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

12 In the Matter of the Accusation Against:

Case No. 79/12-15

13 **AMTEK AUTO REPAIR**
14 **KEN QUOC NGUYEN, Owner**
220 Leo Avenue #G
15 **San Jose, CA 95112**
Automotive Repair Dealer Registration No. ARD 238482
16 **Smog Check Test and Repair Station License No.**
17 **RC 238482**
Lamp Station License No. LS 238482, Class A
Brake Station License No. BS 238482, Class C

A C C U S A T I O N

SMOG CHECK

18 **KEN QUOC NGUYEN**
1148 Brandybuck Way
19 **San Jose, CA 95121**
Advanced Emission Specialist Technician License No.
20 **EA 149625**
21 **Brake Adjuster License No. BA 149625, Class C**
22 **Lamp Adjuster License No. LA 149625, Class A**

23 **TUNG QUOC-HAI NGUYEN**
1052 Kichener Circle
24 **San Jose, CA 95121**
Advanced Emission Specialist Technician License No.
25 **EA 149337**
26 **Brake Adjuster License No. BA 149337, Class C**
Lamp Adjuster License No. LA 149337, Class A

27 Respondents.

1 Sherry Mehl ("Complainant") alleges:

2 **PARTIES**

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

5 **LICENSE INFORMATION**

6 **Ken Quoc Nguyen**

7 2. In or about 2005, the Bureau issued Automotive Repair Dealer Registration Number
8 ARD 238482 ("registration") to Ken Quoc Nguyen ("Respondent Ken"), doing business as Amtek
9 Auto Repair. The registration was in full force and effect at all times relevant to the charges
10 brought herein and will expire on March 31, 2012, unless renewed.

11 3. On or about April 20, 2005, the Bureau issued Smog Check Test and Repair Station
12 License Number RC 238482 to Respondent Ken. The license was in full force and effect at all
13 times relevant to the charges brought herein and will expire on March 31, 2012, unless renewed.

14 4. On or about August 1, 2005, the Bureau issued Lamp Station License Number LS
15 238482, Class A, to Respondent Ken. The license was in full force and effect at all times relevant
16 to the charges brought herein and will expire on March 31, 2012, unless renewed.

17 5. On or about August 1, 2005, the Bureau issued Brake Station License Number BS
18 238482, Class C, to Respondent Ken. The license was in full force and effect at all times relevant
19 to the charges brought herein and will expire on March 31, 2012, unless renewed.

20 6. In or about 2004, the Bureau issued Advanced Emission Specialist Technician
21 License Number EA 149625 to Respondent Ken. The license was in full force and effect at all
22 times relevant to the charges brought herein and will expire on February 29, 2012, unless
23 renewed.

24 7. In or about 2005, the Bureau issued Brake Adjuster License Number BA 149625,
25 Class C, to Respondent Ken. The license was in full force and effect at all times relevant to the
26 charges brought herein and will expire on February 28, 2013, unless renewed.

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1 8. In or about 2009, the Bureau issued Lamp Adjuster License Number LA 149625,
2 Class A, to Respondent Ken. The license was in full force and effect at all times relevant to the
3 charges brought herein and will expire on February 28, 2013, unless renewed.

4 **Tung Quoc-Hai Nguyen**

5 9. In or about 2004, the Bureau issued Advanced Emission Specialist Technician
6 License Number EA 149337 to Tung Quoc-Hai Nguyen ("Respondent Tung"). The license was
7 in full force and effect at all times relevant to the charges brought herein and will expire on
8 October 31, 2012, unless renewed.

9 10. In or about 2005, the Bureau issued Brake Adjuster License Number BA 149337,
10 Class C, to Respondent Tung. The license was in full force and effect at all times relevant to the
11 charges brought herein and will expire on October 31, 2013, unless renewed.

12 11. In or about 2005, the Bureau issued Lamp Adjuster License Number LA 149337,
13 Class A, to Respondent Tung. The license was in full force and effect at all times relevant to the
14 charges brought herein and will expire on October 31, 2013, unless renewed.

15 **STATUTORY PROVISIONS**

16 12. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
17 part:

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

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

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

 (4) Any other conduct which constitutes fraud.

 (5) Conduct constituting gross negligence.

 (6) Failure in any material respect to comply with the provisions of this
chapter or regulations adopted pursuant to it.

1 (7) Any willful departure from or disregard of accepted trade standards
2 for good and workmanlike repair in any material respect, which is prejudicial to
another without consent of the owner or his or her duly authorized representative.

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

6 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
7 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,
8 engaged in a course of repeated and willful violations of this chapter, or regulations
adopted pursuant to it.

9 13. Section 9889.3 of the Code states, in pertinent part:

10 The director may suspend, revoke, or take other disciplinary action
11 against a license as provided in this article if the licensee or any partner, officer, or
director thereof:

12 (a) Violates any section of the Business and Professions Code that relates
13 to his or her licensed activities.

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

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

17 (h) Violates or attempts to violate the provisions of this chapter relating to
the particular activity for which he or she is licensed.

18 14. Section 9889.1 of the Code states:

19 Any license issued pursuant to Articles 5 and 6, may be suspended or
20 revoked by the director. The director may refuse to issue a license to any applicant
for the reasons set forth in Section 9889.2. The proceedings under this article shall be
21 conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1
of Division 3 of Title 2 of the Government Code, and the director shall have all the
22 powers granted therein.

23 15. Section 9889.9 of the Code states:

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

26 16. Section 9889.16 of the Code states:

27 Whenever a licensed adjuster in a licensed station upon an inspection or
28 after an adjustment, made in conformity with the instructions of the bureau.

1 determines that the lamps or the brakes upon any vehicle conform with the
2 requirements of the Vehicle Code, he shall, when requested by the owner or driver of
3 the vehicle, issue a certificate of adjustment on a form prescribed by the director,
4 which certificate shall contain the date of issuance, the make and registration number
5 of the vehicle, the name of the owner of the vehicle, and the official license of the
6 station.

7 17. Section 9884.9 of the Code states:

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

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

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

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

(signature or initials)

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

18. Section 9889.7 of the Code states:

The expiration or suspension of a license by operation of law or by order
or decision of the director or a court of law, or the voluntary surrender of a license by
a licensee shall not deprive the director of jurisdiction to proceed with any
investigation of or action or disciplinary proceedings against such licensee, or to
render a decision suspending or revoking such license.

19. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a
valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary

1 proceeding against an automotive repair dealer or to render a decision invalidating a registration
2 temporarily or permanently.

3 20. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
4 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
5 the Motor Vehicle Inspection Program.

6 21. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

21 23. Section 44072.8 of the Health and Safety Code states:

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

25 COST RECOVERY

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

UNDERCOVER OPERATION NO. 1: 1997 HONDA ACCORD

25. On or about January 27, 2011, an undercover Bureau operator ("operator") drove a
Bureau documented 1997 Honda Accord to Respondent Ken's facility and requested a lamp,

1 directives issued by the Bureau. Respondent issued Brake Adjustment Certificate No. BC
2 1179719, certifying that the vehicle's brake system was in compliance with Bureau Regulations
3 and/or the Vehicle Code when, in fact, it was not.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with the Code)**

6 32. Respondent Ken's registration is subject to discipline pursuant to Code section
7 9884.7(a)(6), in that on or about January 27, 2011, regarding the 1997 Honda Accord, he failed to
8 comply with Code section 9889.16 by issuing Brake Adjustment Certificate No. BC1179719,
9 certifying the brake system was in compliance with the regulations of the Vehicle Code when, in
10 fact, it was not.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations)**

13 33. Respondent Ken's registration is subject to discipline pursuant to Code section
14 9884.7(a)(6), in that on or about January 27, 2011, regarding the 1997 Honda Accord, he failed to
15 comply with provisions of California Code of Regulations, title 16, in the following material
16 respects:

17 a. **Section 3305(a):** Respondent Ken failed to perform the inspection of the brake
18 system on the vehicle in accordance with the vehicle's manufacturer standards and/or current
19 standards, specifications, recommended procedures, and/or directives issued by the Bureau.

20 b. **Section 3321(c)(2):** Respondent Ken issued Brake Adjustment Certificate No.
21 BC1179719 to the vehicle when the brake system on the vehicle had not been tested or inspected.

22 **SEVENTH CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with the Code)**

24 34. Respondent Ken's brake and lamp station licenses and brake and lamp adjuster
25 licenses are subject to discipline under Code section 9889.3(a), in that on or about
26 January 27, 2011, regarding the 1997 Honda Accord, he violated section 9889.16 of the Code,
27 relating to his licensed activities, as more particularly set forth above in paragraph 32.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations)**

3 35. Respondent Ken's brake and lamp station licenses and brake and lamp adjuster
4 licenses are subject to discipline under Code section 9889.3(c), in that on or about
5 January 27, 2011, regarding the 1997 Honda Accord, he failed to comply with provisions of
6 California Code of Regulations, title 16, sections 3305(a) and 3321(c)(2), as more particularly set
7 forth above in paragraph 33.

8 **NINTH CAUSE FOR DISCIPLINE**

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

10 36. Respondent Ken's brake and lamp station licenses and brake and lamp adjuster
11 licenses are subject to discipline pursuant to Code section 9889.3(d), in that on or about
12 January 27, 2011, regarding the 1997 Honda Accord, he committed acts involving dishonesty,
13 fraud, or deceit whereby another was injured, as more particularly set forth above in paragraph
14 29.

15 **TENTH CAUSE FOR DISCIPLINE**

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

17 37. Respondent Ken's smog check station license and smog technician license are subject
18 to discipline pursuant to Health and Safety Code section 44072.2(d), in that on or about
19 January 27, 2011, he committed a dishonest, fraudulent, or deceitful act whereby another was
20 injured, as more particularly set forth above in paragraph 29.

21 **UNDERCOVER OPERATION NO. 2: 1995 HONDA CIVIC**

22 38. On or about February 10, 2011, an undercover Bureau operator ("operator") drove
23 a Bureau documented 1995 Honda Civic to Respondent Ken's facility and requested a lamp,
24 brake, and smog inspection. The vehicle could not pass a brake inspection, in that both front
25 brake rotors were beyond factory allowable specifications (undersized), and both rear brake
26 drums were beyond factory diameter specifications (oversized). In addition, the vehicle could not
27 pass a lamp inspection, in that both front headlights were out of adjustment.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 42. Respondent Ken's registration is subject to discipline pursuant to Code section
4 9884.7(a)(4), in that on or about February 10, 2011, regarding the 1995 Honda Civic, he
5 committed acts that constitute fraud by issuing Brake Adjustment Certificate No. BC1195117
6 certifying that the vehicle's brake system was in satisfactory condition when, in fact, the front
7 brake rotors were undersized and the rear brake drums were oversized. In addition, Respondent
8 issued Lamp Adjustment Certificate No. LC1177417, certifying that the vehicle's lamp system
9 had been properly adjusted when, in fact, both headlamps were out of adjustment.

10 **THIRTEENTH CAUSE FOR DISCIPLINE**

11 **(Gross Negligence)**

12 43. Respondent Ken's registration is subject to discipline under Code section
13 9884.7(a)(5), in that on or about February 10, 2011, regarding the 1995 Honda Civic, Respondent
14 Tung committed acts constituting gross negligence by issuing Brake Adjustment Certificate No.
15 BC1195117, certifying that the vehicle's brake system had been inspected and was in satisfactory
16 condition when, in fact, the vehicle's front brake rotors were undersized and the rear brake drums
17 were oversized. In addition, Respondent Tung issued Lamp Adjustment Certificate No.
18 LC1177417, certifying that the vehicle's lamp system had been properly adjusted and was in
19 satisfactory condition when, in fact, both headlamps were out of acceptable aim limits.

20 **FOURTEENTH CAUSE FOR DISCIPLINE**

21 **(Departure from Trade Standards)**

22 44. Respondent Ken's registration is subject to discipline under Code section
23 9884.7(a)(7), in that on or about February 10, 2011, regarding the 1995 Honda Civic, he willfully
24 departed from or disregarded accepted trade standards for good and workmanlike repair without
25 the consent of the owner or the owner's duly authorized representative in a material respect, in
26 that Respondent Tung failed to perform an inspection of the vehicle's brake system and lamp
27 system in accordance with the vehicle's manufacturer standards and/or current standards.
28 specifications, recommended procedures, and/or directives issued by the Bureau, in that the

1 vehicle's headlamps were both out of adjustment and the vehicle's front brake rotors were
2 undersized and the rear brake drums were oversized.

3 **FIFTEENTH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with the Code)**

5 45. Respondent Ken's registration is subject to discipline pursuant to Code section
6 9884.7(a)(6), in that on or about February 10, 2011, regarding the 1995 Honda Civic, he failed to
7 comply with Code section 9889.16 by issuing Brake Adjustment Certificate No. BC1195117 and
8 Lamp Adjustment Certificate No. LC1177417 when, in fact, the vehicle's brake and lamp systems
9 were not in compliance with the Vehicle Code.

10 **SIXTEENTH CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Regulations)**

12 46. Respondent Ken's registration is subject to discipline pursuant to Code section
13 9884.7(a)(6), in that on or about February 10, 2011, regarding the 1995 Honda Civic, he failed to
14 comply with provisions of California Code of Regulations, title 16, in the following material
15 respects:

16 a. **Section 3305(a):** Respondent Tung failed to perform an inspection of the vehicle's
17 brake system in accordance with the vehicle's manufacturer standards and/or current standards,
18 specifications, recommended procedures, and/or directives issued by the Bureau.

19 b. **Section 3316(d)(2):** Respondent Tung issued Lamp Adjustment Certificate No.
20 LC1177417 when, in fact, the vehicle's lamp system was not in compliance with the Vehicle
21 Code and Bureau regulations.

22 c. **Section 3321(c)(2):** Respondent Tung issued Brake Adjustment Certificate No.
23 BC1195117 to the vehicle when the brake system on the vehicle had not been tested or inspected.

24 **SEVENTEENTH CAUSE FOR DISCIPLINE**

25 **(Failure to Comply with the Code)**

26 47. Respondent Ken's brake and lamp station licenses are subject to discipline under
27 Code section 9889.3(a), in that on or about February 10, 2011, regarding the 1995 Honda Civic,
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1 he violated section 9889.16 of the Code, relating to his licensed activities, as more particularly set
2 forth above in paragraph 45.

3 **EIGHTEENTH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Regulations)**

5 48. Respondent Ken's brake and lamp station licenses are subject to discipline under
6 Code section 9889.3(c), in that on or about February 10, 2011, regarding the 1995 Honda Civic,
7 he failed to comply with provisions of California Code of Regulations, title 16, sections 3305(a),
8 3316(d)(2), and 3321(c)(2), as more particularly set forth above in paragraph 46.

9 **NINETEENTH CAUSE FOR DISCIPLINE**

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

11 49. Respondent Ken's brake and lamp station licenses are subject to discipline
12 pursuant to Code section 9889.3(d), in that on or about February 10, 2011, regarding the 1995
13 Honda Civic, Respondent committed acts involving dishonesty, fraud, or deceit whereby another
14 was injured, as more particularly set forth above in paragraph 42.

15 **TWENTIETH CAUSE FOR DISCIPLINE**

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

17 50. Respondent Ken's smog check station license is subject to discipline pursuant to
18 Health and Safety Code section 44072.2(d), in that on or about February 10, 2011, Respondent
19 committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing Brake
20 Adjustment Certificate No. BC1195117 and Lamp Adjustment Certificate No. LC1177417 for the
21 1995 Honda Civic, certifying that the brake and lamp systems were in compliance with Bureau
22 regulations and the Vehicle Code when, in fact, they were not, as more particularly set forth
23 above in paragraph 42.

24 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

25 **(Failure to Comply with the Code)**

26 51. Respondent Tung's brake and lamp adjuster licenses are subject to discipline under
27 Code section 9889.3(a) and (h), in that on or about February 10, 2011, regarding the 1995 Honda
28 Civic, he violated Code section 9889.16, relating to his licensed activities, by issuing Brake

1 Adjustment Certificate No. BC1195117 and Lamp Adjustment Certificate No. LC1177417,
2 certifying that the brake and lamp systems were in compliance with Bureau regulations and the
3 Vehicle Code when, in fact, they were not.

4 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Regulations)**

6 52. Respondent Tung's brake and lamp adjuster licenses are subject to discipline under
7 Code section 9889.3(c), in that on or about February 10, 2011, regarding the 1995 Honda Civic,
8 he failed to comply with provisions of California Code of Regulations, title 16, sections 3305(a),
9 3316(d), and 3321(c)(2), as more particularly set forth above in paragraph 46, subsections (a), (b),
10 and (c).

11 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

12 **(Acts Involving Dishonesty, Fraud, or Deceit)**

13 53. Respondent Tung's brake and lamp adjuster licenses are subject to discipline under
14 Code section 9889.3(d), in that on or about February 10, 2011, regarding the 1995 Honda Civic,
15 he committed acts involving dishonesty, fraud, or deceit, by issuing Brake Adjustment Certificate
16 No. BC1195117 certifying that the vehicle's brake system was in satisfactory condition when, in
17 fact, the front brake rotors were undersized and the rear brake drums were oversized. In addition,
18 Respondent issued Lamp Adjustment Certificate No. LC1177417, certifying that the vehicle's
19 lamp system had been properly adjusted when, in fact, both headlamps were out of adjustment.

20 **UNDERCOVER OPERATION – MARCH 3, 2011**

21 54. On or about March 3, 2011, a Bureau undercover operator (“operator”) drove a
22 Bureau documented 1999 Toyota 4Runner to Respondent Ken’s facility and requested a smog
23 inspection. The vehicle had a missing evaporative emission control (“EVAP”) canister, rendering
24 the vehicle incapable of passing the visual portion of a smog inspection. The operator signed
25 Work Order No. 014387 and was provided a copy. Respondent Tung performed the smog
26 inspection and issued electronic Certificate of Compliance No. OA724582, certifying that he had
27 tested and inspected the vehicle and that the vehicle was in compliance with applicable laws and
28 regulations when, in fact, the vehicle could not have passed the visual portion of the smog

1 inspection, in that the EVAP canister was missing. The operator paid \$40 and was provided a
2 copy of Work Order No. 014387 and the Vehicle Inspection Report.

3 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 55. Respondent Ken's registration is subject to discipline under Code section
6 9884.7(a)(1), in that on or about March 3, 2011, he made statements which he knew or which by
7 exercise of reasonable care he should have known to be untrue or misleading by issuing electronic
8 Certificate of Compliance No. OA724582 for the 1999 Toyota 4Runner, certifying that the
9 vehicle was in compliance with applicable laws and regulations when, in fact, it could not have
10 passed the visual portion of the smog inspection because of the vehicle's EVAP canister was
11 missing.

12 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

13 **(Fraud)**

14 56. Respondent Ken's registration is subject to discipline under Code section
15 9884.7(a)(4), in that on or about March 3, 2011, he committed acts constituting fraud by issuing
16 electronic Certificate of Compliance No. OA724582 for the 1999 Toyota 4Runner without
17 performing a bona fide inspection of the emission control devices and systems on the vehicle,
18 thereby depriving the People of the State of California of the protection afforded by the Motor
19 Vehicle Inspection Program.

20 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Chapter Requirements)**

22 57. Respondent Ken's station license is subject to discipline under Health and Safety
23 Code section 44072.2(a), in that on or about March 3, 2011, regarding the 1999 Toyota 4Runner,
24 he failed to comply with the following sections of that Code:

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

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1 4Runner, he committed acts involving dishonesty, fraud, or deceit whereby another was injured,
2 as more particularly set forth above in paragraph 56.

3 **THIRTIETH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Chapter Requirements)**

5 61. Respondent Tung's technician license is subject to discipline under Health and Safety
6 Code section 44072.2(a), in that on or about March 3, 2011, regarding the 1999 Toyota 4Runner,
7 he failed to comply with the following Code sections:

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

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

13 c. **Section 44032:** Respondent failed to perform a test of the emission control devices
14 and systems on the vehicle in accordance with Health and Safety Code section 44012.

15 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with Regulations)**

17 62. Respondent Tung's technician license is subject to discipline under Health and Safety
18 Code section 44072.2(c), in that on or about March 3, 2011, regarding the 1999 Toyota 4Runner,
19 he failed to comply with provisions of California Code of Regulations, title 16, as follows:

20 a. **Section 3340.30(a):** Respondent failed to inspect and test the vehicle in accordance
21 with Health and Safety Code section 44012.

22 b. **Section 3340.41(c):** Respondent entered false information into the Emission
23 Inspection System unit by entering "Pass" for the fuel evaporative controls inspection when, in
24 fact, the EVAP canister was missing.

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

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1 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 66. Respondent Ken's registration is subject to discipline under Code section
4 9884.7(a)(1), in that on or about March 16, 2011, he made or authorized statements which he
5 knew or in the exercise of reasonable care he should have known to be untrue or misleading by
6 issuing electronic Certificate of Compliance No. OA942622 for the 1995 Chevrolet Impala SS,
7 certifying that the vehicle was in compliance with applicable laws and regulations, when, in fact,
8 the vehicle could not have passed the visual portion of the smog inspection because the vehicle's
9 PCV valve was missing.

10 **THIRTY-FIFTH CAUSE FOR DISCIPLINE**

11 **(Fraud)**

12 67. Respondent Ken's registration is subject to discipline under Code section
13 9884.7(a)(4), in that on or about March 16, 2011, he committed acts which constitute fraud by
14 issuing electronic Certificate of Compliance No. OA942622 for the 1995 Chevrolet Impala SS
15 without performing a bona fide inspection of the emission control devices and systems on the
16 vehicle, thereby depriving the People of the State of California of the protection afforded by the
17 Motor Vehicle Inspection Program.

18 **THIRTY-SIXTH CAUSE FOR DISCIPLINE**

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

20 68. Respondent Ken's station license is subject to discipline under Health & Safety Code
21 section 44072.2(a), in that on or about March 16, 2011, regarding the 1995 Chevrolet Impala SS,
22 he failed to comply with the following sections of that Code:

23 a. **Section 44012(f):** Respondent Ken failed to perform emission control tests on the
24 vehicle in accordance with procedures prescribed by the department.

25 b. **Section 44015(b):** Respondent Ken issued electronic Certificate of Compliance No.
26 OA942622 for the vehicle without properly testing and inspecting the vehicle to determine if it
27 was in compliance with Health & Safety Code section 44012.

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1 c. **Section 44032:** Respondent Ken failed to perform a test of the emission control
2 devices and systems on the vehicle in accordance with Health and Safety Code section 44012.

3 **FORTIETH CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Regulations)**

5 72. Respondent Ken's technician license is subject to discipline under Health and Safety
6 Code section 44072.2(c), in that on or about March 16, 2011, regarding the 1995 Chevrolet
7 Impala SS, he failed to comply with provisions of California Code of Regulations, title 16, as
8 follows:

9 a. **Section 3340.30(a):** Respondent Ken failed to inspect and test the vehicle in
10 accordance with Health and Safety Code section 44012.

11 b. **Section 3340.41(c):** Respondent Ken entered false information into the Emission
12 Inspection System unit by entering "Pass" for the fuel evaporative controls inspection when, in
13 fact, the PCV valve was missing.

14 c. **Section 3340.42:** Respondent Ken failed to conduct the required smog tests and
15 inspections on the vehicle in accordance with the Bureau's specifications.

16 **FORTY-FIRST CAUSE FOR DISCIPLINE**

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

18 73. Respondent Ken's technician license is subject to discipline under Health and Safety
19 Code section 44072.2(d), in that on or about March 16, 2011, he committed acts involving
20 dishonesty, fraud, or deceit whereby another was injured by issuing electronic Certificate of
21 Compliance No. OA942622 for the 1995 Chevrolet Impala SS without performing a bona fide
22 inspection of the emission control devices and systems on the vehicle, thereby depriving the
23 People of the State of California of the protection afforded by the Motor Vehicle Inspection
24 Program.

25 **FORTY-SECOND CAUSE FOR DISCIPLINE**

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

27 74. Respondent Ken's brake and lamp station licenses and brake and lamp adjuster
28 licenses are subject to discipline pursuant to Code section 9889.3(d), in that on or about

1 March 16, 2011, regarding the 1995 Chevrolet Impala SS, he committed acts involving
2 dishonesty, fraud, or deceit whereby another was injured, as more particularly set forth above in
3 paragraph 67.

4 **OTHER MATTERS**

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

9 76. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station
10 License Number RC 238482, issued to Ken Quoc Nguyen, doing business as Amtek Auto Repair,
11 is revoked or suspended, any additional license issued under this chapter in the name of said
12 licensees may be likewise revoked or suspended by the director, including Advanced Emission
13 Specialist Technician License Number EA 149625.

14 77. Pursuant to Code section 9889.9, if Lamp Station License Number LS 238482,
15 issued to Ken Quoc Nguyen, doing business as Amtek Auto Repair, is revoked or suspended, any
16 additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions
17 Code in the name of said licensee may be likewise revoked or suspended by the director,
18 including Lamp Adjuster License Number LA 149625.

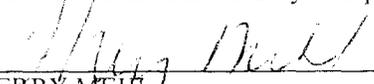
19 78. Pursuant to Code section 9889.9, if Brake Station License Number BS 238482,
20 issued to Ken Quoc Nguyen, doing business as Amtek Auto Repair, is revoked or suspended, any
21 additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions
22 Code in the name of said licensees may be likewise revoked or suspended by the director,
23 including Brake Adjuster License Number BA 149625.

24 79. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission
25 Specialist Technician License Number EA 149337, issued to Tung Quoc-Hai Nguyen, is revoked
26 or suspended, any additional license issued under this chapter in the name of said licensee may be
27 likewise revoked or suspended by the director.

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- 1 9. Revoking or suspending any additional license issued under Chapter 5 of the
- 2 Health and Safety Code in the name of Ken Quoc Nguyen;
- 3 10. Revoking or suspending Brake Adjuster License Number BA 149625, issued to
- 4 Ken Quoc Nguyen;
- 5 11. Revoking or suspending Lamp Adjuster License Number LA 149625, issued to
- 6 Ken Quoc Nguyen;
- 7 12. Revoking or suspending any additional license issued under Articles 5 and 6 of
- 8 Chapter 20.3 of the Business and Professions Code in the name of Ken Quoc Nguyen;
- 9 13. Revoking or suspending Advanced Emission Specialist Technician License
- 10 Number EA 149337, issued to Tung Quoc-Hai Nguyen;
- 11 14. Revoking or suspending any additional license issued under Chapter 5 of the
- 12 Health and Safety Code in the name of Tung Quoc-Hai Nguyen;
- 13 15. Revoking or suspending Brake Adjuster License Number BA 149337, issued to
- 14 Tung Quoc-Hai Nguyen;
- 15 16. Revoking or suspending Lamp Adjuster License Number LA 149337, issued to
- 16 Tung Quoc-Hai Nguyen;
- 17 17. Revoking or suspending any additional license issued under Articles 5 and 6 of
- 18 Chapter 20.3 of the Business and Professions Code in the name of Tung Quoc-Hai Nguyen;
- 19 18. Ordering Ken Quoc Nguyen and Tung Quoc-Hai Nguyen to pay the Director of
- 20 Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant
- 21 to Code section 125.3; and,
- 22 19. Taking such other and further action as deemed necessary and proper.

23 DATED: 11/18/11



SHERRY MEHL

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

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