

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

In the Matter of the Accusation Against:

**TAMARA DEANNE DOYLE-MEMBER  
and DOYLE AUTOMOTIVE, LLC  
doing business as DAN'S SMOG  
CHECK STATION,**

ARD Registration No. ARD 270606,  
Smog Check Station License No.  
TC 270606,

and

**MAZDA MEHRAZ,**

Smog Check Inspector License No. EO  
637139,

Respondents.

Case No. 79/15-132

OAH No. 2015070404

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517(c)(2)(C), the typographical errors in the Proposed Decision are corrected as follows:

1. Page 18, second paragraph, first sentence: The phrase "include: m prior" is corrected to "include: prior".

This Decision shall become effective

July 13, 2016

DATED:

May 25, 2016



TAMARA COLSON  
Assistant General Counsel  
Department of Consumer Affairs

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In the Matter of Accusation Against:

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as DAN'S SMOG CHECK STATION,

ARD Registration No. ARD 270606,  
Smog Check Station License No. TC 270606,

and

MAZDA MEHRAZ,

Smog Check Inspector License No. EO 637139,

Respondents.

Case No. 79/15-132

OAH No. 2015070404

**PROPOSED DECISION**

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on March 23, 2016.

Adrian R. Contreras, Deputy Attorney General, Department of Justice, State of California, represented complainant, Patrick Dorais, Chief, Bureau of Automotive Repair, Department of Consumer Affairs, State of California.

J. F. Partida, Attorney at Law, represented respondents, Tamara Deanne Doyle-Member and Doyle Automotive, LLC, doing business as Dan's Smog Check Station, and respondent Mazda Mehraz.

The matter was submitted on March 23, 2016.

## SUMMARY

On three occasions in 2014, Dan's Smog Check Station caused an electronic certificate of compliance to be issued to a specially-prepared Bureau of Automotive Repair undercover vehicle that should have failed a properly conducted smog check inspection. Mr. Mehrnaz performed the smog check inspection on one occasion.

The revocation of the automotive repair dealer registration and smog check station license issued to Dan's Smog Check Station is appropriate under the circumstances. Placing Mazda Mehrnaz on two years' probation and requiring him to complete a 16-hour BAR-certified basic training course is appropriate and will protect the public.

## FACTUAL FINDINGS

### *License Histories*

1. On October 19, 2012, the Bureau of Automotive Repair (Bureau or BAR) issued Automotive Repair Dealer Registration No. ARD 270606 to respondent Tamara Deanne Doyle-Member and Doyle Automotive, LLC, doing business as Dan's Smog Check Station (respondent Dan's Smog Check).

On January 9, 2019, the Bureau issued Test Only Smog Check Station License No. TC 270606 to respondent Tamara Deanne Doyle-Member and Doyle Automotive, LLC.

On November 2, 2015, at the request of respondent Tamara Deanne Doyle-Member and Doyle Automotive, LLC, the Bureau cancelled the automotive repair dealer registration and smog check station license issued to Dan's Smog Check Station.

There is no history of the Bureau having imposed any prior discipline on the automotive repair dealer registration or smog check station license issued to Dan's Smog Check Station.

2. On July 24, 2014, the Bureau issued Smog Check Inspector License No. EO 637139 to respondent Mazda Mehrnaz (respondent Mehrnaz).

There is no history of the Bureau having imposed any prior discipline on the smog check inspector issued to respondent Mehrnaz.

3. Respondent Mehrnaz previously owned Dan's Smog Check Station. He was not licensed as a smog check inspector when he owned the station.

In 2011, the Bureau cited respondent Mehrnaz after a smog check station employee improperly performed a smog check inspection of a specially-prepared undercover 2001

Honda, which resulted in the station's improper issuance of a certificate of compliance for that vehicle. Respondent Mehrnaz appealed the citation.

On October 26, 2012, Administrative Law Judge Susan J. Boyle presided over an administrative hearing arising out of the appeal. In the hearing, respondent Mehrnaz argued the Bureau's undercover operation was unfair because it was very difficult for a smog check technician to determine that a fuel evaporative canister had been removed from the 2001 Honda. He argued the smog check inspector who conducted the inspection was honest and competent. He testified he was committed to maintaining high standards, loved to learn about cars, and strongly supported a clean environment. He testified he and his employees attended smog-check inspection classes every two years and discussed smog check inspection-related issues daily.

The following factual finding appeared in the decision arising out of Citation No. C2012-0154: "There is no legitimate reason for the technician to have overlooked that the FEC [fuel evaporative canister] was missing." The Director of the Department of Consumer Affairs adopted the proposed decision as the final decision in the matter. The decision affirmed the violation alleged in the citation and imposed a \$500 administrative penalty on respondent Mehrnaz.

The decision arising out of Citation No. C2012-0154 established respondent Mehrnaz knew the Bureau conducted undercover operations using specially-prepared undercover vehicles. However, the citation related to respondent Mehrnaz's ownership of a licensed smog check station; he was not licensed as a smog check inspector at the time; and, he did not personally participate in the improper inspection of the 2001 Honda.

#### *California's Clean Air Legislation and Smog Check Inspections*

4. The California Legislature enacted clean air legislation to reduce toxic emissions caused by the operation of motor vehicles. California's legislation requires every motor vehicle registered in California to pass a smog check inspection upon change of ownership and undergo an inspection every two years in certain areas subject to the biennial smog certification program.

A licensed smog check technician conducts an inspection at a smog check station. When the vehicle being tested passes an inspection, the smog check station causes an electronic certificate of compliance to be issued, together with a Vehicle Inspection Report (VIR) that certifies the vehicle being tested passed all portions of the smog check inspection. When a vehicle does not pass a smog check inspection, it must be repaired and retested. A certificate of compliance cannot be issued until the vehicle passes an inspection.

#### *Testing of the Vehicles Involved in the 2014 Undercover Operation*

5. For the specially-prepared vehicles involved in the Bureau's undercover operation at Dan's Smog Check Station in 2014 - a 1988 Toyota Camry, a 1990 Toyota

Corolla, and a 1992 Toyota Corolla – a computer-based device, known as an emission inspection system (EIS), was used to conduct the inspections. Information entered into the EIS concerning a smog check inspection was stored immediately in the EIS and statewide database.

The EIS was activated when a licensed smog check technician working at Dan's Smog Check Station entered his personal identification and smog check technician license number. Thereafter, the smog check technician entered information into the EIS pertaining to the identity of the vehicle being inspected.

After required vehicle identification information was entered, the EIS prompted the smog check technician to insert a probe into the tailpipe of the vehicle. Exhaust emissions were measured while the engine was running. Each vehicle used in the Bureau's undercover operation passed exhaust emission testing.

After data concerning engine emissions was obtained, the EIS prompted the technician to conduct a visual inspection to confirm the presence of all required emission control systems and devices. Each undercover vehicle possessed the systems and devices necessary to pass a visual inspection. The technician entered his observations into the EIS in response to a series of prompts.

The EIS then guided the smog check technician through a series of functional tests to determine whether emission control devices were properly calibrated and/or in good working order. For the specially-prepared vehicles, a low pressure fuel evaporative test (LPFET) was required to ensure there were no leaks in the lines from the gas tank filler cap to the charcoal canister in the engine.

To perform the LPFET, a technician had to remove the fuel tank filler cap, insert a vacuum sealed testing device into the neck of the filler pipe, attach a set of approved locks to pinch off the fuel evaporative canister hose, pressurize the gas tank with Nitrogen, and observe and report the pressure reading obtained during testing. If the lines were in good working order, there should be no more than a minimal drop in pressure, if any, after the gas tank was pressurized; however, if there was a defect in the fuel neck or any line or hose, there would be a significant loss of pressure. The pressure obtained from the LPFET test device at the conclusion of testing had to be entered into the EIS, produced a "pass" or "fail" for result for the low pressure fuel evaporative test.

6. Before the three 2014 undercover runs at Dan's Smog Check Station, Bureau program representatives induced defects that caused each specially-prepared vehicle involved in an undercover run to fail LPFET testing. In the case of the 1988 Toyota, a damaged fuel neck was installed; for the 1990 Toyota, a defective fuel evaporative hose was installed; and, for the 1992 Toyota, a small hole was drilled into the fuel evaporative hose. Because of these defects, it was impossible for any specially-prepared vehicle to pass a properly conducted smog check inspection.

*The August 26, 2014, Undercover Investigation*

7. On August 26, 2014, the Bureau conducted an undercover run at respondent Dan's Smog Check using the specially-prepared 1988 Toyota Camry.

Before the August 26, 2014, undercover run, BAR Program Representative Paul Hsu, a qualified mechanic and an expert in the area of automotive repair and smog check inspections, inspected the 1988 Toyota at the Bureau's documentation lab in Fontana. He verified the presence of required emission control systems, components and devices; confirmed that engine emissions were within acceptable levels; and conducted a smog check inspection that resulted in a VIR being issued to document that the 1988 Toyota met required clean air standards and was eligible to receive a certificate of compliance. Following that inspection, Mr. Hsu removed the fuel neck from the 1988 Toyota, installed a defective fuel neck, and performed another smog check inspection. As expected, the 1988 Toyota failed functional LPFET testing and the smog check inspection.

Mr. Hsu delivered custody of the 1988 Toyota to Bureau Program Representative Richard Losse, who thereafter delivered the vehicle to Ignacio Villegas, an undercover operative, on August 26, 2014.

On August 26, 2014, Mr. Losse directed Mr. Villegas to drive to respondent Dan's Smog Check Station, request a smog check inspection, pay for the inspection, and return the 1988 Toyota and any paperwork following the inspection.

Mr. Villegas drove the 1988 Toyota to Dan's Smog Check Station, where he requested a smog check inspection. Mr. Villegas remained at the smog check station for 22 minutes. Towards the end of his visit, he was given a VIR that stated a smog check inspection conducted by respondent Mehrnaz resulted in the 1988 Toyota passing all portions of the inspection, including functional LPFET testing. Data submitted by respondent Dan's Smog Check's EIS to the Bureau concerning the inspection established the actual inspection lasted 11 minutes. Mr. Villegas paid \$53.25 for the inspection and a certificate of compliance. Following the inspection, Mr. Villegas returned custody of the 1988 Toyota to Mr. Lossee, along with documents provided by respondent Dan's Smog Check.

Mr. Losse returned custody of the 1988 Toyota to Mr. Hsu who, on August 27, 2014, reinspected the 1988 Toyota at the Bureau's documentation lab in Fontana. Mr. Hsu found the defective fuel neck he previously installed was still in place. Mr. Hsu conducted a smog check inspection. The 1988 Toyota failed LPFET testing and was incapable of passing a properly conducted smog check inspection due to the defect Mr. Hsu previously induced.

8. The foregoing information was carefully documented in declarations and reports prepared by Bureau employees and operatives as a part of their official duties. The employees who prepared the declarations and reports were knowledgeable investigators who possessed specialized knowledge in the area of smog check inspections. Ignacio Villegas

and Program Representatives Hsu and Robert J. Cassel, who was familiar with the investigation, provided credible testimony concerning the first undercover investigation.

*The September 22, 2014, Undercover Investigation*

9. On September 22, 2014, the Bureau conducted an undercover run at respondent Dan's Smog Check using the specially-prepared 1990 Toyota Corolla.

Before the September 22, 2014, undercover run, BAR Program Representative Daniell J. Rogers, a qualified mechanic and an expert in the area of automotive repair and smog check inspections, inspected the 1990 Toyota at the Bureau's documentation lab in Fontana. He verified the presence of required emission control systems, components and devices; confirmed engine emissions were within acceptable levels; and conducted a smog check inspection that resulted in a VIR being issued that documented the 1990 Toyota met required clean air standards and was eligible to receive a certificate of compliance. Following that inspection, Mr. Rogers removed an existing fuel evaporative hose and replaced it with a perforated hose. Mr. Rogers then performed another smog check inspection. As expected, the 1990 Toyota failed functional LPFET testing and the smog check inspection.

Mr. Rogers delivered custody of the 1990 Toyota to Bureau Program Representative Sam Wharton, who delivered the vehicle to Franco Vilaboy, an undercover operative, on September 22, 2014.

On September 22, 2014, Mr. Wharton directed Mr. Vilaboy to drive to respondent Dan's Smog Check, request a smog check inspection, pay for the inspection, and return the 1990 Toyota and any paperwork following the inspection.

Mr. Vilaboy drove the 1990 Toyota to Dan's Smog Check Station, where he requested a smog check inspection. Mr. Vilaboy remained at the smog check station for 23 minutes. Towards the end of his visit, he was given a VIR that stated Man Cao Nguyen, a licensed smog check inspector, conducted a smog check inspection and the 1990 Toyota passed all portions of the inspection including functional LPFET testing. Data submitted by respondent Dan's Smog Check's EIS to the Bureau concerning the inspection established the inspection lasted 10 minutes. Mr. Villegas paid \$53.21 for the inspection and a certificate of compliance. Following the inspection, Mr. Vilaboy returned custody of the 1990 Toyota to Mr. Wharton, along with documents provided by respondent Dan's Smog Check Station.

Mr. Wharton returned custody of the 1990 Toyota to Mr. Rogers who, on September 24, 2014, reinspected the 1988 Toyota at the Bureau's documentation lab in Fontana. Mr. Rogers found the perforated fuel evaporative hose he installed was still in place. Mr. Rogers conducted a smog check inspection. The 1990 Toyota failed the LPFET portion of the inspection and was incapable of passing a properly conducted smog check inspection due to the perforated fuel evaporative hose Mr. Rogers previously installed.

10. The foregoing information was carefully documented in declarations and reports prepared by Bureau employees and operatives as a part of their official duties. The employees who prepared the declarations and reports were knowledgeable investigators who possessed specialized knowledge in the area of smog check inspections. Franco Vilaboy and Bureau Program Representatives Rogers and Cassel provided credible testimony concerning the second undercover investigation.

*The December 12, 2014, Undercover Investigation*

11. On September 22, 2014, the Bureau conducted an undercover run at respondent Dan's Smog Check Station using the specially-prepared 1992 Toyota Corolla.

Before the September 22, 2014, undercover operation, BAR Program Representative Steven M. Gauronski (Mr. Gauronski), a qualified mechanic and an expert in the area of automotive repair and smog check inspections, inspected the 1992 Toyota at the Bureau's documentation lab in Fontana. He verified the presence of required emission control systems, components and devices; he confirmed engine emissions were within acceptable levels; and, he conducted a smog check inspection that resulted in a VIR being issued that documented the 1992 Toyota met required clean air standards and was eligible to receive a certificate of compliance. Following that inspection, Mr. Gauronski created a leak in the fuel evaporative system by drilling a small hole into a fuel evaporative hose. Mr. Gauronski then performed an additional smog check inspection. As expected, the 1992 Toyota failed functional LPFET testing and the smog check inspection.

Mr. Gauronski installed a tamper indicator on the fuel filler cap to determine whether it had been removed to enable the insertion of the LPFET device during testing. He also installed several hidden video cameras to document what took place during the smog check inspection.

Mr. Gauronski delivered custody of the 1992 Toyota to Bureau program representative Robert J. Cassel, who delivered the vehicle to Mr. Villegas, a Bureau undercover operative, on December 12, 2014.

On December 12, 2014, Mr. Cassel directed Mr. Villegas to drive to respondent Dan's Smog Check, request a smog check inspection, pay for the inspection, and return the 1992 Toyota and any paperwork following the inspection.

Mr. Villegas drove the 1992 Toyota to Dan's Smog Check Station, where he requested a smog check inspection. Mr. Villegas remained at the smog check station for less than 22 minutes. Towards the end of his visit, he was given a VIR that stated Mr. Nguyen conducted the smog check inspection and the 1992 Toyota had passed all portions of the inspection, including functional LPFET testing. Data submitted by respondent Dan's Smog Check's EIS to the Bureau concerning the inspection of the 1992 Toyota established the inspection lasted eight minutes. Mr. Villegas paid \$53 for the inspection and a certificate of



compliance. Following the inspection, Mr. Villegas returned custody of the 1992 Toyota to Mr. Cassel, along with documents provided by respondent Dan's Smog Check Station.

Mr. Cassel returned custody of the 1992 Toyota to Mr. Gauronski who, on December 15, 2014, reinspected the 1992 Toyota at the Bureau's documentation lab in Fontana. Mr. Gauronski found the hole he drilled in the fuel evaporative hose was still there. He found the tamper indicator on the fuel fill cap was intact, indicating the fill cap had not been removed as required to conduct LPFET testing. He reviewed the videotapes from the hidden video cameras which established no one performed LPFET testing in the manner required.

Mr. Gauronski conducted another smog check inspection. The 1992 Toyota failed LPFET testing and was incapable of passing a properly conducted smog check inspection as a result of the defect Mr. Gauronski previously induced.

12. The foregoing information, including the chain of custody of the undercover vehicles, was carefully described and documented in declarations and reports prepared by Bureau employees and operatives as a part of their official duties. The employees who prepared the declarations and reports were knowledgeable investigators who possessed specialized knowledge in the area of smog check inspections. Mr. Villegas and Program Representatives Gauronski and Cassel provided credible testimony concerning the third undercover investigation.

#### *The Accusation*

13. On January 5, 2015, Program Representative Cassel signed the investigative report arising out of this matter. He recommended the report be forwarded to the Attorney General's Office for "appropriate disciplinary action."

According to an attachment to the declaration of Adrian R. Contreras, preparation of the pleadings in this matter began on June 3, 2015. Complainant signed Accusation No. 79/15-132 on June 12, 2015.

The accusation contained multiple causes for discipline: respondent Dan's Smog Check's false and misleading statements (first cause for discipline); respondent Dan's Smog Check's violations of the motor vehicle inspection program (second cause for discipline); respondent Dan's Smog Check's violation of motor vehicle inspection program regulations (third cause for discipline); respondent Dan's Smog Check's dishonesty, fraud, or deceit (fourth cause for discipline); respondent Mehrasz's violation of motor vehicle inspection program regulations (sixth cause for discipline); respondent Mehrasz's dishonesty, fraud, or deceit (seventh cause for discipline); Man Cau Nguyen's violation of motor vehicle inspection program regulations (eighth cause for discipline); and Man Cau Nguyen's dishonesty, fraud, or deceit (ninth cause for discipline). The accusation requested an award of investigative and enforcement costs.

The accusation was served on respondents and on Man Cau Nguyen, each of whom filed a notice of defense. The matter was set for a disciplinary hearing.<sup>1</sup>

On March 23, 2016, the administrative record was opened. Respondents' motion to continue the hearing on the basis that counsel had just been retained was denied as good cause was not established.<sup>2</sup> Sworn testimony and documentary evidence was received; closing arguments were given; the record was closed; and the matter was submitted.

*Mr. Mehraz's Testimony*

14. Mr. Mehraz previously owned Dan's Smog Check Center. After selling the business, he attended classes provided by The Smog Tech Institute, a San Diego entity that offers a smog check inspector training course. According to Mr. Mehraz, he attended two classes a week, from 6:30 p.m. to 9:30 p.m., in the four to six months before he took a four-hour BAR licensing examination. He completed about 60 hours of training, six hours of which involved "hands on" training.

Mr. Mehraz took the BAR smog check inspector test in July 2014. He passed it the first time. He obtained Smog Check Inspector License No. EO 637139 on July 24, 2014. He immediately went to work at respondent Dan's Smog Check.

There was one test bay at Dan's Smog Check Station, a STAR-certified test only smog check station. When Mr. Mehraz started working there, two other licensed smog check inspectors were employed at Dan's Smog Check Stations. According to Mr. Mehraz, these

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<sup>1</sup> Man Cau Nguyen and the Bureau entered into a settlement before the hearing in this matter commenced, and Mr. Nguyen did not appear at the disciplinary hearing.

<sup>2</sup> An oral motion to continue the hearing was made the morning of March 23, 2016. Respondents' counsel represented he had just been retained and needed additional time to prepare for the hearing. Counsel for complainant argued the motion was not timely and good cause was not established. The motion for a continuance was denied.

When an administrative law judge has been assigned to a hearing, no continuance may be granted except for good cause shown. A party must apply for a continuance within 10 working days after the party discovers or reasonably should discover the event or occurrence that establishes the good cause. Government Code section 11524 vests an administrative law judge with authority to grant a continuance only upon a showing of good cause. (*Dresser v. Board of Medical Quality Assurance* (1982) 130 Cal.App.3d 506, 518.) Parties do not have the absolute right to insist upon a change of counsel at the last moment before commencement of trial where such a change would require a continuance. If a trial had to be continued every time an attorney withdrew from the case, there would be no end to the matter. Denying a motion for a continuance when new counsel has just been retained is not an abuse of discretion. (*County of San Bernardino v. Doria Mining & Engineering Corp.* (1977) 72 Cal.App.3d 776, 781.)

inspectors did not fare well on STAR-certification tests and their employment was terminated by respondent Tamara Deanne Doyle-Member.

The LPFET test equipment at Dan's Smog Check Center was manufactured by ESP. According to respondent Mehrnaz, it "broke down all the time" and "had to be serviced every week." The LPFET test equipment at Dan's Smog Check Center was not manufactured by the same entity that manufactured the LPFET test equipment in use at the Bureau's Fontana laboratory. The Bureau program representatives who testified in this matter were not very familiar with the operation of the ESP test equipment.

Mr. Mehrnaz provided the smog check inspection for the 1988 Toyota Camry on August 26, 2014, about a month after he received his license. He testified he was not very experienced at the time and knew very little about the LPFET test equipment. He recalled nothing specific about his inspection of the 1988 Toyota Camry, testifying he did not recall whether or not he removed the fuel filler cap before LPFET testing. He acknowledged that he entered data to indicate that 1988 Toyota Camry passed LPFET functional testing. His signature appears on the VIR that was issued for the 1988 Toyota after the August 26, 2014, inspection. Mr. Mehrnaz admitted he probably made a mistake during his inspection of the 1988 Toyota on August 26, 2014.

Mr. Mehrnaz claimed he possessed the high scores necessary to maintain employment at a STAR-certified test center. He did not produce documentary evidence to support that claim. Mr. Cassel never investigated Mr. Mehrnaz's STAR-certification scores.

Mr. Mehrnaz did not voluntarily obtain additional education or training after he was served with the accusation. Complainant produced no aggravating evidence related to Mr. Mehrnaz's licensure as a smog check inspector.

#### *Ms. Doyle's Representations*

15. In closing argument, Ms. Doyle-Member represented she knew next to nothing about conducting a proper smog check inspections; she said she relied on what she was told by the smog check inspectors she employed, each of whom was licensed by the Bureau. She testified she holds professional and occupational licenses issued by other administrative agencies, including the Department of Motor Vehicles. She testified she cancelled the registration and license issued to Dan's Smog Check Center to avoid disciplinary action. Her representations concerning her lack of knowledge of any wrongdoing and the cancellation of her registration and license possessed the ring of truth. Complainant produced no evidence that established Ms. Doyle possessed actual knowledge of any wrongdoing or that she personally engaged dishonesty or fraud.

Ms. Doyle, as a registrant and licensee, was responsible for the acts of her agents and employees, but it is found she did not personally engage in any wrongdoing and did not have actual knowledge of any wrongdoing. She did not personally engage in dishonesty or fraud.

## *Evaluation*

16. A preponderance of the evidence established respondent Dan's Smog Check caused electronic certificates of compliance to be issued to three specially-prepared vehicles in 2014 that could not have passed a properly conducted smog check inspection. Respondent Mehrnaz and Mr. Nguyen, agents or employees of respondent Dan's Smog Check, failed to perform or report LPFET testing in an appropriate manner. The information they entered into the EIS concerning LPFET testing was not accurate.

In the case of the first undercover investigation, Mr. Mehrnaz's wrongdoing involved simple negligence; he was inexperienced; it was not established he failed to remove the fuel filler cap before conducting LPFET testing. A preponderance of the evidence did not establish his intentional wrongdoing, dishonesty, fraud or deceit.

In the case of the third undercover investigation, the evidence established Mr. Nguyen's wrongdoing involved more than simple negligence. Mr. Nguyen was an experienced smog check inspector.<sup>3</sup> While it was not established Mr. Nguyen failed to remove the fuel filler cap when testing the 1990 Toyota during the second undercover operation, his failure to remove the fuel filler cap when inspecting the 1992 Toyota during the third undercover operation was clearly established. That fundamental omission conclusively established Mr. Nguyen did not conduct any kind of LPFET testing, and, on the issue of fraud and deceit, no inference can be drawn except that the value Mr. Nguyen entered into the EIS related to LPFET testing of the 1992 Toyota was unsupported and fabricated.

A preponderance of the evidence established there was a lack of effective supervision at respondent Dan's Smog Check. Respondent Tamara Deanne Doyle-Member was present in the office to meet the public, but she knew very little about smog check inspections. In that setting, there was no quality control and no method by which negligence could be ascertained or fraud could be prevented.

Respondent Dan's Smog Check was under a duty to ensure its license was not used in violation of law. Inadequate supervision and management's lack of actual knowledge of employee wrongdoing was no defense to the disciplinary charges.

17. Protection of the public does not require the revocation of respondent Mehrnaz's license. Although complainant argued respondent Mehrnaz should be placed on probation for several years and required complete a 60-hour BAR-approved training program, the totality of the evidence does not support that sanction. Complainant established respondent Mehrnaz was guilty of simple negligence on a single occasion; the Bureau typically issues a citation and requires the errant smog check inspector complete an 8-hour Bureau-certified training course in the same or similar circumstances. In this matter, placing

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<sup>3</sup> Notice is taken that, according to Accusation No. 79/15-132, the Bureau licensed Mr. Nguyen as a smog check technician on September 27, 2010.

respondent Mehraz on probation for two years, directing him to pay a portion of enforcement costs, and requiring him to complete a 16-hour Bureau-certified training course as a condition of probation is appropriate under all the circumstances.

18. The revocation of the registration and license issued to Dan's Smog Check Center might not be appropriate if Dan's Smog Check Center were still in business; however, respondent Dan's Smog Check cancelled its registration and license; probation is not an option; no sanction other than revocation is reasonable at this time.

#### *Costs of Investigation and Prosecution*

19. A certification of costs of investigation was signed by William D. Thomas, Program Manager II. The certification stated Mr. Thomas reviewed Bureau records "which reflect that the attachments of costs and fees that have been incurred by the agency in connection with the investigation and prosecution of Accusation Number 79/15-132 as of March 4, 2016." The attachment stated 141 hours of Program Representative I time was incurred and billed at an hourly rate of \$76.57. The attachment stated the Bureau paid \$600 in "operator fees" at the rate of \$200 per day. An additional \$159.21 charge was incurred for "undercover runs." Costs of enforcement totaled \$11,409.13, according to the attachment.

Neither the certification nor the attachment contained facts sufficient to support any finding regarding the Bureau's costs incurred or the reasonableness of investigative services. The certification Mr. Thomas signed did not describe the general tasks performed or the time spent on each task.

An order related to investigative costs cannot be issued because inadequate evidence was provided to support an award.

20. A certification of prosecution costs was signed by the deputy who prosecuted this action. A billing summary was attached to his declaration. In contrast to the attachment to Mr. Thomas's certification, the billing summary contained the dates legal services were provided, the nature of the tasks performed, the time spent performing particular tasks, and the billing rates of the persons providing legal services. The billing rate for attorney services was \$170 per hour. The billing rate for paralegal services was \$120 per hour. These are reasonable rates. The deputy who prosecuted the matter was professional and well prepared. The time spent in the prosecution of the matter was reasonable given the complexity of the case. The billing summary documented enforcement costs of \$8,262.50.

21. The evidence supports an order directing respondent Dan's Smog Check to pay one half of the enforcement costs – \$4,131.25 – and an order directing respondent Mehraz to pay his fair share of enforcement costs (one-third of the remaining one-half of such costs) in the amount of \$1,377.10.

## LEGAL CONCLUSIONS

### *Purpose of Administrative Discipline*

1. Administrative proceedings to revoke, suspend, or impose discipline on a license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)

### *Burden and Standard of Proof*

2. Absent a statute to the contrary, the burden of proof in an administrative disciplinary proceeding is on the party filing the accusation, which is ordinarily the agency. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.)

3. Although an applicant for an advanced emission specialist technician license must complete certain coursework and pass an examination, these requirements are not similar to the extensive educational, training and testing requirements necessary to obtain a professional license. An advanced emission specialist technician license is a nonprofessional license, and proceedings to revoke such a license are governed by the preponderance of evidence standard of proof. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.)

4. Respondent Dan's Smog Check's liability was based on the misconduct of its agents and employees. The standard of proof that applies to the smog check inspector license – a preponderance of the evidence – applies to an automotive dealer registration and a smog check station license. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair, supra*, at 918.)

### *Statutes and Regulations*

5. Business and Professions Code section 118, subdivision (b), provides that the surrender or cancellation of a license does not deprive the Director of jurisdiction to proceed with a disciplinary action.

6. Business and Professions Code section 9884.7 provides in part:

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

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

[¶] . . . [¶]

(4) Any other conduct that constitutes fraud . . . .

7. Health and Safety Code section 44072.2 provides in 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 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.

[¶] . . . [¶]

(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

8. Health and Safety Code section 44012 provides in part:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department . . . .  
The department shall ensure, as appropriate to the test method, the following:

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

[¶] . . . [¶]

(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

[¶] . . . [¶]

(f) A visual or functional check is made of emission control devices specified by the department . . . . The visual or functional check shall be performed in accordance with procedures prescribed by the department . . . .

9. Health and Safety Code section 44015 provides in part:

(a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle that meets the following criteria:

(1) A vehicle that has been tampered with.

[¶] . . . [¶]

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance . . . .

10. Health and Safety Code section 44035 provides in part:

(a) A smog check station's license or a qualified smog check technician's qualification may be suspended or revoked by the department, after a hearing, for failure to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct. The department shall adopt rules and regulations governing the suspension, revocation, and reinstatement of licenses and qualifications and the conduct of the hearings . . . .

11. Health and Safety Code section 44072.10 requires the Department to revoke the license of any smog check technician or smog check station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles.

12. California Code of Regulations, title 16, section 3340.30, subdivision (a), requires a licensed smog technician to “[i]nspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.”



13. California Code of Regulations, title 16, section 3340.35, subdivision (c), authorizes a licensed smog check station to issue a certificate of compliance to the owner or operator of any vehicle that has been inspected with specified procedures and possesses all required emission control equipment and devices installed and functioning correctly.

14. California Code of Regulations, title 16, section 3340.42, sets forth specific emissions test methods and procedures that apply when conducting a smog check inspection in California.

*The Smog Check Manual*

15. Official notice was taken of the Bureau's 2013 Smog Check Manual, which applied to the smog check inspections that are the subject of this proceeding. The manual is incorporated by reference into California Code of Regulations, title 16, section 3240.45. It specifies procedures required to perform smog check inspections, including the low pressure fuel evaporative testing, which is set forth in the manual at pp. 24-25. That section provides in part:

Inspection: Smog Check stations and Smog Check inspectors shall perform the low pressure test of a vehicle's fuel evaporative systems, using a BAR certified low pressure fuel evaporative tester (LPFET). The test shall be performed in accordance with the test procedures and specifications contained in the LPFET instruction manual provided by the tester manufacturer, and the following, as applicable:

- If components related to the vehicle's fuel evaporative system tank side are missing, modified, disconnected, or defective enter N (not applicable) at the EIS Low Pressure Fuel Evaporative Test prompt. If the vehicle's tank side fuel evaporative system components are not missing, modified, disconnected, or defective proceed with the test. Tank side means the portion of the fuel evaporative system between the canister pinch or seal point and the fuel tank filler neck. (Tank side visual inspection failures can affect the LPFET. Therefore, in cases where a tank side visual inspection failure exists, the LPFET does not apply). Note: Evaporative system visual inspection results must be entered at the EIS Evaporative System Visual Inspection prompt; see section 1.3.1.

- If, at the conclusion of the test, the LPFET displays a P (pass), enter P in the EIS at the Fuel Evaporative Test prompt.

- If, at the conclusion of the test the LPFET displays an F (fail), perform a seal check in accordance with the procedures and specifications contained in the LPFET instruction manual provided by the tester manufacturers.

### *Employer Responsibility*

16. The owner of a license is obligated to see that the license is not used in violation of the law. If a licensee operates his or her business through employees, the licensee must be responsible to the licensing authority for their conduct in the exercise of the license, and the licensee is responsible for the acts of agents or employees done in the course of the business in the operation of the license. A licensee may not insulate himself or herself from administrative regulation and discipline by electing to function through employees or independent contractors. (*Rob-Mac, Inc. v. Department of Motor Vehicles* (1983) 148 Cal.App.3d 793, 797.)

### *Disciplinary Guidelines*

17. California Code of Regulations, title 16, section 3395.4 provides in part:

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), including formal hearings conducted by the Office of Administrative Hearings, the Bureau of Automotive Repair shall consider the disciplinary guidelines entitled "Guidelines for Disciplinary Penalties and Terms of Probation" [May, 1997] which are hereby incorporated by reference. The "Guidelines for Disciplinary Penalties and Terms of Probation" are advisory. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Bureau of Automotive Repair in its sole discretion determines that the facts of the particular case warrant such deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.

18. The introduction to the Bureau's disciplinary guidelines provides in part:

To foster uniformity of penalties and to make sure our licensees and registrants understand the consequences of violations of the Automotive Repair Act or the Smog Check Program, the Bureau of Automotive Repair has established these guidelines. The guidelines provide a range of penalties for each section of law found to have been violated. The Bureau requests that Administrative Law Judges take into account the "Factors in

Aggravation and in Mitigation” listed below, when deciding the severity of the penalty within the range.

Should a probationary period be a part of a proposed decision, the Bureau requests that the Administrative Law Judge impose the appropriate “Terms and Conditions of Probation,” as outlined below. These terms and conditions are intended to protect the public from continued illegal behavior and to facilitate the rehabilitation of the probationer without being unduly burdensome or anti-competitive.

Under the guidelines, factors in aggravation include: m prior warnings from BAR; prior notices of violations; prior office conference; prior adverse inspection reports; prior demonstration of incompetence; a history of citations; a history of formal disciplinary action; the failure to permit Bureau employees to inspect records; an use of a mechanic’s lien; the attempt to intimidate a consumer; neglect or improper repair work; evidence that an unlawful act was part of a pattern of practice; the failure to comply with the Bureau’s request for corrective action; being on probation; the failure to successfully complete a period of probation; the failure to pay a court judgment; the violation of a court order; and any other conduct which constitutes fraud or gross negligence.

Under the guidelines, factors in mitigation include: evidence that a respondent accepted Bureau’s suggested resolution of a consumer complaint; the voluntary participation in retraining for oneself or employees; the voluntary purchase of proper diagnostic equipment and manuals; evidence of temporary medical condition that prevented a respondent from exercising supervision and control over employees or others which led to wrongdoing; the absence of any loss to a consumer (undercover cars are treated as consumer vehicles); evidence that a licensed station has taken specific steps for retraining and has initiated steps to minimize recurrence; evidence of resolution of consumer complaints with a subsequent change in business practices; and evidence of implementing internal control or audits designed to eliminate errors.

According to the guidelines, the Bureau’s emphasis is on disciplining licensees who show a pattern of abuse or willful misconduct in dealing with the public.

For false and misleading statements, the minimum recommended discipline is a 90-day suspension, with 80 days stayed, and two years’ probation; the maximum recommended sanction is revocation.

For conduct constituting fraud, the minimum recommended discipline is revocation, stayed, with a 30-day suspension and five years’ probation; the maximum recommended sanction is revocation.

For improper inspections or improperly issuing a certificate of compliance, the minimum recommended discipline is revocation of the ARD and station license, stayed, with

a 30-day suspension of the station license, and two years' probation; the maximum recommended sanction is revocation.

19. When a smog check inspector engages in simple negligence and improperly conducts a smog check inspection of a specially-prepared vehicle involved in a Bureau undercover run the first time, the Bureau usually issues a citation requiring the smog check inspector to complete an 8-hour Bureau-approved basic training course; probation is not imposed; the smog check inspector is not required to pay the Bureau's costs of investigation or enforcement. Imposing a sanction upon respondent Mehrnaz far in excess of the Bureau's standard practice for a first time offense involving simple negligence would constitute punishment and would not serve to protect the public.

*Cause Exists to Revoke Respondent Dan's Smog Check Station's Registration and License*

20. A preponderance of evidence established cause to impose discipline on respondent Dan's Smog Check's ARD registration and smog check station license under Business and Professions Code section 9884.7, subdivision (a)(1), Health and Safety Code section 44072.10, subdivisions (a) and (c), and Health and Safety Code section 44072.2, subdivision (a). In connection with the three undercover runs, respondent Dan's Smog Check's employees failed to perform appropriate LPFET testing and made inaccurate statements when inputting test data, resulting in respondent Dan's Smog Check improperly issuing certificates of compliance. In the case of the inspection of the 1992 Toyota, Mr. Nguyen engaged in fraud. Respondent Dan's Smog Check failed to establish a bona fide error under Business and Professions Code section 9884.7 in that instance. Because respondent Dan's Smog Check cancelled its registration and license, no measure of discipline other than a revocation can be imposed. Application of factors in aggravation and mitigation are not required under the circumstances.

*Cause to Impose Discipline on Respondent Mehrnaz's Smog Check Inspector License*

21. A preponderance of evidence did not establish respondent Mehrnaz engaged in dishonesty, fraud or deceit in connection with his inspection of the 1988 Toyota on August 26, 2014. Thus, respondent Mehrnaz's smog check inspector's license is not subject to discipline under Health and Safety Code 44072.10, subdivisions (a) and (c), or under Health and Safety Code section 44072.2, subdivision (d), as alleged in the seventh cause for discipline.

22. A preponderance of evidence established cause to impose discipline on respondent Mehrnaz's smog check inspector's license under Health and Safety Code section 44072.10, subdivisions (a) and (c), and under Health and Safety Code section 44072.2, subdivision (a). During his inspection of the 1988 Toyota on August 26, 2014, respondent Mehrnaz failed to properly perform LPFET testing and negligently caused a certificate of compliance to be issued for the 1988 Toyota.

23. Complainant did not establish any factors in aggravation related to respondent Mehrnaz's smog check inspector license. Respondent Mehrnaz did not establish any factors in mitigation. It was not established respondent Mehrnaz engaged in a pattern of abuse or willful misconduct in dealing with the public.

Revoking respondent Mehrnaz's smog check inspector license, staying the revocation, placing him on two years' probation, requiring him to complete a 16-hour Bureau-approved basic training program, directing him to pay his fair share of enforcement costs will protect the public. This measure of discipline exceeds the discipline customarily imposed by the Bureau upon smog check inspectors who have engaged in a simple act of negligence for the first time.

*Costs of Investigation and Enforcement*

24. Business and Professions Code section 125.3 provides in part:

(a) . . . in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

25. As indicated in the factual findings, it is reasonable to direct respondent Dan's Smog Check to pay enforcement costs of \$4,131.25 and to direct respondent Mehrnaz to pay enforcement costs of \$1,377.10.

ORDERS

*Respondent Dan's Smog Check Station*

Automotive Repair Dealer Registration ARD 270606 and Smog Check, Test Only, Station License No. TC 270606 issued to respondents Tamara Deanne Doyle-Member and Doyle Automotive, LLC, doing business as Dan's Smog Check Station, are revoked.

Tamara Deanne Doyle-Member and Doyle Automotive, LLC, shall pay \$4,131.25 to the Bureau of Automotive Repair for costs of enforcement related to this disciplinary action.

*Respondent Mazda Mehrnaz*

Smog Check Inspector License No EO 637139 issued to respondent Mazda Mehrnaz is revoked; provided, however, that the order of revocation is stayed and the license issued to respondent is placed on probation for a period of two years on the following terms and conditions of probation.

1. **Obey All Laws:** Respondent Mehrnaz shall comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

2. **Complete Required Training:** Respondent Mehrnaz shall attend and successfully complete a Bureau-certified 16-hour training course in diagnosis of emission systems failures and engine performance applicable to the class of license held by respondent. The course shall be completed and respondent shall submit proof of completion to the Bureau within 60 days of the effective date of this decision and order. If respondent fails to submit proof of completion of the course to the Bureau within the 60-day period, respondent's license shall be immediately suspended until such proof is received.

3. **Report as Directed:** Respondent Mehrnaz shall report in person or in writing as directed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

4. **Report Any Interest in a Registered or Licensed Operation:** Within 30 days of the effective date of this decision, respondent Mehrnaz shall report any financial interest he has or may have in facility registered with or licensed by the Bureau of Automotive Repair.

5. **Cooperate with Bureau Representatives:** Respondent Mehrnaz shall provide Bureau representatives with unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion, along with any paperwork related to smog check inspections he has conducted while he is on probation.

6. **Pay Enforcement Costs:** Respondent Mehrnaz shall pay enforcement costs of \$1,377.10 in a manner directed by the Bureau. Enforcement costs must be paid in full by the conclusion of the first year of probation.

7. **Violation of Probation:** Should the Director of Consumer Affairs determine respondent Mehrnaz has failed to comply with any term and condition of probation, the Department may, after giving notice and opportunity to be heard, temporarily or permanently suspend or revoke the license. If an accusation is filed against respondent Mehrnaz during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

//

**8. Successful Completion of Probation:** Upon the successful completion of probation, respondent Mehrnaz shall be entitled to the issuance of an unrestricted smog check inspector license.

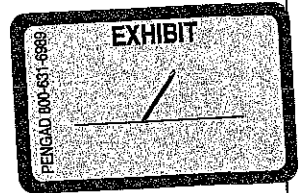
DATED: April 13, 2016

DocuSigned by:  
*James Ahler*  
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JAMES AHLER  
Administrative Law Judge  
Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:  
13 **TAMARA DEANNE DOYLE-MEMBER;**  
14 **DOYLE AUTOMOTIVE LLC,**  
15 **DOING BUSINESS AS DAN'S SMOG**  
**CHECK STATION**  
4555 University Ave.  
San Diego, CA 92105

Case No. 79/15-132  
ACCUSATION  
smog check

16 **Automotive Repair Dealer Registration**  
17 **ARD 270606**  
18 **Smog Check, Test Only, Station License No.**  
**TC 270606**

19 **MAZDA MEHRAZ**  
20 **4546 Lisann St.**  
**San Diego, CA 92117**

21 **Smog Check Inspector License No. EO**  
22 **637139**



1 **MAN CAO NGUYEN**  
2 **1644 Towell Lane**  
3 **Escondido, CA 92029**

4 **Smog Check Inspector License No. EO**  
5 **632531**  
6 **Smog Check Repair Technician License No.**  
7 **EI 632531 (formerly Advanced Emission**  
8 **Specialist Technician License No. EA**  
9 **632531)**

10 Respondents.

11 Complainant alleges:

12 **PARTIES**

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

15 2. On or about October 19, 2012, the Bureau issued Automotive Repair Dealer  
16 Registration No. ARD 270606 to Respondent Tamara Deanne Doyle, Member; Doyle Automotive  
17 LLC, doing business as Dan's Smog Check Station (collectively Dan's Smog Check Station). The  
18 registration was in full force and effect at all times relevant to the charges brought herein and will  
19 expire on October 31, 2015, unless renewed.

20 3. On or about January 9, 2013, the Bureau issued Smog Check Test Only Station  
21 License No. TC 270606 to Dan's Smog Check Station. The license was in full force and effect at  
22 all times relevant to the charges brought herein and will expire on October 31, 2015, unless  
23 renewed.

24 4. On or about July 24, 2014, the Bureau issued Smog Check Inspector License No. EO  
25 637139 to Respondent Mazda Mehrnaz (Mehraz). The Smog Check Inspector License was in full  
26 force and effect at all times relevant to the charges brought herein and will expire on March 31,  
27 2016, unless renewed.

28 5. On or about September 27, 2010, the Bureau issued Advanced Emission Specialist  
(EA) Technician License No. 632531 to Respondent Man Cao Nguyen (Nguyen), which was due  
to expire on June 30, 2014. Under California Code of Regulations, title 16, section 3340.28,  
subdivision (e), the license was renewed, under Nguyen's election, as Smog Check Inspector

1 License No. EO 632531 and Smog Check Repair Technician License No. EI 632531, effective  
2 September 19, 2014. The Smog Check Inspector License and Smog Check Repair Technician  
3 License (collectively technician licenses) were in full force and effect at all times relevant to the  
4 charges brought herein and will expire on June 30, 2016, unless renewed.

### 5 JURISDICTION

6 6. This Accusation is brought before the Director of Consumer Affairs (Director) for the  
7 Bureau of Automotive Repair, under the authority of the following laws.

8 7. Section 118, subdivision (b), of the Code provides that the suspension, expiration,  
9 surrender, cancellation of a license shall not deprive the Director of jurisdiction to proceed with a  
10 disciplinary action during the period within which the license may be renewed, restored, reissued  
11 or reinstated.

12 8. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid  
13 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary  
14 proceeding against an automotive repair dealer or to render a decision invalidating a registration  
15 temporarily or permanently.

16 9. Section 9884.20 of the Code states:

17 "All accusations against automotive repair dealers shall be filed within three years after the  
18 performance of the act or omission alleged as the ground for disciplinary action, except that with  
19 respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action, the  
20 accusation may be filed within two years after the discovery, by the bureau, of the alleged facts  
21 constituting the fraud or misrepresentation."

22 10. Section 9884.22 of the Code states:

23 "(a) Notwithstanding any other provision of law, the director may revoke, suspend, or deny  
24 at any time any registration required by this article on any of the grounds for disciplinary action  
25 provided in this article. The proceedings under this article shall be conducted in accordance with  
26 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
27 Code, and the director shall have all the powers granted therein.

28 "..."

1           11. Section 44002 of the Health and Safety Code provides, in pertinent part, that the  
2 Director has all the powers and authority granted under the Automotive Repair Act for enforcing  
3 the Motor Vehicle Inspection Program.

4           12. Section 44072 of the Health and Safety Code states:

5           “Any license issued under this chapter and the regulations adopted pursuant to it may be  
6 suspended or revoked by the director. The director may refuse to issue a license to any applicant  
7 for the reasons set forth in Section 44072.1. The proceedings under this article shall be conducted  
8 in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2  
9 of the Government Code, and the director shall have all the powers granted therein.”

10          13. Section 44072.4 of the Health and Safety Code states:

11          “The director may take disciplinary action against any licensee after a hearing as provided in  
12 this article by any of the following:

13           “(a) Imposing probation upon terms and conditions to be set forth by the director.

14           “(b) Suspending the license.

15           “(c) Revoking the license.”

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

20          15. Section 44072.7 of the Health and Safety Code states:

21          “All accusations against licensees shall be filed within three years after the act or omission  
22 alleged as the ground for disciplinary action, except that with respect to an accusation alleging a  
23 violation of subdivision (d) of Section 44072.2, the accusation may be filed within two years after  
24 the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation  
25 prohibited by that section.”

26          ///

27          ///

28          ///

1 16. Section 44072.8 of the Health and Safety Code states:

2 "When a license has been revoked or suspended following a hearing under this article, any  
3 additional license issued under this chapter in the name of the licensee may be likewise revoked or  
4 suspended by the director."

5 **STATUTORY PROVISIONS**

6 17. Section 22 of the Code states:

7 "(a) 'Board' as used in any provisions of this Code, refers to the board in which the  
8 administration of the provision is vested, and unless otherwise expressly provided, shall include  
9 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and  
10 'agency.'

11 "(b) Whenever the regulatory program of a board that is subject to review by the Joint  
12 Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2  
13 (commencing with Section 473), is taken over by the department, that program shall be designated  
14 as a 'bureau.'"

15 18. Section 23.7 of the Code states:

16 "Unless otherwise expressly provided, 'license' means license, certificate, registration, or  
17 other means to engage in a business or profession regulated by this code or referred to in Section  
18 1000 or 3600."

19 19. Section 9884.7 of the Code states:

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

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

28 "...

1           “(4) Any other conduct that constitutes fraud.

2           “...

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

7           20. Section 44012 of the Health and Safety Code states:

8           “The test at the smog check stations shall be performed in accordance with procedures  
9 prescribed by the department and may require loaded mode dynamometer testing in enhanced  
10 areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other  
11 appropriate test procedures as determined by the department in consultation with the state board.  
12 The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode  
13 dynamometer or two-speed idle testing , on model year 2000 and newer vehicles only, beginning  
14 no earlier than January 1, 2013. However, the department, in consultation with the state board,  
15 may prescribe alternative test procedures that include loaded mode dynamometer or two-speed  
16 idle testing for vehicles with onboard diagnostic systems that the department and the state board  
17 determine exhibit operational problems. The department shall ensure, as appropriate to the test  
18 method, the following:

19           “(a) Emission control systems required by state and federal law are reducing excess  
20 emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section  
21 44013.

22           “(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of  
23 the vehicle's emission control system.

24           “(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons,  
25 carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are  
26 tested in accordance with procedures prescribed by the department. In determining how loaded  
27 mode and evaporative emissions testing shall be conducted, the department shall ensure that the  
28 emission reduction targets for the enhanced program are met.

1           (d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and  
2 crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic  
3 compound emissions, in accordance with procedures prescribed by the department.

4           “(e) For diesel-powered vehicles, a visual inspection is made of emission control devices and  
5 the vehicle's exhaust emissions are tested in accordance with procedures prescribed by the  
6 department, that may include, but are not limited to, onboard diagnostic testing. The test may  
7 include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon the  
8 adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

9           “(f) A visual or functional check is made of emission control devices specified by the  
10 department, including the catalytic converter in those instances in which the department determines  
11 it to be necessary to meet the findings of Section 44001. The visual or functional check shall be  
12 performed in accordance with procedures prescribed by the department.

13           “(g) A determination as to whether the motor vehicle complies with the emission standards  
14 for that vehicle's class and model-year as prescribed by the department.

15           “(h) An analysis of pass and fail rates of vehicles subject to an onboard diagnostic test and a  
16 tailpipe test to assess whether any vehicles passing their onboard diagnostic test have, or would  
17 have, failed a tailpipe test, and whether any vehicles failing their onboard diagnostic test have or  
18 would have passed a tailpipe test.

19           “(i) The test procedures may authorize smog check stations to refuse the testing of a vehicle  
20 that would be unsafe to test, or that cannot physically be inspected, as specified by the department  
21 by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle  
22 from compliance with all applicable requirements of this chapter.”

23           21. Section 44015 of the Health and Safety Code states:

24           “(a) A licensed smog check station shall not issue a certificate of compliance, except as  
25 authorized by this chapter, to any vehicle that meets the following criteria:

26           “(1) A vehicle that has been tampered with.

27           “(2) A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision (b) of  
28 Section 44036. A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision

1 (b) of Section 44036 shall be directed to the department to determine whether an inadvertent error  
2 can explain the irregularity, or whether the vehicle otherwise meets smog check requirements,  
3 allowing the certificate for compliance to be issued, or the vehicle shall be reinspected by a referee  
4 or another smog check station.

5 “(3) A vehicle that, prior to repairs, has been initially identified by the smog check station as  
6 a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated test-  
7 only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections  
8 44014 and 44014.2.

9 “(4) A vehicle described in subdivision (c).

10 “(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to  
11 issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

12 “(c)(1) A repair cost waiver shall be issued, upon request of the vehicle owner, by an entity  
13 authorized to perform referee functions for a vehicle that has been properly tested but does not  
14 meet the applicable emission standards when it is determined that no adjustment or repair can be  
15 made that will reduce emissions from the inspected motor vehicle without exceeding the applicable  
16 repair cost limit established under Section 44017 and that every defect specified by paragraph (2)  
17 of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section  
18 43205, has been corrected. A repair cost waiver issued pursuant to this paragraph shall be  
19 accepted in lieu of a certificate of compliance for the purposes of compliance with Section 4000.3  
20 of the Vehicle Code. No repair cost waiver shall exceed two years' duration. No repair cost waiver  
21 shall be issued until the vehicle owner has expended an amount equal to the applicable repair cost  
22 limit specified in Section 44017.

23 “(2) An economic hardship extension shall be issued, upon request of a qualified low-income  
24 motor vehicle owner, by an entity authorized to perform referee functions, for a motor vehicle that  
25 has been properly tested but does not meet the applicable emission standards when it is determined  
26 that no adjustment or repair can be made that will reduce emissions from the inspected motor  
27 vehicle without exceeding the applicable repair cost limit, as established pursuant to Section  
28 44017.1, that every defect specified in paragraph (2) of subdivision (a) of Section 43204, and in

1 paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected, that the low-  
2 income vehicle owner would suffer an economic hardship if the extension is not issued, and that all  
3 appropriate emissions-related repairs up to the amount of the applicable repair cost limit in Section  
4 44017.1 have been performed.

5 “(d) No repair cost waiver or economic hardship extension shall be issued under any of the  
6 following circumstances:

7 “(1) If a motor vehicle was issued a repair cost waiver or economic hardship extension in the  
8 previous biennial inspection of that vehicle. A repair cost waiver or economic hardship extension  
9 may be issued to a motor vehicle owner only once for a particular motor vehicle belonging to that  
10 owner. However, a repair cost waiver or economic hardship extension may be issued for a motor  
11 vehicle that participated in a previous waiver or extension program prior to January 1, 1998, as  
12 determined by the department. For waivers or extensions issued in the program operative on or  
13 after January 1, 1998, a waiver or extension may be issued for a motor vehicle only once per  
14 owner.

15 “(2) Upon initial registration of all of the following:

16 “(A) A direct import motor vehicle.

17 “(B) A motor vehicle previously registered outside this state.

18 “(C) A dismantled motor vehicle pursuant to Section 11519 of the Vehicle Code.

19 “(D) A motor vehicle that has had an engine change.

20 “(E) An alternate fuel vehicle.

21 “(F) A specially constructed vehicle.

22 “(e) Except as provided in subdivision (f), a certificate of compliance or noncompliance shall  
23 be valid for 90 days.

24 “(f) Excluding any vehicle whose transfer of ownership and registration is described in  
25 subdivision (d) of Section 4000.1 of the Vehicle Code, and except as otherwise provided in  
26 Sections 4000.1, 24007, 24007.5, and 24007.6 of the Vehicle Code, a licensed motor vehicle  
27 dealer shall be responsible for having a smog check inspection performed on, and a certificate of  
28 compliance or noncompliance issued for, every motor vehicle offered for retail sale. A certificate



1 issued to a licensed motor vehicle dealer shall be valid for a two-year period, or until the vehicle is  
2 sold and registered to a retail buyer, whichever occurs first.

3 “(g) A test may be made at any time within 90 days prior to the date otherwise required.”

4 22. Section 44035 of the Health and Safety Code states:

5 “(a) A smog check station's license or a qualified smog check technician's qualification may  
6 be suspended or revoked by the department, after a hearing, for failure to meet or maintain the  
7 standards prescribed for qualification, equipment, performance, or conduct. The department shall  
8 adopt rules and regulations governing the suspension, revocation, and reinstatement of licenses  
9 and qualifications and the conduct of the hearings.

10 “(b) The department or its representatives, including quality assurance inspectors, shall be  
11 provided access to licensed stations for the purpose of examining property, station equipment,  
12 repair orders, emissions equipment maintenance records, and any emission inspection items, as  
13 defined by the department.”

14 23. Section 44072.2 of the Health and Safety Code states:

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

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

21 ". . .

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

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

24 ". . . ."

25 24. Section 44072.10 of the Health and Safety Code states:

26 "...



1 tested. Nor shall any person knowingly enter into the emissions inspection system any false  
2 information about the vehicle being tested.

3 " . . . . "

4 28. California Code of Regulations, title 16, section 3340.42 states:

5 "Smog check inspection methods are prescribed in the Smog Check Manual, referenced by  
6 section 3340.45.

7 "(a) All vehicles subject to a smog check inspection, shall receive one of the following test  
8 methods:

9 "(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year  
10 vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-  
11 mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen  
12 emissions, as contained in the bureau's specifications referenced in subsection (a) of Section  
13 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM) test  
14 equipment, including a chassis dynamometer, certified by the bureau.

15 "On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection  
16 shall be measured and compared to the emissions standards shown in the Vehicle Look-up Table  
17 (VLT) Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby  
18 incorporated by reference. If the emissions standards for a specific vehicle are not included in this  
19 table then the exhaust emissions shall be compared to the emissions standards set forth in TABLE  
20 I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured  
21 emissions are less than or equal to the applicable emission standards specified in the applicable  
22 table.

23 "(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999 model-  
24 year vehicles, except diesel-powered, registered in all program areas of the state, except in those  
25 areas of the state where the enhanced program has been implemented. The two-speed idle mode  
26 test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and  
27 again at idle RPM, as contained in the bureau's specifications referenced in subsection (a) of  
28 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall be

1 measured and compared to the emission standards set forth in this section and as shown in TABLE  
2 III. A vehicle passes the two-speed idle mode test if all of its measured emissions are less than or  
3 equal to the applicable emissions standards specified in Table III.

4 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered  
5 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.  
6 The OBD test failure criteria are specified in section 3340.42.2.

7 “(b) In addition to subsection (a), all vehicles subject to the smog check program shall  
8 receive the following:

9 “(1) A visual inspection of emission control components and systems to verify the vehicle's  
10 emission control systems are properly installed.

11 “(2) A functional inspection of emission control systems as specified in the Smog Check  
12 Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper  
13 operation.

14 “. . . .”

15 29. California Code of Regulations, title 16, section 3395.4 states:

16 “In reaching a decision on a disciplinary action under the Administrative Procedure Act  
17 (Government Code Section 11400 et seq.), including formal hearings conducted by the Office of  
18 Administrative Hearing, the Bureau of Automotive Repair shall consider the disciplinary guidelines  
19 entitled ‘Guidelines for Disciplinary Penalties and Terms of Probation’ [May, 1997] which are  
20 hereby incorporated by reference. The ‘Guidelines for Disciplinary Penalties and Terms of  
21 Probation’ are advisory. Deviation from these guidelines and orders, including the standard terms  
22 of probation, is appropriate where the Bureau of Automotive Repair in its sole discretion  
23 determines that the facts of the particular case warrant such deviation -for example: the presence  
24 of mitigating factors; the age of the case; evidentiary problems.”

#### 25 COSTS

26 30. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the  
27 administrative law judge to direct a licentiate found to have committed a violation or violations of  
28 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

1 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
2 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
3 included in a stipulated settlement.

#### 4 **FACTS**

5 31. At all times alleged in this Accusation, Tamara Deanne Doyle, Mehraz, and Nguyen  
6 were acting in the course and within the scope of a technician, employee, partner, officer, or  
7 member of Dan's Smog Check Station.

#### 8 **FIRST UNDERCOVER RUN**

9 32. On August 26, 2014, a Bureau undercover operator drove a Bureau-documented 1988  
10 Toyota to Dan's Smog Check Station for inspection. The following introduced malfunction was  
11 placed on the vehicle: installation of a damaged fuel neck so that the vehicle would fail the  
12 functional check for the Low Pressure Fuel Evaporative Test. The undercover operator drove to  
13 the facility and requested a smog inspection. Dan's Smog Check Station and Mehraz performed  
14 the inspection. Certificate of Compliance [REDACTED] was issued for the inspection. After the  
15 inspection was completed, the undercover operator paid Dan's Smog Check Station for the  
16 inspection. Dan's Smog Check Station gave the undercover operator a Vehicle Inspection Report  
17 and an invoice. The undercover operator then left the facility and transferred custody of the  
18 vehicle to a Bureau representative.

19 33. A Bureau representative later reinspected the vehicle. The vehicle was still in the  
20 condition that would cause the vehicle to fail the functional check for the Low Pressure Fuel  
21 Evaporative Test. In light of this condition, a certificate of compliance should not have been  
22 issued for Dan's Smog Check Station's and Mehraz's inspection.

#### 23 **SECOND UNDERCOVER RUN**

24 34. On September 22, 2014, a Bureau undercover operator drove a Bureau-documented  
25 1990 Toyota to Dan's Smog Check Station for inspection. The following introduced malfunction  
26 was placed on the vehicle: a leak in the Fuel Evaporative system by installing a defective Fuel  
27 Evaporative Hose so that the vehicle would fail the functional check for the Low Pressure Fuel  
28 Evaporative Test. The undercover operator drove to the facility and requested a smog inspection.

1 Dan's Smog Check Station and Nguyen performed the inspection. Certificate of Compliance  
2 [REDACTED] was issued for the inspection. After the inspection was completed, the undercover  
3 operator paid Dan's Smog Check Station for the inspection. Dan's Smog Check Station gave the  
4 undercover operator a Vehicle Inspection Report and an invoice. The undercover operator then  
5 left the facility and transferred custody of the vehicle to a Bureau representative.

6 35. A Bureau representative later reinspected the vehicle. The vehicle was still in the  
7 condition that would cause the vehicle to fail the functional check for the Low Pressure Fuel  
8 Evaporative Test. In light of this condition, a certificate of compliance should not have been  
9 issued for Dan's Smog Check Station's and Nguyen's inspection.

### 10 **THIRD UNDERCOVER RUN**

11 36. On December 12, 2014, a Bureau undercover operator drove a Bureau-documented  
12 1992 Toyota to Dan's Smog Check Station for inspection. The following introduced malfunction  
13 was placed on the vehicle: installation of a fuel evaporative hose with a hole in it so that the vehicle  
14 would fail the functional check for the Low Pressure Fuel Evaporative Test. The undercover  
15 operator drove to the facility and requested a smog inspection. Dan's Smog Check Station and  
16 Nguyen performed the inspection. Certificate of Compliance [REDACTED] was issued for the  
17 inspection. After the inspection was completed, the undercover operator paid Dan's Smog Check  
18 Station \$53.00. Dan's Smog Check Station gave the undercover operator a Vehicle Inspection  
19 Report and an invoice. The undercover operator then left the facility and transferred custody of  
20 the vehicle to a Bureau representative.

21 37. A Bureau representative later reinspected the vehicle. The vehicle was still in the  
22 condition that would cause the vehicle to fail the functional check for the Low Pressure Fuel  
23 Evaporative Test. In light of this condition, a certificate of compliance should not have been  
24 issued for Dan's Smog Check Station's and Nguyen's inspection.

### 25 **FIRST CAUSE FOR DISCIPLINE**

#### 26 **(Untrue or Misleading Statements)**

27 38. Complainant re-alleges and incorporates by reference the allegations set forth above in  
28 paragraphs 31-37.

1 39. Dan's Smog Check Station's Registration is subject to disciplinary action under  
2 section 9884.7, subdivision (a)(1), in that Dan's Smog Check Station made or authorized  
3 statements which Dan's Smog Check Station knew or in the exercise of reasonable care should  
4 have known to be untrue or misleading.

5 40. Dan's Smog Check Station certified that Dan's Smog Check Station inspected the  
6 vehicle(s) described in paragraphs 31-37, when in fact the vehicle(s) were not inspected.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Violations of Motor Vehicle Inspection Program)**

9 41. Complainant re-alleges and incorporates by reference the allegations set forth above in  
10 paragraphs 31-40.

11 42. Dan's Smog Check Station's Smog Check Station License is subject to disciplinary  
12 action under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,  
13 subdivision (a), in that Dan's Smog Check Station failed to comply with the following sections of  
14 that Code:

15 a. **Section 44012**: failed to perform the tests of the emission control systems and devices  
16 on the vehicle(s) in paragraphs 31-40 in accordance with procedures prescribed by the  
17 Department.

18 b. **Section 44015**: issued a certificate of compliance for the vehicle(s) in 31-40 without  
19 properly testing and inspecting them to determine if they were in compliance with Health & Safety  
20 Code section 44012.

21 c. **Section 44035**: failed to meet or maintain the standards prescribed for qualification,  
22 equipment, performance, or conduct by failing to properly perform a smog inspection on the  
23 vehicle(s) in paragraphs 31-40 or certifying that such test(s) had been performed, when in fact they  
24 were never performed.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Failure to Comply with Regulations Under the Motor Vehicle Inspection Program)**

27 43. Complainant re-alleges and incorporates by reference the allegations set forth above in  
28 paragraphs 31-42.

1 44. Dan's Smog Check Station's Smog Check Station License is subject to disciplinary  
2 action under Health and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2,  
3 subdivision (a), in that Dan's Smog Check Station failed to comply with the following sections of  
4 Title 16, California Code of Regulations:

5 a. **Section 3340.35, subdivision (c)**: failed to inspect and test the vehicle(s) in  
6 paragraphs 31-42 in accordance with the procedures specified in section 3340.42 of the  
7 Regulations and failed to ensure that the vehicle(s) had all the required emission control equipment  
8 and devices installed and functioning correctly.

9 b. **Section 3340.41, subdivision (c)**: knowingly entered into the Emissions Inspection  
10 System false information about the vehicle(s) in paragraphs 31-42, providing result(s) for smog  
11 inspection(s) which were not actually performed.

12 c. **Section 3340.42**: failed to conduct the required smog tests on the vehicle(s) in  
13 paragraphs 31-42 in accordance with the Bureau's specifications.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Dishonesty, Fraud, Deceit)**

16 45. Complainant re-alleges and incorporates by reference the allegations set forth above in  
17 paragraphs 31-44.

18 46. Dan's Smog Check Station's Registration is subject to disciplinary action under Code  
19 section 9884.7, subdivision (a)(4), and Dan's Smog Check Station's Smog Check Station License  
20 is subject to disciplinary action under Health and Safety Code sections 44072.10, subdivision (a)  
21 and (c) and 44072.2, subdivision (d), in that Dan's Smog Check Station committed dishonest,  
22 fraudulent, or deceitful acts whereby another is injured by issuing a smog certificate of compliance  
23 for the vehicle(s) in paragraphs 31-44 without performing bona fide inspections of the emission  
24 control devices and systems on the vehicle(s), thereby depriving the People of the State of  
25 California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Violation of Motor Vehicle Inspection Program)**

3 47. Complainant re-alleges and incorporates by reference the allegations set forth above in  
4 paragraphs 31-46.

5 48. Mehraz's Smog Check Inspector License is subject to disciplinary action under Health  
6 and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a), in that  
7 Mehraz failed to comply with the following sections of that Code:

8 a. **Section 44012**: failed to perform the tests of the emission control systems and devices  
9 on the vehicle(s) in paragraphs 31-46 in accordance with procedures prescribed by the  
10 Department.

11 b. **Section 44015**: issued a certificate of compliance for the vehicle(s) in paragraphs 31-  
12 46 without properly testing and inspecting them to determine if they were in compliance with  
13 Health & Safety Code section 44012.

14 c. **Section 44035**: failed to meet or maintain the standards prescribed for qualification,  
15 equipment, performance, or conduct by failing to properly perform a smog inspection on the  
16 vehicle(s) in paragraphs 31-46 or certifying that such test(s) had been performed, when in fact they  
17 were never performed.

18 **SIXTH CAUSE FOR DISCIPLINE**

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

20 49. Complainant re-alleges and incorporates by reference the allegations set forth above in  
21 paragraphs 31-48.

22 50. Mehraz's Smog Check Inspector License is subject to disciplinary action under Health  
23 and Safety Code sections 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a) in that  
24 Mehraz failed to comply with the following sections of Title 16, California Code of Regulations:

25 a. **Section 3340.35, subdivision (c)**: failed to inspect and test the vehicle(s) in  
26 paragraphs 31-48 in accordance with the procedures specified in section 3340.42 of the  
27 Regulations and failed to ensure that the vehicle(s) had all the required emission control equipment  
28 and devices installed and functioning correctly.





1 58. Nguyen's technician licenses are subject to disciplinary action under Health and Safety  
2 Code sections 44072.10, subdivision (a) and (c) and 44072.2, subdivision (d), in that Nguyen  
3 committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a smog  
4 certificate of compliance for the vehicle(s) in paragraphs 31-56 without performing bona fide  
5 inspections of the emission control devices and systems on the vehicle(s), thereby depriving the  
6 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
7 Program.

#### 8 OTHER MATTERS

9 59. Under Code section 9884.7, subdivision (c), the Director may suspend, revoke, or  
10 place on probation the registration for all places of business operated in this State by Dan's Smog  
11 Check Station upon a finding that Dan's Smog Check Station has, or is, engaged in a course of  
12 repeated and willful violations of the laws and regulations pertaining to an automotive repair  
13 dealer.

14 60. Under Health & Safety Code section 44072.8, if Dan's Smog Check Station's Station  
15 License is revoked or suspended, the Director may likewise revoke or suspend any additional  
16 license issued under Chapter 5 of the Health and Safety Code in the name of Dan's Smog Check  
17 Station.

18 61. Under Health & Safety Code section 44072.8, if Nguyen's licenses are revoked or  
19 suspended, the Director may likewise revoke or suspend any additional license issued under  
20 Chapter 5 of the Health and Safety Code in the name of Nguyen.

21 62. Under Health & Safety Code section 44072.8, if Mehraz's license is revoked or  
22 suspended, the Director may likewise revoke or suspend any additional license issued under  
23 Chapter 5 of the Health and Safety Code in the name of Mehraz.

#### 24 PRAYER

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
26 and that following the hearing, the Director of Consumer Affairs issue a decision:  
27  
28

1           1.     Revoking or suspending Automotive Repair Dealer Registration No. ARD 270606  
2 issued to Respondent Tamara Deanne Doyle, Member; Doyle Automotive LLC, doing business as  
3 Dan's Smog Check Station;

4           2.     Revoking or suspending Smog Check Test Only Station License No. TC 270606  
5 issued to Respondent Tamara Deanne Doyle, Member; Doyle Automotive LLC, doing business as  
6 Dan's Smog Check Station;

7           3.     Revoking or suspending Smog Check Inspector License No. EO 637139 issued to  
8 Mazda Mehraz;

9           4.     Revoking or suspending Smog Check Inspector License No. EO 632531, and Smog  
10 Check Repair Technician License No. EI 632531 (formerly Advanced Emission Specialist (EA)  
11 Technician License No. 632531) issued to Man Cao Nguyen;

12          5.     Revoking or suspending the registration for all places of business operated in this state  
13 by Respondent Tamara Deanne Doyle, Member; Doyle Automotive LLC, doing business as Dan's  
14 Smog Check Station;

15          6.     Revoking or suspending any additional license issued under Chapter 5 of the Health  
16 and Safety Code in the name of Respondent Tamara Deanne Doyle, Member; Doyle Automotive  
17 LLC, doing business as Dan's Smog Check Station;

18          7.     Revoking or suspending any additional license issued under Chapter 5 of the Health  
19 and Safety Code in the name of Mazda Mehraz;

20          8.     Revoking or suspending any additional license issued under Chapter 5 of the Health  
21 and Safety Code in the name of Man Cao Nguyen;

22          9.     Ordering Respondent Tamara Deanne Doyle, Member; Doyle Automotive LLC, doing  
23 business as Dan's Smog Check Station; Mazda Mehraz; and Man Cao Nguyen to pay the Bureau  
24 of Automotive Repair the reasonable costs of the investigation and enforcement of this case,  
25 pursuant to Business and Professions Code section 125.3; and

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

DATED: June 12, 2015 Patrick Dorais

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

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