

1 EDMUND G. BROWN JR.
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 TIMOTHY J. McDONOUGH
Deputy Attorney General
4 State Bar No. 235850
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2134
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

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. 79/11-08

13 **SMOG MAN LLC,**
14 **dba SMOG MAN**
15 **BRIAN ANDREW CARLSEN, MEMBER**
16 **JENNIFER LYNN ALLEN, MEMBER**
17 **LINDSIE CARLSEN, MEMBER**
18 **3753 San Pablo Dam Road**
19 **El Sobrante, CA 94803**
20 **Automotive Repair Dealer Reg. No. ARD 256719**
21 **Smog Check, Test Only, Station License No. TC**
22 **256719**

A C C U S A T I O N

SMOG CHECK

and

19 **JORGE LUIS CRUZ-JIMENEZ**
20 **1485 Frances Road**
21 **San Pablo, CA 94806**
22 **Advanced Emission Specialist Technician**
23 **License No. EA 150956**

Respondents.

24 Complainant alleges:

25 **PARTIES**

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

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

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

4 12. Health & Saf. Code section 44072.8 states that when a license has been revoked or
5 suspended following a hearing under this article, any additional license issued under this chapter
6 in the name of the licensee may be likewise revoked or suspended by the director.

7 **COST RECOVERY**

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

12 **VID DATA REVIEW**

13 14. In or about March 2010, a representative of the Bureau initiated an investigation
14 against Respondent Smog Man and conducted a detailed review of VID (vehicle information
15 database) data for all smog inspections performed at Respondent's facility for the period of April
16 2009 through May 2010. The representative found that the four vehicles identified below
17 recorded certain diagnostic trouble codes (hereinafter "code") during the OBD II tests¹. The
18 representative obtained information indicating that none of these codes were applicable to the
19 vehicles. The VID data also showed that Respondent Cruz-Jimenez had performed the
20 inspections on the vehicles.

21 15. The Bureau concluded that Respondent Cruz-Jimenez performed the smog
22 inspections on the vehicles using a different vehicle during the OBD II tests, a method known as

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25 ¹ The On Board Diagnostics (OBD II) functional test is an automated function of the
26 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an
27 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is
28 located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves
information from the vehicle's on-board computer about the status of the readiness indicators,
trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II
functional test, it will fail the overall inspection.

1 "clean plugging",² resulting in the issuance of fraudulent certificates of compliance for the
2 vehicles.

Date & Time of Inspection	Vehicle Certified & License No.	Certificate No.
1. 07/19/2009 11:29 - 11:37	2001 Volvo V70; no plates	NM172414C
2. 12/04/2009 10:52 - 11:11	2003 Chevrolet K3500 Silverado 4WD; License No. 7S84664	NO847673C
3. 03/18/2010 16:31 - 16:41	2000 Chevrolet K1500 Silverado 4WD; License No. 6F21332	NS213928C
4. 04/24/2010 08:30 - 08:41	2000 Ford F250 SRW Super Duty; License No. 7T69107	NS661150C

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10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

12 16. Respondent Smog Man's registration is subject to disciplinary action pursuant to Bus.
13 & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized
14 statements which it knew or in the exercise of reasonable care should have known to be untrue or
15 misleading, as follows: Respondent Smog Man's technician, Respondent Cruz-Jimenez, certified
16 that vehicles 1 through 4, identified in paragraph 15 above, had passed inspection and were in
17 compliance with applicable laws and regulations. In fact, Respondent Cruz-Jimenez conducted
18 the inspections on the vehicles using clean-plugging methods in that he substituted or used a
19 different vehicle(s) during the OBD II functional tests in order to issue smog certificates of
20 compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf.
21 Code section 44012.

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25 ² Clean-plugging is the use of the OBD II readiness monitor status and stored fault code
26 (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to
27 another vehicle that is not in compliance due to a failure to complete the minimum number of self
28 tests, known as monitors, or due to the presence of a stored fault code that indicates an emission
control system or component failure.

1 SECOND CAUSE FOR DISCIPLINE

2 (Fraud)

3 17. Respondent Smog Man's registration is subject to disciplinary action pursuant to Bus.
4 & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which
5 constitute fraud by issuing electronic smog certificates of compliance for vehicles 1 through 4,
6 identified in paragraph 15 above, without performing bona fide inspections of the emission
7 control devices and systems on the vehicles, thereby depriving the People of the State of
8 California of the protection afforded by the Motor Vehicle Inspection Program.

9 THIRD CAUSE FOR DISCIPLINE

10 (Violations of the Motor Vehicle Inspection Program)

11 18. Respondent Smog Man's smog check station license is subject to disciplinary action
12 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
13 comply with the following sections of that Code:

14 a. Section 44012: Respondent failed to ensure that the emission control tests were
15 performed on vehicles 1 through 4, identified in paragraph 15 above, in accordance with
16 procedures prescribed by the department.

17 b. Section 44015: Respondent issued electronic smog certificates of compliance for
18 vehicles 1 through 4, identified in paragraph 15 above, without ensuring that the vehicles were
19 properly tested and inspected to determine if they were in compliance with Health & Saf. Code
20 section 44012.

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1 comply with section 44012 of that Code in a material respect, as follows: Respondent failed to
2 perform the emission control tests on vehicles 1 through 4, identified in paragraph 15 above, in
3 accordance with procedures prescribed by the department.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 **(Failure to Comply with Regulations Pursuant**
6 **to the Motor Vehicle Inspection Program)**

7 22. Respondent Cruz-Jimenez's technician license is subject to disciplinary action
8 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
9 comply with provisions of California Code of Regulations, title 16, as follows:

10 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
11 electronic smog certificates of compliance for vehicles 1 through 4, identified in paragraph 15
12 above.

13 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1
14 through 4, identified in paragraph 15 above, in accordance with Health & Saf. Code sections
15 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

16 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1
17 through 4, identified in paragraph 15 above, in accordance with the Bureau's specifications.

18 **EIGHTH CAUSE FOR DISCIPLINE**

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

20 23. Respondent Cruz-Jimenez's technician license is subject to disciplinary action
21 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
22 dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog
23 certificates of compliance for vehicles 1 through 4, identified in paragraph 15 above, without
24 performing bona fide inspections of the emission control devices and systems on the vehicles,
25 thereby depriving the People of the State of California of the protection afforded by the Motor
26 Vehicle Inspection Program.

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1 **MATTERS IN AGGRAVATION**

2 24. To determine the degree of discipline, if any, to be imposed on Respondent Cruz-
3 Jimenez, Complainant alleges as follows: On or about August 14, 2008, the Bureau issued
4 Citation No. M09-0161 against Respondent for violations of Health & Saf. Code section 44032
5 (qualified technicians shall perform tests of emission control systems and devices in accordance
6 with Health & Saf. Code section 44012) and California Code of Regulations, title 16, section
7 (hereinafter "Regulation") 3340.30, subdivision (a) (qualified technicians shall inspect, test, and
8 repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and Regulation
9 3340.42). On or about August 5, 2008, Respondent issued a certificate of compliance to a Bureau
10 undercover vehicle with a missing positive crankcase ventilation system. Respondent was
11 directed to complete an 8 hour training course, with proof of completion submitted to the Bureau
12 within thirty (30) days from receipt of the citation. Respondent complied with the citation and
13 completed the required training on October 17, 2008.

14 **OTHER MATTERS**

15 25. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
16 refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of
17 business operated in this state by Respondent Smog Man LLC, doing business as Smog Man,
18 upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations
19 of the laws and regulations pertaining to an automotive repair dealer.

20 26. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
21 License Number TC 256719, issued to Respondent Smog Man LLC, doing business as Smog
22 Man, revoked or suspended, any additional license issued under this chapter in the name of said
23 licensee may be likewise revoked or suspended by the director.

24 27. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
25 Technician License Number EA 150956, issued to Jorge Luis Cruz-Jimenez, is revoked or
26 suspended, any additional license issued under this chapter in the name of said licensee may be
27 likewise revoked or suspended by the director.

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PRAYER

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

1. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number ARD 256719, issued to Smog Man LLC, doing business as Smog Man;
2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to Smog Man LLC;
3. Revoking or suspending Smog Check, Test Only, Station License Number TC 256719, issued to Smog Man LLC, doing business as Smog Man;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Smog Man LLC;
5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 150956, issued to Jorge Luis Cruz-Jimenez;
6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Jorge Luis Cruz-Jimenez;
7. Ordering Respondents Smog Man LLC, doing business as Smog Man, and Jorge Luis Cruz-Jimenez to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
8. Taking such other and further action as deemed necessary and proper.

DATED: 8/10/10


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