

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

In the Matter of the Accusation Against:

DEOL AUTOMOTIVE SERVICE

1974 W. Tennyson Road
Hayward, California 94545

PIARA S. DEOL, Owner

Automotive Repair Dealer Registration
No. ARD 147661
Smog Check Station License
No. RC 147661
Brake Station License No. BS 147661
Lamp Station License No. LS 147661

and

PIARA SINGH DEOL

Union City, California
Advanced Emission Specialist Technician
License No. EA 313163

Respondents.

Case No. 79/09-25

OAH No. 2008110639

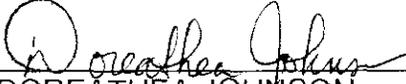
DECISION

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

The word "state" is corrected to read "station." Therefore, whenever the term "smog check state" is mentioned, this should be replaced by "smog check station" throughout the Proposed Decision.

This Decision shall become effective 5/17/10

IT IS SO ORDERED this 7th day of April, 2010.


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

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PROPOSED DECISION

On September 30, 2009, October 1, 2009, and February 2, 2010, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Leslie E. Brast, Deputy Attorney General, represented Complainant.

Camellia Bray, Attorney at Law, with the law offices of Bonjour, Thorman, Baray and Billingsley, 24301 Southland Drive, Suite 312, Hayward, California 94554, represented Respondent Piara Singh Deol individually and as owner of Respondent Deol Automotive Service.

On February 2, 2010, the parties submitted the matter for decision and the record closed.

FACTUAL FINDINGS

1. On September 28, 2008, Complainant Sherry Mehl (Complainant), in her official capacity as Chief, Bureau of Automotive Repair, Department of Consumer Affairs, State of California, made the Accusation against Respondent Piara Singh Deol (Respondent) individually and as owner of Deol Automotive Service as well as against Respondent Deol Automotive Service (Respondent Deol Automotive).

Registration, Certificate and License Information

ARD Registration number ARD 147661

2. On June 21, 1989, the Director of the Department of Consumer Affairs (the Director) issued Automotive Repair Dealer Registration number ARD 147661 (ARD) to Respondent, doing business as Respondent Deol Automotive, which has a premises address at 1974 West Tennyson Road, Hayward, California 94545-4351. The ARD registration will expire on June 30, 2010, unless renewed, surrendered, suspended or revoked before that date.

Smog Check Station License number RC 147661

3. On August 16, 1989, the Director issued to Respondent, doing business as Respondent Deol Automotive, Smog Check Station License number RC 147661. The smog check station license will expire on June 30, 2010, unless renewed, surrendered, suspended or revoked before that date.

Lamp Station License LS 147661

4. On or about September 6, 1989, the Director issued to Respondent, doing business as Respondent Deol Automotive, Lamp Station License Number LS 147661 (lamp station license). The lamp station license will expire on June 30, 2010, unless renewed, surrendered, suspended or revoked before that date.

Brake Station License BS 147661

5. On or about September 6, 1989, the Director issued to Respondent, doing business as Respondent Deol Automotive, Brake Station License Number BS 147661 (brake station license). The brake station license will expire on June 30, 2010, unless renewed, surrendered, suspended or revoked before that date.

Advanced Emission Specialist Technician EA 313163

6. In about 2003, the Director issued to Respondent Advanced Emission Specialist Technician license number EA 313163. The emission specialist technician license issued to Respondent will expire on February 28, 2011, unless renewed, surrendered, suspended or revoked before that date.

Investigator's Surveillance, Observations and Conclusions

7. On dates between May 3, 2007, and August 8, 2007, Bureau Program Representative II Joseph B. Cheung (BAR PR II Cheung) led a surveillance of, and investigation into, the smog check station practices of individual employees or agents at the premises of Respondent Deol Automotive.

Before activating surveillance operations of activities at the premises of Respondent Deol Automotive, BAR PR II Cheung analyzed computer database information gathered by the Bureau of several other smog check stations. As measured against data from other smog check stations, BAR PR II Cheung discerned statistical anomalies in data or records for smog inspections performed at the facilities of Respondent Deol Automotive.

The results from the analysis of computerized data, which showed indicia of abnormal or irregular activities at the subject smog check facility, prompted BAR PR II Cheung to scrutinize the licensed status of the owners and licensed employees of Respondent Deol Automotive. (Study of the data suggested that visual inspections were being missed or function tests were low for the volume of smog checks for the subject smog check station.) Accordingly, BAR PR II Cheung initiated measures to conduct undercover surveillance operations of business activities at Respondent Deol Automotive's facilities. During the course of the investigation, the Bureau's representative discovered that Respondent Deol Automotive employed Joel Luna Martinez, who had never been issued by the Bureau with a license to work as a smog check technician. Also the Bureau's personnel determined that Mr. Martinez had extensively performed smog check inspections on each day that Bureau personnel engaged in surveillance or undercover operations at the facility. And the Bureau's employees determined that both Respondent and Mr. Martinez executed substandard smog check inspections on vehicles at the smog check station by passing those vehicles that should have failed smog check inspections.

Instances of Unlawful Acts by Agents or Employees of Respondent Deol Automotive Service

a. First Instance Unprofessional Conduct - Undercover Operation-May 3, 2007

8. While performing his official duties, BAR PR II Cheung participated in an undercover operation on May 3, 2007, at Respondent Deol Automotive's business premises. At the outset of the investigation, BAR PR II Cheung examined and verified that a Bureau

vehicle, namely a 1995 Chevrolet Astro Van (Astro Van), was placed under his control with that vehicle having been maladjusted so that it should have failed a smog check operation. In particular, the Astro Van lacked a positive crankcase ventilation (PCV) system when BAR PR II Cheung took possession of the vehicle.

9. On May 3, 2007, BAR PR II Cheung appointed Joe Lopez (Mr. Lopez) to drive the Astro Van to the facilities of Respondent Deol Automotive.

10. Mr. Lopez offered credible and persuasive testimonial evidence at the hearing of this matter.

On May 3, 2007, Mr. Lopez, using the alias Rubin Gomez, drove the Astro Van, to respondents' facility for a smog check inspection. (Mr. Lopez was provided with a photograph from Bureau records of Respondent and the Bureau's agent was instructed to look for Respondent.)

At the subject facility, Mr. Lopez observed two individuals including Respondent who was recognized by Mr. Lopez by way of a photograph he had seen earlier. At the initial sighting of the facility's employees or agents on the premises, Mr. Lopez did not recognize the other man who was learned later to be Mr. Joel Luna Martinez. Yet, Mr. Martinez was the facility employee who interacted with Mr. Lopez for all aspects of the smog check inspection of the Astro Van.

11. At respondents' facility, Mr. Lopez observed Mr. Martinez to go through some steps of performing a smog check inspection of the Astro Van. Although Mr. Martinez asked the undercover operative to complete the owner's information, and to sign a work order, Mr. Martinez presented Mr. Lopez with neither a copy of the work order nor a written estimate. Mr. Lopez observed Mr. Martinez to enter an access code into the smog test machinery, the Emission Inspection System (EIS). Mr. Lopez recognized that Mr. Martinez failed to perform the required function test of ignition timing of a smog inspection.

12. Although he was on the premises on May 3, 2007, Respondent never participated in any portion of the smog inspection of the Astro Van.

13. In order to perform the smog inspection of the Astro Van on May 3, 2007, Mr. Martinez entered the personal access code that had been assigned for the exclusive use of Respondent as a licensed smog check technician of the Bureau.

14. After the Astro Van's smog inspection, which was performed by Mr. Martinez, on May 3, 2007, Mr. Lopez drove the vehicle to a site where BAR PR II Cheung waited. Mr. Lopez informed BAR PR II Cheung that Respondent did not perform the smog check inspection of the Astro Van, but rather an unknown person, who was later identified to be an unlicensed technician, conducted all aspects of the smog check inspection. And Mr. Lopez presented BAR PR II Cheung with a final invoice, which showed payment of \$65 to

Respondent Deol Automotive Services, and a Vehicle Inspection Report (VIR), which indicated that the Astro Van had passed a smog check inspection.

15. At the rendezvous site on May 3, 2007, for Mr. Lopez and BAR PR II Cheung, the Bureau's personnel detected that the PCV system remained missing so that the Astro Van should have failed the smog inspection performed at respondents' facility. Also digital images were taken by BAR PR II Cheung of the Astro Van's engine area that depicted the "introduced malfunction," namely the missing PCV system for the vehicle. Again Mr. Lopez informed BAR PR II Cheung that Respondent performed no part of the smog inspection.

16. Later, BAR PR II Cheung reviewed the Bureau's Vehicle Information Data (VID) to detect that the BAR97 Test Detail for the smog inspection resulted in Respondent Deol Automotive Services unlawfully issuing on May 3, 2007, for the Astro Van the VIR and Certificate of Compliance No. MQ843870C. Issuance of the certification of compliance fraudulently represented that the Astro Van had been properly tested and inspected and that the vehicle was in compliance with smog check laws and regulations.

17. On a later date, Bureau personnel detected through studying the Bureau's licensing records that Mr. Martinez has never held a license to act as a smog check technician.

Untrue or Misleading Statements

18. On May 3, 2007, Respondent, doing business as Respondent Deol Automotive, made or authorized statements which he knew, or in the exercise of reasonable care he should have known, were untrue or misleading, by issuing electronic Certificate of Compliance No. MQ843870C for the Astro Van. The issuance of the certificate of compliance untruthfully and misleadingly certified that the vehicle's smog suppression system conformed with applicable laws and regulations of this state. The Astro Van could not have passed the visual portion of the smog inspection because the vehicle's PCV system was missing. As a smog check station licensee, Respondent's acts or omissions in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(1).

Fraud

19. On May 3, 2007, Respondent, doing business as Respondent Deol Automotive, committed acts that constitute fraud by issuing electronic Certificate of Compliance No. MQ843870C for the Astro Van without performing a bona fide inspection of the emission control devices and systems on the vehicle. Respondent's acts or omissions on that day deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Respondent's acts or omissions in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(4).

Failure to Comply with the Automotive Repair Act

20. On May 3, 2007, Respondent, doing business as Respondent Deol Automotive, failed to comply with Business and Professions Code section 9884.9, subdivision (a), by failing to provide Mr. Lopez with a written estimated price for parts and labor for a specific job regarding the smog inspection. Respondent's acts or omissions in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(6).

Violations of the Motor Vehicle Inspection Program

21. On May 3, 2007, regarding the Astro Van, Respondent, doing business as Respondent Deol Automotive, failed to comply with the sections of the Health and Safety Code as follows:

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

b. *Section 44014, subdivision (a)*: Respondent allowed Mr. Martinez, an unlicensed person, to perform the smog inspection when Martinez was not licensed to work as a smog check technician.

c. *Section 44015, subdivision (b)*: Respondent issued electronic Certificate of Compliance No. MQ843870C for the vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with Health and Safety Code section 44012.

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

e. *Section 44059*: Respondent willfully made false entries for electronic Certificate of Compliance No. MQ843870C by certifying that the vehicle had been inspected as required when, in fact, it had not be properly inspected and tested.

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

Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program

22. On May 3, 2007, regarding the Astro Van, Respondent, doing business as Respondent Deol Automotive, failed to comply with the following provisions of California Code of Regulations, title 16:

a. *Section 3340.24, subdivision (c)*: Respondent falsely or fraudulently issued electronic Certificate of Compliance No. MQ843870C for the vehicle, in that the vehicle could not pass a smog inspection because the vehicle's PCV system was missing.

b. *Section 3340.30, subdivision (a)*: Respondent failed to inspect and test the vehicle in accordance with Health and Safety Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

c. *Section 3340.35, subdivision (c)*: Respondent issued electronic Certificate of Compliance No. MQ843870C for the vehicle even though the vehicle had not been inspected in accordance with section 3340.42.

d. *Section 3340.41, subdivision (b)*: Respondent allowed Mr. Martinez, an unlicensed person, to access the Emission Inspection System (EIS) using Respondent's personal access code.

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

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

Dishonesty, Fraud or Deceit

23. On May 3, 2007, Respondent, doing business as Respondent Deol Automotive, committed dishonest, fraudulent or deceitful acts whereby another person, or the state's citizenry, may be injured by issuing electronic Certificate of Compliance No. MQ843870C. Such injury occurred in issuing the certificate of compliance for the Astro Van without a licensed smog check technician first performing a bona fide inspection of the emission control devices and systems on the vehicle. By dishonestly, fraudulently and deceitfully issuing a false certificate of compliance, Respondent's acts or omissions deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

In the capacity as both a smog check station licensee and an advanced emission specialist technician licensee, Respondent's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (d).

Aiding and Abetting Unlicensed Activity

24. On May 3, 2007, Respondent, doing business as Respondent Deol Automotive, aided and abetted Mr. Martinez, an unlicensed person, to evade the provisions of the Motor Vehicle Inspection Program by allowing Mr. Martinez to perform the smog

tests and inspections on the Astro Van when Mr. Martinez was not licensed to work as a smog check technician.

In the capacity as both a smog check state licensee and an advanced emission specialist technician licensee, Respondent's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (f).

*Second Instance of Acts of Unprofessional Conduct -
Undercover Surveillance Operation – June 20, 2007*

25. On June 20, 2007, BAR PR II Cheung conducted a surveillance of smog check stations operations at respondents' facility. The Bureau's investigator used three video camera-recorders to detect that the Bureau's licensee allowed illegal activities to be performed on that day. The video cameras operated for the duration of the work day on June 20, 2007. And the cameras were positioned in distinct, yet advantageous and hidden locations so as to reasonably capture as digital images the activities that occurred at respondents' facility. The three cameras operated from 6:00 a.m. until 6:00 p.m. in the surveillance operation on June 20, 2007.

26. Following his close review of the surveillance video recording, BAR PR II Cheung, who had photographs of Respondent and Mr. Martinez, ascertained that the smog inspections, which were performed on June 20, 2007, were not performed by Respondent. Rather BAR PR II Cheung observed on the video film that the person, who acted as the smog technician on that day, was Mr. Martinez, who was not a licensee of the Bureau.

27. The videotape from the June 20, 2007, surveillance showed Respondent was present at the premises from about 9:11 a.m. until 6:25 p.m. on June 20, 2007. However, Respondent did not perform any portion of the smog check inspections on a 1991 Mazda MPV and a 1992 Acura Integra on June 20, 2007.

28. From his study of surveillance video recording and information obtained from the EIS and the Bureau's VID, BAR PR II Cheung determined that the unlicensed individual, Mr. Martinez, on June 20, 2007, performed a smog inspection of a 1991 Mazda truck and he caused to be issued an electronic smog certificate of compliance for that vehicle. And Mr. Martinez unlawfully performed a smog inspection of a 1992 Acura Integra automobile and caused the unlawful issuance of a certificate of compliance for the Acura Integra automobile.

29. The Bureau's records showed that the subject two vehicles, which were issued certificates of compliance on June 20, 2007, at respondents' facility, reflected the personal assess code belonging to Respondent. Bureau personnel reasonably inferred that Respondent had unlawfully allowed Mr. Martinez, an unlicensed individual, to perform smog check inspections on June 20, 2007, at respondents' facility for the two vehicles.

Misleading Statements

30. On June 20, 2007, Respondent, doing business as Respondent Deol Automotive, made statements which he knew, or which by exercise of reasonable care he should have known, were untrue or misleading, as follows:

a. Respondent, through his agent or employee, issued electronic Certificate of Compliance No. MS406926C for the 1991 Mazda MPV. The certificate certified that the vehicle had been tested and inspected by a licensed technician. In fact, Mr. Martinez performed the tests and inspections when Mr. Martinez was not licensed to act as a smog check technician.

b. Respondent, through his agent or employee, issued electronic Certificate of Compliance No. MS406927C for the 1992 Acura Integra. The certificate certified that the vehicle had been tested and inspected by a licensed technician. In fact, Mr. Martinez performed the tests and inspections when Mr. Martinez was not licensed to act as a smog check technician.

Respondent's acts or omissions in the foregoing matters violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(1).

Fraud

31. On June 20, 2007, Respondent, doing business as Respondent Deol Automotive, committed acts that constitute fraud by issuing electronic Certificate of Compliance No. MS406926C for a 1991 Mazda MPV and electronic Certificate of Compliance No. MS406927C for a 1992 Acura Integra without performing bona fide inspections of the emission control devices and systems on those vehicles. Through dishonesty and deceit, respondents' acts or omissions on that day deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Respondent's acts or omissions in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(4).

Violations of Regulations Pursuant to the Motor Vehicle Inspection Program

32. On June 20, 2007, regarding electronic Certificate of Compliance No. MS406926C for the 1991 Mazda MPV and electronic Certificate of Compliance No. MS406927C for the 1992 Acura Integra, Respondent, doing business as Respondent Deol Automotive, violated the following sections of the Health and Safety Code:

a. *Section 44012, subdivision (f)*: Respondent failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the Bureau.

b. *Section 44014, subdivision (a)*: Respondent allowed Mr. Martinez to perform the smog inspections when Martinez was not licensed to act as a smog check technician.

c. *Section 44015, subdivision (b)*: Respondent issued the electronic certificates of compliance for those vehicles without properly testing and inspecting the vehicles to determine if they were in compliance with Health & Safety Code section 44012.

d. *Section 44032*: Respondent failed to perform tests of the emission control devices and systems on those vehicles in accordance with section 44012 of that Code.

e. *Section 44059*: Respondent willfully made false entries for the electronic certificates of compliance by certifying that the vehicles had been inspected as required when, in fact, they had not.

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

Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program

33. On June 20, 2007, regarding electronic Certificate of Compliance No. MS406926C for the 1991 Mazda MPV and electronic Certificate of Compliance No. MS406927C for the 1992 Acura Integra, Respondent, doing business as Respondent Deol Automotive Services, failed to comply with the following provisions of California Code of Regulations, title 16:

a. *Section 3340.24, subdivision (c)*: Respondent falsely or fraudulently issued the electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles as required by Health and Safety Code section 44012.

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

c. *Section 3340.35, subdivision (c)*: Respondent issued the electronic certificates of compliance for the vehicles even though the vehicles had not been inspected in accordance with section 3340.42.

d. *Section 3340.41, subdivision (b)*: Respondent allowed Mr. Martinez to access the EIS using Respondent's personal access code in order to perform the smog inspections.

e. *Section 3340.42*: Respondent failed to conduct the required smog tests on those vehicles in accordance with the Bureau's specifications.

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

Dishonesty, Fraud or Deceit

34. On June 20, 2007, Respondent, doing business as Respondent Deol Automotive, committed dishonest, fraudulent or deceitful acts whereby another person, or the state's residents were injured by issuing electronic Certificate of Compliance No. MS406926C for the 1991 Mazda MPV and electronic Certificate of Compliance No. MS406927C for the 1992 Acura Integra. Such injury occurred in issuing the certificate of compliance for the automobiles without a licensed smog check technician first performing a bona fide inspection of the emission control devices and systems on the vehicle. By dishonestly, fraudulently and deceitfully issuing a false certificate of compliance, Respondent's acts or omissions deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

In the capacity as both a smog check state licensee and an advanced emission specialist technician licensee, Respondent's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (d).

Aiding and Abetting Unlicensed Activity

35. On June 20, 2007, Respondent, doing business as Respondent Deol Automotive, aided and abetted Mr. Martinez, an unlicensed person, to evade the provisions of the Motor Vehicle Inspection Program by allowing Mr. Martinez to perform the smog tests and inspections on the 1991 Mazda MPV and 1992 Acura Integra when Mr. Martinez was not licensed to act as a smog check technician.

In the capacity as both a smog check state licensee and an advanced emission specialist technician licensee, Respondent's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (f).

*Third Instance of Unprofessional Conduct -
Undercover Surveillance Operation - June 21, 2007*

36. On June 21, 2007, BAR PR II Cheung conducted a second day of surveillance of smog check stations operations at respondents' facility. Again the Bureau's investigator used three video camera-recorders to ascertain that the Bureau's licensee engaged in illegal activities on that day, or allowed another person to perform illegal activities at the subject licensed facility. The video cameras operated for the duration of the work day on June 21, 2007. And the cameras were again positioned in distinct, yet advantageous and hidden locations as to reasonably capture as digital images the activities that occurred at respondents' facility. The three cameras operated from 6:00 a.m. until 6:20 p.m. in the surveillance operation on June 21, 2007.

37. From his study of surveillance video recording and information obtained from the EIS and the Bureau's VID, BAR PR II Cheung determined that the unlicensed individual,

Mr. Martinez, on June 21, 2007, performed a smog inspection of a 2000 Pontiac Grand Am and he caused to be issued an electronic smog certificate of compliance for the vehicle. And Mr. Martinez unlawfully performed a smog inspection of a 2002 Pontiac Grand Prix automobile and caused the unlawful issuance of a certificate of compliance for an automobile, which was not subjected to a proper smog inspection.

All of the Bureau's records showed that the vehicles, which were issued certificates of compliance at respondents' facility, reflected the personal access code belonging to Respondent. Bureau personnel reasonably inferred that Respondent had unlawfully allowed Mr. Martinez, an unlicensed individual, to perform smog check inspections on June 21, 2007, at respondents' facility.

38. In addition to his detection that an unlicensed individual performed smog inspections on June 21, 2007, of two Pontiac automobiles, BAR PR II Cheung observed from his close scrutiny of the video film from one camera, which captured all activities, that neither Respondent nor the unlicensed individual performed fuel cap integrity function checks as required by the Bureau regulations. Hence, a reasonable determination was reached that the smog check inspections for the vehicles had not been properly performed.

Misleading Statements

39. On June 21, 2007, Respondent, doing business as Respondent Deol Automotive, made statements which he knew, or by exercise of reasonable care he should have known, were untrue or misleading, as follows:

a. Respondent issued electronic Certificate of Compliance No. MS406929C for the 2000 Pontiac Grand Am, certifying that the vehicle had been tested and inspected by a licensed technician. In fact, Mr. Martinez performed the tests and inspections when Martinez was not licensed to act as a smog check technician.

b. Respondent issued electronic Certificate of Compliance No. MS406930C for the 2002 Pontiac Grand Prix, certifying that the vehicle had been tested and inspected by a licensed technician. In fact, Mr. Martinez performed the tests and inspections when Martinez was not licensed to do so.

Respondent's acts or omissions in this regard violated the provisions of Code section 9884.7, subdivision (a)(1).

Fraud

40. On June 21, 2007, Respondent, doing business as Respondent Deol Automotive, committed acts that constitute fraud by issuing electronic Certificate of Compliance No. MS406929C for a 2000 Pontiac Grand Am and electronic Certificate of Compliance No. MS406930C for a 2002 Pontiac Grand Prix without performing bona fide inspections of the emission control devices and systems on those vehicles. Respondents'

acts or omissions on that day deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Respondent's acts or omissions in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(4).

Violation of the Motor Vehicle Inspection Program

41. On June 21, 2007, regarding electronic Certificate of Compliance No. MS406929C for the 2000 Pontiac Grand Am and electronic Certificate of Compliance No. MS406930C for the 2002 Pontiac Grand Prix, Respondent, doing business as Respondent Deol Automotive, violated the following sections of the Health and Safety Code:

a. *Section 44012, subdivision (f)*: Respondent failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the department.

b. *Section 44014, subdivision (a)*: Respondent allowed Mr. Martinez to perform the smog inspections when Mr. Martinez was not licensed to do so.

c. *Section 44015, subdivision (b)*: Respondent issued the electronic certificates of compliance for those vehicles without properly testing and inspecting the vehicles to determine if they were in compliance with Health & Safety Code section 44012.

d. *Section 44032*: Respondent failed to perform tests of the emission control devices and systems on those vehicles in accordance with section 44012 of that Code.

e. *Section 44059*: Respondent willfully made false entries for the electronic certificates of compliance by certifying that those vehicles had been inspected as required when, in fact, they had not.

In the capacity as both a smog check station licensee and an advanced emission specialist technician licensee, Respondent's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (a).

Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program

42. On June 21, 2007, regarding electronic Certificate of Compliance No. MS406929C for the 2000 Pontiac Grand Am and electronic Certificate of Compliance No. MS406930C for the 2002 Pontiac Grand Prix, Respondent, doing business as Respondent Deol Automotive, failed to comply with the following provisions of California Code of Regulations, title 16:

a. *Section 3340.24, subdivision (c)*: Respondent falsely or fraudulently issued the electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles as required by Health and Safety Code section 44012.

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

c. *Section 3340.35, subdivision (c)*: Respondent issued the electronic certificates of compliance for those vehicles even though the vehicles had not been inspected in accordance with section 3340.42.

d. *Section 3340.41, subdivision (b)*: Respondent allowed Mr. Martinez to access the EIS using Respondent's personal access code in order to perform the smog inspections.

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

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

Dishonesty, Fraud or Deceit

43. On June 21, 2007, regarding electronic Certificate of Compliance No. MS406929C for the 2000 Pontiac Grand Am and electronic Certificate of Compliance No. MS 406930C for the 2002 Pontiac Grand Prix, Respondent, doing business as Respondent Deol Automotive, committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing the electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles. By dishonestly, fraudulently and deceitfully issuing false certificates of compliance, Respondent's acts or omissions deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

In the capacity as both a smog check station licensee and an advanced emission specialist technician licensee, Respondent's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (d).

Aiding and Abetting Unlicensed Activity

44. On June 21, 2007, Respondent, doing business as Respondent Deol Automotive, aided and abetted Mr. Martinez, an unlicensed person, to evade the provisions of the Motor Vehicle Inspection Program by allowing Mr. Martinez to perform the smog tests and inspections on the 2000 Pontiac Grand Am and 2002 Pontiac Grand Prix when Martinez was not licensed to act as a smog check technician.

In the capacity as both a smog check state licensee and an advanced emission specialist technician licensee, Respondent's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (f).

*Fourth Instance of Unprofessional Conduct -
Undercover Surveillance Operation – June 22, 2007*

45. On June 22, 2007, BAR PR II Cheung conducted a third day of surveillance of smog check station operations at respondents' facility. Again the Bureau's investigator used three video camera-recorders to ascertain that the Bureau's licensee engaged in illegal activities on that day, or allowed another person to perform illegal activities at the licensed facility. The video cameras operated for the duration of the work day on June 22, 2007. And the cameras were again positioned in distinct, yet advantageous and hidden locations as to reasonably capture in digital images the activities that occurred at respondents' facility. The three cameras operated from 6:24 a.m. until 6:42 p.m. in the surveillance operation on June 22, 2007.

46. From his study of surveillance video recording and information obtained from the EIS and the Bureau's VID, BAR PR II Cheung determined that the unlicensed individual, Mr. Martinez, on June 22, 2007, performed a smog inspection of a 2000 Dodge Neon and he caused to be issued an electronic smog certificate of compliance for the vehicle. And Mr. Martinez unlawfully performed a smog inspection of a 1999 Ford Windstar Van automobile and caused the unlawful issuance of a certificate of compliance for a vehicle, which was not subjected to a proper smog inspection.

All of Bureau's records showed that the vehicles, which were issued certificates of compliance at respondents' facility, reflected the personal assess code belonging to Respondent. Bureau personnel reasonably inferred that Respondent had unlawfully allowed Mr. Martinez, an unlicensed individual, to perform smog check inspections on June 22, 2007, at respondents' facility.

Misleading Statements

47. On June 22, 2007, Respondent, doing business as Respondent Deol Automotive, made statements which he knew, or by exercise of reasonable care he should have known, were untrue or misleading, as follows:

a. Respondent issued electronic Certificate of Compliance No. MS406933C for the 2000 Dodge Neon, certifying that the vehicle had been tested and inspected by a licensed technician. In fact, Mr. Martinez performed the tests and inspections when Martinez was not licensed to do so.

b. Respondent issued electronic Certificate of Compliance No. MS406939C for the 1999 Ford Windstar Van, certifying that the vehicle had been tested and inspected by a licensed technician. In fact, Mr. Martinez performed the tests and inspections when Martinez was not licensed to do so.

Respondent's acts or omissions in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(1).

Fraud

48. On June 22, 2007, Respondent, doing business as Respondent Deol Automotive, committed acts that constitute fraud by issuing electronic Certificate of Compliance No. MS406933C for a 2000 Dodge Neon and electronic Certificate of Compliance No. MS406939C for a 1999 Ford Windstar Van without performing bona fide inspections of the emission control devices and systems on those vehicles. Respondent's acts or omissions on that day deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. As both a smog check station licensee and an advanced emission specialist technician licensee, Respondent's acts or omissions in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(4).

Violation of the Motor Vehicle Inspection Program

49. On June 22, 2007, regarding electronic Certificate of Compliance No. MS406933C for the 2000 Dodge Neon and electronic Certificate of Compliance No. MS406939C for the 1999 Ford Windstar Van, Respondent, doing business as Respondent Deol Automotive, violated the following sections of the Health and Safety Code:

- a. *Section 44012, subdivision (f)*: Respondent failed to perform emission control tests on those vehicles in accordance with procedures prescribed by the Bureau.
- b. *Section 44014, subdivision (a)*: Respondent allowed Martinez to perform the smog inspections when Martinez was not licensed to do so.
- c. *Section 44015, subdivision (b)*: Respondent issued the electronic certificates of compliance for those vehicles without properly testing and inspecting the vehicles to determine if they were in compliance with Health & Safety Code section 44012.
- d. *Section 44032*: Respondent failed to perform tests of the emission control devices and systems on those vehicles in accordance with section 44012 of that Code.
- e. *Section 44059*: Respondent willfully made false entries for the electronic certificates of compliance by certifying that the vehicles had been inspected as required when, in fact, they had not.

In the capacity as both a smog check station licensee and an advanced emission specialist technician licensee, Respondent's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (a).

Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program

50. On June 22, 2007, regarding electronic Certificate of Compliance No. MS406933C for the 2000 Dodge Neon and electronic Certificate of Compliance No. MS406939C for the 1999 Ford Windstar Van, Respondent, doing business as Respondent Deol Automotive Services, failed to comply with the following provisions of California Code of Regulations, title 16:

- a. *Section 3340.24, subdivision (c)*: Respondent falsely or fraudulently issued the electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles as required by Health and Safety Code section 44012.
- b. *Section 3340.30, subdivision (a)*: Respondent failed to inspect and test the vehicles in accordance with Health and Safety Code section 44012.
- c. *Section 3340.35, subdivision (c)*: Respondent issued the electronic certificates of compliance for those vehicles even though the vehicles had not been inspected in accordance with section 3340.42.
- d. *Section 3340.41, subdivision (b)*: Respondent allowed Martinez to access the EIS using Respondent's personal access code in order to perform the smog inspection.
- e. *Section 3340.42*: Respondent failed to conduct the required smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

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

Dishonesty, Fraud or Deceit

51. On June 22, 2007, regarding MS406933C for the 2000 Dodge Neon and electronic Certificate of Compliance No. MS406939C for the 1999 Ford Windstar Van, Respondent, doing business as Respondent Deol Automotive, committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing the electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles. By dishonestly, fraudulently and deceitfully issuing false certificates of compliance, Respondent's acts or omissions deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

In the capacity as both a smog check state licensee and an advanced emission specialist technician licensee, Respondent's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (d).

Aiding and Abetting Unlicensed Activity

52. On June 22, 2007, Respondent, doing business as Respondent Deol Automotive Services, aided and abetted Mr. Martinez, an unlicensed person, to evade the provisions of the Motor Vehicle Inspection Program by allowing Mr. Martinez to perform the smog tests and inspections on the 2000 Dodge Neon and 1999 Ford Windstar Van when Martinez was not licensed to act as a smog check technician.

In the capacity as both a smog check station licensee and an advanced emission specialist technician licensee, Respondent's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (f).

*Fifth Instance of Unprofessional Conduct –
Undercover Operation - July 23, 2007*

53. On July 23, 2007, BAR PR II Cheung arranged a second undercover operation to test the proficiency of smog check inspection services being performed at respondents' facility.

Before sending the undercover agent into operation, BAR PR II Cheung examined and verified a Bureau vehicle, namely a 1992 Lexus ES300 (Lexus ES300), which was placed under his control, was maladjusted so that it should have failed a smog check operation. In particular, the Lexus ES300 manifested function timing failure so that the timing was outside the manufacturer's acceptable range by 10 degrees, and the fuel cap was defective. The introduced maladjustment rendered the Lexus in a condition so as to fail a smog check inspection.

Before the vehicle was placed into the possession of BAR PR II Cheung, the Bureau's documentation laboratory had affixed onto the Lexus ES300 a tamper indicator at the vehicle's engine's distributor housing assembly. Also the Bureau's laboratory personnel concealed small video cameras in the vehicle's engine area in order to film respondents' personnel as such person or persons performed a smog check inspection on the vehicle.

54. On July 23, 2007, BAR PR II Cheung again appointed Mr. Lopez, as an undercover operative, to drive the Lexus ES300 to the facilities of Respondent Deol Automotive.

55. At the hearing of this matter, Mr. Lopez provided credible and compelling testimonial evidence on this matter.

On July 23, 2007, Mr. Lopez, again using the alias Rubin Gomez, drove the Lexus ES300, to respondents' facility for a smog inspection. Upon reaching respondents' facility, Mr. Lopez did not initially see Respondent so that he initially interacted with Mr. Martinez. Mr. Martinez, an unlicensed individual, directed Mr. Lopez to drive the Lexus into the

facility's bay and presented Mr. Lopez with a blank work order. After Mr. Martinez commenced the intake process for the smog check inspection of the Lexus automobile, Mr. Lopez first observed Respondent in the area of a smog bay, but Respondent walked out of the smog bay and went into the station's office area. Mr. Lopez saw Mr. Martinez point the bar code scanner on the EIS machine to begin the process. And Mr. Lopez watched Mr. Martinez enter Respondent's personal access code in order to begin the smog check inspection; but then the unlicensed individual began to work on another vehicle that had been driven onto the site subsequent to the arrival of Mr. Lopez. Thereupon Respondent exited the facility's office and entered the smog bay to perform portions of the smog check on the Lexus ES300. (Several minutes later, Mr. Lopez spoke with Mr. Martinez to remark that he had never seen Respondent personally perform smog check to which Mr. Martinez replied¹ that Respondent would personally perform smog checks at times when the facility became busy.)

56. At respondents' facility, Mr. Lopez observed Respondent to go through some steps of performing a smog inspection of the Lexus ES300 automobile. Although Respondent asked the undercover operative to complete the owner's information, and to sign, a work order, Respondent did not present Mr. Lopez with either a copy of the work order or a written estimate.

57. After the smog inspection of the Lexus ES300, which was performed by Mr. Martinez, an unlicensed person, on July 23, 2007, Mr. Lopez drove the vehicle to a site where BAR PR II Cheung waited. Mr. Lopez informed BAR PR II Cheung that Respondent performed the latter aspects of the smog check inspection for the Lexus ES300, but that Mr. Martinez had entered the licensee's access code to begin the smog check inspection. And Mr. Lopez presented BAR PR II Cheung with a final invoice, which showed payment of \$65 to Respondent Deol Automotive Services, a VIR, which indicated that the Lexus ES300 had passed a smog check inspection.

58. At the rendezvous site for Mr. Lopez and BAR PR II Cheung, it was detected that the Lexus ES300 should have failed the smog inspection performed at respondents' facility. Also digital images were taken of the Lexus ES300's engine area that depicted the "introduced malfunction," namely the tamper indicators remained intact so as to establish that there had been no attempt by any smog check technician at respondents' facility to verify correct engine timing for the subject tested automobile during the smog inspection.

59. Later, BAR PR II Cheung reviewed the Bureau's VID to detect that the BAR97 Test Detail for the smog inspection resulted in Respondent Deol Automotive Services unlawfully issuing on July 23, 2007, for the Lexus ES300 the VIR and Certificate of Compliance No. MS956956C. Issuance of the certification of compliance fraudulently

¹ Mr. Martinez's remarks to Mr. Lopez regarding irregular performance by Respondent of smog check technician's services may be used as an admission of a co-conspirator in "civil wrong doing" in the furtherance of the objective of the conspiracy within the meaning of Evidence Code section 1223. Such admission may be imputed to Respondent.

represented that the Lexus ES300 had been properly tested and inspected and that the vehicle was in compliance with smog check laws and regulations.

Untrue or Misleading Statements

60. On July 23, 2007, Respondent, doing business as Respondent Deol Automotive, made or authorized statements which he knew, or in the exercise of reasonable care he should have known, were untrue or misleading by issuing electronic Certificate of Compliance No. MS956956C for the Lexus ES300. The certificate certified that the vehicle was in compliance with applicable laws and regulations. But the Lexus ES300 could not have passed the function portion of the smog inspection because the vehicle's ignition timing was adjusted beyond the manufacturer's specifications and the fuel cap was defective.

Respondent's acts or omissions in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(1).

Fraud

61. On July 23, 2007, Respondent, doing business as Respondent Deol Automotive, committed acts that constitute fraud by issuing electronic Certificate of Compliance No. MS956956C for the Lexus ES300 without performing a bona fide inspection of the emission control devices and systems on the vehicle. Respondent's acts or omissions on that day deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Respondent's acts or omissions in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(4).

Failure to Comply with the Automotive Repair Act

62. On July 23, 2007, Respondent, doing business as Respondent Deol Automotive, failed to comply with Business and Professions Code section 9884.9, subdivision (a), by not providing Mr. Lopez, the undercover operator, with a written estimated price for parts and labor for a specific job regarding the smog inspection.

Respondent's acts or omissions in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(6).

Violations of the Motor Vehicle Inspection Program

63. On July 23, 2007, regarding the Lexus ES300, Respondent failed to comply with the following sections of the Health and Safety Code:

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

b. *Section 44014, subdivision (a)*: Respondent allowed Martinez to access the EIS system when Martinez was not licensed to do so.

c. *Section 44015, subdivision (b)*: Respondent issued electronic Certificate of Compliance No. MS956956C for that vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with Health & Safety Code section 44012.

d. *Section 44032*: Respondent failed to perform tests of the emission control devices and systems on the vehicle in accordance with section 44012 of that Code, in that the vehicle could not have passed the function portion of the smog inspection because the vehicle's ignition timing was adjusted beyond the manufacturer's specifications.

e. *Section 44059*: Respondent willfully made false entries for electronic Certificate of Compliance No. MS956956C by certifying that the vehicle had been inspected as required when, in fact, it had not.

In the capacity as both a smog check station licensee and an advanced emission specialist technician licensee, Respondent's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (a).

Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program

64. On July 23, 2007, regarding the Lexus ES300, Respondent failed to comply with the following provisions of California Code of Regulations, title 16:

a. *Section 3340.24, subdivision (c)*: Respondent falsely or fraudulently issued electronic Certificate of Compliance No. MS956956C for the vehicle, in that the vehicle could not pass the function portion of the smog inspection because the vehicle's ignition timing was adjusted beyond the manufacturer's specification.

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

c. *Section 3340.35, subdivision (c)*: Respondent issued electronic Certificate of Compliance No. MS956956C for the vehicle even though the vehicle had not been inspected in accordance with section 3340.42.

d. *Section 3340.41, subdivision (b)*: Respondent allowed Martinez to access the EIS system using Respondent's personal access code when Martinez was not licensed to do so.

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

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

Dishonesty, Fraud or Deceit

65. On July 23, 2007, Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic Certificate of Compliance No. MS956956C for the Lexus ES300 without performing a bona fide inspection of the emission control devices and systems on the vehicle. By dishonestly, fraudulently and deceitfully issuing a false certificate of compliance, Respondent's acts or omissions deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

In the capacity as both a smog check station licensee and an advanced emission specialist technician licensee, Respondent's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (d).

Aiding and Abetting Unlicensed Activity

66. On July 23, 2007, Respondent aided and abetted Martinez, an unlicensed person, to evade the provisions of the Motor Vehicle Inspection Program by allowing Martinez to access the EIS system when Martinez was not licensed to do so.

In the capacity as both a smog check station licensee and an advanced emission specialist technician licensee, Respondent's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (f).

Sixth Instance of Unprofessional Conduct – Undercover Operation – August 8, 2007

67. On August 8, 2007, BAR PR II Cheung arranged a final undercover operation to test the proficiency of smog check inspection services being performed at respondents' facility.

BAR PR II Cheung examined and verified a Bureau vehicle, namely a 1990 Mercury Sable (Mercury Sable), was placed under his control with that vehicle maladjusted so that it should have failed a smog check operation. In particular, the Mercury Sable manifested functional timing failure so that the timing was outside the manufacturer's acceptable range by several degrees. The introduced maladjustments that rendered the Mercury Sable in a condition so as to fail a smog check inspection.

Before the vehicle was placed into the possession of BAR PR II Cheung, the Bureau's documentation laboratory had fixed onto the Mercury Sable a tamper indicator at the vehicle's engine's distributor housing assembly. Also the Bureau's laboratory personnel

concealed small video cameras in the vehicle's engine area in order to film respondents' personnel as such person or persons performed a smog check inspection on the vehicle.

68. On August 8, 2007, BAR PR II Cheung again appointed Mr. Lopez, as an undercover operative, to drive the Mercury Sable to the facilities of Respondent Deol Automotive Services.

69. On August 8, 2007, Mr. Lopez, using the alias Rubin Gomez, drove the Mercury Sable, to respondents' facility for a smog inspection. Upon reaching respondents' facility, Mr. Lopez observed Respondent at the premises, but another individual, Mr. Martinez attended providing the requested service of securing a smog check inspection.

70. At respondents' facility, Mr. Lopez observed Mr. Martinez to go through some steps of performing a smog inspection of the Mercury Sable automobile. Although Mr. Martinez asked the undercover operative to complete the owner's information, and to sign, a work order, Mr. Martinez did not present Mr. Lopez with either a copy of the work order or a written estimate.

And Mr. Lopez observed Mr. Martinez to enter an access code into the smog test machinery.

71. On August 8, 2007, Mr. Lopez recognized that Mr. Martinez failed to perform the required function test for ignition timing during the smog inspection. In particular, Mr. Lopez noted that Mr. Martinez did not thoroughly inspect a defect in the gasoline tank cap. Mr. Martinez did not place the gas cap on the EIS but rather he placed his thumb over a hole of the cap and then he improperly prompted the Bureau's analyzer to perform a function test of the cap.

72. Although he was on the premises on August 8, 2007, Respondent never participated in any portion of the smog inspection.

73. After the smog inspection of the Mercury Sable, which was performed by Mr. Martinez, an unlicensed person, on August 8, 2007, Mr. Lopez drove the vehicle to a site where BAR PR II Cheung waited. Mr. Lopez informed BAR PR II Cheung that Respondent did not perform the smog check inspection. And Mr. Lopez presented BAR PR II Cheung with a final invoice, which showed payment of \$65 to Respondent Deol Automotive, and a VIR, which indicated that the Mercury Sable had passed a smog check inspection.

At the rendezvous site for Mr. Lopez and BAR PR II Cheung, it was detected that the PCV system remained missing so that the Mercury Sable should have failed the smog inspection performed at respondents' facility. Also digital images were taken of the Mercury Sable's engine area that depicted the "introduced malfunction," namely the tamper indicators remained intact so as to establish that there had been no attempt by a smog check technician to verify correct engine timing for the subject tested automobile during the smog inspection.

74. Later, BAR PR II Cheung reviewed the Bureau's VID to detect that the BAR97 Test Detail for the smog inspection resulted in Respondent Deol Automotive unlawfully issuing on August 8, 2007, for the Mercury Sable the VIR and Certificate of Compliance No. MU156214C. Issuance of the certification of compliance fraudulently represented that the Mercury Sable had been properly tested and inspected and that the vehicle was in compliance with smog check laws

75. BAR PR II Cheung's study of the videotape from cameras onboard the Mercury Sable revealed to the Bureau's employee that Mr. Martinez, an unlicensed individual, while working as a smog technician for Respondent Deol Automotive failed to perform important functions. Mr. Martinez did not perform function timing test and he did not perform the check of the fuel cap integrity test. A film image showed Mr. Martinez sitting in the driver's seat of the vehicle during the smog check "drive trace" test. BAR PR II Cheung was accurate in concluding the Respondent Deol never participated in any aspect of the smog test of the Mercury Sable.

Untrue or Misleading Statements

76. On August 8, 2007, Respondent, doing business as Respondent Deol Automotive, made or authorized statements which he knew or in the exercise of reasonable care he should have known to be untrue or misleading, by issuing electronic Certificate of Compliance No. MU156214C for the Mercury Sable. But the Mercury Sable could not have passed the function portion of the smog inspection because the vehicle's ignition timing was adjusted beyond the manufacturer's specification. As a smog check station licensee, Respondent's acts or omissions in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(1).

Fraud

77. On August 8, 2007, Respondent, doing business as Respondent Deol Automotive, committed acts that constitute fraud by issuing electronic Certificate of Compliance No. MU156214C for the Mercury Sable, without performing a bona fide inspection of the emission control devices and systems on the vehicle. Respondent's acts or omissions on that day deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. As both a smog check state licensee and an advanced emission specialist technician licensee, Respondent's acts or omissions in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(4).

Failure to Comply with the Automotive Repair Act

78. On August 8, 2007, Respondent, doing business as Respondent Deol Automotive, failed to comply with Code section 9884.9, subdivision (a), by failing to provide the operator with a written estimated price for parts and labor for a specific job regarding the smog inspection.

Respondent's acts or omissions in this regard violated the provisions of Business and Professions Code section 9884.7, subdivision (a)(6).

Violation of the Motor Vehicle Inspection Program

79. On August 8, 2007, regarding the Mercury Sable, Respondent, doing business as Respondent Deol Automotive, failed to comply with the following sections of the Health and Safety Code:

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

b. *Section 44014, subdivision (a)*: Respondent allowed Martinez to perform the smog inspection when Martinez was not licensed to do so.

c. *Section 44015, subdivision (b)*: Respondent issued electronic Certificate of Compliance No. MU156214C for that vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with Health & Safety Code section 44012.

d. *Section 44059*: Respondent willfully made false entries for electronic Certificate of Compliance No. MU156214C by certifying that the vehicle had been inspected as required when, in fact, it had not.

In the capacity as both a smog check station licensee and an advanced emission specialist technician licensee, Respondent's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (a).

Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program

80. On August 8, 2007, regarding the Mercury Sable, Respondent, doing business as Respondent Deol Automotive, failed to comply with the following provisions of California Code of Regulations, title 16:

a. *Section 3340.24, subdivision (c)*: Respondent falsely or fraudulently issued electronic Certificate of Compliance No. MU156214C for the vehicle, in that the vehicle could not pass a smog inspection because the vehicle's ignition timing was adjusted beyond the manufacturer's specifications.

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

c. *Section 3340.35, subdivision (c)*: Respondent issued electronic Certificate of Compliance No. MU156214C for the vehicle even though the vehicle had not been inspected in accordance with section 3340.42.

d. *Section 3340.41, subdivision (b)*: Respondent allowed Martinez to access the EIS using Respondent's personal access code in order to perform the smog inspection.

e. *Section 3340.41, subdivision (c)*: Respondent allowed Martinez to access the EIS using Respondent's personal access code in order to enter false information regarding the vehicle's ignition timing and the fuel cap test.

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

In the capacity as both a smog check station licensee and an advanced emission specialist technician licensee, Respondent's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (a).

Dishonesty, Fraud or Deceit

81. On August 8, 2007, regarding MU156214C for the Mercury Sable, Respondent, doing business as Respondent Deol Automotive, committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing the electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles. By dishonestly, fraudulently and deceitfully issuing a false certificate of compliance, Respondent's acts or omissions deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

In the capacity as both a smog check station licensee and an advanced emission specialist technician licensee, Respondent's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (d).

Aiding and Abetting Unlicensed Activity

82. On August 8, 2007, Respondent, doing business as Respondent Deol Automotive, aided and abetted Mr. Martinez, an unlicensed person, to evade the provisions of the Motor Vehicle Inspection Program by allowing Martinez to perform the smog tests and inspections on the Mercury Sable when Mr. Martinez was not licensed to work as a smog check technician.

In the capacity as both a smog check station licensee and an advanced emission specialist technician licensee, Respondent's acts or omissions in this regard violated the provisions of Health and Safety Code section 44072.2, subdivision (f).

Other Consequences of Respondent's Dishonesty, Fraud or Deceit

83. From May 3, 2007, to August 8, 2007, Respondent, doing business as Respondent Deol Automotive, committed acts involving dishonesty, fraud or deceit whereby the residents of the State of California were unreasonably exposed to injury. Respondent's acts of fraud, dishonesty and deceit as set forth above in factual findings subject to invalidation not only Respondent's automotive repair deal registration but also revocation of the lamp station license and the brake station license that have been issued to Respondent. The matters above regarding the unlawful conduct found at respondents' smog check station, which necessitates revocation of that license, show that Respondents' acts and omissions violated Business and Professions Code section 9889.3, subdivision (d).

Other Evidence offered by Complainant.

84. Mr. David Lockwood offered credible and persuasive evidence at the hearing of this matter.

Mr. Lockwood, as a Bureau employee, is assigned to the Bureau's San Leandro Documentation Lab. During the course of performing his duties, Mr. Lockwood prepared the undercover vehicle used by Messrs. Lopez and Cheung on May 3, 2007. On April 20, 2007, Mr. Lockwood had disconnected the PCV system from the Chevrolet Astro Van before the subject undercover operation. Mr. Lockwood rendered the Astro Van unable to pass a smog test and he made the vehicle available for undercover operations. In June 2007, Mr. Lockwood regained possession of the Astro Van, then he performed a smog check test and determined that the Astro Van failed the function test of the smog inspection because the vehicle had missing PCV system components.

85. Mr. Nickolas W. Louie offered credible and persuasive evidence at the hearing of this matter.

Mr. Louie as a Bureau employee is assigned to the Bureau's San Leandro Documentation Lab. During the course of performing the duties, Mr. Lockwood prepared the undercover vehicle used by Messrs. Lopez and Cheung on July 23, 2007. On July 11, 2007, Mr. Louie placed the engine timing for the Lexus ES 300 at 20 degrees before top dead center, which was 10 degrees beyond the manufacturer's specifications. He delivered the vehicle for the undercover operations into the care and control of BAR PR II Cheung. And on July 23, 2007, Mr. Louie regained possession of the Lexus ES 300 and secured the vehicle at the Bureau's facility. On July 26, 2007, he performed a smog check test and determined that the Lexus ES 300 failed the function timing test of the smog inspection. Mr. Louie also found the tamper indicators, which he had affixed to the Lexus ES 300 in early July 2007, to be intact and undisturbed.

Also Mr. Louie performed work on the Mercury Sable automobile used by Messrs. Lopez and Cheung for an undercover operation at respondents' facility. On July 31, 2007, Mr. Louie placed the engine timing for the Mercury Sable at 20 degrees before top dead

center, which was 10 degrees beyond the manufacturer's specifications. On August 8, 2007, he delivered the vehicle for the undercover operations into the care and control of BAR PRU Cheung. And on the day of the undercover operation, but after Messrs. Lopez and Cheung had completed the operation, Mr. Louie regained possession of the Mercury Sable and secured the vehicle at the Bureau's facility. On August 14, 2007, he performed a smog check test and determined the Mercury Sable failed the function timing test of the smog check inspection. Mr. Louie also found the tamper indicators, which he had affixed to the Mercury Sable on July 31, 2007, to be intact and undisturbed.

Background of the Owner of Respondent Deol Automotive and Matters in Mitigation

86. Respondent is 54 years old. He is a mature and intelligent man.

87. Respondent has been married for nearly 35 years. He and his wife have three adult children including sons who are 33 years old and 31 years. One of his sons is married and has a three-year-old daughter.

Respondent owns a house in Union City where he, his wife, two sons, a daughter-in-law, a grandchild and Respondent's wife's parents reside. Respondent asserts that he is the sole supporter of the entire household. (But Respondent offered no corroborating evidence that his adult children are unable to contribute to the maintenance of the extended family.) Respondent's adult daughter lives outside the household and she is self-sufficient in her work.

88. In 1975, Respondent emigrated from India after he married his wife, who was then a permanent resident of the United States. He and his wife first settled in Yuba City and Respondent worked as a farm laborer for about three years. In about 1978, Respondent and his wife moved to Union City to work and reside. Thereafter, Respondent worked in a plastic manufacturer's plant and a tile crafting company over the span of eight years as a machinist in factories of those businesses.

During the time that he worked in factory-like jobs, Respondent began to study automotive repair at the community college level. From 1984 through 1989, Respondent attended Chabot College. He acquired a certificate of completion in the automotive repair course in 1989.

89. In 1989 Respondent met the owner of an existing service station and repair garage located at 1974 West Tennyson Road in Hayward. Because the other man was not successful with an automotive repair dealer's business at that location, Respondent assumed the operation of the business upon acquiring an ARD registration and other licenses as issued through the Bureau. Also in 1989, he secured a smog check technician's license. Hence over a period of more than 20 years, Respondent has conducted operations under licenses issued to him by the Bureau.

In 1990, with financial assistance from his brother, a brother-in-law and his personal savings, Respondent purchased the gasoline sales franchise at the West Tennyson Road premises. And in 1992, Respondent and his brother purchased a gasoline station in Union City, which for a period of a few years conducted automobile repair operations under an ARD registration held in Respondent's name.

90. Currently Respondent works six days per week at respondents' facilities. At the West Tennyson Road location, Respondent has four employees, including his daughter-in-law. The gasoline station operates under the Union 76 banner. Respondent estimates that at this time, income to the business is evenly divided between gasoline station sales and smog check/automobile repair operation.

Although he has a financial interest in the Union City gasoline station, Respondent is not actively involved in that business, which is now essentially his brother's concern. (In about 1995, the ARD registration for the Union City business expired; and, Respondent ceased his active role at that site, which operates as a Shell Gasoline station and mini-mart.)

91. Respondent proclaimed at the hearing of this matter that in his more than 20 years of operating an auto repair business and smog check station that he has not received any consumer complaints.

92. Other than an unpaid citation directed by the Bureau to the former ARD registration operations at the Union City facility managed by his brother, Respondent has no history of disciplinary action imposed through the Bureau against the licenses held in his name.

Matters in Aggravation

93. Respondents offered no competent evidence that Respondent Mr. Deol, in the capacity of owner of Respondent Deol Automotive, exercised diligence and prudence in supervising the services of Mr. Martinez. Although Respondent claimed at the hearing of this matter that Mr. Martinez performed smog check inspections only during the year 2007, the mechanic worked for Respondent Deol Automotive for seven years.

94. Even though at the hearing of this matter, Respondent described Mr. Martinez as a "dishonest employee," Respondent took it upon himself to train Mr. Martinez in smog check inspection procedures.

95. Respondent discharged Mr. Martinez as an employee of Respondent Deol Automotive in November 2008, which was about two months after the date of the accusation in this matter. And the date of the termination of employment of Mr. Martinez occurred more than one year after the Bureau completed its surveillance and undercover operation to detect the wrongdoing at the subject facility.

96. Respondent offers no competent evidence that he has voluntarily participated or directed retraining for himself or any employee so as to avoid the fraudulent activity and malfeasance shown to have been perpetrated by both himself and Mr. Martinez in attending to smog checks at the facilities of Respondent Deol Automotive.

97. Respondent has an unpaid civil monetary penalty from a citation that is associated with the defunct ARD registration operations at the service station in Union City, which is now primarily operated by his brother. When his brother allowed the ARD registration to expire when the automobile repair facility was converted to a mini-mart business, the civil penalty associated with the citation was not paid. Even though Respondent claims that he is not active in that Union City gasoline station, the Bureau's records show him to be a partner in that business.

98. Respondents' acts and omissions as set out above reveal evidence that respondents' unlawful acts were part of a pattern of practice that enabled an unlicensed individual to fraudulently conduct improper smog check inspections. And Respondent's failure to detect the maladjustments on vehicles used during undercover operations show his pattern of substandard provision of services as a smog check technician.

99. Respondents' willful authorization of an unlicensed individual to perform smog check inspections, which were improper and substandard, showed a disposition to endanger the public health, welfare and safety by allowing smog producing vehicles to be driven on the roadways of the State of California.

100. At the hearing of this matter, Respondent was not persuasive that he sought to be altruistic towards Mr. Martinez by providing the mechanic with training in an "apprentice-

like” setting so that the mechanic would be amply prepared to enter a formal training program to become a smog check technician.

101. Respondent was not credible when he asserted at the hearing of this matter that at the time of the Bureau’s investigation in 2007 he lacked knowledge that he violated the law by enabling Mr. Martinez, an unlicensed person, to perform smog check inspections. And Respondent was not believable when he unpersuasively testified that Mr. Martinez was competent as a smog technician as the mechanic knew “everything” about smog check even though he did not possess licensure status.

102. At the hearing of this matter Respondent voiced inappropriate frustration with the Bureau’s surveillance and undercover operations. He unpersuasively articulated that the relationship between his smog check station/automobile repair facility and the Bureau was a “partnership,” and that the Bureau resorting to its undercover operations in 2007 rather than meeting and conferring with him about perceived problems indicated that the Bureau had breached the “partnership” relationship. Respondent’s feigned disdain for the Bureau’s surveillance and undercover operations indicates his failure to perceive that the Bureau is not his “partner,” but rather it is a regulatory agency that is charged with oversight of licensees in meeting its paramount mission to protect the health, welfare and safety of the public.

103. Respondent suggested that the failure of technicians during smog inspections to detect incorrect engine timing, discern compromised fuel cap integrity, or notice a missing PCV system were merely “technical” errors. Respondent’s position indicates a failure to comprehend the seriousness of the smog check inspection process.

104. The most egregious aspect in this matter is that respondents’ conduct constituted fraud. And Respondent’s failure to acknowledge the several instances of dishonesty, deceit and grossly unprofessional conduct that were detected through the Bureau’s investigation for the licensed facility between May and August 2007, establish that he is not suited to hold the licenses issued to him.

Other matters

105. Respondent called one witness to the hearing. Mr. Ken Barnes holds an ARD registration and smog check station license. Mr. Barnes expressed that he holds great respect for Respondent’s business practices that he has come to know. But, Respondent’s witness confirmed that he is aware that it is widely known in the smog check station operator’s community that it is contrary to the law for an unlicensed person to perform a smog check inspection. And Mr. Barnes proclaimed that he would never entrust his personal access code to any other person to start a smog check inspection.

106. Respondent presented a number of citations issued by the Bureau against other licensees at about the time of the detected misconduct at respondents’ facility. Respondents were not persuasive that the acts and omissions at the facility warrant only the imposition of civil penalties as the detected conduct was similar to the matters described in the citations

offered during closing argument. But respondent's argument is without merit. None of the citations upon which respondent argued for discipline less than revocation involved a licensee aiding and abetting an unlicensed person to perform smog check inspections. And none of the citations reflected the pattern and scope of unlawful activity by a licensee as described above.

Complainant's Request for Recovery of Costs of Investigation and Enforcement and Respondents' Objection to Imposition of Costs

107. Complainant requests that respondents be ordered to pay the Bureau its costs of investigation and prosecution under Business and Professions Code section 125.3. In support of its request for cost recovery, Complainant offers a declaration, dated May 13, 2009, by Curtis Worden, Program Manager I, Bureau of Automotive Repair, Department of Consumer Affairs. The declaration states that the Bureau has incurred investigative services by Bureau staff, including intricate mechanical work to misadjust engines and to conceal the irregularities, as well as to expend efforts in undercover operations, to prepare written reports and to travel to and from the facility and to execute clerical services. Such costs are in the amount of \$11,185.91.

On September 29, 2009, Deputy Attorney General Brast prepared a declaration under penalty of perjury to support the Certification of Prosecution Costs. The deputy attorney general expressed that she is a duly appointed representative of Complainant and that the Department of Justice will bill, or has billed, the Bureau for costs in the amount of \$19,110.25.

108. Respondents did not advance a meritorious defense in the exercise of their right to a hearing in this matter. Respondents did not show that any component or allegation in the investigative reports by various Bureau program representatives was not prosecuted in good faith. Respondents did not establish that any matter raised in the litigation by the deputy attorney general was not prosecuted and established by clear and convincing evidence. Also, Respondents cannot be seen, under the facts set out above, to have committed slight or inconsequential misconduct in the context of the Accusation. And, Respondents did not raise a "colorable challenge" to Complainant's Accusation's paramount cause for discipline, namely fraudulent acts, dishonesty and grossly unprofessional conduct in carrying out the business of a smog check station and in performing the functions, duties and responsibilities of an advanced emission specialist technician.

Respondent's assertions during his direct testimony that the business operation of Respondent Deol Automotive has sustained a financial downturn and now has limited financial resources due to his termination of Mr. Martinez and Respondent's direct assumption of the smog check technician's work were not compelling. Respondent's unpersuasive testimonial evidence was contradictory and not supported by evidence from a bookkeeper, audited financial records or an analysis by an accountant.

Respondent asserts that he is the sole supporter of various members of his household. But he did not call any witness to corroborate his claim. Furthermore, Respondent produced no evidence to establish that his adult children, who he claims that he supports, are unable to secure or maintain gainful employment.

Respondent failed to credibly assert that as of August 2007 when the Bureau's investigation concluded that either Respondent Deol Automotive or he had sparse income or financial resources. To the contrary, it may be inferred that Respondent's unlawful business practice of using an unlicensed technician to conduct smog inspections resulted in sizable profits for respondents. Moreover, Respondent Deol Automotive can continue to sell gasoline, other petroleum products and general consumer items from its gasoline station premises. Also, Respondent has a financial interest in a services station in Union City that is operated by his brother. And Respondent did not indicate that with his experience, skills and education as a mechanic that he cannot secure employment in a well paying position.

The immediate foregoing factors do not indicate that the imposition upon Respondent of the full costs of investigation and prosecution will unfairly penalize Respondent.

A substantial basis does not exist to warrant a reduction of the assessment against Respondent for the costs of prosecution incurred by Complainant.

109. Complainant is entitled to a reasonable sum of money for its costs of investigation and prosecution before commencement of the hearing in this matter. The facts developed at the hearing indicate that Complainant's personnel expended considerable, but reasonable and essential, efforts and time in the investigation of this extensive matter that involved fraud, deceit and unprofessional conduct. Also, the assigned deputy attorney general devoted significant, yet reasonable, time to the prosecution of this matter.

The reasonable sum of money attributable to the efforts of the Bureau's personnel in the investigation of this matter is \$11,185.91. In addition the reasonable sum of money attributable to the work of the Attorney General's office in the matter is in the sum of \$19,110.25.

110. The total cost of investigation and prosecution in this matter is a total amount of \$30,296.16.

LEGAL CONCLUSIONS

The Standard of Proof

1. The standard of proof in an administrative disciplinary action that seeks the suspension or revocation of a Bureau license is "clear and convincing evidence to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 583.)

“Clear and convincing evidence” means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered. “Clear and convincing evidence” is a higher standard of proof than proof by “a preponderance of the evidence.” (*CACI*² 201) “Clear and convincing evidence” requires a finding of high probability for the propositions advanced in an accusation against a targeted respondent licensee. It must be so clear as to leave no substantial doubt and to command the unhesitating assent of every reasonable mind. (*In re Michael G.* (1998) 63 Cal.App.4th 700.) And, the standard of proof known as clear and convincing evidence is required where particularly important individual interests or rights are at stake. (*Weiner v. Fleischman* (1991) 54 Cal.3d 476, 487.)

2. Business and Professions Code section 9889.1 provides, in pertinent part, that the Director may suspend or revoke any license issued under Articles 5 and 6 (commencing with Code section 9887.1) of the Automotive Repair Act.

3. Health and Safety Code section 44002 provides, in pertinent part, that the Director of the Department of Consumer Affairs has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

Automobile Repair Registration and Smog Station License of Respondent, doing business as Deol Automotive Service

4. Business and Professions Code section 9884.7, subdivision (a)(1), sets forth that the Director may invalidate temporarily or permanently an automobile repair dealer registration when the licensee has committed acts or through omissions allowed the “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.”

Cause exists for discipline of the automotive repair dealer registration as issued to Respondent, doing business as Deol Automotive, under Business and Professions Code section 9884.7, subdivision (a)(1), as that set interacts with section 9889.1, by reason of the matters set forth in Factual Findings 18, 30, 39, 47, 60 and 76.

5. Business and Professions Code section 9884.7, subdivision (a)(4), provides that the Director may invalidate temporarily or permanently an automobile repair dealer registration when the licensee has committed acts or through omissions allowed “any other conduct which constitutes fraud.”

Under Civil Code section 1572, actual fraud “consists in any of the following acts, committed by a party to the contract, or with his connivance, with the intent to deceive another party thereto, or to induce him to enter into that contract:

² Judicial Council of California, Civil Jury Instructions.

a. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

b. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

c. The suppression of that which is true, by one having knowledge or belief of the fact;

d. A promise made without any intention of performing it; or,

e. Any other act . . . to deceive.

Under California law, in order to find a person culpable of actual fraud, the party must be shown to have concealed material facts from the victim with an intent thereby to deceive the victim or to induce the victim to enter into a contract. (*Earl v. Saks & Co.* (1951) 36 Cal.2d 602.)

Herein, when Respondent Deol sought to mislead through the acts and omissions of his unlicensed employee, Respondent Deol violated the public confidence entrusted in him by the Bureau. And when he presented false and fraudulent-based documents he engaged in acts to deceive. Accordingly, the acts and omissions of Respondent injured the public interest.

Cause exists for discipline of the automotive repair dealer registration as issued to Respondent, doing business as Deol Automotive, under Business and Professions Code section 9884.7, subdivision (a)(4), as that set interacts with Health and Safety Code section 44012, by reason of the matters set forth in Factual Findings 19, 31, 40, 48, 61 and 77.

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

The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer. . . . [f]ailure in any material respect to comply with the provisions of this chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted pursuant to it.

Business and Professions Code section 9884.9, subdivision (a), provides:

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

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

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

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

(signature or initials)

Cause exists for discipline of the automotive repair dealer registration as issued to Respondent, doing business as Deol Automotive, under Business and Professions Code section 9884.7, subdivision (a)(6), as that set interacts with Code section 9884.9, subdivision (a), and Code section 9889.1, by reason of the matters set forth in Factual Findings 20, 62 and 78.

7. Health and Safety Code section 44072.2, subdivision (a), states, in pertinent part, that "[t]he director may suspend, revoke, or take other disciplinary action against a license as provided . . . if the licensee, or any partner, officer, or director thereof, "[v]iolates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code, §

44000 et seq.)] and the regulations adopted pursuant to it, which relate to the licensed activities.”

Cause exists for discipline of the smog station license as issued to Respondent, doing business as Deol Automotive, under Health and Safety Code section 44072.2, subdivision (a), as that set interacts with Health and Safety Code section 44002 and Business and Professions Code section 9889.1, by reason of Factual Findings 21, 32, 41, 49, 63 and 79.

8. Health and Safety Code section 44072.2, subdivision (c), states, in pertinent part, that “[t]he director may suspend, revoke, or take other disciplinary action against a license as provided . . . if the licensee, or any partner, officer, or director thereof, [v]iolates any of the regulations adopted by the director pursuant [to this chapter].”

Cause exists for discipline of the smog station license as issued to Respondent, doing business as Deol Automotive, under Health and Safety Code section 44072.2, subdivision (c), as that set interacts with Health and Safety Code section 44002 and Business and Professions Code section 9889.1, by reason of Factual Findings 22, 33, 42, 50, 64 and 80.

9. Health and Safety Code section 44072.2, subdivision (d), states, in pertinent part, that “[t]he director may suspend, revoke, or take other disciplinary action against a license as provided . . . if the licensee, or any partner, officer, or director thereof, [c]ommits any act involving dishonesty, fraud, or deceit whereby another is injured.”

Cause exists for discipline of the smog station license as issued to Respondent, doing business as Deol Automotive, under Health and Safety Code section 44072.2, subdivision (d), as that set interacts with Health and Safety Code section 44002 and Business and Professions Code section 9889.1, by reason of Factual Findings 23, 34, 43, 51, 65 and 81.

10. Health and Safety Code section 44072.2, subdivision (f), states, in pertinent part, that “[t]he director may suspend, revoke, or take other disciplinary action against a license as provided . . . if the licensee, or any partner, officer, or director thereof, [a]ids or abets unlicensed persons to evade the provisions [to this chapter].”

Cause exists for discipline of the smog station license as issued to Respondent, doing business as Deol Automotive, under Health and Safety Code section 44072.2, subdivision (f), as that set interacts with Health and Safety Code section 44002 and Business and Professions Code section 9889.1, by reason of Factual Findings 24, 35, 44, 52, 66 and 82.

Brake Station License and Lamp Station License of Respondent, doing business as Deol Automotive Service

11. Health & Safety Code Section 44072.8 states: “[w]hen a license has been revoked or suspended following a hearing under this article, any additional license issued under this chapter in the name of the licensee may be likewise revoked or suspended by the director.”

Business and Professions Code section 477 provides, in pertinent part, that “ ‘[l]icense’ includes certificate, registration or other means to engage in a business or profession regulated by the Code.”

Cause exists to revoke the brake station license and lamp station license issued to Respondent, doing business as Deol Automotive, by reason of Legal Conclusions 4 through 10.

Advanced Emission Specialist Technician Registration of Respondent Piara Singh Deol

12. Cause exists for discipline of the advanced emission specialist technician license as issued to Respondent under Health and Safety Code section 44072.2, subdivision (a), as that set interacts with Health and Safety Code section 44002 and Business and Professions Code section 9889.1, as well as Health and Safety Code sections 44014, subdivision (a), 440032, and 44059, by reason of Factual Findings 21, 32, 41, 49, 63 and 79.

13. Cause for discipline of the advanced emission specialist technician license exists under Health and Safety Code section 44072.2, subdivision (c), as that set interacts with Health and Safety Code section 44002 and Business and Professions Code section 9889.1, by reason of the matters set forth in Factual Findings 22, 33, 42, 50, 64, and 80.

14. Cause for discipline of the advanced emission specialist technician license exists under Health and Safety Code section 44072.2, subdivision (d), as that set interacts with Health and Safety Code section 44002 and Business and Professions Code section 9889.1, by reason of the matters set forth in Factual Findings 23, 34, 43, 51, 65, and 81.

15. Cause exists for discipline of the advanced emission specialist technician license as issued to Respondent under Health and Safety Code section 44072.2, subdivision (f), as that set interacts with Health and Safety Code section 44002 and Business and Professions Code section 9889.1, by reason of Factual Findings 24, 35, 44, 52, 66, and 82.

Other Matters

16. Matters in mitigation as set out in Factual Findings 86 through 92, inclusive, were considered in making the order below.

17. Matters in aggravation as set forth in Factual Findings 93 through 104, inclusive, were considered in making the order below.

Costs of Investigation and Enforcement

18. Business and Professions Code section 125.3 prescribes that a “licentiate found to have committed a violation or violations of the licensing acts” may be directed “to

pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.”

California Code of Regulations, title 1, section 1042, subdivision (2), sets forth “a certificate or affidavit in support of costs incurred by the agency for services provided by regular agency employees should include sufficient information by which the administrative law judge can determine the costs incurred in connection with the matter and the reasonableness of such costs, for example, a general description of tasks performed, the time spent on such tasks, and the method of calculation the cost for such services.” Complainant’s designees’ certifications of costs of investigation and prosecution are legally sufficient to impose costs on respondents.

Although not made directly applicable to administrative adjudication by the Bureau of Automotive Repair through an appellate court decision or statutory directive, the California Supreme Court’s reasoning on the obligation of a licensing agency to fairly and conscientiously impose costs in administrative adjudication as articulated in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45-46, is persuasive and should be considered in this matter. Scrutiny of certain factors, which pertain to the Bureau’s exercise of discretion to examine or analyze factors that might mitigate or reduce costs of prosecution upon a licensee found to have engaged in unprofessional conduct, are set forth in Factual Finding 108.

19. Respondent initiated, encouraged and authorized the unlicensed activity of Mr. Martinez at the licensed facility. Respondent taught Mr. Martinez cursory and basic smog check inspection steps. Respondent was the dishonest business owner who benefited from his supposed altruistic enabling of the unskilled mechanic to earn money in the smog check station; but, Respondent reaped benefits and profits from substandard work by the unlicensed individual. Also Respondent engaged in fraud as well as substandard performance of smog check inspections. The unlawful pattern and practice of Respondent required Bureau employees and the Department of Justice to extend significant time in establishing Respondent’s misconduct. Hence, Respondent must bear the full measure of the costs of investigation and prosecution as determined to be fair and reasonable in this matter. By reason of Factual Findings 107 and 109, the reasonable costs of investigation and prosecution as set forth in Factual Finding 110 are at a total recoverable amount of \$30,296.16.

Measure of Discipline

20. The purpose of an administrative adjudication proceeding, which contemplates the revocation or suspension of a professional or occupational license, is not to punish the individual licensee. The purpose of the agency action that results from the administrative adjudication proceeding is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance*, *supra*, 135 Cal.App.3d 583.) The weight of the evidence established that Respondent Mr. Deol operated a dishonest business. Hence his operation of a smog check station and

automobile repair shop must end, and he must surrender all licenses issued to him through the Bureau.

ORDER

Respondent Piara Singh Deol, doing business as Deol Automotive Service

1. Automotive Repair Dealer Registration number ARD 147661 issued to Respondent Piara S. Deol, owner of Deol Automotive Service with premises at 1974 West Tennyson Road, Hayward, California 94545-4351, is permanently invalidated pursuant to Legal Conclusions 4, 5, and 6, jointly and singly.

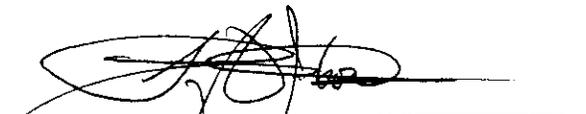
2. Smog Check Station License number RC 147661 issued to Respondent Piara Singh Deol, owner of Deol Automotive Service, is revoked pursuant to Legal Conclusions 7, 8, 9, and 10, jointly and singly.

3. Lamp Station License number LS 147661 and Brake Station License number BS 147661 issued by the Department to Respondent Piara S. Deol are revoked, pursuant to Legal Conclusion 11.

4. Advanced Emission Specialist Technician License number EA 313163 issued to Respondent Piara Singh Deol, is revoked pursuant to Legal Conclusions 12 through 15, jointly and singly.

5. Pursuant to Legal Conclusions 18 and 19, within thirty (30) days of the effective date of the Decision, Respondent Piara S. Deol shall pay the Bureau the costs of investigation and prosecution in an amount of \$30,296.16, or in the alternative, he shall enter into an installment payment plan that is satisfactory to the Bureau and the Department.

DATED: March 10, 2010



PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

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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. 79/09-25

13 **DEOL AUTOMOTIVE SERVICE**

1974 Tennyson Road
Hayward, California 94545

14 **PIARA S. DEOL, OWNER**

Automotive Repair Dealer Registration
15 No. ARD 147661
Smog Check Station License No. RC 147661
16 Brake Station License No. BS 147661
Lamp Station License No. LS 147661,

17 and

18 **PIARA SINGH DEOL**

4645 Silvertide Drive
Union City, California 94587

20 Advanced Emission Specialist Technician
21 License No. EA 313163

22 Respondents.

A C C U S A T I O N

[SMOG CHECK]

23
24 Sherry Mehl ("Complainant") alleges:

25 **PARTIES**

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

28 ///

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

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

7 (4) Any other conduct which constitutes fraud.

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

11 (b) Except as provided for in subdivision (c), if an automotive repair
12 dealer operates more than one place of business in this state, the director pursuant
13 to subdivision (a) shall only invalidate temporarily or permanently the registration
14 of the specific place of business which has violated any of the provisions of this
15 chapter. This violation, or action by the director, shall not affect in any manner
16 the right of the automotive repair dealer to operate his or her other places of
17 business.

18 (c) Notwithstanding subdivision (b), the director may invalidate
19 temporarily or permanently, the registration for all places of business operated in
20 this state by an automotive repair dealer upon a finding that the automotive repair
21 dealer has, or is, engaged in a course of repeated and willful violations of this
22 chapter, or regulations adopted pursuant to it.

23 8. Code section 9884.9, subdivision (a), states:

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

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

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

///

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

3 _____
(signature or initials)"

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

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

11 10. Code section 9889.1 provides, in pertinent part, that the Director may
12 suspend or revoke any license issued under Articles 5 and 6 (commencing with Code section
13 9887.1) of the Automotive Repair Act.

14 11. Code section 9889.7 provides, in pertinent part, that the expiration or
15 suspension of a license by operation of law or by order or decision of the Director or a court of
16 law, or the voluntary surrender of a license shall not deprive the Director of jurisdiction to
17 proceed with any disciplinary proceedings.

18 12. Code section 9889.3, states, in pertinent part:

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

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

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

27 14. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

///

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

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

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

6 (f) Aids or abets unlicensed persons to evade the provisions of this
7 chapter.

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

12 16. Section 44072.8 of the Health & Safety Code states:

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

16 17. Code section 477 provides, in pertinent part, that “Board” includes
17 “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,”
18 “program,” and “agency.” “License” includes certificate, registration or other means to engage
19 in a business or profession regulated by the Code.

20 COST RECOVERY

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

25 UNDERCOVER OPERATION - MAY 3, 2007

26 19. On May 3, 2007, a Bureau undercover operator using the alias
27 Rubin Gomez (“operator”) drove a Bureau-documented 1995 Chevrolet Astro Van, California
28 License Plate No. 3 NUD802, to Respondent’s facility for a smog inspection. The vehicle could

1 not pass a smog inspection because the vehicle's positive crankcase ventilation ("PCV") system
2 was missing. Joel Luna Martinez ("Martinez"), an unlicensed person using Respondent's
3 personal access code, performed the smog inspection. The operator filled out and signed a work
4 order; however, the operator was not provided with a copy of the document prior to the smog
5 inspection. Martinez did not perform a functional test of the ignition timing. Respondent issued
6 electronic Certificate of Compliance No. MQ843870C, certifying that he had tested and
7 inspected the 1995 Chevrolet Astro Van and that the vehicle was in compliance with applicable
8 laws and regulations. In fact, the vehicle could not have passed the visual portion of the smog
9 inspection because the vehicle's PCV system was missing.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

12 20. Respondent's registration is subject to disciplinary action pursuant to Code
13 section 9884.7, subdivision (a)(1), in that on or about May 3, 2007, Respondent made or
14 authorized statements which he knew or in the exercise of reasonable care he should have known
15 to be untrue or misleading by issuing electronic Certificate of Compliance No. MQ843870C for
16 the 1995 Chevrolet Astro Van, certifying that the vehicle was in compliance with applicable laws
17 and regulations. In fact, the vehicle could not have passed the visual portion of the smog
18 inspection because the vehicle's PCV system was missing.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 21. Respondent's registration is subject to disciplinary action pursuant to Code
22 section 9884.7, subdivision (a)(4), in that on or about May 3, 2007, he committed acts which
23 constitute fraud by issuing electronic Certificate of Compliance No. MQ843870C for the 1995
24 Chevrolet Astro Van without performing a bona fide inspection of the emission control devices
25 and systems on the vehicle, thereby depriving the People of the State of California of the
26 protection afforded by the Motor Vehicle Inspection Program.

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1 regarding the 1995 Chevrolet Astro Van. Respondent failed to comply with the following
2 provisions of California Code of Regulations, title 16:

3 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
4 issued electronic Certificate of Compliance No. MQ843870C for the vehicle, in that the vehicle
5 could not pass a smog inspection because the vehicle's PCV system was missing.

6 b. **Section 3340.35, subdivision (c):** Respondent issued electronic
7 Certificate of Compliance No. MQ843870C for the vehicle even though the vehicle had not been
8 inspected in accordance with section 3340.42.

9 c. **Section 3340.41, subdivision (b):** Respondent allowed Martinez to
10 access the Emission Inspection System ("EIS") using Respondent's personal access code.

11 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on
12 the vehicle in accordance with the Bureau's specifications.

13 **SIXTH CAUSE FOR DISCIPLINE**

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

15 25. Respondent's station license is subject to disciplinary action pursuant to
16 Health & Safety Code section 44072.2, subdivision (d), in that on or about May 3, 2007,
17 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by
18 issuing electronic Certificate of Compliance No. MQ843870C for the 1995 Chevrolet Astro Van
19 without performing a bona fide inspection of the emission control devices and systems on the
20 vehicle, thereby depriving the People of the State of California of the protection afforded by the
21 Motor Vehicle Inspection Program.

22 **SEVENTH CAUSE FOR DISCIPLINE**

23 **(Aiding and Abetting Unlicensed Activity)**

24 26. Respondent's station license is subject to disciplinary action pursuant to
25 Health and Safety Code section 44072.2, subdivision (f), in that on or about May 3, 2007, he
26 aided and abetted Martinez, an unlicensed person, to evade the provisions of the Motor Vehicle
27 Inspection Program by allowing Martinez to perform the smog tests and inspections on the 1995
28 Chevrolet Astro Van when Martinez was not licensed to do so.

1 Compliance No. MS406926 for a 1991 Mazda MPV and electronic Certificate of Compliance No.
2 MS406927C for a 1992 Acura Integra, certifying that the vehicles had been tested and inspected
3 and that the vehicles were in compliance with applicable laws and regulations. In fact, both smog
4 inspections were performed by Martinez, who was not licensed to perform smog inspections.

5 **TWELFTH CAUSE FOR DISCIPLINE**

6 **(Misleading Statements)**

7 32. Respondent's registration is subject to disciplinary action pursuant to Code
8 section 9884.7, subdivision (a)(1), in that on or about June 20, 2007, he made statements which he
9 knew or which by exercise of reasonable care he should have known were untrue or misleading,
10 as follows:

11 a. Respondent issued electronic Certificate of Compliance No. MS406926C
12 for the 1991 Mazda MPV, certifying that the vehicle had been tested and inspected by a licensed
13 technician when, in fact, Martinez performed the tests and inspections when Martinez was not
14 licensed to do so.

15 b. Respondent issued electronic Certificate of Compliance No. MS406927C
16 for the 1992 Acura Integra, certifying that the vehicle had been tested and inspected by a licensed
17 technician when, in fact, Martinez performed the tests and inspections when Martinez was not
18 licensed to do so.

19 **THIRTEENTH CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 33. Respondent's registration is subject to disciplinary action pursuant to Code
22 section 9884.7, subdivision (a)(4), in that on or about June 20, 2007, he committed acts which
23 constitute fraud by issuing electronic Certificate of Compliance No. MS406926 for a 1991 Mazda
24 MPV and electronic Certificate of Compliance No. MS406927C for a 1992 Acura Integra without
25 performing bona fide inspections of the emission control devices and systems on those vehicles,
26 thereby depriving the People of the State of California of the protection afforded by the Motor
27 Vehicle Inspection Program.

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1 inspections of the emission control devices and systems on those vehicles as required by Health
2 and Safety Code section 44012.

3 b. **Section 3340.35, subdivision (c):** Respondent issued the electronic
4 certificates of compliance for the vehicles even though the vehicles had not been inspected in
5 accordance with section 3340.42.

6 c. **Section 3340.41, subdivision (b):** Respondent allowed Martinez to
7 access the EIS using Respondent's personal access code in order to perform the smog inspections.

8 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on
9 those vehicles in accordance with the Bureau's specifications.

10 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

12 36. Respondent has subjected his station license to disciplinary action pursuant
13 to Health and Safety Code section 44072.2, subdivision (d), in that on or about June 20, 2007,
14 regarding electronic Certificate of Compliance No. MS406926C for the 1991 Mazda MPV and
15 electronic Certificate of Compliance No. MS406927C for the 1992 Acura Integra, he committed
16 acts involving dishonesty, fraud or deceit whereby another was injured by issuing the electronic
17 certificates of compliance for those vehicles without performing bona fide inspections of the
18 emission control devices and systems on those vehicles, thereby depriving the People of the State
19 of California of the protection afforded by the Motor Vehicle Inspection Program.

20 **SEVENTEENTH CAUSE FOR DISCIPLINE**

21 **(Aiding and Abetting Unlicensed Activity)**

22 37. Respondent has subjected his station license to disciplinary action pursuant
23 to Health and Safety Code section 44072.2, subdivision (f), in that on or about June 20, 2007, he
24 aided and abetted Martinez, an unlicensed person, to evade the provisions of the Motor Vehicle
25 Inspection Program by allowing Martinez to perform the smog tests and inspections on the 1991
26 Mazda MPV and 1992 Acura Integra when Martinez was not licensed to do.

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1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

3 38. Respondent's technician license is subject to disciplinary action under
4 Health and Safety Code section 44072.2, subdivision (a), in that on or about June 20, 2007,
5 regarding electronic Certificate of Compliance No. MS406926C for the 1991 Mazda MPV and
6 electronic Certificate of Compliance No. MS406927C for the 1992 Acura Integra, he violated the
7 following sections of that Code:

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

11 b. **Section 44014, subdivision (a):** Respondent allowed Martinez to perform
12 the smog inspections when Martinez was not licensed to do so.

13 c. **Section 44032:** Respondent failed to perform tests of the emission control
14 devices and systems on those vehicles in accordance with section 44012 of that Code.

15 d. **Section 44059:** Respondent entered false information for the electronic
16 certificates of compliance by certifying that the vehicles had been inspected as required when, in
17 fact, they had not.

18 **NINETEENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with Regulations Pursuant
20 to the Motor Vehicle Inspection Program)**

21 39. Respondent's technician license is subject to disciplinary action under
22 Health and Safety Code section 44072.2, subdivision (c), in that on or about June 20, 2007,
23 regarding electronic Certificate of Compliance No. MS406926C for the 1991 Mazda MPV and
24 electronic Certificate of Compliance No. MS406927C for the 1992 Acura Integra, he violated the
25 following sections of the California Code of Regulations, title 16:

26 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
27 issued the electronic certificates of compliance for those vehicles without performing bona fide

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1 inspections of the emission control devices and systems on the vehicles as required by Health and
2 Safety Code section 44012.

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

5 c. **Section 3340.41, subdivision (b):** Respondent allowed Martinez to
6 access the EIS unit using Respondent's personal access code in order to perform the smog
7 inspections.

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

10 **TWENTIETH CAUSE FOR DISCIPLINE**

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

12 40. Respondent has subjected his technician license to disciplinary action
13 pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on or about June 20,
14 2007, regarding electronic Certificate of Compliance No. MS406926C for the 1991 Mazda MPV
15 and electronic Certificate of Compliance No. MS406927C for the 1992 Acura Integra, he
16 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing the
17 electronic certificates of compliance for those vehicles without performing bona fide inspections
18 of the emission control devices and systems on the vehicles, thereby depriving the People of the
19 State of California of the protection afforded by the Motor Vehicle Inspection Program.

20 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

21 **(Aiding and Abetting Unlicensed Activity)**

22 41. Respondent has subjected his technician license to disciplinary action
23 pursuant to Health and Safety Code section 44072.2, subdivision (f), in that on or about June 20,
24 2007, he aided and abetted Martinez, an unlicensed person, to evade the provisions of the Motor
25 Vehicle Inspection Program by allowing Martinez to perform the smog tests and inspections on
26 the 1991 Mazda MPV and 1992 Acura Integra when Martinez was not licensed to do so.

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1 Pontiac Grand Am and electronic Certificate of Compliance No. MS406930C for a 2002 Pontiac
2 Grand Prix without performing bona fide inspections of the emission control devices and systems
3 on those vehicles, thereby depriving the People of the State of California of the protection
4 afforded by the Motor Vehicle Inspection Program.

5 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

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

7 45. Respondent's station license is subject to disciplinary action pursuant to
8 Health and Safety Code section 44072.2, subdivision (a), in that on or about June 21, 2007,
9 regarding electronic Certificate of Compliance No. MS406929C for the 2000 Pontiac Grand Am
10 and electronic Certificate of Compliance No. MS406930C for the 2002 Pontiac Grand Prix, he
11 violated the following sections of that Code:

12 a. **Section 44012, subdivision (f)**: Respondent failed to perform emission
13 control tests on those vehicles in accordance with procedures prescribed by the department.

14 b. **Section 44014, subdivision (a)**: Respondent allowed Martinez to perform
15 the smog inspections when Martinez was not licensed to do so.

16 c. **Section 44015, subdivision (b)**: Respondent issued the electronic
17 certificates of compliance for those vehicles without properly testing and inspecting the vehicles
18 to determine if they were in compliance with Health & Safety Code section 44012.

19 d. **Section 44059**: Respondent willfully made false entries for the electronic
20 certificates of compliance by certifying that those vehicles had been inspected as required when,
21 in fact, they had not.

22 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with Regulations Pursuant
24 to the Motor Vehicle Inspection Program)**

25 46. Respondent's station license is subject to disciplinary action pursuant to
26 Health & Safety Code section 44072.2, subdivision (c), in that on or about June 21, 2007,
27 regarding electronic Certificate of Compliance No. MS406929C for the 2000 Pontiac Grand Am
28 and electronic Certificate of Compliance No. MS406930C for the 2002 Pontiac Grand Prix.

1 Respondent failed to comply with the following provisions of California Code of Regulations,
2 title 16:

3 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently
4 issued the electronic certificates of compliance for those vehicles without performing bona fide
5 inspections of the emission control devices and systems on the vehicles as required by Health and
6 Safety Code section 44012.

7 b. Section 3340.35, subdivision (c): Respondent issued the electronic
8 certificates of compliance for those vehicles even though the vehicles had not been inspected in
9 accordance with section 3340.42.

10 c. Section 3340.41, subdivision (b): Respondent allowed Martinez to
11 access the EIS using Respondent's personal access code in order to perform the smog inspections.

12 d. Section 3340.42: Respondent failed to conduct the required smog tests
13 and inspections on those vehicles in accordance with the Bureau's specifications.

14 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

16 47. Respondent has subjected his station license to disciplinary action pursuant
17 to Health and Safety Code section 44072.2, subdivision (d), in that on or about June 21, 2007,
18 regarding electronic Certificate of Compliance No. MS406929C for the 2000 Pontiac Grand Am
19 and electronic Certificate of Compliance No. MS 406930C for the 2002 Pontiac Grand Prix, he
20 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing the
21 electronic certificates of compliance for those vehicles without performing bona fide inspections
22 of the emission control devices and systems on those vehicles, thereby depriving the People of the
23 State of California of the protection afforded by the Motor Vehicle Inspection Program.

24 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

25 **(Aiding and Abetting Unlicensed Activity)**

26 48. Respondent has subjected his station license to disciplinary action pursuant
27 to Health and Safety Code section 44072.2, subdivision (f), in that on or about June 21, 2007, he
28 aided and abetted Martinez, an unlicensed person, to evade the provisions of the Motor Vehicle

1 Inspection Program by allowing Martinez to perform the smog tests and inspections on the 2000
2 Pontiac Grand Am and 2002 Pontiac Grand Prix when Martinez was not licensed to do so.

3 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

5 49. Respondent's technician license is subject to disciplinary action pursuant to
6 Health and Safety Code section 44072.2, subdivision (a), in that on or about June 21, 2007,
7 regarding electronic Certificate of Compliance No. MS406929C for a 2000 Pontiac Grand Am
8 and electronic Certificate of Compliance No. MS406930C for a 2002 Pontiac Grand Prix, he
9 violated the following sections of that Code:

10 a. **Section 44012, subdivision (f):** Respondent failed to determine that all
11 emission control devices and systems required by law were installed and functioning correctly on
12 those vehicles in accordance with test procedures.

13 b. **Section 44014, subdivision (a):** Respondent allowed Martinez to perform
14 the smog inspections when Martinez was not licensed to do so.

15 c. **Section 44032:** Respondent failed to perform tests of the emission control
16 devices and systems on those vehicles in accordance with section 44012 of that Code.

17 d. **Section 44059:** Respondent entered false information for the electronic
18 certificates of compliance by certifying that the vehicles had been inspected as required when, in
19 fact, they had not.

20 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Regulations Pursuant
22 to the Motor Vehicle Inspection Program)**

23 50. Respondent's technician license is subject to disciplinary action pursuant to
24 Health and Safety Code section 44072.2, subdivision (c), in that on or about June 21, 2007,
25 regarding electronic Certificate of Compliance No. MS406929C for a 2000 Pontiac Grand Am
26 and electronic Certificate of Compliance No. MS406930C for a 2002 Pontiac Grand Prix, he
27 violated the following sections of the California Code of Regulations:

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1 a. Section 3340.24, subdivision (c): Respondent falsely or fraudulently
2 issued the electronic certificates of compliance for those vehicles without performing bona fide
3 inspections of the emission control devices and systems on those vehicles as required by Health
4 and Safety Code section 44012.

5 b. Section 3340.30, subdivision (a): Respondent failed to inspect and test
6 the vehicles in accordance with Health and Safety Code section 44012.

7 c. Section 3340.41, subdivision (b): Respondent allowed Martinez to
8 access the EIS using Respondent's personal access code in order to perform the smog inspections.

9 d. Section 3340.42: Respondent failed to conduct the required smog tests
10 and inspections on those vehicles in accordance with the Bureau's specifications.

11 **THIRTIETH CAUSE FOR DISCIPLINE**

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

13 51. Respondent has subjected his technician license to disciplinary action
14 pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on or about June 21,
15 2007, regarding electronic Certificate of Compliance No. MS406929C for the 2000 Pontiac Grand
16 Am and electronic Certificate of Compliance No. MS406930C for the 2002 Pontiac Grand Prix,
17 he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
18 the electronic certificates of compliance for those vehicles without performing bona fide
19 inspections of the emission control devices and systems on those vehicles, thereby depriving the
20 People of the State of California of the protection afforded by the Motor Vehicle Inspection
21 Program.

22 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

23 **(Aiding and Abetting Unlicensed Activity)**

24 52. Respondent has subjected his technician license to disciplinary action
25 pursuant to Health and Safety Code section 44072.2, subdivision (f), in that on or about June 21,
26 2007, he aided and abetted Martinez, an unlicensed person, to evade the provisions of the Motor
27 Vehicle Inspection Program by allowing Martinez to perform the smog tests and inspections on

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1 the 2000 Pontiac Grand Am and 2002 Pontiac Grand Prix when Martinez was not licensed to do
2 so.

3 **SURVEILLANCE OPERATION - JUNE 22, 2007**

4 53. On or about June 22, 2007, the Bureau performed a videotaped surveillance
5 at Respondent's facility. The surveillance operation and information obtained from the Bureau's
6 VID revealed that from approximately 0857 hours to 1653 hours, two (2) smog inspections were
7 performed that resulted in the issuance of electronic Certificate of Compliance No. MS406933C
8 for a 2000 Dodge Neon and electronic Certificate of Compliance No. MS406939C for a 1999
9 Ford Windstar Van, certifying that the vehicles had been tested and inspected and that the vehicles
10 were in compliance with applicable laws and regulations. In fact, both smog inspections were
11 performed by Martinez, who was not licensed to perform smog inspections.

12 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

13 **(Misleading Statements)**

14 54. Respondent's registration is subject to disciplinary action pursuant to Code
15 section 9884.7, subdivision (a)(1), in that on or about June 22, 2007, he made statements which he
16 knew or which by exercise of reasonable care he should have known were untrue or misleading,
17 as follows:

18 a. Respondent issued electronic Certificate of Compliance No. MS406933C
19 for the 2000 Dodge Neon, certifying that the vehicle had been tested and inspected by a licensed
20 technician when, in fact, Martinez performed the tests and inspections when Martinez was not
21 licensed to do so.

22 b. Respondent issued electronic Certificate of Compliance No. MS406939C
23 for the 1999 Ford Windstar Van, certifying that the vehicle had been tested and inspected by a
24 licensed technician when, in fact, Martinez performed the tests and inspections when Martinez
25 was not licensed to do so.

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

3 **THIRTY-SEVENTH CAUSE FOR DISCIPLINE**

4 **(Aiding and Abetting Unlicensed Activity)**

5 59. Respondent has subjected his station license to disciplinary action pursuant
6 to Health and Safety Code section 44072.2, subdivision (f), in that on or about June 22, 2007, he
7 aided and abetted Martinez, an unlicensed person, to evade the provisions of the Motor Vehicle
8 Inspection Program by allowing Martinez to perform the smog tests and inspections on the 2000
9 Dodge Neon and 1999 Ford Windstar Van when Martinez was not licensed to do so.

10 **THIRTY-EIGHTH CAUSE FOR DISCIPLINE**

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

12 60. Respondent's technician license is subject to disciplinary action pursuant to
13 Health and Safety Code section 44072.2, subdivision (a), in that on or about June 22, 2007,
14 regarding electronic Certificate of Compliance No. MS406933C for a 2000 Dodge Neon and
15 electronic Certificate of Compliance No. MS406939C for a 1999 Ford Windstar Van, he violated
16 the following sections of that Code:

17 a. **Section 44012, subdivision (f):** Respondent failed to determine that all
18 emission control devices and systems required by law were installed and functioning correctly on
19 those vehicles in accordance with test procedures.

20 b. **Section 44014, subdivision (a):** Respondent allowed Martinez to perform
21 the smog inspections when Martinez was not licensed to do so.

22 c. **Section 44032:** Respondent failed to perform tests of the emission control
23 devices and systems on those vehicles in accordance with section 44012 of that Code.

24 d. **Section 44059:** Respondent entered false information for the electronic
25 certificates of compliance by certifying that those vehicles had been inspected as required when,
26 in fact, they had not.

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1 **FORTY-FIRST CAUSE FOR DISCIPLINE**

2 **(Aiding and Abetting Unlicensed Activity)**

3 63. Respondent has subjected his technician license to disciplinary action
4 pursuant to Health and Safety Code section 44072.2, subdivision (f), in that on or about June 22,
5 2007, he aided and abetted Martinez, an unlicensed person, to evade the provisions of the Motor
6 Vehicle Inspection Program by allowing Martinez to perform the smog tests and inspections on
7 the 2000 Dodge Neon and 1999 Ford Windstar Van when Martinez was not licensed to do so.

8 **UNDERCOVER OPERATION - JULY 23, 2007**

9 64. On July 23, 2007, a Bureau undercover operator using the alias "Ruben"
10 ("operator") drove a Bureau-documented 1992 Lexus ES300, California License Plate No.
11 5AFW014, to Respondent's facility for a smog inspection. The vehicle could not pass a smog
12 inspection because the vehicle's ignition timing was adjusted beyond the manufacturer's
13 specifications. Martinez accessed the EIS; however, Respondent performed the actual smog
14 inspection. Respondent failed to perform the functional test of the ignition timing and a fuel cap
15 integrity test. The operator was not provided with a written estimate prior to the smog inspection.
16 Following the completion of the smog inspection, Respondent provided the operator with a work
17 order asking for the operator's information. Respondent issued electronic Certificate of
18 Compliance No. MS956956C, certifying that he had tested and inspected the 1992 Lexus ES300
19 and that the vehicle was in compliance with applicable laws and regulations. In fact, the vehicle
20 could not have passed the functional portion of the smog inspection because the vehicle's ignition
21 timing was adjusted beyond the manufacturer's specification.

22 **FORTY-SECOND CAUSE FOR DISCIPLINE**

23 **(Untrue or Misleading Statements)**

24 65. Respondent's registration is subject to disciplinary action pursuant to Code
25 section 9884.7, subdivision (a)(1), in that on or about July 23, 2007, Respondent made or
26 authorized statements which he knew or in the exercise of reasonable care he should have known
27 to be untrue or misleading by issuing electronic Certificate of Compliance No. MS956956C for
28 the 1992 Lexus ES300, certifying that the vehicle was in compliance with applicable laws and

1 regulations. In fact, the vehicle could not have passed the functional portion of the smog
2 inspection because the vehicle's ignition timing was adjusted beyond the manufacturer's
3 specifications.

4 **FORTY-THIRD CAUSE FOR DISCIPLINE**

5 **(Fraud)**

6 66. Respondent's registration is subject to disciplinary action pursuant to Code
7 section 9884.7, subdivision (a)(4), in that on or about July 23, 2007, he committed acts which
8 constitute fraud by issuing electronic Certificate of Compliance No. MS956956C for the 1992
9 Lexus ES300 without performing a bona fide inspection of the emission control devices and
10 systems on the vehicle, thereby depriving the People of the State of California of the protection
11 afforded by the Motor Vehicle Inspection Program.

12 **FORTY-FOURTH CAUSE FOR DISCIPLINE**

13 **(Failure to Comply with the Automotive Repair Act)**

14 67. Respondent's registration is subject to disciplinary action pursuant to Code
15 section 9884.7, subdivision (a)(6), in that on or about July 23, 2007, Respondent failed to comply
16 with Code section 9884.9, subdivision (a), by failing to provide the operator with a written
17 estimated price for parts and labor for a specific job regarding the smog inspection.

18 **FORTY-FIFTH CAUSE FOR DISCIPLINE**

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

20 68. Respondent's station license is subject to disciplinary action pursuant to
21 Health & Safety Code section 44072.2, subdivision (a), in that on or about July 23, 2007,
22 regarding the 1992 Lexus ES300, Respondent failed to comply with the following sections of that
23 Code:

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

26 b. **Section 44014, subdivision (a)**: Respondent allowed Martinez to access
27 the EIS system when Martinez was not licensed to do so.

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1 c. **Section 44015, subdivision (b)**: Respondent issued electronic Certificate
2 of Compliance No. MS956956C for that vehicle without properly testing and inspecting the
3 vehicle to determine if it was in compliance with Health & Safety Code section 44012.

4 d. **Section 44059**: Respondent willfully made false entries for electronic
5 Certificate of Compliance No. MS956956C by certifying that the vehicle had been inspected as
6 required when, in fact, it had not.

7 **FORTY-SIXTH CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with Regulations Pursuant
9 to the Motor Vehicle Inspection Program)**

10 69. Respondent's station license is subject to disciplinary action pursuant to
11 Health & Safety Code section 44072.2, subdivision (c), in that on or about July 23, 2007,
12 regarding the 1992 Lexus ES300, Respondent failed to comply with the following provisions of
13 California Code of Regulations, title 16:

14 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently
15 issued electronic Certificate of Compliance No. MS956956C for the vehicle, in that the vehicle
16 could not pass the functional portion of the smog inspection because the vehicle's ignition timing
17 was adjusted beyond the manufacturer's specification.

18 b. **Section 3340.35, subdivision (c)**: Respondent issued electronic Certificate
19 of Compliance No. MS956956C for the vehicle even though the vehicle had not been inspected in
20 accordance with section 3340.42.

21 c. **Section 3340.41, subdivision (b)**: Respondent allowed Martinez to access
22 the EIS system using Respondent's personal access code when Martinez was not licensed to do
23 so.

24 d. **Section 3340.42**: Respondent failed to conduct the required smog tests on
25 the vehicle in accordance with the Bureau's specifications.

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1 c. **Section 44032:** Respondent failed to perform tests of the emission control
2 devices and systems on the vehicle in accordance with section 44012 of that Code, in that the
3 vehicle could not have passed the functional portion of the smog inspection because the vehicle's
4 ignition timing was adjusted beyond the manufacturer's specifications.

5 d. **Section 44059:** Respondent willfully made false entries for electronic
6 Certificate of Compliance No. MS956956C by certifying that the vehicle had been inspected as
7 required when, in fact, it had not.

8 **FIFTIETH CAUSE FOR DISCIPLINE**

9 **(Failure to Comply with Regulations Pursuant
10 to the Motor Vehicle Inspection Program)**

11 73. Respondent's technician license is subject to disciplinary action pursuant to
12 Health and Safety Code section 44072.2, subdivision (c), in that on or about July 23, 2007,
13 regarding electronic Certificate of Compliance No. MS956956C for the 1992 Lexus ES300, he
14 violated the following sections of the California Code of Regulations, title 16:

15 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
16 issued the electronic certificate of compliance for that vehicle without performing a bona fide
17 inspection of the emission control devices and systems on the vehicle as required by Health and
18 Safety Code section 44012.

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

21 c. **Section 3340.41, subdivision (b):** Respondent allowed Martinez to access
22 the EIS using Respondent's personal access code.

23 d. **Section 3340.41, subdivision (c):** Respondent entered false information
24 for the electronic certificate of compliance by certifying that he had inspected the vehicle when, in
25 fact, the vehicle could not pass the functional portion of the smog inspection because the vehicle's
26 ignition timing was adjusted beyond the manufacturer's specifications.

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

1 **FIFTY-FIRST CAUSE FOR DISCIPLINE**

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

3 74. Respondent's technician license is subject to disciplinary action under
4 Health and Safety Code section 44072.2, subdivision (d), in that on or about July 23, 2007, he
5 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
6 electronic Certificate of Compliance No. MS956956C for the 1992 Lexus ES300 without
7 performing a bona fide inspection of the emission control devices and systems on that vehicle,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program.

10 **FIFTY-SECOND CAUSE FOR DISCIPLINE**

11 **(Aiding and Abetting Unlicensed Activity)**

12 75. Respondent's technician license is subject to disciplinary action pursuant to
13 Health and Safety Code section 44072.2, subdivision (f), in that on or about July 23, 2007, he
14 aided and abetted Martinez, an unlicensed person, to evade the provisions of the Motor Vehicle
15 Inspection Program by allowing Martinez to access the EIS when Martinez was not licensed to do
16 so.

17 **UNDERCOVER OPERATION - AUGUST 8, 2007**

18 76. On August 8, 2007, a Bureau undercover operator using the alias "Ruben"
19 drove a Bureau-documented 1990 Mercury Sable, California License Plate No. 2REV663, to
20 Respondent's facility for a smog inspection. The vehicle could not pass a smog inspection
21 because the vehicle's ignition timing was adjusted beyond the manufacturer's specifications. The
22 operator spoke with Martinez and requested a smog inspection. The operator provided Martinez
23 with his information and signed a work order; however, the operator did not receive a written
24 estimate prior to the smog inspection. Martinez, an unlicensed person using Respondent's
25 personal access code, performed the smog inspection. Martinez failed to perform a functional test
26 of the ignition timing and a fuel cap integrity test. Respondent issued electronic Certificate of
27 Compliance No. MU156214C, certifying that he had tested and inspected the 1990 Mercury
28 Sable and that the vehicle was in compliance with applicable laws and regulations. In fact, the

1 vehicle could not have passed the functional portion of the smog inspection because the vehicle's
2 ignition timing was adjusted beyond the manufacturer's specification.

3 **FIFTY-THIRD CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 77. Respondent's registration is subject to disciplinary action pursuant to Code
6 section 9884.7, subdivision (a)(1), in that on or about August 8, 2007, Respondent made or
7 authorized statements which he knew or in the exercise of reasonable care he should have known
8 to be untrue or misleading, by issuing electronic Certificate of Compliance No. MU156214C for
9 the 1990 Mercury Sable, certifying that the vehicle was in compliance with applicable laws and
10 regulations. In fact, the vehicle could not have passed the functional portion of the smog
11 inspection because the vehicle's ignition timing was adjusted beyond the manufacturer's
12 specification.

13 **FIFTY-FOURTH CAUSE FOR DISCIPLINE**

14 **(Fraud)**

15 78. Respondent's registration is subject to disciplinary action pursuant to Code
16 section 9884.7, subdivision (a)(4), in that on or about August 8, 2007, he committed acts which
17 constitute fraud by issuing electronic Certificate of Compliance No. MU156214C for the 1990
18 Mercury Sable, without performing a bona fide inspection of the emission control devices and
19 systems on the vehicle, thereby depriving the People of the State of California of the protection
20 afforded by the Motor Vehicle Inspection Program.

21 **FIFTY-FIFTH CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with the Automotive Repair Act)**

23 79. Respondent's registration is subject to disciplinary action pursuant to Code
24 section 9884.7, subdivision (a)(6), in that on or about August 8, 2007, Respondent failed to
25 comply with Code section 9884.9, subdivision (a), by failing to provide the operator with a
26 written estimated price for parts and labor for a specific job regarding the smog inspection.

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1 **FIFTY-SIXTH CAUSE FOR DISCIPLINE**

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

3 80. Respondent's station license is subject to disciplinary action pursuant to
4 Health & Safety Code section 44072.2, subdivision (a), in that on or about August 8, 2007,
5 regarding the 1990 Mercury Sable, Respondent failed to comply with the following sections of
6 that Code:

7 a. **Section 44012, subdivision (f)**: Respondent failed to perform emission
8 control tests on the vehicle in accordance with procedures prescribed by the department.

9 b. **Section 44014, subdivision (a)**: Respondent allowed Martinez to perform
10 the smog inspection when Martinez was not licensed to do so.

11 c. **Section 44015, subdivision (b)**: Respondent issued electronic Certificate
12 of Compliance No. MU156214C for that vehicle without properly testing and inspecting the
13 vehicle to determine if it was in compliance with Health & Safety Code section 44012.

14 d. **Section 44059**: Respondent willfully made false entries for electronic
15 Certificate of Compliance No. MU156214C by certifying that the vehicle had been inspected as
16 required when, in fact, it had not.

17 **FIFTY-SEVENTH CAUSE FOR DISCIPLINE**

18 **(Failure to Comply with Regulations Pursuant**
19 **to the Motor Vehicle Inspection Program)**

20 81. Respondent's station license is subject to disciplinary action pursuant to
21 Health & Safety Code section 44072.2, subdivision (c), in that on or about August 8, 2007,
22 regarding the 1990 Mercury Sable, Respondent failed to comply with the following provisions of
23 California Code of Regulations, title 16:

24 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently
25 issued electronic Certificate of Compliance No. MU156214C for the vehicle, in that the vehicle
26 could not pass a smog inspection because the vehicle's ignition timing was adjusted beyond the
27 manufacturer's specifications.

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1 b. Section 3340.35, subdivision (c): Respondent issued electronic Certificate
2 of Compliance No. MU156214C for the vehicle even though the vehicle had not been inspected in
3 accordance with section 3340.42.

4 c. Section 3340.41, subdivision (b): Respondent allowed Martinez to
5 access the EIS using Respondent's personal access code in order to perform the smog inspection.

6 d. Section 3340.41, subdivision (c): Respondent allowed Martinez to
7 access the EIS using Respondent's personal access code in order to enter false information
8 regarding the vehicle's ignition timing and the fuel cap test.

9 e. Section 3340.42: Respondent failed to conduct the required smog tests on
10 the vehicle in accordance with the Bureau's specifications.

11 **FIFTY-EIGHTH CAUSE FOR DISCIPLINE**

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

13 82. Respondent's station license is subject to disciplinary action pursuant to
14 Health & Safety Code section 44072.2, subdivision (d), in that on or about August 8, 2007,
15 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by
16 issuing electronic Certificate of Compliance No. MU156214C for the 1990 Mercury Sable
17 without performing a bona fide inspection of the emission control devices and systems on the
18 vehicle, thereby depriving the People of the State of California of the protection afforded by the
19 Motor Vehicle Inspection Program.

20 **FIFTY-NINTH CAUSE FOR DISCIPLINE**

21 **(Aiding and Abetting Unlicensed Activity)**

22 83. Respondent's station license is subject to disciplinary action pursuant to
23 Health and Safety Code section 44072.2, subdivision (f), in that on or about August 8, 2007, he
24 aided and abetted Martinez, an unlicensed person, to evade the provisions of the Motor Vehicle
25 Inspection Program by allowing Martinez to perform the smog tests and inspections on the 1990
26 Mercury Sable when Martinez was not licensed to do so.

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

3 c. Section 3340.41, subdivision (c): Respondent entered false information
4 for the electronic certificate of compliance by certifying that he had inspected the vehicle when, in
5 fact, Martinez performed the smog tests and inspections when Martinez was not licensed to do so.

6 d. Section 3340.42: Respondent failed to conduct the required smog tests
7 and inspections on the vehicle in accordance with the Bureau's specifications.

8 **SIXTY-SECOND CAUSE FOR DISCIPLINE**

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

10 86. Respondent's technician license is subject to disciplinary action pursuant to
11 Health and Safety Code section 44072.2, subdivision (d), in that on or about August 8, 2007, he
12 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
13 electronic Certificate of Compliance No. MU156214C for the 1990 Mercury Sable without
14 performing a bona fide inspection of the emission control devices and systems on that vehicle,
15 thereby depriving the People of the State of California of the protection afforded by the Motor
16 Vehicle Inspection Program.

17 **SIXTY-THIRD CAUSE FOR DISCIPLINE**

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

19 87. Respondent's lamp and brake station licenses are subject to disciplinary
20 action pursuant to Code section 9889.3, subdivision (d), in that from May 3, 2007, to August 8,
21 2007, he committed acts involving dishonesty, fraud or deceit whereby another was injured, as
22 more particularly set forth in paragraphs 21, 25, 33, 36, 44, 47, 55, 58, 66, 70, 78, and 82, above.

23 **OTHER MATTERS**

24 88. Under Code section 9884.7, subdivision (c), the director may invalidate
25 temporarily or permanently or refuse to validate, the registrations for all places of business
26 operated in this state by Piara S. Deol, also known as Piara Singh Deol, doing business as Deol
27 Automotive Service, upon a finding that he has, or is, engaged in a course of repeated and willful
28 violations of the laws and regulations pertaining to an automotive repair dealer.

1 4. Revoking or suspending any additional license issued under Chapter 5 of
2 the Health and Safety Code in the name of Piara S. Deol, Piara Singh Deol, doing business as
3 Deol Automotive Service;

4 5. Revoking or suspending Lamp Station License Number LS 147661, Class
5 C, issued to Piara S. Deol, Piara Singh Deol, doing business as Deol Automotive Service;

6 6. Revoking or suspending Brake Station License Number BS 147661, Class
7 A, issued to Piara S. Deol, Piara Singh Deol, doing business as Deol Automotive Service;

8 7. Revoking or suspending any additional license issued under this chapter in
9 the name of Piara S. Deol, Piara Singh Deol, doing business as Deol Automotive Service;

10 8. Revoking or suspending Advanced Emission Specialist Technician License
11 Number EA 313163, issued to Piara Singh Deol, also known as Piara S. Deol;

12 9. Revoking or suspending any additional license issued under Chapter 5 of
13 the Health and Safety Code in the name of Piara Singh Deol, also known as Piara S. Deol;

14 10. Ordering Piara S. Deol, also known as Piara Singh Deol to pay the Bureau
15 of Automotive Repair the reasonable costs of the investigation and enforcement of this case,
16 pursuant to Code section 125.3; and,

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

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19 DATED: 9/29/08

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22 
23 SHERRY MEHL
24 Chief
25 Bureau of Automotive Repair
26 Department of Consumer Affairs
27 State of California
28 Complainant