

1 XAVIER BECERRA
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KRISTINA T. JARVIS
Deputy Attorney General
4 State Bar No. 258229
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-6088
Facsimile: (916) 327-8643
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. *79/18-2714*

13 **SMOG TECH PROS**
14 **SHAHNAWAZ KHAN, OWNER**
10751 Folsom Blvd., #B
15 Rancho Cordova, CA 95670

ACCUSATION

16 **Automotive Repair Dealer Reg. No. ARD 272701**
17 **Smog Check, Test Only, Station License**
18 **No. TC 272701,**

19 **and**

20 **KEVIN HUMBERTO CRUZ**
21 **4220 Melisa Court**
22 **Carmichael, CA 95608**

23 **Smog Check Inspector License No. EO 152826**
24 **Smog Check Repair Technician License No. EI**
25 **152826**

26 **OTHER RELATED LICENSES**

27 **SMOG TECH PROS**
28 **SHAHNAWAZ KHAN, OWNER**
2411 Howe Avenue
Sacramento, CA 95825

Automotive Repair Dealer Reg. No. ARD 277349
Smog Check, Test Only, Station License
No. TC 277349,

and

1 **SMOG TECH PROS**
2 **SHAHNAWAZ KHAN, OWNER**
3 **2701 Riverside Blvd., #A**
4 **Sacramento, CA 95818**
5 **Mailing Address:**
6 **946 S. Central Avenue**
7 **Lodi, CA 95240**
8
9 **Automotive Repair Dealer Reg. No. ARD 271346**
10 **Smog Check, Test Only, Station License**
11 **No. TC 271346,**

Respondents.

Complainant alleges:

PARTIES

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

2. On or about April 26, 2013, the Director of Consumer Affairs (“Director”) issued Automotive Repair Dealer Registration Number ARD 272701 to Shahnawaz Khan (“Respondent Khan”), owner of Smog Tech Pros. The automotive repair dealer registration was in full force and effect at all times relevant to the charges brought in the Accusation and will expire on April 30, 2019, unless renewed.

3. On or about May 13, 2013, the Director issued Smog Check, Test Only, Station License Number TC 272701 to Respondent Khan, owner of Smog Tech Pros. The smog check, test only, station license was in full force and effect at all times relevant to the charges brought in the Accusation and will expire on April 30, 2019, unless renewed.

4. On or about July 25, 2014, the Director issued Automotive Repair Dealer Registration Number ARD 277349 to Respondent Khan, owner of Smog Tech Pros. The automotive repair dealer registration was in full force and effect at all times relevant to the charges brought in the Accusation and will expire on July 31, 2019, unless renewed.

5. On or about September 10, 2014, the Director issued Smog Check, Test Only, Station License Number TC 277349 to Respondent Khan, owner of Smog Tech Pros. The smog check, test only, station license was in full force and effect at all times relevant to the charges brought in the Accusation and will expire on July 31, 2019, unless renewed.

1 11. Bus. & Prof. Code section 9884.7 provides that the Director may revoke an
2 automotive repair dealer registration.

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

7 13. Health and Safety Code (“Health & Saf. Code”) section 44002 provides, in pertinent
8 part, that the Director has all the powers and authority granted under the Automotive Repair Act
9 for enforcing the Motor Vehicle Inspection Program.

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

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

17 **STATUTORY AND REGULATORY PROVISIONS**

18 16. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

25 (1) Making or authorizing in any manner or by any means whatever any
26 statement written or oral which is untrue or misleading, and which is known, or which
27 by the exercise of reasonable care should be known, to be untrue or misleading.

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(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

1 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
2 engaged in a course of repeated and willful violations of this chapter, or regulations
3 adopted pursuant to it.

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

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

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

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

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

16 18. Health & Saf. Code section 44072.10 states, in pertinent part:

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18 (c) The department shall revoke the license of any smog check technician
19 or station licensee who fraudulently certifies vehicles or participates in the fraudulent
20 inspection of vehicles. A fraudulent inspection includes, but is not limited to, all of
21 the following:

22

23 (4) Intentional or willful violation of this chapter or any regulation,
24 standard, or procedure of the department implementing this chapter . . .

25 19. Health & Saf. Code section 44024.5, subdivision (a), states:

26 The department shall compile and maintain statistical and emissions
27 profiles and data from motor vehicles that are subject to the motor vehicle inspection
28 program. The department may use data from any source, including remote sensing
data, in use data, and other motor vehicle inspection program data, to develop and
confirm the validity of the profiles, to evaluate the program, and to assess the
performance of smog check stations. The department shall undertake these
requirements directly or seek a qualified vendor for these services.

29 20. Health & Saf. Code section 44037 states, in pertinent part:

30 (a) The department shall compile and maintain records, using the
31 sampling methodology necessary to ensure their scientific validity and reliability, of
32 tests and repairs performed by qualified smog check technicians at licensed smog
33 check stations pursuant to this chapter on all of the following information:

34 (1) The motor vehicle identification information and the test data
35 collected at the station.

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(5) Data received and compiled through the use of the centralized computer database and computer network to be established pursuant to Section 44037.1, and any other information determined to be essential by the department for program enhancement to achieve greater efficiency, consumer protection, cost-effectiveness, convenience, or emission reductions . . .

21. Health & Saf. Code section 44037.1 states, in pertinent part:

(a) On or before January 1, 1995, the department shall design and establish the equipment necessary to operate a centralized computer data base and computer network that is readily accessible by all licensed smog check technicians on a real time basis.

(b) The centralized computer data base and network shall be designed with all of the following capabilities:

....

(2) To provide smog check technicians and the department with information as to the date and result of prior smog check tests performed on each vehicle to discourage vehicle owners from shopping for certificates of compliance and to permit the department to identify smog check stations for further investigation as potential violators of this chapter.

(3) To provide the department with data on the failure rates and repair effectiveness for vehicles of each make and model year on a statewide basis, and by smog check station and technician, to facilitate identification of smog check stations and technicians as potential violators of this chapter.

....

(8) To be compatible with the department's recordkeeping and compilation requirements established by Section 44037.

....

(c) After January 1, 1995, each smog check station shall transmit vehicle data emission test results to the department's centralized data base. Each smog check station shall also transmit vehicle data and emission measurements made before and after repair . . .

22. Title 16, California Code of Regulations, section 3340.17 states, in pertinent part:

....

(c) Vehicle data and test results from the OBD Inspection System (OIS) shall be transmitted to the bureau's centralized database . . .

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1 **COST RECOVERY**

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

6 **BACKGROUND**

7 24. On March 9, 2015, California's Smog Check Program was updated to keep pace with
8 ever-advancing technology. The program update requires the use of an On-Board Diagnostic
9 Inspection System (BAR-OIS). BAR-OIS is the smog check equipment required in all areas of
10 the State when inspecting most model-year 2000 and newer gasoline and hybrid vehicles and
11 most 1998 and newer diesel vehicles. The system consists of a certified Data Acquisition Device
12 (DAD), computer, bar code scanner, and printer.

13 25. The DAD is an On Board Diagnostic (OBD) scan tool that, when requested by the
14 California BAR-OIS software, retrieves OBD data from the vehicle. The DAD connects between
15 the BAR-OIS computer and the vehicle's diagnostic link connector. The bar code scanner is used
16 to input technician information, the vehicle identification number, and DMV renewal
17 information. The vehicle identification number (VIN) that is physically present on all vehicles is
18 required to be programmed into the vehicle's On-Board Diagnostics – Generation II (OBD II) on
19 2005 and newer vehicles, and on many occasions was programmed into the OBD II computer in
20 earlier model-years. The electronically programmed VIN is referred to as the "eVIN", is captured
21 by the Bureau during a smog check inspection, and should match the physical VIN on the vehicle.
22 The printer is used to provide a vehicle inspection report, which shows the inspection results and
23 the Smog Check Certificate of Compliance Number for passing vehicles. Data retrieved and
24 recorded during an OIS smog check includes the eVIN, the communication protocol², and the

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27 ² The OBD II communication protocol describes the specified communication "language"
28 used by the OBD II computer to communicate to scan tools and other devices such as the BAR-
OIS. The communication protocol is programmed into the vehicle's on-board computer during
manufacture and does not change.

1 number of Parameter Identifications (PID's)³.

2 **REVIEW OF OIS TEST DATA FOR SMOG TECH PROS**

3 26. Bureau Representative N. M. reviewed OIS test data pertaining to smog inspections
4 conducted at Respondent Khan's smog check station Smog Tech Pros located on Folsom
5 Boulevard in Rancho Cordova. N. M. found that the facility's smog check technician,
6 Respondent Cruz ("Cruz"), performed smog inspections on the ten vehicles identified below
7 using a method known as "clean plugging",⁴ resulting in the issuance of fraudulent certificates of
8 compliance for the vehicles.

9 **Vehicle 1:**

10 27. The OIS test data showed that on June 16, 2017, Cruz performed a smog inspection
11 on a 2007 Chevrolet Silverado K2500 Heavy Duty ("Vehicle 1"), resulting in the issuance of
12 electronic Smog Certificate of Compliance No. ZX339053C. The OIS test details for Vehicle 1
13 showed that the eVIN was not reported; i.e., transmitted to the Bureau's vehicle information
14 database ("VID"). N. M. reviewed the Comparative OIS Test Data for 2007 Chevrolet Silverado
15 K2500 Heavy Duty vehicles and found that the eVIN is reported. N. M. also found that the
16 communication protocol and PID count recorded during the inspection on Vehicle 1 were not
17 consistent with the communication protocol and PID count for that make and model vehicle.
18 N. M. concluded that the DAD was not connected to Vehicle 1 during the smog inspection,
19 resulting in the issuance of a fraudulent smog certificate of compliance for the vehicle.

20 28. The OIS test data also showed that on November 13, 2014, Vehicle 1 was tested at
21 another smog check station and passed the inspection. N. M. found that the eVIN was reported
22 during the inspection, and that the communication protocol and PID count recorded during the

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24 ³ PID's are data points reported by the vehicle's on-board computer to a scan tool or BAR-
25 OIS (for example, engine speed, vehicle speed, engine temperature, etc.) The PID count is the
26 number of data points reported by the vehicle's on-board computer and is programmed during
27 manufacture.

27 ⁴ Clean-plugging is the use of a vehicle's properly functioning OBD II system, or another
28 source, to generate passing diagnostic readings for the purpose of issuing a fraudulent smog
certificate of compliance to another vehicle that is not in compliance with the Smog Check
Program and/or is not present for testing.

1 inspection matched the communication protocol and PID count for 2007 Chevrolet Silverado
2 K2500 Heavy Duty vehicles.

3 **Vehicle 2:**

4 29. The OIS test data showed that on August 1, 2017, between 08:12 and 08:14 hours,
5 Cruz performed a smog inspection on a 2013 Chevrolet Cruze LT (“Vehicle 2”), resulting in the
6 issuance of electronic Smog Certificate of Compliance No. HD064248C. The OIS test details for
7 Vehicle 2 showed that the eVIN recorded during the inspection did not match the physical VIN
8 on the vehicle. N. M. reviewed the Comparative OIS Test Data for 2013 Chevrolet Cruze LT
9 vehicles and found that the communication protocol and PID count recorded during the inspection
10 on Vehicle 2 were not consistent with the communication protocol and PID count for that make
11 and model vehicle. N. M. concluded that the DAD was not connected to Vehicle 2 during the
12 smog inspection.

13 30. The OIS test data also showed that on August 1, 2017, between 08:07 and 08:10
14 hours, Cruz performed a smog test on a 2003 Chevrolet Tahoe K1500 at Respondent Khan’s
15 smog check station Smog Tech Pros located on Folsom Boulevard and that the eVIN transmitted
16 to the VID was the same eVIN that was recorded during the smog inspection on Vehicle 2.
17 Further, the communication protocol and PID count recorded during the inspection on the 2003
18 Chevrolet Tahoe K1500 were consistent with the communication protocol and PID count
19 recorded during the inspection on Vehicle 2. N. M. concluded that Cruz used the 2003 Chevrolet
20 Tahoe K1500’s properly functioning OBD II system during the smog inspection on Vehicle 2,
21 resulting in the issuance of a fraudulent smog certificate of compliance for the vehicle.

22 **Vehicle 3:**

23 31. The OIS test data showed that on October 6, 2017, Cruz performed a smog inspection
24 on a 2007 Dodge Magnum SXT (“Vehicle 3”), resulting in the issuance of electronic Smog
25 Certificate of Compliance No. HH158309C. The OIS test details for Vehicle 3 showed that the
26 eVIN was not reported. N. M. reviewed the Comparative OIS Test Data for 2007 Dodge
27 Magnum SXT vehicles and found that the eVIN is reported. N. M. also found that the
28 communication protocol and PID count recorded during the inspection on Vehicle 3 were not

1 consistent with the communication protocol and PID count for that make and model vehicle.
2 N. M. concluded that the DAD was not connected to Vehicle 3 during the smog inspection,
3 resulting in the issuance of a fraudulent smog certificate of compliance for the vehicle.

4 32. The OIS test data also showed that on September 28, 2016, Vehicle 3 was tested at
5 another smog check station and passed the inspection. N. M. found that the eVIN was reported
6 during the inspection, and that the communication protocol and PID count recorded during the
7 inspection matched the communication protocol and PID count for 2007 Dodge Magnum SXT
8 vehicles.

9 **Vehicle 4:**

10 33. The OIS test data showed that on October 19, 2017, between 09:27 and 09:29 hours,
11 Cruz performed a smog inspection on a 2005 Chevrolet Corvette ("Vehicle 4"), resulting in the
12 issuance of electronic Smog Certificate of Compliance No. HH158339C. The OIS test details for
13 Vehicle 4 showed that the eVIN recorded during the inspection did not match the physical VIN
14 on the vehicle. N. M. reviewed the Comparative OIS Test Data for 2005 Chevrolet Corvette
15 vehicles and found that the communication protocol and PID count recorded during the inspection
16 on Vehicle 4 were not consistent with the communication protocol and PID count for that make
17 and model vehicle. N. M. concluded that the DAD was not connected to Vehicle 4 during the
18 smog inspection.

19 34. The OIS test data also showed that on October 19, 2017, between 09:24 and 09:26
20 hours, Cruz performed a smog test on a 2005 Chevrolet Suburban K1500 at Respondent Khan's
21 smog check station Smog Tech Pros located on Folsom Boulevard and that the eVIN transmitted
22 to the VID was the same eVIN that was recorded during the smog inspection on Vehicle 4.
23 Further, the communication protocol and PID count recorded during the inspection on the 2005
24 Chevrolet Suburban K1500 were consistent with the communication protocol and PID count
25 recorded during the inspection on Vehicle 4. N. M. concluded that Cruz used the 2005 Chevrolet
26 Suburban K1500's properly functioning OBD II system during the smog inspection on Vehicle 4,
27 resulting in the issuance of a fraudulent smog certificate of compliance for the vehicle.

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1 **Vehicle 5:**

2 35. The OIS test data showed that on October 23, 2017, Cruz performed a smog
3 inspection on a 2008 Dodge Sprint 2500 (“Vehicle 5”), resulting in the issuance of electronic
4 Smog Certificate of Compliance No. HH619360C. The OIS test details for Vehicle 5 showed that
5 the eVIN was not reported. N. M. reviewed the Comparative OIS Test Data for 2008 Dodge
6 Sprint 2500 vehicles and found that the eVIN is reported. N. M. also found that the
7 communication protocol and PID count recorded during the inspection on Vehicle 5 were not
8 consistent with the communication protocol and PID count for that make and model vehicle.
9 N. M. concluded that the DAD was not connected to Vehicle 5 during the smog inspection,
10 resulting in the issuance of a fraudulent smog certificate of compliance for the vehicle.

11 36. The OIS test data also showed that on June 1, 2015, Vehicle 5 was tested at another
12 smog check station and passed the inspection. N. M. found that the eVIN was reported during the
13 inspection, and that the communication protocol and PID count recorded during the inspection
14 matched the communication protocol and PID count for 2008 Dodge Sprint 2500 vehicles.

15 **Vehicle 6:**

16 37. The OIS test data showed that on November 6, 2017, between 12:14 and 12:20 hours,
17 Cruz performed a smog inspection on a 2002 Subaru Impreza WRX (“Vehicle 6”), resulting in
18 the issuance of electronic Smog Certificate of Compliance No. HJ071901C. The OIS test details
19 for Vehicle 6 showed that the eVIN recorded during the inspection did not match the physical
20 VIN on the vehicle. N. M. reviewed the Comparative OIS Test Data for 2002 Subaru Impreza
21 WRX vehicles and found that the eVIN is not transmitted. N.M. also found that the
22 communication protocol and PID count recorded during the inspection on Vehicle 6 were not
23 consistent with the communication protocol and PID count for that make and model vehicle. N.
24 M. concluded that the DAD was not connected to Vehicle 6 during the smog inspection.

25 38. The OIS test data also showed that on September 29, 2015, Vehicle 6 was tested at
26 another smog check station and passed the inspection. N. M. found that the eVIN was not
27 transmitted, and the communication protocol and PID count recorded during the inspection
28 matched the communication protocol and PID count for 2002 Subaru Impreza WRX vehicles.

1 39. Further, the OIS test data showed that on November 6, 2017, between 12:20 and
2 12:22 hours, Cruz performed a smog test on a 2006 Subaru Legacy GT Limited at Respondent
3 Khan's smog check station Smog Tech Pros located on Folsom Boulevard and that the eVIN
4 transmitted to the VID was the same eVIN that was recorded during the smog inspection on
5 Vehicle 6. Further, the communication protocol and PID count recorded during the inspection on
6 the 2006 Subaru Legacy GT Limited were consistent with the communication protocol and PID
7 count recorded during the inspection on Vehicle 6. N. M. concluded that Cruz used the 2006
8 Subaru Legacy GT Limited's properly functioning OBD II system during the smog inspection on
9 Vehicle 6, resulting in the issuance of a fraudulent smog certificate of compliance for the vehicle.

10 **Vehicle 7:**

11 40. The OIS test data showed that on November 28, 2017, Cruz performed a smog
12 inspection on a 2005 Chevrolet Trailblazer EXT LS ("Vehicle 7"), resulting in the issuance of
13 electronic Smog Certificate of Compliance No. HJ473189C. The OIS test details for Vehicle 7
14 showed that the eVIN was not reported. N. M. reviewed the Comparative OIS Test Data for 2005
15 Chevrolet Trailblazer EXT LS vehicles and found that the eVIN is reported. N. M. also found
16 that the communication protocol and PID count recorded during the inspection on Vehicle 7 were
17 not consistent with the communication protocol and PID count for that make and model vehicle.
18 N. M. concluded that the DAD was not connected to Vehicle 7 during the smog inspection,
19 resulting in the issuance of a fraudulent smog certificate of compliance for the vehicle.

20 41. The OIS test data also showed that on May 15, 2017, Vehicle 7 was tested at another
21 smog check station and passed the inspection. N. M. found that the eVIN was reported during the
22 inspection, and that the communication protocol and PID count recorded during the inspection
23 matched the communication protocol and PID count for a 2005 Chevrolet Trailblazer EXT LS
24 vehicles.

25 **Vehicle 8:**

26 42. The OIS test data showed that on November 28, 2017, between 08:22 and 08:25
27 hours, Cruz performed a smog inspection on a 2003 Toyota Tacoma XtraCab ("Vehicle 8"),
28 resulting in the issuance of electronic Smog Certificate of Compliance No. HJ473190C. The OIS

1 test details for Vehicle 8 showed that the eVIN did not match the physical VIN on the vehicle.
2 N. M. reviewed the Comparative OIS Test Data for 2003 Toyota Tacoma XtraCab vehicles and
3 found that the eVIN is not reported. N. M. also found that the communication protocol and PID
4 count recorded during the inspection on Vehicle 8 were not consistent with the communication
5 protocol and PID count for that make and model vehicle. N. M. concluded that the DAD was not
6 connected to Vehicle 8 during the smog inspection.

7 43. The OIS test data also showed that on May 25, 2015, Vehicle 8 was tested at another
8 smog check station and passed the inspection. N. M. found that the communication protocol and
9 PID count recorded during the inspection matched the communication protocol and PID count for
10 2003 Toyota Tacoma XtraCab vehicles.

11 44. Further, the OIS test data showed that on November 28, 2017, between 08:18 and
12 08:21 hours, Cruz performed a smog test on a 2011 Chevrolet Malibu 1LT at Respondent Khan's
13 smog check station Smog Tech Pros located on Folsom Boulevard and that the eVIN transmitted
14 to the VID was the same eVIN that was recorded during the smog inspection on Vehicle 8.
15 Further, the communication protocol and PID count recorded during the inspection on the 2011
16 Chevrolet Malibu 1LT were consistent with the communication protocol and PID count recorded
17 during the inspection on Vehicle 8. N. M. concluded that Cruz used the 2011 Chevrolet Malibu
18 1LT's properly functioning OBD II system during the smog inspection on Vehicle 8, resulting in
19 the issuance of a fraudulent smog certificate of compliance for the vehicle.

20 **Vehicle 9:**

21 45. The OIS test data showed that on December 13, 2017, between 11:28 and 11:30
22 hours, Cruz performed a smog inspection on a 2006 BMW 750 Li ("Vehicle 9"), resulting in the
23 issuance of electronic Smog Certificate of Compliance No. HL031032C. The OIS test details for
24 Vehicle 9 showed that the eVIN recorded during the inspection did not match the physical VIN
25 on the vehicle. N. M. reviewed the Comparative OIS Test Data for 2006 BMW 750 Li vehicles
26 and found that the communication protocol and PID count recorded during the inspection on
27 Vehicle 9 were not consistent with the communication protocol and PID count for that make and

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1 model vehicle. N. M. concluded that the DAD was not connected to Vehicle 9 during the smog
2 inspection.

3 46. The OIS test data also showed that on June 16, 2015, Vehicle 9 was tested at another
4 smog check station and passed the inspection. N. M. found that the communication protocol and
5 PID count recorded during the inspection matched the communication protocol and PID count for
6 2006 BMW 750 Li vehicles.

7 47. Further, the OIS test data showed that on December 13, 2017, between 11:23 and
8 11:25 hours, Cruz performed a smog test on a 2009 Toyota RAV4 at Respondent Khan's smog
9 check station Smog Tech Pros located on Folsom Boulevard and that the eVIN transmitted to the
10 VID was the same eVIN that was recorded during the smog inspection on Vehicle 9. Further, the
11 communication protocol and PID count recorded during the inspection on the 2009 Toyota RAV4
12 were consistent with the communication protocol and PID count recorded during the inspection
13 on Vehicle 9. N. M. concluded that Cruz used the 2009 Toyota RAV4's properly functioning
14 OBD II system during the smog inspection on Vehicle 9, resulting in the issuance of a fraudulent
15 smog certificate of compliance for the vehicle.

16 **Vehicle 10:**

17 48. The OIS test data showed that on December 19, 2017, Cruz performed a smog
18 inspection on a 2002 Toyota Tacoma ("Vehicle 10"), resulting in the issuance of electronic Smog
19 Certificate of Compliance No. HL136813C. N. M. reviewed the Comparative OIS Test Data for
20 2002 Toyota Tacoma vehicles and found that the communication protocol and PID count
21 recorded during the inspection on Vehicle 10 were not consistent with the communication
22 protocol and PID count for that make and model vehicle. N. M. concluded that the DAD was not
23 connected to Vehicle 10 during the smog inspection, resulting in the issuance of a fraudulent
24 smog certificate of compliance for the vehicle.

25 49. The OIS test data also showed that on November 27, 2017, Vehicle 10 was tested at
26 Respondent Khan's smog check station Smog Tech Pros located on Folsom Boulevard and that
27 the vehicle did not pass the inspection. N. M. found that the communication protocol and PID

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1 count recorded during the inspection matched the communication protocol and PID count for
2 2002 Toyota Tacoma vehicles.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 50. Respondent Khan's Automotive Repair Dealer Registration Number ARD 272701 is
6 subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in
7 that Respondent made or authorized statements which he knew or in the exercise of reasonable
8 care should have known to be untrue or misleading, as follows: Respondent Khan's smog check
9 technician, Respondent Cruz, certified that Vehicles 1 through 10, identified in paragraphs 27 to
10 49 above, had passed inspection and were in compliance with applicable laws and regulations. In
11 fact, Respondent Cruz conducted the smog inspections on the vehicles using clean-plugging
12 methods in that he substituted or used a different vehicle during the inspections in order to issue
13 smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as
14 required by Health & Saf. Code section 44012.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Fraud)**

17 51. Respondent Khan's Automotive Repair Dealer Registration Number ARD 272701 is
18 subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in
19 that Respondent committed acts which constitute fraud by issuing electronic smog certificates of
20 compliance for Vehicles 1 through 10, identified in paragraphs 27 to 49 above, without ensuring
21 that bona fide inspections were performed of the emission control devices and systems on the
22 vehicles, thereby depriving the People of the State of California of the protection afforded by the
23 Motor Vehicle Inspection Program.

24 **THIRD CAUSE FOR DISCIPLINE**

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

26 52. Respondent Khan's Smog Check, Test Only, Station License Number TC 272701 is
27 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in
28 that Respondent failed to comply with the following sections of that Code:

1 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
2 performed on Vehicles 1 through 106, identified in paragraphs 27 to 49 above, in accordance with
3 procedures prescribed by the department.

4 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
5 Vehicles 1 through 10, identified in paragraphs 27 to 49 above, without ensuring that the vehicles
6 were properly tested and inspected to determine if they were in compliance with Health & Saf.
7 Code section 44012.

8 **FOURTH CAUSE FOR DISCIPLINE**
9 **(Failure to Comply with Regulations Pursuant**
10 **to the Motor Vehicle Inspection Program)**

11 53. Respondent Khan's Smog Check, Test Only, Station License Number TC 272701 is
12 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in
13 that Respondent failed to comply with provisions of Title 16, California Code of Regulations, as
14 follows:

15 a. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
16 compliance for Vehicles 1 through 10, identified in paragraphs 27 to 49 above, even though the
17 vehicles had not been inspected in accordance with section 3340.42.

18 b. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
19 conducted on Vehicles 1 through 10, identified in paragraphs 27 to 49 above, in accordance with
20 the Bureau's specifications.

21 **FIFTH CAUSE FOR DISCIPLINE**
22 **(Dishonesty, Fraud or Deceit)**

23 54. Respondent Khan's Smog Check, Test Only, Station License Number TC 272701 is
24 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in
25 that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by
26 issuing electronic smog certificates of compliance for Vehicles 1 through 10, identified in
27 paragraphs 27 to 49 above, without ensuring that bona fide inspections were performed of the

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1 emission control devices and systems on the vehicles, thereby depriving the People of the State of
2 California of the protection afforded by the Motor Vehicle Inspection Program.

3 **SIXTH CAUSE FOR DISCIPLINE**

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

5 55. Respondent Cruz's smog check inspector and smog check repair technician licenses
6 are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a),
7 in that Respondent failed to comply with section 44012 of that Code in a material respect, as
8 follows: Respondent failed to perform the emission control tests on Vehicles 1 through 10,
9 identified in paragraphs 27 to 49 above, in accordance with procedures prescribed by the
10 department.

11 **SEVENTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations Pursuant**
13 **to the Motor Vehicle Inspection Program)**

14 56. Respondent Cruz's smog check inspector and smog check repair technician licenses
15 are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c),
16 in that Respondent failed to comply with provisions of Title 16, California Code of Regulations,
17 as follows:

18 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test Vehicles 1
19 through 10, identified in paragraphs 27 to 49 above, in accordance with Health & Saf. Code
20 sections 44012 and 44035, and Title 16, California Code of Regulations, section 3340.42.

21 b. **Section 3340.42:** Respondent failed to conduct the required smog tests on Vehicles 1
22 through 10, identified in paragraphs 27 to 49 above, in accordance with the Bureau's
23 specifications.

24 **EIGHTH CAUSE FOR DISCIPLINE**

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

26 57. Respondent Cruz's smog check inspector and smog check repair technician licenses
27 are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d),
28 in that Respondent committed dishonest, fraudulent, or deceitful acts whereby another is injured

1 by issuing electronic smog certificate of compliance for Vehicles 1 through 10, identified in
2 paragraphs 27 to 49 above, without performing bona fide inspections of the emission control
3 devices and systems on the vehicles, thereby depriving the People of the State of California of the
4 protection afforded by the Motor Vehicle Inspection Program.

5 **MATTERS IN AGGRAVATION**

6 58. To determine the degree of discipline, if any, to be imposed on Respondent Cruz,
7 Complainant alleges as follows:

8 a. On or about March 10, 2009, the Bureau issued Citation No. M2009-1055 against
9 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
10 perform tests of emission control systems and devices in accordance with Health & Saf. Code
11 section 44012); and Title 16, California Code of Regulations, section 3340.30, subdivision (a)
12 (qualified technicians shall inspect, test and repair vehicles in accordance with Health & Saf.
13 Code sections 44012 and 44035 and Title 16, California Code of Regulations, section 3340.42).
14 On February 3, 2009, Respondent issued a certificate of compliance to a Bureau undercover
15 vehicle with the ignition timing adjusted beyond specifications. Respondent was directed to
16 complete an 8-hour training course and to submit proof of completion to the Bureau within 30
17 days from receipt of the citation. Respondent completed the training on April 28, 2009.

18 b. On or about May 21, 2009, the Bureau issued Citation No. M2009-1344 against
19 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
20 perform tests of emission control systems and devices in accordance with Health & Saf. Code
21 section 44012); and Title 16, California Code of Regulations, section 3340.30, subdivision (a)
22 (qualified technicians shall inspect, test and repair vehicles in accordance with Health & Saf.
23 Code sections 44012 and 44035 and Title 16, California Code of Regulations, section 3340.42).
24 On May 6, 2009, Respondent issued a certificate of compliance to a Bureau undercover vehicle
25 with a missing fuel evaporative storage canister. Respondent was directed to complete a 16-hour
26 training course and to submit proof of completion to the Bureau within 30 days from receipt of
27 the citation. Respondent completed the training on June 23, 2010.

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1 **OTHER MATTERS**

2 59. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
3 suspend, revoke or place on probation the registration for all places of business operated in this
4 state by Respondent Shahnawaz Khan, owner of Smog Tech Pros, including, but not limited to,
5 Automotive Repair Dealer Registration Number ARD 272701, Automotive Repair Dealer
6 Registration Number ARD 277349, and issued Automotive Repair Dealer Registration Number
7 ARD 271346, upon a finding that Respondent has, or is, engaged in a course of repeated and
8 willful violations of the laws and regulations pertaining to an automotive repair dealer.

9 60. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
10 License Number TC 272701, issued to Respondent Shahnawaz Khan, owner of Smog Tech Pros,
11 is revoked or suspended, any additional license issued under Chapter 5 of the Health & Saf. Code
12 in the name of said licensee, including, but not limited to, Smog Check, Test Only, Station
13 License Number TC 277349 and Smog Check, Test Only, Station License Number TC 271346,
14 may be likewise revoked or suspended by the Director.

15 61. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
16 Number EO 152826 and Smog Check Repair Technician License Number EI 152826, issued to
17 Respondent Kevin Humberto Cruz, is revoked or suspended, any additional license issued under
18 this chapter 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 272701, issued to Shahnawaz Khan, owner of Smog Tech Pros;

24 2. Revoking or suspending any other automotive repair dealer registration issued to
25 Shahnawaz Khan, including, but not limited to, Automotive Repair Dealer Registration Number
26 ARD 277349 and Automotive Repair Dealer Registration Number ARD 271346;

27 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
28 272701, issued to Shahnawaz Khan, owner of Smog Tech Pros;

1 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
2 Division 26 of the Health and Safety Code in the name of Shahnawaz Khan, owner of Smog Tech
3 Pros, including, but not limited to, Smog Check, Test Only, Station License Number TC 277349
4 and Smog Check, Test Only, Station License Number TC 271346;

5 5. Revoking or suspending Smog Check Inspector License Number EO 152826 and
6 Smog Check Repair Technician License Number EI 152826, issued to Kevin Humberto Cruz;

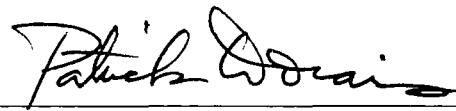
7 6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
8 Division 26 of of the Health and Safety Code in the name of Kevin Humberto Cruz;

9 7. Ordering Shahnawaz Khan, owner of Smog Tech Pros and Kevin Humberto Cruz, to
10 pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of
11 this case, pursuant to Business and Professions Code section 125.3; and

12 8. Taking such other and further action as deemed necessary and proper.

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14 DATED:

August 7, 2018



PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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