

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

In the Matter of the Accusation Against:

**NGUYEN'S AUTO SERVICES INC.  
dba NGUYEN'S AUTO SERVICES II**

15 N. 27<sup>th</sup> Street  
San Jose, California 95116

And

449 Printy Avenue  
Milpitas, California 95035

**PHUONG KIM NGUYEN, President**  
Automotive Repair Dealer Registration  
No. ARD 240337  
Smog Check, Test and Repair, Station  
License No. RC 240337

**NGUYEN TRONG NGUYEN**  
Advanced Emission Specialist Technician  
License No. EA 135062

Respondents.

Case No. 79/11-39

OAH No. 2011020632

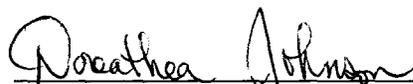
**DECISION**

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 page 6, paragraph 1 under Legal Conclusions, third paragraph, 6<sup>th</sup> line, of the Proposed Decision is corrected as follows:

The word "bee" between the words "not" and "inspected" is corrected to read "been."

This Decision shall become effective 11/7/11.

IT IS SO ORDERED this 3rd day of October, 2011.

  
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DOREATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

NGUYEN'S AUTO SERVICES INC. dba  
NGUYEN'S AUTO SERVICES II  
15 N. 27th Street  
San Jose, California 951166

and

449 Printy Avenue  
Milpitas, California 95035

PHUONG KIM NGUYEN, President  
Automotive Repair Dealer Registration No.  
ARD 240337  
Smog Check, Test and Repair, Station No.  
RC 240337

NGUYEN TRONG NGUYEN  
Advanced Emission Specialist Technician  
License No. EA 135062

Respondents.

Case No. 79/11-39

OAH No. 2011020632

**PROPOSED DECISION**

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on August 9 – 11, 2011. Minh Tam Ha, Certified Interpreter, provided English-Vietnamese interpretation on August 9 and 10, 2011. Pursuant to agreement of the parties, no interpreter was present on August 11, 2011.

Complainant Sherry Mehl, Chief, Bureau of Automotive Repair, Department of Consumer Affairs, was represented by Nicholas Tsukamaki, Deputy Attorney General.

Respondents Phuong Kim Nguyen and Nguyen Trong Nguyen were present and represented themselves.

The matter was submitted on August 11, 2011.

## FACTUAL FINDINGS

1. Complainant Sherry Mehl, Chief, Bureau of Automotive Repair (BAR), Department of Consumer Affairs, issued the accusation in her official capacity.

2. The accusation in this matter originally involved 10 vehicles, including a 2001 Subaru Impreza, license number 4SUP313. At the August 9, 2011, hearing, complainant amended the accusation to remove this vehicle from the accusation. Thus, nine vehicles are at issue in this matter.

3. Respondent Phuong Kim Nguyen, President, Nguyen's Auto Services, Inc., doing business as Nguyen's Auto Services II, 15 N. 27th Street, San Jose, California, holds Automotive Repair Dealer Registration No. ARD 240337, issued by BAR on September 16, 2005. She also holds Smog Check Station License No. RC 240337, issued by BAR on October 28, 2005. Although present at the hearing, she did not testify.

4. Respondent Nguyen Trong Nguyen holds Advanced Emission Specialist Technician License EA 135062, issued by BAR in 2003. He will be referred to as respondent Nguyen. He was the only witness to testify on behalf of respondents.

5. Respondents Nguyen Trong Nguyen and Phuong Kim Nguyen are a married couple.

6. In May 2010, complainant conducted a detailed review of the Vehicle Information Database (VID) for smog inspections performed by respondent Nguyen at respondents' facility, Nguyen's Auto Services II, from April 1, 2009, through March 31, 2010. A June 9, 2010, investigative report by Martin Sexton, BAR Program Representative I, focused on 10 vehicles, nine of which are the subject of the accusation (as amended) in this matter:

The VID showed a pattern of various diagnostic trouble codes (also known as fault codes) stored in the memory of the power train control modules (PCM) on the nine vehicles (numbers 1 through 7, 9 and 10). Respondent Nguyen certified the nine vehicles with trouble codes that are not supported by original equipment manufacturer (OEM) and widely used aftermarket service information. In other words, respondent Nguyen certified the nine vehicles as showing trouble codes that do not exist for each particular vehicle.

7. Program Representative Sexton concluded, and the evidence at hearing shows, that respondent Nguyen entered false information into the VID database and issued certificates of compliance for the nine vehicles without performing the required On Board Diagnostic II (OBD II) functional test on the vehicles.

The OBD II functional test is an automated function of the BAR-97 analyzer. During the OBD II test, the technician is required to connect an interface cable from the BAR-97 to a

connector on the subject vehicle, which enables the BAR-97 to automatically retrieve information from the vehicle's on-board computer regarding the status of readiness indicators, trouble codes, and the malfunction indicator light (MIL). If the vehicle fails the OBD II functional test, it fails the overall smog inspection.

8. "Clean plugging" is the use of another vehicle's OBD II monitor and fault code status to illegally issue a smog certificate to a test vehicle that is not in compliance with smog test requirements. A technician engaging in clean plugging plugs the BAR-97 interface cable into a vehicle that is in compliance with smog test requirements and fraudulently uses that vehicle's readings to pass an out-of-compliance vehicle. Clean plugging results in non-compliant vehicles receiving smog certificates, thus defeating the purpose of the smog check laws and contributing to air pollution in California.

9. Respondent Nguyen conducted smog tests on the nine vehicles listed below. He certified each vehicle as having passed its smog test. Computerized test data, however, revealed fault codes supposedly stored in the PCM memory of the vehicles. The reported fault codes did not apply to these vehicles.

That the fault codes did not apply to the subject vehicles is confirmed by OEM service information and further confirmed by aftermarket service and repair information providers Alldata and Mitchell. Alldata and Mitchell are widely used, nationally-recognized, industry-standard service and repair information providers. The non-supported fault codes demonstrate that respondent Nguyen clean plugged the vehicles for which he issued smog certificates. The date and time of inspection, identification information, smog certificate number, and unsupported fault code for the nine vehicles are shown in the following table:

Date and Time of Inspection	Vehicle Certified License Number	Certificate Number	Unsupported Fault Code
1. 04/10/2009 1631 – 1640	2003 Dodge Caravan License No. (no plates) VIN: 1D4GP25RX3B290689	NI361243	P1676
2. 08/06/2009 1524 – 1543	2004 Subaru Impreza License No. (no plates) VIN: JF1GD29654G517576	NM336824	P0500
3. 08/10/2009 0952 – 0957	2004 BMW X3 License No. (no plates) VIN: WBXPA934X4WA61895	NM336833	P3242
4. 10/27/2009 1306 – 1355	1997 Acura 3.5RL License No. 4XPC865	NO337919	P0128
5. 10/27/2009 1514 – 1635	2000 Chevrolet Van License No. 6F09804	NO337920	P0128
6. 12/03/2009 1609 – 1635	1998 Volkswagen Beetle License No. (no plates) VIN: 3VWBB61C1WM015420	NO829777	P1676
7. 01/19/2010	1998 Pontiac Trans Sport	NQ262026	P1800

1633 – 1643	License No. (no plates) VIN: 1GMDX03E1WD230969		
8. Not applicable (removed from accusation)	n/a	n/a	n/a
9. 02/24/2010 1342 – 1407	2001 Isuzu Rodeo License No. (no plates) VIN: 4S2CK58W514358898	NQ722546	P0455
10. 03/24/2010 1049 – 1114	1996 Volkswagen Golf License No. 3RMD529	NS151597	P0457

Vehicle 9 (2001 Isuzu Rodeo) was respondent Nguyen's own vehicle. He acknowledged at hearing that he was frustrated with the vehicle and "lost control" as he was conducting its smog test. He did not acknowledge that he clean plugged the vehicle.

Respondent Nguyen fraudulently certified that the nine vehicles passed inspection and were in compliance with applicable laws and regulations when he in fact had clean plugged those vehicles. In so doing, respondent Nguyen failed to conduct bona fide inspections of those vehicles and failed to perform the emission control tests in accordance with procedures prescribed by the state.

10. The conduct of Nguyen's Auto Services II and respondent Nguyen involved acts of dishonesty, fraud and deceit that was injurious to the people of the State of California and their interest in cleaner air.

11. Respondents submitted the following exhibits. All were admitted as administrative hearsay, except Exhibit I, which was withdrawn by respondents and not received in evidence.

- A. Print-out from [www.allpar.com](http://www.allpar.com) for "2002-2008 Chrysler, Dodge, and Jeep Error Codes"
- B. CARFAX Vehicle History report for 2003 Dodge Caravan SE (Vehicle 1)
- C. CARFAX Vehicle History report for 2004 Subaru Impreza WRX (Vehicle 2)
- D. Print-out from [www.iwsti.com](http://www.iwsti.com) car forum
- E. Print-out from [www.oakos.com](http://www.oakos.com) titled "Subaru Specific OBDII Diagnostic Trouble Codes (DTC)"
- F. Print-out from YAHOO! Answers, "Subaru ABS – Too Sensitive?"

- G. Various print-outs (including [www.bimmerfest.com](http://www.bimmerfest.com)) regarding BMW vehicles
- H. Print-out from [www.troublecodes.net](http://www.troublecodes.net)
- I. (Withdrawn, not in evidence)
- J. ALLDATA print-out for 2001 Chevy Truck Express ½ Ton Van V6-4.3L: Computers and Control Systems: Diagnostic Trouble Code Tests and Associated Procedures
- K. Smog Check Vehicle Inspection Report (VIR) for 2000 Chevrolet Van (Vehicle 5)
- L. CARFAX Vehicle History report for 2000 Chevrolet Express G2500 (Vehicle 5)
- M. Respondent Nguyen's August 2, 2011, email to himself
- N. Print-out from [www.obd-codes.com](http://www.obd-codes.com) "VW – Volkswagen OBD-II Trouble Codes
- O. CARFAX Vehicle History report for 1998 Volkswagen New Beetle (Vehicle 6)
- P. ALLDATA print-out for 1998 Volkswagen Beetle L4-2.0L: Computers and Control Systems: Diagnostic Trouble Code Tests and Associated Procedures
- Q. Internet search results for "P1676 BEETLE"
- R. Print-out from [www.freeautomechanic.com](http://www.freeautomechanic.com) "OBD II Trouble Codes from P1800 through P1899" (with handwritten notation from respondent Nguyen, "98 Pontiac transport 3.4L")
- S. Print-out from Mitchell Repair Information Company: 1998 Pontiac Transport Montana: 1997-98 Automatic Transmissions Hydra-Matic 4T60-E Diagnosis
- T. Smog Check Vehicle Inspection Report (VIR) for 2001 Isuzu Rodeo (Vehicle 9)

12. Neither respondents' exhibits, respondent Nguyen's testimony, nor any other evidence in the record established that the fault codes reported for the subject vehicles were applicable to those vehicles. To the contrary, complainant established that the reported fault

codes were not supported by the subject vehicles and that respondent Nguyen clean plugged the vehicles.

13. Respondent Nguyen asserted that unsupported fault codes can result from vehicles having their PCM switched or from vehicles being damaged and receiving salvage titles. There was no showing that the unsupported fault codes in any of the nine vehicles in issue resulted from such circumstances.

14. Complainant incurred \$10,347.50 in Attorney General costs and \$7,008.64 in investigative and other costs in connection with the investigation and prosecution of the accusation in this matter. Those costs are reasonable.

### LEGAL CONCLUSIONS

1. Pursuant to Health and Safety Code section 44072.2, the Director of the Department of Consumer Affairs is authorized to enforce the Motor Vehicle Inspection Program (Health & Saf. Code, § 44000, et. seq.).

Health and Safety Code section 44072.2 sets forth the grounds for discipline of smog check station licenses and technician licenses. A license may be disciplined under section 44072.2, subdivisions (a) (violation of Motor Vehicle Inspection Program provisions), (c) (violation of regulations implementing the inspection program as set forth in California Code of Regulations, title 16, section 3300 et seq.), and (d) (any act involving dishonesty, fraud, or deceit whereby another is injured).

California Code of Regulations, title 16, section 3340.24, subdivision (c), prohibits false or fraudulent issuance of a certificate of compliance. Section 3340.30, subdivision (a), prohibits failing to inspect and test vehicles in accordance with Health and Safety Code section 44012, which sets forth the tests that are to be conducted as part of a smog inspection. Section 3340.35, subdivision (c), prohibits issuing certificate of compliance when vehicles have not been inspected in accordance with section 3340.42. Section 3340.42 sets forth the mandatory emissions inspection standards and test procedures.

2. Pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), the registration of an automotive repair dealer may be disciplined where the dealer or its technician (or employee, partner, officer, or member) has made or authorized the making of an untrue or misleading statement which is known or should have been known to be untrue or misleading. Phuong Kim Nguyen's Automotive Repair Dealer Registration No. ARD 240337 is subject to discipline under this provision due to respondent Nguyen's false certification of the nine vehicles named in the amended accusation.

3. Respondent Phuong Kim Nguyen's Automotive Repair Dealer Registration No. ARD 240337 is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), because Nguyen's Auto Services II and respondent Nguyen issued fraudulent smog certificates for the nine vehicles involved in this matter.

4. Respondent Phuong Kim Nguyen's Smog Check Station License No. RC 240337 is subject to discipline pursuant to Health and Safety Code section 44012 because Nguyen's Auto Services II and respondent Nguyen failed to ensure that the emission control tests performed on the nine vehicles were in accordance with prescribed procedures. The smog check station license is further subject to discipline pursuant to Health and Safety Code section 44015 because Nguyen's Auto Services II issued certificates of compliance for the nine vehicles without ensuring that the vehicles were properly tested and inspected.

5. Respondent Phuong Kim Nguyen's Smog Check Station License No. RC 240337 is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), and California Code of Regulations, title 16, sections 3340.24, subdivision (c) (false or fraudulent issuance of compliance certificates without performing bona fide inspections), 3340.35, subdivision (c) (issuance of certificates without mandated inspection), and 3340.42 (failure to conduct smog tests and inspections in accordance with BAR specifications).

6. Respondent Phuong Kim Nguyen's Smog Check Station License No. RC 240337 is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), because Nguyen's Auto Services II and respondent Nguyen committed acts of dishonesty, fraud and deceit that were injurious to the people of the State of California and their interest in cleaner air.

7. Respondent Nguyen's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (a), because he failed to perform emission control tests in accordance with prescribed procedures.

8. Respondent Nguyen's Advanced Emission Specialist Technician License EA 135062 is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (c) (violation of regulations), and California Code of Regulations, title 16, sections 3340.30, subdivision (a) (compliance with required procedures), and 3340.42 (failure to conduct smog tests and inspections in accordance with BAR specifications).

9. Respondent Nguyen's Advanced Emission Specialist Technician License EA 135062 is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), because he committed acts of dishonesty, fraud and deceit by issuing certificates of compliance without performing bona fide inspections, thereby causing injury to the people of the State of California and their interest in cleaner air.

10. Respondent Nguyen maintained throughout the hearing that he did not engage in clean plugging, but he had no plausible evidence to refute complainant's evidence.

11. Business and Professions Code section 9884.7, subdivision (c), and Health and Safety Code section 44072.8 provide that, under certain conditions, additional licenses held

by respondents can be disciplined by the director. There was no showing that respondents hold licenses beyond those at issue in this matter.

12. Respondent Nguyen acknowledged that his technician license might be revoked, but requested that his wife's dealer registration and smog check test and repair licenses not be revoked. He noted that he and his wife rely on those licenses to support their family. The evidence did not show whether or not Mrs. Nguyen was aware of her husband's clean plugging. But respondents made no showing of mitigation or rehabilitation. They provided no character witnesses or letters. Respondent Nguyen did not acknowledge that he had engaged in clean plugging; the closest he came was to testify that he "lost control" while testing his Isuzu Rodeo. Respondents provided no assurances that clean plugging would not take place at their facility in the future. Under these circumstances, there is little choice but to revoke all licenses at issue.

13. Pursuant to Business and Professions Code section 125.3, respondents will be ordered to pay complainant's reasonable costs of \$17,356.16 (\$10,347.50 in Attorney General costs plus \$7,008.64 in investigative and other costs).

#### ORDER

1. Automotive Repair Dealer Registration No. ARD 240337 issued to Nguyen's Auto Services Inc., doing business as Nguyen's Auto Services II, Phuong Kim Nguyen, President, is revoked.

2. Smog Check Station License No. RC 240337 issued to Nguyen's Auto Services Inc., doing business as Nguyen's Auto Services II, Phuong Kim Nguyen, President, is revoked.

3. Advanced Emission Specialist Technician License EA 135062, issued to respondent Nguyen Trong Nguyen is revoked.

4. Respondents shall pay to the Director of Consumer Affairs \$17,356.16 as reimbursement for complainant's reasonable cost of investigation and enforcement in this matter.

DATED: September 2, 2011

  
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STEVEN C. OWYANG  
Administrative Law Judge  
Office of Administrative Hearings

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Attorney General of California  
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8  
9 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
**FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
10 **STATE OF CALIFORNIA**

11 79/11-39

12 In the Matter of the Accusation Against:

Case No.

13 **NGUYEN'S AUTO SERVICES INC.**  
14 **dba NGUYEN'S AUTO SERVICES II**

**A C C U S A T I O N**

15 15 N. 27<sup>th</sup> Street  
San Jose, California 95116

**SMOG CHECK**

- and -

16 449 Printy Avenue  
17 Milpitas, California 95035  
**PHUONG KIM NGUYEN, President**  
18 **Automotive Repair Dealer Registration No. ARD 240337**  
**Smog Check, Test and Repair, Station No. RC 240337**

19 **NGUYEN TRONG NGUYEN**  
20 449 Printy Avenue  
21 Milpitas, California 95035  
**Advanced Emission Specialist Technician License No.**  
22 **EA 135062**

23 Respondents.

24  
25 Sherry Mehl ("Complainant") alleges:

26 **PARTIES**

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



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

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

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

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

17 7. Section 44002 of the Health and Safety Code provides, in pertinent part, that the  
18 Director has all the powers and authority granted under the Automotive Repair Act for enforcing  
19 the Motor Vehicle Inspection Program.

20 8. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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



TABLE 1

Date and Time of Inspection	Vehicle Certified License No.	Certificate No.
1. 04/10/2009 1631 – 1640	2003 Dodge Caravan License No.(no plates) VIN: 1D4GP25RX3B290689	NI361243
2. 08/06/2009 1524 – 1543	2004 Subaru Impreza License No. (no plates) VIN: JF1GD29654G517576	NM336824
3. 08/10/20009 0952 – 0957	2004 BMW X3 License No. (no plates) VIN: WBXPA934X4WA61895	NM336833
4. 10/27/2009 1306 – 1355	1997 Acura 3.5RL License No. 4XPC865	NO337919
5. 10/27/2009 1514 – 1635	2000 Chevrolet Van License No. 6F09804	NO337920
6. 12/03/2009 1609 – 1635	1998 Volkswagen Beetle License No. (no plates) VIN: 3VWBB61C1WM015429	NO829777
7. 01/19/2010 1633 – 1643	1998 Pontiac Trans Sport License No. (no plates) VIN: 1GMDX03E1WD230969	NQ262026
8. 02/20/2010 1037 – 1042	2001 Subaru Impreza License No. 4SUP313	NQ722528
9. 02/24/2010 1342 – 1407	2001 Isuzu Rodeo License No. (no plates) VIN: 4S2CK58W514358898	NQ722546
10. 03/24/2010 1049 – 1114	1996 Volkswagen Golf License No. 3RMD529	NS151597

**FIRST CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

13. Respondent's registration is subject to discipline pursuant to Code section 9884.7(a)(1), in that between April 10, 2009, and March 24, 2010, it made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent certified that vehicles 1 through 10, set forth above in Table functional test, it will fail the overall inspection.

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

1 1, had passed inspection and were in compliance with applicable laws and regulations. In fact,  
2 Respondent conducted the inspections on those vehicles using the clean plugging method by  
3 substituting or using different vehicles during the OBD II functional tests in order to issue smog  
4 certificates of compliance for the 10 vehicles, and did not test or inspect the 10 vehicles as  
5 required by Health and Safety Code section 44012.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Fraud)**

8 14. Respondent's registration is subject to discipline pursuant to Code section  
9 9884.7(a)(4), in that between April 10, 2009, and March 24, 2010, it committed acts which  
10 constitute fraud by issuing electronic certificates of compliance for vehicles 1 through 10, set  
11 forth above in Table 1, without performing bona fide inspections of the emission control devices  
12 and systems on those vehicles, thereby depriving the People of the State of California of the  
13 protection afforded by the Motor Vehicle Inspection Program.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with the Motor Vehicle Inspection Program)**

16 15. Respondent's station license is subject to discipline pursuant to Health and Safety  
17 Code section 44072.2(a), in that between April 10, 2009, and March 24, 2010, regarding vehicles  
18 1 through 10, set forth above in Table 1, it failed to comply with the following sections of that  
19 Code:

20 a. **Section 44012:** Respondent failed to ensure that the emission control tests were  
21 performed on vehicles 1 through 10, in accordance with procedures prescribed by the department.

22 b. **Section 44015:** Respondent issued electronic certificates of compliance for vehicles 1  
23 through 10, without ensuring that the vehicles were properly tested and inspected to determine if  
24 they were in compliance with Health and Safety Code section 44012.

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

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Regulations Pursuant to the**  
6 **Motor Vehicle Inspection Program)**

7 16. Respondent's station license is subject to discipline pursuant to Health and Safety  
8 Code section 44072.2(c), in that between April 10, 2009, and March 24, 2010, regarding vehicles  
9 1 through 10, set forth above in Table 1, it failed to comply with provisions of California Code of  
10 Regulations, title 16, as follows:

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

14 b. **Section 3340.35(c):** Respondent issued electronic certificates of compliance even  
15 though those vehicles had not been inspected in accordance with section 3340.42 of that Code.

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

18 **FIFTH CAUSE FOR DISCIPLINE**

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

20 17. Respondent's station license is subject to discipline pursuant to Health and Safety  
21 Code section 44072.2(d), in that between April 10, 2009, and March 24, 2010, regarding vehicles  
22 1 through 10, set forth above in Table 1, it committed acts involving dishonesty, fraud or deceit  
23 whereby another was injured by issuing electronic certificates of compliance for those vehicles  
24 without performing bona fide inspections of the emission control devices and systems on the  
25 vehicles, thereby depriving the People of the State of California of the protection afforded by the  
26 Motor Vehicle Inspection Program.

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1 SIXTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 18. Respondent Nguyen's technician license is subject to discipline pursuant to Health  
4 and Safety Code section 44072.2(a), in that between April 10, 2009, and March 24, 2010,  
5 regarding vehicles 1 through 10, set forth above in Table 1, he failed to comply with section  
6 44012 of that Code in a material respect, as follows: Respondent Nguyen failed to perform the  
7 emission control tests on those vehicles in accordance with procedures prescribed by the  
8 department.

9 SEVENTH CAUSE FOR DISCIPLINE

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

12 19. Respondent Nguyen's technician license is subject to discipline pursuant to Health  
13 and Safety Code section 44072.2(c), in that between April 10, 2009, and March 24, 2010,  
14 regarding vehicles 1 through 10, set forth above in Table 1, he failed to comply with provisions of  
15 California Code of Regulations, title 16, as follows:

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

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

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

23 EIGHTH CAUSE FOR DISCIPLINE

24 (Dishonesty, Fraud or Deceit)

25 20. Respondent Nguyen's technician license is subject to discipline pursuant to Health  
26 and Safety Code section 44072.2(d), in that between April 10, 2009, and March 24, 2010,  
27 regarding vehicles 1 through 10, set forth above in Table 1, he committed acts involving  
28 dishonesty, fraud or deceit whereby another was injured by issuing electronic certificates of

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

4 **OTHER MATTERS**

5 21. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on  
6 probation the registrations for all places of business operated in this state by Nguyen's Auto  
7 Services Inc., doing business as Nguyen's Auto Services II, upon a finding that it has, or is,  
8 engaged in a course of repeated and willful violation of the laws and regulations pertaining to an  
9 automotive repair dealer.

10 22. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test and  
11 Repair Station License Number RC 240337, issued to Nguyen's Auto Services Inc., doing  
12 business as Nguyen's Auto Services II, is revoked or suspended, any additional license issued  
13 under this chapter in the name of said licensee may be likewise revoked or suspended by the  
14 director.

15 23. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission Specialist  
16 Technician License Number EA 135062, issued to Nguyen Trong Nguyen, is revoked or  
17 suspended, any additional license issued under this chapter in the name of said licensee may be  
18 likewise revoked or suspended by the director.

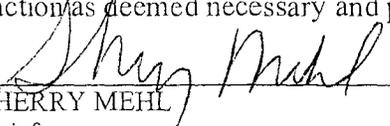
19 **PRAYER**

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

- 22 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD  
23 240337, issued to Nguyen's Auto Services Inc., doing business as Nguyen's Auto Services II;  
24 2. Revoking or suspending any other automotive repair dealer registration issued to  
25 Nguyen's Auto Services Inc., doing business as Nguyen's Auto Services II;  
26 3. Revoking or suspending Smog Test and Repair Station License Number RC  
27 240337, issued to Nguyen's Auto Services Inc., doing business as Nguyen's Auto Services II;  
28

- 1           4.       Revoking or suspending Advanced Emission Specialist Technician License
- 2           Number EA 135062, issued to Nguyen Trong Nguyen;
- 3           5.       Revoking or suspending any additional license issued under Chapter 5 of the
- 4           Health and Safety Code in the name of Nguyen Trong Nguyen;
- 5           6.       Ordering Nguyen Trong Nguyen and Nguyen's Auto Services, Inc., doing business
- 6           as Nguyen's Auto Services II to pay the Director of Consumer Affairs the reasonable costs of the
- 7           investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 8           7.       Taking such other and further action as deemed necessary and proper.

9   DATED: 1-18-10

  
SHERRY MEHL  
Chief  
Bureau of Automotive Repair I/M Smog  
Department of Consumer Affairs  
State of California  
*Complainant*

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