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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**  
1602 S. Coast Highway, Suite C  
14 Oceanside, California 92054  
**PHUC QUOC THAI, PARTNER**  
15 **HAI DINH TRAN, PARTNER**  
Automotive Repair Dealer Registration  
16 No. ARD 229799  
Smog Check Test Only Station License  
17 No. TC 229799

**ACCUSATION**  
**[SMOG CHECK]**

18 and

19 **HAI DINH TRAN**  
5156 Towle Court  
20 San Diego, California 92105  
Advanced Emission Specialist Technician License  
21 No. EA 146190

Respondents.

22  
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.

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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:

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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.

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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

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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.

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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.

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1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 21. Respondent Tran has subjected his technician license to discipline under  
4 Health and Safety Code section 44072.2, subdivision (a), in that on or about September 12, 2007,  
5 regarding the 1992 Toyota pickup, he violated sections of that Code, as follows:

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

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

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

14 d. **Section 44059:** Respondent Tran willfully entered false information for  
15 electronic Certificate of Compliance No. VJ778221 by certifying that the vehicle had been  
16 inspected as required when, in fact, it had not.

17 **SEVENTH CAUSE FOR DISCIPLINE**

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

19 22. Respondent Tran has subjected his technician license to discipline under  
20 Health and Safety Code section 44072.2, subdivision (c), in that on or about September 12, 2007,  
21 regarding the 1992 Toyota pickup, he violated sections of the California Code of Regulations,  
22 title 16, as follows:

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

27 b. **Section 3340.30, subdivision (a):** Respondent Tran failed to inspect and  
28 test that vehicle in accordance with Health and Safety Code section 44012.



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 Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a  
2 certificate of compliance to a vehicle that was improperly tested), for issuing a certificate of  
3 compliance to a Bureau undercover vehicle with a missing PCV system. The Bureau assessed  
4 civil penalties totaling \$500 against Respondent T & T for the violations. Respondent  
5 T & T complied with this citation on October 26, 2006.

6 b. On or about April 2, 2007, the Bureau issued Citation No. C07-0690  
7 against Respondent T & T's registration and station licenses for violations of Health & Safety  
8 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission  
9 control devices according to procedures prescribed by the department), and Regulation 3340.35,  
10 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for  
11 issuing a certificate of compliance to a Bureau undercover vehicle with a missing EGR valve.  
12 The Bureau assessed civil penalties totaling \$1,000 against Respondent T & T for the violations.  
13 Respondent complied with this citation on June 5, 2007.

14 c. On or about July 6, 2007, the Bureau issued Citation No. C08-0020  
15 against Respondent T & T's registration and station licenses for violations of Health & Safety  
16 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission  
17 control devices according to procedures prescribed by the department), and Regulation 3340.35,  
18 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested), for  
19 issuing a certificate of compliance to a Bureau undercover vehicle with the ignition timing  
20 adjusted beyond the manufacturer's specifications. The Bureau assessed civil penalties totaling  
21 \$2,000 against Respondent T & T for the violations. Respondent T & T complied with this  
22 citation on September 4, 2007.

### 23 OTHER MATTERS

24 29. Pursuant to Code section 9884.7, subdivision (c), the Director may  
25 invalidate temporarily or permanently, the registrations for all places of business operated in this  
26 state by T & T Auto Smog Test Only Center, upon a finding that said it has, or is, engaged in a  
27 course of repeated and willful violations of the laws and regulations pertaining to an automotive  
28 repair dealer.

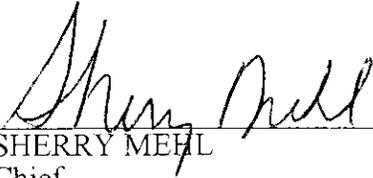


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7. Ordering T & T Auto Smog Test Only Center and Hai Dinh Tran to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 12/15/08

  
\_\_\_\_\_  
SHERRY MEHL  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
Complainant