

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

In the Matter of the Accusation Against:

**ONE STOP SMOG & RPR CO ROSEDALE**  
**JIMMIE WHITTINGTON, PARTNER**  
**NELDA L. WHITTINGTON, PARTNER**  
10120 Rosedale Hwy  
Bakersfield, CA 93312  
Automotive Repair Dealer Registration  
No. ARD 182674  
Smog Check Station License No. RC 192674

Case No. 79/12-77

OAH No. 2012050065

And

**ELIZABETH L. BURGER**  
**2341 Pictoria Drive**  
**Bakersfield, CA 93306**

Advanced Emission Specialist Technician  
License No. EA 148826

Respondents.


**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 only as to respondent Elizabeth L. Burger, Advanced Emission Specialist Technician License No. EA 148826; except that, pursuant to Government Code section 11517(c)(2)(C), the typographical error on the case caption, page 1, of the Proposed Decision, is corrected as follows:

The Case No. is corrected to read "Case No. 79/12-77."

This Decision shall become effective 12/10/12.

DATED: November 2, 2012

  
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DOREATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

ELIZABETH L. BURGER  
Advanced Emission Specialist Technician  
License No. EA 148826,

Respondent.

Case No.: 79/12-07

OAH No.: 2012050065

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, on October 1, 2012, at Los Angeles, California.

Alvaro Mejia, Deputy Attorney General, represented the Complainant.

Respondent appeared in person and represented herself.

Oral and documentary evidence and evidence by way of official notice and stipulation was received and the cause argued and then submitted.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

*Parties*

1. Sherry Mehl, Complainant herein, brought the Accusation in her official capacity as the Chief of the Bureau of Automotive Repair (Bureau or BAR), Department of Consumer Affairs.

2. In 2006, the Director issued Advanced Emission Specialist Technician License Number EA 148826 (Technician license) to Elizabeth L. Burger (Respondent Burger or Burger). Respondent's technician license was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2012, unless renewed.

### *Jurisdiction*

3. The Bureau has jurisdiction to proceed pursuant to Business and Professions Code sections 9884.7 and 9884.13 and Health and Safety Code sections 44002 and 44072.6. Administrative proceedings before the Bureau are conducted in conformity with the provisions of the California Administrative Procedure Act, Chapter 5, commencing with Government Code section 11500, *et seq.*

### *Background Finding*

4. In 1995, the Director of Consumer Affairs (Director) issued Automotive Repair Dealer Registration Number ARD 182674 (Registration) to One Stop Smog & Rpr Co Rosedale (One Stop or One Stop Smog) with Jimmie Whittington and Nelda L. Whittington as partners. Said registration was in full force and effect at all times relevant herein.

5. On March 15, 1995, the Director issued Smog Check Station License Number RC 182674 to One Stop Smog & Rpr Co Rosedale. Said smog check station license was in full force and effect at all times herein.

6. An Accusation with charging allegations related to the conduct set forth in the following Findings/Conclusions was filed against One Stop on February 8, 2012. To resolve the matter One Stop entered into a Stipulated Settlement and Disciplinary Order (Settlement) on May 31, 2012.

### *Combined Findings of Fact/Conclusions of Law (Findings/Conclusions)*

7. On April 19, 2011, an undercover operator with the Bureau (Operator) took the Bureau's 1993 Honda Accord to One Stop Smog's facility and requested a smog inspection. The ignition timing on the Bureau-documented vehicle was not adjusted to manufacturer's specifications. The Operator signed a work order for the inspection, but was not given a copy or a written estimate. After the inspection was completed, the Operator paid the facility \$68.20 and received copies of an invoice and vehicle inspection report (VIR). The VIR indicated that Respondent had performed the inspection. That same day, electronic smog Certificate of Compliance Number WT697242C was issued for the vehicle.

8. On May 6, 2011, the Bureau inspected the vehicle and found that the ignition timing still was not adjusted to manufacturer's specifications. The video tape of the undercover operation revealed that Respondent had not performed the required functional ignition timing test or functional low pressure fuel evaporation test (LPFET) on the vehicle.

9. Respondent's technician license is subject to disciplinary action pursuant to Health and Safety Code (HSC) section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the functional check of the emission control systems and devices on the Bureau's 1993

Honda Accord in accordance with procedures prescribed by the Department in that Respondent failed to perform the required functional ignition timing test and functional LPFET test on the vehicle.

10. Respondent's technician license is subject to disciplinary action pursuant to HSC section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

- (A) Section 3340.30, subdivision (a): Respondent failed to inspect and test the Bureau's 1993 Honda Accord in accordance with HSC sections 44012 and 44035, and California Code of Regulations, title 16, (CCR) section 3340.42.
- (B) Section 3340.41, subdivision (c): Respondent entered false information into the EIS by entering data indicating that the functional ignition timing test and functional LPFET test were not required on the Bureau's 1993 Honda Accord.
- (C) Section 3340.42: Respondent failed to conduct the required smog tests on the Bureau's 1993 Honda Accord in accordance with the Bureau's specifications.

11. Respondent's Burger technician license is not subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that it was not established that Respondent committed a dishonest, fraudulent or deceitful act. Respondent's conduct in issuing an electronic smog certificate of compliance for the Bureau's 1993 Honda Accord without performing a bona fide inspection of the emission control devices and systems on the vehicle which thereby deprived the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program was the result of inadvertence and not intent.

12. On April 30, 2011, an undercover operator with the Bureau (Operator) took the Bureau's 1986 GMC 3500 Sierra pickup truck to One Stop Smog's facility and requested a smog inspection. The exhaust gas recirculation (EGR) valve had been removed from the Bureau-documented vehicle and a non-factory blockage plate had been installed in its place, and the vacuum hose was disconnected. The operator signed a work order for the inspection, but was not given a copy or a written estimate. After the inspection was completed, the operator paid the facility \$68.20 and received copies of an invoice and VIR. The VIR indicated that Respondent had performed the inspection. That same day, electronic smog Certificate of Compliance Number WV228204C was issued for the vehicle.

13. On June 7, 2011, the Bureau inspected the vehicle and found that the EGR valve was still missing and the vacuum hose was still disconnected.

14. Respondent's technician license is subject to disciplinary action pursuant to HSC section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the visual check of the emission control systems and devices on the Bureau's 1986 GMC 3500 Sierra pickup truck in accordance with procedures prescribed by the Department in that Respondent failed to determine that the EGR valve was missing on the vehicle and that the vacuum hose was disconnected.

15. Respondent's technician license is subject to disciplinary action pursuant to HSC section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

- (A) Section 3340.30, subdivision (a): Respondent failed to inspect and test the Bureau's 1986 GMC 3500 Sierra pickup truck in accordance with Health and Safety Code sections 44012 and 44035, and CCR section 3340.42.
- (B) Section 3340.41, subdivision (c): Respondent entered false information into the EIS by entering date indicating that the Bureau's 1986 GMC 3500 Sierra pickup truck had passed the EGR visual and functional tests when, in fact, the EGR valve was missing and the vacuum hose was disconnected.
- (C) Section 3340.42: Respondent failed to conduct the required smog tests on the Bureau's 1986 GMC 3500 Sierra pickup truck in accordance with the Bureau's specifications.

16. Respondent's technician license is not subject to disciplinary action pursuant to HSC 44072.2, subdivision (d), in that it was not established that Respondent committed a dishonest, fraudulent or deceitful act. Respondent's conduct in an electronic smog certificate of compliance for the Bureau's 1986 GMC 3500 Sierra pickup truck without performing a bona fide inspection of the emission control devices and systems on the vehicle, which thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program was the result of the inadvertence and not intent.

17. On April 2, 2011, Respondent performed a smog inspection on a 2005 BMW 5-Series, License No. 5NFL458, on behalf of One Stop Smog resulting in the issuance of electronic smog Certificate of Compliance No. WT743984C.

18. A representative of the Bureau reviewed test data from the Bureau's vehicle information database (VID), which revealed that Respondent entered "pass" for the EGR system and the pulse air injection system (AIS) during the visual check portion of the smog inspection. The representative obtained information indicating that the vehicle was not

equipped with an EGR system and that the EGR system was not required emission control system for the vehicle. The information also indicated that the vehicle was equipped with an electric AIS pump and not a pulse type pump.

19. On May 31, 2011, the representative inspected the vehicle using the under-hood Vehicle Emission Control Information (VECI) label<sup>1</sup> and confirmed that the vehicle did not require an EGR system. The representative also observed that the vehicle was equipped with an electric AIS pump (the pump was mounted in the interior of the left front fender).

20. Respondent's technician license is subject to disciplinary action pursuant to HSC section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows: Respondent failed to properly perform the visual check of the emission control systems and devices on the 2005 BMW 5-Series, as set forth in Finding/Conclusion 18.

21. Respondent's technician license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of CCR, as follows:

- (A) Section 3340.30, subdivision (a): Respondent failed to inspect and test the 2005 BMW 5-Series in accordance with Health and Safety Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.
- (B) Section 3340.41, subdivision (c): Respondent entered a false information into the EIS concerning the 2005 BMW 5-Series, as set forth in Finding/Conclusion 20.
- (C) Section 3340.42: Respondent failed to conduct the required smog tests on the 2005 BMW 5-Series in accordance with the Bureau's specifications.

22. On April 9, 2011, Respondent performed a smog inspection on a 2003 Toyota Sequoia, License No. JPALMER, on behalf of One Stop Smog resulting in the issuance of electronic smog Certificate of Compliance No. WT697245C.

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<sup>1</sup> Section 1.3.0 of the Bureau's August 2009 Smog Check Inspection Procedures Manual states, in pertinent part, that "[t]echnicians shall conduct the visual inspection in accordance with the inspection procedures described in this manual and as prompted by the EIS . . .". Section 1.3.1. states, in pertinent part, that "[t]echnicians must use all available information necessary to determine the vehicle's emission control requirements, including but not limited to, the under-hood emission control label . . ."

23. A representative of the Bureau reviewed test data from the Bureau's VID, which revealed that Respondent entered "pass" for the EGR system during the visual check portion of the smog inspection.

24. On June 16, 2011, the representative inspected the vehicle using the VECI label and found that the vehicle was not equipped with an EGR system and that the EGR system was not a required emission control system for the vehicle.

25. Respondent's technician license is subject to disciplinary action pursuant to HSC section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows: Respondent failed to properly perform the visual check of the emission control systems and devices on the 2003 Toyota Sequoia, as set forth in Finding/Conclusion 24.

26. Respondent's technician license is subject to disciplinary action pursuant to HSC section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of CCR as follows:

- (A) Section 3340.30, subdivision (a): Respondent failed to inspect and test the 2003 Toyota Sequoia in accordance with HSC sections 44012 and 44035, and California CCR section 3340.42.
- (B) Section 3340.41, subdivision (c): Respondent entered false information into the EIS concerning the 2003 Toyota Sequoia, as set forth in paragraph 53 above.
- (C) Section 3340.42: Respondent failed to conduct the required smog tests on the 2003 Toyota Sequoia in accordance with the Bureau's specifications.

27. On April 9, 2011, Respondent performed a smog inspection on a 1995 Saturn SC, License No. 3LKT062, on behalf of Respondent One Stop resulting in the issuance of electronic smog Certificate of Compliance No. WT847826C.

28. A representative of the Bureau reviewed test data from the Bureau's VID, which revealed that Respondent entered "not applicable" for the LPFET test during the functional check portion of the smog inspection. The representative obtained information showing that the LPFET functional test was required for the vehicle.<sup>2</sup>

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<sup>2</sup> Section 1.3.1 of the Bureau's August 2009 Smog Check Inspection Procedures Manual states, in pertinent part, that ". . . [t]echnicians are prohibited from entering "Not Applicable" for an emission control system that is in fact required for the vehicle undergoing inspection."

29. On June 22, 2011, the representative inspected the vehicle and found that the LPFET pinch point was accessible, indicating that the LPFET test could have been performed.

30. Respondent's technician license is subject to disciplinary action pursuant to HSC section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows: Respondent failed to properly perform the functional check of the emission control devices and systems on the 1995 Saturn SC.

31. Respondent's technician license is subject to disciplinary action pursuant to HSC section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of CCR as follows:

- (A) Section 3340.30, subdivision (a): Respondent failed to inspect and test the 1995 Saturn SC in accordance with HSC sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.
- (B) Section 3340.41, subdivision (c): Respondent entered inaccurate information into the EIS concerning the 1995 Saturn SC, as set forth in Finding/Conclusion 28.
- (C) Section 3340.42: Respondent failed to conduct the required smog tests on the 1995 Saturn SC in accordance with the Bureau's specifications.

32. On April 16, 2011, Respondent performed a smog inspection on a 1990 Chevrolet Caprice, License No. 3CYK021, on behalf of One Stop Smog resulting in the issuance of electronic smog Certificate of Compliance No. WT886848C.

33. A representative of the Bureau reviewed test data from the Bureau's VID, which revealed that Respondent entered "pass" for both the carburetor and the pulse AIS during the visual check portion of the smog inspection.

34. On June 22, 2011, the representative inspected the vehicle using the VECI label and found that the vehicle was equipped with a throttle body fuel injection system, instead of a carburetor, and a belt driven type AIS pump instead of a pulse AIS.

35. Respondent's technician license is subject to disciplinary action pursuant to HSC section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows: Respondent failed to properly perform the visual check of the emission control systems and devices on the 1990 Chevrolet Caprice as set forth in Finding/Conclusion 33.

36. Respondent's technician license is subject to disciplinary action pursuant to HSC section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of CCR as follows:



- (A) Section 3340.30, subdivision (a): Respondent failed to inspect and test the 1990 Chevrolet Caprice in accordance with HSC sections 44012 and 44035, and CCR section 3340.42.
- (B) Section 3340.41, subdivision (c): Respondent entered inaccurate information into the EIS concerning the 1990 Chevrolet Caprice, as set forth in Findings/Conclusion 33.
- (C) Section 3340.42: Respondent failed to conduct the required smog tests on the 1990 Chevrolet Caprice in accordance with the Bureau's specifications.

37. On April 16, 2011, Respondent performed a smog inspection on a 2001 Chevrolet Monte Carlo SS, License No. LINDALL, on behalf of One Stop Smog resulting in the issuance of electronic smog Certificate of Compliance No. WT990301C.

38. A representative of the Bureau reviewed test data from the Bureau's VID, which revealed that Respondent entered "pass" for the pulse AIS during the visual check portion of the smog inspection. The representative obtained information showing that the vehicle was equipped with an electronically drive type AIS pump.

39. On July 18, 2011, the representative inspected the vehicle and observed that it was equipped with electronically driven type AIS pump.

40. Respondent's technician license is subject to disciplinary action pursuant to HSC section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows: Respondent failed to properly perform the visual check of the emission control systems and devices on the 2001 Chevrolet Monte Carlo SS, as set forth in Finding/Conclusion 38.

41. Respondent's technician license is subject to disciplinary action pursuant to HSC section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

- (A) Section 3340.30, subdivision (a): Respondent failed to inspect and test the 2001 Chevrolet Monte Carlo SS in accordance with HSC sections 44012 and 44035, and CCR section 3340.42.
- (B) Section 3340.41, subdivision (c): Respondent entered false information into the EIS concerning the Chevrolet Monte Carlo SS, as set forth in Finding/Conclusion 38.

- (C) Section 3340.42: Respondent failed to conduct the required smog tests on the 2001 Chevrolet Monte Carlo SS in accordance with the Bureau's specifications.

42. On April 30, 2011, Respondent performed a smog inspection on a 1994 GMC C3500 Sierra, License No. 4Y26455, on behalf of Respondent One Stop Smog & Rpr Co Rosedale, resulting in the issuance of electronic smog Certificate of Compliance No. WV091450C.

43. A representative of the Bureau reviewed test data from the Bureau's VID, which revealed that Respondent entered "pass" for both the carburetor and the pulse AIS during the visual check portion of the smog inspection, and "not applicable" for the LPFET test during the functional check. Later, the representative obtained information showing that the LPFET functional test was required for the vehicle.

44. On June 1, 2011, the representative inspected the vehicle using the VECI label and found that the vehicle was equipped with a throttle body fuel injection system and not a carburetor. The representative also found that the vehicle was not equipped with an AIS system and that the AIS system was not a required emission control system for the vehicle.

45. Respondent's technician license is subject to disciplinary action pursuant to HSC section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows: Respondent failed to properly perform the visual and functional checks of the emission control systems and devices on the 1994 GMC C3500 Sierra, as set forth in Finding/Conclusion 43.

46. Respondent's technician license is subject to disciplinary action pursuant to HSC section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of CCR as follows:

- (A) Section 3340.30, subdivision (a): Respondent failed to inspect and test the 1994 GMC C3500 Sierra in accordance with Health and Safety Code sections 44012 and 44035, and CCR section 3340.42.
- (B) Section 3340.41, subdivision (c): Respondent entered false information into the EIS concerning the 1994 GMC C3500 Sierra, as set forth in Finding/Conclusion 45.
- (C) Section 3340.42: Respondent failed to conduct the required smog tests on the 1994 GMC C3500 Sierra in accordance with the Bureau's specifications.

*Aggravation*

47. On January 23, 2009, the Bureau issued Citation No. M09-0860 against Respondent for violations of HSC section 44032 (qualified technicians shall perform tests of emission control systems and devices in accordance with HSC section 44012); and CCR section 3340.30, subdivision (a) (qualified technicians shall inspect, test and repair vehicles in accordance with HSC sections 44012 and 44035 and CCR section 3340.42). On January 14, 2009, Respondent issued a certificate of compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond specifications. Respondent was directed to complete an 8 hours training course and to submit proof of completion to the Bureau within 30 days from receipt of the citation. Respondent completed the training on February 22, 2009.

*Supplemental Findings*

48. Respondent – licensed in 2006 – did not do work under her license until 2009. Since then she has work sporadically for a number of smog shops including One Stop Smog. While at One Stop she worked on Saturdays as a “fill-in tech” and attempted to process from 30 to 35 vehicles each Saturday.

49. By Respondent’s admission the Saturday volume of vehicles became too much for her, particularly in light of One Stop Smog’s Mantra: “get them in – get them out”. Under pressure to deal with that volume and that mantra Respondent’s work was – at best – mediocre.

*Costs*

50. Pursuant to Business and Professions Code section 125.3<sup>3</sup> the Complainant certified the following total costs of investigation and enforcement of the case against both Respondent and One Stop Smog in the sum of \$16,379.33. The costs are reasonable.

Bureau	\$10,256.83
Attorney General	<u>6,122.50</u>
Total	\$16,379.00 (Rounded)

51. BAR assessed \$12,609.00 of said total sum to One Stop Smog. One Stop has agreed to pay 50% thereof or \$6,304.00 as part of the terms of its Settlement with BAR. The amount assessed to One Stop minus the total amount is assessed to Respondent: \$16,379.00 minus \$12,609 equals \$3,770.00.

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<sup>3</sup> Business and Professions Code section 125.3 provides that in any order issued in resolution of a disciplinary proceeding before a Bureau within the Department of Consumer Affairs where a licentiate is found to have committed a violation or violations of the licensing act, the Bureau may request the administrative law judge to order the licensee to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

52. At present Respondent is not employed full time and lives her family. Additionally, most Californians, including Respondent, are attempting to recover from the effects of the nationwide Great Recession which are compounded by the persistently deflated California economy. Accordingly, Respondent does suffer from economic hardship.

## LEGAL DETERMINATIONS

### *Violations*

1. Cause exists for suspension or revocation of Respondent's Advance Emission Specialist Technician License No. EA 148826 by reason of the following separately and in combination:

- (A) Findings/Conclusions 7 through 10;
- (B) Findings/Conclusions 12 through 15;
- (C) Findings/Conclusions 22 through 26;
- (D) Findings/Conclusions 22 through 26;
- (E) Findings/Conclusions 27 through 31;
- (F) Findings/Conclusions 32 through 36;
- (G) Findings/Conclusions 37 through 41;
- (H) Findings/Conclusions 42 through 46.

2. No cause exists for suspension or revocation of said License No. EA 148826 by reason of Findings/Conclusions 11 and 16.

### *Costs*

3. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost regulation similar to section 125.3. In so doing, however, the Court directed the Administrative Law Judge and the agency to evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, the Bureau must not assess the full costs where it would unfairly penalize the Respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Bureau must consider a Respondent's subjective good faith belief in the merits of his or her position and whether the Respondent has raised a colorable challenge; the Bureau must consider a Respondent's ability to pay; and the Bureau may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a Respondent engaged in relatively innocuous misconduct. (*Zuckerman v. State Board of Chiropractic Examiners, supra* at p. 45).

4. In the instant case Respondent did have a subjective good faith belief in the merits of her position and did obtain the dismissal of some charges. But – more importantly – the paramount factor of *Zuckerman* is here in play: Respondent does not have the ability to pay in that she is under economic hardship (Finding 52).

5. Although the Costs set forth in Findings 50 and 51 are reasonable, no cause exists for an Order of Costs to be imposed on Respondent by reason of Legal Determinations 3 and 4 combined with Finding 52.

*Disciplinary Considerations*

6. The Bureau’s Disciplinary Guidelines (Guidelines) were reviewed and considered by the Administrative Law Judge to determine the appropriate level of discipline warranted. Additionally, the objective of application proceeding is to protect the public,<sup>4</sup> the licensed profession, maintain integrity, high standards, and preserve public confidence in licensees of the BAR. The purpose of proceedings of this type is not to punish Respondent. In particular, the statutes relating to board licensees are designed to protect the public from any potential risk of harm.

7. In sum, as is demonstrated in the totality of Findings/Conclusions, Respondent – repeatedly – committed serious breaches of basic smogging procedures thereby placing individual vehicle owners and the public at risk. The breaches resulted in numerous violations of applicable Health and Safety Code and California Code of Regulations which exist to protect the public. Accordingly, the only Order that can be made which is consistent with the public interest is the Order which follows.

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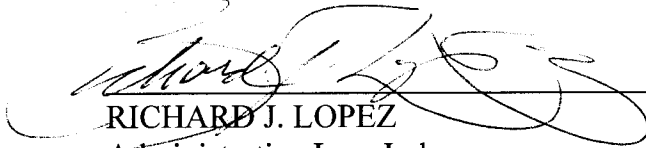
<sup>4</sup> *Camacho v. Youde* (1975) 95 Cal. App. 3d, 165; *Clerical v. Department of Motor Vehicles* (1990) 224 Cal. Ap. 3<sup>rd</sup> 1016, 1030-1031; *Fahmy v. Medical Board of California* (1995) 38 Cal. App. 4<sup>th</sup> 810, 816.

ORDER

1. Advanced Emission Specialist Technician License Number EA 148826, issued to Elizabeth L. Burger is hereby revoked.

2. Any additional license issued under Chapter 5 of the Health and Safety Code in the name of Elizabeth L. Burger is hereby revoked.

Dated: October 20, 2012

  
RICHARD J. LOPEZ  
Administrative Law Judge  
Office of Administrative Hearings

RJL:ref

1 KAMALA D. HARRIS  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
4 State Bar No. 164015  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2520  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
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8 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:  
12 **ONE STOP SMOG & RPR CO ROSEDALE**  
13 **JIMMIE WHITTINGTON, PARTNER**  
14 **NELDA L. WHITTINGTON, PARTNER**  
10120 Rosedale Hwy  
15 Bakersfield, CA 93312  
Automotive Repair Dealer Reg. No. ARD 182674  
16 Smog Check Station License No. RC 182674

Case No. 79/12-77

**A C C U S A T I O N**  
(Smog Check)

17 and

18 **ELIZABETH L. BURGER**  
2341 Pictoria Drive  
19 Bakersfield, CA 93306  
Advanced Emission Specialist Technician  
20 License No. EA 148826

21 Respondents.

22 Complainant alleges:

23 **PARTIES**

24 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as  
25 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

26 **One Stop Smog & Rpr Co Rosedale**

27 2. In or about 1995, the Director of Consumer Affairs ("Director") issued Automotive  
28 Repair Dealer Registration Number ARD 182674 ("registration") to One Stop Smog & Rpr Co

1 Rosedale ("Respondent One Stop Smog & Rpr Co Rosedale"), with Jimmie Whittington and  
2 Nelda L. Whittington as partners. Respondent's registration was in full force and effect at all  
3 times relevant to the charges brought herein and will expire on March 31, 2012, unless renewed.

4 3. On or about March 15, 1995, the Director issued Smog Check Station License  
5 Number RC 182674 to Respondent One Stop Smog & Rpr Co Rosedale. Respondent's smog  
6 check station license was in full force and effect at all times relevant to the charges brought herein  
7 and will expire on March 31, 2012, unless renewed.

8 **Elizabeth L. Burger**

9 4. In or about 2006, the Director issued Advanced Emission Specialist Technician  
10 License Number EA 148826 ("technician license") to Elizabeth L. Burger ("Respondent Burger"  
11 or "Burger"). Respondent's technician license was in full force and effect at all times relevant to  
12 the charges brought herein and will expire on October 31, 2012, unless renewed.

13 **JURISDICTION**

14 5. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that  
15 the Director may revoke an automotive repair dealer registration.

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

20 7. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent  
21 part, that the Director has all the powers and authority granted under the Automotive Repair Act  
22 for enforcing the Motor Vehicle Inspection Program.

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

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28 ///





1 11. Bus. & Prof. Code section 22, subdivision (a), states:

2 "Board" as used in any provision of this Code, refers to the board in  
3 which the administration of the provision is vested, and unless otherwise expressly  
4 provided, shall include "bureau," "commission," "committee," "department,"  
"division," "examining committee," "program," and "agency."

5 12. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a  
6 "license" includes "registration" and "certificate."

7 13. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

12 . . . .

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

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

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

17 . . . .

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

21 . . . .

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

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

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1 COST RECOVERY

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

6 VIDEOTAPED UNDERCOVER OPERATION #1: 1993 HONDA ACCORD

7 17. On April 9, 2011, an undercover operator with the Bureau ("operator") took the  
8 Bureau's 1993 Honda Accord to Respondent One Stop Smog & Rpr Co Rosedale's facility and  
9 requested a smog inspection. The ignition timing on the Bureau-documented vehicle was not  
10 adjusted to manufacturer's specifications. The operator signed a work order for the inspection,  
11 but was not given a copy or a written estimate. After the inspection was completed, the operator  
12 paid the facility \$68.20 and received copies of an invoice and vehicle inspection report ("VIR").  
13 The VIR indicated that Respondent Burger had performed the inspection. That same day,  
14 electronic smog Certificate of Compliance Number WT697242C was issued for the vehicle.

15 18. On May 6, 2011, the Bureau inspected the vehicle and found that the ignition timing  
16 still was not adjusted to manufacturer's specifications. The video tape of the undercover  
17 operation revealed that Burger had not performed the required functional ignition timing test or  
18 functional low pressure fuel evaporation test ("LPFET") on the vehicle.

19 FIRST CAUSE FOR DISCIPLINE

20 (Untrue or Misleading Statements)

21 19. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to  
22 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that  
23 Respondent made or authorized statements which it knew or in the exercise of reasonable care  
24 should have known to be untrue or misleading, as follows: Respondent One Stop Smog & Rpr  
25 Co Rosedale's technician, Respondent Burger, certified under penalty of perjury on the VIR that  
26 she performed the smog inspection on the Bureau's 1993 Honda Accord in accordance with all  
27 Bureau requirements and that the vehicle had passed inspection and was in compliance with  
28 applicable laws and regulations. In fact, Respondent Burger failed to perform the required

1 functional ignition timing test and functional LPFET test on the vehicle. Further, the ignition  
2 timing on the vehicle was not adjusted to manufacturer's specifications in that the ignition timing  
3 was set to 25 degrees before top dead center (BTDC) when the specifications were 15 degrees  
4 BTDC. As such, vehicle would not pass the inspection required by Health & Saf. Code section  
5 44012.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Failure to Provide Customer with Copy of Signed Document)**

8 20. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to  
9 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that  
10 Respondent failed to provide the operator with a copy of the work order.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 21. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to  
14 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that  
15 Respondent committed an act that constitutes fraud by issuing an electronic smog certificate of  
16 compliance for the Bureau's 1993 Honda Accord without ensuring that a bona fide inspection was  
17 performed of the emission control devices and systems on the vehicle, thereby depriving the  
18 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
19 Program.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Provisions of the Bus. & Prof. Code)**

22 22. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to  
23 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that  
24 Respondent failed to comply with section 9884.9, subdivision (a), of that Code in a material  
25 respect, as follows: Respondent failed to provide the operator with a written estimate for the  
26 smog inspection on the Bureau's 1993 Honda Accord.

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with Provisions of the Bus. & Prof. Code)

3 23. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to  
4 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that  
5 Respondent failed to comply with California Code of Regulations, title 16, section 3356,  
6 subdivision (a), in the following material respects: Respondent failed to show the correct  
7 registration number on the invoice in that it was listed as RJ142219. Further, Respondent failed  
8 to include its business address.

9 SIXTH CAUSE FOR DISCIPLINE

10 (Violations of the Motor Vehicle Inspection Program)

11 24. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is  
12 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in  
13 that Respondent failed to comply with provisions of that Code, as follows:

14 a. Section 44012, subdivision (f): Respondent failed to ensure that the functional  
15 check of the emission control systems and devices was performed on the Bureau's 1993 Honda  
16 Accord in accordance with procedures prescribed by the department in that Respondent Burger  
17 failed to perform the required functional ignition timing test and functional LPFET test on the  
18 vehicle.

19 b. Section 44015: Respondent issued an electronic smog certificate of compliance for  
20 the Bureau's 1993 Honda Accord without ensuring that the vehicle was properly tested and  
21 inspected to determine if it was in compliance with Health & Saf. Code section 44012.

22 SEVENTH CAUSE FOR DISCIPLINE

23 (Failure to Comply with Regulations Pursuant  
24 to the Motor Vehicle Inspection Program)

25 25. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is  
26 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in

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1 that Respondent failed to comply with provisions of California Code of Regulations, title 16, as  
2 follows:

3 a. Section 3340.35, subdivision (c): Respondent One Stop Smog & Rpr Co Rosedale  
4 issued an electronic smog certificate of compliance for the Bureau's 1993 Honda Accord even  
5 though the vehicle had not been inspected in accordance with section 3340.42.

6 b. Section 3340.41, subdivision (c): Respondent One Stop Smog & Rpr Co Rosedale  
7 permitted its technician, Respondent Burger, to enter false information into the Emissions  
8 Inspection System ("EIS") by entering data indicating that the functional ignition timing test and  
9 functional LPFET test were not required on the Bureau's 1993 Honda Accord.

10 c. Section 3340.42: Respondent One Stop Smog & Rpr Co Rosedale failed to ensure  
11 that the required smog tests were conducted on the Bureau's 1993 Honda Accord in accordance  
12 with the Bureau's specifications.

### 13 EIGHTH CAUSE FOR DISCIPLINE

#### 14 (Dishonesty, Fraud or Deceit)

15 26. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is  
16 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in  
17 that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by  
18 issuing an electronic smog certificate of compliance for the Bureau's 1993 Honda Accord without  
19 ensuring that a bona fide inspection was performed of the emission control devices and systems  
20 on the vehicle, thereby depriving the People of the State of California of the protection afforded  
21 by the Motor Vehicle Inspection Program.

### 22 NINTH CAUSE FOR DISCIPLINE

#### 23 (Violations of the Motor Vehicle Inspection Program)

24 27. Respondent Burger's technician license is subject to disciplinary action pursuant to  
25 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with  
26 section 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the  
27 functional check of the emission control systems and devices on the Bureau's 1993 Honda

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1 Accord in accordance with procedures prescribed by the department in that Respondent failed to  
2 perform the required functional ignition timing test and functional LPFET test on the vehicle.

3 **TENTH CAUSE FOR DISCIPLINE**

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

6 28. Respondent Burger's technician license is subject to disciplinary action pursuant to  
7 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with  
8 provisions of California Code of Regulations, title 16, as follows:

9 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's  
10 1993 Honda Accord in accordance with Health & Saf. Code sections 44012 and 44035, and  
11 California Code of Regulations, title 16, section 3340.42.

12 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS  
13 by entering data indicating that the functional ignition timing test and functional LPFET test were  
14 not required on the Bureau's 1993 Honda Accord.

15 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the  
16 Bureau's 1993 Honda Accord in accordance with the Bureau's specifications.

17 **ELEVENTH CAUSE FOR DISCIPLINE**

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

19 29. Respondent Burger's technician license is subject to disciplinary action pursuant to  
20 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,  
21 fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of  
22 compliance for the Bureau's 1993 Honda Accord without performing a bona fide inspection of the  
23 emission control devices and systems on the vehicle, thereby depriving the People of the State of  
24 California of the protection afforded by the Motor Vehicle Inspection Program.

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1                                    **UNDERCOVER OPERATION #2: 1986 GMC 3500 SIERRA PICKUP TRUCK**

2            30.    On April 30, 2011, an undercover operator with the Bureau ("operator") took the  
3 Bureau's 1986 GMC 3500 Sierra pickup truck to Respondent One Stop Smog & Rpr Co  
4 Rosedale's facility and requested a smog inspection. The exhaust gas recirculation ("EGR") valve  
5 had been removed from the Bureau-documented vehicle and a non-factory blockage plate had  
6 been installed in its place, and the vacuum hose was disconnected. The operator signed a work  
7 order for the inspection, but was not given a copy or a written estimate. After the inspection was  
8 completed, the operator paid the facility \$68.20 and received copies of an invoice and VIR. The  
9 VIR indicated that Respondent Burger had performed the inspection. That same day, electronic  
10 smog Certificate of Compliance Number WV228204C was issued for the vehicle.

11            31.    On June 7, 2011, the Bureau inspected the vehicle and found that the EGR valve was  
12 still missing and the vacuum hose was still disconnected.

13                                    **TWELFTH CAUSE FOR DISCIPLINE**

14                                    **(Untrue or Misleading Statements)**

15            32.    Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to  
16 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that  
17 Respondent made or authorized statements which it knew or in the exercise of reasonable care  
18 should have known to be untrue or misleading, as follows: Respondent One Stop Smog & Rpr  
19 Co Rosedale's technician, Respondent Burger, certified under penalty of perjury on the VIR that  
20 she performed the smog inspection on the Bureau's 1986 GMC 3500 Sierra pickup truck in  
21 accordance with all Bureau requirements and that the vehicle had passed inspection and was in  
22 compliance with applicable laws and regulations. In fact, the EGR valve on the vehicle was  
23 missing and a non-factory blockage plate had been installed in its place, and the vacuum hose was  
24 disconnected. As such, vehicle would not pass the inspection required by Health & Saf. Code  
25 section 44012.

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1 THIRTEENTH CAUSE FOR DISCIPLINE

2 **(Failure to Provide Customer with Copy of Signed Document)**

3 33. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to  
4 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(3), in that  
5 Respondent failed to provide the operator with a copy of the work order.

6 FOURTEENTH CAUSE FOR DISCIPLINE

7 **(Fraud)**

8 34. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to  
9 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that  
10 Respondent committed an act that constitutes fraud by issuing an electronic smog certificate of  
11 compliance for the Bureau's 1986 GMC 3500 Sierra pickup truck without ensuring that a bona  
12 fide inspection was performed of the emission control devices and systems on the vehicle, thereby  
13 depriving the People of the State of California of the protection afforded by the Motor Vehicle  
14 Inspection Program.

15 FIFTEENTH CAUSE FOR DISCIPLINE

16 **(Failure to Comply with Provisions of the Bus. & Prof. Code)**

17 35. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to  
18 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that  
19 Respondent failed to comply with section 9884.9, subdivision (a), of that Code in a material  
20 respect, as follows: Respondent failed to provide the operator with a written estimate for the  
21 smog inspection on the Bureau's 1986 GMC 3500 Sierra pickup truck.

22 SIXTEENTH CAUSE FOR DISCIPLINE

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

24 36. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is  
25 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in  
26 that Respondent failed to comply with provisions of that Code, as follows:

27 a. Section 44012, subdivision (f): Respondent failed to ensure that the visual check of  
28 the emission control systems and devices was performed on the Bureau's 1986 GMC 3500 Sierra

1 pickup truck in accordance with procedures prescribed by the department in that Respondent  
2 Burger failed to determine that the EGR valve on the vehicle was missing and the vacuum hose  
3 was disconnected.

4 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for  
5 the Bureau's 1986 GMC 3500 Sierra pickup truck without ensuring that the vehicle was properly  
6 tested and inspected to determine if it was in compliance with Health & Saf. Code section 44012.

7 **SEVENTEENTH CAUSE FOR DISCIPLINE**

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

10 37. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is  
11 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in  
12 that Respondent failed to comply with provisions of California Code of Regulations, title 16, as  
13 follows:

14 a. **Section 3340.35, subdivision (c):** Respondent One Stop Smog & Rpr Co Rosedale  
15 issued an electronic smog certificate of compliance for the Bureau's 1986 GMC 3500 Sierra  
16 pickup truck even though the vehicle had not been inspected in accordance with section 3340.42.

17 b. **Section 3340.41, subdivision (c):** Respondent One Stop Smog & Rpr Co Rosedale  
18 permitted its technician, Respondent Burger, to enter false information into the EIS by entering  
19 data indicating that the Bureau's 1986 GMC 3500 Sierra pickup truck had passed the EGR visual  
20 and functional tests when, in fact, the EGR valve was missing and the vacuum hose was  
21 disconnected.

22 c. **Section 3340.42:** Respondent One Stop Smog & Rpr Co Rosedale failed to ensure  
23 that the required smog tests were conducted on the Bureau's 1986 GMC 3500 Sierra pickup truck  
24 in accordance with the Bureau's specifications.

25 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

27 38. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is  
28 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in

1 that Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by  
2 issuing an electronic smog certificate of compliance for the Bureau's 1986 GMC 3500 Sierra  
3 pickup truck without ensuring that a bona fide inspection was performed of the emission control  
4 devices and systems on the vehicle, thereby depriving the People of the State of California of the  
5 protection afforded by the Motor Vehicle Inspection Program.

6 **NINETEENTH CAUSE FOR DISCIPLINE**

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

8 39. Respondent Burger's technician license is subject to disciplinary action pursuant to  
9 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with  
10 section 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the visual  
11 check of the emission control systems and devices on the Bureau's 1986 GMC 3500 Sierra  
12 pickup truck in accordance with procedures prescribed by the department in that Respondent  
13 failed to determine that the EGR valve was missing on the vehicle and that the vacuum hose was  
14 disconnected.

15 **TWENTIETH CAUSE FOR DISCIPLINE**

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

18 40. Respondent Burger's technician license is subject to disciplinary action pursuant to  
19 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with  
20 provisions of California Code of Regulations, title 16, as follows:

21 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's  
22 1986 GMC 3500 Sierra pickup truck in accordance with Health & Saf. Code sections 44012 and  
23 44035, and California Code of Regulations, title 16, section 3340.42.

24 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS  
25 by entering data indicating that the Bureau's 1986 GMC 3500 Sierra pickup truck had passed the  
26 EGR visual and functional tests when, in fact, the EGR valve was missing and the vacuum hose  
27 was disconnected.

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1 c. Section 3340.42: Respondent failed to conduct the required smog tests on the  
2 Bureau's 1986 GMC 3500 Sierra pickup truck in accordance with the Bureau's specifications.

3 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

5 41. Respondent Burger's technician license is subject to disciplinary action pursuant to  
6 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,  
7 fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of  
8 compliance for the Bureau's 1986 GMC 3500 Sierra pickup truck without performing a bona fide  
9 inspection of the emission control devices and systems on the vehicle, thereby depriving the  
10 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
11 Program.

12 **VEHICLE INSPECTION: 2005 BMW 5-SERIES**

13 42. On April 2, 2011, Respondent Burger performed a smog inspection on a 2005 BMW  
14 5-Series, License No. 5NFL458, on behalf of Respondent One Stop Smog & Rpr Co Rosedale,  
15 resulting in the issuance of electronic smog Certificate of Compliance No. WT743984C.

16 43. A representative of the Bureau reviewed test data from the Bureau's vehicle  
17 information database ("VID"), which revealed that Burger entered "pass" for the EGR system and  
18 the pulse air injection system ("AIS") during the visual check portion of the smog inspection.  
19 The representative obtained information indicating that the vehicle was not equipped with an  
20 EGR system and that the EGR system was not a required emission control system for the vehicle.  
21 The information also indicated that the vehicle was equipped with an electric AIS pump and not a  
22 pulse type pump.

23 44. On May 31, 2011, the representative inspected the vehicle using the under-hood  
24 Vehicle Emission Control Information ("VECI") label<sup>1</sup> and confirmed that the vehicle did not

25 <sup>1</sup> Section 1.3.0 of the Bureau's August 2009 Smog Check Inspection Procedures Manual  
26 states, in pertinent part, that "[t]echnicians shall conduct the visual inspection in accordance with  
27 the inspection procedures described in this manual and as prompted by the EIS . . .". Section  
28 1.3.1. states, in pertinent part, that "[t]echnicians must use all available information necessary to  
determine the vehicle's emission control requirements, including but not limited to, the under-  
hood emission control label . . ."

1 require an EGR system. The representative also observed that the vehicle was equipped with an  
2 electric AIS pump (the pump was mounted in the interior of the left front fender).

3 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

4 **(Untrue or Misleading Statements)**

5 45. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to  
6 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that  
7 Respondent made or authorized statements which it knew or in the exercise of reasonable care  
8 should have known to be untrue or misleading, as follows:

9 a. Respondent One Stop Smog & Rpr Co Rosedale's technician, Respondent Burger,  
10 certified that the EGR system on the 2005 BMW 5-Series had passed the visual check portion of  
11 the smog inspection. In fact, the vehicle is not equipped with an EGR system and that the EGR  
12 system is not a required emission control system for the vehicle.

13 b. Respondent One Stop Smog & Rpr Co Rosedale's technician, Respondent Burger,  
14 certified that the 2005 BMW 5-Series was equipped with a pulse type AIS pump when, in fact,  
15 the vehicle is equipped with an electric AIS pump.

16 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

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

18 46. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is  
19 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in  
20 that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows:  
21 Respondent failed to ensure that the visual check of the emission control systems and devices on  
22 the 2005 BMW 5-Series was performed properly, as set forth in paragraph 45 above.

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1 TWENTY-FOURTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with Regulations Pursuant  
3 to the Motor Vehicle Inspection Program)

4 47. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is  
5 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in  
6 that Respondent failed to comply with provisions of California Code of Regulations, title 16, as  
7 follows:

8 a. Section 3340.35, subdivision (c): Respondent One Stop Smog & Rpr Co Rosedale  
9 issued an electronic smog certificate of compliance for the 2005 BMW 5-Series even though the  
10 vehicle had not been inspected in accordance with section 3340.42.

11 b. Section 3340.41, subdivision (c): Respondent One Stop Smog & Rpr Co Rosedale  
12 permitted its technician, Respondent Burger, to enter false information into the EIS concerning  
13 the 2005 BMW 5-Series, as set forth in paragraph 45 above.

14 c. Section 3340.42: Respondent One Stop Smog & Rpr Co Rosedale failed to ensure  
15 that the required smog tests were conducted on the 2005 BMW 5-Series in accordance with the  
16 Bureau's specifications.

17 TWENTY-FIFTH CAUSE FOR DISCIPLINE

18 (Violations of the Motor Vehicle Inspection Program)

19 48. Respondent Burger's technician license is subject to disciplinary action pursuant to  
20 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with  
21 section 44012, subdivision (f), of that Code, as follows: Respondent failed to properly perform  
22 the visual check of the emission control systems and devices on the 2005 BMW 5-Series, as set  
23 forth in paragraph 45 above.

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**TWENTY-SIXTH CAUSE FOR DISCIPLINE**  
**(Failure to Comply with Regulations Pursuant  
to the Motor Vehicle Inspection Program)**

49. Respondent Burger's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

- a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the 2005 BMW 5-Series in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.
- b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS concerning the 2005 BMW 5-Series, as set forth in paragraph 45 above.
- c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the 2005 BMW 5-Series in accordance with the Bureau's specifications.

**VEHICLE INSPECTION: 2003 TOYOTA SEQUOIA**

- 50. On April 9, 2011, Respondent Burger performed a smog inspection on a 2003 Toyota Sequoia, License No. JPALMER, on behalf of Respondent One Stop Smog & Rpr Co Rosedale, resulting in the issuance of electronic smog Certificate of Compliance No. WT697245C.
- 51. A representative of the Bureau reviewed test data from the Bureau's VID, which revealed that Burger entered "pass" for the EGR system during the visual check portion of the smog inspection.
- 52. On June 16, 2011, the representative inspected the vehicle using the VECI label and found that the vehicle was not equipped with an EGR system and that the EGR system was not a required emission control system for the vehicle.

**TWENTY-SEVENTH CAUSE FOR DISCIPLINE**  
**(Untrue or Misleading Statements)**

53. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which it knew or in the exercise of reasonable care

1 should have known to be untrue or misleading, as follows: Respondent One Stop Smog & Rpr  
2 Co Rosedale's technician, Respondent Burger, certified that the EGR system on the 2003 Toyota  
3 Sequoia had passed the visual check portion of the smog inspection. In fact, the vehicle is not  
4 equipped with an EGR system and that the EGR system is not a required emission control system  
5 for the vehicle.

6 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

8 54. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is  
9 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in  
10 that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows:  
11 Respondent failed to ensure that the visual check of the emission control systems and devices on  
12 the 2003 Toyota Sequoia was performed properly, as set forth in paragraph 53 above.

13 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

16 55. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is  
17 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in  
18 that Respondent failed to comply with provisions of California Code of Regulations, title 16, as  
19 follows:

20 a. **Section 3340.35, subdivision (c):** Respondent One Stop Smog & Rpr Co Rosedale  
21 issued an electronic smog certificate of compliance for the 2003 Toyota Sequoia even though the  
22 vehicle had not been inspected in accordance with section 3340.42.

23 b. **Section 3340.41, subdivision (c):** Respondent One Stop Smog & Rpr Co Rosedale  
24 permitted its technician, Respondent Burger, to enter false information into the EIS concerning  
25 the 2003 Toyota Sequoia, as set forth in paragraph 53 above.

26 c. **Section 3340.42:** Respondent One Stop Smog & Rpr Co Rosedale failed to ensure  
27 that the required smog tests were conducted on the 2003 Toyota Sequoia in accordance with the  
28 Bureau's specifications.





1 portion of the smog inspection. The representative obtained information showing that the LPFET  
2 functional test was required for the vehicle.<sup>2</sup>

3 60. On June 22, 2011, the representative inspected the vehicle and found that the LPFET  
4 pinch point was accessible, indicating that the LPFET test could have been performed.

5 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

6 **(Untrue or Misleading Statements)**

7 61. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to  
8 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that  
9 Respondent made or authorized a statement which it knew or in the exercise of reasonable care  
10 should have known to be untrue or misleading, as follows: Respondent One Stop Smog & Rpr  
11 Co Rosedale's technician, Respondent Burger, certified that the LPFET functional test was not  
12 applicable to the 1995 Saturn SC. In fact, the LPFET functional test was required for the vehicle.

13 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

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

15 62. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is  
16 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in  
17 that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows:  
18 Respondent failed to ensure that the functional check of the emission control devices and systems  
19 was properly performed on the 1995 Saturn SC.

20 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

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

23 63. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is  
24 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in  
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27 <sup>2</sup> Section 1.3.1 of the Bureau's August 2009 Smog Check Inspection Procedures Manual  
28 states, in pertinent part, that ". . . [t]echnicians are prohibited from entering "Not Applicable" for  
an emission control system that is in fact required for the vehicle undergoing inspection."

1 that Respondent failed to comply with provisions of California Code of Regulations, title 16, as  
2 follows:

3 a. Section 3340.35, subdivision (c): Respondent One Stop Smog & Rpr Co Rosedale  
4 issued an electronic smog certificate of compliance for the 1995 Saturn SC even though the  
5 vehicle had not been inspected in accordance with section 3340.42.

6 b. Section 3340.41, subdivision (c): Respondent One Stop Smog & Rpr Co Rosedale  
7 permitted its technician, Respondent Burger, to enter false information into the EIS concerning  
8 the 1995 Saturn SC, as set forth in paragraph 61 above.

9 c. Section 3340.42: Respondent One Stop Smog & Rpr Co Rosedale failed to ensure  
10 that the required smog tests were conducted on the 1995 Saturn SC in accordance with the  
11 Bureau's specifications.

### 12 THIRTY-FIFTH CAUSE FOR DISCIPLINE

#### 13 (Violations of the Motor Vehicle Inspection Program)

14 64. Respondent Burger's technician license is subject to disciplinary action pursuant to  
15 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with  
16 section 44012, subdivision (f), of that Code, as follows: Respondent failed to properly perform  
17 the functional check of the emission control devices and systems on the 1995 Saturn SC.

### 18 THIRTY-SIXTH CAUSE FOR DISCIPLINE

#### 19 (Failure to Comply with Regulations Pursuant 20 to the Motor Vehicle Inspection Program)

21 65. Respondent Burger's technician license is subject to disciplinary action pursuant to  
22 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with  
23 provisions of California Code of Regulations, title 16, as follows:

24 a. Section 3340.30, subdivision (a): Respondent failed to inspect and test the 1995  
25 Saturn SC in accordance with Health & Saf. Code sections 44012 and 44035, and California Code  
26 of Regulations, title 16, section 3340.42.

27 b. Section 3340.41, subdivision (c): Respondent entered false information into the EIS  
28 concerning the 1995 Saturn SC, as set forth in paragraph 61 above.

1 c. Section 3340.42: Respondent failed to conduct the required smog tests on the 1995  
2 Saturn SC in accordance with the Bureau's specifications.

3 VEHICLE INSPECTION: 1990 CHEVROLET CAPRICE

4 66. On April 16, 2011, Respondent Burger ("Burger") performed a smog inspection on a  
5 1990 Chevrolet Caprice. License No. 3CYK021, on behalf of Respondent One Stop Smog & Rpr  
6 Co Rosedale, resulting in the issuance of electronic smog Certificate of Compliance No.  
7 WT886848C.

8 67. A representative of the Bureau reviewed test data from the Bureau's VID, which  
9 revealed that Burger entered "pass" for both the carburetor and the pulse AIS during the visual  
10 check portion of the smog inspection.

11 68. On June 22, 2011, the representative inspected the vehicle using the VECI label and  
12 found that the vehicle was equipped with a throttle body fuel injection system, instead of a  
13 carburetor, and a belt driven type AIS pump instead of a pulse AIS.

14 THIRTY-SEVENTH CAUSE FOR DISCIPLINE

15 (Untrue or Misleading Statements)

16 69. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to  
17 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that  
18 Respondent made or authorized statements which it knew or in the exercise of reasonable care  
19 should have known to be untrue or misleading, as follows:

20 a. Respondent One Stop Smog & Rpr Co Rosedale's technician, Respondent Burger,  
21 certified that the 1990 Chevrolet Caprice was equipped with a carburetor when, in fact, the  
22 vehicle is equipped with a throttle body fuel injection system.

23 b. Respondent One Stop Smog & Rpr Co Rosedale's technician, Respondent Burger,  
24 certified that the 1990 Chevrolet Caprice was equipped with a pulse type AIS pump. In fact, the  
25 vehicle is equipped with a belt driven type AIS pump.

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1 THIRTY-EIGHTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 70. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is  
4 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in  
5 that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows:  
6 Respondent failed to ensure that the visual check of the emission control systems and devices on  
7 the 1990 Chevrolet Caprice were performed properly, as set forth in paragraph 69 above.

8 THIRTY-NINTH CAUSE FOR DISCIPLINE

9 (Failure to Comply with Regulations Pursuant  
10 to the Motor Vehicle Inspection Program)

11 71. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is  
12 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in  
13 that Respondent failed to comply with provisions of California Code of Regulations, title 16, as  
14 follows:

15 a. Section 3340.35, subdivision (c): Respondent One Stop Smog & Rpr Co Rosedale  
16 issued an electronic smog certificate of compliance for the 1990 Chevrolet Caprice even though  
17 the vehicle had not been inspected in accordance with section 3340.42.

18 b. Section 3340.41, subdivision (c): Respondent One Stop Smog & Rpr Co Rosedale  
19 permitted its technician, Respondent Burger, to enter false information into the EIS concerning  
20 the 1990 Chevrolet Caprice, as set forth in paragraph 69 above.

21 c. Section 3340.42: Respondent One Stop Smog & Rpr Co Rosedale failed to ensure  
22 that the required smog tests were conducted on the 1990 Chevrolet Caprice in accordance with  
23 the Bureau's specifications.

24 FORTIETH CAUSE FOR DISCIPLINE

25 (Violations of the Motor Vehicle Inspection Program)

26 72. Respondent Burger's technician license is subject to disciplinary action pursuant to  
27 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with  
28 section 44012, subdivision (f), of that Code, as follows: Respondent failed to properly perform

1 the visual check of the emission control systems and devices on the 1990 Chevrolet Caprice, as  
2 set forth in paragraph 69 above.

3 **FORTY-FIRST CAUSE FOR DISCIPLINE**  
4 **(Failure to Comply with Regulations Pursuant**  
5 **to the Motor Vehicle Inspection Program)**

6 73. Respondent Burger's technician license is subject to disciplinary action pursuant to  
7 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with  
8 provisions of California Code of Regulations, title 16, as follows:

9 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the 1990  
10 Chevrolet Caprice in accordance with Health & Saf. Code sections 44012 and 44035, and  
11 California Code of Regulations, title 16, section 3340.42.

12 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS  
13 concerning the 1990 Chevrolet Caprice, as set forth in paragraph 69 above.

14 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the 1990  
15 Chevrolet Caprice in accordance with the Bureau's specifications.

16 **VEHICLE INSPECTION: 2001 CHEVROLET MONTE CARLO**

17 74. On April 16, 2011, Respondent Burger ("Burger") performed a smog inspection on a  
18 2001 Chevrolet Monte Carlo SS, License No. LINDALL, on behalf of Respondent One Stop  
19 Smog & Rpr Co Rosedale, resulting in the issuance of electronic smog Certificate of Compliance  
20 No. WT990301C.

21 75. A representative of the Bureau reviewed test data from the Bureau's VID, which  
22 revealed that Burger entered "pass" for the pulse AIS during the visual check portion of the smog  
23 inspection. The representative obtained information showing that the vehicle was equipped with  
24 an electronically driven type AIS pump.

25 76. On July 18, 2011, the representative inspected the vehicle and observed that it was  
26 equipped with an electronically driven type AIS pump.

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**FORTY-SECOND CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

77. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent One Stop Smog & Rpr Co Rosedale's technician, Respondent Burger, certified that the 2001 Chevrolet Monte Carlo SS was equipped with a pulse type AIS pump when, in fact, the vehicle is equipped with an electric AIS pump.

**FORTY-THIRD CAUSE FOR DISCIPLINE**

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

78. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows: Respondent failed to ensure that the visual check of the emission control systems and devices on the 2001 Chevrolet Monte Carlo SS was performed properly, as set forth in paragraph 77 above.

**FORTY-FOURTH CAUSE FOR DISCIPLINE**

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

79. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.35, subdivision (c):** Respondent One Stop Smog & Rpr Co Rosedale issued an electronic smog certificate of compliance for the 2001 Chevrolet Monte Carlo SS even though the vehicle had not been inspected in accordance with section 3340.42.

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1           b.    Section 3340.41, subdivision (c): Respondent One Stop Smog & Rpr Co Rosedale  
2 permitted its technician, Respondent Burger, to enter false information into the EIS concerning  
3 the 2001 Chevrolet Monte Carlo SS, as set forth in paragraph 77 above.

4           c.    Section 3340.42: Respondent One Stop Smog & Rpr Co Rosedale failed to ensure  
5 that the required smog tests were conducted on the 2001 Chevrolet Monte Carlo SS in accordance  
6 with the Bureau's specifications.

7   **FORTY-FIFTH CAUSE FOR DISCIPLINE**

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

9           80.   Respondent Burger's technician license is subject to disciplinary action pursuant to  
10 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with  
11 section 44012, subdivision (f), of that Code, as follows: Respondent failed to properly perform  
12 the visual check of the emission control systems and devices on the 2001 Chevrolet Monte Carlo  
13 SS, as set forth in paragraph 77 above.

14   **FORTY-SIXTH CAUSE FOR DISCIPLINE**

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

17           81.   Respondent Burger's technician license is subject to disciplinary action pursuant to  
18 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with  
19 provisions of California Code of Regulations, title 16, as follows:

20           a.    Section 3340.30, subdivision (a): Respondent failed to inspect and test the 2001  
21 Chevrolet Monte Carlo SS in accordance with Health & Saf. Code sections 44012 and 44035, and  
22 California Code of Regulations, title 16, section 3340.42.

23           b.    Section 3340.41, subdivision (c): Respondent entered false information into the EIS  
24 concerning the 2001 Chevrolet Monte Carlo SS, as set forth in paragraph 77 above.

25           c.    Section 3340.42: Respondent failed to conduct the required smog tests on the 2001  
26 Chevrolet Monte Carlo SS in accordance with the Bureau's specifications.

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1 VEHICLE INSPECTION: 1994 GMC C3500 SIERRA

2 82. On April 30, 2011, Respondent Burger ("Burger") performed a smog inspection on a  
3 1994 GMC C3500 Sierra, License No. 4Y26455, on behalf of Respondent One Stop Smog & Rpr  
4 Co Rosedale, resulting in the issuance of electronic smog Certificate of Compliance No.  
5 WV091450C.

6 83. A representative of the Bureau reviewed test data from the Bureau's VID, which  
7 revealed that Burger entered "pass" for both the carburetor and the pulse AIS during the visual  
8 check portion of the smog inspection, and "not applicable" for the LPFET test during the  
9 functional check. Later, the representative obtained information showing that the LPFET  
10 functional test was required for the vehicle.

11 84. On June 1, 2011, the representative inspected the vehicle using the VECI label and  
12 found that the vehicle was equipped with a throttle body fuel injection system and not a  
13 carburetor. The representative also found that the vehicle was not equipped with an AIS system  
14 and that the AIS system was not a required emission control system for the vehicle.

15 FORTY-SEVENTH CAUSE FOR DISCIPLINE

16 (Untrue or Misleading Statements)

17 85. Respondent One Stop Smog & Rpr Co Rosedale's registration is subject to  
18 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that  
19 Respondent made or authorized statements which it knew or in the exercise of reasonable care  
20 should have known to be untrue or misleading, as follows:

21 a. Respondent One Stop Smog & Rpr Co Rosedale's technician, Respondent Burger,  
22 certified that the 1994 GMC C3500 Sierra was equipped with a carburetor when, in fact, the  
23 vehicle is equipped with a throttle body fuel injection system.

24 b. Respondent One Stop Smog & Rpr Co Rosedale's technician, Respondent Burger,  
25 certified that the 1994 GMC C3500 Sierra was equipped with a pulse type AIS pump. In fact, the  
26 vehicle is not equipped with an AIS system and the AIS system is not a required emission control  
27 system for the vehicle.

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1 c. Respondent One Stop Smog & Rpr Co Rosedale's technician, Respondent Burger,  
2 certified that the LPFET functional test was not applicable to the 1994 GMC C3500 Sierra. In  
3 fact, the LPFET functional test was required for the vehicle.

4 **FORTY-EIGHTH CAUSE FOR DISCIPLINE**

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

6 86. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is  
7 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in  
8 that Respondent failed to comply with section 44012, subdivision (f), of that Code, as follows:  
9 Respondent failed to ensure that the visual and functional checks of the emission control systems  
10 and devices on the 1994 GMC C3500 Sierra were performed properly, as set forth in paragraph  
11 85 above.

12 **FORTY-NINTH CAUSE FOR DISCIPLINE**

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

15 87. Respondent One Stop Smog & Rpr Co Rosedale's smog check station license is  
16 subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in  
17 that Respondent failed to comply with provisions of California Code of Regulations, title 16, as  
18 follows:

19 a. **Section 3340.35, subdivision (c)**: Respondent One Stop Smog & Rpr Co Rosedale  
20 issued an electronic smog certificate of compliance for the 1994 GMC C3500 Sierra even though  
21 the vehicle had not been inspected in accordance with section 3340.42.

22 b. **Section 3340.41, subdivision (c)**: Respondent One Stop Smog & Rpr Co Rosedale  
23 permitted its technician, Respondent Burger, to enter false information into the EIS concerning  
24 the 1994 GMC C3500 Sierra, as set forth in paragraph 85 above.

25 c. **Section 3340.42**: Respondent One Stop Smog & Rpr Co Rosedale failed to ensure  
26 that the required smog tests were conducted on the 1994 GMC C3500 Sierra in accordance with  
27 the Bureau's specifications.

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3 **FIFTIETH CAUSE FOR DISCIPLINE**

4 (Violations of the Motor Vehicle Inspection Program)

5 88. Respondent Burger's technician license is subject to disciplinary action pursuant to  
6 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with  
7 section 44012, subdivision (f), of that Code, as follows: Respondent failed to properly perform  
8 the visual and functional checks of the emission control systems and devices on the 1994 GMC  
9 C3500 Sierra, as set forth in paragraph 85 above.

10 **FIFTY-FIRST CAUSE FOR DISCIPLINE**

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

13 89. Respondent Burger's technician license is subject to disciplinary action pursuant to  
14 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with  
15 provisions of California Code of Regulations, title 16, as follows:

16 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the 1994  
17 GMC C3500 Sierra in accordance with Health & Saf. Code sections 44012 and 44035, and  
18 California Code of Regulations, title 16, section 3340.42.

19 b. **Section 3340.41, subdivision (c)**: Respondent entered false information into the EIS  
20 concerning the 1994 GMC C3500 Sierra, as set forth in paragraph 85 above.

21 c. **Section 3340.42**: Respondent failed to conduct the required smog tests on the 1994  
22 GMC C3500 Sierra in accordance with the Bureau's specifications.

23 **MATTERS IN AGGRAVATION**

24 90. To determine the degree of discipline, if any, to be imposed on Respondent Elizabeth  
25 L. Burger, Complainant alleges as follows: On or about January 23, 2009, the Bureau issued  
26 Citation No. M09-0860 against Respondent for violations of Health & Saf. Code section 44032  
27 (qualified technicians shall perform tests of emission control systems and devices in accordance  
28 with Health & Saf. Code section 44012); and California Code of Regulations, title 16, section  
("Regulation") 3340.30, subdivision (a) (qualified technicians shall inspect, test and repair  
vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and Regulation

1 3340.42). On or about January 14, 2009, Respondent issued a certificate of compliance to a  
2 Bureau undercover vehicle with the ignition timing adjusted beyond specifications. Respondent  
3 was directed to complete an 8 hour training course and to submit proof of completion to the  
4 Bureau within 30 days from receipt of the citation. Respondent completed the training on  
5 February 22, 2009.

6 **OTHER MATTERS**

7 91. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
8 suspend, revoke, or place on probation the registration for all places of business operated in this  
9 state by Respondent One Stop Smog & Rpr Co Rosedale upon a finding that Respondent has, or  
10 is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to  
11 an automotive repair dealer.

12 92. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License  
13 Number RC 182674, issued to Respondent One Stop Smog & Rpr Co Rosedale, is revoked or  
14 suspended, any additional license issued under this chapter in the name of said licensee may be  
15 likewise revoked or suspended by the Director.

16 93. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist  
17 Technician License Number EA 148826, issued to Respondent Elizabeth L. Burger, is revoked or  
18 suspended, any additional license issued under this chapter in the name of said licensee may be  
19 likewise revoked or suspended by the Director.

20 **PRAYER**

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
22 and that following the hearing, the Director of Consumer Affairs issue a decision:

23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
24 182674, issued to One Stop Smog & Rpr Co Rosedale;

25 2. Revoking or suspending any other automotive repair dealer registration issued to One  
26 Stop Smog & Rpr Co Rosedale;

27 3. Revoking or suspending Smog Check Station License Number RC 182674, issued to  
28 One Stop Smog & Rpr Co Rosedale,

1           4.     Revoking or suspending any additional license issued under Chapter 5 of the Health  
2 and Safety Code in the name of One Stop Smog & Rpr Co. Rosedale;

3           5.     Revoking or suspending Advanced Emission Specialist Technician License Number  
4 EA 148826. issued to Elizabeth L. Burger;

5           6.     Revoking or suspending any additional license issued under Chapter 5 of the Health  
6 and Safety Code in the name of Elizabeth L. Burger;

7           7.     Ordering One Stop Smog & Rpr Co Rosedale and Elizabeth L. Burger to pay the  
8 Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this  
9 case, pursuant to Business and Professions Code section 125.3;

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

11  
12 DATED: \_\_\_\_\_

2/8/12

  
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SHERRY MEHL  
Chief

Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*

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