

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

In the Matter of the Accusation Against:

T & T AUTO SMOG TEST ONLY CENTER
1602 s. Coast Highway, Suite C
Oceanside, CA 92054

PHUC QUOC THAI, Partner
HAI DINH TRAN, Partner
Automotive Repair Dealer Registration
No. ARD 229799
Smog Check Test Only Station License No.
TC 229799

and

HAI DINH TRAN
5156 Towle Court
San Diego, CA 92105
Advanced Emission Specialist Technician
License No. EA 146190

Respondents.

Case No. 79/09-55

OAH No. 2009090882

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.

The suspension of Automotive Repair Dealer Registration No. ARD 229799 and Smog Check Test Only Station License No. TC 229799 shall commence on the effective date of this decision.

This Decision shall become effective 5/17/10

IT IS SO ORDERED April 13, 2010


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

Case No. 79/09-55

T & T AUTO SMOG TEST ONLY CENTER
1602 S. Coast Highway, Suite C
Oceanside, CA 92054

OAH No. 2009090882

PHUC QUOC THAI, PARTNER
HAI DINH TRAN, PARTNER
Automotive Repair Dealer Registration
No. ARD 229799
Smog Check Test Only Station License No.
TC 229799

and

HAI DINH TRAN
5156 Towle Court
San Diego, CA 92105
Advanced Emission Specialist Technician
License No. EA 146190

Respondents.

PROPOSED DECISION

On March 2, 2010, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Karen Gordon, Deputy Attorney General, represented complainant.

Respondent Phuc Quoc Thai represented respondents. Both respondents were present throughout the administrative proceeding.

The matter was submitted on March 2, 2010.

FACTUAL FINDINGS

License History

1. On November 23, 2003, Automotive Repair Dealer Registration No. ARD 229799 was issued to respondent T & T Auto Smog Test Only Center (respondent T & T), a partnership owned by respondents Phuc Quoc Thai (respondent Thai) and Hai Dinh Tran (respondent Tran).
2. On January 2, 2004, Smog Check Test Only Station License No. TC 229799 was issued to respondent T & T.
3. Advanced Emission Specialist (EA) Technician License No. EA 146190 was issued to respondent Tran in 2003.
4. Advanced Emission Specialist (EA) Technician License No. EA 133142 was issued to respondent Thai in 2003, but was suspended on September 26, 2007.

Previous Administrative Discipline

5. On September 1, 2006, March 23, 2007, and June 22, 2007, the Bureau of Automotive Repair (the Bureau or the BAR) conducted three undercover operations at respondent T & T to determine if respondent T & T was complying with rules and regulations pertaining to licensed smog check centers. Respondent Thai was the smog check technician for each of the undercover operations.

A. In the September 1, 2006, undercover operation, the Bureau presented an undercover vehicle with a missing EGR valve to respondent T & T for a smog check inspection. Respondent Thai failed to determine the PCV was missing which resulted in the wrongful issuance of a certificate of compliance.

The Bureau issued a citation against respondents T & T and Thai. It assessed a civil penalty of \$500.00 against respondent T & T which was paid on October 26, 2006. The Bureau required respondent Thai to complete an eight-hour training course which he completed on November 11, 2006.

B. In the March 23, 2007, undercover operation, the Bureau presented an undercover vehicle with a missing EGR valve to respondent T & T for a smog check inspection. Respondent Thai failed to determine the PCV was missing which resulted in the wrongful issuance of a certificate of compliance.

The Bureau issued a citation against respondents T & T and Thai. It assessed a civil penalty of \$1,000.00 against respondent T & T which was paid on June 5, 2007. The Bureau required respondent Thai to complete a 16-hour training course which he completed on May 31, 2007.

C. In the June 22, 2007, undercover operation, the Bureau presented an undercover vehicle with its ignition timing adjusted beyond specifications to respondent T & T for a smog check inspection. Respondent Thai failed to determine the ignition timing was adjusted beyond specifications which resulted in the wrongful issuance of a certificate of compliance.

The Bureau issued a citation against respondents T & T and Thai. It assessed a civil penalty of \$2,000.00 against respondent T & T which was paid on September 4, 2007. The Bureau required respondent Thai to complete a 68-hour Clean Air Car Training course which he did not complete. This resulted in the suspension of respondent Thai's license.

D. Following the issuance of each citation, the Bureau conducted citation conferences with respondent Thai as the owner of respondent T & T and as the technician. Bureau personnel advised respondent Thai, among other things, that future violations would lead to additional civil penalties or legal action, and further undercover operations would be employed.

Jurisdictional Matters

6. On December 15, 2008, Sherry Mehl, Chief, Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation No. 79/09-55. Respondents filed timely Notices of Defense.

The September 12, 2007 Undercover Investigation

7. On September 12, 2007, Tamara Hopton, an undercover operative of the Bureau participated in a Bureau undercover operation at 1602 S. Coast Highway, Suite C, Oceanside, California, respondent T & T's licensed establishment, using a 1992 Toyota pickup, license number 4S12688. Previously, Bureau staff had tampered with the vehicle's emissions control system by removing the pulse air injection system. Ms. Hopton drove the vehicle to the facility and requested a smog inspection.

Respondent Tran performed the test. After he completed the test, he gave Ms. Hopton an invoice and a vehicle inspection report which indicated the vehicle had passed the inspection. The information relating to the test and the test result was transmitted by modem from respondent's EIS to the Bureau's database and to the DMV.

8. A proper smog inspection in compliance with the applicable statutes and regulations of the Bureau consists of a visual inspection of anti-smog equipment, a functional engine system check, and an emission check. The visual inspection requires the technician conduct an underhood visual check that the required items of the emissions control system are present. A functional check requires the technician to test some of the equipment which comprises the emissions control system to determine if it works properly and to check the ignition timing to ensure it satisfies the manufacturer's specifications.

John Ghio is a program representative with the Bureau assigned to the Bureau's San Leandro documentation lab. On May 18, 2007, after assuring himself the Toyota pickup passed a smog inspection, he created a functional failure in the vehicle by removing the air suction system reed valve assembly. He then performed two smog inspections of the vehicle and determined it failed because of the missing assembly.

The results of a smog inspection are printed on a strip of paper known as a Vehicle Inspection Report. The report reflects an overall designation of whether the vehicle passes or fails the smog inspection. The Vehicle Inspection Report respondent Tran provided to Ms. Hopton contained the entry the undercover vehicle "passed" the functional portion of the test. That entry was false in that the air suction system reed valve assembly was missing, and this should have been determined and reflected on the report.

A Certificate of Compliance No. VJ778221 was transmitted by respondent T & T's EIS to the Bureau and DMV, and it indicated the undercover vehicle inspected by respondent Tran was in compliance with the applicable requirements of the Health and Safety Code. This certificate should not have been issued because the vehicle was not in compliance with the applicable anti-smog requirements.

The May 2, 2008 Undercover Investigation

9. On May 2, 2008, Victoria Gunning, an undercover operative of the Bureau participated in a Bureau undercover operation at respondent T & T's licensed establishment, using a 1990 Toyota Camry, license number 2PUM034. Previously, Bureau staff had tampered with its emissions control system by advancing the engine's ignition timing 10 degrees from the manufacturer's specification. Ms. Gunning drove the vehicle to the facility and requested a smog inspection.

Respondent Tran performed the test. After he completed the test, he gave Ms. Gunning an invoice and a vehicle inspection report which indicated the vehicle had passed the inspection. A Certificate of Compliance No. VP 725672 was transmitted by respondent T & T's EIS to the Bureau and DMV, and it indicated the undercover vehicle inspected by respondent Tran was in compliance with the applicable requirements of the Health and Safety Code.

Daniel Woods is a program representative with the Bureau assigned to the Bureau's Rialto documentation lab. On April 8, 2008, after assuring himself the Toyota Camry passed a smog inspection, he created a functional failure in the vehicle by advancing the engine's ignition timing 10 degrees beyond the manufacturer's specification. He also installed a tamper indicator on the engine to detect distributor rotation which is required in order to adjust the timing. He then performed two smog inspections of the vehicle, and determined it failed because of the incorrect ignition timing.

On May 5, 2008, Mr. Woods inspected the Toyota Camry and performed a smog check inspection. The vehicle passed. He observed the timing was set to the factory specification, and the tamper indicator was broken. He concluded that the Toyota Camry's

ignition timing had been adjusted while it was signed out of the lab and in possession of Bureau field personnel.

Felix Caraballo is a Program Representative with the Bureau. He conducted the two undercover operations of respondent T & T's premises. Before he turned the Toyota Camry over to Ms. Gunning, he inspected the vehicle and determined the tamper indicator was intact. After Ms. Gunning returned the Toyota Camry to him on May 2, 2008, he inspected the vehicle and determined the tamper indicator had been broken.

10. The invoice respondents T & T and Tran provided to Ms. Gunning indicated that respondents performed a smog inspection on the Toyota Camry and charged her for it. The invoice does not indicate that respondents performed an adjustment to the ignition timing, and does not contain any charges for such a service. Neither respondent Tran nor respondent Thai informed Ms. Gunning that her vehicle needed an ignition timing adjustment or asked for authorization to perform such a service.

T & T's Operation

11. Respondent Thai came to the United States from Vietnam in 1994, and opened respondent T & T in January 2003, with respondent, Tran, his brother-in-law. Respondent Thai had worked as the smog check technician for the facility until after the third undercover operation in 2007. He completed the 68-hour training course required of him, but he did not have the certification of completion submitted by his instructor to the Bureau, and consequently, his license was suspended. He stopped performing smog inspections at that time, and respondent Tran has been performing them since that time.

Respondent Tran came to the United States from Vietnam as a political refugee. He has a wife and three children, including an infant. He has been a mechanic since 1996. He attended Miramar College where he completed several courses in auto mechanics. He also is ASE-certified in a number of areas. He performs the smog inspections for respondent T & T.

Respondent Tran admitted he adjusted the timing on the Toyota Camry, and did it to help the customer. He did not have any financial motive for adjusting the timing. Respondent Thai did not know about the adjustment.

Between September 27, 2007 and May 2, 2008, the Bureau performed an undercover operation at respondent T & T, respondent Tran performed the inspection of the vehicle, and determined an air pump was missing. He did not complete the smog check, but told the customer it would fail the inspection. The customer left the facility without having the smog check performed.

Costs of Investigation and Prosecution

12. A Certification of Costs of Investigation and Prosecution was filed to support the Bureau's claim for recovery of investigative costs of \$11,395.05. The Attorney General submitted a certification of costs showing that 38.5 hours of attorney services and 9.25 hours

of paralegal services were performed, and together, the total legal costs were \$7,373.75. Consequently, the total costs for investigation and prosecution of this matter is \$18,768.80.

LEGAL CONCLUSIONS

1. Business and Professions Code section 9884.7 provides in part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error . . . 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 that constitutes fraud.

...

(6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

2. Business and Professions Code section 9884.8 provides:

All work done by an automotive repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied. Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for parts, not including sales tax, and shall state separately the sales tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a statement indicating whether any crash parts are original equipment manufacturer crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be given to the customer and one copy shall be retained by the automotive repair dealer.

3. Business and Professions Code section 9884.9 provides in part:

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

4. Health and Safety Code section 44072.2 provides in part:

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

(a) Violates any section of this chapter and the regulations adopted pursuant to it, which related to the licensed activities.

...

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

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

5. Health and Safety Code section 44012 provides in part:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44103, shall require, at a minimum, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas, and shall ensure all of the following:

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

...

(f) A visual or functional check is made of emission control devices specified by the department . . . The visual or functional check shall be performed in accordance with procedures prescribed by the department . . .

6. Health and Safety Code section 44015 provides in part:

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance . . .

7. Business and Professions Code section 44032 provides in part:

No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smog check station. Qualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.

8. Business and Professions Code section 44059 provides in part:

The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter . . . constitutes perjury and is punishable as provided in the Penal Code.

9. Title 16, California Code of Regulations, section 3340.16, provides in part:

(d) A smog check test-only station shall not engage in any automotive repair work.

10. Title 16, California Code of Regulations, section 3340.24, subdivision (c) provides:

The bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance.

11. Title 16, California Code of Regulations, section 3340.30, provides in part:

A smog check technician shall comply with the following requirements at all times while licensed.

(a) A licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

12. Title 16, California Code of Regulations, section 3340.35, subdivision (c) provides:

(c) *A licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly. . .*

13. Title 16, California Code of Regulations, section 3340.41, provides in part:

(c) *No person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested.*

14. A licensee who elects to operate the business through employees is responsible to the licensing authority for their conduct in the exercise of the license. A licensed owner has a responsibility to see the license is not used in violation of the law. The objective of an administrative proceeding relating to a possible license suspension is to protect the public, and to determine whether a licensee has exercised his privilege in derogation of the public interest. If a licensee were not liable for the actions of his independent contractor, effective regulation would be impossible. He could contract away the daily operations of his business, and become immune to disciplinary action by the licensing authority. The principle that a licensee will be held liable for the acts of its agents is one that has been applied whether the agent is an independent contractor or an employee. *Borg-Warner Protective Services Corp. v. Superior Court* (1999) 75 Cal.App.4th 1203, 1210-1211.

15. Cause for discipline of respondent T & T's registration under Business and Professions Code section 9884.7, subdivision (a)(1), untrue or misleading statements, was established by reason of Factual Findings 7 and 8.

16. Cause for discipline of respondent T & T's registration under Business and Professions Code section 9884.7, subdivision (a)(4), fraud, was not established.

17. Cause for discipline of respondent T & T's station license under Health and Safety Code section 44072.2, subdivision (a), for violation of sections 44012, subdivisions (a), and (f), 44015, subdivision (b), 44032, and 44059, was established by reason of Factual Findings 7 and 8.

18. Cause for discipline of respondent T & T's station license under Health and Safety Code section 44072.2, subdivision (a), for violation of Title 16, California Code of Regulations, sections 3340.24, subdivision (c), 3340.30, subdivision (a), 3340.35, subdivision (c), 3340.41, subdivision (c), and 3340.42, was established by reason of Factual Findings 7 and 8.

19. Cause for discipline of respondent T & T's station license under Health and Safety Code section 44072.2, subdivision (d), dishonesty, fraud, or deceit, was not established.

20. Cause for discipline of respondent T & T's registration under Business and Professions Code section 9884.7, subdivision (a)(6), for violation of sections 9884.8 and 9884.9, subdivision (a), was established by reason of Factual Findings 9 and 10.

21. Cause for discipline of respondent T & T's station license under Health and Safety Code section 44072.2, subdivision (a), for violation of section 44014.5, by adjusting the vehicle's ignition timing when it was not licensed to do so, was established by reason of Factual Findings 9 and 10.

22. Cause for discipline of respondent T & T's station license under Health and Safety Code section 44072.2, subdivision (c), for violation of Title 16, California Code of Regulations, section 3340.16, subdivision (d), adjusting the vehicle's ignition timing when it was not licensed to do so, was established by reason of Factual Findings 9 and 10.

23. Cause for discipline of respondent Tran's advanced emission specialist technician license was established by reason of Findings 7, 8, 9, and 10, and Legal Conclusions 15 through 22.

24. The Bureau enacted disciplinary guidelines, which are found at Title 16, California Code of Regulations, section 3395.4. The guidelines provide a range of sanctions for various violations. The Bureau requests that an administrative law judge take into account factors in aggravation and mitigation when considering a final penalty.

25. In this matter, relevant factors in aggravation against respondent T & T include three prior citations and three prior office conferences. Respondent Thai, as one of the partners of respondent T & T, did not complete, or at least did not document his completion of a training course required of him following the June 22, 2007 undercover operation. There are no factors in aggravation against respondent Tran. In mitigation, respondent Thai, after being cited for violating anti-smog laws in connection with three undercover operations, voluntarily chose to stop performing inspections and instead turned over that work to respondent Tran.

In connection with the May 2, 2008 undercover operation, there are several factors in mitigation. Although respondents did not have a license to perform the adjustment to the ignition timing and did not obtain prior authorization to perform the adjustment, respondents did not charge the customer for the service. Respondent Tran testified he had no financial reason to perform the adjustment and only wanted to see the customer's vehicle pass the inspection. In addition, respondent Tran has had no prior disciplinary action or citations filed against him.

26. The minimum recommended penalty for the kinds of violations described in Factual Findings 7 and 8 is a 90-day suspension, with 80 days stayed, and two years probation. The maximum recommended penalty for such violations is revocation. The minimum recommended penalty for the kinds of violations described in Factual Findings 9 and 10 vary from a ten-day suspension and two-year probation for a violation of Business and Professions Code section 9884.8, a 90-day suspension with 80-days stayed for a

violation of section 9884.9, to a 30-day suspension and two-year probation for violations of Health and Safety Code section 44014.5.

27. The three prior citations the Bureau had previously filed against respondent T & T elevated the violations stemming from the September 12, 2007 undercover operation from a citation to an accusation. Once the violations are considered sufficient to warrant the filing of an accusation, there are no other factors in aggravation that would warrant the imposition of the maximum penalty, that is, revocation of respondent T & T's automotive repair dealer registration or smog check test only license. In mitigation, respondent Tran, who performed the smog inspections, has no prior disciplinary history, and respondent Thai, who has a prior disciplinary history, had nothing to do with or no knowledge of respondent Tran's actions. Further, while respondent committed technical violations of the anti-smog laws by not obtaining prior consent for adjusting the ignition timing and acting beyond its license, it did not profit from its actions, and instead provided the adjustment without charge to the customer solely to allow the customer's vehicle to pass the inspection.

Under these circumstances, and weighing all the evidence of aggravation and mitigation, it is concluded that it would not be against the public interest to impose the minimum penalty against respondent T & T's registration and license in connection with the September 12, 2007 undercover operation. Accordingly, a 90-day suspension, with 80 days stayed and a two-year probation, would adequately protect the public. In connection with the violations resulting from the May 2, 2008 undercover operation, a disciplinary order that results in an actual ten-day suspension is appropriate. Under the Bureau's disciplinary guidelines, the penalties should run concurrently.

Regarding respondent Tran's advanced emission specialist technician's license, this is his first disciplinary action and his actions would normally have resulted in a citation. Typically, the Bureau would have required him to complete a training course. In order to accomplish that within this proceeding, a short, stayed suspension and period of probation, with a condition that he complete a training course, is the most appropriate penalty.

28. Cause exists pursuant to Business and Professions Code section 125.3 to order respondents to pay the Bureau's costs of investigation and prosecution in this matter by reason of Factual Findings 7 through 10 and 12, and Legal Conclusions 15, 17, 18, 20, 21, 22, and 23.

The amount of the costs must be considered. The evidence established the Bureau incurred costs in the amount of \$18,768.80. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32, 45, the Supreme Court rejected a constitutional challenge to a cost regulation similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure the cost provision did not deter individuals from exercising their right to a hearing: An agency must not assess the full costs where it would unfairly penalize the respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the agency must consider a respondent's subjective good faith belief in the merits of his or her position

and whether the respondent has raised a colorable challenge; the agency must consider a respondent's ability to pay; and the agency may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engage in relatively innocuous misconduct.

Respondent T & T is a small, test only shop, and employs one smog technician, respondent Tran, one of the partners, to perform the services it provides. After giving due consideration to respondents' ability to pay and the severity of the violations in relation to the extent of the investigation, it is reasonable to reduce the costs to \$5,000 and to allow respondents to make monthly payments during the period of probation.

ORDERS

1. Automotive Repair Dealer Registration No. ARD 229799 and Smog Check Test Only Station License No. TC 229799 issued to respondent T & T Auto Smog Test Only Center, Phuc Quoc Thai and Hai Dinh Tran, Partners, are suspended for 90 days. However, 80 days of the suspension are stayed and respondent T & T Auto Smog Test Only Center is placed on probation for two (2) years on the following terms and conditions:

During the period of probation, respondent T & T Auto Smog Test Only Center shall:

- a. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
- b. Post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.
- c. 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.
- d. 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.
- e. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

f. 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.

g. 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, temporarily invalidate the registration and suspend the license.

h. 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.

2. Advanced Emission Specialist Technician License No. EA 146190 issued to respondent Hai Dinh Tran, is suspended for ten days. However, the entire suspension is stayed and respondent Tran is placed on probation for one (1) year on the following terms and conditions:

During the period of probation, respondent Tran shall:

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, temporarily invalidate the registration and suspend the license.

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. During the period of probation, respondent shall attend and successfully complete a Bureau certified training course in diagnosis and repair of emission systems failures and engine performance, applicable to the class of license held by the respondent. Said course shall be completed and proof of completion submitted to the Bureau within 60 days of the effective date of this decision and order. If proof of completion of the course is not furnished to the Bureau within the 60-day period, respondents' license shall be immediately suspended until such proof is received.

3. Respondent T & T Auto Smog Test Only Center shall reimburse the Bureau for its costs of investigation in the amount of \$5,000.00. Respondent may fulfill this obligation by making periodic payments, but said payments must be completed no later than six months prior to the termination of probation.

DATED: 3/30/2010


ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER, State Bar No. 101336
Supervising Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101
5
6 P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 79/09-55

13 **T & T AUTO SMOG TEST ONLY CENTER**

14 1602 S. Coast Highway, Suite C
Oceanside, California 92054

15 **PHUC QUOC THAI, PARTNER**

16 **HAI DINH TRAN, PARTNER**

Automotive Repair Dealer Registration

17 No. ARD 229799

Smog Check Test Only Station License

No. TC 229799

18 and

19 **HAI DINH TRAN**

5156 Towle Court

20 San Diego, California 92105

Advanced Emission Specialist Technician License

21 No. EA 146190

22 Respondents.

ACCUSATION

[SMOG CHECK]

23
24 Sherry Mehl ("Complainant") alleges:

25 **PARTIES**

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

28 ///

1 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 9884.8 states:

7 All work done by an automotive repair dealer, including all warranty
8 work, shall be recorded on an invoice and shall describe all service work done and
9 parts supplied. Service work and parts shall be listed separately on the invoice,
10 which shall also state separately the subtotal prices for service work and for parts,
11 not including sales tax, and shall state separately the sales tax, if any, applicable to
12 each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall
13 clearly state that fact. If a part of a component system is composed of new and
14 used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The
15 invoice shall include a statement indicating whether any crash parts are original
16 equipment manufacturer crash parts or nonoriginal equipment manufacturer
17 aftermarket crash parts. One copy of the invoice shall be given to the customer
18 and one copy shall be retained by the automotive repair dealer.

14 7. Code section 9884.9, subdivision (a), states:

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

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

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

///

///

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

3 _____
(signature or initials)"

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

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

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

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

18 11. Section 44072.2 of the Health & Safety Code states:

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

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

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

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

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

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

13. Section 44072.8 of the Health & Safety Code 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.”

COST RECOVERY

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

UNDERCOVER OPERATION - SEPTEMBER 12, 2007

15. On September 12, 2007, a Bureau undercover operator using the alias Roberta Clint/James Clint (“operator”) drove a Bureau-documented 1992 Toyota pickup, California License Plate No. 4S12688, to Respondent T & T’s facility for a smog inspection. The vehicle could not pass a smog inspection because the vehicle’s pulse air injection system (“PAIR”) was missing. The operator signed a work order and received a copy of the document. Respondent Tran performed the smog inspection and issued electronic Certificate of Compliance No. VJ778221, certifying that he had tested and inspected the 1992 Toyota pickup and that the vehicle was in compliance with applicable laws and regulations. In fact, the vehicle could not have passed the visual portion of the smog inspection because the vehicle’s PAIR system was missing.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

16. Respondent T & T has subjected its registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about September 12, 2007, it made statements which it knew or which by exercise of reasonable care it should have known were untrue or misleading by issuing electronic Certificate of Compliance No. VJ778221 for the 1992 Toyota pickup, certifying that the vehicle was in compliance with applicable laws and regulations. In

///

1 fact, the vehicle could not have passed the visual portion of the smog inspection because the
2 vehicle's PAIR system was missing.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 17. Respondent T & T has subjected its registration to discipline under Code
6 section 9884.7, subdivision (a)(4), in that on or about September 12, 2007, it committed acts
7 which constitute fraud by issuing electronic Certificate of Compliance No. VJ778221 for the
8 1992 Toyota pickup without performing a bona fide inspection of the emission control devices
9 and systems on that vehicle, thereby depriving the People of the State of California of the
10 protection afforded by the Motor Vehicle Inspection Program.

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 18. Respondent T & T has subjected its station license to discipline under
14 Health and Safety Code section 44072.2, subdivision (a), in that on or about September 12, 2007,
15 regarding the 1992 Toyota pickup, it violated sections of that Code, as follows:

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

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

22 c. **Section 44015, subdivision (b):** Respondent T & T issued electronic
23 Certificate of Compliance No. VJ778221 for that vehicle without properly testing and inspecting
24 the vehicle to determine if it was in compliance with Code section 44012.

25 d. **Section 44059:** Respondent T & T willfully made false entries for
26 electronic Certificate of Compliance No. VJ778221 for that vehicle, certifying that the vehicle
27 had been inspected as required when, in fact, it had not.

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 19. Respondent T & T has subjected its station license to discipline under
4 Health and Safety Code section 44072.2, subdivision (c), in that on or about September 12, 2007,
5 regarding the 1992 Toyota pickup, it violated sections of the California Code of Regulations, title
6 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent T & T falsely or
8 fraudulently issued electronic Certificate of Compliance No. VJ778221 for that vehicle without
9 performing a bona fide inspection of the emission control devices and systems on the vehicle as
10 required by Health and Safety Code section 44012.

11 b. **Section 3340.35, subdivision (c):** Respondent T & T issued electronic
12 Certificate of Compliance No. VJ778221 for that vehicle even though the vehicle had not been
13 inspected in accordance with section 3340.42 of that Code.

14 c. **Section 3340.42:** Respondent T & T failed to conduct the required smog
15 tests and inspections on that vehicle in accordance with the Bureau's specifications.

16 **FIFTH CAUSE FOR DISCIPLINE**

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

18 20. Respondent T & T has subjected its station license to discipline under
19 Health and Safety Code section 44072.2, subdivision (d), in that on or about September 12, 2007,
20 it committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
21 Certificate of Compliance No. VJ778221 for the 1992 Toyota pickup without performing a bona
22 fide inspection of the emission control devices and systems on the vehicle, thereby depriving the
23 People of the State of California of the protection afforded by the Motor Vehicle Inspection
24 Program.

25 ///

26 ///

27 ///

28 ///

1 **NINTH CAUSE FOR DISCIPLINE**

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

3 25. Respondent T & T has subjected its registration to discipline under Code
4 section 9884.7, subdivision (a)(6), in that on or about May 2, 2008, Respondent failed to comply
5 with the following Code sections:

6 a. **Section 9884.8:** Respondent T & T failed to document the adjustment of
7 the ignition timing on the invoice dated May 2, 2008.

8 b. **Section 9884.9, subdivision (a):** Respondent T & T failed to obtain the
9 operator's consent to adjust the vehicle's ignition timing.

10 **TENTH CAUSE FOR DISCIPLINE**

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

12 26. Respondent T & T has subjected its station license to discipline under
13 Health and Safety Code section 44072.2, subdivision (a), in that on or about May 2, 2008,
14 regarding the 1990 Toyota Camry, it violated section 44014.5, subdivision (b) by adjusting the
15 vehicle's ignition timing when it was not properly licensed to do so.

16 **ELEVENTH CAUSE FOR DISCIPLINE**

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

18 27. Respondent T & T has subjected its station license to discipline under
19 Health and Safety Code section 44072.2, subdivision (c), in that on or about May 2, 2008,
20 regarding the 1990 Toyota Camry, it violated section 3340.16, subdivision (d) by adjusting the
21 vehicle's ignition timing when it was not properly licensed to do so.

22 **PRIOR CITATIONS**

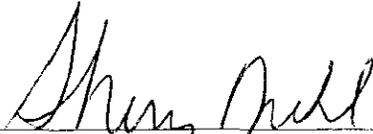
23 28. To determine the degree of discipline, if any, to be imposed on
24 Respondent, Complainant alleges as follows:

25 a. On or about September 21, 2006, the Bureau issued Citation No.
26 C07-0107 against Respondent T & T's registration and station licenses for violations of Health &
27 Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of
28 emission control devices according to procedures prescribed by the department), and California

1 7. Ordering T & T Auto Smog Test Only Center and Hai Dinh Tran to pay
2 the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of
3 this case, pursuant to Code section 125.3; and,

4 8. Taking such other and further action as deemed necessary and proper.
5

6 DATED: 12/15/08

7
8 
9 SHERRY MEHL
10 Chief
11 Bureau of Automotive Repair
12 Department of Consumer Affairs
13 State of California
14 Complainant
15
16
17
18
19
20
21
22
23
24
25
26

27 03562-110SD2008801479
28 T&TAuto
ps (11/13/08)