

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

In the Matter of the Accusation Against:

DELACRUZ SMOG ONLY
HOANG HUY TRAN, OWNER
Automotive Repair Dealer Registration
No. ARD 254099
Smog Check Test Only Station
License No. TC 254099

HOANG HUY TRAN
Smog Check Inspector License
No. EO 150704

Smog Check Repair Technician License No.
EI 150704 (formerly Advanced Emission
Specialist Technician License
No. EA 150704

Case No. 79/12-56

OAH No. 2013040260

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective _____

OCT 24 2013

DATED: September 17, 2013



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 Accusation Against:

DELACRUZ SMOG ONLY
HOANG HUY TRAN, OWNER
Automotive Repair Dealer Registration
No. ARD 254099
Smog Check Test Only Station
License No. TC 254099

HOANG HUY TRAN
Smog Check Inspector
License No. EO 150704

Smog Check Repair Technician License No.
EI 150704 (formerly Advanced Emission
Specialist Technician
License No. EA 150704

Respondent.

Case No. 79/12-56

OAH No. 2013040260

PROPOSED DECISION

Administrative Law Judge Adrienne J. Miller, State of California, Office of Administrative Hearings, heard this matter on August 13, 2013, in Oakland, California.

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

Respondent Hoang Huy Tran represented himself and Delacruz Smog Only, and was present throughout the administrative hearing.

The matter was submitted on August 13, 2013.

FACTUAL FINDINGS

Licenses

1. On March 17, 2008, the Bureau issued Automotive Repair Dealer Registration Number ARD 254099 (registration) to Hoang Huy Tran, (respondent), owner of Delacruz Smog Only. The registration was in full force and effect at all times relevant to the charges brought herein. The registration expired on February 28, 2011, and has not been renewed.

2. On April 9, 2008, the Bureau issued Smog Check Test Only Station License Number TC 254099 (station license) to respondent. The station license was in full force and effect at all times relevant to the charges brought herein. The state license expired on February 28, 2011, and has not been renewed.

3. In 2005, the Bureau issued Advanced Emission Specialist Technician License Number EA 150704 (technician license) to respondent. Effective October 24, 2012, pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was renewed, at respondent's election, as Smog Check Inspector License Number EO 150704 and Smog Check Repair Technician License Number EI 150704 (technician licenses). Respondent's technician licenses will expire November 30, 2014, unless renewed.¹

Accusation

4. On November 28, 2011, the Bureau filed an Accusation against respondent. On August 9, 2013, the Bureau filed a First Amended Accusation. The First Amended Accusation alleges that two detailed reviews of the Vehicle Information Database (VID) were conducted for all smog inspections performed at respondent's facility for the period of March 2, 2010, through May 22, 2010, and on July 2, 2012. The First Amended Accusation further alleges that during this time period, respondent engaged in "cleaning plugging" in order to issue certificates of compliance for 10 vehicles that were not tested.²

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

² Clean plugging is the use of the OBD II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purposes of illegally issuing a smog certificate to another vehicle that is not in compliance due to a failure to complete the minimum number of self test, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

Stipulated Settlement

5. At hearing on August 13, 2013, respondent, as an individual, and as owner of Delacruz Smog Only, voluntarily entered into a stipulated settlement with the Bureau regarding the First Amended Accusation. Pursuant to the stipulated settlement the parties agreed that the following licenses are revoked: Automotive Repair Dealer Registration No. ARD 254099; Smog Check Test Only Station License No. TC 254099; Smog Check Inspector License No. EO 150704; and Smog Check Repair Technician License No. EI 150704.

Costs of Investigation and Enforcement

6. The Bureau requested that the Administrative Law Judge receive evidence and make a determination with respect to the recovery of costs for the investigation and enforcement of this matter. The Bureau submitted its documentary evidence without objection by respondent.

7. The Bureau has incurred \$8,862.50 in attorney's fees from the Office of the Attorney General, and \$19,031.60 in investigative costs, for a total of \$27,894.10 in costs of investigation and enforcement.

8. Respondent sold his business establishment after the accusation was filed.

9. It would be a financial hardship for respondent to pay the costs of investigation and enforcement since he has only been working fulltime for the last month as a mechanic for Alfa Omega Auto Repair. Respondent earns \$15 per hour. Prior to respondent's current job he worked for three months as a part-time mechanic at QTR Auto Service. Respondent closed his business two years ago and has been unemployed and underemployed since the closure of his business. Respondent has also worked in the air conditioning business to earn income, but not on a regular basis. Respondent is single and for the last 15 years has been living with his mother and brother. Respondent contributes to the payment of rent and household expenses with his mother and brother.

LEGAL CONCLUSIONS

1. Cause exists to revoke Automotive Repair Dealer Registration No. ARD 254099; Smog Check Test Only Station License No. TC 254099; Smog Check Inspector License No. EO 150704; and Smog check Repair Technician License No. EI 150704, by reason of the stipulated settlement as set forth in Factual Finding 5.

2. Pursuant to Business and Professions Code section 125.3, the Bureau may request an administrative law judge to order a licensee found to have violated the licensing act to pay an amount that does not exceed the reasonable costs of investigation and enforcement. That section also provides that the Bureau's certification of the actual costs

constitutes prima facie evidence of the reasonable costs. The costs set forth in Finding 7 were established by such a certification. The reasonable costs of investigation and enforcement are therefore determined to be \$27,894.10.

3. *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32, identifies the factors to be considered in determining the reasonableness of costs pursuant to statutory provisions like Business and Professions Code section 125.3. The factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced; the licensee's subjective good faith belief in the merits of his or her position; whether the licensee has raised a colorable challenge to the proposed discipline; the financial ability of the licensee to pay; and whether the scope of the investigation was appropriate to the alleged misconduct. In this case, respondent did not defend against any of the charges or challenge the proposed discipline. However, respondent accepted responsibility for his actions by entering a stipulated settlement. And it also must be noted that respondent has limited financial means, as set forth in Finding 8 and 9. After considering all of the facts and circumstances of this case, it is determined that an award of \$13,947.05 is reasonable and appropriate. Payment of costs shall not be required unless and until respondent seeks a license from the Bureau.

ORDER

1. Automotive Repair Dealer Registration No. ARD 254099 issued to Hoang Huy Tran, owner of Delacruz Smog Only, is revoked.
2. Smog Check Test Only Station License No. 254099 issued to Hoang Huy Tran, doing business as Delacruz Smog Only, is revoked.
3. Smog Check Inspector License No. EO 150704 issued to Hoang Huy Tran is revoked.
4. Smog Check Repair Technician License No. EI 150704 (formerly Advanced Emission Specialist Technician License No. EA 150704) issued to Hoang Huy Tran is revoked.
5. Respondent Hoang Huy Tran shall pay to the Bureau of Automotive Repair the sum of \$13,947.05, as reimbursement for investigative and enforcement costs. However, costs shall not become due and payable until such time as respondent applies for a license

from the Bureau of Automotive Repair. At that time, the Bureau shall consider an installment payment plan for respondent.

DATED: 8-28-13



ADRIENNE J. MILLER
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 MARETTA WARD
Deputy Attorney General
4 State Bar No. 176470
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1384
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 79/12-56

11 **DELACRUZ SMOG ONLY**
12 **2495 Delacruz Blvd.**
13 **Santa Clara, CA 95050**
14 **HOANG HUY TRAN, Owner**
15 **Automotive Repair Dealer Registration No.**
ARD 254099
16 **Smog Check Test Only Station License No.**
TC 254099

FIRST AMENDED
ACCUSATION
(Smog Check)

17 **HOANG HUY TRAN**
18 **355 Colville Circle**
San Jose, CA 95123
19 **Smog Check Insepctor License No. EO 150704**
20 **Smog Check Repair Technician License No.**
21 **EI 150704 (formerly Advanced Emission Specialist**
Technician License No. EA 150704)

22 Respondent.

23
24 Patrick Dorais ("Complainant") alleges:

25 **PARTIES**

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

28 ///

1 (4) Any other conduct that constitutes fraud.

2 (6) Failure in any material respect to comply with the provisions of this
3 chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or
4 regulations adopted pursuant to it.

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

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

16 6. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a
17 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
18 proceeding against an automotive repair dealer or to render a decision invalidating a registration
19 temporarily or permanently.

20 7. Section 477(b) of the Code states that "license" includes certificate, registration or
21 other means to engage in a business or profession regulated by this code.

22 8. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
23 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
24 the Motor Vehicle Inspection Program.

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

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

(a) Violates any section of this chapter [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.

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

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

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

5 11. Section 44072.8 of the Health and Safety Code states:

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

9 12. Section 44072.10 of the Health and Safety Code states, in pertinent part:

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

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

15 (4) Intentional or willful violation of this chapter or any regulation, standard,
16 or procedure of the department implementing this chapter.

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

21 COST RECOVERY

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

26 FACTUAL BACKGROUND

27 15. On or about June 2, 2010, the Bureau conducted a detailed review of the Vehicle
28 Information Database ("VID") for all smog inspections performed at Respondent's facility for the
period of March 2, 2010, through May 22, 2010. The review showed a pattern of various,
random diagnostic trouble codes ("DTC") stored in the memory of the power train control module

1 ("PCM") on nine (9) different vehicles. Vehicles 1 through 9, set forth below in Table 1, were all
 2 certified with various pending codes stored in the PCM memory, while the Original Equipment
 3 Manufacturer ("OEM") service information shows these vehicles do not support the pending
 4 codes stored in the PCM memory. The vehicles receiving smog certificates were not tested
 5 during the OBD II² functional test and another vehicle(s) was used, constituting clean plugging³.

6 16. In addition, on or about July 2, 2010, the Bureau conducted an additional review of
 7 the VID for smog inspections performed at Respondent's facility on January 7, 2010. The review
 8 showed that one (1) vehicle, set forth in Table 2, was certified with a pending code stored in the
 9 PCM memory while the OEM service information showed the vehicle did not support the
 10 pending code stored in the PCM memory. The vehicle received a smog certificate without being
 11 tested during the OBD II functional test and another vehicle was used, constituting clean
 12 plugging.

13 **TABLE 1**

Date and Time of Inspection	Vehicle Certified License No.	Certificate No.
1. 03/2/2010 1029 – 1045 hours	1996 Volkswagen Golf License No. 3RME741	NQ928124
2. 03/15/2010 1609 – 1618 hours	1999 Mazda Miata License No. 4HDS236	NS190608
3. 03/17/2010 1833 – 1840 hours	2003 Ford Crown Victoria License No. 8G44826	NS190631
4. 04/2/2010 1244 – 1250 hours	1998 Nissan Sentra License No. 6GKC316	NS445768
5. 04/3/2010 1410 – 1426 hours	1997 Nissan Pathfinder License No. 5AOA850	NS445776
6. 04/3/2010	2003 Mini Cooper	NS445778

22 ² The On Board Diagnostics (OBD II) functional test is an automated function of the
 23 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an
 24 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is
 25 located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves
 information from the vehicle's on-board computer about the status of the readiness indicators,
 trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II
 functional test, it will fail the overall inspection.

26 ³ Clean plugging is the use of the OBD II readiness monitor status and stored fault code
 (trouble code) status of a passing vehicle for the purposes of illegally issuing a smog certificate to
 27 another vehicle that is not in compliance due to a failure to complete the minimum number of self
 tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
 28 control system or component failure.

1450 – 1459 hours	License No. 4ZSA128	
7. 04/23/2010 1802 – 1824 hours	1996 Toyota 4Runner License No. 3RST053	NS694187
8. 04/24/2010 1401 – 1411 hours	1999 Crown Victoria License No. 7J08808	NS694192
9. 05/22/2010 1301 – 1308 hours	1996 Ford Aerostar License No. 3SIC656	NU048195

TABLE 2

Date and Time of Inspection	Vehicle Certified License No.	Certificate No.
1. 01/7/2010 1416 – 1425 hours	1998 Honda Civic License No. 4CXA943	NQ243957

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

17. Respondent's registration is subject to discipline pursuant to Code section 9884.7(a)(1), in that between January 7, 2010, and May 22, 2010, Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent certified that the vehicles set forth above in Tables 1 and 2, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles using the clean plugging method by substituting or using different vehicles during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by Health and Safety Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

18. Respondent's registration is subject to discipline pursuant to Code section 9884.7(a)(4), in that between January 7, 2010, and May 22, 2010, Respondent committed acts which constitute fraud by issuing electronic certificates of compliance for the vehicles set forth above in Tables 1 and 2, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

1 those vehicles without performing bona fide inspections of the emission control devices and
2 systems on the vehicles, thereby depriving the People of the State of California of the protection
3 afforded by the Motor Vehicle Inspection Program.

4 **SIXTH CAUSE FOR DISCIPLINE**

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

6 22. Respondent's technician license(s) is subject to discipline pursuant to Health and
7 Safety Code section 44072.2(a), in that between January 7, 2010, and May 22, 2010, regarding
8 the vehicles set forth above in Tables 1 and 2, he failed to comply with section 44012 of that
9 Code in a material respect, by failing to perform the emission control tests on those vehicles in
10 accordance with procedures prescribed by the department.

11
12 **SEVENTH CAUSE FOR DISCIPLINE**

13 **(Failure to Comply with Regulations Pursuant to the**
14 **Motor Vehicle Inspection Program)**

15 23. Respondent's technician license(s) is subject to discipline pursuant to Health and
16 Safety Code section 44072.2(c), in that between January 7, 2010, and May 22, 2010, regarding
17 the vehicles set forth above in Tables 1 and 2, he failed to comply with provisions of California
18 Code of Regulations, title 16, as follows:

19 a. **Section 3340.30(a)**: Respondent failed to inspect and test those vehicles in accordance
20 with Health and Safety Code sections 44012.

21 b. **Section 3340.42**: Respondent failed to conduct the required smog tests and inspections
22 on those vehicles in accordance with the Bureau's specifications.

23 **EIGHTH CAUSE FOR DISCIPLINE**

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

25 24. Respondent's technician license(s) is subject to discipline pursuant to Health and
26 Safety Code section 44072.2(d), in that between January 7, 2010, and May 22, 2010, regarding
27 the vehicles set forth above in Tables 1 and 2, he committed acts involving dishonesty, fraud or
28 deceit whereby another was injured by issuing electronic certificates of compliance without

1 performing bona fide inspections of the emission control devices and systems on those vehicles,
2 thereby depriving the People of the State of California of the protection afforded by the Motor
3 Vehicle Inspection Program.

4 **OTHER MATTERS**

5 25. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
6 probation the registrations for all places of business operated in this state by Hoang Huy Tran,
7 upon a finding that he has, or is, engaged in a course of repeated and willful violation of the laws
8 and regulations pertaining to an automotive repair dealer.

9 26. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
10 Station License Number TC 254099, issued to Hoang Huy Tran, doing business as Delacruz
11 Smog Only, is revoked or suspended, any additional license issued under this chapter in the name
12 of said licensee may be likewise revoked or suspended by the director.

13 27. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
14 License No. EO 150704 and Smog Check Repair Technician License EI 150704, issued to Hoang
15 Huy Tran, are revoked or suspended, any additional license issued under this chapter in the name
16 of said licensee may be likewise revoked or suspended by the director.

17 **PRAYER**

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

20 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD
21 254099, issued to Hoang Huy Tran, doing business as Delacruz Smog Only;

22 2. Revoking or suspending any other automotive repair dealer registration issued to
23 Hoang Huy Tran;

24 3. Revoking or suspending Smog Check Test Only Station License Number TC
25 254099, issued to Hoang Huy Tran, doing business as Delacruz Smog Only;

26 4. Revoking or suspending any additional license issued under Chapter 5 of the
27 Health and Safety Code in the name of Hoang Huy Tran;

28

1 5. Revoking or suspending Smog Check Inspector License No. EO 150704 (formally
2 Advanced Emission Specialist Technician License Number EA 150704), issued to Hoang Huy
3 Tran;

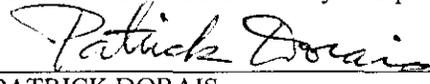
4 6. Revoking or suspending Smog Check Repair Technician License No. EI 150704
5 (formally Advanced Emission Specialist Technician License Number EA 150704), issued to
6 Hoang Huy Tran;

7 7. Revoking or suspending any additional license issued under Chapter 5 of the
8 Health and Safety Code in the name of Hoang Huy Tran;

9 8. Ordering Hoang Huy Tran to pay the Director of Consumer Affairs the reasonable
10 costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

12 DATED: August 9, 2013



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

13
14
15
16
17 SF2010202294
10779302.doc

18
19
20
21
22
23
24
25
26
27
28