

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

In the Matter of the Accusation Against:

STEVE LOOC ENTERPRISES INC.
dba SMOG EXPRESS
STEVE W. LOOC, Pres.
5931 Folsom Blvd.
Sacramento, CA 95819

Automotive Repair Dealer Registration No.:
ARD 219403
Smog Check, Test Only Station No.: TC
219403

and

STEVE W. LOOC
3800 Tahoe St.
West Sacramento, CA 95691

Smog Check Inspector No.: EO 43574
Smog Check Repair Technician No.: EI 43574

and

CHRISTOPHER TRAN
3014 Ryer Island St.
W. Sacramento, CA 95691

Smog Check Inspector License No.: EO
135776
Smog Check Repair Technician License No.:
EI 135776

Respondents.

Case No.: 79/18-3990

OAH No.: 2018100440

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517, subdivision (c)(2)(C), technical or other minor changes in the Proposed Decision are made as follows:

1. Page 1: The caption is corrected as to Respondent Steve Looc to include "Smog Check Inspector No. EO 43574" and "Smog Check Repair Technician No. EI 43574" as these were included in the Accusation's caption and the Accusation itself.

The technical or minor changes made above do not affect the factual or legal basis of the Proposed Decision.

This Decision shall become effective at 5:00 PM on July 30, 2019.

DATED: June 25, 2019



GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Legal Affairs Division
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

STEVE LOOC ENTERPRISES INC. DBA
SMOG EXPRESS; STEVE W. LOOC,
PRESIDENT

Automotive Repair Dealer Registration
No. ARD 219403
Smog Check, Test Only, Station License
No. TC 219403

and

CHRISTOPHER TRAN¹
Smog Check Inspector License No. EO 135776
Smog Check Repair Technician License No. EI
135776

Respondents.

Case No. 79/18-3990

OAH No. 2018100440

PROPOSED DECISION

Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 14, 2019, in Sacramento California.

Deputy Attorney General Jeff Stone represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

William Ferreira, Attorney at Law, represented respondent Steve Looc Enterprises, dba Smog Express, Steve Looc, President (respondent).

¹ Christopher Tran did not file a Notice of Defense. There was no jurisdiction over him pursuant to Government Code section 11506, subdivision (c). The matter proceeded as to Steve Looc Enterprises, dba Smog Express, Steve Looc, President

Evidence was received and argument was heard on May 14, 2019. The record was held open to allow the parties to submit briefs on the issue of owner liability. Respondent submitted his brief on May 29, 2019, and complainant on June 5, 2019. The briefs were marked as evidence and admitted as argument. The record was closed, and the matter was submitted for decision on June 5, 2019.

FACTUAL FINDINGS

Licensure and Jurisdiction

1. In 2001, the Bureau issued Automotive Repair Dealer Registration number ARD 219403 to respondent, doing business as Smog Express. On March 27, 2002, the Bureau issued Smog Check, Test Only, Station License number TC 219403 to respondent. The license and registration will expire on December 31, 2019, unless renewed or revoked. Smog Express is also certified as a STAR Station. The certification was issued on January 2, 2013, and will remain active unless the ARD registration or Smog Check Station license is revoked, canceled, licenses become delinquent or certification is invalidated.

2. In 1996, the BAR issued Advanced Emission Specialist (EA) Technician License No. 43574 to respondent, under SB 1997. The license was cancelled on July 24, 2012. The license was then renewed pursuant to respondent's election as Smog Check Inspector (EO) License No. 43574, and Smog Check Repair Technician (EI) License No. 43574, effective July 24, 2012. The EO license will expire on July 31, 2020, unless renewed or revoked. The EI license expired on July 31, 2016.

3. On July 23, 2018, complainant, solely in his official capacity, signed and thereafter filed the Accusation. Respondent timely filed a Notice of Defense, requesting a hearing. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

License Discipline History

4. On March 21, 2006, the Bureau issued Citation C06-0585 against respondent's ARD and test-only licenses for violating Health and Safety Code section 44012, subdivision (f). The Bureau alleged that respondent issued a certificate of compliance to a Bureau undercover vehicle with a missing air injection system. The Bureau assessed a \$500 fine, which respondent paid on June 16, 2006.²

² The Bureau presented evidence that Citation C2017-1606 was issued on August 30, 2017, and reissued on December 21, 2017. The citation appeal is pending and has not been resolved.

Vehicle Information Database (VID) Data Review – Clean-Plugging

5. The Accusation alleges respondent issued smog check certificates that were false and fraudulent, in that respondent did not actually test the vehicles for which smog certificates were issued. The allegations involve smog testing done following the Bureau's updating, on March 9, 2015, of the California Smog Check Program, which required the use of an On-Board Diagnostic Inspection System (BAR-OIS). The BAR-OIS smog check equipment is required when inspecting model-year 2000 and newer gasoline and hybrid vehicles and most 1998 and newer diesel vehicles. The system consists of a certified Data Acquisition Device (DAD), computer, bar-code scanner, and printer.

6. "Clean plugging" is an illegal technique used to fraudulently pass a vehicle through a smog check inspection. Part of the smog test is an On Board Diagnostics - Generation II (OBDII) functional test in which the licensed inspector connects a cable from the station's test computer to a Diagnostic Link Connector, which is a plug found inside the vehicle's passenger cabin. Through the plug and cable, the test computer retrieves information from the vehicle's on-board computer. When clean plugging a vehicle, the technician enters information into the station's computer-based smog testing system about the vehicle to be issued a certificate indicating it passed the inspection, but this is done by actually connecting the test cable to a different vehicle. The purpose of clean plugging is to issue fraudulent smog Certificates of Compliance (certificates) to vehicles that are not in smog compliance or are not even present for testing.

7. The OBDII testing process produces vehicle information including the automobile's Vehicle Identification Number (VIN). A VIN is physically present on all vehicles, and is most often found on the vehicle's dash and on the door. The VIN is required to be programmed into the OBDII system on 2005 and newer vehicles. The VIN has also been programmed into the OBDII system for many earlier-model years of automobiles. This electronically programmed VIN is referred to as the "eVIN," which is transmitted to the Vehicle Information Database (VID) during the smog check and must match the automobile's physical VIN.

8. During an OIS smog check, two other types of data distinct to the vehicle being tested are also retrieved and recorded. The first includes the vehicle's "communication protocol," or the specified communication "language" used by the OBDII computer to communicate with scan tools and other devices such as the BAR-OIS. The communication protocol is programmed into the OBDII computer during the vehicle's manufacture and does not change.

9. The second distinct form of data collected is the total number of Parameter Identifications (PIDs) that exist for the vehicle being tested. PIDs are data points reported by the OBDII computer to the scan tool or BAR-OIS, relaying information about, for example, engine speed (rpm), vehicle speed, and engine temperature. The "PID count" refers to the number of data points reported by the vehicle's OBDII computer. Each make and model

vehicle reports a specific number of PID counts; the PID count does not vary for one particular make and model vehicle.

10. Ian Evans is a Program Representative II with the Bureau, and is trained in searching for anomalies in the VID data using automated data checks. As a Program Representative II, he searches for anomalies in the VID data using automated data checks. Information on each smog check inspection performed by a smog check station is transmitted electronically to the VID.

11. Mr. Evans testified at hearing regarding the investigation he initiated on February 21, 2018. He reviewed data obtained from the Bureau's VID pertaining to smog inspections performed at Smog Express. He found that respondent's technician performed smog inspections on five vehicles identified below using a clean-plugging method, which resulted in the issuance of fraudulent certificates for all four vehicles as follows.

Clean-Plugged Vehicles

VEHICLE ONE

12. On March 20, 2017, respondent's technician performed a smog inspection on a 2007 Ford Econoline E350 Super Duty Wagon (Vehicle 1), resulting in the issuance of Smog Certificate of Compliance (certificate) number ZR413620C. The OIS test results showed that the eVIN that was recorded did not match the VIN on the scanned DMV paperwork. Mr. Evans reviewed the Comparative OIS Test Data for the same make and model vehicles and found that the PID count recorded during the inspection was not consistent with the PID count for that make and model vehicle. The eVIN, communication protocol, and PID count, however, did match a 2012 Ford Econoline E350 Super Duty Wagon that subsequently passed a smog test by a different technician at Express Smog on December 12, 2017. This was evidence that the DAD was not connected to Vehicle 1 during the smog inspection, resulting in the issuance of a fraudulent certificate.

VEHICLE TWO

13. On May 16, 2017, respondent's technician performed a smog inspection on a 2003 Nissan Xterra XE (Vehicle 2), resulting in issuance of certificate number ZV451658C. The OIS test results showed that the eVIN that was recorded did not match the VIN on the scanned DMV paperwork. Mr. Evans reviewed the Comparative OIS Test Data for the same make and model vehicles and found that the PID count recorded during the inspection was not consistent with the communication protocol and PID count for that make and model vehicle. The eVIN, communication protocol, and PID count, however, did match a 2011 Honda Odyssey LX, which passed a smog test with the same technician on the same day. This was evidence that the DAD was not connected to Vehicle 2 during the smog inspection, resulting in the issuance of a fraudulent certificate.

VEHICLE THREE

14. On August 16, 2017, respondent's technician performed a smog inspection on a 2006 Honda Pilot EX (Vehicle 3), resulting in issuance of certificate number HD566593C. The OIS test results showed that the eVIN that was recorded did not match the physical VIN on the vehicle. Mr. Evans reviewed the Comparative OIS Test Data for the same make and model vehicles and found that the PID count recorded during the inspection was not consistent with the communication protocol and PID count for that make and model vehicle. The eVIN, communication protocol, and PID count, however, did match a 2007 Honda Odyssey Touring that had passed a smog test at Smog Check Express by technician Jeffrey Chi on October 12, 2017. This was evidence that the DAD was not connected to Vehicle 3 during the smog inspection, resulting in the issuance of a fraudulent certificate.

VEHICLE FOUR

15. On October 14, 2017, respondent's technician performed a smog inspection on a 2003 Land Rover Discovery II SE (Vehicle 4), resulting in issuance of certificate number HH253219C. The OIS test results showed that the eVIN that was recorded did not match the VIN on the scanned DMV paperwork. Mr. Evans reviewed the Comparative OIS Test Data for the same make and model vehicles and found that the PID count recorded during the inspection was not consistent with the communication protocol and PID count for that make and model vehicle. The eVIN, communication protocol, and PID count, however, did match a 2005 Toyota Tundra Double Cab Limited, which passed a smog inspection at Smog Check Express by technician Jeffrey Chi on the same day as Vehicle 4's test. This was evidence that the DAD was not connected to Vehicle 4 during the smog inspection, resulting in the issuance of a fraudulent certificate.

VEHICLE FIVE

16. On December 1, 2017, respondent's technician performed a smog inspection on a 2004 Chrysler Pacifica (Vehicle 5), resulting in issuance of certificate number HJ468830C. The OIS test results showed that no eVIN was recorded through the OIS. Mr. Evans reviewed the Comparative OIS Test Data for the same make and model vehicles and found that similar 2004 Chrysler Pacificas transmit a correct eVIN, and the PID count recorded during the inspection was not consistent with the communication protocol and PID count for that make and model vehicle. On November 30, 2017, respondent's technician conducted a smog inspection on Vehicle 5, and the vehicle failed, with an illuminated multifunction indicator lamp (MIL) reported. This was evidence that the DAD was not connected to Vehicle 4 during the smog inspection, resulting in the issuance of a fraudulent certificate.

17. Mr. Evans also reviewed respondent's certificate sales history. Respondent purchased 50 certificates on March 14, 2017, May 15, 2017, August 14, 2017, October 9, 2017, and November 20, 2017, with corresponding numbers for each set of certificates. The

numbers displayed on the certificates issued for Vehicles 1 through 5 corresponded with the certificates respondent purchased.

Respondent's Evidence and Argument

18. Respondent testified that he has been a smog technician since 1996. In 1998, he started his business, Smog Express. He currently has one full-time and three part-time technicians. He estimated that the shop performs 40 to 75 smog tests daily. Since starting his business in 1998, he has received three citations from the Bureau, all of which were against Smog Express based on the work of one of respondent's technicians.

19. In 2017, respondent was not actively running Smog Express. His wife passed away in 2016. He did not have the mental or emotional capacity to be involved in the business, so he relied upon an on-site manager and assistance from his sister and brother-in-law. When respondent learned of the allegations regarding clean plugging, he asked his technician, Christopher Tran, what had happened. Mr. Tran was unable to offer an explanation. Mr. Tran continues to work for Smog Express, but is not performing smog inspections, on respondent's order. As the most experienced technician, Mr. Tran is often left "in charge" of Smog Express, but respondent stated Smog Express technically does not have a manager.

20. Since he learned Mr. Tran issued certificates to Vehicles 1 through 5, respondent has instructed his technicians to scan both the vehicle and the DMV registration prior to performing the smog inspection. He has also told them that they are licensed technicians and they are responsible for accurate tests. Any deviation from proper testing will result in the technician's termination. When asked how respondent enforces these policies, he stated, "it's based on trust."

21. Respondent argued that while Mr. Tran appeared to scan the DMV paperwork of one car, but test another, the mistakes were inadvertent and based on either using the wrong DAD or an owner who brought in one set of paperwork, but another car. For example, Vehicle 1 is a Ford Econoline, and one of several that Capitol Elementary owns, under the name "Tamre Burns." The DMV registration card for the donor vehicle used to clean-plug Vehicle 1 shows that Tamre Burns also owned the donor vehicle.

22. Additionally, respondent explained that Smog Express has three DADs, all of which are positioned centrally for easy access. He speculated that Mr. Tran might have begun a smog test with one device, but inadvertently picked up another to perform the test.

23. Following the clean-plugging allegations, respondent started spending more time at Smog Express. He does some smog tests, and tries to be present on a daily basis. He also testified, however, about his personal limitations. When the Bureau asked for paperwork related to Vehicles 1 through 5, he requested that his brother-in-law help him get the requested documents. Respondent's brother-in-law then called Mr. Tran to obtain the documents. Respondent explained that he could not pull the documents himself because he

is “clinically depressed,” suffers from anxiety, and, consequently, is operating at a reduced capacity.

24. Respondent stated that he is aware he is responsible for his employees, but argued that he cannot be held responsible for their fraudulent acts. He maintained, however, that the smog tests performed on Vehicles 1 through 5 were due to owners mistakenly bringing mismatched DMV information and cars or switching DADs during tests.

Discussion

25. The weight of the evidence established that respondent’s employee, Mr. Tran, issued certificates of compliance to Vehicles 1 through 5. In doing so, Mr. Tran certified under penalty of perjury that each vehicle passed a properly performed smog inspection. He never connected the DAD to any of the vehicles during the inspection, however. Instead, he connected the DAD to another vehicle to generate fraudulent BAR-OIS data and a certificate of compliance. Such conduct constituted dishonest, fraudulent, and deceitful acts, and violated the statutes and regulations governing California’s Smog Check Program.

26. Respondent argued that the incorrect eVIN, PID count, and protocol data could have been produced for a variety of reasons that did not involve fraud. For example, perhaps Mr. Tran scanned the wrong Department of Motor Vehicles registration paperwork prior to performing the smog inspection. Or the owner brought in the paperwork for the wrong vehicle. Respondent argued that even if Mr. Tran issued fraudulent smog certificates, respondent is not responsible for his employee’s conduct when that conduct is outside the scope of employment. For the reasons discussed below, this argument is without merit.

27. Respondent also argued that the public would be adequately protected if respondent were subject to a probationary period and the Bureau were to install a “certificate blocking” mechanism in respondent’s BAR-OIS system to prevent clean plugging. Certificate blocking prohibits a certificate from being issued to a car where the scanned data from the VIN barcode does not match the data of the vehicle connected to the DAD. Mr. Evans could not directly answer whether certificate blocking is available and effective.

28. The Bureau has produced Disciplinary Guidelines (Guidelines) to apply to determine the appropriate level of discipline. The Guidelines suggest that matters in aggravation and mitigation be considered. Here, respondent’s only prior citations were issued based on his employees’ conduct. He complied with the orders in those citations, though one is still pending appeal. No evidence was presented regarding additional violations following the date of the Accusation. Respondent offered in mitigation that he was, and perhaps is, unable to properly supervise his employees following his wife’s passing. Respondent’s mental and emotional state is understandable, but he is also responsible to ensure that his business continues to operate under the law.

29. Respondent performs a high volume of smog inspections. While five instances of clean plugging are not a large percentage of his business, he has nevertheless

deprived the public of the protections that the smog testing program provides. Complainant now seeks revocation of respondent's ARD registration, smog check, test only, station license, and his smog check inspector license. In seeking revocation, complainant points to respondent's disciplinary history that includes one citation in 2017, as well as the pending citation.

30. Applying the Guidelines to the violations alleged and proved herein, the appropriate discipline is a probationary period and actual suspension of respondent's licenses. The above matters have all been considered in determining that it would not be contrary to the public interest for respondent to continue automotive repair and smog inspection activities on a probationary basis with appropriate terms and conditions.

Employer Responsibility

31. Respondent asserts that the doctrine of strict liability should be applied to protect him against the negligent actions of his employee. This doctrine is commonly applied in product liability cases or against imposition of liability for damage proximately caused by one who carries on an "ultrahazardous" activity. (*Edwards v. Post Transportation Co.* (1991) 228 Cal.App.3d 980, 983.) Proper performance of smog checks is not an ultrahazardous activity. The doctrine of strict liability as a defense does not apply to the conduct at issue in this case.

32. The doctrine of respondeat superior applies when an employee acts within the scope of his or her employment. (*Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal. 4th 291, 299.) The licensee, if he elects to operate his business through employees, must be responsible to the licensing authority for their conduct in the exercise of his license. (*Cornell v. Reilly* (1954) 127 Cal. App. 2d 178, 186.) As such, the licensee is directly liable for the negligent actions of his employee in the improper performance of the smog inspection. (*Diaz v. Carcamo* (2011) 51 Cal. 4th 1148, 1159.) Respondent's license is subject to discipline when he fails in the oversight that his license requires.

33. Ultimately, the Bureau's authority to discipline respondent's license derives from statutory law and regulation. A smog check technician must be associated with a licensed station in order to issue Certificates of Compliance under the Smog Check Program. (Health & Saf. Code, § 44014.) Mr. Tran, a licensed technician at respondent's shop, improperly performed the smog inspections on Vehicles 1 through 5. Respondent employed Mr. Tran, who was required to perform his duties in compliance with approved procedures. Respondent, as owner of Smog Express, was responsible to hire, retain, and supervise qualified licensed technicians in the performance of their smog check duties.

34. The evidence established that respondent did not know of Mr. Tran's conduct until informed by the Bureau. The evidence also established that respondent did not supervise his employees in 2017, and only minimally does so now. He stated that he is enforcing policies to prevent clean-plugging, but could offer no method by which he accomplishes this, other than trusting his employees and reminding them that they are

licensed by the Bureau. He stated that if an employee issues a fraudulent smog certificate, that employee would be terminated, but he has contradicted this policy by keeping Mr. Tran on as a de facto manager.

35. Respondent's remaining arguments have been considered and are found to be without merit.

Cost of Investigation

36. Pursuant to Business and Professions Code section 125.3, complainant requested respondent be ordered to reimburse the Bureau for the reasonable costs of investigation and enforcement of this matter in the total amount of \$9,696.68. In support of this total amount, complainant submitted Declarations of Mark Casillas and Ian Evans. Their declarations and attached spreadsheets of investigative hours spent on this matter request a total of \$961.68. Complainant also submitted a Certification of Prosecution Costs: Declaration of Jeff Stone, stating that the Bureau has been billed \$8,735 for the time the Attorney General's Office worked on this matter. Mr. Stone's Declaration attached a "Cost of Suit Summary," which included the total hours spent on this matter in for fiscal years 2017-2018 and 2018-2019. The Cost of Suit Summary did not include a description of the tasks performed or the time spent on each task. The appropriateness of these costs is addressed in the Legal Conclusions, below.

LEGAL CONCLUSIONS

Burden of Proof

1. In revocation proceedings, the Bureau must prove that charges in the Accusation are true and it must do so using the preponderance of the evidence standard. (*Imports Performance et al. v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918.) Respondent has the burden of establishing any affirmative defenses.

Statutes and Regulations

2. The Legislature has declared that California's Motor Vehicle Inspection Program (Program), Health and Safety Code section 44000 et seq., requires an "enforcement program which is vigorous and effective and includes monitoring of the performance of the smog check test or repair stations and technicians, as well as the monitoring of vehicle emissions as vehicles are being driven." (Health & Saf. Code, § 44001, subd. (b)(5)(E).) The Director of Consumer Affairs (director) has all of the powers and authority granted under the Automotive Repair Act for enforcing the Program; the Program is enforced and administered by the chief of the Bureau of Automotive Repairs. (Health & Saf. Code, §§ 44001.5, 44002.)

3. Business and Professions Code section 9884.7 provides in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

(1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

[¶] . . . [¶]

(4) Any other conduct that constitutes fraud.

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation 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.

4. Pursuant to Health and Safety Code section 44072.2, the director may suspend, revoke, or take other disciplinary action against a license if the licensee does any of the following:

(a) Violates any section of this chapter and the regulations adopted pursuant to it, which related to the licensed activities.

[¶] . . . [¶]

(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.

5. A smog test “shall be performed in accordance with procedures prescribed by the department. . . .” (Health & Saf. Code, § 44012; Cal. Code Regs. tit. 16, § 3340.42.) A smog check technician shall inspect, test and repair vehicles, as applicable, in accordance

with Health and Safety Code sections 44012 and 44015, and California Code of Regulations, title 16, section 3340.42. (Cal. Code Regs., tit. 16, § 3340.30, subd. (a).) A smog check station's license or a qualified smog check technician's qualification may be suspended or revoked by the Bureau, after a hearing, for failure to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct. (Health & Saf. Code, § 44035, subd. (a).)

6. A licensed smog check station shall not issue a certificate of compliance to any vehicle that has not met the requirements of Health and Safety Code section 44012. (Health & Saf. Code, § 44015, subd. (b).) A licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and "has all the required emission control equipment and devices installed and functioning correctly. . . ." (Cal. Code Regs., tit. 16, § 3340.35, subd. (c).)

Causes for Discipline

7. Complainant established cause for discipline against respondent's ARD registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), by reason of the matters set forth in Factual Findings 12 through 16. Respondent made or authorized a statement which he knew or in the exercise of reasonable care should have known to be untrue or misleading.

8. Complainant established cause for disciplining respondent's ARD registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), by reason of the matters set forth in Factual Findings 12 through 16. Complainant established that through his employee, respondent performed smog inspections on vehicles that were not the vehicles that he connected to the DAD and BAR-OIS.

9. Complainant established cause for disciplining respondent's smog check station license pursuant to Health and Safety Code section 44072.2, subdivision (a), by reason of the matters set forth in Factual Findings 12 through 15. Through his employee, respondent failed to comply with provisions of the Motor Vehicle Inspection Program. (Health & Saf. Code, §§ 44012, 44015; Cal. Code Regs., tit. 16, §§ 3340.35, subd. (c) and 3340.42.)

10. Complainant established cause for disciplining respondent's smog check station license pursuant to Health and Safety Code section 44072.2, subdivision (c), by reason of the matters set forth in Factual Findings 12 through 16. Through his employee, respondent failed to comply with provisions of California Code of Regulations, title 16. (Cal. Code Regs., tit. 16, §§ 3340.35, subd. (c), 3340.42.)

11. Complainant established cause for disciplining respondent's smog check station license pursuant to Health and Safety Code section 44072.2, subdivision (d), by reason of the matters set forth in Factual Findings 12 through 15. Through his employee,

respondent committed a dishonest or deceitful act by issuing a smog certificate of compliance to Vehicles 1 through 4 without ensuring that a bona fide inspection was performed of the emission control devices and systems.

12. Respondent's failure to supervise his employee whose conduct in clean plugging five vehicles deprived the public of the protections the Bureau's smog check program provides. Respondent has one prior, resolved citation. There was no evidence of additional misconduct following the events that led to the Accusation. Under all of the facts and circumstances, it would not be contrary to the public interest to permit respondent to retain its auto repair dealer registration and smog check station license, subject to probationary terms and conditions. Pursuant to the Guidelines, probation should be for five years, and respondent's registration and license suspended for 10 days.

Discipline of Other Licenses

13. Under Health and Safety Code section 44072.8, the suspension or revocation of a smog check station license or smog technician license constitutes cause to suspend or revoke other such licenses held by the disciplined licensee. Accordingly, if the smog check station license issued to respondent, as owner of Smog Express, is disciplined, respondent's technician license may also be disciplined.

14. Business and Professions Code section 9884.7, subdivision (c), provides that "the director may suspend, revoke, or place on probation 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."

Costs

15. Pursuant to Business and Professions Code section 125.3, subdivision (a), an administrative law judge may direct a licensee found to have violated the licensing act to "pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court set forth the following factors to be considered in determining the reasonableness of the costs sought pursuant to regulatory and statutory provisions like Business and Professions Code section 125.3:

The Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that regulation 317.5 does not deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing. Thus, the Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a chiropractor who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a

reduction in the severity of the discipline imposed. The Board must consider the chiropractor's "subjective good faith belief in the merits of his or her position" [citation] and whether the chiropractor has raised a "colorable challenge" to the proposed discipline [citation]. Furthermore, as in cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation [citation], the Board must determine that the chiropractor will be financially able to make later payments. Finally, the Board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a chiropractor engaged in relatively innocuous misconduct.

16. California Code of Regulations, title 1, section 1042, subdivision (b), sets forth the requirements that an agency must comply with to recover its costs, and in relevant part provides:

Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

17. As set forth in Factual Finding 36, there was sufficient evidence to substantiate that the \$961.68 in investigation costs incurred by the Bureau were reasonable. The certification of costs submitted by the Office of the Attorney General for enforcement costs, however, did not comply with requirements of California Code of Regulations, title 1, section 1042, subdivision (b). As a result, respondent should be ordered to pay the Bureau

\$961.68 for the costs of investigation that the Bureau incurred, but not the Office of the Attorney General's enforcement costs.

ORDER

1. Automotive Repair Dealer Registration Number ARD 219403, issued to Steve Looc Enterprises, Inc., doing business as Smog Express, Steve Looc, President, is revoked.

2. Smog Check, Test Only, Station License Number TC 219403 issued to Steve Looc Enterprises, Inc., doing business as Smog Express, Steve Looc, President, is revoked.

3. Smog Check Inspector License Number EO 43574, issued to Steve Looc, is revoked.

4. Smog Check Repair Technician Number EI 43574, issued to Steve Looc, is revoked.

5. The above registration and license revocations, however, are stayed, and respondent is placed on probation for five years, subject to the following terms and conditions:

a) Automotive Repair Dealer Registration Number ARD 219403, and Smog Check, Test Only, Station License Number TC 219403 issued to Steve Looc Enterprises, Inc., doing business as Smog Express, Steve Looc, President, are suspended for 10 consecutive days beginning on the effective date of the Decision and Order.

b) Smog Check Inspector License Number EO 43574, and Smog Check Repair Technician Number EI 43574, issued to Steve Looc, are suspended for 10 consecutive days beginning on the effective date of the Decision and Order.

c) Obey All Laws. During the period of probation, respondent shall comply with all federal and state statutes, regulations and rules governing all Bureau registrations and licenses held by respondent.

d) Posting of Sign. During the period of suspension, respondent shall prominently post a sign or signs, provided by BAR, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign or signs shall be conspicuously displayed in a location or locations open to and frequented by customers. The location(s) of the sign(s) shall be approved by BAR and shall remain posted during the entire period of actual suspension.

e) Quarterly Reporting. During the period of probation, respondent shall report either by personal appearance or in writing as determined by the Bureau on a schedule set by Bureau, but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

f) Report Financial Interests. Respondent shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by the Bureau during the period of probation, report any financial interest which any respondent or any partners, officers, or owners of any respondent facility may have in any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code.

g) Access to Examine Vehicles and Records. Respondent shall provide Bureau representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including the point of completion. Respondent shall also provide Bureau representatives unrestricted access to all records pursuant to Bureau laws and regulations.

h) Tolling of Probation. If, during probation, respondent leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, respondent shall notify the Bureau in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California.

All provisions of probation other than cost reimbursement requirements, restitution requirements, training requirements, and that respondent obey all laws, shall be held in abeyance during any period of time of 30 days or more in which respondent is not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which respondent is not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

i) Violation of Probation. If respondent violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard may set aside the stay order and carry out the disciplinary order provided in the decision. Once respondent is served notice of the Bureau's intent to set aside the stay, the Director shall

maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

j) Maintain Valid License. Respondent shall, at all times while on probation, maintain a current and active registration and/or license(s) with the Bureau, including any period during which suspension or probation is tolled. If respondent's registration or license is expired at the time the decision becomes effective, the registration or license must be renewed by respondent within 30 days of that date. If respondent's registration or license expires during a term of probation, by operation of law or otherwise, then upon renewal respondent's registration or license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active registration and/or license during the period of probation shall also constitute a violation of probation.

k) Cost Recovery. Respondent shall pay the Bureau of Automotive Repair \$961.68 for the reasonable costs of the investigation of case No. 79/18-3990. Respondent shall make such payment according to a payment schedule promulgated by the Bureau, to be completed no later than six (6) months before probation terminates. Respondent shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for case No. 79/18-3990. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. The Bureau reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

l) Completion of Probation. Upon successful completion of probation, respondent's affected registration and license will be fully restored or issued without restriction, if respondent meets all current requirements for registration or licensure and has paid all outstanding fees, monetary penalties, or cost recovery owed to the Bureau.

m) License Surrender. Following the effective date of a decision that orders a stay of invalidation or revocation, if respondent ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, respondent may request that the stay be vacated. Such request shall be made in writing to the Bureau. The Director and the Bureau Chief reserve the right to evaluate respondent's request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision.

Respondent may not petition the Director for reinstatement of the surrendered registration and/or license, or apply for a new registration or license under the jurisdiction of the Bureau at any time before the date of the originally scheduled completion of probation. If respondent applies to the Bureau for a registration or license at any time after that date, respondent must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to the Bureau and left outstanding at the time of surrender.

n) Training Courses. During the period of probation, respondent shall attend and successfully complete a Bureau-specified and Bureau-approved training course in inspection, diagnosis and/or repair of emission systems failures and engine performance, applicable to the class of license held by the respondent. Respondent shall provide to the Bureau proof of enrollment in the course within 30 days of the effective date of the decision, and proof of successful course completion within 180 days of the effective date of the decision. Failure to provide proof of enrollment and/or successful course completion to the Bureau within the timeframes specified shall constitute a violation of probation, and respondent shall be prohibited from issuing any certificate of compliance or noncompliance until such proof is received.

Within 60 days of the effective date of a decision, respondent shall attend a Write It Right presentation provided by a Bureau Representative, at the location, date, and time determined by the Bureau.

o) Notification to Employer. When performing services that fall within the scope of his or her license, respondent shall provide each of his or her current or future employers a copy of the decision and the underlying Accusation or Statement of Issues before commencing employment. Notification to respondent's current employer shall occur no later than the effective date of the decision. Respondent shall submit to the Bureau, upon request, satisfactory evidence of compliance with this term of probation.

p) Restriction on inspecting vehicles requiring Smog Check certification at a STAR station. Respondent shall not be permitted to issue certificates of compliance for any vehicles requiring Smog Check certification at a STAR station for their biennial Smog Check pursuant to Section 44010.5 or 44014.7 under the Health and Safety Code.

q) Supervision Requirements. Respondent shall not delegate his supervisory duties, as they relate to the business activities relevant to the probationary registration and/or license, to another person during the period of probation. Any persons employed by respondent to carry out such business activities shall be directly supervised by respondent. In the event that a bona

if a medical condition arises during the period of probation, which temporarily prevents respondent from exercising direct supervision over employees, notice and medical substantiation of the condition shall be submitted to the Bureau within ten (10) days of the medical affirmation of the condition.

DATED: June 12, 2019

DocuSigned by:
Heather M. Rowan
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HEATHER M. ROWAN
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against:

Case No. 79/18-3990

STEVE LOOC ENTERPRISES INC. DBA
SMOG EXPRESS; STEVE W. LOOC,
PRESIDENT
5931 Folsom Blvd.
Sacramento, CA 95819

ACUSATION

Automotive Repair Dealer Registration No.
ARD 219403
Smog Check, Test Only Station No. TC
219403
Smog Check Inspector No. EO 43574
Smog Check Repair Technician No. EI
43574,

and

CHRISTOPHER TRAN
3014 Ryer Island St.
W. Sacramento, CA 95691

Smog Check Inspector License No. EO
135776
Smog Check Repair Technician License No.
EI 135776

Respondents.

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1 Complainant alleges:

2 **PARTIES**

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

5 2. In or about 2001, the Bureau of Automotive Repair issued Automotive Repair Dealer
6 Registration Number ARD 219403 to Steve Looc Enterprises Inc. dba Smog Express; Steve W.
7 Looc, President ("Respondent Looc"). Smog Express was certified as a STAR Station on or about
8 January 2, 2013, and will remain active unless the Automotive Repair Dealer Registration and/or
9 Smog Check Station License (addressed in paragraph 3) is revoked, canceled, delinquent or
10 invalidated. The Automotive Repair Dealer Registration was in full force and effect at all times
11 relevant to the charges brought herein and will expire on December 31, 2018, unless renewed.

12 3. On or about March 27, 2002, the Bureau of Automotive Repair issued Smog Check,
13 Test Only Station Number TC 219403 to Respondent Looc. The Smog Check, Test Only Station
14 Registration was in full force and effect at all times relevant to the charges brought herein and
15 will expire on December 31, 2018, unless renewed.

16 4. In or about 1996, the Bureau of Automotive Repair issued Smog Check Inspector
17 Number EO 43574 to Respondent Looc. This license was in full force and effect at all times
18 relevant to the charges brought herein and will expire on July 31, 2018, unless renewed. In or
19 about 2012, the Bureau of Automotive Repair also issued to Respondent Looc Smog Check
20 Repair Technician Number EI 43574, which expired on July 31, 2016.

21 5. On or about November 19, 2013, the Bureau of Automotive Repair issued Smog
22 Check Inspector License Number EO 135776 and Smog Check Repair Technician License
23 Number EI 135776 to Christopher Tran ("Respondent Tran"). The Smog Check Repair
24 Technician License was in full force and effect at all times relevant to the charges brought herein
25 and expired December 31, 2017, and has not been renewed. The Smog Check Inspector License
26 was in full force and effect at all times relevant to the charges brought herein and will expire on
27 December 31, 2019, unless renewed.

28 ///

1 **JURISDICTION**

2 6. California Business and Professions Code ("Bus. & Prof. Code") section 9884.7
3 provides that the Director may revoke an automotive repair dealer registration.

4 7. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a
5 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
6 proceeding against an automotive repair dealer or to render a decision temporarily or permanently
7 invalidating (suspending or revoking) a registration.

8 8. California Health and Safety Code ("Health & Saf. Code") section 44002 provides, in
9 pertinent part, that the Director has all the powers and authority granted under the Automotive
10 Repair Act for enforcing the Motor Vehicle Inspection Program.

11 9. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or
12 suspension of a license by operation of law, or by order or decision of the Director of Consumer
13 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
14 of jurisdiction to proceed with disciplinary action.

15 10. Health & Saf. Code section 44072.8 states that when a license has been revoked or
16 suspended following a hearing under this article, any additional license issued under this chapter
17 in the name of the licensee may be likewise revoked or suspended by the director.

18 **STATUTORY AND REGULATORY PROVISIONS**

19 11. Bus. & Prof. Code section 9884.7 states, in pertinent part:

20 (a) The director, where the automotive repair dealer cannot show there
21 was a bona fide error, may deny, suspend, revoke, or place on probation the
22 registration of an automotive repair dealer for any of the following acts or omissions
23 related to the conduct of the business of the automotive repair dealer, which are done
24 by the automotive repair dealer or any automotive technician, employee, partner,
25 officer, or member of the automotive repair dealer.

26 (1) Making or authorizing in any manner or by any means whatever any
27 statement written or oral which is untrue or misleading, and which is known, or which
28 by the exercise of reasonable care should be known, to be untrue or misleading.

...

(4) Any other conduct that constitutes fraud.

...

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

6 12. Bus. & Prof. Code section 22, subdivision (a), states:

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

11 13. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
12 "license" includes "registration" and "certificate."

13 14. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

20 ...

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

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

25 15. Health & Saf. Code section 44072.10 states, in pertinent part:

26 ...

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

...

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

16. Health & Saf. Code section 44024.5, subdivision (a), states:

The department shall compile and maintain statistical and emissions
profiles and data from motor vehicles that are subject to the motor vehicle inspection
program. The department may use data from any source, including remote sensing
data, in use data, and other motor vehicle inspection program data, to develop and
confirm the validity of the profiles, to evaluate the program, and to assess the

performance of smog check stations. The department shall undertake these requirements directly or seek a qualified vendor for these services.

17. Health & Saf. Code section 44037 states, in pertinent part:

(a) The department shall compile and maintain records, using the sampling methodology necessary to ensure their scientific validity and reliability, of tests and repairs performed by qualified smog check technicians at licensed smog check stations pursuant to this chapter on all of the following information:

(1) The motor vehicle identification information and the test data collected at the station.

...

(5) Data received and compiled through the use of the centralized computer database and computer network to be established pursuant to Section 44037.1, and any other information determined to be essential by the department for program enhancement to achieve greater efficiency, consumer protection, cost-effectiveness, convenience, or emission reductions

18. Health & Saf. Code section 44037.1 states, in pertinent part:

(a) On or before January 1, 1995, the department shall design and establish the equipment necessary to operate a centralized computer data base and computer network that is readily accessible by all licensed smog check technicians on a real time basis.

(b) The centralized computer data base and network shall be designed with all of the following capabilities:

...

(2) To provide smog check technicians and the department with information as to the date and result of prior smog check tests performed on each vehicle to discourage vehicle owners from shopping for certificates of compliance and to permit the department to identify smog check stations for further investigation as potential violators of this chapter.

(3) To provide the department with data on the failure rates and repair effectiveness for vehicles of each make and model year on a statewide basis, and by smog check station and technician, to facilitate identification of smog check stations and technicians as potential violators of this chapter.

...

(8) To be compatible with the department's recordkeeping and compilation requirements established by Section 44037.

...

(c) After January 1, 1995, each smog check station shall transmit vehicle data emission test results to the department's centralized data base. Each smog check station shall also transmit vehicle data and emission measurements made before and after repair

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19. Title 16, California Code of Regulations, section 3340.17 states, in pertinent part:

• • •

(c) Vehicle data and test results from the OBD Inspection System (OIS) shall be transmitted to the bureau's centralized database

COST RECOVERY

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

BACKGROUND

21. On March 9, 2015, California's Smog Check Program was updated to keep pace with ever-advancing technology. The program update requires the use of an On-Board Diagnostic Inspection System (BAR-OIS). BAR-OIS is the smog check equipment required in all areas of the State when inspecting most model-year 2000 and newer gasoline and hybrid vehicles and most 1998 and newer diesel vehicles. The system consists of a certified Data Acquisition Device (DAD), computer, bar code scanner, and printer.

22. The DAD is an On Board Diagnostic (OBD) scan tool that, when requested by the California BAR-OIS software, retrieves OBD data from the vehicle. The DAD connects between the BAR-OIS computer and the vehicle's diagnostic link connector. The bar code scanner is used to input technician information, the vehicle identification number, and DMV renewal information. The vehicle identification number (VIN) that is physically present on all vehicles is required to be programmed into the vehicle's On-Board Diagnostics – Generation II (OBD II) on 2005 and newer vehicles, and on many occasions was programmed into the OBD II computer in earlier model-years. The electronically programmed VIN is referred to as the "eVIN," is captured by the Bureau during a smog check inspection, and should match the physical VIN on the vehicle. The printer is used to provide a Vehicle Inspection Report (VIR), which shows the inspection results and the Smog Check Certificate of Compliance Number for passing vehicles. Data

1 retrieved and recorded during an OIS smog check includes the eVIN, the communication
2 protocol¹, and the number of Parameter Identifications (PID's)².

3 REVIEW OF OIS TEST DATA REGARDING RESPONDENTS

4 **Factual Allegations**

5 23. Bureau Representative I. A. reviewed OIS test data pertaining to smog inspections
6 conducted at Respondent Looc's facility, Smog Express. I.A. found that the facility's smog check
7 technician, Respondent Tran, performed smog inspections on the five vehicles identified below
8 using a method known as "clean plugging,"³ resulting in the issuance of fraudulent certificates of
9 compliance for the vehicles.

10 **Vehicle 1:**

11 24. The OIS test details show that on March 20, 2017, between 10:56 a.m. and 11:00 a.m.
12 p.m., Respondent Tran performed a smog inspection on a 2007 Ford Econoline E350 Super Duty
13 Wagon ("Vehicle 1"), resulting in the issuance of electronic Smog Certificate of Compliance No.
14 ZR413620C. The OIS test details for Vehicle 1 showed that the eVIN recorded during the
15 inspection did not match the physical VIN on the vehicle.

16 25. The Bureau's VID (Vehicle Information Database) data shows that on July 20, 2017,
17 between 1:26 p.m. and 1:30 p.m., a 2007 Ford Econoline Super Duty Wagon was smog tested at
18 Smog Express and that the eVIN transmitted to the VID was the same physical VIN that was
19 recorded during the smog inspection on Vehicle 1.

20
21 ¹ The OBD II communication protocol describes the specified communication "language"
22 used by the OBD II computer to communicate to scan tools and other devices such as the BAR-
OIS. The communication protocol is programmed into the OBD II computer during manufacture
and does not change.

23 ² PID's are data points reported by the OBD II computer to the scan tool or BAR-OIS (for
24 example, engine speed (rpm), vehicle speed, engine temperature, etc.). The PID count is the
25 number of data points reported by the OBD II computer and is programmed during manufacture.
Each make and model vehicle reports a specific number of PID counts; i.e., the PID count does
not vary for that make and model vehicle.

26 ³ Clean-plugging is the use of a vehicle's properly functioning OBD II system, or another
27 source, to generate passing diagnostic readings for the purpose of issuing a fraudulent smog
28 certificate of compliance to another vehicle that is not in compliance with the Smog Check
Program and/or is not present for testing.

1 26. The Bureau's VID data shows that on December 12, 2017, between 11:59 a.m. and
2 12:04 p.m., a 2012 Ford Econoline Super Duty Wagon was smog tested at Smog Express. Its OIS
3 test details matched the test details, including eVIN, for vehicle 1 - showing that the 2012 Ford
4 Econoline Super Duty Wagon tested on December 12, 2018 was the vehicle used to obtain false
5 test details for Vehicle 1.

6 27. Based on the discrepancies in the OIS test details, I. A. concluded that the DAD was
7 not connected to Vehicle 1, but instead to the 2012 Ford Econoline Super Duty Wagon, thus
8 resulting in the issuance of a fraudulent smog certificate of compliance for Vehicle 1.

9 **Vehicle 2:**

10 28. The OIS test details show that on May 16, 2017, between 12:28 p.m. and 12:31 p.m.,
11 Respondent Tran performed a smog inspection on a 2003 Nissan Xterra XE ("Vehicle 2"),
12 resulting in the issuance of electronic Smog Certificate of Compliance No. ZV451658C. The OIS
13 test details for Vehicle 2, transmitted to the VID, showed an eVIN, a communication protocol and
14 PID count inconsistent with that year, make and model vehicle. I.A. found that similar OIS test
15 data for 2003 Nissan Xterra XE vehicles showed that an eVIN is not reported and that the
16 communication protocol and PID count. were inconsistent with the OIS tests details for Vehicle
17 2.

18 29. I. A.'s VID research found that Vehicle 2 had previously been tested at Smog Express
19 on March 3, 2017, between 10:21 a.m. and 10:25 a.m. The OIS test details were consistent with
20 OIS test data for vehicles of the same year, make and model. However, Vehicle 2 did not pass
21 that inspection.

22 30. Additionally, VID data and OIS test details show that a 2011 Honda Odyssey LX
23 tested at Smog Express the same day as Vehicle 2, May 16, 2017, between 12:23 p.m. and 12:28
24 p.m., was the vehicle used to generate the fraudulent smog certificate for Vehicle 2.

25 31. Based on the discrepancies in the OIS details, I. A. concluded that the DAD was not
26 connected to Vehicle 2 during the smog inspection on May 16, 2017, but instead the 2011 Honda
27 Odyssey LX, thus resulting in the issuance of a fraudulent smog certificate of compliance for
28 Vehicle 2.

1 **Vehicle 3:**

2 32. The OIS test details show that on August 16, 2017, between 9:44 a.m. and 9:47 a.m.,
3 Respondent Tran performed a smog inspection on a 2006 Honda Pilot EX ("Vehicle 3"), resulting
4 in the issuance of electronic Smog Certificate of Compliance No. HD566593(c). The OIS test
5 details for Vehicle 3, transmitted to the VID, showed an eVIN different from its physical VIN,
6 and a communication protocol and PID count that were inconsistent with that year, make and
7 model vehicle. I.A. found that similar OIS test data for 2006 Honda Pilot EX vehicles showed a
8 communication protocol and PID counts inconsistent with the OIS details of Vehicle 3.

9 33. I.A.'s VID research found that Vehicle 3 had previously been tested at Smog Express
10 on June 23, 2015 between 5:32 p.m. and 5:35 p.m. The OIS test data was consistent with OIS test
11 data for vehicles of the same year, make and mode.

12 34. Additionally, VID data and OIS test details show that a 2007 Honda Odyssey Touring
13 tested at Smog Express on October 12, 2017, between 12:47 p.m. and 12:58 p.m., was the vehicle
14 used to generate the fraudulent smog certificate for Vehicle 3.

15 35. Based on the discrepancies in the OIS details, I.A. concluded that the DAD was not
16 connected to Vehicle 3 during the smog inspection on August 16, 2017, but instead the Honda
17 Odyssey Touring, thus resulting in the issuance of a fraudulent smog certificate of compliance for
18 Vehicle 3.

19 **Vehicle 4**

20 36. The OIS test details show that on October 14, 2017, between 4:19 p.m. and 4:22 p.m.,
21 Respondent Tran performed a smog inspection on a 2003 Land Rover Discovery II SE ("Vehicle
22 4"), resulting in the issuance of electronic Smog Certificate of Compliance No. HH253219C. The
23 OIS test details for Vehicle 4, transmitted to the VID, showed an eVIN different from its physical
24 VIN, and a communication protocol and PID count that were inconsistent with that year, make
25 and model vehicle. I.A. found that similar OIS test data for 2003 Land Rover Discovery II SE
26 vehicles showed a communication protocol and PID counts inconsistent with the OIS details of
27 Vehicle 4.

28 ///

1 37. Additionally, VID data and OIS test details show that a 2005 Toyota Tundra Double
2 Cab Limited tested at Smog Express on October 14, 2017, between 4:17 p.m. and 4:20 p.m., was
3 the vehicle used to generate the fraudulent smog certificate for Vehicle 4.

4 39. Based on the discrepancies of the OIS details, I.A. concluded that the DAD was not
5 connected to Vehicle 4 during the smog inspection on October 14, 2017, but instead the Toyota
6 Tundra Double Cab Limited, thus resulting in the issuance of a fraudulent smog certificate of
7 compliance for Vehicle 4.

8 **Vehicle 5**

9 39. The OIS test details show that on December 1, 2017, between 8:03 a.m. and 8:07
10 a.m., Respondent Tran performed a smog inspection on a 2004 Chrysler Pacifica ("Vehicle 5"),
11 resulting in the issuance of electronic Smog Certificate of Compliance No. HJ468830C. The OIS
12 test details for Vehicle 5, transmitted to the VID, showed an eVIN different from its physical
13 VIN, and a communication protocol and PID count that were inconsistent with that year, make
14 and model vehicle. I.A. found that similar OIS test data for 2004 Chrysler Pacifica vehicles
15 showed a communication protocol and PID counts inconsistent with the OIS details of Vehicle 5.

16 40. Additionally, I.A.'s VID research found that Vehicle 5 had previously been tested at
17 Smog Express the day before the fraudulent test, November 30, 2017 between 12:37 p.m. and
18 12:41 p.m. The OIS test details were consistent with OIS test data for vehicles of the same year,
19 make and mode, but Vehicle 5 failed that test with an illuminated MIL reported.

20 41. Based on the discrepancies of the OIS details, I.A. concluded that the DAD was not
21 connected to Vehicle 5 during the smog inspection on December 1, 2017, 2017, thus resulting in
22 the issuance of a fraudulent smog certificate of compliance for Vehicle 5.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Untrue or Misleading Statements)**

25 42. Respondent Looc's registration is subject to disciplinary action pursuant to Bus. &
26 Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements
27 which it knew or in the exercise of reasonable care should have known to be untrue or
28 misleading, as follows:

1 a. Respondent Looc's smog check technician, Respondent Tran, certified that
2 Vehicles 1 through 5, identified in paragraphs 24 through 39 above, had passed inspection and
3 were in compliance with applicable laws and regulations. In fact, Respondent Tran conducted the
4 smog inspections on the vehicle using clean-plugging methods in that he substituted or used a
5 different vehicle during the inspections in order to issue a smog certificate of compliance for the
6 vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Fraud)**

9 43. Respondent Looc's registration is subject to disciplinary action pursuant to Bus. &
10 Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitute
11 fraud by issuing electronic smog certificates of compliance for Vehicles 1 through 5, identified in
12 paragraphs 24 through 39 above, without ensuring that bona fide inspections were performed of
13 the emission control devices and systems on the vehicles, thereby depriving the People of the
14 State of California of the protection afforded by the Motor Vehicle Inspection Program.

15 **THIRD CAUSE FOR DISCIPLINE**

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

17 44. Respondent Looc's smog check station license is subject to disciplinary action
18 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
19 comply with the following sections of that Code:

20 a. **Section 44012:** Respondent failed to ensure that the emission control tests
21 were performed on Vehicles 1 through 5, identified in paragraphs 24 through 39 above, in
22 accordance with procedures prescribed by the department.

23 b. **Section 44015:** Respondent issued electronic smog certificates of compliance
24 for Vehicles 1 through 5, identified in paragraphs 24 through 39 above, without ensuring that the
25 vehicles were properly tested and inspected to determine if they were in compliance with Health
26 & Saf. Code section 44012.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 45. Respondent Looc's smog check station license is subject to disciplinary action
5 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
6 comply with provisions of Title 16, California Code of Regulations, as follows:

7 a. **Section 3340.35, subdivision (c):** Respondent issued electronic smog
8 certificates of compliance for Vehicles 1 through 5, identified in paragraphs 24 through 39 above,
9 even though the vehicles had not been inspected in accordance with Section 3340.42.

10 b. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
11 conducted on Vehicles 1 through 5, identified in paragraphs 24 through 39 above, in accordance
12 with the Bureau's specifications.

13 **FIFTH CAUSE FOR DISCIPLINE**

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

15 46. Respondent Looc's smog check station license is subject to disciplinary action
16 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
17 dishonest, fraudulent, or deceitful acts whereby another was injured by issuing electronic smog
18 certificates of compliance for Vehicles 1 through 5, identified in paragraphs 24 through 39 above,
19 without ensuring that bona fide inspections were performed of the emission control devices and
20 systems on the vehicles, thereby depriving the People of the State of California of the protection
21 afforded by the Motor Vehicle Inspection Program.

22 **SIXTH CAUSE FOR DISCIPLINE**

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

24 47. Respondent Tran's smog check inspector license is subject to disciplinary action
25 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
26 comply with section 44012 of that Code in a material respect, as follows: Respondent failed to
27 perform the emission control tests on Vehicles 1 through 5, identified in paragraphs 24 through
28 39 above, in accordance with procedures prescribed by the department.

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 48. Respondent Tran's smog check inspector license is subject to disciplinary action
5 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
6 comply with provisions of Title 16, California Code of Regulations, as follows:

7 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test
8 Vehicles 1 through 5, identified in paragraphs 24 through 39 above, in accordance with Health &
9 Saf. Code sections 44012 and 44035, and Title 16, California Code of Regulations, section
10 3340.42.

11 b. **Section 3340.42**: Respondent failed to conduct the required smog tests on
12 Vehicles 1 through 5, identified in paragraphs 24 through 39 above, in accordance with the
13 Bureau's specifications.

14 **EIGHTH CAUSE FOR DISCIPLINE**

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

16 49. Respondent Tran's smog check inspector license is subject to disciplinary action
17 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
18 dishonest, fraudulent, or deceitful act whereby another was injured by issuing an electronic smog
19 certificate of compliance for Vehicles 1 through 5, identified in paragraphs 24 through 39 above,
20 without performing a bona fide inspection of the emission control devices and systems on the
21 vehicle, thereby depriving the People of the State of California of the protection afforded by the
22 Motor Vehicle Inspection Program.

23 **DISCIPLINE CONSIDERATIONS**

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

26 51. On or about March 21, 2006, in a prior action, the Bureau of Automotive Repair
27 issued Citation Number C2006-585. Respondent was cited for violations of Health and Saf. Code
28 section 44012(f) and California Code of Regulations Title 16 section 3340.35C by illegally

1 issuing a certificate of compliance to a vehicle with a missing Air Injection System (AIS). That
2 Decision is now final and is incorporated by reference as if fully set forth.

3 52. On or about August 30, 2017, in a prior action, the Bureau of Automotive Repair
4 issued Citation Number 2017-1606. Respondent was cited for violations of Health and Saf. Code
5 section 44012 and by illegally issuing a certificate of compliance to a vehicle with a missing or
6 modified Evaporative Emissions System (eVAP) components. The citation was affirmed and
7 reissued and a formal appeal request was received January 19, 2018. The appeal is still pending.
8 This Citation matter is incorporated by reference as if fully set forth.

9 **OTHER MATTERS**

10 53. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
11 or place on probation the registration for all places of business operated in this state by
12 Respondent Looc, upon a finding that Respondent has, or is, engaged in a course of repeated and
13 willful violations of the laws and regulations pertaining to an automotive repair dealer.

14 54. Pursuant to Health & Safety Code section 44072.8, if Smog Check, Test Only Station
15 License No. TC 219403 and/or Smog Check Inspector Number EO 43574 issued to Respondent
16 Looc, is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of
17 Division 26 of the Health & Safety Code in the name of said licensee may be likewise revoked or
18 suspended by the director.

19 55. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License
20 Number EO 135776 and/or Smog Check Repair Technician License Number EI 135776 issued to
21 Respondent Tran, is revoked or suspended, any additional license issued under Chapter 5 of Part
22 5 of Division 26 of the Health & Safety Code in the name of said licensee may be likewise
23 revoked or suspended by the director.

24 **PRAYER**

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

27 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
28 219403, issued to Steve Looc Enterprises Inc. dba Smog Express; Steve W. Looc, President, and

1 revoking or suspending any other Automotive Dealer Registration in the name of Steve Looc
2 Enterprises, Inc.;

3 2. Revoking or suspending Smog Check, Test Only Station License Number TC
4 219403, issued to Steve Looc Enterprises Inc. dba Smog Express; Steve W. Looc, President;

5 3. Revoking or suspending Smog Check Inspector License Number EO 43574, issued to
6 Steve W. Looc;

7 4. Revoking or suspending Smog Check Repair Technician License Number EI 43574,
8 issued to Steve W. Looc;

9 5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
10 Division 26 of the Health & Safety Code in the name of Steve W. Looc;

11 6. Revoking or suspending Smog Check Inspector License Number EO 135776, issued
12 to Christopher Tran.

13 7. Revoking or suspending Smog Check Repair Technician License Number EI 135776,
14 issued to Christopher Tran;

15 8. Ordering Respondents Steve W. Looc and Christopher Tran to pay the Bureau of
16 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
17 pursuant to Business and Professions Code section 125.3; and,

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

19
20 DATED: 7-23-14

by Patrick Dorais, Asst. Chief
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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