

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

In the Matter of the Accusation Against:

AJ SMOG TEST ONLY
660 E. Vista Way
Vista, California 92084
HUSSEIN ALY, Owner

Automotive Repair Dealer Registration
No. ARD 204920
Smog Check, Test Only, Station
License No. TC 204920

and

HUSSEIN ALY
1951 Labrea Street
Escondido, CA 92026

Advanced Emission Specialist Technician
License No. EA 303228

Respondents.

Case No. 79/09-41

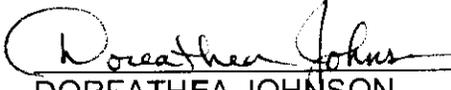
OAH No. 2009080382

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.

This Decision shall become effective 3-11-10.

IT IS SO ORDERED this 09th day of February, 2010.



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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Advanced Emission Specialist Technician
License Number EA 303228,

Respondents.

Case No. 79/09-41

OAH No. 2009080382

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge (ALJ), Office of Administrative Hearings, at San Diego, California on December 10, 2009.

Deputy Attorney General Carl W. Sonne represented complainant.

Hussein Aly (respondent), owner of AJ Smog Test Only (respondent) was present throughout the hearing and was represented by Michael B. Levin, Esq.

Oral and documentary evidence was received and the matter was submitted on December 10, 2009.

FACTUAL FINDINGS

1. Sherry Mehl (complainant) filed the Accusation while acting in her official capacity as the Chief of the Bureau of Automotive Repair (BAR), Department of Consumer Affairs, State of California.
2. On May 11, 1999, the BAR issued Automotive Repair Dealer (ARD) Registration number ARD 204920 to Hussein Aly, doing business as AJ Smog Test Only. At all times relevant to the instant proceedings, respondent's ARD Registration was in full force and effect.
3. On May 18, 1999, the BAR issued Smog Check, Test Only, Station (Smog Check) License number TC 204920 to respondent. At all times relevant to the instant proceedings, respondent's Smog Check license was in full force and effect.
4. In 1996,¹ the BAR issued Advanced Emission Specialist Technician (EA) License number EA 303228 to respondent. At all times relevant to the instant proceedings respondent's EA license was in full force and effect.

The March 24, 2008 Undercover Operation

5. On March 24, 2008, a BAR representative drove a 1994 Toyota Corolla to respondent's facility, located in Vista, California, for a smog check inspection. Prior to being driven to respondent's facility, the Toyota's ignition timing was advanced beyond the manufacturer's specifications, producing a condition which would cause the vehicle to fail a properly performed smog check inspection and functional timing test.
6. Upon arriving at respondent's facility, the BAR representative requested a smog inspection. The representative was not asked to sign a work order nor was he provided with a written estimate prior to the smog inspection. Upon completion of the inspection, the BAR representative paid respondent \$70.00. The BAR representative was provided with a copy of the invoice and a copy of the Vehicle Inspection Report (VIR). The VIR indicated that the 1994 Toyota Corolla had been issued Smog Check Certificate Number VP168865, certifying that the vehicle had passed "the enhanced Smog Check inspection." (Exh. 9.)
7. Subsequent testing of the Toyota used in the BAR undercover operation revealed that the vehicle should have failed the smog inspection performed by respondent.

¹ The license certification introduced during the hearing states, in pertinent part: "License number EA 303228 was issued in 1996, and expires on January 31, 2009. (Exh. 2.)"

8. A review of the evidence obtained during the March 24, 2008 undercover operation reveals that respondent issued electronic certificate of compliance number VP 168865 certifying that the Toyota was in compliance with all applicable state and federal laws and regulations. In fact, the vehicle was not in compliance with all applicable state and federal laws and regulations when inspected by respondent because the vehicle's ignition timing had been advanced beyond manufacturer's specifications. Additionally, the evidence revealed that respondent neglected to provide the BAR representative with a written estimate, have him sign a work order prior to commencing the Smog inspection, and respondent manually entered "Pass" into the Emission Inspection System when the Toyota could not have passed the visual/functional portion of the smog test.

Prior Discipline

9. November 20, 2006:

a. The BAR issued Citation Number C07-0319 against respondent's ARD registration and his Smog Check license based on violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department), and Title 16, California Code of Regulations, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a BAR undercover vehicle with a missing PCV system. The BAR assessed civil penalties totaling \$500 against respondent for the violations. Respondent paid the civil penalties on January 8, 2007.

b. Additionally, the BAR issued Citation Number M07-0320 against respondent's technician license² for violating of Health and Safety Code section 44032 (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department) and Title 16, California Code of Regulations, section 3340.30, subdivision (a) (issuing a certificate of compliance to a vehicle that was improperly tested). The citation required respondent to complete an 8-hour training course. Respondent complied with the citation by taking the required course.

10. September 11, 2007:

a. The BAR issued Citation Number C08-0223 against respondent's ARD registration and his Smog Check license based on violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department), and Title 16, California Code of Regulations, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a BAR undercover vehicle with a missing pulse air injection system. The BAR assessed civil

² Respondent was the technician who actually performed the Smog test inspection on November 20, 2006.

penalties totaling \$1,000 against respondent for the violations. Respondent paid the civil penalties on October 29, 2007;

b. Additionally, the BAR issued Citation Number M08-0224 against respondent's technician license³ for violating Health and Safety Code section 44032 (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department) and Title 16, California Code of Regulations, section 3340.30, subdivision (a) (issuing a certificate of compliance to a vehicle that was improperly tested). The citation required respondent to complete a 16-hour training course. Respondent complied with the citation by taking the required course.

11. November 8, 2007:

a. The BAR issued Citation Number C08-0468 against respondent's ARD registration and his Smog Check license based on violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department), and Title 16, California Code of Regulations, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a BAR undercover vehicle with the ignition timing adjusted beyond the manufacturer's specifications. The BAR assessed civil penalties totaling \$2,000 against respondent for the violations. Respondent paid the civil penalties on May 27, 2008;

b. Additionally, the BAR issued Citation Number M08-0469 against respondent's technician license⁴ for violating Health and Safety Code section 44032 (failure to perform a visual/functional check of emission control devices according to procedures prescribed by the department) and Title 16, California Code of Regulations, section 3340.30, subdivision (a) (issuing a certificate of compliance to a vehicle that was improperly tested). The citation required respondent to complete a basic clean air course. Respondent complied with the citation by taking the required course.

12. After each of the citations listed above, respondent participated in a "citation conference" during which the violations were discussed, and respondent was allowed to make any statements or ask any questions to help him bring his practices into conformity with BAR standards. During his last conference, respondent mentioned to the BAR representative that due to his poor eyesight he could not clearly see the timing marks for purposes of testing a vehicle's ignition timing. The BAR representative informed respondent that "if he could not properly visually perform an inspection he should decline testing a vehicle."

³ Respondent was the technician who actually performed the Smog test inspection on September 11, 2007.

⁴ Respondent was the technician who actually performed the Smog test inspection on November 8, 2007.

Respondent's Testimony

13. Respondent testified concerning each of his citations and the undercover operation that resulted in the instant proceedings. Respondent's testimony revealed that his errors and omissions were not the result of any fraud or deceit. Respondent has vision problems that impaired, and currently still impair, his ability to perform the visual portions of a smog check. Respondent, having recognized his limitations, has hired another technician to perform smog checks at respondent's station. Respondent hired the technician in February of 2009, and the technician works 44 hours per week, Monday through Saturday.

14. The certification of costs submitted by the BAR established that the total costs incurred by the BAR in investigating and enforcing the instant case against respondent totals \$11,479.42. Said costs are found to have been necessary and reasonable.

LEGAL CONCLUSIONS

1. Cause exists for discipline of respondent's ARD registration pursuant to California Business and Professions Code (Code) section 9884.7, subdivision (a)(1), because the findings, considered as a whole, reveal that respondent made statements concerning the inspected vehicle which he knew, or reasonably should have known, were untrue and misleading. Specifically, respondent certified that the vehicle was in compliance with all applicable state and federal laws and regulations when, in fact, the vehicle was not.

2. Cause exists for discipline of respondent's ARD registration pursuant to California Business and Professions Code (Code) section 9884.7, subdivision (a)(6), because the findings, considered as a whole, reveal the respondent failed to comply with Business and Professions Code section 9884.9, subdivision (a) by failing to provide the operator with a written estimate prior to commencing the smog inspection.

3. Cause exists for discipline of respondent's smog check station license pursuant to Health and Safety Code section 44072.2, subdivision (a), because, the findings, considered as a whole, reveal that respondent committed the following violations of provisions of the Motor Vehicle Inspection Program set forth in Health and Safety Code sections 44012, subdivisions (a) and (f), 44015, subdivision (b), and 44059:

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

b. Section 44012, subdivision (f). Respondent failed to perform emission control inspections and tests on a vehicle in accordance with prescribed procedures.

c. Section 4015, subdivision (b). Respondent issued an electronic certificate of compliance for a vehicle without determining if the vehicle met the requirements of section 44012 of the Code.

d. Section 44059. Respondent entered false information on an electronic certificate of compliance for a vehicle by indicating that all emission control devices and systems on the vehicle were installed and functioning correctly when, in fact, they were not.

4. Cause exists for discipline of respondent's smog check station license pursuant to Health and Safety Code section 44072.2, subdivision (c), because the findings, considered as a whole, reveal that respondent committed the following violations of Title 16, California Code of Regulations:

a. Section 3340.24, subdivision (c). Respondent falsely issued an electronic certificate of compliance to a vehicle without performing a bona fide inspection of the emission control devices and systems on the vehicle as required by Health and Safety Code section 44012;

b. Section 3340.35, subdivision (c). Respondent issued an electronic certificate of compliance to a vehicle even though the vehicle had not been properly inspected in accordance with section 3340.42;

c. Section 3340.42. Respondent failed to conduct the required smog tests and inspections on a vehicle in accordance with the BAR's specifications.

5. Cause exists for discipline of respondent's technician license pursuant to Health and Safety Code section 44072.2, subdivision (a), because the findings, considered as a whole, reveal that respondent committed the following violations of provisions of the Motor Vehicle Inspection Program set forth in Health and Safety Code sections 44012 and 44059:

a. Section 44012, subdivision (a). Respondent failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures;

b. Section 44012, subdivision (f). Respondent failed to perform emission control inspections and tests on a vehicle in accordance with prescribed procedures;

c. Section 44059. Respondent made false statements on the VIR for a vehicle.

6. Cause exists for discipline of respondent's technician license pursuant to Health and Safety Code section 44072.2, subdivision (c), because the findings, considered as a whole, reveal that respondent committed the following violations of Title 16, California Code of Regulations:

a. Section 3340.24, subdivision (c). Respondent falsely issued an electronic certificate of compliance to a vehicle without performing a bona fide inspection of the emission control devices and systems on the vehicle as required by Health and Safety Code section 44012;

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

c. Section 3340.41, subdivision (c). Respondent entered false information into the Emission Inspection System by entering "Pass" for the functional portion of the smog test when, in fact, the vehicle could not have passed the functional portion of the smog inspection because the vehicle's ignition timing was adjusted beyond the manufacturer's specifications.

7. Respondent did not engage in intentional acts of dishonesty, fraud or deceit.

8. As set forth in Finding 14, the reasonable costs of investigating and enforcing the instant case against respondent, recoverable by the BAR pursuant to Business and Professions Code section 125.3, total \$11,479.42.

9. Based on the Factual Findings and the Legal Conclusions, considered as a whole, it appears that the public can be adequately protected from further negligent acts by revoking respondent's technician license and by placing his ARD registration and Smog Check Test Only Station license on probation. This is so because respondent's station is a "test only" station; accordingly, respondent is precluded from performing any repair work on inspected vehicles. Additionally, respondent now has another technician in his employ who can perform smog inspections. Even though another technician will be performing inspections, respondent is cautioned that as station owner he is ultimately responsible for all inspections conducted at his station and his station license is at risk if he does not properly supervise his technician.

ORDER

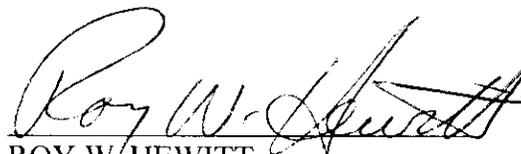
WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Respondent's Advanced Emission Specialist Technician License number EA 303228 is revoked.

2. Respondent's Automotive Repair Dealer (ARD) Registration number ARD 204920 and his Smog Check, Test Only, Station License number TC 204920 are revoked; however, the revocations are stayed and respondent's registration and license are placed on five years probation, subject to the following terms and conditions:

- a. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
- b. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
- c. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code.
- d. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.
- e. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.
- f. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard suspend or revoke respondent's license(s).
- g. If the accusation involves false and misleading advertising, during the period of probation, respondent shall submit any proposed advertising copy, whether revised or new, to the Bureau at least thirty (30) days prior to its use.
- h. Pursuant to Business and Professions Code section 125.3, respondent shall pay the BAR \$11,479.42.

DATED: January 21, 2010


ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General
of the State of California
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8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 79/09-41

13 **AJ SMOG TEST ONLY**
660 E. Vista Way
14 Vista, California 92084
HUSSEIN ALY, A.K.A.,
15 **HUSSEIN E. ALY, OWNER**

ACCUSATION
[SMOG CHECK]

16 Automotive Repair Dealer Registration
No. ARD 204920
17 Smog Check Test Only Station License
No. TC 204920

18 and

19 **HUSSEIN E. ALY, A.K.A.,**
20 **HUSSEIN ALY**
1951 Labrea Street
21 Escondido, California 92026

22 Advanced Emission Specialist Technician
License No. EA 303228

23 Respondents.
24

25 Sherry Mehl ("Complainant") alleges:

26 **PARTIES**

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

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Automotive Repair Dealer Registration

2. On or about May 11, 1999, the Bureau issued Automotive Repair Dealer Registration Number ARD 204920 ("registration") to Hussein Aly, also known as Hussein E. Aly, doing business as AJ Smog Test Only ("Respondent"). The registration will expire on April 30, 2009, unless renewed.

Smog Check Test Only Station License

3. On or about May 18, 1999, the Bureau issued Smog Check Test Only Station License Number TC 204920 ("station license") to Respondent. The station license will expire on April 30, 2009, unless renewed.

Advanced Emission Specialist Technician License

4. On a date uncertain in 1996, the Bureau issued Advanced Emission Specialist Technician License Number EA 303228 ("technician license") to Respondent. The technician license will expire on January 31, 2009, unless renewed.

STATUTORY PROVISIONS

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

(a) 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.

(1) 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.

(4) Any other conduct which constitutes fraud.

(6) Failure 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.

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only invalidate temporarily or permanently the registration of the specific place of business which has violated any of the provisions of this

1 chapter. This violation, or action by the director, shall not affect in any manner
2 the right of the automotive repair dealer to operate his or her other places of
business.

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

6 6. Code section 9884.9, subdivision (a), states:

7 (a) The automotive repair dealer shall give to the customer a written
8 estimated price for labor and parts necessary for a specific job. No work shall be
9 done and no charges shall accrue before authorization to proceed is obtained from
10 the customer. No charge shall be made for work done or parts supplied in excess
11 of the estimated price without the oral or written consent of the customer that
12 shall be obtained at some time after it is determined that the estimated price is
13 insufficient and before the work not estimated is done or the parts not estimated
14 are supplied. Written consent or authorization for an increase in the original
15 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:

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

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

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

21 _____
(signature or initials)"

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

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

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1 systems on that vehicle, thereby depriving the People of the State of California of the protection
2 afforded by the Motor Vehicle Inspection Program.

3 **THIRD CAUSE FOR DISCIPLINE**

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

5 17. Respondent has subjected his registration to discipline under Code section
6 9884.7, subdivision (a)(6), in that on or about March 24, 2008, Respondent failed to materially
7 comply with Code section 9884.9, subdivision (a) by failing to provide the operator with a
8 written estimated price for parts and labor for a specific job regarding the smog inspection.

9 **FOURTH CAUSE FOR DISCIPLINE**

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

11 18. Respondent has subjected his station license to discipline under Health and
12 Safety Code section 44072.2, subdivision (a), in that on or about March 24, 2008, regarding the
13 1994 Toyota Corolla, he violated sections of that Code, as follows:

14 a. **Section 44012, subdivision (a):** Respondent failed to determine that all
15 emission control devices and systems required by law were installed and functioning correctly in
16 accordance with test procedures.

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

19 c. **Section 44015, subdivision (b):** Respondent issued electronic
20 Certificate of Compliance No. VP168865 for that vehicle without properly testing and inspecting
21 the vehicle to determine if it was in compliance with Code section 44012.

22 d. **Section 44059:** Respondent willfully made false entries for electronic
23 Certificate of Compliance No. VP168865 for that vehicle, certifying that the vehicle had been
24 inspected as required when, in fact, it had not.

25 **FIFTH CAUSE FOR DISCIPLINE**

26 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

27 19. Respondent has subjected his station license to discipline under Health and
28 Safety Code section 44072.2, subdivision (c), in that on or about March 24, 2008, regarding the

1 1994 Toyota Corolla, he violated sections of the California Code of Regulations, title 16, as
2 follows:

3 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
4 issued electronic Certificate of Compliance No. VP168865 for that vehicle without performing a
5 bona fide inspection of the emission control devices and systems on the vehicle as required by
6 Health and Safety Code section 44012.

7 b. **Section 3340.35, subdivision (c):** Respondent issued electronic
8 Certificate of Compliance No. VP168865 for that vehicle even though the vehicle had not been
9 inspected in accordance with section 3340.42 of that Code.

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

12 **SIXTH CAUSE FOR DISCIPLINE**

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

14 20. Respondent has subjected his station license to discipline under Health and
15 Safety Code section 44072.2, subdivision (d), in that on or about March 24, 2008, he committed
16 acts involving dishonesty, fraud or deceit whereby another was injured by issuing Certificate of
17 Compliance No. VP168865 for the 1994 Toyota Corolla without performing a bona fide
18 inspection of the emission control devices and systems on the vehicle, thereby depriving the
19 People of the State of California of the protection afforded by the Motor Vehicle Inspection
20 Program.

21 **SEVENTH CAUSE FOR DISCIPLINE**

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

23 21. Respondent has subjected his technician license to discipline under Health
24 and Safety Code section 44072.2, subdivision (a), in that on or about March 24, 2008, regarding
25 the 1994 Toyota Corolla, he violated sections of that Code, as follows:

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

1 electronic Certificate of Compliance No. VP168865 for the 1994 Toyota Corolla without
2 performing a bona fide inspection of the emission control systems and devices on that vehicle,
3 thereby depriving the People of the State of California of the protection afforded by the Motor
4 Vehicle Inspection Program.

5 **PRIOR CITATIONS**

6 24. To determine the degree of discipline, if any, to be imposed on
7 Respondent, Complainant alleges as follows:

8 a. On or about November 20, 2006, the Bureau issued Citation No.
9 C07-0319 against Respondent's registration and station licenses for violations of Health & Safety
10 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission
11 control devices according to procedures prescribed by the department), and California Code of
12 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
13 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
14 Bureau undercover vehicle with a missing PCV system. The Bureau assessed civil penalties
15 totaling \$500 against Respondent for the violations. Respondent complied with this citation on
16 January 8, 2007.

17 b. On or about November 20, 2006, the Bureau issued Citation No. M07-
18 0320 against Respondent's technician license for violations of Health & Safety Code section
19 44032, (failure to perform a visual/functional check of emission control devices according to
20 procedures prescribed by the department), and Regulation 3340.30, subdivision (a) (issuing a
21 certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of
22 compliance to a Bureau undercover vehicle with a missing PCV system. The Bureau directed
23 Respondent to complete an 8-hour training course. Respondent complied with this citation on
24 February 10, 2007.

25 c. On or about September 11, 2007, the Bureau issued Citation No. C08-
26 0223 against Respondent's registration and station licenses for violations of Health & Safety
27 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission
28 control devices according to procedures prescribed by the department), and Regulation 3340.35,

1 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
2 issuing a certificate of compliance to a Bureau undercover vehicle with a missing pulse air
3 injection system. The Bureau assessed civil penalties totaling \$1,000 against Respondent for the
4 violations. Respondent complied with this citation on October 29, 2007.

5 d. On or about September 11, 2007, the Bureau issued Citation No. M08-
6 0224 against Respondent's technician license for violations of Health & Safety Code section
7 44032, (failure to perform a visual/functional check of emission control devices according to
8 procedures prescribed by the department), and Regulation 3340.30, subdivision (a) (issuing a
9 certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of
10 compliance to a Bureau undercover vehicle with a missing pulse air injection system. The
11 Bureau directed Respondent to complete a 16-hour training course. Respondent complied with
12 this citation on November 3, 2007.

13 e. On or about November 8, 2007, the Bureau issued Citation No. C08-0468
14 against Respondent's registration and station licenses for violations of Health & Safety Code
15 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
16 devices according to procedures prescribed by the department), and Regulation 3340.35,
17 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
18 issuing a certificate of compliance to a Bureau undercover vehicle with the ignition timing
19 adjusted beyond the manufacturer's specifications. The Bureau assessed civil penalties totaling
20 \$2,000 against Respondent for the violations. Respondent complied with this citation on
21 May 27, 2008.

22 f. On or about November 8, 2007, the Bureau issued Citation No.M08-0469,
23 against Respondent's technician license for violations of Health & Safety Code section 44032,
24 (failure to perform a visual/functional check of emission control devices according to procedures
25 prescribed by the department), and Regulation 3340.30, subdivision (a) (issuing a certificate of
26 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
27 Bureau undercover vehicle with ignition timing adjusted beyond the manufacturer's

28 ///

1 specifications. The Bureau directed Respondent to complete a basic clean air course.

2 Respondent complied with this citation on April 16, 2008.

3 **OTHER MATTERS**

4 25. Pursuant to Code section 9884.7, subdivision (c), the Director may
5 invalidate temporarily or permanently, the registrations for all places of business operated in this
6 state by Hussein Aly, also known as Hussein E. Aly, doing business as AJ Smog Test Only, upon
7 a finding that said he has, or is, engaged in a course of repeated and willful violations of the laws
8 and regulations pertaining to an automotive repair dealer.

9 26. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test
10 Only Station License Number TC 204920, issued to Hussein Aly, also known as Hussein E. Aly,
11 doing business as AJ Smog Test Only, is revoked or suspended, any additional license issued
12 under this chapter in the name of said licensee may be likewise revoked or suspended by the
13 director.

14 27. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission
15 Specialist Technician License Number EA 303228, issued to Hussein E. Aly, also known as
16 Hussein Aly, is revoked or suspended, any additional license issued under this chapter in the
17 name of said licensee may be likewise revoked or suspended by the director.

18 **PRAYER**

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

21 1. Temporarily or permanently invalidating Automotive Repair Dealer
22 Registration Number ARD 204920, issued to Hussein Aly, also known as Hussein E. Aly, doing
23 business as AJ Smog Test Only;

24 2. Temporarily or permanently invalidating any other automotive repair
25 dealer registration issued to Hussein Aly, also known as Hussein E. Aly, doing business as
26 AJ Smog Test Only;

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1 3. Revoking or suspending Smog Check Test Only Station License Number
2 TC 204920, issued to Hussein Aly, also known as Hussein E. Aly, doing business as AJ Smog
3 Test Only;

4 4. Revoking or suspending any additional license issued under Chapter 5 of
5 the Health and Safety Code in the name of Hussein Aly, also known as Hussein E. Aly, doing
6 business as AJ Smog Test Only;

7 3. Revoking or suspending Advanced Emission Specialist Technician
8 License Number EA 303228, issued to Hussein E. Aly, also known as Hussein Aly;

9 4. Revoking or suspending any additional license issued under Chapter 5 of
10 the Health and Safety Code in the name of Hussein E. Aly, also known as Hussein Aly;

11 7. Ordering Hussein Aly, also known as Hussein E. Aly to pay the Director
12 of Consumer Affairs the reasonable costs of the investigation and enforcement of this case,
13 pursuant to Code section 125.3; and,

14 8. Taking such other and further action as deemed necessary and proper.

15 DATED: 11-7-08

16 
17 SHERRY MEHL
18 Chief
19 Bureau of Automotive Repair
20 Department of Consumer Affairs
21 State of California
22 Complainant