

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

In the Matter of the Statement of Issues
Against:

DUNG TRUNG DAO,

Respondent.

Case No. 79/13-88S

OAH No. 2013060236

ADOPTION OF PROPOSED DECISION BY OPERATION OF LAW

The Director of the Department of Consumer Affairs issued an Order of Non-Adoption of Proposed Decision on November 27, 2013, in which the Order also called for any objection to the Director deciding the case upon the record without including the transcript, to be submitted by January 2, 2014, and in the alternative for any written argument to be submitted by January 21, 2014. No objection to deciding the case upon the record without the transcript and no written argument were received.

Because no transcripts were ordered, the Proposed Decision of the Administrative Law Judge in the above-referenced matter is adopted by operation of law 100 days from the date the Order of Non-Adoption of Proposed Decision was issued, pursuant to Government Code section 11517(c)(2)(E)(iv).

THEREFORE, the attached Proposed Decision of the Administrative Law Judge was adopted on March 7, 2014 by operation of law.

In the interests of effectuating the Order as adopted, rather than deny the request of license and issue a probationary license, for which there is currently no mechanism at the Bureau of Automotive Repair, the Director hereby grants the Smog Check Technician License, provided however that the license is revoked, that revocation is immediately stayed, and the license is placed on probation for a period of three years with the terms and conditions as stated in the Order. As to the completion of the certified training course (Number 2 of the Order), if proof of completion of the course is not furnished to the Bureau within the 60-day period, the Director may, after giving notice and opportunity to be heard, lift the stay of revocation causing respondent's license to be revoked.

This Decision shall become effective on May 30, 2014.

DATED: April 25, 2014


DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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PROPOSED DECISION

Humberto Flores, Administrative Law Judge with Office of Administrative Hearings, heard this matter on August 1, 2013, in Los Angeles, California.

Linda Sun, Deputy Attorney General, represented complainant.

Dung Trung Dao (respondent) appeared personally and represented himself.

The parties presented testimony and documentary evidence at the hearing and the matter was submitted for decision. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions and Order:

FACTUAL FINDINGS

1. On November 28, 2011, respondent filed an application with the Bureau of Automotive Repair (Bureau) for an Smog Check Technician License. The Bureau denied the application on April 4, 2012.

2. Respondent was previously licensed as an Advanced Emission Specialist. Respondent also held an Automotive Repair Dealer Registration and a Smog Check Test Only License doing business as La Puente Test Only Center. Pursuant to a Decision and Order effective August 14, 2006, respondent's Automotive Repair Dealer Registration was invalidated. Further, respondent's Smog Check Test Only and Advanced Emission Specialist licenses were revoked. The facts underlying the discipline were that respondent engaged in the illegal conduct known as "clean piping" where he would test one vehicle for emissions and issue a certificate of compliance for another vehicle that had not been tested. Respondent issued 11 false and fraudulent smog certificates for vehicles that he had not tested for emissions during a surveillance operation conducted by Bureau investigators in April 2004.

3. On April 25, 2006, in the Superior Court of California, County of Los Angeles, respondent entered a plea of guilty and was convicted of violating Vehicle Code section 4463, subdivisions (a)(1) and (a)(2), altering and falsifying a registration/license.

4. Respondent applied for a smog check technician license in 2008. The Bureau denied respondent's application in a Decision effective June 1, 2010. In its decision, the Bureau noted the seriousness of respondent's misconduct and that respondent did not present sufficient evidence of rehabilitation.

5. Respondent presented evidence of rehabilitation. It has been seven years since respondent's licenses were revoked based on conduct that occurred nine years ago. He is remorseful for his misconduct because he feels that he disappointed his family. Since 2008, respondent has been volunteering at a Buddhist Temple. He testified that he performs volunteer work for the temple in part to make amends for his past dishonesty. He currently works as a mechanic for friends and relatives by going to their homes to repair and service their cars. On July 29, 2011, respondent conviction was expunged pursuant to Penal Code section 1203.4. In addition to his evidence of rehabilitation, respondent has completed the Basic Clean Air Car Course in 2008 and the Advanced Clean Air Car Course in 2012.

6. Respondent's daughter testified that respondent has a changed attitude since he engaged in the misconduct. She also corroborated respondent's testimony regarding the remorse he feels for his past misconduct.

LEGAL CONCLUSIONS

1. Cause exists to deny respondent's application for a Smog Check Technician License under Health and Safety Code section 44072.1; subdivisions (b), (c), (d) and (f), based on Factual Findings 2, 3 and 4.

2. California Code of Regulations Title 16, section 3395 states:

(a) When considering the denial of a license or a registration under Section 480 of the Business and Professions Code, the bureau, in evaluating the rehabilitation of the applicant, will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.

- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.
- (b) When considering the suspension or revocation of a license or a registration on the grounds that the licensee or registrant has been convicted of a crime, the bureau, in evaluating the rehabilitation of such person, will consider the following criteria:
 - (1) Nature and severity of the act(s) or offense(s).
 - (2) Total criminal record.
 - (3) The time that has elapsed since commission of the act(s) or offense(s).
 - (4) Whether the licensee or registrant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee or registrant.
 - (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
 - (6) Evidence, if any, of rehabilitation submitted by the licensee or registrant.

3. Respondent's misconduct was a crime of dishonesty that was directly related to his duties as a BAR licensee. However, it has now been nine years since he committed the acts which resulted in his previous discipline and conviction. His conviction has since been expunged. Respondent's expression of remorse was credible and his volunteer efforts at his Buddhist Temple show that he is serious about his rehabilitation. Finally, respondent has taken the basic and advanced clean air car courses offered by the Bureau. The evidence of rehabilitation presented by respondent is sufficient to grant respondent a probationary license with appropriate conditions that would protect the public.

ORDER

The application of respondent Dung Trung Dao for a Smog Check Technician License is denied; provided, however, that a probationary Smog Check Technician License shall be issued to respondent for three years on the following terms and conditions:

1. During the period of probation, respondent(s) shall:
 - a. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
 - b. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
 - c. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.
 - d. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.
 - e. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.
 - f. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard suspend or revoke the license.
 - g. If the accusation involves false and misleading advertising, during the period of probation, respondent shall submit any proposed advertising copy, whether revised or new, to the Bureau at least thirty (30) days prior to its use.
2. During the period of probation, respondent shall attend and successfully complete a Bureau certified training course in diagnosis and repair of emission systems failures and engine performance, applicable to the class of license held by the respondent. Said course shall be completed and proof of

completion submitted to the Bureau within 60 days of the effective date of this decision and order. If proof of completion of the course is not furnished to the Bureau within the 60-day period, respondents' license shall be immediately suspended until such proof is received.

DATED: September 4, 2013



HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings

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

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11 In the Matter of the Statement of Issues
Against:

Case No. 79/13-88s

12 **DUNG TRUNG DAO**

STATEMENT OF ISSUES

13
14 Respondent.

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16 John Wallauch ("Complainant") alleges:

17 **PARTIES**

18 1. Complainant brings this Statement of Issues solely in his official capacity as the
19 Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

20 2. On or about November 28, 2011, the Bureau received an Application for Initial
21 Smog Check Technician License from Dung Trung Dao ("Respondent"). On or about
22 November 23, 2011, Respondent certified under penalty of perjury to the truthfulness of all
23 statements, answers, and representations in the application. The Bureau denied the application on
24 April 4, 2012.

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1 **JURISDICTION**

2 3. Pursuant to Business and Professions Code ("Code") section 485(b), on or about
3 April 4, 2012, Respondent's application was denied and he was notified of the right to a hearing
4 to appeal that denial.

5 4. On or about May 27, 2012, Respondent requested a hearing to appeal the denial of
6 his application.

7 **LICENSE HISTORY**

8 **Automotive Repair Dealer Registration**

9 5. On or about May 10, 2001, the Bureau issued Automotive Repair Registration
10 Number AD 215972 to Respondent, doing business as La Puente Test Only Center.

11 **Smog Check Test Only Station License**

12 6. On or about June 7, 2001, the Bureau issued Smog Check Test Only Station License
13 Number TD 215972 to Respondent.

14 **Advanced Emission Specialist Technician License**

15 7. In 1996, the Bureau issued Advanced Emission Specialist Technician Number EA
16 134938 to Respondent.

17 **PRIOR DISCIPLINE**

18 8. On or about December 12, 2005, Accusation No. 79/06-21, was filed, alleging that
19 Respondent violated Health and Safety Code sections 44012(f) (failing to perform tests of
20 emission control systems or devices in accordance with procedures prescribed by the
21 department); 44015(b) (issuing electronic certificates of compliance to vehicles without
22 determining if the vehicles met the requirements of Health and Safety Code section 44012);
23 44032 (failing to perform tests of emission control devices and system in accordance with Health
24 and Safety Code section 44012); and 44059 (willfully made false entries for the electronic
25 certificates of compliance by certifying vehicles had been inspected as required, when in fact,
26 they had not); and Business and Professions Code sections 9884.7(a)(1) (making false and
27 misleading statements); and 9884.7(a)(4) (conduct constituting fraud). Effective August 14,
28 2006, pursuant to a Decision and Order, attached hereto as Exhibit A, Respondent's Automotive

1 Repair Dealer Registration Number AD 215972 was permanently invalidated, and Smog Check
2 Test Only Station License Number TD 215972, and Advanced Emission Specialist License
3 Number EA 134938, were revoked.

4 9. On or about March 27, 2008, the Bureau received an Application for Smog Check
5 Technician License from Respondent. On or about November 3, 2008, Statement of Issues No.
6 79/06-21S, was filed, denying Respondent's application for a Smog Check Technician License,
7 alleging that Respondent violated Health and Safety Code section 44072.1 (criminal conviction),
8 in that on or about April 25, 2006, in the Los Angeles Superior Court, Case No. BA293189,
9 Respondent was convicted by the court on his plea of guilty of violating Vehicle Code section
10 4463(A)(1) (altering a registration/license), and Vehicle Code section 4463(A)(2) (false evidence
11 of registration/license), felonies. In addition, Respondent violated Health and Safety Code
12 sections 44072.1(b) (previously revoked license); 44072.1(c) (acts committed by a licentiate of
13 the business would constitute grounds for suspension or revocation of a license); and 44072.1(d)
14 (dishonesty, fraud or deceit). Effective June 1, 2010, pursuant to a Decision and Order, attached
15 hereto as **Exhibit B**, Respondent's Application for Smog Check Technician License was denied.

16 STATUTORY PROVISIONS

17 10. Code section 480 states, in pertinent part:

18 (a) A board may deny a license regulated by this code on the grounds that
19 the applicant has one of the following:

20 (2) Done any act involving dishonesty, fraud, or deceit with the intent to
substantially benefit himself or herself or another, or substantially injure another.

21 (3)(A) Done any act that if done by a licentiate of the business or profession
22 in question, would be grounds for suspension or revocation of license.

23 11. Health and Safety Code section 44072 provides:

24 Any license issued under this chapter and the regulations adopted pursuant
to it may be suspended or revoked by the director. The director may refuse to issue a
25 license to any applicant for the reasons set forth in Section 44072.1. The proceedings
under this article shall be conducted in accordance with Chapter 5 (commencing with
26 Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the
director shall have all the powers granted therein.

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12. Health and Safety Code section 44072.1 states, in pertinent part:

The director may deny a license if the applicant, or any partner, officer, or director thereof, does any of the following:

(b) Was previously the holder of a license issued under this chapter, which license had been revoked and never reissued.

(c) Has committed any act that, if committed by any licensee, would be grounds for the suspension or revocation of a license issued pursuant to this chapter.

(d) Has committed any act involving dishonesty, fraud, or deceit whereby another is injured or whereby the applicant has benefited.

(f) Has entered a plea of guilty or novo contender to, or been found guilty of, or been convicted of a crime substantially related to the qualifications, functions, or duties of the licenseholder in question. . .

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction of a Crime)

13. Respondent's application for a smog check technician license is subject to denial under Health and Safety Code section 44072.1(f), in that on or about April 25, 2006, in the case of *People v. Dung T. Dao*, (Super. Ct. Los Angeles County, 2006, Case No. BA293189), Respondent was convicted by the Court on his plea of guilty of violating Vehicle Code section 4463(A)(1) (alter registration/license), and Vehicle Code section 4463(A)(2) (false evidence of registration/license), both felonies.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Previously Revoked License)

14. Respondent's application for a smog check technician license is subject to denial under Health and Safety Code section 44072.1(b), in that effective August 14, 2006, Respondent's Smog Check Test Only Station License Number TD 215972 and Advanced Emission Specialist License Number EA 134938, were revoked and never reissued, as more particularly set forth in Decision No. 79/06-21, attached hereto as **Exhibit A**, and incorporated herein by reference.

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1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(Committed Acts Which if Done by a Licentiate Would Constitute Cause for Discipline)**

3 15. Respondent's application for a smog check technician license is subject to denial
4 under Code section 480(a)(3)(A) and Health and Safety Code section 44072.1(c), in that
5 Respondent committed acts which if done by a licentiate of the business would constitute grounds
6 for suspension or revocation of a license, as more particularly set forth in Decision and Order
7 Nos. 79/06-21 and 79/06-21S, attached hereto as Exhibits A and B, respectively, and
8 incorporated herein by reference.

9 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

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

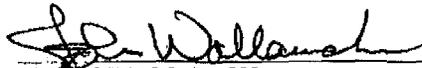
11 16. Respondent's application for a smog check technician license is subject to denial
12 under Code section 480(a)(2) and Health and Safety Code section 44072.1(d), in that Respondent
13 committed acts involving dishonesty, fraud or deceit with the intent to substantially benefit
14 himself, as more particularly set forth in Decision and Order Nos. 79/06-21 and 79/06-21S,
15 attached hereto as Exhibits A and B, respectively, and incorporated herein by reference.

16 **PRAYER**

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

- 19 1. Denying the application of Dung Trung Dao for an Advanced Emission Specialist
20 Technician License; and,
21 2. Taking such other and further action as deemed necessary and proper.

22 DATED: March 1, 2013

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24 JOHN WALLAUCH
25 Chief
26 Bureau of Automotive Repair
27 Department of Consumer Affairs
28 State of California
Complainant

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