

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON, State Bar No. 161032
Deputy Attorney General
4 California Department of Justice
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5558
6 Facsimile: (415) 703-5480

7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 79/08-27

12
13 **A 1 SMOG TEST ONLY**

1939 Panama Avenue
14 San Jose, CA 95122
and

15 61 #A Minnis Circle
Milpitas, CA 95035

16 **LEHUYEN THI DO, OWNER**

17 Automotive Repair Dealer
Registration No. AH 235227
18 Smog Check Test Only Station
License No. TH 235227

19 **BINH NGOCTHANH DO**

20 1939 Panama Avenue
San Jose, CA 95122

21 Advanced Emission Specialist Technician
22 License No. EA 146952

23 Respondents.

A C C U S A T I O N

(SMOG CHECK)

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.

1 **Automotive Repair Dealer Registration**

2 2. On or about September 3, 2004, the Bureau issued Automotive Repair
3 Dealer Registration Number AH 235227 ("registration") to Lehuyen Thi Do ("Respondent Thi
4 Do"), doing business as A One Smog & Repair. Effective December 21, 2005, the business
5 name changed to A One Smog Test Only, and effective January 24, 2007, the business name
6 changed to A 1 Smog Test Only. The registration will expire on August 31, 2008.

7 **Smog Check Test Only Station License**

8 3. On or about January 9, 2006, the Bureau issued Smog Check Test Only
9 Station License Number TH 235227 ("station license") to Respondent Thi Do. The station
10 license will expire on August 31, 2008.

11 **Advanced Emission Specialist Technician License**

12 4. On or about November 6, 2003, the Bureau issued Advanced Emission
13 Specialist Technician License Number EA 146952 ("technician license") to Binh Ngocthanh Do
14 ("Respondent Binh Do"). The technician license will expire on December 31, 2007.

15 **STATUTORY PROVISIONS**

16 5. Business and Professions Code ("Code") section 9884.7 states, in pertinent
17 part:

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

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

 (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

///

1 the right of the automotive repair dealer to operate his or her other places of
2 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
6 dealer has, or is, engaged in a course of repeated and willful violations of this
7 chapter, or regulations adopted pursuant to it.

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

12 7. Health and Safety Code section 44002 provides, in pertinent part, that the
13 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
14 the Motor Vehicle Inspection Program.

15 8. Health and Safety Code section 44072.2 states:

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

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

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

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

26 9. Health and Safety Code section 44072.6 provides, in pertinent part, that
27 the expiration or suspension of a license by operation of law, or by order or decision of the
28 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.

10 10. Health and Safety Code section 44072.8 states that when a license has
11 been revoked or suspended following a hearing under this article, any additional license issued
12 under this chapter in the name of the licensee may be likewise revoked or suspended by the
13 director.

1 applicable laws and regulations. In fact, the vehicle could not have passed the smog inspection
2 because the vehicle's PCV system and hose were missing.

3 **SECOND CAUSE FOR DISCIPLINE**

4 (Fraud)

5 15. Respondent Thi Do's registration is subject to disciplinary action pursuant
6 to Code section 9884.7, subdivision (a)(4), in that on or about May 2, 2007, he committed acts
7 which constitute fraud by issuing electronic Certificate of Compliance No. MQ798225 for the
8 1987 Ford Ranger without performing a bona fide inspection of the emission control devices and
9 systems on the vehicle, thereby depriving the People of the State of California of the protection
10 afforded by the Motor Vehicle Inspection Program.

11 **THIRD CAUSE FOR DISCIPLINE**

12 (Violations of the Motor Vehicle Inspection Program)

13 16. Respondent Thi Do's station license is subject to disciplinary action
14 pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about May 2,
15 2007, regarding the 1987 Ford Ranger, he failed to comply with the following sections of that
16 Code:

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

19 b. **Section 44015, subdivision (b)**: Respondent Thi Do issued electronic
20 Certificate of Compliance No. MQ798225 for the vehicle without properly testing and inspecting
21 the vehicle to determine if it was in compliance with Health & Safety Code section 44012.

22 c. **Section 44059**: Respondent Thi Do willfully made false entries for
23 electronic Certificate of Compliance MQ798225, by certifying that the vehicle had been
24 inspected as required when, in fact, it had not.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 (Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)

27 17. Respondent Thi D's station license is subject to disciplinary action
28 pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about May 2,

1 2007, regarding the 1987 Ford Ranger, he failed to comply with provisions of California Code of
2 Regulations, title 16, as follows:

3 a. **Section 3340.24, subdivision (c)**: Respondent Thi Do falsely or
4 fraudulently issued electronic Certificate of Compliance No. MQ798225 for the vehicle, in that
5 the vehicle could not pass the smog inspection because the vehicle's PCV system and hose were
6 missing.

7 b. **Section 3340.35, subdivision (c)**: Respondent Thi Do issued electronic
8 Certificate of Compliance No. MQ798225 for the vehicle, even though the vehicle had not been
9 inspected in accordance with section 3340.42.

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

12 **FIFTH CAUSE FOR DISCIPLINE**

13 (Dishonesty, Fraud or Deceit)

14 18. Respondent Thi Do's station license is subject to disciplinary action
15 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about May 2,
16 2007, Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured
17 by issuing electronic Certificate of Compliance No. MQ798225 for the 1987 Ford Ranger
18 without performing a bona fide inspection of the emission control devices and systems on the
19 vehicle, thereby depriving the People of the State of California of the protection afforded by the
20 Motor Vehicle Inspection Program.

21 **SIXTH CAUSE FOR DISCIPLINE**

22 (Violations of the Motor Vehicle Inspection Program)

23 19. Respondent Binh Do's technician license is subject to disciplinary action
24 pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about May 2,
25 2007, regarding the 1987 Ford Ranger, he failed to comply with provisions of that Code, as
26 follows:

27 a. **Section 44012, subdivision (f)**: Respondent Binh Do failed to perform
28 emission control tests on the vehicle in accordance with procedures prescribed by the department.

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

3 **PRIOR CITATIONS**

4 22. To determine the degree of discipline, if any, to be imposed on
5 Respondents Thi Do and Binh Do, Complainant alleges, as follows:

6 **Respondent Thi Do**

7 a. On or about September 26, 2006, the Bureau issued Citation No. C07-
8 0169 against Respondent Thi Do, as owner of A 1 Smog Test Only, Automotive Dealer
9 Registration No. AH 235227, and Smog Check Test Only Station License No. TH235227, for
10 violations of Health & Safety Code section 44012, subdivision (f) (failure to confirm that
11 emission control devices and systems were installed and functioning correctly), and California
12 Code of Regulations, title 16 ("Regulation"), section 3340.35, subdivision (c) (issuing a
13 certificate of compliance to a vehicle that was improperly tested). The Bureau assessed a fine of
14 \$500 to Respondent Thi Do. Respondent complied with this citation on October 18, 2006.

15 b. On or about January 3, 2007, the Bureau issued Citation No. C07-0436
16 against Respondent Thi Do, as owner of A 1 Smog Test Only, Automotive Repair Dealer
17 Registration No. AH 235227, and Smog Check Test Only Station License No. TH235227, for
18 violations of Health & Safety Code section 44012, subdivision (f) (failure to confirm that
19 emission control devices and systems were installed and functioning correctly), and Regulation,
20 section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was
21 improperly tested). The Bureau assessed a fine of \$1,000 to Respondent Thi Do. Respondent
22 complied with this citation on February 16, 2007.

23 c. On or about March 9, 2007, the Bureau issued Citation No. C07-0636
24 against Respondent Thi Do, as owner of A 1 Smog Test Only, Automotive Repair Dealer
25 Registration No. AH 235227, and Smog Check Test Only Station License No. TH235227, for
26 violations of Health & Safety Code section 44012, subdivision (f) (failure to confirm that
27 emission control devices and systems were installed and functioning correctly), and Regulation,
28 section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was

1 improperly tested). The Bureau assessed a fine of \$2,000 to Respondent Thi Do. Respondent
2 complied with this citation on April 24, 2007.

3 **Respondent Binh Do**

4 d. On or about September 26, 2006, the Bureau issued Citation No.
5 M07-0170 against Respondent Binh Do, Advanced Emission Specialist Technician License No.
6 EA146952, for violations of Health & Safety Code section 44032 (failure to confirm that
7 emission control devices and systems were installed and functioning correctly), and Regulation,
8 section 3340.30, subdivision (a) (failure to inspect vehicles in accordance with Health and Safety
9 Code sections 44012, 44035 and Regulation 3340.42). The Bureau directed Respondent Binh Do
10 to complete an eight hour training course. Respondent complied with this citation on
11 November 8, 2006.

12 e. On or about January 3, 2007, the Bureau issued Citation No. M07-0437
13 against Respondent Binh Do, Advanced Emission Specialist Technician License No. EA146952,
14 for violations of Health & Safety Code section 44032 (failure to confirm that emission control
15 devices and systems were installed and functioning correctly), and Regulation, section 3340.30,
16 subdivision (a) (failure to inspect vehicles in accordance with Health and Safety Code sections
17 44012, 44035 and Regulation 3340.42). The Bureau directed Respondent Binh Do to complete a
18 sixteen hour training course. Respondent complied with this citation on February 13, 2007.

19 f. On or about March 9, 2007, the Bureau issued Citation No. M07-0637
20 against Respondent Binh Do, Advanced Emission Specialist Technician License No. EA146952,
21 for violations of Health & Safety Code section 44032 (failure to confirm that emission control
22 devices and systems were installed and functioning correctly), and Regulation, section 3340.30,
23 subdivision (a) (failure to inspect vehicles in accordance with Health and Safety Code sections
24 44012, 44035 and Regulation 3340.42). On or about March 30, 2007, Respondent Binh Do
25 appealed the citation.

26 ///

27 ///

28 ///

1 **OTHER MATTERS**

2 23. Under Code section 9884.7, subdivision (c), the director may invalidate or
3 refuse to validate, temporarily or permanently, the registrations for all places of business operated
4 in this state by Lehuyen Thi Do, doing business as A 1 Smog Test Only, upon a finding that he
5 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
6 pertaining to an automotive repair dealer.

7 24. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only
8 Station License Number TH 235227, issued to Lehuyen Thi Do, doing business as A 1 Smog
9 Test Only, is revoked or suspended, any additional license issued under this chapter in the name
10 of said licensee may be likewise revoked or suspended by the director.

11 25. Under section 44072.8 of the Health and Safety Code, if Advanced
12 Emission Specialist Technician License Number EA 146952, issued to Binh Ngocthanh Do, is
13 revoked or suspended, any additional license issued under this chapter in the name of said
14 licensee may be likewise revoked or suspended by the director.

15 **PRAYER**

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

18 1. Temporarily or permanently invalidating Automotive Repair Dealer
19 Registration Number AH 235227, issued to Lehuyen Thi Do, doing business as A 1 Smog Test
20 Only;

21 2. Temporarily or permanently invalidating any other automotive repair
22 dealer registration issued to Lehuyen Thi Do;

23 3. Revoking or suspending Smog Check Test Only Station License Number
24 TH 235227, issued to Lehuyen Thi Do, doing business as A 1 Smog Test Only;

25 4. Revoking or suspending any additional license issued under Chapter 5 of
26 the Health and Safety Code in the name of Lehuyen Thi Do;

27 5. Revoking or suspending Advanced Emission Specialist Technician
28 Number EA 146952, issued to Binh Ngocthanh Do;

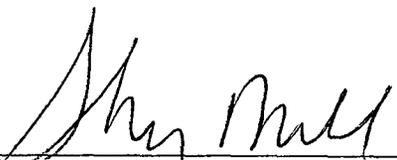
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Binh Ngocthanh Do;

7. Ordering Lehuyen Thi Do, and Binh Ngocthanh Do 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: 11-5-07



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

03562110-SF2007402231
A-1Smog.Acc.wpd
[bfc 9/25/07]