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

12 In the Matter of the Accusation Against:

Case No.

79/11-35

13 **480 KEYES TEST ONLY**
480 Keyes Street
14 San Jose, CA 95112
HOANG NGUYEN, OWNER
Automotive Repair Dealer Registration No.
15 **ARD 253934**
Smog Check Test Only Station License No.
16 **TC 253934**

ACCUSATION
SMOG CHECK

17 **HOANG NGUYEN**
480 Keyes Street
18 San Jose, CA 95112
Advanced Emission Specialist Technician
19 License No. EA 154713

20 Respondents.

22 Complainant alleges:

23 **PARTIES**

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

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1 engaged in a course of repeated and willful violations of this chapter, or regulations
2 adopted pursuant to it.

3 6. Code section 118, subdivision (b) states:

4 The suspension, expiration, or forfeiture by operation of law of a license
5 issued by a board in the department, or its suspension, forfeiture, or cancellation by
6 order of the board or by order of a court of law, or its surrender without the written
7 consent of the board, shall not, during any period in which it may be renewed,
8 restored, reissued, or reinstated, deprive the board of its authority to institute or
9 continue a disciplinary proceeding against the licensee upon any ground provided by
10 law or to enter an order suspending or revoking the license or otherwise taking
11 disciplinary action against the licensee on any such ground.

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

16 8. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
17 "commission," "committee," "department," "division," "examining committee," "program," and
18 "agency." "License" includes certificate, registration or other means to engage in a business or
19 profession regulated by the Code.

20 9. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
21 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
22 the Motor Vehicle Inspection Program.

23 10. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

27 (a) Violates any section of this chapter [the Motor Vehicle Inspection
28 Program (Health and Saf. Code, § 44000, et seq.)] 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.

11. 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

1 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
2 the Director of jurisdiction to proceed with disciplinary action.

3 12. Section 44072.8 of the Health and Safety Code states:

4 When a license has been revoked or suspended following a hearing under
5 this article, any additional license issued under this chapter in the name of the
6 licensee may be likewise revoked or suspended by the director.

6 COST RECOVERY

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

11 UNDERCOVER OPERATION – JANUARY 9, 2010

12 12. On or about January 9, 2010, a Bureau undercover operator drove a Bureau-
13 documented 1996 Honda Accord to Respondent's facility and requested a smog inspection. The
14 vehicle could not pass the visual portion of a smog inspection because the vehicle's fuel
15 evaporative canister (EVAP) system was missing. The operator signed a work order and was
16 provided with a copy of the document. Respondent performed the smog inspection and issued
17 electronic Certificate of Compliance No. NQ271907 for that vehicle. The operator paid \$58.25
18 for the smog inspection and received a copy of Invoice No. 3434 and the Vehicle Inspection
19 Report ("VIR").

20 FIRST CAUSE FOR DISCIPLINE

21 (Misleading Statements)

22 13. Respondent has subjected his registration to discipline under Code section 9884.7,
23 subdivision (a)(1), in that on or about January 9, 2010, he made statements which he knew or
24 which by exercise of reasonable care he should have known were untrue or misleading when he
25 issued electronic Certificate of Compliance No. NQ271907 for the 1996 Honda Accord,
26 certifying that the vehicle was in compliance with applicable laws and regulations when, in fact,
27 the vehicle's EVAP system was missing.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Fraud)

3 14. Respondent has subjected his registration to discipline under Code section 9884.7,
4 subdivision (a)(4), in that on or about January 9, 2010, he committed acts which constitute fraud
5 by issuing electronic Certificate of Compliance No. NQ271907 for the 1996 Honda Accord,
6 without performing a bona fide inspection of the emission control devices and systems on that
7 vehicle, thereby depriving the People of the State of California of the protection afforded by the
8 Motor Vehicle Inspection Program.

9 THIRD CAUSE FOR DISCIPLINE

10 (Violation of the Motor Vehicle Inspection Program)

11 15. Respondent has subjected his station license to discipline under Health and Safety
12 Code section 44072.2, subdivision (a), in that on or about January 9, 2010, regarding the 1996
13 Honda Accord, he violated sections of that Code, as follows:

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

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

19 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
20 Compliance No. NQ271907 without properly testing and inspecting the vehicle to determine if it
21 was in compliance with section 44012 of that Code.

22 d. **Section 44059:** Respondent willfully made false entries for the electronic Certificate
23 of Compliance No. NQ271907, certifying that the vehicle had been inspected as required when, in
24 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 16. Respondent has subjected his station license to discipline under Health and Safety
4 Code section 44072.2, subdivision (c), in that on or about January 9, 2010, regarding the 1996
5 Honda Accord, he violated sections of the California Code of Regulations, title 16, as follows:

6 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
7 electronic Certificate of Compliance No. NQ271907 without performing a bona fide inspection of
8 the emission control devices and systems on that vehicle as required by Health and Safety Code
9 section 44012.

10 b. **Section 3340.35, subdivision (c):** Respondent issued electronic Certificate of
11 Compliance No. NQ271907 even though that vehicle had not been inspected in accordance with
12 section 3340.42 of that Code.

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

15 **FIFTH CAUSE FOR DISCIPLINE**

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

17 17. Respondent subjected his station license to discipline under Health and Safety Code
18 section 44072.2, subdivision (d), in that on or about January 9, 2010, regarding the 1996 Honda
19 Accord, he committed acts involving dishonesty, fraud or deceit whereby another was injured by
20 issuing electronic Certificate of Compliance No. NQ271907 without performing a bona fide
21 inspection of the emission control devices and system on that vehicle, thereby depriving the
22 People of the State of California of the protection afforded by the Motor Vehicle Inspection
23 Program.

24 **SIXTH CAUSE FOR DISCIPLINE**

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

26 18. Respondent has subjected his technician license to discipline under Health and Safety
27 Code section 44072.2, subdivision (a), in that on or about January 9, 2010, regarding the 1996
28 Honda Accord, he violated sections of that Code, as follows:

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

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

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

8 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of
9 Compliance No. NQ271907, certifying that the vehicle had been inspected as required when, in
10 fact, it had not.

11 **SEVENTH CAUSE FOR DISCIPLINE**

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

13 19. Respondent has subjected his technician license to discipline under Health and Safety
14 Code section 44072.2, subdivision (c), in that on or about January 9, 2010, regarding the 1996
15 Honda Accord, he violated sections of the California Code of Regulations, title 16, as follows:

16 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
17 electronic Certificate of Compliance No. NQ271907 without performing a bona fide inspection of
18 the emission control devices and systems on that vehicle as required by Health and Safety Code
19 section 44012.

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

22 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the
23 Emission Inspection System for electronic Certificate of Compliance No. NQ271907 by entering
24 "Pass" for the visual inspection portion of the smog inspection when, in fact, the vehicle should
25 not have passed the visual portion of the smog inspection because the vehicle's EVAP system
26 was missing.

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

1 EIGHTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 20. Respondent has subjected his technician license to discipline under Health and Safety
4 Code section 44072.2, subdivision (d), in that on or about January 9, 2010, regarding the 1996
5 Honda Accord, he committed acts involving dishonesty, fraud or deceit whereby another was
6 injured by issuing electronic Certificate of Compliance No. NQ271907 without performing a
7 bona fide inspection of the emission control devices and systems on that vehicle, thereby
8 depriving the People of the State of California of the protection afforded by the Motor Vehicle
9 Inspection Program.

10 PRIOR CITATIONS

11 21. To determine the degree of penalty, if any, to be imposed upon Respondent,
12 Complainant alleges as follows:

13 a. On September 12, 2008, the Bureau issued Citation No. C09-0238 to Respondent
14 against his registration and station licenses for violations of Health and Safety Code section
15 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
16 and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c)
17 (issuing a certificate of compliance to a vehicle improperly tested). Respondent issued a
18 certificate of compliance to a Bureau vehicle with a non-functional exhaust gas recirculation
19 valve. The Bureau assessed a civil penalty of \$500. Respondent complied with this citation on
20 September 29, 2008.

21 b. On March 23, 2009, the Bureau issued Citation No. C09-1092 to Respondent against
22 his registration and station licenses for violations of Health and Safety Code section 44012,
23 subdivision (f) (failure to perform a visual/functional check of emission control devices) and
24 Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
25 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with the
26 ignition timing adjusted beyond the manufacturer's specifications. The Bureau assessed a civil
27 penalty of \$1,000. Respondent complied with this citation on April 17, 2009.

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1 c. On September 28, 2009, the Bureau issued Citation No. C2010-0246 to Respondent
2 against his registration and station licenses for violations of Health and Safety Code section
3 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
4 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
5 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with the
6 ignition timing adjusted beyond the manufacturer's specifications. The Bureau assessed a civil
7 penalty of \$2,000. Respondent complied with this citation on October 19, 2009.

8 d. On September 12, 2008, the Bureau issued Citation No. M09-0239 to Respondent
9 against his technician license for violations of Health and Safety Code section 44032, (qualified
10 technicians shall perform tests of emission control systems and devices in accordance with
11 section 44012 of that Code) and Regulation, section 3340.30, subdivision (a) (qualified
12 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
13 the Health and Safety Code, and Regulation section 3340.42). Respondent issued a certificate of
14 compliance to a Bureau vehicle with a non-functional exhaust gas recirculation system.
15 Respondent was required to attend an 8-hour training course. Respondent complied with this
16 citation on October 8, 2008.

17 e. On March 23, 2009, the Bureau issued Citation No. M09-1093 to Respondent against
18 his technician license for violations of Health and Safety Code section 44032, (qualified
19 technicians shall perform tests of emission control systems and devices in accordance with
20 section 44012 of that Code) and Regulation, section 3340.30, subdivision (a) (qualified
21 technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of
22 the Health and Safety Code, and Regulation, section 3340.42). Respondent issued a certificate of
23 compliance to a Bureau vehicle with the ignition timing adjusted beyond the manufacturer's
24 specifications. Respondent was required to attend a 16-hour training course. Respondent
25 complied with this citation on May 5, 2009.

26 **OTHER MATTERS**

27 22. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
28 or permanently or refuse to validate, the registrations for all places of business operated in this

1 state by to Hoang Nguyen doing business as 480 Keyes Test Only, upon a finding that he has, or
2 is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to
3 an automotive repair dealer.

4 23. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
5 License Number TC 253934, issued to Hoang Nguyen doing business as 480 Keyes Test Only, is
6 revoked or suspended, any additional license issued under this chapter in the name of said
7 licensee including, but not limited to Advanced Emission Specialist Technician License Number
8 EA 154713, may be likewise revoked or suspended by the director.

9 **PRAYER**

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

- 12 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
13 Registration Number ARD 253934, issued to Hoang Nguyen doing business as 480 Keyes Test
14 Only;
- 15 2. Revoking, suspending, or placing on probation any other automotive repair dealer
16 registration issued in the name of Hoang Nguyen;
- 17 3. Revoking or suspending Smog Check Test Only Station License Number TC 253934,
18 issued to Hoang Nguyen doing business as 480 Keyes Test Only;
- 19 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
20 & Safety Code in the name of Hoang Nguyen;
- 21 5. Revoking or suspending Advanced Emission Specialist Technician License Number
22 EA 154713, issued to Hoang Nguyen;
- 23 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
24 & Safety Code in the name of Hoang Nguyen;

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1 7. Ordering Hoang Nguyen to pay the Bureau of Automotive Repair the reasonable
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions
3 Code section 125.3; and,

4 8. Taking such other and further action as deemed necessary and proper.
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7 DATED: 11-16-10



8 SHERRY MEHL
9 Chief
10 Bureau of Automotive Repair
11 Department of Consumer Affairs
12 State of California
13 *Complainant*