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

79/10-07

12 In the Matter of the Accusation Against:

Case No.

13 **A K AMIGOS AUTO SMOG**  
14 **ASHOK KUMAR, OWNER**  
302 N. 9th Street  
15 Modesto, California 95350  
Automotive Repair Dealer Registration  
16 No. ARD 217694  
Smog Check Test Only Station License  
No. TC 217694,

**ACCUSATION**

**SMOG CHECK**

17 **and**

18 **ASHOK KUMAR**  
4125 Heritage Oak Court  
19 Modesto, California 95350  
Advanced Emission Specialist Technician  
20 License No. EA 142209

21 Respondents.

22  
23 Complainant alleges:

24 **PARTIES**

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

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1           **Automotive Repair Dealer Registration**

2           2.     On a date uncertain in September/October 2001, the Bureau issued Automotive  
3     Repair Dealer Registration Number ARD 217694 ("registration") to Ashok Kumar  
4     ("Respondent"), as owner of A K Amigos Auto Smog. The registration was in full force and  
5     effect at all times relevant to the charges brought herein and will expire on August 31, 2009,  
6     unless renewed.

7           **Smog Check Test Only Station License**

8           3.     On or about October 15, 2001, the Bureau issued Smog Check Test Only Station  
9     License Number TC 217694 ("station license") to Respondent. The station license was in full  
10    force and effect at all times relevant to the charges brought herein and will expire on August 31,  
11    2009, unless renewed.

12          **Advanced Emission Specialist Technician License**

13          4.     On a date uncertain in 2002, the Bureau issued Advanced Emission Specialist  
14    Technician License Number EA 142209 ("technician license") to Respondent. The technician  
15    license will expire on April 30, 2010, unless renewed.

16                                   **STATUTORY PROVISIONS**

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

19                   (a) The director, where the automotive repair dealer cannot show there  
20                   was a bona fide error, may refuse to validate, or may invalidate temporarily or  
21                   permanently, the registration of an automotive repair dealer for any of the following  
22                   acts or omissions related to the conduct of the business of the automotive repair  
23                   dealer, which are done by the automotive repair dealer or any automotive technician,  
24                   employee, partner, officer, or member of the automotive repair dealer.

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

28                   (4) Any other conduct which constitutes fraud.

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

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

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

10 7. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"  
11 "commission," "committee," "department," "division," "examining committee," "program," and  
12 "agency." "License" includes certificate, registration or other means to engage in a business or  
13 profession regulated by the Code.

14 8. Section 44002 of the Health and Safety Code provides, in pertinent part, that the  
15 Director has all the powers and authority granted under the Automotive Repair Act for enforcing  
16 the Motor Vehicle Inspection Program.

17 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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





1 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of  
2 Compliance No. NE457888C without properly testing and inspecting that vehicle to determine it  
3 is was in compliance with section 44012 of that Code.

4 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of  
5 Compliance No. NE457888C, certifying that the vehicle had been inspected as required, when, in  
6 fact, it had not.

7 **FOURTH CAUSE FOR DISCIPLINE**

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

9 17. Respondent's station license is subject to discipline pursuant to Health and Safety  
10 Code section 44072.2, subdivision (c), in that on or about September 30, 2008, regarding the  
11 1999 Pontiac Grand Am, Respondent violated the following sections of the California Code of  
12 Regulations, title 16:

13 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
14 electronic Certificate of Compliance No. NE457888C without performing a bona fide inspection  
15 of the emission control devices and systems on that vehicle as required by Health and Safety  
16 Code section 44012.

17 c. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of  
18 Compliance No. NE457888C even though that vehicle had not been inspected in accordance with  
19 section 3340.42 of that Code.

20 d. **Section 3340.42:** Respondent failed to conduct the required smog tests and  
21 inspections in accordance with the Bureau's specifications.

22 **FIFTH CAUSE FOR DISCIPLINE**

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

24 18. Respondent's station license is subject to discipline pursuant to Health and Safety  
25 Code section 44072.2, subdivision (d), in that on or about September 30, 2008, regarding the  
26 1999 Pontiac Grand Am, Respondent committed acts involving dishonesty, fraud or deceit  
27 whereby another was injured by issuing electronic Certificate of Compliance No. NE457888C  
28 without performing a bona fide inspection of the emission control devices and systems on that

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

3 **SIXTH CAUSE FOR DISCIPLINE**

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

5 19. Respondent's technician license is subject to discipline pursuant to Health and Safety  
6 Code section 44072.2, subdivision (a), in that on or about September 30, 2008, regarding the  
7 1999 Pontiac Grand Am, Respondent failed to comply with the following sections of that Code:

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

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

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

15 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of  
16 Compliance No. NE457888C, certifying that the vehicle had been inspected as required, when, in  
17 fact, it had not.

18 **SEVENTH CAUSE FOR DISCIPLINE**

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

20 20. Respondent's technician license is subject to discipline pursuant to Health and Safety  
21 Code section 44072.2, subdivision (c), in that on or about September 30, 2008, regarding the  
22 1999 Pontiac Grand Am, Respondent violated the following sections of the California Code of  
23 Regulations, title 16:

24 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
25 electronic Certificate of Compliance No. NE457888C without performing a bona fide inspection  
26 of the emission control devices and systems on that vehicle as required by Health and Safety  
27 Code section 44012.

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1 untrue or misleading by certifying that the 1998 Pontiac Grand Prix had passed inspection and  
2 was in compliance with applicable laws and regulations. In fact, Respondent conducted the smog  
3 inspection using another vehicle for the OBDII functional test in order to issue electronic  
4 Certificate of Compliance No. NE521873C.

5 **TENTH CAUSE FOR DISCIPLINE**

6 **(Fraud)**

7 24. Respondent's registration is subject to discipline pursuant to Code section 9884.7,  
8 subdivision (a)(4), in that on or about October 6, 2008, Respondent committed acts which  
9 constitute fraud by issuing electronic Certificate of Compliance No. NE521873C for the 1998  
10 Pontiac Grand Prix without performing a bona fide inspection of the emission control devices and  
11 systems on that vehicle, thereby depriving the People of the State of California of the protection  
12 afforded by the Motor Vehicle Inspection Program.

13 **ELEVENTH CAUSE FOR DISCIPLINE**

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

15 25. Respondent's station license is subject to discipline pursuant to Health and Safety  
16 Code section 44072.2, subdivision (a), in that on or about October 6, 2008, regarding the 1998  
17 Pontiac Grand Prix, Respondent failed to comply with the following sections of that Code:

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

21 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests  
22 in accordance with procedures prescribed by the department.

23 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of  
24 Compliance No. NE521873C without properly testing and inspecting that vehicle to determine it  
25 is was in compliance with section 44012 of that Code.

26 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of  
27 Compliance No. NE521873C, certifying that the vehicle had been inspected as required, when, in  
28 fact, it had not.

1 TWELFTH CAUSE FOR DISCIPLINE

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

3 26. Respondent's station license is subject to discipline pursuant to Health and Safety  
4 Code section 44072.2, subdivision (c), in that on or about October 6, 2008, regarding the 1998  
5 Pontiac Grand Prix, Respondent violated the following sections of the California Code of  
6 Regulations, title 16:

7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued  
8 electronic Certificate of Compliance No. NE521873C without performing a bona fide inspection  
9 of the emission control devices and systems on that vehicle as required by Health and Safety  
10 Code section 44012.

11 c. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of  
12 Compliance No. NE521873C even though that vehicle had not been inspected in accordance with  
13 section 3340.42 of that Code.

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

16 THIRTEENTH CAUSE FOR DISCIPLINE

17 (Dishonesty, Fraud or Deceit)

18 27. Respondent's station license is subject to discipline pursuant to Health and Safety  
19 Code section 44072.2, subdivision (d), in that on or about October 6, 2008, regarding the 1998  
20 Pontiac Grand Prix, Respondent committed acts involving dishonesty, fraud or deceit whereby  
21 another was injured by issuing electronic Certificate of Compliance No. NE521873C without  
22 performing a bona fide inspection of the emission control devices and systems on that vehicle,  
23 thereby depriving the People of the State of California of the protection afforded by the Motor  
24 Vehicle Inspection Program.

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1 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS  
2 for electronic Certificate of Compliance No. NE521873C by entering vehicle identification  
3 information or emission control information for a vehicle other than the vehicle being certified.

4 d. **Section 3340.42:** Respondent failed to conduct the required smog tests and  
5 inspections in accordance with the Bureau's specifications.

6 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

8 30. Respondent's technician license is subject to discipline pursuant to Health and Safety  
9 Code section 44072.2, subdivision (d), in that on or about October 6, 2008, regarding the 1998  
10 Pontiac Grand Prix, Respondent committed acts involving dishonesty, fraud or deceit whereby  
11 another was injured by issuing electronic Certificate of Compliance No. NE521873C without  
12 performing a bona fide inspection of the emission control devices and systems on that vehicle,  
13 thereby depriving the People of the State of California of the protection afforded by the Motor  
14 Vehicle Inspection Program.

15 **OTHER MATTERS**

16 31. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily  
17 or permanently or refuse to validate, the registrations for all places of business operated in this  
18 state by Ashok Kumar doing business as A K Amigos Auto Smog, upon a finding that he has, or  
19 is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to  
20 an automotive repair dealer.

21 32. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station  
22 License Number TC 217694, issued to Ashok Kumar doing business as A K Amigos Auto Smog,  
23 is revoked or suspended, any additional license issued under this chapter in the name of said  
24 licensee may be likewise revoked or suspended by the director.

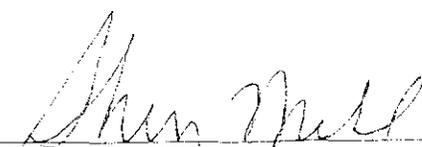
25 33. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist  
26 Technician License Number EA 142209, issued to Ashok Kumar, is revoked or suspended, any  
27 additional license issued under this chapter in the name of said licensee may be likewise revoked  
28 or suspended by the director.

PRAYER

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

1. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number ARD 217694, issued to Ashok Kumar doing business as A K Amigos Auto Smog;
2. Temporarily or permanently invaliding any other automotive repair dealer registration issued to Ashok Kumar;
3. Revoking or suspending Smog Check Test Only Station License Number TC 217694, issued to Ashok Kumar doing business as A K Amigos Auto Smog;
4. Revoking or suspending any additional license issued under this chapter in the name of Ashok Kumar;
5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 142209, issued to Ashok Kumar;
6. Revoking or suspending any additional license issued under this chapter in the name of Ashok Kumar;
7. Ordering Ashok Kumar to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
8. Taking such other and further action as deemed necessary and proper.

DATED: 8/15/09

  
SHERRY MEHL

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

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