

1 KAMALA D. HARRIS  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
4 State Bar No. 132645  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2105  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*  
8

9 **BEFORE THE**  
**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. 79/12-30

13 **AB MOBIL SMOG TEST ONLY CENTER**  
14 **MOHAMMAD HASHEM, OWNER**  
15 **13872 Red Hill Avenue, Unit B**  
**Tustin, CA 92780**  
16 **Mailing Address:**  
**6067 E. Montefino Lane**  
**Anaheim, CA 92807**  
17 **Automotive Repair Dealer Reg. No. ARD 257732**  
18 **Smog Check Test Only Station License No.**  
**TC 257732**

**A C C U S A T I O N**

(Smog Check)

19 Respondent.

20  
21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about April 8, 2009, the Director of Consumer Affairs ("Director") issued  
26 Automotive Repair Dealer Registration Number ARD 257732 ("registration") to Mohammad  
27 Hashem ("Respondent"), owner of AB Mobil Smog Test Only Center. Respondent's registration

28 ///

1 was in full force and effect at all times relevant to the charges brought herein and will expire on  
2 March 31, 2012, unless renewed.

3 3. On or about April 22, 2009, the Director issued Smog Check Test Only Station  
4 License Number TC 257732 ("smog check station license") to Respondent. Respondent's smog  
5 check station license was in full force and effect at all times relevant to the charges brought herein  
6 and will expire on March 31, 2012, unless renewed.

### 7 JURISDICTION

8 4. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that  
9 the Director may revoke an automotive repair dealer registration.

10 5. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a  
11 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary  
12 proceeding against an automotive repair dealer or to render a decision temporarily or permanently  
13 invalidating (revoking or suspending) a registration.

14 6. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent  
15 part, that the Director has all the powers and authority granted under the Automotive Repair Act  
16 for enforcing the Motor Vehicle Inspection Program.

17 7. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or  
18 suspension of a license by operation of law, or by order or decision of the Director of Consumer  
19 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director  
20 of jurisdiction to proceed with disciplinary action.

### 21 STATUTORY PROVISIONS

22 8. Bus. & Prof. Code section 9884.7 states, in pertinent part:

23 (a) The director, where the automotive repair dealer cannot show there  
24 was a bona fide error, may deny, suspend, revoke, or place on probation the  
25 registration of an automotive repair dealer for any of the following acts or omissions  
26 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.

27 (1) Making or authorizing in any manner or by any means whatever any  
28 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.

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

....

(4) Any other conduct that constitutes fraud.

....

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in 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.

9. Bus. & Prof. Code section 22, subdivision (a), states:

“Board” as used in any provision of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.”

10. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a “license” includes “registration” and “certificate.”

11. Health & Saf. Code section 44072.2 states, in pertinent part:

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

(a) Violates any section of this chapter [the Motor Vehicle Inspection 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 . . .

12. Health & Saf. Code section 44072.8 states that 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**

13. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or

///

1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
2 and enforcement of the case.

3 **UNDERCOVER OPERATION: 1991 TOYOTA PICKUP**

4 14. On March 24, 2011, an undercover operator of the Bureau (hereinafter "operator")  
5 took the Bureau's 1991 Toyota pickup to Respondent's facility and requested a smog inspection.  
6 The air suction system components had been removed from the Bureau-documented vehicle. The  
7 operator signed and received a copy of a written estimate for the inspection. After the inspection  
8 was completed, the operator paid the facility \$78.23 and received copies of an invoice and a  
9 vehicle inspection report. The vehicle inspection report indicated that the smog inspection was  
10 performed by Respondent's smog check technician, Henry Dang Huynh, resulting in the issuance  
11 of electronic smog Certificate of Compliance No. WT586721C for the vehicle.

12 15. Later that same day, the Bureau inspected the vehicle and found that the air suction  
13 system components were still missing.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Untrue or Misleading Statements)**

16 16. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.  
17 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which  
18 he knew, or in the exercise of reasonable care should have known to be untrue or misleading, as  
19 follows: Respondent's smog check technician, Henry Dang Huynh, certified under penalty of  
20 perjury on the vehicle inspection report that the Bureau's 1991 Toyota pickup had passed the  
21 inspection and was in compliance with applicable laws and regulations. In fact, the air suction  
22 system components had been removed vehicle and as such, the vehicle would not pass the  
23 inspection required by Health & Saf. Code section 44012.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Fraud)**

26 17. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.  
27 Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that constitutes  
28 fraud, as follows: Respondent issued an electronic smog certificate of compliance for the

1 Bureau's 1991 Toyota pickup without ensuring that a bona fide inspection was performed of the  
2 emission control devices and systems on the vehicle, thereby depriving the People of the State of  
3 California of the protection afforded by the Motor Vehicle Inspection Program.

4 **THIRD CAUSE FOR DISCIPLINE**

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

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

9 a. **Section 44012:** Respondent failed to ensure that the emission control tests were  
10 performed on the Bureau's 1991 Toyota pickup in accordance with procedures prescribed by the  
11 department.

12 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for  
13 the Bureau's 1991 Toyota pickup without ensuring that the vehicle was properly tested and  
14 inspected to determine if it was in compliance with Health & Saf. Code section 44012.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with Regulations Pursuant**

17 **to the Motor Vehicle Inspection Program)**

18 19. Respondent's smog check station license is subject to disciplinary action pursuant to  
19 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with the  
20 following sections of California Code of Regulations, title 16:

21 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an  
22 electronic smog certificate of compliance for the Bureau's 1991 Toyota pickup.

23 b. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate  
24 of compliance for the Bureau's 1991 Toyota pickup even though the vehicle had not been  
25 inspected in accordance with section 3340.42.

26 c. **Section 3340.42:** Respondent failed to ensure that the required smog tests were  
27 conducted on the Bureau's 1991 Toyota pickup in accordance with the Bureau's specifications.

28 ///

1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 20. Respondent's smog check station license is subject to disciplinary action pursuant to  
4 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,  
5 fraudulent, or deceitful act whereby another is injured, as follows: Respondent issued an  
6 electronic smog certificate of compliance for the Bureau's 1991 Toyota pickup without ensuring  
7 that a bona fide inspection was performed of the emission control devices and systems on the  
8 vehicle, thereby depriving the People of the State of California of the protection afforded by the  
9 Motor Vehicle Inspection Program.

10 **MATTERS IN AGGRAVATION**

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

13 a. On or about January 6, 2010, the Bureau issued Citation No. C2010-0566 against  
14 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to  
15 perform a visual/functional check of emission control devices according to procedures prescribed  
16 by the department); and California Code of Regulations, title 16, section ("Regulation") 3340.35,  
17 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested).  
18 Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a missing  
19 positive crankcase ventilation system. The Bureau assessed civil penalties totaling \$500 against  
20 Respondent for the violations. Respondent paid the fine on February 8, 2010.

21 b. On or about April 1, 2010, the Bureau issued Citation No. C2010-1035 against  
22 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to  
23 determine that emission control devices and systems required by State and Federal law are  
24 installed and functioning correctly in accordance with test procedures); and Regulation 3340.35,  
25 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested).  
26 Respondent had issued a certificate of compliance to a Bureau undercover vehicle with the  
27 ignition timing adjusted beyond specifications. The Bureau assessed civil penalties totaling  
28 \$1,000 against Respondent for the violations. Respondent paid the fine on May 10, 2010.

1 c. On or about August 10, 2010, the Bureau issued Citation No. C2011-0166 against  
2 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to  
3 perform a visual/functional check of emission control devices according to procedures prescribed  
4 by the department); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance  
5 to a vehicle that was improperly tested). Respondent had issued a certificate of compliance to a  
6 Bureau undercover vehicle with a disconnected evaporative emission control system and a non-  
7 California Air Resources Board approved carburetor. The Bureau assessed civil penalties totaling  
8 \$2,500 against Respondent for the violations. Respondent paid the fine on October 11, 2010.

9 **OTHER MATTERS**

10 22. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
11 suspend, revoke, or place on probation the registration for all places of business operated in this  
12 state by Respondent Mohammad Hashem, owner of AB Mobil Smog Test Only Center, upon a  
13 finding that Respondent has, or is, engaged in a course of repeated and willful violations of the  
14 laws and regulations pertaining to an automotive repair dealer.

15 23. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station  
16 License Number TC 257732, issued to Respondent Mohammad Hashem, owner of AB Mobil  
17 Smog Test Only Center, is revoked or suspended, any additional license issued under this chapter  
18 in the name of said licensee may be likewise revoked or suspended by the director.

19 **PRAYER**

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

22 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
23 257732, issued to Mohammad Hashem, owner of AB Mobil Smog Test Only Center;

24 2. Revoking or suspending any other automotive repair dealer registration issued to  
25 Mohammad Hashem;

26 3. Revoking or suspending Smog Check Test Only Station License Number TC 257732,  
27 issued to Mohammad Hashem, owner of AB Mobil Smog Test Only Center;

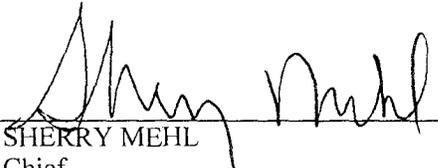
28 ///

1           4.    Revoking or suspending any additional license issued under Chapter 5 of the Health  
2 and Safety Code in the name of Mohammad Hashem;

3           5.    Ordering Mohammad Hashem, owner of AB Mobil Smog Test Only Center, to pay  
4 the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this  
5 case, pursuant to Business and Professions Code section 125.3;

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

7  
8 DATED:           9/14/11          

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

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SD2011800579