

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SHANA A. BAGLEY
Deputy Attorney General
4 State Bar No. 169423
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2129
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

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

11 In the Matter of the First Amended Accusation
12 Against:

Case No. 79/14-42

FIRST AMENDED ACCUSATION

13 **TOM HOA PHAM, Doing Business As**
14 **COLEMAN AUTOMOTIVE & SMOG**
15 **CHECK**
16 **660 Coleman Ave. # 5**
San Jose, CA 95110

17 **Automotive Repair Dealer Registration No.**
ARD253298
18 **Smog Check Station License No. RC253298**
19 **And**

20 **TAM HUYNH**
660 Coleman Ave. # 5
21 **San Jose, CA 95110**

22 **Smog Check Inspector License EO 147802;**
23 **Smog Check Repair Technician License EI**
24 **147802 (formerly Advanced Emission**
Specialist Technician License EA 147802)

25 Respondents.

26
27 ///

1 Complainant alleges:

2 **PARTIES**

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

6 **LICENSE INFORMATION**

7 **Respondent Coleman Automotive**

8 2. On or about January 15, 2008, the Bureau issued Automotive Repair Dealer
9 Registration Number ARD 253298 (registration) to Tom Hoa Pham, doing business as Coleman
10 Automotive & Smog Check (Respondent Coleman Automotive). The registration was in full
11 force and effect at all times relevant to the charges brought in this First Amended Accusation and
12 will expire on December 31, 2013, unless renewed.

13 3. On or about March 12, 2009, the Bureau issued Smog Check Station License Number
14 RC 253298 (station license) to Respondent Coleman Automotive. The station license was in full
15 force and effect at all times relevant to the charges brought in this First Amended Accusation and
16 will expire on December 31, 2013, unless renewed.

17 **Respondent Tam Huynh**

18 4. On a date uncertain in 2005, the Bureau issued Advanced Emission Specialist
19 Technician License Number EA 147802 (technician license) to Tam Huynh (Respondent Huynh).
20 Respondent's advanced emission specialist technician license was due to expire on August 31,
21 2012. Pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), said
22 license was renewed, pursuant to Respondent's election, as Smog Check Inspector License No.
23 EO 147802 and Smog Check Repair Technician License No. EI 147802, effective August 31,
24 2012. Respondent's smog check inspector license and smog check repair technician will expire
25 on August 31, 2015, unless renewed.¹

26 ¹ Effective August 1, 2012 California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 **JURISDICTION**

2 5. This First Amended Accusation is brought before the Director of Consumer Affairs
3 (Director) for the Bureau of Automotive Repair, under the authority of the following laws. All
4 sections references are to the Business and Professions Code (Code) unless otherwise indicated.

5 6. Code section 118, subdivision (b), states:

6 The suspension, expiration, or forfeiture by operation of law of a license issued
7 by a board in the department, or its suspension, forfeiture, or cancellation by order of
8 the board or by order of a court of law, or its surrender without the written consent of
9 the board, shall not, during any period in which it may be renewed, restored, reissued,
10 or reinstated, deprive the board of its authority to institute or continue a disciplinary
11 proceeding against the licensee upon any ground provided by law or to enter an order
12 suspending or revoking the license or otherwise taking disciplinary action against the
13 licensee on any such ground.

14 7. Code section 9884.7 provides that the Director may revoke an automotive repair
15 dealer registration.

16 8. Code section 9884.13 provides, in part, that the expiration of a valid registration shall
17 not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an
18 automotive repair dealer or to render a decision temporarily or permanently invalidating
19 (suspending or revoking) a registration.

20 9. Health and Safety Code section 44002, provides, in part, that the Director has all of
21 the powers and authority granted under the Automotive Repair Act for enforcing the Motor
22 Vehicle Inspection Program.

23 10. Health and Safety Code section 44072.6 provides, in part, that the expiration or
24 suspension of a license by operation of law, or by order or decision of the Director of Consumer
25 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
26 of jurisdiction to proceed with disciplinary action.

27 **STATUTORY PROVISIONS**

28 11. Code section 490 provides, in part:

A board may suspend or revoke a license on the ground that the licensee has
been convicted of a crime, if the crime is substantially related to the qualifications,
functions, or duties of the business or profession for which the license was issued. A

conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

12. Code section 9889.3 states, in part:

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: . . .

(b) Is convicted of any crime substantially related to the qualifications, functions and duties of the licenseholder in question.

13. Health and Safety Code section 44072.2 states, in pertinent part:

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: . . .

(b) Is convicted of any crime substantially related to the qualifications, functions, and duties of the licenseholder in question.

14. Health and Safety Code section 44072.8 states:

When 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.

15. Health and Safety Code section 44072.10 states, in part:

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

....

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

REGULATORY PROVISIONS

16. California Code of Regulations, title 16, section 3395.2 provides:

A crime or act shall be considered to be substantially related to the qualifications, functions, or duties of a registrant if to a substantial degree it shows that the registrant is presently or potentially unfit to perform the functions authorized by the registration in a manner consistent with the public health, safety, or welfare.

1 Such crimes or acts shall include, but not be limited to, any violation of the provisions
2 of Article 3 of Chapter 20.3 of Division 3 of the Business and Professions Code.²

3 17. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
4 "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
5 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
6 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

7 **COST RECOVERY**

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

11 **VID DATA REVIEW**

12 19. On or about May 17, 2012, a representative of the Bureau conducted a detailed
13 review of the Vehicle Information Database (VID) data for all smog inspections performed at
14 Respondent Coleman Automotive's facility for the period of January 1, 2012, through May 9,
15 2012. The representative found that 14 vehicles, as set forth in Table 1, below, were identified at
16 the time of certification as Directed Vehicles (DV), also known as High Emitter Profile (HEP)
17 and/or Gross Polluter (GP) vehicles. However, Respondent Coleman Automotive was not
18 licensed pursuant to Health and Safety Code sections 44014, subdivision (b), and 44014.2 and
19 California Code of Regulations section 3340.41, subdivision (e), to certify DV/HEP or GP
20 vehicles. The VID data also showed that Respondent Huynh had performed the smog inspections
21 on the 14 vehicles identified in Table 1, below.

22 20. The Bureau concluded that Respondent Coleman Automotive and Respondent Huynh
23 performed the smog inspections on the vehicles identified in Table 1, below, by intentionally
24 disconnecting the Emissions Inspection System (EIS) from the State's computer system, a method

25
26 ² Article 3 of Chapter 20.3 of Division 3 of the Code includes Section 9884.7,
27 subdivision (a)(4), which lists "conduct which constitutes fraud" as a ground for the invalidation
28 of the registration of an automotive repair dealer.

1 known as "off line testing,"³ resulting in the issuance of fraudulent certificates of compliance for
 2 the following vehicles:

3 **TABLE 1**

4	Date & Time of Inspection	Vehicle	License Plate No.	DV/HEP	GP	Certificate No.
5	1 5/5/2012 12:05-12:15	2002 Daewoo Nubria	5HLH931	Yes	No	OM247046C
6	2 5/5/2012 12:22-12:33	1992 Honda Accord	2ZRP541	Yes	No	OM247047C
7	3 5/5/2012 12:43-12:53	1998 Dodge Ram	5T49069	Yes	No	N/A
8	4 5/5/2012 3:26-3:38	1998 Dodge Ram	5T49069	Yes	No	OM247049C
9	5 5/7/2012 11:59-12:10	1994 Honda Accord	4MSW756	Yes	No	OM609752C
10	6 5/7/2012 3:14-3:26	2002 Ford Windstar	4WIC926	Yes	No	OM609753C
11	7 5/8/2012 10:08-10:19	1991 Ford Aerostar	4KPJ326	No	Yes	OM609755C
12	8 5/8/2012 12:41-12:53	1996 Toyota Camry	4XGF334	Yes	No	OM609757C
13	9 5/8/2012 1:51-2:04	1996 Chevrolet Cavalier	3RUW099	Yes	No	OM609758C
14	10 5/8/2012 2:45-3:02	1993 Toyota Pickup	6U43209	Yes	Yes	OM609759C
15	11 5/8/2012 4:20-4:31	1983 Chevrolet G20 Chevy Van	2F61167	Yes	No	OM609760C
16	12 5/8/2012 5:30-5:41	2000 Toyota Corolla	6JST154	Yes	Yes	OM609761C
17	13 5/9/2012 9:47-10:01	1994 Chevrolet C1500 Pickup	4W48351	Yes	No	OM609762C
18	14 5/9/2012 5:16-5:30	1981 Oldsmobile Cutlass	1CFC203	Yes	No	OM609767C

19 ³ To perform an "off line test," the telephone line, or high-speed or broadband connection
 20 is disconnected from the EIS prior to entering the information that identifies the vehicle he/she
 21 wishes to certify and then performs a complete smog inspection. Performing the test off line
 22 prevents the EIS from contacting the VID. The EIS would prohibit the certification of vehicles
 23 identified as directed vehicles/high emitter profile (DV/HEP) or vehicles identified as gross
 24 polluters (GP) at stations that are not licensed to certify DV/HEP or GP vehicles.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 21. Respondent Coleman Automotive's registration is subject to discipline under Code
4 section 9884.7, subdivision (a)(1), in that Respondent Coleman Automotive made statements
5 which he knew or which by exercise of reasonable care should have known to be untrue or
6 misleading, a follows:

7 a. Respondent Coleman Automotive certified that vehicles 1, 2 and 4 through 14, as
8 identified in Table 1 of paragraph 20, above, had passed inspection and complied with applicable
9 laws and regulations. Respondent Coleman Automotive conducted the inspections on the
10 vehicles while the EIS was off line because he disconnected the EIS from the State's computer
11 system.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Fraud)**

14 22. Respondent Coleman Automotive's registration is subject to discipline under Code
15 section 9884.7, subdivision (a)(4), in that Respondent Coleman Automotive committed acts
16 constituting fraud by certifying vehicles 1, 2 and 4 through 14, as identified in Table 1 of
17 paragraph 20, above, without being licensed to certify DV/HEP and GP vehicles, thereby
18 depriving the People of the State of California of the protection afforded by the Motor Vehicle
19 Inspection Program.

20 **THIRD CAUSE FOR DISCIPLINE**

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

22 23. Respondent Coleman Automotive's station license is subject to discipline pursuant to
23 Health & Safety Code section 44072.2, subdivision (a), in that Respondent Coleman Automotive
24 failed to comply with the following section of that Code:

25 a. **44015, subdivision (b):** Respondent Coleman Automotive issued electronic
26 certificates of compliance to vehicles 1, 2, and 4 through 14, as identified in Table 1 of paragraph
27 20, above, without properly being licensed by the department to issue certificates.

28

1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 24. Respondent Coleman Automotive's station license is subject to discipline pursuant to
4 Health & Safety Code section 44072.2, subdivision (c), in that Respondent failed to comply with
5 the following sections of California Code of Regulations, title 16:

6 a. **3340.17, subdivision (h):** Respondent Coleman Automotive failed to keep
7 communication line connected via modem between the EIS and the State's computer system, in
8 order to transmit required program information for vehicles, as identified in Table 1 of paragraph
9 17, above.

10 b. **3340.41, subdivision (e):** Respondent Coleman Automotive issued certificates of
11 compliance to vehicles 1, 2, and 4 through 14, as identified in Table 1 of paragraph 17, above, for
12 which the station was not licensed to certify.

13 c. **3373:** Respondent Coleman Automotive created false and misleading records in the
14 issuance of certificates of compliance to vehicles 1, 2, and 4 through 14, as identified in Table 1
15 of paragraph 20, above.

16 **FIFTH CAUSE FOR DISCIPLINE**

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

18 25. Respondent Coleman Automotive's station license is subject to discipline pursuant to
19 Health & Safety Code section 44072.2, subdivision (d), in that Respondent Coleman Automotive
20 committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic
21 smog certificate of compliance for vehicles 1, 2, and 4 through 14, as identified in Table 1 of
22 paragraph 20, above, without being licensed by the department to certify the vehicles, thereby
23 depriving the People of the State of California of the protection afforded by the Motor Vehicle
24 Inspection Program.

25 **SIXTH CAUSE FOR DISCIPLINE**

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

27 26. Respondent Huynh's smog check repair technician license and smog check inspector
28 license are subject to disciplinary action pursuant to Health & Safety Code section 44072.2,

1 subdivision (a), in that he failed to comply with section 44012 of that Code in a material respect,
2 as follows: Respondent Huynh failed to perform the emission control tests on vehicles 1 through
3 14, as identified in Table 1 of paragraph 20, above, in accordance with procedures by the
4 Department.

5 **SEVENTH CAUSE FOR DISCIPLINE**

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

7 27. Respondent Huynh's smog check repair technician license and smog check inspector
8 license are subject to disciplinary action pursuant to Health & Safety Code section 44072.2,
9 subdivision (c), in that he failed to comply with the following sections of California Code of
10 Regulations, title 16:

11 a. **3340.30 subdivision (a):** A licensed technician shall inspect, test and repair vehicles
12 in accordance with Health and Safety Code sections 44012 and 44035 and California Code of
13 Regulations, title 16, section 3340.42.

14 b. **3373:** Respondent created false and misleading records in the issuance of certificate
15 of compliance to vehicles 1, 2, and 4 through 14, as identified in Table 1 of paragraph 20, above.

16 **EIGHTH CAUSE FOR DISCIPLINE**

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

18 28. Respondent Huynh's smog check repair technician license and smog check inspector
19 license are subject to discipline pursuant to Health & Safety Code section 44072.2, subdivision
20 (d), in that he committed dishonest, fraudulent or deceitful acts whereby another is injured by
21 issuing electronic smog certificate of compliance for vehicles 1, 2, and 4 through 14, as identified
22 in Table 1 of paragraph 20, above, without being licensed by the department to certify the
23 vehicles, thereby depriving the People of the State of California of the protection afforded by the
24 Motor Vehicle Inspection Program.

25 ///

26 ///

27 ///

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NINTH CAUSE FOR DISCIPLINE

(Substantially Related Conviction)

29. Respondent Huynh's smog check repair technician license and smog check inspector license are subject to disciplinary action under Code sections 490 and 9889.3, subdivision (b), and Health and Safety Code section 44072.2, subdivision (b), in that he was convicted of an offense substantially related to the qualifications, functions, and duties of an Advanced Emission Specialist Technician, within the meaning of California Code of Regulations, title 16, section 3395.2. The circumstances are as follows:

a. On or about September 30, 2013, in the criminal proceeding entitled *People v. Tam Huyn* in Santa Clara County Superior Court Case Number C1350078, Respondent Huynh was convicted by a plea of nolo contendere, with a Harvey Waiver, of violating Vehicle Code section 4463, subdivision (a)(2), (Counterfeit Certificates) a misdemeanor.

b. Respondent Huynh was sentenced to serve 15 days in county jail, serve 3 years of informal probation, to pay restitution to the victim and fines to the court, and to comply with other terms and conditions.

c. The underlying circumstances of the conviction are more particularly set forth in paragraphs 19 and 20, above.

PRIOR CITATIONS

30. To determine the degree of discipline, if any, to be imposed on Respondent, Complaint alleges the following:

a. On or about October 6, 2009, the Bureau issued Citation No. C2010-0334 against Respondent Coleman Automotive's registration and station license for violating Health and Safety Code section 44012, subdivision (f), and California Code of Regulations, title 16, section 3340.35, subdivision (c), for issuing a certificate of compliance to a Bureau undercover vehicle that did not comply with Health & Safety Code section 44012. The Bureau assessed civil penalties totaling \$500.00 for the violations. Respondent Coleman Automotive complied with this citation on November 2, 2009.

1 b. On or about February 23, 2010, the Bureau issued Citation No. C2010-0847 against
2 Respondent Coleman Automotive's registration and station license for violating Health and
3 Safety Code section 44012, subdivision (f), and California Code of Regulations, title 16, section
4 3340.35, subdivision (c), for issuing a certificate of compliance to a Bureau undercover vehicle
5 that did not comply with Health & Safety Code section 44012. The Bureau assessed civil
6 penalties totaling \$1,000.00 for the violations. Respondent Coleman Automotive complied with
7 this citation on January 19, 2012.

8 c. On or about January 19, 2007, the Bureau issued Citation No. M2007-0463 against
9 Respondent Huynh's technician license for violating Health and Safety Code section 44032 and
10 California Code of Regulations, title 16, section 3340.30, subdivision (a), for issuing a certificate
11 of compliance to a Bureau undercover vehicle that was did not comply with Health & Safety
12 Code section 44012. Respondent Huynh was required to attend an 8-hour training course. On or
13 about March 18, 2007, Respondent Huynh completed the required training course.

14 d. On or about October 6, 2009, the Bureau issued Citation No. M2010-0335 against
15 Respondent Huynh's technician license for violating Health and Safety Code section 44032 and
16 California Code of Regulations, title 16, section 3340.30, subdivision (a), for issuing a certificate
17 of compliance to a Bureau undercover vehicle that did not comply with Health & Safety Code
18 section 44012. Respondent Huynh was required to attend an 8-hour training course. On or about
19 October 25, 2009, Respondent Huynh completed the required training course.

20 e. On or about February 23, 2010, the Bureau issued Citation No. M2010-0848 against
21 Respondent Huynh's technician license for violating Health and Safety Code section 44032 and
22 California Code of Regulations, title 16, section 3340.30, subdivision (a), for issuing a certificate
23 of compliance to a Bureau undercover vehicle that did not comply with Health & Safety Code
24 section 44012. Respondent Huynh was required to attend a 16-hour training course. On or about
25 January 23, 2012, Respondent Huynh completed the required training course.

26 ///

27 ///

28

1 **OTHER MATTERS**

2 31. Pursuant to Code section 9884.7, subdivision (c), the director may suspend, revoke,
3 or place on probation the registrations for all places of business operated in this state by Tom Hoa
4 Pham, upon a finding that he has, or is, engaged in a course of repeated and willful violations of
5 the laws and regulations pertaining to an automotive repair dealer.

6 32. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station License
7 Number RC 253298, issued to Tom Hoa Pham, doing business as Coleman Automotive & Smog
8 Check, is revoked or suspended, any additional license issued under this chapter in the name of
9 said licensees may be likewise revoked or suspended by the director.

10 33. Pursuant to Health and Safety Code section 44072.8, if Smog Check Repair
11 Technician License Number E1 147802, issued to Tam Huynh, is revoked or suspended, any
12 additional license issued under this chapter in the name of said licensees may be likewise revoked
13 or suspended by the director.

14 34. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
15 Number EO 147802, issued to Tam Huynh, is revoked or suspended, any additional license issued
16 under this chapter in the name of said licensee may be likewise revoked or suspended by the
17 Director.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
20 First Amended Accusation, and that following the hearing, the Director of Consumer Affairs
21 issue a decision:

22 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
23 Registration No. ARD 253298, issued to Tom Hoa Pham, doing business as Coleman Automotive
24 & Smog Check;

25 2. Revoking, suspending, or placing on probation any other automotive repair dealer
26 registration issued to Tom Hoa Pham;

27 3. Revoking or suspending Smog Check Station License Number RC 253298, issued to
28 Tom Hoa Pham, doing business as Coleman Automotive & Smog Check;

1 4. Revoking or suspending any additional license issued under chapter 5, of the Health
2 and Safety Code in the name of Tom Hoa Pham;

3 5. Revoking or suspending Smog Check Repair Technician License Number EI 147802,
4 issued to Tam Huynh;

5 6. Revoking or suspending Smog Check Inspector License Number EO 147802, issued
6 to Tam Hyunh;

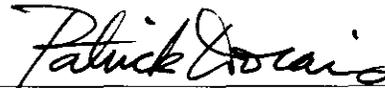
7 7. Revoking or suspending any additional license issued to Tam Huynh under chapter 5,
8 of the Health and Safety Code, pursuant to Health and Safety Code section 44072.8;

9 8. Ordering Tom Hoa Pham and Tam Huynh to pay the Director of Consumer Affairs
10 the reasonable costs of the investigation and enforcement of this case, pursuant to Code section
11 125.3; and

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

13

14 DATED: November 18, 2013



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

15

16

17

18

19 SF2012901132/ COLEMAN.acc.amended.docx

20

21

22

23

24

25

26

27

28