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

11
12 In the Matter of the Accusation Against:

Case No. **79/15-7**

13 **ALL SMOG STATION INC, BICH**
14 **DUONG, PRESIDENT, SECRETARY,**
TREASURER
15 **3301 East Chapman Avenue, Suite D**
Orange, CA 92869

A C C U S A T I O N

16 **Automotive Repair Dealer Registration No.**
ARD 263337
17 **Smog Check-Test Only Station License No.**
TC 263337

18 **BICH DUONG**
19 **42 Shea Ridge**
20 **Rancho Santa Margarita, CA 92688**

21 **Smog Check Inspector License No.**
EO148012 (formerly Advanced Emission
22 **Specialist Technician License No.**
EA148012

23 **Repair Technician License No. EI148012**

24 Respondents.

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1 Complainant alleges:

2 **PARTIES**

3 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as
4 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

5 **LICENSE INFORMATION**

6 2. On or about September 21, 2010, the Bureau of Automotive Repair issued
7 Automotive Repair Dealer Registration Number ARD 263337 to All Smog Station Inc, Bich
8 Duong, President, Secretary, Treasurer (Respondents). The Automotive Repair Dealer
9 Registration was in full force and effect at all times relevant to the charges brought herein and
10 will expire on September 30, 2014, unless renewed.

11 3. On or about September 30, 2010, the Bureau of Automotive Repair issued Smog
12 Check-Test Only Station License Number TC 263337 to All Smog Station Inc, Bich Duong,
13 President, Secretary, Treasurer (Respondent). The Smog Check-Test Only Station License was in
14 full force and effect at all times relevant to the charges brought herein and will expire on
15 September 30, 2014, unless renewed.

16 4. On a date uncertain in 2003, the Bureau of Automotive Repair issued Advanced
17 Emission Specialist Technician License Number EA 148012 to Bich Duong, (Respondent). The
18 Advanced Emission Specialist Technician License was in full force and effect at all times
19 relevant to the charges brought herein and was due to expire on January 31, 2014, but was
20 cancelled on October 17, 2013. Pursuant to California Code of Regulations, title 16 section
21 3340.28, subdivision (c), said license was renewed pursuant to Bich Duong's election as Smog
22 Check Inspector (EO) License No. 148012 and Smog Check Repair Technician (EI) License No.
23 148012, effective October 17, 2013. The Smog Check Inspector (EO) License and Smog Check
24 Repair Technician (EI) License will expire January 31, 2016.¹

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26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 **JURISDICTION**

2 5. This Accusation is brought before the Director of Consumer Affairs (Director) for the
3 Bureau of Automotive Repair, under the authority of the following laws. All section references
4 are to the Business and Professions Code unless otherwise indicated.

5 6. Section 9884.7 of the Code states:

6 (a) The director, where the automotive repair dealer cannot show there was
7 a bona fide error, may deny, suspend, revoke, or place on probation the registration
8 of an automotive repair dealer for any of the following acts or omissions related to
9 the conduct of the business of the automotive repair dealer, which are done by the
10 automotive repair dealer or any automotive technician, employee, partner, officer,
11 or member of the automotive repair dealer.

12
13 (6) Failure in any material respect to comply with the provisions of this
14 chapter or regulations adopted pursuant to it.

15 (7) Any willful departure from or disregard of accepted trade standards for
16 good and workmanlike repair in any material respect, which is prejudicial to
17 another without consent of the owner or his or her duly authorized representative.

18
19 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
20 place on probation the registration for all places of business operated in this state
21 by an automotive repair dealer upon a finding that the automotive repair dealer
22 has, or is, engaged in a course of repeated and willful violations of this chapter, or
23 regulations adopted pursuant to it.

24 7. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
25 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
26 the Motor Vehicle Inspection Program.

27 8. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
28 expiration or suspension of a license by operation of law, or by order or decision of the 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 any investigation of, or action or disciplinary
proceedings against the licensee, or to render a decision suspending or revoking the license.

9. Section 44072.8 of the Health and Safety Code states:

"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."

1 hose were removed and the AIR system components were capped on the 2002 Pontiac, such that
2 the vehicle should have failed the visual portion of the California ASM Smog Check. Prior to the
3 inspection, the operator received and signed a \$62.00 estimate for the Smog Check inspection.
4 Respondent began the inspection and showed the operator, by pointing directly to it, the hose that
5 had been capped off. Respondent then asked the operator if he worked for the state, to which the
6 operator replied that he did not. Thereafter, Respondent completed his inspection, charged
7 \$62.00, and provided a copy of the invoice and Vehicle Inspection report to the operator.

8 18. On March 26, 2014, the Bureau reinspected the 2002 Pontiac and found that the
9 vehicle's AIR pump and vacuum signal hose were still missing and the AIR system components
10 still capped. The Bureau found that the vehicle still failed the visual portion of the Smog Check
11 because of the vehicle's missing AIR system.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Failure to Perform a Visual Check According to Procedures)**

14 19. Respondent's registration is subject to disciplinary action under Health and Safety
15 Code section 44012, subsection (f), in that Respondent failed to perform a visual/functional
16 check of the Bureau's 2002 Pontiac emission control devices according to procedures prescribed
17 by the Bureau, as detailed in paragraph 17, above.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Issuing a Smog Certificate to a Vehicle Not Meeting Requirements)**

20 20. Respondent's registration is subject to disciplinary action under Health and Safety
21 Code section 44015, subsection (b), in that Respondent issued a smog certificate to the Bureau's
22 2002 Pontiac when this vehicle's emissions did not meet the requirements of section 44012 of the
23 Health and Safety Code. Specifically, the vehicle's AIR pump and vacuum signal hose were
24 removed and AIR system components were capped at the time of the inspection, a fact noticed by
25 Respondent, which should have caused the vehicle to fail the visual inspection, as further detailed
26 in paragraph 17.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Issuing a Certificate of Compliance to a Vehicle Not in Compliance)**

3 21. Respondent's registration is subject to disciplinary action under California Code of
4 Regulations code section 3340.35, subsection (c), in that Respondent issued a certificate of
5 compliance to the Bureau's 2002 Pontiac when this vehicle's emissions did not meet the
6 requirements of section 44012 of the Health and Safety Code. Specifically, the vehicle's AIR
7 pump and vacuum signal hose were removed and AIR system components were capped at the
8 time of the inspection, a fact noticed by Respondent, which should have caused the vehicle to fail
9 the visual inspection, as further detailed in paragraph 17.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Conducting a Emission Control Systems Test in Accordance with the Code)**

12 22. Respondent's registration is subject to disciplinary action under California Code of
13 Regulations code section 44015, subsection (b), in that Respondent issued a smog certificate to
14 the Bureau's 2002 Pontiac when this vehicle's emissions did not meet the requirements of section
15 44012 of the Health and Safety Code. Respondent did not conduct the inspection of the Bureau's
16 2002 Pontiac in accordance with smog check emission test methods and standards prescribed by
17 the Bureau, as further detailed in paragraph 17.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Failure to Perform Emissions Test in Accordance with Section 44012)**

20 23. Respondent's registration is subject to disciplinary action under Health and Safety
21 Code section 44032, in that Respondent failed to perform visual or functional check tests of the
22 Bureau's 2002 Pontiac emission control systems and devices in accordance with section 44012,
23 subsection (f) of the Health and Safety Code, which requires that all such tests "be performed in
24 accordance with procedures prescribed by the department," as further detailed in paragraph 17.

25 **SIXTH CAUSE FOR DISCIPLINE**

26 **(Failure to Perform Tests of Emissions Controls Systems in Accordance with Section 44012)**

27 24. Respondent's registration is subject to disciplinary action under California Code of
28 Regulations section 3340.30, subsection (a), in that Respondent failed to perform smog test

1 checks on the Bureau's 2002 Pontiac emission control systems and devices in accordance with
2 section 44012, subsection (f) of the Health and Safety Code, which requires that all such tests "be
3 performed in accordance with procedures prescribed by the department," as further detailed in
4 paragraph 17.

5 **SEVENTH CAUSE FOR DISCIPLINE**

6 **(Failure to Perform Smog Check Inspection in Accordance with the Current Manual)**

7 25. Respondent's registration is subject to disciplinary action under California Code of
8 Regulations section 3340.45, subsection (b), in that Respondent failed to perform smog test
9 checks on the Bureau's 2002 Pontiac emission control systems and devices in accordance with
10 the Smog Check Manual, which became effective January 1, 2013, and as further detailed in
11 paragraph 17.

12 **DISCIPLINE CONSIDERATIONS**

13 26. To determine the degree of discipline, if any, to be imposed on Respondent,
14 Complainant alleges that on or about November 17, 2011, in a prior action, the Bureau of
15 Automotive Repair issued Citation Numbers C2012-0480 to All Smog Station, Inc. Respondent
16 was ordered to pay a \$1,000. The fine was paid on December 22, 2011. That Citation is now final
17 and is incorporated by reference as if fully set forth.

18 27. Complainant further alleges that on or about October 4, 2012, in a prior action, the
19 Bureau of Automotive Repair issued Citation Numbers C2013-0288 to All Smog Station, Inc.
20 Respondent was ordered to pay a \$2,000 fine. The fine was paid on November 19, 2012. That
21 Citation is now final and is incorporated by reference as if fully set forth.

22 28. Complainant further alleges that on or about May 22, 2013, in a prior action, the
23 Bureau of Automotive Repair issued Citation Numbers C2013-0664 All Smog Station Inc.
24 Respondent was ordered to pay a administrative fine of \$3,000 fine. The fine was paid on July 16,
25 2013. That Citation is now final and is incorporated by reference as if fully set forth.

26 29. On or about November 17, 2011, in a prior action, the Bureau of Automotive Repair
27 issued citation number M2012-0481 to technician Bich Duong. Respondent was to complete an 8-
28 Hour Training Course. Course was completed on December 21, 2011.

DATED: 7-16-14

Patrick Dorais by Doug Balatti

PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Assist. Chief
Doug BALATTI
Complainant

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