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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:

13 **ANH-TUAN ANDY PHAM**
14 **DBA O2 STAR SMOG CHECK**
15 **701 Kings Row 39B**
16 **San Jose, CA 95112**

17 **Mailing Address**
18 **1120 N 1st St**
19 **San Jose, CA 95112**

20 **Automotive Repair Dealer Registration No. ARD**
21 **287959**
22 **Smog Check, Test-Only, Station License No. TC**
23 **287959**

24 **ANH-TUAN ANDY PHAM**
25 **1120 N 1st St**
26 **San Jose, CA 95112**

27 **Smog Check Inspector License No. EO 638864**

28 Respondent.

Case No. 79/24-4141

OAH No.

**DEFAULT DECISION AND
ORDER**

[Gov. Code, §11520]

29 **FINDINGS OF FACT**

30 1. On or about September 16, 2024, Complainant Patrick Dorais, in his official capacity
31 as the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs,
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1 filed Accusation No. 79/24-4141 against Anh-Tuan Andy Pham dba O2 Star Smog Check
2 (Respondent) before the Director of the Department of Consumer Affairs. (Accusation attached
3 as Exhibit A.)

4 2. On or about July 11, 2017, the Bureau issued Automotive Repair Dealer Registration
5 Number ARD 287959 to Respondent dba O2 Star Smog Check. The Automotive Repair Dealer
6 Registration was in full force and effect at all times relevant to the charges brought herein and
7 will expire on July 31, 2025, unless renewed.

8 3. On or about July 20, 2017, the Bureau issued Smog Check, Test-only, Station License
9 Number TC 287959 to Respondent dba O2 Star Smog Check. The Smog Check, Test-only,
10 Station License was in full force and effect at all times relevant to the charges brought herein and
11 will expire on July 31, 2025, unless renewed. The Smog Check, Test-only, Station License was
12 STAR certified on or about October 26, 2017.

13 4. On or about December 28, 2015, the Bureau issued Smog Check Inspector License
14 Number EO 638864 to Respondent. The Smog Check Inspector License was in full force and
15 effect at all times relevant to the charges brought herein and will expire on December 31, 2025,
16 unless renewed.

17 5. On or about September 23, 2024, Respondent was served by Certified and First Class
18 Mail copies of the Accusation No. 79/24-4141, Statement to Respondent, Notice of Defense,
19 Request for Discovery and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
20 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
21 section 136, is required to be reported and maintained with the Bureau. Respondent's address of
22 record was and is:

23 1120 N 1st St
24 San Jose, CA 95112.

25 6. On or about September 23, 2024, Respondent was served by Certified and First Class
26 Mail copies of the Accusation No. 79/24-4141, Statement to Respondent, Notice of Defense,
27 Request for Discovery and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
28 11507.7) at the business address of Respondent's station, O2 Star Smog Check, which was and is:

1 701 Kings Row 39B

2 San Jose, CA 95112

3 1. Service of the Accusation was effective as a matter of law under the provisions of
4 Government Code section 11505(c) and/or Business and Professions Code section 124.

5 2. Government Code section 11506(c) states, in pertinent part:

6 (c) The respondent shall be entitled to a hearing on the merits if the respondent
7 files a notice of defense . . . and the notice shall be deemed a specific denial of all
8 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
9 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
10 discretion may nevertheless grant a hearing.

11 3. The Bureau takes official notice of its records and the fact that Respondent failed to
12 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore
13 waived his right to a hearing on the merits of Accusation No. 79/24-4141.

14 4. California Government Code section 11520(a) states, in pertinent part:

15 (a) If the respondent either fails to file a notice of defense . . . or to appear at
16 the hearing, the agency may take action based upon the respondent's express
17 admissions or upon other evidence and affidavits may be used as evidence without
18 any notice to respondent

19 5. Pursuant to its authority under Government Code section 11520, the Director after
20 having reviewed the proof of service dated September 23, 2024, signed by Jose Katigbak, finds
21 Respondent is in default. The Director will take action without further hearing and, based on the
22 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
23 finds that the charges and allegations in Accusation No. 79/24-4141, are separately and severally,
24 found to be true and correct by clear and convincing evidence.

25 **DETERMINATION OF ISSUES**

26 1. Based on the foregoing findings of fact, Respondent Anh-Tuan Andy Pham dba O2
27 Star Smog Check has subjected his Automotive Repair Dealer Registration No. ARD 287959 to
28 discipline.

2. Based on the foregoing findings of fact, Respondent Anh-Tuan Andy Pham dba O2
Star Smog Check has subjected his Smog Check, Test-only, Station License No. TC 287959 to
discipline.

1 3. Based on the foregoing findings of fact, Respondent Anh-Tuan Andy Pham has
2 subjected his Smog Check Inspector Number EO 638864 to discipline.

3 4. The agency has jurisdiction to adjudicate this case by default.

4 5. The Director of the Department of Consumer Affairs is authorized to revoke
5 Respondent's Automotive Repair Dealer Registration, Smog Check, Test-only, Station License,
6 and Smog Check Inspector License, based upon the following violations alleged in the
7 Accusation which are supported by the evidence contained in the Default Decision Investigatory
8 Evidence Packet in this case:

- 9 a. Respondent has subjected his Automotive Repair Dealer Registration to discipline
10 under Code section 9884.7, subdivision (a)(4), in that he committed acts which
11 constitute fraud.
- 12 b. Respondent has subjected his Automotive Repair Dealer Registration to discipline
13 under Code section 9884.7, subdivision (a)(6), in that he violated California Code of
14 Regulations, title 16, section 3373, by creating and issuing false or misleading
15 certificates of compliance and vehicle inspection reports.
- 16 c. Respondent has subjected his Smog Check, Test-only, Station License and Smog
17 Check Inspector License to discipline under Health and Safety Code sections
18 44072.10 and/or 44072.2, subdivision (d), in that he committed acts involving
19 dishonesty, fraud or deceit, whereby another was injured by issuing electronic
20 certificates of compliance for vehicles without performing bona fide inspections of
21 the emission control devices and systems on those vehicles.
- 22 d. Respondent has subjected his Smog Check, Test-only, Station License and Smog
23 Check Inspector License to discipline under Health and Safety Code sections
24 44072.10 and/or 44072.2, subdivisions (a) and (c), in that he violated sections of that
25 Code and applicable regulations, through conduct described in the Smog Program and
26 Clean Plugging Allegations, as follows:

- i. **Section 44012:** Respondent failed to ensure that smog inspections were performed on vehicles in accordance with procedures prescribed by the department.
- ii. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic certificates of compliance to certain vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles.
- iii. **Section 3340.30, subdivision (a):** Respondent failed to inspect the vehicles in accordance with Health and Safety Code section 44012 and California Code of Regulations, title 16, section 3340.42.
- iv. **Section 3340.41, subdivision (c):** Respondent entered false information about vehicles being tested into OIS.
- v. **Section 3340.41, subdivision (h):** Respondent had electronic devices or software capable of simulating the OBD data stream from a vehicle or manipulating OBD VIN, calibration identification, calibration verification number, MIL status, readiness, or diagnostic trouble codes collected from a vehicle during a Smog Check Inspection in the approved testing area of the station.
- vi. **Section 3340.42:** Respondent failed to conduct the required smog tests and inspections on certain vehicles in accordance with the Bureau's specifications.
- vii. **Section 3340.45** Respondent violated the procedures contained in the Smog Check Manual by entering vehicle identification information for a vehicle that was not being tested.
- viii. **Section 44059:** Respondent willfully made false statements in issuing the Smog Certificates of compliance and on the Vehicle Inspection Reports.

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ORDER

IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 287959, issued to Respondent Anh-Tuan Andy Pham dba O2 Star Smog Check, is revoked.

IT IS SO ORDERED that Smog Check, Test-only, Station License No. TC 287959, issued to Respondent Anh-Tuan Andy Pham dba O2 Star Smog Check, is revoked.

IT IS SO ORDERED that Smog Check Inspector Number EO 638864, issued to Respondent Anh-Tuan Andy Pham, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The motion should be sent to the Bureau of Automotive Repair, ATTN: Patrick Lutfi, Bureau of Automotive Repair, 10949 North Mather Boulevard Rancho Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on March 13, 2025.

It is so ORDERED March 5, 2025



GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Division of Legal Affairs
Department of Consumer Affairs

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DOJ Matter ID:SF2024401253

Attachment:
Exhibit A: Accusation