza. The 1997 BMW 528I was never at

respondent's establishment in Dixon, California on that date. And respondent Gallardo never laid his hands on the 1997 BMW 528I on July 29, 2010, because on that date the vehicle was stored in the garage at Mr. Arreola's residence in Sacramento.

75. PR II Dingman reasonably concluded that on July 29, 2010, the 1997 BMW 528I could not have passed a correctly and lawfully administered smog check inspection. The vehicle would have failed the functional portion of the smog test on July 29, 2010, because the MIL remained illuminated.

76. PR II Dingman showed that vehicle test information included in the VID demonstrated that on July 29, 2010, at respondent's licensed establishment Certificate of Compliance number WL928463C was issued, and the document was signed by respondent Gallardo, for the 1997 BMW 528I. Among the errors on the certificate of compliance, was the entry made by respondent Gallardo regarding the measured drive axle weight of the BMW 528I, which was incorrectly recorded at 1,370 pounds.

77. On May 4, 2011, the 1997 BMW 528I underwent a smog check inspection at the state referee facility. The state referee's test resulted in the vehicle's failure of the functional portion of the smog inspection because of the illumination of the MIL. The trouble code was determined by the referee to be "PO349," which indicated a problem in the camshaft position sensor circuit. Also the vehicle failed the smog test by the referee because of disconnected wiring to engine sensors. The 1997 BMW 528I, hence, failed both the functional portion and visual portion of the smog check inspection.

The state referee recorded the correct measured drive axle weight of the BMW 528I at 1,786 pounds.

78. As a result of his investigation of the complaint by Mr. Arreola regarding the 1997 BMW 528I, PR II Dingman reached two conclusions regarding the unlawful, fraudulent and corrupt conduct of respondents. First, the program representative determined that respondents had engaged in Clean Piping with regard to the 1997 BMW 528I in order to generate Certificate of Compliance number WL928463C. And, PR II Dingman concluded that respondent created smog inspection records for the 1997 BMW 528I approximately two days after the date of the actual sale of the vehicle to Mr. Arreola and his father, Mr. Garcia.

*Twenty Seventh Cause for Discipline: Respondent Navarro  
Untrue or Misleading Statements  
Regarding Record Inspection and a 1997 BMW 528I*

79. On July 29, 2010, respondent Navarro, doing business as Accurate Diagnostics, through its agent or employee, made statements that the licensed establishment's personnel knew, or by exercise of reasonable care, should have known were untrue or misleading, by the issuance of electronic Certificate of Compliance number WL928463C for a 1997 BMW 528I. The issuance of the certificate of compliance

untruthfully and misleadingly certified that the vehicle's smog suppression system conformed with applicable laws and regulations of this state. The 1997 BMW 528I could not have passed the smog inspection because the vehicle's MIL remained illuminated. Moreover, respondent perpetuated false statements because the 1997 BMW 528I had been involved in an unlawful Clean Pipe scheme.

As a smog check station licensee, respondent Navarro's acts or omissions, doing business as respondent Accurate Diagnostics, in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(1).

*Twenty Eighth Cause for Discipline: Respondent Navarro  
Fraud Regarding Record Inspection and a 1997 BMW 528I*

80. On July 29, 2010, respondent Navarro, doing business as Accurate Diagnostics, through his agents or employees, committed acts that constitute fraud by issuing electronic Certificate of Compliance Certificate of Compliance WL928463C for 1997 BMW 528I without the assigned licensed smog check technician performing a bona fide visual inspection of the emission control devices and systems on the vehicle. Respondent's acts or omissions, through his agent or employee, on that day deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Respondent Navarro's acts or omissions in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(4).

*Twenty-Ninth Cause for Discipline: Respondent Navarro  
Violations of the Motor Vehicle Inspection Program  
Regarding Record Inspection and a 1997 BMW 528I*

81. On July 29, 2010, regarding the 1997 BMW 528I, respondent Navarro, doing business as Accurate Diagnostics, failed to comply with the sections of the Health and Safety Code as follows:

a. *Section 44012, subdivision (a):* Respondent Accurate Diagnostics, through his agent or employee, failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures;

b. *Section 44012, subdivision (f):* Respondent Accurate Diagnostics, through his agent or employee, failed to perform emission control tests on the vehicle in accordance with procedures prescribed by the bureau.

c. *Section 44015, subdivision (b):* Respondent Accurate Diagnostics, through his agent or employee, issued electronic Certificate of Compliance No. WL928463C for a 1997 BMW 528I without properly testing and inspecting the vehicle to determine if it was in compliance with Health and Safety Code section 44012.

In this regard, as a smog check station licensee, doing business as Accurate Diagnostics, respondent Navarro, through the acts or omissions of his employee or agent, violated the forestated provisions of Health and Safety Code sections 44012 and 44015, subdivision (b), as those statutes respectively interact with Health and Safety Code section 44072.2, subdivision (a).

*Thirtieth Cause for Discipline: Respondent Navarro  
Violations of Regulations Pursuant to the Motor Vehicle Inspection Program  
Regarding Record Inspection and a 1997 BMW 528I*

82. On July 29, 2010, regarding the 1997 BMW 528I, respondent Navarro, doing business as Accurate Diagnostics, failed to comply with the following provisions of California Code of Regulations, title 16:

a. *Section 3340.35, subdivision (c)*: Respondent Navarro issued electronic Certificate of Compliance No. WL928463C for the vehicle even though the vehicle had not been inspected in accordance with section 3340.42.

b. *Section 3340.42*: Respondent Navarro failed to conduct the required smog tests on the vehicle in accordance with the bureau's specifications.

In this regard, as a smog check station licensee, doing business as Accurate Diagnostics, respondent Navarro, through the acts or omissions of his employee or agent, violated the forestated provisions of California Code of Regulations, title 16, sections 3340.35 and 3340.42, as those regulations respectively interact with Health and Safety Code section 44072.2, subdivision (c).

*Thirty-First Cause for Discipline: Respondent Navarro  
Dishonesty, Fraud or Deceit  
Regarding Record Inspection and a 1997 BMW 528I*

83. On July 29, 2010, respondent Navarro, doing business as Accurate Diagnostics, committed dishonest, fraudulent or deceitful acts whereby another person, or the state's citizenry, may be injured by the issuance of electronic Certificate of Compliance No. WL928463C. Such injury occurred in issuing the certificate of compliance for the 1997 BMW 528I, without a licensed smog check technician first performing a bona fide inspection of the emission control devices and systems on the vehicle. By dishonestly, fraudulently and deceitfully issuing a false certificate of compliance, respondent Navarro's acts or omissions deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. These acts violated Health and Safety Code section 44072.2, subdivision (d).

*Thirty-Second Cause for Discipline: Respondent Gallardo  
Violations of the Motor Vehicle Inspection Program  
Regarding Record Inspection and a 1997 BMW 528I*

84. On July 29, 2010, regarding the 1997 BMW 528I, respondent Gallardo failed to comply with the sections of the Health and Safety Code as follows:

a. *Section 44012, subdivision (a)*: Respondent Gallardo failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures;

b. *Section 44012, subdivision (f)*: Respondent Gallardo failed to perform emission control tests on the vehicle in accordance with procedures prescribed by the bureau.

c. *Section 44032*: Respondent Gallardo failed to perform tests of the emission control devices and systems on that vehicle in accordance with section 44012 of the Health and Safety Code.

In this regard, respondent Gallardo violated the forestated provisions of Health and Safety Code sections 44012 and 44032, as those statutes respectively interact with Health and Safety Code section 44072.2, subdivision (a).

*Thirty-Third Cause for Discipline: Respondent Gallardo  
Violations of Regulation Pursuant to the Motor Vehicle Inspection Program  
Regarding Record Inspection and a 1997 BMW 528I*

85. On July 29, 2010, regarding the 1997 BMW 528I, respondent Gallardo failed to comply with the following provisions of California Code of Regulations, title 16:

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

b. *Section 3340.41, subdivision (c)*: Respondent Gallardo entered false information into the Emission Inspection System for electronic Certificate of Compliance number WL928463C by entering "Pass" for the visual inspection and functional inspection of the engine, in fact, the 1997 BMW 528I could not have passed the visual inspection because the subject vehicle's had MIL illuminated that indicated malfunctions of the smog gas suppression features of the engine. And respondent Gallardo engaged in the illegal act of entering vehicle identification or emission control information for a vehicle other than the vehicle being certified, which is an unlawful scheme called Clean Piping.

c. *Section 3340.42*: Respondent Gallardo failed to conduct the required smog tests and inspection on the 1997 BMW 528I in accordance with the bureau's specifications.

In the capacity as both a smog check station licensee and an advanced emission specialist technician licensee, respondent Gallardo's acts or omissions in specialist technician licensee, respondent Gallardo's acts or omissions in the foregoing matters violated the provisions of Health & Safety Code section 44072.2, subdivision (c).

*Thirty Fourth Cause for Discipline: Respondent Gallardo  
Dishonesty, Fraud or Deceit  
Regarding Record Inspection and a 1997 BMW 528I*

86. On July 29, 2010, respondent Gallardo committed dishonest, fraudulent or deceitful acts whereby another person, or the state's citizenry, may be injured by the issuance of electronic Certificate of Compliance No. WL928463C. Such injury occurred in issuing the certificate of compliance for the 1997 BMW 528I without a bona fide inspection of the emission control devices and systems on the vehicle. By dishonestly, fraudulently and deceitfully issuing a false certificate of compliance, respondent Gallardo's acts or omissions deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Respondent Gallardo's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (d).

*Matters in Aggravation*

87. On December 30, 2008, the bureau issued Citation No C09-0769 against respondent Navarro, doing business as Accurate Diagnostics, for violating Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional smog check of emission control devices according to procedures prescribed by the department), and California Code of Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested.)

Respondent Navarro, doing business as Accurate Diagnostics, issued a certificate of compliance to a bureau undercover vehicle that had a missing pulse air injection reactor system.

The bureau assessed against respondent Navarro, doing business as Accurate Diagnostics, as civil penalties totaling \$500 for those violations. Respondent Navarro complied with the citation on February 29, 2009.

88. On June 19, 2009, the bureau issued Citation No C09-1402 against Navarro, doing business as Accurate Diagnostics, for violating Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional smog check of emission control devices according to procedures prescribed by the department), and California Code of Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested).

Respondent Accurate Diagnostics issued a certificate of compliance to a bureau vehicle that had a missing EGR valve.

The bureau assessed against respondent civil penalties totaling \$1,000 for those violations. Respondent complied with the citation on October 23, 2009.

89. On January 25, 2010, the bureau issued Citation No C2010-0723 against respondent Navarro, doing business as Accurate Diagnostics, for violating Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional smog check of emission control devices according to procedures prescribed by the department), and California Code of Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested.)

Respondent Navarro, doing business as Accurate Diagnostics, issued a certificate of compliance to a bureau vehicle that had a missing PCV system.

The bureau assessed against respondent Navarro, doing business as Accurate Diagnostics, civil penalties totaling \$2,000 for those violations. Respondent complied with the citation on March 25, 2010.

90. On December 30, 2009, the bureau issued Citation No. M09-0770 to respondent Gallardo against his smog check technician license for violations of Health and Safety Code section 44032, (qualified technicians shall perform tests of emission control systems and devices in accordance with section 44012 of that Code) and California Code of Regulations, title 16, section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section 3340.42).

Respondent Gallardo issued a certificate of compliance to a bureau vehicle that reflected a missing pulse air injection reactor system.

Respondent Gallardo was required to attend an eight-hour training course. Respondent Gallardo complied with this citation on February 24, 2009.

91. On June 19, 2009, the Bureau issued Citation No. M09-1403 to Respondent Gallardo against his smog check technician license for violations of Health and Safety Code section 44032, (qualified technicians shall perform tests of emission control systems and devices in accordance with section 44012 of that Code) and California Code of Regulations, title 16, section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section 3340.42).

Respondent Gallardo issued a certificate of compliance to a bureau vehicle with a missing EGR valve.

Respondent Gallardo was required to attend a 16-hour training course. Respondent Gallardo complied with this citation on October 23, 2009.

92. On January 25, 2010, the Bureau issued Citation No. M2010-0724 to Respondent Gallardo against his smog check technician license for violations of Health and Safety Code section 44032, (qualified technicians shall perform tests of emission control systems and devices in accordance with section 44012 of that Code) and California Code of Regulations, title 16, section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section 3340.42).

Respondent Gallardo issued a certificate of compliance to a bureau vehicle with a missing PCV system.

Respondent Gallardo was required to attend a 68-hour training course. Respondent Gallardo complied with this citation on April 8, 2010.

#### *Other Matters*

93. Due to the defaults by respondent Navarro and respondent Gallardo, and their resultant, respective failure to appear for hearing, evidence did not establish that either respondent Navarro or respondent Gallardo has voluntarily pursued educational endeavors since late 2010 to improve deficiencies identified through the bureau's investigations.

94. Due to the defaults by respondent Navarro and respondent Gallardo, and their resultant, respective failure to appear for hearing, evidence was not developed to show that either respondent Navarro or respondent Gallardo has been engaged in significant and conscientious involvement and participation in community, religious or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

95. Due to the defaults by respondent Navarro and respondent Gallardo, respondents did not call to the hearing of this matter any witness, such as satisfied customers or other bureau licensees, to provide evidence regarding the trustworthiness and honesty of subject ARD/smog check station licensee and the subject smog check technician licensee. No independent person came to the hearing of this matter to offer favorable evidence regarding either respondent's conduct that led to the First Amended Accusation's causes for discipline. No credible person offered evidence regarding the attitudes of respondents with regard to the past acts of unprofessional, unlawful conduct as described above.

96. As to the factual findings set out above, by a preponderance of evidence, complainant proved that respondent Navarro's acts and omissions, which give cause to sustain all allegations in the First Amended Accusation, establish that respondent Navarro as an automotive repair dealer has engaged in a course of repeated and willful violations of the statutes and regulations that govern licensees of the bureau.

97. Similarly, by a preponderance of evidence, complainant proved that respondent Gallardo's acts and omissions, which gave cause to sustain all allegations in the First Amended Accusation, establish that respondent Gallardo as a smog check technician has engaged in a course of repeated and willful violations of the statutes and regulations that govern licensees of the bureau.

98. The evidence establishes respondents failed to properly perform smog checks in situations where vehicles presented in the course of business at respondent Accurate Diagnostic facility located in Dixon, California, for smog check service. Repeatedly, respondents failed to conduct proper visual and functional inspections of vehicles during the smog checks, and then the caused to be issued certificates of compliance under penalty of perjury for failing vehicles that were not capable of passing a properly conducted smog check.

99. The evidence establishes that respondents, through a fraudulent scheme in conjunction with an auto sales dealer known as Super Amigos Auto Plaza, repeatedly issued false certificates of compliance on vehicles purchased at Super Amigos Auto Plaza that were never lawfully smogged at the Accurate Diagnostics facility by respondent Gallardo. In fact, the evidence established conclusively that respondents issued certificates of compliance on vehicles that were never smogged at the facility, had never been brought to the facility, on dates and at times when the vehicles were in the physical possession of respective owners.

*Costs of Investigation and Prosecution*

100. Program Manager I William D. Thomas, of the Case Management and Enforcement Statistics unit for the bureau, certified that as of May 13, 2013, certain costs were incurred in connection with the preparation of undercover vehicles, which were used in the agency's action that led to the Accusation against respondent:

I. COSTS OF VEHICLE PREPARATION SERVICES:

a. Bureau

Personnel	Fiscal Year	Hours	Rate/HR	Cost
Program Representative II	2009/10	16	\$74.56	\$1,192.96
	2010/11	60	\$76.92	\$4,615.20
	2011/12	26	\$76.06	<u>\$1,977.56</u>

Total Cost for Investigation  
and Enforcement Operations

\$7,785.72

II. COSTS OF PROSECUTION SERVICES:

Deputy Attorney General Mareta Ward certified, on July 10, 2013, that the costs of prosecution by the Department of Justice on behalf of the bureau were incurred regarding the Accusation against respondent as follows:

b. Department of Justice

<i>Deputy Attorneys General</i>	Fiscal Years	Hours	Rate \$	Cost \$
All deputies	2013/14; 2012/13; 2011/12; and 2010/11	47.25	\$170	\$8,032.50
Paralegal Services	2011/12; 2010/11	12.00	\$120	\$1,380.00

The sum of prosecution costs, through the Department of Justice, are \$9,472.50.

101. The total costs of investigation, vehicle preparation and prosecution in this matter are \$17,258.22. Those are the costs actually and necessarily incurred investigating and prosecuting this matter. The hearing of this matter pertained to an undercover operation, which included extensive work by a bureau laboratory representative in preparing the undercover vehicle. And there were four or five program representatives who provided billable services regarding assembling and studying respondents' fraudulent and unlawful records that were related to "Clean Piping" practices permitted, or executed, by respondents.

102. Due to their defaults and resultant failures to appear for the hearing, respondents did not advance any meritorious defense in the exercise of their respective rights to a hearing in this matter. Also, neither respondent can be seen, under the facts set out above, to have committed slight or inconsequential misconduct in the context of the First Amended Accusation. Respondents did not raise any "colorable challenge" to complainant's First Amended Accusation's causes for discipline. Respondents did not contest or refute the conclusions of the bureau's program representatives that respondent Navarro, through Accurate Diagnostics, enabled respondent Gallardo's unprofessional conduct, which arose out of five overriding deficiencies, which were: (i) making misleading statements; (ii) engaging in fraud; (iii) violating statutes and regulations pertaining to the Motor Vehicle Inspection Program; (iv) pursuing a pattern of dishonesty, deceit and fraud; and (v) violating the requirements prescribed in regulations of the bureau.

The immediate foregoing factors do not indicate that the imposition of the full costs of investigation and prosecution will unfairly penalize respondents. And a substantial basis does not exist to warrant a reduction of the assessment against respondents for the costs of investigation and prosecution as incurred by complainant.

103. Accordingly, as of the date of the hearing, the reasonable cost owed by respondents, jointly and severally, to the department, on behalf of the bureau, is \$17,258.22.

## LEGAL CONCLUSIONS

### *Standard of Proof*

1. "Preponderance of the evidence" is the standard of proof to be applied as to facts in dispute under the Accusation from which disciplinary action may result against the registration and license held by respondent. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repairs* (2011) 201 Cal.App.4th 911, 916-918.)

The Factual Findings and Order, herein, rest upon a preponderance of evidence that establishes respondents' unprofessional and unlawful acts and omissions in the matters recorded herein.

### *Causes for Discipline*

RESPONDENT LUIS NAVARRO DOING BUSINESS AS ACCURATE DIAGNOSTICS AND SMOGS

#### *UNTRUE OR MISLEADING STATEMENTS (1st, 11th, 19th and 27th CAUSES)*

2. Business and Professions Code section 9884.7, subdivision (a)(1), sets out that:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, 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. Cause exists for discipline of the automotive repair dealer registration of respondent Navarro, doing business as Accurate Diagnostics, under Business and Professions

Code section 9884.7, subdivision (a)(1), by reason of the matters set forth in Factual Findings 18, 49, 64 and 79, along with Legal Conclusion 2.

*FAILED TO PROVIDE COPY OF A SIGNED DOCUMENT (2nd CAUSE)*

4. Business and Professions Code section 9884.7, subdivision (a)(3), sets out that:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, 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.

[¶] . . . . [¶]

(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.

5. Cause exists for discipline of the automotive repair dealer registration of respondent Navarro, doing business as Accurate Diagnostics, under Business and Professions Code section 9884.7, subdivision (a)(3), by reason of the matters set forth in Factual Findings 13 and 19, along with Legal Conclusion 4.

*FRAUD (3rd, 12th, 20th, 28th CAUSES)*

6. Business and Professions Code section 9884.7, subdivision (a)(4), establishes:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, 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.

[¶] . . . [¶]

(4) Any other conduct which constitutes fraud.

Fraud is the willful deceit of another with the intent to induce him to enter a contract or to alter his position to his injury or risk. (Civ. Code, §§ 1572; 1709.) Under California law, in order to find a person culpable of actual fraud, the party must be shown to have concealed material facts from the victim with intent thereby to deceive the victim or to induce the victim to enter into a contract. (*Earl v. Saks & Co.* (1951) 36 Cal.2d 602.)

It must also be stated that the term “fraud” has many definitions. It has been defined as “any kind of artifice employed by one person to deceive another.”<sup>3</sup> Also, it is said to be “a generic term, embracing all multifarious means [that] human ingenuity can devise, and [that] are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated.”<sup>4</sup> And, fraud and “bad faith” are synonymous, and also the term has synonyms of “dishonesty, infidelity, faithlessness, perfidy [and] unfairness.”<sup>5</sup>

California appellate courts have ruled that “where failure to disclose a material fact is calculated to induce a false belief, the distinction between concealment and affirmative misrepresentation is tenuous. Both are fraudulent. An active concealment has the same force and effect as a representation which is positive in form.” (*Outboard Marine Corp. v. Superior Court* (1975) 52 Cal.App.3d 30, 37.)

Misrepresentation “being a false assertion of fact, commonly takes the form of spoken or written words. Whether a statement is false depends on the meaning of the words in all the circumstances, including what may fairly be inferred from them. An assertion may also be inferred from conduct other than words. Concealment or even non-disclosure may have the effect of a misrepresentation . . . . [A]n assertion need not be fraudulent to be a misrepresentation. Thus a statement intended to be truthful may be a misrepresentation because of ignorance or carelessness, as when the word ‘not’ is inadvertently omitted or when inaccurate language is used. But a misrepresentation that is not fraudulent has no consequences . . . . unless it is material.” (*Restatement (Second) of Contracts* § 159 comment A (1979).)

Respondent Navarro, through its agent and employee at Accurate Diagnostics, made repeated false assertions and misrepresentations to the pretend consumer and bureau program representative. The aggrieved consumers were persons who depended upon accurate, truthful and correct information. The misrepresentations by respondent Navarro’s personnel were material and substantial.

7. Cause exists for discipline of the automotive repair dealer registration of respondent Navarro, doing business as Accurate Diagnostics, under Business and Professions

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<sup>3</sup> *Black’s Law Dict.* (Revised 4th ed., 1968) p. 788.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

Code section 9884.7, subdivision (a)(4), by reason of the matters set forth in Factual Findings 20, 50, 65 and 80, along with Legal Conclusion 6.

*FAILURE TO PROVIDE A WRITTEN ESTIMATE (4th CAUSE)*

8. Business and Professions Code section 9884.7, subdivision (a)(6), establishes:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, 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.

[¶] . . . [¶]

(6) Failure in any material respect to comply with the provisions of [the Automotive Repair Act] or regulations adopted pursuant to it.

9. Business and Professions Code section 9884.9, subdivision (a), states:

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:

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

\_\_\_\_\_  
(signature or initials)"

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

California Code of Regulations, title 16, section 3353, subdivision (a), sets forth:

No work for compensation shall be commenced and no charges shall accrue without specific authorization from the customer in accordance with the following requirements:

(a) Estimate for Parts and Labor. Every dealer shall give to each customer a written estimated price for parts and labor for a specific job.

10. Cause exists for discipline of the automotive repair dealer registration of respondent Navarro, doing business as Accurate Diagnostics, under Business and Professions Code section 9884.9, subdivision (a), and California Code of Regulations, title 16, section 3353, subdivision (a), in conjunction with Code section 9884.7, subdivision (a)(6), by reason of the matters set forth in Factual Findings 13 and 21 along with Legal Conclusions 8 and 9.

*VIOLATION OF THE MOTOR VEHICLE INSPECTION PROGRAM  
(5th, 13th, 21st, and 29th Causes)*

11. Health and Safety Code section 44072.2, subdivision (a), states, in pertinent part, that 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 [the Motor Vehicle Inspection Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.

Health and Safety Code section 44012 sets out, in part, that “[t]he test at the smog check stations shall be performed in accordance with procedures prescribed by the department . . . . The department shall ensure, as appropriate to the test method, the following:

- a. Subdivision (a): Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards . . . .
- b. Subdivision (f): A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

Health and Safety Code section 44015, subdivision (b), sets forth, “[i]f 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.”

12. Cause exists for discipline of the smog check station license of respondent Navarro, doing business as Accurate Diagnostics, under Health and Safety Code section 44072.2, subdivision (a), in conjunction with Health and Safety Code sections 44012 and 44015, subdivision (b) by reason of the matters set forth in Factual Findings 22, 51, 66 and 81, along with Legal Conclusion 11.

*VIOLATION OF REGULATIONS PERTINENT TO THE MOTOR VEHICLE INSPECTION PROGRAM  
(6th, 14th, 22nd, and 30th CAUSES)*

13. Health and Safety Code section 44072.2, subdivision (c), provides that, “[t]he 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, . . . :

[¶] . . . . [¶]

(c) Violates any of the regulations adopted by the director pursuant to [Chapter 5-Motor Vehicle Inspection Program].

14. California Code of Regulations, title 16, section 3340.35, subdivision (c), sets forth, “[a] licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected . . . and has all the required emission control equipment and devices installed and functioning correctly.”

15. California Code of Regulations, title 16, section 3340.42, establishes the Smog Check Inspection Methods and Standards.

16. Cause for discipline of the smog check station license of respondent Navarro, doing business as Accurate Diagnostics, under Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.35, subdivision (c), by reason of the matters set forth in Factual Findings 23, 52, 67 and 82 along with Legal Conclusions 13 and 14.

17. Cause exists for discipline of the smog check station license of respondent Navarro, doing business as Accurate Diagnostics, under Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.42, by reason of the matters set forth in Factual Findings 23, 52, 67, and 82 along with Legal Conclusions 13 and 15.

*DISHONESTY, FRAUD AND DECEIT (7th, 15th, 23rd, and 31st CAUSES)*

18. Health and Safety Code section 44072.2, subdivision (d), provides that, “[t]he 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 . . . :

[¶] . . . . [¶]

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

19. Cause exists for discipline of the smog check station license of respondent Navarro, doing business as Accurate Diagnostics, under Health and Safety Code section 44072.2, subdivision (d), by reason of the matters set forth in Factual Findings 24, 53, 68 and 83 along with Legal Conclusion 18.

RESPONDENT RICARDO GALLARDO AS SMOG CHECK TECHNICIAN

*VIOLATION OF THE MOTOR VEHICLE INSPECTION PROGRAM  
(8th, 16th, 24th, and 32nd CAUSES)*

20. Health and Safety 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.*

(Emphasis added.)

21. Cause exists for discipline of the smog check technician license of respondent Gallardo under Health and Safety Code section 44072.2, subdivision (c), in conjunction with Health and Safety Code section 44012, subdivisions (a) and (f), and section 44032, by reason of the matters set forth in Factual Findings 25, 54, 69 and 84 and along with Legal Conclusions 11 and 20.

*VIOLATIONS OF REGULATIONS PURSUANT TO THE MOTOR VEHICLE INSPECTION PROGRAM (9th, 17th, 25th, and 33rd CAUSES)*

22. California Code of Regulations, title 16, section 3340.30, subdivision (a), sets forth, “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 [Article 5.5- Motor Vehicle Inspection Program].”

California Code of Regulations, title 16, section 3340.41, subdivision (c), sets forth: “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.”

California Code of Regulations, title 16, section 3340.42, which is a comprehensive, lengthy and detailed regulation, describes the “Smog Check Test Methods and Standards.”

23. Cause exists for discipline of the smog check technician license of respondent Gallardo under Health and Safety Code section 44072.2, subdivision (c), in conjunction with California Code of Regulations, title 16, section 3340.30, subdivision (a), section 3340.41, subdivision (c), and section 3340.42, by reason of the matters set forth in Factual Findings 26, 55, 70, and 85 along with Legal Conclusions 13, 14 in part, and 22.

*DISHONESTY, FRAUD OR DECEIT (10th, 18th, 26th and 34th CAUSES)*

24. Cause exists for discipline of the smog check technician license of respondent Gallardo under Health and Safety Code section 44072.2, subdivision (d), by reason of the matters set forth in Factual Findings 27, 56, 71, and 86 along with Legal Conclusion 17.

*Failure to Appear for Administrative Adjudication Hearing*

25. Because both respondents failed to appear at the hearing of this matter on the day set aside for presentation of the defense to the First Amended Accusation, no evidence in mitigation or rehabilitation is available. Hence, no basis exists to consider either

respondent's rehabilitation following the unlawful, fraudulent and deceitful acts, omissions and behavior committed by respondents during the year 2010.

*Respondent Navarro, owner of Accurate Diagnostics, is Subject to Agency Action*

26. In light of the well-established rule of nondelegable duties imposed upon an owner-licensee, respondent Navarro must be held responsible for the acts and omissions of, or by his agent and employee, respondent Gallardo, at the licensed smog check station and automotive repair dealer's facility, and respondent Navarro is subject to the causes for discipline that result from the serious misconduct associated with the premises owned by him.

The nondelegable duties rule, which is similar to the rule of *respondeat superior*, advances that a "licensee, if he elects to operate his business through employees, must be responsible to the licensing authority for [the employees'] conduct in the exercise of his license." (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 295.) "By virtue of the ownership of a . . . license, such owner has a responsibility to see to it that the license is not used in violation of law." (*Ford Dealers Assn. v. Dept. of Motor Vehicles* (1982) 32 Cal.3d 347, 360.)

In citing Civil Code section 2330, the court in the *Ford Dealers Association* case commented that: "[t]he settled rule that licensees can be held liable for the acts of their employees comports with the general rule governing principal-agent liability. 'An agent represents his principal for all purposes within the scope of his actual or ostensible authority.' (Civil Code section 2330.)" (*Ford Dealers Assn. v. DMV, supra*, 32 Cal.3d at p. 360.)

The rule of nondelegable duties of licensees is of common law derivation. (*California Assn. of Health Facilities v. Department of Health Services supra*, 16 Cal.4th at p. 296; *Van Arsdale v. Hollinger* (1968) 68 Cal.2d 245, 251.) The essential justification for the rule is to ensure accountability of licensees so as to safeguard the public health, safety or welfare. More importantly, if a licensee, such as respondent Navarro, were not liable for the acts and omissions of his agents and independent contractors, "effective regulation would be impossible. [The licensee] could contract away the daily operations of his business to independent contractors and become immune to disciplinary action by the licensing authority." (*California Assn. of Health Facilities v. Department of Health Services, supra*, 16 Cal.4th at p. 296.) Such result would undermine effective law enforcement and regulatory oversight. And, the concept that a licensee will be held liable for the acts of agents is one that has been applied to situations where the agent is an independent contractor or is an employee. (*Banks v. Board of Pharmacy* (1984) 161 Cal.App.3d 708, 713; *Rob-Mac, Inc. v. Dept. of Motor Vehicles* (1983) 148 Cal.App.3d 793, 797-798.)

Respondent Navarro was obligated to supervise and control the activities and functions of the smog check technician, who was associated with the ARD registration

attached to Accurate Diagnostics and Smogs. Respondent Navarro must bear full responsibility for the acts and omissions of respondent Gallardo, who was either an agent or employee of respondent Navarro, doing business as Accurate Diagnostics and Smogs.

*Matters in Aggravation and Degree of Discipline*

27. As set out in Factual Finding 87 through 92, the past citations against the respective licenses held by respondent Navarro and respondent Gallardo constitute matters in aggravation in this agency action. Each of the two respondents has previously received citations for issuing false certificates of compliance and for failing to comply with the laws pertaining to smog inspections. Between the two of them, respondents have received six citations for this conduct since 2008.

Moreover, respondents were notified of the problems, educated on how to address the problems in citation conferences. Respondent Gallardo was required to take approximately 90 hours in training and still the behavior persisted resulting in the instant First Amended Accusation. Despite the bureau's previous efforts to assist respondents in bringing their conduct in conformity with the law and despite repeated citations, the licensees' individual and collective misconduct has never been corrected and appears impervious to improvement.

The facts in this case are uncontroverted and unopposed because respondents did not present any evidence to oppose the strong evidence presented by complainant.

Respondents' acts were on-going egregious, unlawful and corrupt conduct. Their aura of defiance was that of being unrepentant. As to the licensure disciplinary action to be imposed, complainant is reasonable to request revocation of all licenses.

28. The bureau has promulgated guidelines that set out the extent of license discipline that may be imposed under particular circumstances. The guidelines explicitly indicate that license revocation is justified for nearly all of the causes for discipline against respondents as established by the evidence in this matter.

An array of factors in aggravation exists and includes:

- The undercover operation involved detection of incompetence on the part of respondent Gallardo as an agent or employee of respondent Navarro, doing business as Accurate Diagnostics.
- Respondent Navarro, doing business as Accurate Diagnostics, through his employee or agent, respondent Gallardo, performed unlawful and willfully improper smog check inspections that endangered the health and finances of consumers. Respondent Gallardo's gross negligence or incompetence is vividly demonstrated through the undercover operation described above. More importantly, the evidence is clear that respondent Gallardo engaged in deliberate acts of fraud and deceit when unlawful acts

of cleaning piping of vehicles after the actual dates of sale when the subject vehicles were not in the custody of the smog check technician at the subject smog check station.

- Respondent Navarro, doing business as Accurate Diagnostics, and respondent Gallardo have a history of being subject of citation penalties from the bureau.
- Respondent Navarro, doing business as Accurate Diagnostics, together with respondent Gallardo, committed fraud in several instances set out in the factual findings.
- There was no evidence that respondent Navarro has provided any outside training for either himself or respondent Gallardo.
- There was no evidence of any medical or mental conditions that prevented respondent Navarro from exercising direct supervision and control over respondent Gallardo, whose fraudulent conduct led to wrongdoing.
- There was significant loss to the State of California and potentially significant damage to consumer's property as detected through the bureau's undercover operation and the records inspection activities by bureau program representatives.
- There was no evidence that respondent Accurate Diagnostic's owner, respondent Navarro, has taken any specific steps to minimize recurrence of the violations described herein.
- There is no indication that respondent Navarro will change his facility's operation if the ARD or smog station license were placed on probation.
- And consumers suffered monetary damages due to respondents' unlawful acts.

#### *Other Determinations Regarding Respondent Luis Navarro*

29. Business and Professions Code section 9884.7, subdivision (c), establishes: "The director may invalidate, temporarily or permanently, the registration for *all places* of business operated in this state by an automotive repair dealer *upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations* of this chapter, or regulations adopted pursuant to it." (Emphasis added.)

In order to avoid an injustice and to assure the utmost compliance with, and respect for, the bureau's police powers relative to the automobile repair industry, the directive of Business and Professions Code section 9884.7, subdivision (c), must operate with regard to respondent to the fullest extent of the law.

Hence, the director may permanently invalidate the registration for all places of business operated in the State of California in respondent Navarro's name because of the course of repeated and willful violations of Automotive Repair Act (Business and Professions Code, Chapter 20.3, section 9880 et seq.), or regulations adopted pursuant to it. And, the director may revoke the Smog Check Station license issued to respondent Navarro.

30. Under Health and Safety Code section 44072.8, if Smog Check Station License Number RC 248267, issued to Luis C. Navarro, doing business as Accurate Diagnostics and Smogs, is invalidated, revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

#### OTHER DETERMINATION AS TO RESPONDENT GALLARDO

31. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician (or Smog Check Repair Technician) License Number EA 146134, issued to Ricardo Gallardo, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

#### *Ultimate Determinations Regarding Respondents*

32. The overwhelming evidence presented at the hearing demonstrates that respondent Luis C. Navarro, doing business as Accurate Diagnostics and Smogs and Respondent Ricardo Gallardo have violated each of the causes for discipline listed against them in the First Amended Accusation. The facts of the case, which are uncontroverted, prove that respondents have engaged in multiple acts of dishonesty, fraud and deceit as it pertains to the state mandated smog check program. First, respondent failed to professionally and competently perform a smog check inspection of a vehicle used during an undercover operation. Then in no less than three distinct instances, respondent conspired with a dishonest used car dealer at a car lot in Sacramento to perform "Clean Piping" schemes on cars on dates that occurred after sales dates to consumers. Specifically, respondents have been shown to have a pattern and practice of deliberate fraud and deceit carried out in two types of unlawful situations.

There can be little doubt that respondents are subject to discipline and the only level of discipline that will adequately protect the public is revocation of all licenses held by the two respondents. This level of discipline is well within the bureau's guidelines.

#### *Recovery of Costs of Investigation and Prosecution*

33. Complainant has requested that respondent Luis C. Navarro and respondent Ricardo Gallardo be ordered to pay the department the costs of investigation and prosecution as incurred by the bureau.

Code section 125.3 prescribes that a “licentiate found to have committed a violation or violations of the licensing act” may be directed “to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.”

The California Supreme Court’s reasoning on the obligation of a licensing agency to fairly and conscientiously impose costs in administrative adjudication as articulated in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45-46, is persuasive and should be considered in this matter. Scrutiny of certain factors, which pertain to the Director’s exercise of discretion to analyze or examine factors that might mitigate or reduce costs of investigation and prosecution upon a licensee found to have engaged in unprofessional conduct, are set forth in Factual Finding 102.

34. The reasonable costs of investigation and prosecution as set forth in Factual Findings 100, 101 and 103 amount to \$17,258.22.

#### ORDER

1. Automotive Repair Dealer Registration Number ARD 248267 issued to Luis C. Navarro, owner and doing business as Accurate Diagnostic and Smogs, is permanently invalidated by reason of Legal Conclusions 3, 5, 7, 10, and 26, separately and for all of them.

2. Smog Check Station License Number RC 248267 issued to respondent Luis C. Navarro, owner and doing business as Accurate Diagnostic and Smogs, is revoked, by reason of to Legal Conclusions 12, 15, 19, and 26, separately and for all of them.

3. Any and all other automobile repair dealer registrations, or other licenses issued by the bureau, for all places of business operated in this state or whose financial or management interests are held in this state by respondent Luis C. Navarro, are permanently invalidated and revoked, by reason of Legal Conclusions 29 and 30.

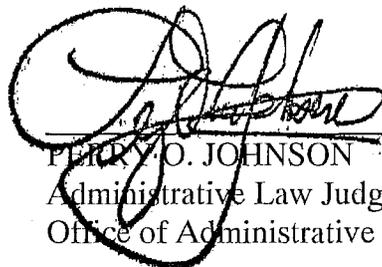
4. Advanced Emission Specialist (Smog Check) Technician License Number EA 146134 issued to respondent Ricardo Gallardo is revoked, by reason of Legal Conclusions 21, 23 and 24, separately and for all of them.

5. Any and all other licenses issued by the bureau, for all places of business operated in this state or whose financial or management interests are held in this state by respondent Ricardo Gallardo, are permanently invalidated and revoked, by reason of Legal Conclusion 31.

6. Within thirty days of the effective date of this decision respondent Luis C. Navarro and respondent Ricardo Gallardo, together or separately, shall pay the Director,

Department of Consumer Affairs, the costs of investigation and prosecution in an amount of \$17,258.22, by reason of Legal Conclusions 33 and 34.

DATED: June 12, 2014



PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

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7

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

11 In the Matter of the First Amended Accusation  
12 Against:

Case No. 79/11-97

13 **ACCURATE DIAGNOSTICS AND SMOGS**  
14 **390 Industrial Way, Suite C**  
15 **Dixon, CA 95620**  
16 **LUIS C. NAVARRO, OWNER**  
17 **Automotive Repair Dealer Registration No.**  
18 **ARD 248267**  
19 **Smog Check Station License No. RC 248267,**

**FIRST AMENDED ACCUSATION**

**SMOG CHECK**

17 and

18 **RICARDO GALLARDO**  
19 **410 West H Street**  
20 **Dixon, CA 95620**  
21 **Advanced Emission Specialist Technician**  
22 **License No. EA 146134**

Respondent.

23 Complainant alleges:

24 **PARTIES**

25 1. Sherry Mehl ("Complainant") brings this First Amended Accusation solely in her  
26 official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of  
27 Consumer Affairs.

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

3 \_\_\_\_\_  
4 (signature or initials)"

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

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

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

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

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

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

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

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

27 12. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
28 expiration or suspension of a license by operation of law, or by order or decision of the 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.

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1 13. Section 44072.8 of the Health and Safety Code states:

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

4 **COST RECOVERY**

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

9 **UNDERCOVER OPERATION – JUNE 14, 2010**

10 15. On or about June 14, 2010, a Bureau undercover operator drove a Bureau-  
11 documented 1995 Chevrolet Impala to Respondent Accurate's facility and requested a smog  
12 inspection. The vehicle could not pass the visual portion of a smog inspection because the  
13 vehicle's positive crankcase ventilation ("PCV") system had been modified. The operator signed  
14 a work order/estimate but was not provided with a copy of that document prior to the smog  
15 inspection. Respondent Gallardo performed the smog inspection and issued electronic Certificate  
16 of Compliance No. [REDACTED] for that vehicle. The operator paid \$65 for the smog inspection  
17 and received a copy of Invoice No. 5111 and the Vehicle Inspection Report ("VIR").

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Misleading Statements)**

20 16. Respondent Accurate has subjected his registration to discipline under Code section  
21 9884.7, subdivision (a)(1), in that on or about June 14, 2010, he made statements which he knew  
22 or which by exercise of reasonable care he should have known were untrue or misleading when  
23 he issued electronic Certificate of Compliance No. [REDACTED] for the 1995 Chevrolet Impala,  
24 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,  
25 the vehicle's PCV system had been modified.

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1 EIGHTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 23. Respondent Gallardo has subjected his technician license to discipline under Health  
4 and Safety Code section 44072.2, subdivision (a), in that on or about June 14, 2010, regarding the  
5 1995 Chevrolet Impala, he violated sections of that Code, as follows:

6 a. **Section 44012, subdivision (a):** Respondent Gallardo failed to determine that all  
7 emission control devices and systems required by law were installed and functioning correctly in  
8 accordance with test procedures.

9 b. **Section 44012, subdivision (f):** Respondent Gallardo failed to perform emission  
10 control tests on that vehicle in accordance with procedures prescribed by the department.

11 c. **Section 44032:** Respondent Gallardo failed to perform tests of the emission control  
12 devices and systems on that vehicle in accordance with section 44012 of that Code.

13 NINTH CAUSE FOR DISCIPLINE

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

15 24. Respondent Gallardo has subjected his technician license to discipline under Health  
16 and Safety Code section 44072.2, subdivision (c), in that on or about June 14, 2010, regarding the  
17 1995 Chevrolet Impala, he violated sections of the California Code of Regulations, title 16, as  
18 follows:

19 a. **Section 3340.30, subdivision (a):** Respondent Gallardo failed to inspect and test that  
20 vehicle in accordance with Health and Safety Code section 44012.

21 b. **Section 3340.41, subdivision (c):** Respondent Gallardo entered false information  
22 into the Emission Inspection System for electronic Certificate of Compliance No. [REDACTED] by  
23 entering "Pass" for the visual inspection for the PCV system when, in fact, the vehicle could not  
24 pass the visual inspection because the vehicle's PCV system had been modified.

25 c. **Section 3340.42:** Respondent Gallardo failed to conduct the required smog tests and  
26 inspections on that vehicle in accordance with the Bureau's specifications.

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1 TENTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 25. Respondent Gallardo has subjected his technician license to discipline under Health  
4 and Safety Code section 44072.2, subdivision (d), in that on or about June 14, 2010, regarding the  
5 1995 Chevrolet Impala, he committed acts involving dishonesty, fraud or deceit whereby another  
6 was injured by issuing electronic Certificate of Compliance No. [REDACTED] without performing a  
7 bona fide inspection of the emission control devices and systems on that vehicle, thereby  
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
9 Inspection Program.

10 **RECORDS INSPECTION - 1999 Porsche Boxter**

11 26. On or about November 13, 2010, Morris Hood ("consumer") purchased a 1999  
12 Porsche Boxter from Super Amigos Auto Plaza. Immediately, the consumer noted a coolant leak  
13 and the vehicle's malfunction indicator light ("MIL") was illuminated. He took the vehicle back  
14 to the facility; however, the problems were never resolved. On December 2, 2010, the Bureau  
15 received a complaint from the consumer regarding the problems with the vehicle.

16 27. A check of the vehicle test information revealed that on December 1, 2010,  
17 Respondent Gallardo issued Certificate of Compliance No. NY684324C for this vehicle;  
18 however, on that date, the vehicle was in the possession of the consumer and not at Respondent  
19 Accurate's facility. In fact, Respondent Gallardo used the clean piping method<sup>1</sup> by using the tail  
20 pipe emissions of a vehicle other than the vehicle certified in order to issue the certificate of  
21 compliance to the 1999 Porsche Boxter.

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25  
26 <sup>1</sup> "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of  
27 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in  
28 compliance or are not present in the smog check area during the time of the certification.

1 ELEVENTH CAUSE FOR DISCIPLINE

2 (Misleading Statements)

3 28. Respondent Accurate has subjected his registration to discipline under Code section  
4 9884.7, subdivision (a)(1), in that on or about December 1, 2010, he made statements which he  
5 knew or which by exercise of reasonable care he should have known were untrue or misleading  
6 when he issued electronic Certificate of Compliance No. NY684324C for the 1999 Porsche  
7 Boxter, certifying that the vehicle was in compliance with applicable laws and regulations when,  
8 in fact, the vehicle had been clean piped.

9 TWELFTH CAUSE FOR DISCIPLINE

10 (Fraud)

11 29. Respondent Accurate has subjected his registration to discipline under Code section  
12 9884.7, subdivision (a)(4), in that on or about December 1, 2010, he committed acts which  
13 constitute fraud by issuing electronic Certificate of Compliance No. NY684324C for the 1999  
14 Porsche Boxter, without performing a bona fide inspection of the emission control devices and  
15 systems on that vehicle, thereby depriving the People of the State of California of the protection  
16 afforded by the Motor Vehicle Inspection Program.

17 THIRTEENTH CAUSE FOR DISCIPLINE

18 (Violation of the Motor Vehicle Inspection Program)

19 30. Respondent Accurate has subjected his station license to discipline under Health and  
20 Safety Code section 44072.2, subdivision (a), in that on or about December 1, 2010, regarding the  
21 1999 Porsche Boxter, he violated sections of that Code, as follows:

22 a. **Section 44012, subdivision (a):** Respondent Accurate failed to determine that all  
23 emission control devices and systems required by law were installed and functioning correctly in  
24 accordance with test procedures.

25 b. **Section 44012, subdivision (f):** Respondent Accurate failed to perform emission  
26 control tests on that vehicle in accordance with procedures prescribed by the department.

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1 c. **Section 44015, subdivision (b):** Respondent Accurate issued electronic Certificate  
2 of Compliance No. NY684324C without properly testing and inspecting the vehicle to determine  
3 if it was in compliance with section 44012 of that Code.

4 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

6 31. Respondent Accurate has subjected his station license to discipline under Health and  
7 Safety Code section 44072.2, subdivision (c), in that on or about December 1, 2010, regarding the  
8 1999 Porsche Boxter, he violated sections of the California Code of Regulations, title 16, as  
9 follows:

10 a. **Section 3340.35, subdivision (c):** Respondent Accurate issued electronic Certificate  
11 of Compliance No. NY684324C even though that vehicle had not been inspected in accordance  
12 with section 3340.42 of that Code.

13 b. **Section 3340.42:** Respondent Accurate failed to conduct the required smog tests and  
14 inspections on that vehicle in accordance with the Bureau's specifications.

15 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

17 32. Respondent Accurate has subjected his station license to discipline under Health and  
18 Safety Code section 44072.2, subdivision (d), in that on or about December 1, 2010, regarding the  
19 1999 Porsche Boxter, he committed acts involving dishonesty, fraud or deceit whereby another  
20 was injured by issuing electronic Certificate of Compliance No. NY684324C for that vehicle  
21 without performing a bona fide inspection of the emission control devices and system on the  
22 vehicle, thereby depriving the People of the State of California of the protection afforded by the  
23 Motor Vehicle Inspection Program.

24 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

26 33. Respondent Gallardo has subjected his technician license to discipline under Health  
27 and Safety Code section 44072.2, subdivision (a), in that on or about December 1, 2010,  
28 regarding the 1999 Porsche Boxter, he violated sections of that Code, as follows:

1 a. **Section 44012, subdivision (a):** Respondent Gallardo failed to determine that all  
2 emission control devices and systems required by law were installed and functioning correctly in  
3 accordance with test procedures.

4 b. **Section 44012, subdivision (f):** Respondent Gallardo failed to perform emission  
5 control tests on that vehicle in accordance with procedures prescribed by the department.

6 c. **Section 44032:** Respondent Gallardo failed to perform tests of the emission control  
7 devices and systems on that vehicle in accordance with section 44012 of that Code.

8 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

10 34. Respondent Gallardo has subjected his technician license to discipline under Health  
11 and Safety Code section 44072.2, subdivision (c), in that on or about December 1, 2010,  
12 regarding the 1999 Porsche Boxter, he violated sections of the California Code of Regulations,  
13 title 16, as follows:

14 a. **Section 3340.30, subdivision (a):** Respondent Gallardo failed to inspect and test that  
15 vehicle in accordance with Health and Safety Code section 44012.

16 b. **Section 3340.41, subdivision (c):** Respondent Gallardo entered false information  
17 into the EIS for electronic Certificate of Compliance No. NY684324C by entering vehicle  
18 identification information or emission control information for a vehicle other than the vehicle  
19 being certified.

20 c. **Section 3340.42:** Respondent Gallardo failed to conduct the required smog tests and  
21 inspections on that vehicle in accordance with the Bureau's specifications.

22 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

24 35. Respondent Gallardo has subjected his technician license to discipline under Health  
25 and Safety Code section 44072.2, subdivision (d), in that on or about December 1, 2010,  
26 regarding the 1999 Porsche Boxter, he committed acts involving dishonesty, fraud or deceit  
27 whereby another was injured by issuing electronic Certificate of Compliance No. NY684324C  
28 without performing a bona fide inspection of the emission control devices and systems on that

1 vehicle, thereby depriving the People of the State of California of the protection afforded by the  
2 Motor Vehicle Inspection Program.

3 **RECORDS INSPECTION – 2005 Nissan Quest**

4 36. On or about January 16, 2010, Omar and Norma Garcia (“consumers”) purchased a  
5 2005 Nissan Quest from Super Amigos Auto Plaza. Immediately, the consumers noted that the  
6 vehicle’s malfunction indicator light (“MIL”) was illuminated. They took the vehicle back to the  
7 facility; however, the problems were never resolved.

8 37. A check of the vehicle test information revealed that on January 26, 2010,  
9 Respondent Gallardo issued Certificate of Compliance No. NQ299000C for this vehicle;  
10 however, on that date, the vehicle was in the possession of the consumer and not at Respondent  
11 Accurate’s facility. Respondent Gallardo used the clean piping method by using the tail pipe  
12 emissions of a vehicle other than the vehicle being certified in to issue the certificate of  
13 compliance to the 2005 Nissan Quest.

14 **NINETEENTH CAUSE FOR DISCIPLINE**

15 **(Misleading Statements)**

16 38. Respondent Accurate has subjected his registration to discipline under Code section  
17 9884.7, subdivision (a)(1), in that on or about January 26, 2010, he made statements which he  
18 knew or which by exercise of reasonable care he should have known were untrue or misleading  
19 when he issued electronic Certificate of Compliance No. NQ299000C for the 2005 Nissan Quest,  
20 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,  
21 the vehicle had been clean piped.

22 **TWENTIETH CAUSE FOR DISCIPLINE**

23 **(Fraud)**

24 39. Respondent Accurate has subjected his registration to discipline under Code section  
25 9884.7, subdivision (a)(4), in that on or about January 26, 2010, he committed acts which  
26 constitute fraud by issuing electronic Certificate of Compliance No. NQ299000C for the 2005  
27 Nissan Quest, without performing a bona fide inspection of the emission control devices and

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1 systems on that vehicle, thereby depriving the People of the State of California of the protection  
2 afforded by the Motor Vehicle Inspection Program.

3 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

4 **(Violation of the Motor Vehicle Inspection Program)**

5 40. Respondent Accurate has subjected his station license to discipline under Health and  
6 Safety Code section 44072.2, subdivision (a), in that on or about January 26, 2010, regarding the  
7 2005 Nissan Quest, he violated sections of that Code, as follows:

8 a. **Section 44012, subdivision (a):** Respondent Accurate failed to determine that all  
9 emission control devices and systems required by law were installed and functioning correctly in  
10 accordance with test procedures.

11 b. **Section 44012, subdivision (f):** Respondent Accurate failed to perform emission  
12 control tests on that vehicle in accordance with procedures prescribed by the department.

13 c. **Section 44015, subdivision (b):** Respondent Accurate issued electronic Certificate  
14 of Compliance No. NQ299000C without properly testing and inspecting the vehicle to determine  
15 if it was in compliance with section 44012 of that Code.

16 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

18 41. Respondent Accurate has subjected his station license to discipline under Health and  
19 Safety Code section 44072.2, subdivision (c), in that on or about January 26, 2010, regarding the  
20 2005 Nissan Quest, he violated sections of the California Code of Regulations, title 16, as  
21 follows:

22 a. **Section 3340.35, subdivision (c):** Respondent Accurate issued electronic Certificate  
23 of Compliance No. NQ299000C even though that vehicle had not been inspected in accordance  
24 with section 3340.42 of that Code.

25 b. **Section 3340.42:** Respondent Accurate failed to conduct the required smog tests and  
26 inspections on that vehicle in accordance with the Bureau's specifications.

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1 a. **Section 3340.30, subdivision (a):** Respondent Gallardo failed to inspect and test that  
2 vehicle in accordance with Health and Safety Code section 44012.

3 b. **Section 3340.41, subdivision (c):** Respondent Gallardo entered false information  
4 into the EIS for electronic Certificate of Compliance No. NQ299000C by entering vehicle  
5 identification information or emission control information for a vehicle other than the vehicle  
6 being certified.

7 c. **Section 3340.42:** Respondent Gallardo failed to conduct the required smog tests and  
8 inspections on that vehicle in accordance with the Bureau's specifications.

9 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

11 45. Respondent Gallardo has subjected his technician license to discipline under Health  
12 and Safety Code section 44072.2, subdivision (d), in that on or about January 26, 2010, regarding  
13 the 2005 Nissan Quest, he committed acts involving dishonesty, fraud or deceit whereby another  
14 was injured by issuing electronic Certificate of Compliance No. NQ299000C without performing  
15 a bona fide inspection of the emission control devices and systems on that vehicle, thereby  
16 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
17 Inspection Program.

18 **RECORDS INSPECTION – 1997 BMW 528I**

19 46. On or about July 27, 2010, Manuel Garcia ("consumer") purchased a 1997 BMW  
20 528I from Super Amigos Auto Plaza. Immediately, the consumer noted a door handle that  
21 needed to be repaired and vehicle's MIL was illuminated. He took the vehicle back to the facility  
22 and the door handle was repaired; however, the MIL light was still illuminated.

23 47. A check of the vehicle test information revealed that on July 29, 2010, Respondent  
24 Gallardo issued Certificate of Compliance No. WL928463C for this vehicle; however, on that  
25 date, the vehicle was in the possession of the consumer and not at Respondent Accurate's facility.  
26 Respondent Gallardo used the clean piping method by using the tail pipe emissions of a vehicle  
27 other than the vehicle being certified in order to issue the certificate of compliance to the 1997  
28 BMW 528I.

1 TWENTY-SEVENTH CAUSE FOR DISCIPLINE

2 (Misleading Statements)

3 48. Respondent Accurate has subjected his registration to discipline under Code section  
4 9884.7, subdivision (a)(1), in that on or about July 29, 2010, he made statements which he knew  
5 or which by exercise of reasonable care he should have known were untrue or misleading when  
6 he issued electronic Certificate of Compliance No. WL928463C for the 1997 BMW 528I,  
7 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,  
8 the vehicle had been clean piped.

9 TWENTY-EIGHTH CAUSE FOR DISCIPLINE

10 (Fraud)

11 49. Respondent Accurate has subjected his registration to discipline under Code section  
12 9884.7, subdivision (a)(4), in that on or about July 29, 2010, he committed acts which constitute  
13 fraud by issuing electronic Certificate of Compliance No. WL928463C for the 1997 BMW 528I,  
14 without performing a bona fide inspection of the emission control devices and systems on that  
15 vehicle, thereby depriving the People of the State of California of the protection afforded by the  
16 Motor Vehicle Inspection Program.

17 TWENTY-NINTH CAUSE FOR DISCIPLINE

18 (Violation of the Motor Vehicle Inspection Program)

19 50. Respondent Accurate has subjected his station license to discipline under Health and  
20 Safety Code section 44072.2, subdivision (a), in that on or about July 29, 2010, regarding the  
21 1997 BMW 528I, he violated sections of that Code, as follows:

22 a. **Section 44012, subdivision (a):** Respondent Accurate failed to determine that all  
23 emission control devices and systems required by law were installed and functioning correctly in  
24 accordance with test procedures.

25 b. **Section 44012, subdivision (f):** Respondent Accurate failed to perform emission  
26 control tests on that vehicle in accordance with procedures prescribed by the department.

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1 c. Section 44015, subdivision (b): Respondent Accurate issued electronic Certificate  
2 of Compliance No. WL928463C without properly testing and inspecting the vehicle to determine  
3 if it was in compliance with section 44012 of that Code.

4 **THIRTIETH CAUSE FOR DISCIPLINE**

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

6 51. Respondent Accurate has subjected his station license to discipline under Health and  
7 Safety Code section 44072.2, subdivision (c), in that on or about July 29, 2010, regarding the  
8 1997 BMW 528I, he violated sections of the California Code of Regulations, title 16, as follows:

9 a. Section 3340.35, subdivision (c): Respondent Accurate issued electronic Certificate  
10 of Compliance No. WL928463C even though that vehicle had not been inspected in accordance  
11 with section 3340.42 of that Code.

12 b. Section 3340.42: Respondent Accurate failed to conduct the required smog tests and  
13 inspections on that vehicle in accordance with the Bureau's specifications.

14 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

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

16 52. Respondent Accurate has subjected his station license to discipline under Health and  
17 Safety Code section 44072.2, subdivision (d), in that on or about July 29, 2010, regarding the  
18 1997 BMW 528I, he committed acts involving dishonesty, fraud or deceit whereby another was  
19 injured by issuing electronic Certificate of Compliance No. WL928463C for that vehicle without  
20 performing a bona fide inspection of the emission control devices and system on the vehicle,  
21 thereby depriving the People of the State of California of the protection afforded by the Motor  
22 Vehicle Inspection Program.

23 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

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

25 53. Respondent Gallardo has subjected his technician license to discipline under Health  
26 and Safety Code section 44072.2, subdivision (a), in that on or about July 29, 2010, regarding the  
27 1997 BMW 528I, he violated sections of that Code, as follows:

28 ///

1 a. **Section 44012, subdivision (a):** Respondent Gallardo failed to determine that all  
2 emission control devices and systems required by law were installed and functioning correctly in  
3 accordance with test procedures.

4 b. **Section 44012, subdivision (f):** Respondent Gallardo failed to perform emission  
5 control tests on that vehicle in accordance with procedures prescribed by the department.

6 c. **Section 44032:** Respondent Gallardo failed to perform tests of the emission control  
7 devices and systems on that vehicle in accordance with section 44012 of that Code.

8 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

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

10 54. Respondent Gallardo has subjected his technician license to discipline under Health  
11 and Safety Code section 44072.2, subdivision (c), in that on or about July 29, 2010, regarding the  
12 1997 BMW 528I, he violated sections of the California Code of Regulations, title 16, as follows:

13 a. **Section 3340.30, subdivision (a):** Respondent Gallardo failed to inspect and test that  
14 vehicle in accordance with Health and Safety Code section 44012.

15 b. **Section 3340.41, subdivision (c):** Respondent Gallardo entered false information  
16 into the EIS for electronic Certificate of Compliance No. WL928463C by entering vehicle  
17 identification information or emission control information for a vehicle other than the vehicle  
18 being certified.

19 c. **Section 3340.42:** Respondent Gallardo failed to conduct the required smog tests and  
20 inspections on that vehicle in accordance with the Bureau's specifications.

21 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

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

23 55. Respondent Gallardo has subjected his technician license to discipline under Health  
24 and Safety Code section 44072.2, subdivision (d), in that on or about July 29, 2010, regarding the  
25 1997 BMW 528I, he committed acts involving dishonesty, fraud or deceit whereby another was  
26 injured by issuing electronic Certificate of Compliance No. WL928463C without performing a  
27 bona fide inspection of the emission control devices and systems on that vehicle, thereby

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1 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
2 Inspection Program.

3 **PRIOR CITATIONS**

4 56. To determine the degree of penalty, if any, to be imposed upon Respondents Accurate  
5 and Gallardo, Complainant alleges as follows:

6 a. On December 30, 2008, the Bureau issued Citation No. C09-0769 to Respondent  
7 Accurate against his registration and station licenses for violations of Health and Safety Code  
8 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control  
9 devices) and California Code of Regulations, title 16, ("Regulation"), section 3340.35,  
10 subdivision (c) (issuing a certificate of compliance to a vehicle improperly tested). Respondent  
11 Accurate issued a certificate of compliance to a Bureau vehicle with a missing pulse air injection  
12 reactor system. The Bureau assessed a civil penalty of \$500. Respondent Accurate complied  
13 with this citation on February 19, 2009.

14 b. On June 19, 2009, the Bureau issued Citation No. C09-1402 to Respondent Accurate  
15 against his registration and station licenses for violations of Health and Safety Code section  
16 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)  
17 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle  
18 improperly tested). Respondent Accurate issued a certificate of compliance to a Bureau vehicle  
19 with a missing EGR valve. The Bureau assessed a civil penalty of \$1,000. Respondent Accurate  
20 complied with this citation on October 23, 2009.

21 c. On January 25, 2010, the Bureau issued Citation No. C2010-0723 to Respondent  
22 Accurate against his registration and station licenses for violations of Health and Safety Code  
23 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control  
24 devices) and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a  
25 vehicle improperly tested). Respondent Accurate issued a certificate of compliance to a Bureau  
26 vehicle with a missing PCV system. The Bureau assessed a civil penalty of \$2,000. Respondent  
27 Accurate complied with this citation on March 25, 2010.

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1 d. On December 30, 2009, the Bureau issued Citation No. M09-0770 to Respondent  
2 Gallardo against his technician license for violations of Health and Safety Code section 44032,  
3 (qualified technicians shall perform tests of emission control systems and devices in accordance  
4 with section 44012 of that Code) and California Code of Regulations, title 16, (“Regulation”)  
5 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
6 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
7 3340.42). Respondent Gallardo issued a certificate of compliance to a Bureau vehicle with a  
8 missing pulse air injection reactor system. Respondent Gallardo was required to attend an 8-hour  
9 training course. Respondent Gallardo complied with this citation on February 24, 2009.

10 e. On June 19, 2009, the Bureau issued Citation No. M09-1403 to Respondent Gallardo  
11 against his technician license for violations of Health and Safety Code section 44032, (qualified  
12 technicians shall perform tests of emission control systems and devices in accordance with  
13 section 44012 of that Code) and California Code of Regulations, title 16, (“Regulation”) section  
14 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
15 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
16 3340.42). Respondent Gallardo issued a certificate of compliance to a Bureau vehicle with a  
17 missing EGR valve. Respondent Gallardo was required to attend a 16-hour training course.  
18 Respondent Gallardo complied with this citation on October 23, 2009.

19 f. On January 25, 2010, the Bureau issued Citation No. M2010-0724 to Respondent  
20 Gallardo against his technician license for violations of Health and Safety Code section 44032,  
21 (qualified technicians shall perform tests of emission control systems and devices in accordance  
22 with section 44012 of that Code) and California Code of Regulations, title 16, (“Regulation”)  
23 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in  
24 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section  
25 3340.42). Respondent Gallardo issued a certificate of compliance to a Bureau vehicle with a  
26 missing PCV system. Respondent Gallardo was required to attend a 68-hour training course.  
27 Respondent Gallardo complied with this citation on April 8, 2010.

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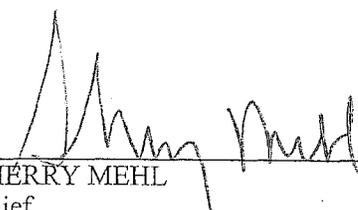
1           6.    Revoking or suspending any additional license issued under Chapter 5 of the Health  
2 and Safety Code in the name of Ricardo Gallardo;

3           7.    Ordering Luis C. Navarro and Ricardo Gallardo to pay the Bureau of Automotive  
4 Repair the reasonable costs of the investigation and enforcement of this case, pursuant to  
5 Business and Professions Code section 125.3; and,

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

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9 DATED: \_\_\_\_\_

11/28/11

  
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SHERRY MEHL

Chief

Bureau of Automotive Repair

Department of Consumer Affairs

State of California

*Complainant*

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