

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

In the Matter of the Petition)
For Interim Suspension Against:)

Case No. 79/11-84

GUERO TEST ONLY; FRANCISCO)
VASQUEZ)
460 W. 92nd Street Avenue)
Los Angeles, CA 90003)

OAH No. 2011040977

Automotive Repair Dealer Registration No.)
ARD 262321)
Smog Check Station License No.)
TC 262321)

and)

JAMES EDWARD KNOX)
8241 South Country Way)
Sacramento, CA 95828)

4823 Arlington Ave.)
Los Angeles, CA 90043)

Advance Emission Specialist Technician)
License No. EA 631224)

Respondents.)

INTERIM SUSPENSION ORDER

On April 22, 2011, Sherry Mehl (Petitioner), Chief of the Bureau of Automotive Repair, Department of Consumer Affairs (Bureau), State of California, filed a Noticed Petition for Interim Suspension Order pursuant to Business and Professions Code section 494 seeking to suspend respondents' Automotive Repair Dealer Registration (ARD), Smog Check Station License, and Advance Emission Specialist Technician License.

The matter came for hearing before Michael A. Scarlett, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, on May 11, 2011. M. Travis Peery, Deputy Attorney General, represented Petitioner. Respondent Francisco Vasquez did not appear. Respondent James Edward Knox appeared and represented himself. Respondent Vasquez was

properly served Notice of the Hearing for the Petition for Interim Suspension Order (ISO) on April 22, 2011, but requested a continuance of hearing on May 4, 2011, which was denied on May 10, 2011.

Jurisdictional documents and declarations under penalty of perjury from Glen Leño (Leño), Program Representative I, Mirl A. Morse (Morse), Program Representative I for the Bureau, J. Larry Drummond (Drummond), Program Representative II for the Bureau, and Dr. Barbara Weller, Air Resources Supervisor I for the Air Resources Board (ARB). The declarations contained facts in support of the Petitioner's request for an ISO and were received into evidence.

The following factual findings and conclusions of law are made on the basis of affidavits and other documents presented at the hearing.

FACTUAL FINDINGS

1. Petitioner Sherry Mehl filed the Petitioner for Interim Suspension Order while serving in her official capacity as the Chief of the Bureau.
2. On June 22, 2010, the Bureau issued ARD Registration No. 262321 to Respondent Vasquez. The ARD Registration was in full force and effect at all times relevant to the charges in the ISO Petition and will expire on June 30, 2011, unless renewed. On August 12, 2010, the Bureau also issued Smog Check Station License No. TC 262321 to Respondent Vasquez. On August 3, 2009, the Bureau issued Advanced Emission Specialist Technician License No. 631224 to Respondent Knox. The Advanced Emission Specialist Technician license was in full force and effect at all times relevant to the charges in the ISO Petition and will expire on September 3, 2011, unless renewed.
2. On May 25, 2010, Representative Morse was contacted by a confidential informant who informed Morse that an unknown person could purchase a "Clean Pipe" in the Los Angeles area at a cost of \$250. Clean Piping is a method used to fraudulently certify vehicles that would not otherwise pass a smog inspection properly administered.
3. The BAR97 Test Summary showed that on August 26, 2010, three (3) smog check inspections were conducted by Respondent Knox on three different vehicles, a 2000 Honda Accord, license plate no. 4LEL659; a 1994 Dodge Ram 2500, license plate no. 5P43037; and a 1990 Pontiac 6000, license plate no. 2TOM055. Three (3) Smog Check Certificate of Compliance numbers were issued by Respondent Knox indicating that the vehicles had successfully passed smog inspection. Respondent Knox issued Certificates of Compliance numbers as follows: No. WN339960C for the 2000 Honda Accord; No. WN339961C for the 1994 Dodge Ram 2500; and No. WN339963C for the 1990 Pontiac 6000.
4. On August 26, 2010, Representative Morse was able to purchase three (3)

Certificates of Compliance issued at Guero Test Only by Respondent Knox at a cost of \$250 each. On August 26, 2010, the date Respondent Knox issued the smog Certificates of Compliance for the three vehicles to Representative Morse, the vehicles were in the custody of the BAR's documentation Lab in Sacramento, California. Consequently, the vehicles were not inspected by Respondent Knox, and thus Knox issued the smog certificates illegally.

4. The evidence did not establish that Respondent Vasquez was aware of the illegal smog check inspections performed by Respondent Knox. However, Guero Test Only and Respondent Vasquez's ARD Registration and Smog Check Station License were used to issue the illegal Certificates of Compliance. Respondent Vasquez is strictly liable for the actions of his employees.

5. Guero Test Only and Respondent Knox participated in a scheme to perform illegal smog inspections and did in fact issue three illegal Certificates of Compliance even though the vehicles identified in the certificates were not inspected by Respondents. Respondents used "Clean Piping" to fraudulently and illegally issue smog certificates for these vehicles.

6. Allowing Respondents to continue to operate will endanger the public health, safety and welfare because the practice of "clean piping" results in vehicles, that would normally not pass smog inspection due to the vehicle's inability to meet California's emissions standards which were implemented and adopted to protect the environment and improve air quality for the citizens of California, being allowed to operate on California's streets and highways disproportionately discharging noxious gases and toxins that pollute the environment.

LEGAL CONCLUSIONS

1. Petitioner has established that respondents engaged in acts constituting violations of Business and Professions Code section 9884.7, subdivisions (a)(1) and (a)(4), and Health and Safety Code section 44072.2, subdivisions (a), (c), and (d), by reason of Factual Findings 2 through 5.

2. There is a reasonable probability that Petitioner will prevail in an action to permanently discipline Respondents' licenses.

3. Permitting Respondents to continue to engage in the licensed activity of smog checking vehicles will endanger the public health, safety, and welfare, by reason of Factual Finding 6. It is unclear on this record whether Respondent Vasquez may retain his ARD Registration if his Smog Check Station License is suspended. Because Guero Test Only appears to be solely a smog inspection and test operation and no evidence was introduced to support the performance of any other activity, the ARD Registration is assumed to have been issued solely for the purpose of conducting smog inspections.

4. The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to respondent in issuing the order.

ORDER

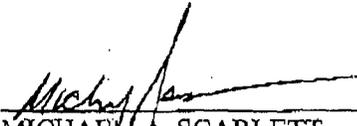
1. The Petition is sustained.

2. Automotive Repair Dealer Registration No. ARD 262321 and Smog Check Station License No. TC 262321, issued to Respondent Francisco Vasquez, and Advanced Emission Specialist Technician License No. EA 631224, issued to Respondent James Edward Knox, are suspended on an interim basis in accordance with Business and Professions Code section 494.

3. During the time that this Interim Suspension Order is in effect, Respondents are prohibited from engaging in the license activity of vehicle smog checking. Respondents are to surrender to the Bureau for safekeeping any indicia of their licensure as a smog tester and technician, respectively, including any wall certificate and/or wallet card.

IT IS SO ORDERED.

Date: May 18, 2011


MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 M. TRAVIS PEERY
Deputy Attorney General
4 State Bar No. 261887
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-0962
6 Facsimile: (213) 897-2804
Attorneys for Complainant

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

10 In the Matter of the Interim Suspension Order
Against:
11 **GUERO TEST ONLY; FRANCISCO**
12 **VASQUEZ**
460 W. 92nd Street
13 Los Angeles, CA 90003
14 Automotive Repair Dealer Registration No.
ARD 262321
15 Smog Check Station License No. TC 262321
16 **and**
17 **JAMES EDWARD KNOX**
8241 South Country Way
18 Sacramento, CA 95828
19 4823 Arlington Ave.
20 Los Angeles, CA 90043
21 Advanced Emission Specialist Technician
License No. EA 631224
22 Respondents.

Case No. 79/11-84
OAH No.
SMOG CHECK
PETITION FOR INTERIM SUSPENSION ORDER
(Filed concurrently with Memorandum of Points and Authorities)

Date: *wednesday, May 11, 2011*
Time: 10:00 a.m.
Place: Office of Administrative Hearings
320 West Fourth Street, Suite 630
Los Angeles, CA 90013

23
24 **INTRODUCTION**

25 Petitioner Sherry Mehl ("Petitioner"), Chief of the Bureau of Automotive Repair,
26 Department of Consumer Affairs ("Bureau"), State of California, by and through her counsel,
27 Kamala D. Harris, Attorney General of the State of California, by Deputy Attorney General M.
28

1 Travis Peery, hereby petitions for an Interim Suspension Order pursuant to Business and
2 Professions Code section 494, to temporarily suspend Automotive Repair Dealer Registration No.
3 ARD 262321 and Smog Check Station License No. TC 262321 issued to Francisco Vasquez and
4 Advanced Emission Specialist Technician License No. EA 631224 issued to James Edward Knox
5 (Respondents) until a hearing can be held on an Accusation charging Respondents with violations
6 of the Automotive Repair Act (Business and Professions Code section 9880, et. Seq.) and Motor
7 Vehicle Inspection Program (Health and Safety Code section 4000, et. Seq.). This Petition is
8 based upon this petition for interim suspension order, the concurrently filed memorandum of
9 points and authorities, supporting declarations and exhibits, all documents on file in this matter,
10 as well as any oral argument made at the hearing.

11 **PARTIES**

12 1. Petitioner is duly appointed and serving as the Chief of the Bureau, and files this
13 Petition in her official capacity.

14 2. On or about June 22, 2010, the Bureau issued Automotive Repair Dealer Registration
15 No. ARD 262321 to Francisco Vasquez. The Automotive Repair Dealer Registration was in full
16 force and effect at all times relevant to the charges brought herein and will expire on June 30,
17 2011, unless renewed.

18 3. On or about August 12, 2010, the Bureau issued Smog Check Station License No. TC
19 262321 to Francisco Vasquez. The Smog Check Station license was in full force and effect at all
20 times relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

21 4. On or about August 3, 2009, the Bureau issued Advanced Emission Specialist
22 Technician License No. 631224 to James Edward Knox. The Advanced Emission Specialist
23 Technician license was in full force and effect at all times relevant to the charges brought herein
24 and will expire on September 3, 2011, unless renewed.

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1 JURISDICTION

2 5. Business and Professions Code section 494 provides, in pertinent part as follows:

3 “(a) A board or administrative law judge sitting alone . . . may, upon petition, issue an
4 interim order suspending any licentiate . . . The Petition shall include affidavits that demonstrate,
5 to the satisfaction of the board, both of the following:

6 “(1) The licentiate has engaged in acts or omissions constituting a violation of this code or
7 has been convicted of a crime substantially related to the licensed activity.

8 “(2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the
9 licentiate to continue in the licensed activity without restrictions, would endanger the public
10 health, safety, or welfare.”

11 6. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

18 “. . . .

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

20 “(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.”

21 VIOLATIONS OF THE AUTOMOTIVE REPAIR ACT AND MOTOR VEHICLE
22 INSPECTION PROGRAM

23 Respondents have engaged in acts or omissions constituting violations of the Automotive
24 Repair Act (Business and Professions Code section 9880 et. seq.) in the following respects:

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1 7. On May 25, 2010, Bureau Program Representative I Mirl A. Morse ("Morse") was
2 contacted by a Confidential Informant and informed that an unknown person could purchase a
3 Clean Pipe¹ in the Los Angeles area and that the cost would be \$250.00.

4 8. The BAR97 Test Summary shows that on August 26, 2010, three (2) Smog Check
5 inspections were conducted by Respondent James Edward Knox on three (3) different vehicles.
6 Three (3) electronic Smog Check Certificate numbers were issued by Respondent James Edward
7 Knox. The following discrepancies occurred:

8 9. On August 26, 2010, Morse was able to purchase three (3) Certificates of Compliance
9 illegally issued at Guero Test Only by James Edward Knox. During this time period the vehicles
10 that were issued illegal Certificates of Compliance were in the custody of the BAR's Sacramento
11 Documentation Lab. The chart below illustrates the date and time of the illegal smog check
12 activity.

DATE & TEST TIMES*	VEHICLE IN BAR97 DATA & LICENSE # SX121206**	VEHICLE ACTUALLY TESTED	CERT ISSUED	DETAILS
08/26/2010 0825 to 0834	2000 Honda Accord (4LEL659)	Undetermined	WN339960C	Vehicle in possession of BAR Sacramento Documentation Lab during indicated inspection time.
08/26/2010 0839 to 0854	1994 Dodge Ram 2500 (5P43037)	Undetermined	WN339961C	Vehicle in possession of BAR Sacramento Documentation Lab during indicated inspection time.
08/26/2010 0906 to 0915	1990 Pontiac 6000 (2TOM055)	Undetermined	WN339963C	Vehicle in possession of BAR Sacramento Documentation Lab during indicated inspection time.

23 * Test times are in military time.

24 ** All vehicles are clean piped.

26 _____
27 ¹ Clean-piping is a method used to fraudulently certify vehicles that will not pass a smog
28 inspection on their own, or in some instances, are not even present during the time the test is performed.

PRAYER

WHEREFORE, Petitioner prays that an Administrative Law Judge on behalf of the Bureau of Automotive Repair issue an interim order suspending Francisco Vasquez's Automotive Repair Dealer Registration No. ARD 262321 and Smog Check Station License No. TC 262321, and James Edward Knox's Advanced Emission Specialist Technician License No. EA 631224, pursuant to Business and Professions Code section 494 for violations of the Automotive Repair Act and Motor Vehicle Inspection Program and further, order any other and further relief deemed necessary to protect the public health, safety, and welfare.

Dated: 4/13/11



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

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