

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

In the Matter of the Accusation Against:

CHRIS & GEORGES TEST ONLY
GEORGE K. GEORGIU, OWNER
2520 West Street
Oakland, California 94612-1128

Automotive Repair Dealer Registration
No. ARD 173287
Smog Check, Test Only, Station License
No. TC 173287

and

GEORGE KYRIAKOS GEORGIU

Advanced Emission Specialist Technician
License No. EA 059660

Respondents.

Case No. 79/12-167

OAH No. 2012090654

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.

This Decision shall become effective 4/2/13.

DATED: FEB 7 0 2013



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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FOR THE BUREAU OF AUTOMOTIVE REPAIR
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PROPOSED DECISION

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Oakland, California, on January 8 and 9, 2013.

Justin R. Surber, Deputy Attorney General, represented Complainant John Wallauch, Chief of the Bureau of Automotive Repair.

Jesse M. Adams, Attorney at Law, represented Respondents Chris & Georges Test Only and George Kyriakos Georgiou. Respondent Georgiou was present on behalf of his business and his individual license.

The record closed on January 9, 2013.

FACTUAL FINDINGS

1. Complainant John Wallauch filed the Accusation solely in his official capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

2. On June 24, 1993, the Director of Consumer Affairs (Director) issued Automotive Repair Dealer Registration License No. ARD 173287 to George K. Georgiou – Owner (Respondent), dba Chris & Georges Test Only. On April 15, 2008, the Director issued Smog Check, Test Only, Station License No. TC 173287 to Respondent. The licenses are renewed until June 30, 2013.

3. In 1999, the Director issued Advanced Emission Specialist Technician License No. EA 059660 to Respondent. The license is renewed until October 31, 2014.

Citation history

4. On June 17, 2002, the Bureau issued Citation No. C02-1116 against Respondent as owner of Chris & Georges Test Only, and Citation No. M02-1117 against Respondent's technician license. The Citations were based upon Respondent's issuance of a certificate of compliance for a Bureau undercover vehicle that had a misadjusted base ignition timing. He was assessed a civil penalty of \$500 and required to complete an eight-hour training course.

5. On May 4, 2010, the Bureau issued Citation No. 2010-1156 against Respondent as owner of Chris & Georges Test Only, and Citation No. M2010-1157 against Respondent's technician license. The Citations were based upon Respondent's issuance of a certificate of compliance for a Bureau undercover vehicle that had a missing fuel evaporative canister. He was assessed a civil penalty of \$1,000 and required to complete an eight-hour training course.

Smog inspections and "clean plugging"

6. A proper smog inspection that complies with the Bureau's applicable statutes and regulations consists of a visual inspection of anti-smog equipment, a functional engine system check, and an emission check. The visual inspection requires that the technician conduct an underhood visual check to determine if the required items of the emissions control system are present. A functional check requires the technician to test some of the equipment which comprises the emissions control system to determine it is working properly, and to check the ignition timing to ensure it meets the manufacturer's specifications. The emissions check requires the technician to insert the free end of a diagnostic probe into the exhaust pipe of the vehicle being tested. The probe enables the emissions inspection system (EIS, also known as a BAR-97) to analyze exhaust emissions when the vehicle's engine is running at two speeds.

One of the functional tests a technician must perform on most 1996 and newer vehicles is an On Board Diagnostics (OBD II) test. The technician is required to connect a test cable from the EIS analyzer to a Diagnostics Link Connector (DLC) which is located in the vehicle's passenger compartment. Through the DLC, the EIS analyzer retrieves information from the vehicle's on-board computer about the status of the readiness indicators, trouble codes, and the malfunction indicator light (MIL). The readiness indicators reveal whether the OBD II system has run self-tests on the vehicle's emission and engine control systems to completion. If a readiness monitor is not set, it means the particular system has not been tested. A trouble code results when the vehicle fails one of these self-tests, and identifies the system and/or component which failed. If the trouble code is persistent, the on-board computer will command the MIL light to turn on. The vehicle will fail the OBD II functional test if more than the allowable number of readiness monitors have not been set, a trouble code has been set, or the MIL light has been commanded to turn on. It will also fail if the on-board computer will not communicate with the EIS through the DLC. If the vehicle fails any of the applicable visual or functional tests, it will fail the overall inspection.

The results of a smog inspection are printed on a a Vehicle Inspection Report. The report states whether the vehicle passed or failed the smog inspection. If the vehicle passed, a certificate to that effect is issued.

7. "Clean-plugging" is a method used to fraudulently inspect and/or certify vehicles. A technician uses another vehicle's OBD II connection to perform the OBD II functional test, but enters data in the EIS for the vehicle being fraudulently inspected.

Bureau investigation

8. In August 2011, Matthew Rodriquez, a Program Representative II Specialist with the Bureau, undertook an investigation of the smog check inspections conducted by Respondent for the period of August 2010 through August 2011. Rodriguez is an expert in automobile repair and smog test systems. He conducted the investigation by reviewing information from the Bureau's Vehicle Information Database (VID).

9. Rodriguez's review of the VID data revealed that the vehicles tested and awarded a certificate by Respondent during the period examined included the following:

1. 2001 Nissan Pathfinder 2WD, License No. 5CYV425, tested 6/20/11, Certificate No. OE190978C
2. 2001 Nissan Pathfinder 4WD, License No. 4UJB926, tested 6/30/11, Certificate No. OE396805C
3. 2003 GMC Envoy 2WD, License No. 5CWG115, tested 7/8/11, Certificate No. OE396830C

4. 1997 Mitsubishi Montero, License No. 3WST737, tested 7/13/11, Certificate No. OE550103C
5. 1997 Mitsubishi Galant, License No. 4UUM589, tested 7/30/11, Certificate No. OE844617C
6. 2001 Toyota Highlander 4WD, License No. 4UGM027, tested 8/16/11, Certificate No. OG29041C
7. 2000 Dodge Dakota pickup 2WD, License No. 8H12416, tested 8/17/11, Certificate No. OG029046C

10. Rodriquez found that vehicles 1 through 3 and 5 through 7 recorded the same two trouble codes during the OBD II tests regardless of the make or model of the vehicle. The Original Equipment Manufacturer (OEM) service information showed that the vehicles did not support the stored codes; one or both of the codes were not applicable to the vehicles. In addition, vehicle 4 recorded certain codes during the OBD II test that were not applicable to the vehicle. The VID data showed that Respondent conducted the inspections on all seven vehicles.

11. Rodriquez also obtained VID data showing that other smog check facilities had performed smog inspections on vehicle nos. 2, 5, and 7, prior to the inspections conducted by Respondent and that they had failed due, in part, to the OBD/MIL functional tests. The VID data indicated that the MIL had been commanded on during the inspections, that the technician performing the inspections had entered data into the EIS showing that the vehicles had failed the MIL functional check, and/or that certain codes were stored in the vehicles' power train control module (PCM) which were different from the codes stored in the vehicle's PCM during the inspections performed by Respondent.

12. Rodriquez concluded that fraudulent smog check inspections were occurring at Respondent's shop; specifically, that Respondent had clean-plugged vehicle nos. 1 through 7. Rodriquez was a credible and persuasive witness in every respect.

Respondent's evidence

13. Respondent has been in the automotive service business since the 1970's, and in recent years has conducted smog inspections exclusively. He acknowledged receiving citations in 2002 and 2010, which involved failing to check timing and a missing part. He did not challenge the citations, as to do so would have been prohibitively expensive. If he did commit the errors, though, he contends that they were honest mistakes.

14. Respondent also acknowledged performing the inspections of the seven vehicles that are the subject of this matter. He denied "attempting to defraud anyone" when he issued the certificates. He does not know why the codes did not match, but provided a

lengthy description of the problems he has experienced with his Worldwide EIS 5000, the EIS machine he has used for ten years. The machine cost over \$50,000, and Respondent estimates he has spent that much money to repair it and had a repair technician out 20 times. It will lock up "when it feels like it." He has had problems with the cable, the switches and the treadmill. Most relevant here, Respondent asserted that his machine is unable to pick up pending codes; it only sets hard codes.

15. Rodolfo Argueta is a licensed automotive repair dealer. His shop is next door to Respondent's shop in a building owned by Respondent. Argueta has operated a shop in that location for almost five years, and does not perform smog inspections. He refers people to Respondent for that service. He testified that he has watched Respondent perform inspections and has never observed Respondent to engage in suspicious activities; however, he also testified that he has never performed a smog inspection and does not know what it entails, other than pulling a car into the service area, "plugging it," and entering the number into a machine.

16. Nick Konstantelos has been a personal friend of Respondent's for 15 years. He owns vehicle no. 3, the GMC Envoy. Konstantelos lives in Modesto, but brought his car to Respondent as he was in the area visiting. He watched Respondent perform the test, and asserts that it was the only vehicle on site and that he "didn't see it plugged into another car."

17. Chuck Upton has been an Air Quality Engineer with the Bureau for 15 years. Prior to that, he was a Program Representative II Specialist, and has performed thousands of smog inspections using an EIS machine. Of those, he estimates performing 500 or 600 with the specific machine used by Respondent. Upton currently provides technical assistance to field investigations. He was on the team of engineers that designed the VID, and works with it on a daily basis.

Upton stated that the Worldwide EIS 5000 stores both pending and hard codes. The monitor self-tests the different systems comprising the vehicle's emission control system. Once it runs to completion, it either finds a fault and sets a hard code, or sets a pending code. Upton reviewed the repair orders for the seven vehicles, and none of the problems described by Respondent would create fault codes that did not exist in the vehicle being tested. Further, a team checks the VID daily for software anomalies and works closely with the EIS manufacturers to correct software problems. No problems exist with the Worldwide EIS 5000 software and corrupt data cannot be received.

18. Upton is an expert in this area and his testimony was persuasive. Respondent's various explanations for the Bureau's findings on the inspections of the seven vehicles in question were not credible. The testimony of Konstantelos, a personal friend, was insufficient to overcome the Bureau's evidence that the vehicles were clean plugged.

Costs

19. Complainant submitted a certification of costs showing that the Bureau has incurred costs totaling \$6,186.94 in investigative services. In addition, Deputy Attorney General Surber submitted a declaration signed March 2, 2011, stating that the Bureau has been billed \$5,210 in legal fees by the Department of Justice, Office of the Attorney General. The costs incurred are found to be reasonable given the nature of the case and the lack of evidence to the contrary. It is therefore determined that the claimed costs, which total \$11,396.94, are reasonable.

20. Mr. Surber's declaration also states that he estimates an additional four hours will be billed to the Bureau for his legal services. The equivocation in the estimate of hours prevents a finding of reasonableness as to an additional amount of \$680.

LEGAL CONCLUSIONS

1. Business and Professions Code section 9884.7 contains descriptions of acts or omissions that are grounds for the temporary or permanent invalidation of an automotive repair dealer registration. A registration may be invalidated under subdivision (a)(1) if the holder of the registration has made or authorized the making of untrue or misleading statements and under subdivision (a)(4) if the holder of the registration has committed conduct which constitutes fraud.

2. Health and Safety Code section 44072.2 sets forth the grounds for discipline of smog check station licenses and technician licenses. A license may be disciplined under subdivision (a) if the licensee has violated any provisions of the Motor Vehicle Inspection Program as set forth in Health and Safety Code section 44000 et seq.; under subdivision (c) if the licensee has violated any of the regulations adopted to implement the inspection program as set forth in California Code of Regulations, title 16, section 3300 et seq.; and under subdivision (d) if the licensee has committed any act involving dishonesty, fraud, or deceit whereby another is injured.

3. California Code of Regulations, title 16, section 3340.30, subdivision (a), prohibits failing to inspect and test vehicles in accordance with Health and Safety Code section 44012, which sets forth the tests that are to be conducted as part of a smog inspection. Section 3340.35, subdivision (c), prohibits issuing certificate of compliance when vehicles have not been inspected in accordance with section 3340.42. Section 3340.42 sets forth the mandatory emissions inspection standards and test procedures.

Causes for discipline

---Untrue or Misleading Statements

4. Cause to discipline Respondent Chris & Georges Test Only's registration exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that it

certified that certain vehicles had passed inspection and were in compliance with applicable laws and regulations when that was not true. (Findings 8 through 12, 17 and 18.)

---Fraud

5. Cause to discipline Respondent Chris & Georges Test Only's registration exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that Respondent Georgiou issued electronic smog certificates of compliance for seven vehicles without performing bona fide inspections of the vehicles, which deprived the people of California of the protection afforded by the Motor Vehicle Inspection Program. (Findings 8 through 12, 17 and 18.)

---Violations of the Motor Vehicle Inspection Program

6. Cause for disciplinary action against Respondent Chris & Georges Test Only's smog check station license exists pursuant to Health and Safety Code section 44072.2, subdivision (a), in that he violated Health and Safety Code sections 44012 and 44015. (Findings 8 through 12, 17 and 18.)

7. Cause for disciplinary action against Respondent Georgiou's technician license exists pursuant to Health and Safety Code section 44072.2, subdivision (a), in that he violated Health and Safety Code section 44012. (Findings 8 through 12, 17 and 18.)

---Violations of Regulations Pursuant to the Motor Vehicle Inspection Program

8. Cause for disciplinary action against Respondent Chris & Georges Test Only's smog check station license exists pursuant to Health and Safety Code section 44072.2, subdivision (c), in that it was established that he violated California Code of Regulations, title 16, sections 3340.35, subdivision (c), and 3340.42. (Findings 8 through 12, 17 and 18.)

9. Cause for disciplinary action against Respondent Georgiou's technician license exists pursuant to Health and Safety Code section 44072.2, subdivision (c), in that it was established that he violated California Code of Regulations, title 16, sections 3340.30, subdivision (a), and 3340.42. (Findings 12, 17 and 18.)

---Dishonesty, Fraud, or Deceit

10. Cause for disciplinary action against Respondent Chris & Georges Test Only's smog check station license exists pursuant to Health and Safety Code section 44072.2, subdivision (d), in that, by issuing a false certificate of compliance it committed an act involving dishonesty, fraud, or deceit that caused injury to the people of California by depriving them of the protections afforded by the Motor Vehicle Inspection Program. (Findings 8 through 12, 17 and 18.)

11. Cause for disciplinary action against Respondent Georgiou's technician license exists pursuant to Health and Safety Code section 44072.2, subdivision (d), in that, by issuing a false certificate of compliance Respondent committed an act involving dishonesty, fraud, or deceit that caused injury to the people of California by depriving them of the protections afforded by the Motor Vehicle Inspection Program. (Findings 8 through 12, 17 and 18.)

Other Matters

12. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Respondent Georgiou, owner of Chris & Georges Test Only, upon a finding that he has engaged in a course of repeated and willful violation of the laws and regulations pertaining to an automotive repair dealer. Cause for such discipline exists by reason of the matters set forth in Findings 8 through 12, 17 and 18.

13. Pursuant to Health and Safety Code section 44072.8, if Respondent Georgiou's station license, or his technician license is revoked or suspended, the Director may revoke or suspend any additional license issued in the same name under Chapter 5 of the Health and Safety Code.

Penalty Determination

14. Respondent falsely certified that seven vehicles passed the California smog test. He denied any knowledge of clean plugging the vehicles, and yet the evidence that the vehicles had been clean plugged during testing by Respondent was clear. Respondent denied any wrongdoing, and presented evidence that he claimed demonstrated that the errors were caused by faulty equipment. This evidence was without factual basis. In aggravation, Respondent has twice been cited for issuing certificates to vehicles that should not have, and could not have, passed a properly administered smog inspection. In these circumstances, the public interest requires revocation.

Cost Recovery

15. Business and Professions Code section 125.3 provides that a licensing agency may order a licensee who has committed a violation of the law to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Subdivision (c) provides that a certified copy of the costs constitutes prima facie evidence of the reasonable costs. As set forth in Finding 19, the actual costs of investigative and enforcement total \$11,396.94.

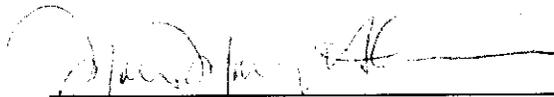
16. The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining whether costs should be assessed. Those factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her

position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. The only factor that could militate in Respondent's favor is their financial ability to pay a cost recovery award, and no evidence was offered on this issue. Therefore, the actual costs of investigation and enforcement will be assessed.

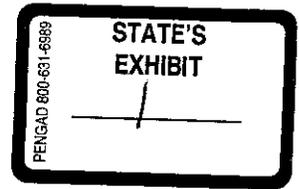
ORDER

1. Automotive Repair Dealer Registration No. ARD 173287, issued to George K. Georgiou, owner of Chris & Georges Test Only, is permanently invalidated.
2. Any other automotive repair dealer registration issued to George K. Georgiou is permanently invalidated.
3. Smog Check, Test Only, Station License No. TC 173287, issued to George K. Georgiou, owner of Chris & Georges Test Only, is revoked.
4. Advanced Emission Specialist Technician License No. EA 059660, issued to George Kyriakos Georgiou, is revoked.
5. Any additional license issued under Chapter 5 of the Health and Safety Code in the name of George Kyriakos Georgiou or George K. Georgiou is revoked.
6. George Kyriakos Georgiou individually, and as owner of Chris & Georges Test Only, is ordered to pay the Director of Consumer Affairs \$11,396.94 as reimbursement of the reasonable costs of investigation and enforcement of this case.

DATED: January 31, 2012



MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings



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

11 In the Matter of the Accusation Against:
 12 **CHRIS & GEORGES TEST ONLY**
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 14 **2520 West Street**
Oakland, CA 94612-1128
 15 **Automotive Repair Dealer Reg. No. ARD 173287**
Smog Check, Test Only, Station License No.
 16 **TC 173287**
 17 **and**
 18 **GEORGE KYRIAKOS GEORGIU**
19 19044 Mayberry Drive
Castro Valley, CA 94546
 20 **Advanced Emission Specialist Technician**
License No. EA 059660
 21
 22 Respondents.

Case No. 79/12-167

A C C U S A T I O N

Smog Check

23 Complainant alleges:

24 **PARTIES**

25 1. John Wallauch ("Complainant") brings this Accusation solely in his official capacity
 26 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

27 ///
 28 ///

1 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
2 of jurisdiction to proceed with disciplinary action.

3 **STATUTORY PROVISIONS**

4 9. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

14

15 (4) Any other conduct that constitutes fraud.

16

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

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

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

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

12. Health & Saf. Code section 44072.2 states, in pertinent 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 [the Motor Vehicle Inspection
Program (Health and Saf. Code § 44000, et seq.)] and the regulations adopted
pursuant to it, which related to the licensed activities.

. . . .

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

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

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

7 **COST RECOVERY**

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

12 **VID DATA REVIEW**

13 15. In or about August 2011, a representative of the Bureau conducted a detailed review
14 of data from the Bureau's VID (vehicle information database) for all smog inspections performed
15 at Respondent's facility for the period of August 2010 through August 2011. The representative
16 found that vehicles 1 through 3 and 5 through 7, identified below, recorded the same two
17 diagnostic trouble codes ("code") during the OBD II tests¹ regardless of the make or model of the
18 vehicle. The representative obtained information indicating that one or both of the codes were
19 not applicable to the vehicles. The representative also found that vehicle 4 recorded certain codes
20 during the OBD II test that were not applicable to the vehicle (codes different from those
21 recorded during the inspections on vehicles 1 through 3 and 5 through 7). The VID data showed
22 that Respondent conducted the inspections on all seven vehicles.

23
24 ¹ The On Board Diagnostics (OBD II) functional test is an automated function of the
25 BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an
26 interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is
27 located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves
28 information from the vehicle's on-board computer about the status of the readiness indicators,
trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II
functional test, it will fail the overall inspection.

Date & Time of Inspection	Vehicle Certified	Certificate No.
1. 06/20/2011 11:03 - 11:14	2001 Nissan Pathfinder 2WD; License No. 5CYV425	OE190978C
2. 06/30/2011 13:07 - 13:16	2001 Nissan Pathfinder 4WD, License No. 4UJB926	OE396805C
3. 07/08/2011 11:00 - 11:11	2003 GMC Envoy 2WD; License No. 5CWG115	OE396830C
4. 07/13/2011 12:30 - 12:47	1997 Mitsubishi Montero; License No. 3WST737	OE550103C
5. 07/30/2011 10:31 - 10:45	1997 Mitsubishi Galant; License No. 4UUM589	OE844617C
6. 08/16/2011 15:11 - 15:16	2001 Toyota Highlander 4WD; License No. 4UGM027	OG029041C
7. 08/17/2011 13:34 - 13:44	2000 Dodge Dakota pickup 2WD; License No. 8H12416	OG029046C

16. The representative also obtained VID data showing that other smog check facilities had performed smog inspections on vehicles 2, 5, and 7, identified in paragraph 15 above, prior to the inspections referenced in paragraph 15, and that vehicles 2, 5, and 7 had failed the prior inspections due, in part, to the OBD/MIL (malfunction indicator light) functional tests. The VID data indicated that the MIL had been commanded on during the inspections, that the technician performing the inspections had entered data into the Emissions Inspection System ("EIS") showing that the vehicles had failed the MIL functional check, and/or that certain codes were stored in the vehicles' PCM (power train control module) which were different from the codes stored in the vehicle's PCM during the inspections referenced in paragraph 15. The Bureau concluded that Respondent performed the smog inspections on the seven vehicles identified in paragraph 15 above using a different vehicle during the OBD II tests, a method known as "clean plugging",² resulting in the issuance of fraudulent certificates of compliance for the vehicles.

///

² Clean-plugging is the use of the OBD II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is not in compliance due to a failure to complete the minimum number of self tests, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

1 **THIRD CAUSE FOR DISCIPLINE**

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

3 20. Respondent's smog check station license is subject to disciplinary action pursuant to
4 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
5 following sections of that Code:

6 a. **Section 44012:** Respondent failed to perform the emission control tests on vehicles 1
7 through 7, identified in paragraph 15 above, in accordance with procedures prescribed by the
8 department.

9 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for
10 vehicles 1 through 7, identified in paragraph 15 above, without properly testing and inspecting the
11 vehicles to determine if they were in compliance with Health & Saf. Code section 44012.

12 **FOURTH CAUSE FOR DISCIPLINE**

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

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

18 a. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
19 compliance for vehicles 1 through 7, identified in paragraph 15 above, even though the vehicles
20 had not been inspected in accordance with section 3340.42.

21 b. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1
22 through 7, identified in paragraph 15 above, in accordance with the Bureau's specifications.

23 **FIFTH CAUSE FOR DISCIPLINE**

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

25 22. Respondent's smog check station license is subject to disciplinary action pursuant to
26 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest,
27 fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of
28 compliance for vehicles 1 through 7, identified in paragraph 15 above, without performing bona

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

4 **SIXTH CAUSE FOR DISCIPLINE**

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

6 23. Respondent's technician license is subject to disciplinary action pursuant to Health &
7 Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section
8 44012 of that Code in a material respect, as follows: Respondent failed to perform the emission
9 control tests on vehicles 1 through 7, identified in paragraph 15 above, in accordance with
10 procedures prescribed by the department.

11 **SEVENTH CAUSE FOR DISCIPLINE**

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

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

17 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test vehicles 1
18 through 7, identified in paragraph 15 above, in accordance with Health & Saf. Code sections
19 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

20 b. **Section 3340.42**: Respondent failed to conduct the required smog tests on vehicles 1
21 through 7, identified in paragraph 15 above, in accordance with the Bureau's specifications.

22 **EIGHTH CAUSE FOR DISCIPLINE**

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

24 25. Respondent's technician license is subject to disciplinary action pursuant to Health &
25 Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent,
26 or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance
27 for vehicles 1 through 7, identified in paragraph 15 above, without performing bona fide
28 inspections of the emission control devices and systems on the vehicles, thereby depriving the

1 People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program.

3 **MATTERS IN AGGRAVATION**

4 26. To determine the degree of discipline, if any, to be imposed on Respondent,
5 Complainant alleges as follows:

6 a. On or about June 17, 2002, the Bureau issued Citation No. C02-1116 against
7 Respondent, in his capacity as owner of Chris & Georges Test Only, for violations of Health &
8 Saf. Code section 44012, subdivision (f) (failure to determine that emission control devices and
9 systems required by State and Federal law are installed and functioning correctly in accordance
10 with test procedures); and California Code of Regulations, title 16, section ("Regulation")
11 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly
12 tested). On or about June 5, 2002, Respondent had issued a certificate of compliance to a Bureau
13 undercover vehicle with a tampered emission control system (misadjusted base ignition timing).
14 The Bureau assessed civil penalties totaling \$500 against Respondent for the violations.
15 Respondent paid the fine on July 23, 2002.

16 b. On or about May 4, 2010, the Bureau issued Citation No. C2010-1156 against
17 Respondent, in his capacity as owner of Chris & Georges Test Only, for violations of Health &
18 Saf. Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission
19 control devices according to procedures prescribed by the department); and Regulation 3340.35,
20 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On
21 or about March 24, 2010, Respondent had issued a certificate of compliance to a Bureau
22 undercover vehicle with a missing fuel evaporative canister. The Bureau assessed civil penalties
23 totaling \$1,000 against Respondent for the violations. Respondent paid the fine on June 9, 2010.

24 c. On or about June 17, 2002, the Bureau issued Citation No. M02-1117 against
25 Respondent's technician license for violations of Health & Saf. Code section 44032 (failure to
26 determine that emission control devices and systems required by State and Federal law are
27 installed and functioning correctly in accordance with test procedures); and Regulation 3340.30,
28 subdivision (a) (issuing a certificate of compliance to a vehicle that was improperly tested). On

1 or about June 5, 2002, Respondent had issued a certificate of compliance to a Bureau undercover
2 vehicle with a tampered emission control system (misadjusted base ignition timing). 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 July
5 30, 2002.

6 d. On or about May 4, 2010, the Bureau issued Citation No. M2010-1157 against
7 Respondent's technician license for violations of Health & Saf. Code section 44032 (qualified
8 technicians shall perform tests of emission control systems and devices in accordance with Health
9 & Saf. Code section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall
10 inspect, test and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035
11 and Regulation 3340.42). On or about March 24, 2010, Respondent had issued a certificate of
12 compliance to a Bureau undercover vehicle with a missing fuel evaporative canister. Respondent
13 was directed to complete an 8 hour training course and to submit proof of completion to the
14 Bureau within 30 days from receipt of the citation. Respondent completed the training on June
15 10, 2010.

16 OTHER MATTERS

17 27. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
18 suspend, revoke, or place on probation the registration for all places of business operated in this
19 state by Respondent George K. Georgiou, also known as George Kyriakos Georgiou, owner of
20 Chris & Georges Test Only, upon a finding that Respondent has, or is, engaged in a course of
21 repeated and willful violations of the laws and regulations pertaining to an automotive repair
22 dealer.

23 28. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
24 License Number TC 173287, issued to Respondent George K. Georgiou, also known as George
25 Kyriakos Georgiou, owner of Chris & Georges Test Only, is revoked or suspended, any
26 additional license issued under this chapter in the name of said licensee may be likewise revoked
27 or suspended by the director.

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

DATED: June 16, 2012



JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

SF2012401453