

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

In the Matter of the Accusation Against:

**EXPERT AUTO CARE,
RAJ KUMAR DHAWAN,**
Automotive Repair Dealer Registration No.
ARD 186865
Smog Check Test Only Station License No.
TC 186865

and

RAJ KUMAR DHAWAN,
Advanced Emission Specialist Technician
License No. EA 134529

Respondents.

Case No. 79/11-67

OAH No. 2013030985

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

July 18, 2014

DATED: June 12, 2014



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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

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PROPOSED DECISION

Administrative Law Judge Regina J. Brown, Office of Administrative Hearings, State of California, heard this matter on May 1, 2014, in Oakland, California.

Maretta Ward, Deputy Attorney General, represented complainant Sherry Mehl.

Respondent Raj Kumar Dhawan represented himself and Expert Auto Care.

The record was left open to May 15, 2014, to allow complainant to submit additional evidence; respondent to respond by May 22, 2014; and complainant to reply by June 2, 2014. On May 5, 2014, complainant submitted a declaration of costs which was marked as Exhibit 24 for identification. On May 15, 2014, complainant submitted an updated certification of respondent's license history which was marked as Exhibit 25 for identification. Respondent did not respond by May 22, 2014, and Exhibits 24 and 25 were admitted into evidence. The record closed and the matter was submitted on May 22, 2014.

FACTUAL FINDINGS

1. Complainant Sherry Mehl filed the Accusation in her official capacity as (then) Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

2. In 1996, the Bureau issued Automotive Repair Dealer Registration number ARD 186865 (registration) to respondent Raj Kumar Dhawan, doing business as Expert Auto Care, located at 2686 Pleasant Hill Road, Pleasant Hill, California. The registration will expire on December 31, 2014, unless it is renewed.

3. In 2003, the Bureau issued Advanced Emission Specialist Technician License number EA 134529 (technician license) to respondent. The technician license will expire on February 28, 2016, unless it is renewed.¹

4. On May 3, 2005, the Bureau issued Smog Check, Test Only, Station License number TC 186865 (station license) to respondent. The station license will expire on December 31, 2014, unless it is renewed.

5. On January 19, 2013, the Bureau certified Expert Auto Care as a STAR Station.² The STAR certification will remain active unless the registration is invalidated or canceled and/or the station license is revoked or canceled.

6. On May 28, 2010, a Bureau undercover operator drove a 2001 Chrysler 300M to Expert Auto Care for a smog check inspection. A Bureau representative had removed the positive crankcase ventilation (PCV) valve from the vehicle and installed a threaded pipe plug in its place. He also left the rubber hose disconnected that normally routes crankcase vapors to the PCV valve. These modifications removed the ability of the vehicle's emission control system to prevent engine vapors from being vented into the atmosphere. In that condition, the vehicle could not pass the visual portion of the smog check inspection. The underhood vehicle emission control information label and emission control vacuum hose routing label, which the bureau left in place on the vehicle, show that the vehicle's required emission control system included a PCV valve and its associated components.

7. Prior to performing the smog check inspection, respondent gave the undercover operator a service invoice to complete and sign. The undercover operator filled in the requested customer and vehicle information, signed the service invoice, and returned it to respondent. The signed service invoice did not include amounts under "smog check (labor)," "subtotal," or "total." Respondent told the undercover operator to drive the vehicle

¹ The technician license was canceled on February 26, 2014, and renewed, pursuant to respondent's election, as Smog Check Inspector License number EO 134529.

² A STAR-certified station must meet Bureau program eligibility requirements and is designated to perform smog checks on certain vehicles that have a high likelihood of failing smog check inspections.

around to the side of the facility. When the undercover operator returned to the front of the facility, respondent gave her a copy of the service invoice that included the amounts of \$59.95 for "smog check (labor)," and \$69.95 for the "subtotal" and "total." The service invoice did not include the vehicle's odometer reading.

Respondent inspected and tested the vehicle. Following the inspection, he issued a Vehicle Inspection Report with Certificate of Compliance number [REDACTED] to the undercover operator certifying that the vehicle passed the visual and functional inspection of its emission control systems. The vehicle was not in a condition to receive such certification. The undercover operator paid respondent the amount of \$69.95. When the undercover operator left the facility, the odometer reading on the vehicle was 156,221.³

8. The Accusation was issued. Respondent filed a timely appeal of the Accusation.

Respondent's Evidence

9. Respondent acknowledges that he made an error in performing the smog check inspection and entered the incorrect information to issue the Certificate of Compliance. He also admits that he made a mistake by not including the vehicle's odometer reading on the service invoice.

10. Respondent contends that the Bureau engages in discriminatory practices in the process for selecting which licensee will undergo an undercover operation. However, he provided no evidence to support this allegation other than that he spoke to other owners who agreed with him. Respondent's contention is not supported by the evidence.

11. Bureau representative Daniel Breitbach testified regarding the undercover operation selection process. A Bureau representative will conduct a data review of the electronic submissions of random smog check stations over a period of time and look for abnormalities. If a smog check station has an unusually low amount of failures, then there is a likelihood that the technician is not performing thorough smog check inspections.

The Bureau followed this process in respondent's case. Respondent was initially selected for an undercover operation to verify that respondent was (or was not) performing thorough smog check inspections. After respondent failed the initial undercover operation, then subsequent undercover runs were performed to confirm his compliance with the Motor Vehicle Inspection Program. Respondent failed multiple subsequent undercover operations.

³ At the commencement of the administrative hearing, the parties submitted a stipulation, which was marked as an exhibit and entered into evidence. The stipulation indicated that respondent did not contest the facts contained in the Accusation. However, during the course of the hearing, respondent disputed the facts alleged in the Accusation.

12. Respondent has lived in the United States for over 40 years, and he has owned Expert Auto Care for over 18 years. He employs two station attendants at an adjoining gas station.

Prior Citation History

13. Respondent has had several citations issued against his registration, station license, and technician license for issuing Certificates of Compliance to undercover vehicles with either the ignition timing adjusted beyond the manufacturer's specifications or with a missing pulse air injection system.

a. On September 12, 2002, the Bureau issued Citation No. C03-0363 against his registration and station license for violations of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices), and California Code of Regulations, title 16, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). The Bureau assessed a civil penalty of \$500. Respondent paid the civil penalty on September 27, 2002.

b. On July 29, 2004, the Bureau issued Citation No. C05-0032 against his registration and station license for violations of Health and Safety Code section 44012, subdivision (f), and California Code of Regulations, title 16, section 3340.35, subdivision (c). The Bureau assessed a civil penalty of \$500, which respondent paid. The Bureau also issued Citation No. M05-0033 against his technician license for violations of Health and Safety Code section 44032 (qualified technicians shall perform tests of emission control systems and devices in accordance with section 44012 of that Code), and California Code of Regulations, title 16, section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with sections 44012 and 44035 of the Health and Safety Code). The Bureau required that respondent attend an eight-hour training course which he completed on October 2, 2004.

c. On June 5, 2009, the Bureau issued Citation No. C09-1392 against his registration and station license and Citation No. M09-1393 against his technician license for the aforementioned violation of laws and regulations. The Bureau assessed a civil penalty of \$500, which respondent paid. Respondent was also required to attend an eight-hour training course which he completed on July 2, 2009.

d. On September 25, 2009, the Bureau issued Citation No. C2010-0238 against his registration and station license and Citation No. M2010-0239 against his technician license for the aforementioned violation of laws and regulations. The Bureau assessed a civil penalty of \$1,000. Respondent was also required to attend a 16-hour training course. He appealed the citations which were affirmed.⁴ Respondent completed the training on August 20, 2010, and paid the civil penalty.

⁴ The Bureau adopted the proposed decision (OAH No. 2012041103) affirming the citations.

e. On January 29, 2010, the Bureau issued Citation No. C2010-0777 against his registration and station license and Citation No. M2010-0778 against his technician license for the aforementioned violation of laws and regulations. The Bureau assessed a civil penalty of \$2,000. Respondent was also required to attend a 68-hour training course. He appealed the citations which were affirmed.⁵ Respondent completed the training on October 1, 2010, and paid the civil penalty.

14. On June 24, 2009, October 30, 2009, and March 16, 2010, respondent attended citation conferences with Bureau representatives to discuss the aforementioned citations. At each citation conference, Bureau representatives offered to conduct a citation seminar for service representatives at respondent's facility.

15. Respondent did not engage in fraud or dishonesty in his issuance of the Certificate of Compliance on the 2001 Chrysler 300M which was not in a condition to receive such certification. Respondent's failure to properly perform the smog check inspection was due to his error only. There was no evidence that he has failed to properly perform smog check inspections since he completed his training courses in 2010.

Costs

16. The Bureau certifies that the following costs were incurred in connection with the investigation and enforcement of this matter:

Deputy Attorney General costs	73.00 hours @ \$170.00/hour	\$12,410.00
Paralegal costs	6.75 hours @ \$120.00/hour	\$ 810.00
Total costs incurred:		\$13,220.00

17. Respondent contends that if he loses his business, then he will have no income to pay the costs of investigation and enforcement. He asserts that the smog check station accounts for fifty percent of his income which helps to pay his employee's salaries, and he will have to lay off his employees if he has to close the smog check station.

There is no evidence that respondent was the sole cause of the delay, given that the underlying conduct occurred in May 2010, in finally bringing this matter to an administrative hearing. Best practices would be to have a due process hearing in a reasonable period of time to avoid certain costs. Thus, the reasonable costs are one-half of the attorney's costs and the entire amount of the paralegal costs in the amount of \$7,015.

⁵ The Bureau adopted the proposed decision (OAH No. 2010060176) affirming the citations.

LEGAL CONCLUSIONS

Respondent's Automotive Repair Dealer Registration

1. Business and Professions Code section 9884.7, subdivision (a)(1), authorizes the temporary or permanent invalidation of an automotive repair dealer registration if an automotive repair dealer makes or authorizes any statement that the dealer knows, or in the exercise of reasonable care should have known, is untrue or misleading.

Cause exists, pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), to temporarily or permanently invalidate the registration issued to respondent, by reason of the matters set forth in Findings 6 and 7. Specifically, respondent knew, or should have known, that untrue or misleading statements were made with respect to issuance of the Certificate of Compliance.

2. Business and Professions Code section 9884.7, subdivision (a)(2), authorizes the temporary or permanent invalidation of an automotive repair dealer registration if an automotive repair dealer causes or allows a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading.

Cause exists, pursuant to Business and Professions Code section 9884.7, subdivision (a)(2), to temporarily or permanently invalidate the registration issued to respondent, by reason of the matters set forth in Findings 6 and 7. Specifically, respondent allowed the undercover operator to sign the service invoice which did not have the automobile's odometer reading.

3. Business and Professions Code section 9884.7, subdivision (a)(3), authorizes the temporary or permanent invalidation of an Automotive Repair Dealer Registration if an automotive repair dealer fails or refuses to give a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.

Cause exists, pursuant to Business and Professions Code section 9884.7, subdivision (a)(3), to temporarily or permanently invalidate the registration issued to respondent, by reason of the matters set forth in Findings 6 and 7. Specifically, respondent failed to give the undercover operator a copy of the service invoice as soon as she signed it.

4. Business and Professions Code section 9884.7, subdivision (a)(4), authorizes the temporary or permanent invalidation of an Automotive Repair Dealer Registration if an automotive repair dealer engages in any conduct that constitutes fraud.

Cause has not been established, pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), to temporarily or permanently invalidate the registration issued to respondent, by reason of the matters set forth in Finding 15.

5. Business and Professions Code section 9884.7, subdivision (a)(6), authorizes the temporary or permanent invalidation of an Automotive Repair Dealer Registration if an automotive repair dealer fails in any material respect to comply with the provisions of this chapter [Chapter 20.3 Automotive Repair Act] or regulations adopted pursuant to it.

Cause exists, pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), to temporarily or permanently invalidate the registration issued to respondent. Specifically, respondent failed to comply with provisions of the Automotive Repair Act, by reason of the matters set forth in Findings 6 and 7, and Legal Conclusions 1, 2, and 3.

Respondent's Smog Check, Test Only, Station License

6. Health and Safety Code section 44072.2, authorizes suspension, revocation, or other disciplinary action against a licensee who violates provisions of the Motor Vehicle Inspection Program. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (a), to discipline the station license issued to respondent for a violation of each of the following provisions of the Health and Safety Code:

- a. Section 44012, subdivision (a): failure to determine all smog check devices and systems were installed and functioning properly on vehicle;
- b. Section 44012, subdivision (f): failure to perform visual smog check test on vehicle;
- c. Section 44015, subdivision (b): issuance of Certificate of Compliance without proper testing and inspection of vehicle.

7. Health and Safety Code section 44059, provides that the willful making of any false statement or entry with regard to a material matter in a Certificate of Compliance or Noncompliance required by the Motor Vehicle Inspection Program or the Automotive Repair Act, constitutes perjury and is punishable under the Penal Code.

Cause has not been established, pursuant to Health and Safety Code section 44072.2, subdivision (a), for a violation of Health and Safety Code section 44059, to discipline the station license issued to respondent, as set forth in Finding 15.

8. Health and Safety Code section 44072.2, subdivision (c), authorizes suspension, revocation, or other disciplinary action against a licensee who violates any of the regulations adopted by the director pursuant to the Motor Vehicle Inspection Program. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (c), to discipline the station license issued to respondent for a violation of each of the following provisions of title 16 of the California Code of Regulations:

- a. Section 3340.24, subdivision (c): issuance of a false Certificate of Compliance;

- b. Section 3340.35, subdivision (c): issuance of an electronic Certificate of Compliance without proper smog testing of the vehicle;
- c. Section 3340.42: failure to perform mandatory smog check test and inspection of the vehicle.

9. Health and Safety Code section 44072.2, subdivision (d), authorizes suspension, revocation, or other disciplinary action against a licensee who commits any act involving dishonesty, fraud, or deceit whereby another is injured. Cause has not been established, pursuant to Health and Safety Code section 44072.2, subdivision (d), to discipline the station license issued to respondent, as set forth in Finding 15.

Respondent's Advanced Emission Specialist Technician License

10. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (a), to discipline respondent's technician license, for each of the following provisions of the Health and Safety Code:

- a. Section 44012, subdivision (a): failure to determine all smog check devices and systems were installed and functioning properly on a vehicle;
- b. Section 44012, subdivision (f): failure to perform visual or functional smog check test on a vehicle;
- c. Section 44032: failure to perform smog check test on a vehicle in accordance with section 44012.

11. Cause has not been established, pursuant to Health and Safety Code section 44072.2, subdivision (a), for a violation of Health and Safety Code section 44059, to discipline respondent's technician license, as set forth in Finding 15, and Legal Conclusion 7.

12. Cause exists, pursuant to Health and Safety Code section 44072.2, subdivision (c), to discipline respondent's technician license, for each of the following provisions of title 16 of the California Code of Regulations:

- a. Section 3340.24, subdivision (c): issuance of a false Certificate of Compliance;
- b. Section 3340.30, subdivision (a): failure to inspect and smog check test a vehicle;
- c. Section 3340.42: failure to perform required smog check test on a vehicle.

13. California Code of Regulations title 16, section 3340.41, subdivision (c), provides that no person shall knowingly enter into the emissions inspection system any false information about the vehicle being tested.

Cause has not been established, pursuant to Health and Safety Code section 44072.2, subdivision (c), for a violation of California Code of Regulations title 16, section 3340.41, subdivision (c), to discipline respondent's technician license, as set forth in Finding 15, and Legal Conclusion 8.

14. Cause has not been established, pursuant to Health and Safety Code section 44072.2, subdivision (d), to discipline respondent's technician license, as set forth in Finding 15, and Legal Conclusion 9.

Other Matters

15. Business and Professions Code section 9884.7, subdivision (c), provides that: "the director may suspend, revoke, or place on probation the registration of all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter [Chapter 20.3 Automotive Repair Act]."

There is insufficient evidence to establish repeated and willful violations of the Automotive Repair Act. All of the prior citations issued to respondent were for violations of the Motor Vehicle Inspection Program, as set forth in Finding 13. Cause has not been established, pursuant to Business and Professions Code section 9884.7, subdivision (c), to discipline the registration issued to respondent.

16. Health and Safety Code section 44072.8, provides that the suspension or revocation of a smog check station license or smog check technician license constitutes cause to suspend or revoke any additional license issued under the Motor Vehicle Inspection Program. Cause exists, pursuant to Health and Safety Code section 44072.8, to revoke any other license issued to respondent under the Motor Vehicle Inspection Program.

17. Cause has not been established, pursuant to Health and Safety Code section 44072.8, to revoke or suspend respondent's registration that was issued under the Automotive Repair Act, not the Motor Vehicle Inspection Program.

Penalty Determination

18. It is undisputed that respondent certified that a vehicle passed the smog emissions test when it did not comply with testing standards. However, the evidence did not establish that he engaged in fraud or deceit in certifying that vehicle. Despite many years of experience, it appears that respondent, in light of his prior history of citations, was unable to consistently and competently test vehicles as the Motor Vehicle Inspection Program requires and needed additional training. It appears that the training he received in 2010 was

successful, as there is no further evidence of his failure to meet the Motor Vehicle Inspection Program requirements and the Bureau's certification of Expert Auto Care as a STAR station in 2013. Considering all the facts and circumstances, it is determined that the public interest will be sufficiently protected by a term of probation and suspension of respondent's registration, station license, and technician license.

Cost Recovery

19. Business and Professions Code section 125.3, provides that respondent may be ordered to pay the Board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." Generally, the Board's certification of the actual costs constitutes prima facie evidence of its costs.

20. In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Court set forth the factors to be considered in determining the reasonableness of costs. Those factors include: whether respondent has been successful at the hearing in getting charges reduced or dismissed; respondent's subjective good faith belief in the merits of his position; whether respondent has raised a colorable challenge to the proposed discipline; respondent's financial ability to pay the cost award; and whether the scope of the investigation was appropriate to the alleged conduct of the respondent.

Applying the *Zuckerman* factors, the amount of costs claimed by complainant should be reduced. The Board's reasonable costs of investigation and enforcement are determined to be \$7,015, as set forth in Findings 16 and 17.

ORDER

1. Automotive Repair Dealer Registration number ARD 186865 issued to respondent Raj Kumar Dhawan, doing business as Expert Auto Care, is permanently invalidated. However, the permanent invalidation is stayed for a two (2) year period of probation, which will include a 90-day suspension with 60 days of the suspension stayed, on the following terms and conditions:

- a. Comply with all statutes, regulations and rules governing automotive inspections, estimates, and repairs.
- b. Post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

c. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

d. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of respondent's facility may have in any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code.

e. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

f. If an Accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the Accusation, and the period of probation shall be extended until such decision.

g. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Bureau may, after giving notice and opportunity to be heard, temporarily or permanently invalidate the registration.

2. Smog Check Test Only Station License number TC 186865 issued to respondent Raj Kumar Dhawan, doing business as Expert Auto Care, is revoked. However, the revocation is stayed for a two (2) year period of probation, and will include a 90-day suspension with 60 days of the suspension stayed, on the following terms and conditions:

a. Comply with all statutes, regulations and rules governing automotive inspections, estimates, and repairs.

b. Post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

c. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

d. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of respondent's facility may have in any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code.

e. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

f. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the Accusation, and the period of probation shall be extended until such decision.

g. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Bureau may, after giving notice and opportunity to be heard, temporarily or permanently invalidate the registration.

3. Advanced Emission Specialist Technician License number EA 134529 issued to Raj Kumar Dhawan is revoked. However, the revocation is stayed for a two (2) year period of probation on the following terms and conditions:

a. Comply with all statutes, regulations and rules governing automotive inspections, estimates, and repairs.

b. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

c. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of respondent's facility may have in any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code.

d. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

e. If an Accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the Accusation, and the period of probation shall be extended until such decision.

f. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Bureau may, after giving notice and opportunity to be heard, temporarily or permanently invalidate the registration.

4. Any additional license issued under the Motor Vehicle Inspection Program to Raj Kumar Dhawan is revoked.

5. Insofar as the Accusation seeks to impose discipline against any other Automotive Repair Dealer Registration issued to Raj Kumar Dhawan under the Automotive Repair Act, the Accusation is dismissed.

6. Respondent shall pay the Bureau the reasonable costs of investigation and enforcement in the amount of \$7,015. This amount shall be paid to the Bureau within 60 days of the effective date of this decision, unless the Bureau, upon a request from respondent, allows payment to be made in installments.

DATED: June 3, 2014



REGINA J. BROWN

Administrative Law Judge

Office of Administrative Hearings



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7
8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

79/11-67

11 In the Matter of the Accusation Against:

Case No.

12 **EXPERT AUTO CARE**
2686 Pleasant Hill Road
13 Pleasant Hill, CA 94523
RAJ KUMAR DHAWAN
14 Automotive Repair Dealer Registration No.
ARD 186865
15 Smog Check Test Only Station License No.
TC 186865

A C C U S A T I O N

S M O G C H E C K

16 and

17 **RAJ KUMAR DHAWAN**
18 3725 W. Ruby Hill Drive
Pleasanton, CA 94566
19 Advanced Emission Specialist Technician
License No. EA 134529

20 Respondents.

21
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 **Automotive Repair Dealer Registration**

27 2. On a date uncertain in 1995, the Bureau issued Automotive Repair Dealer
28 Registration Number ARD 186865 ("registration") to Raj Kumar Dhawan doing business as

1 Expert Auto Care ("Respondent"). The registration was in full force and effect at all times
2 relevant to the charges brought herein and will expire on December 31, 2011.

3 **Smog Check Test Only Station License**

4 3. On or about May 3, 2005, the Bureau issued Smog Check Test Only Station License
5 Number TC 186865 ("station license") to Respondent. The station license was in full force and
6 effect at all times relevant to the charges brought herein and will expire on December 31, 2011.

7 **Advanced Emission Specialist Technician License**

8 4. On a date uncertain in 2003, the Bureau issued Advanced Emission Specialist
9 Technician License Number EA 134529 ("technician license") to Respondent. The technician
10 license was in full force and effect at all times relevant to the charges brought herein and will
11 expire on February 29, 2012, unless renewed.

12 **STATUTORY PROVISIONS**

13 5. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
14 part:

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

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

24 (2) Causing or allowing a customer to sign any work order that does not
25 state the repairs requested by the customer or the automobile's odometer reading at
26 the time of repair.

27 (3) Failing or refusing to give to a customer a copy of any document
28 requiring his or her signature, as soon as the customer signs the document.

(4) Any other conduct that constitutes fraud.

(b) Except as provided for in subdivision (c), if an automotive repair
dealer operates more than one place of business in this state, the director pursuant to
subdivision (a) shall only suspend, revoke, or place on probation the registration of
the specific place of business which has violated any of the provisions of this chapter.
This violation, or action by the director, shall not affect in any manner the right of the
automotive repair dealer to operate his or her other places of business.

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

6 6. Code section 118, subdivision (b) states:

7 The suspension, expiration, or forfeiture by operation of law of a license
8 issued by a board in the department, or its suspension, forfeiture, or cancellation by
9 order of the board or by order of a court of law, or its surrender without the written
10 consent of the board, shall not, during any period in which it may be renewed,
11 restored, reissued, or reinstated, deprive the board of its authority to institute or
12 continue a disciplinary proceeding against the licensee upon any ground provided by
13 law or to enter an order suspending or revoking the license or otherwise taking
14 disciplinary action against the licensee on any such ground.

15 7. Code section 9884.9 states, in pertinent part:

16 (a) The automotive repair dealer shall give to the customer a written
17 estimated price for labor and parts necessary for a specific job. No work shall be done
18 and no charges shall accrue before authorization to proceed is obtained from the
19 customer. No charge shall be made for work done or parts supplied in excess of the
20 estimated price without the oral or written consent of the customer that shall be
21 obtained at some time after it is determined that the estimated price is insufficient and
22 before the work not estimated is done or the parts not estimated are supplied. Written
23 consent or authorization for an increase in the original estimated price may be
24 provided by electronic mail or facsimile transmission from the customer. The bureau
25 may specify in regulation the procedures to be followed by an automotive repair
26 dealer if an authorization or consent for an increase in the original estimated price is
27 provided by electronic mail or facsimile transmission. If that consent is oral, the
28 dealer shall make a notation on the work order of the date, time, name of person
authorizing the additional repairs and telephone number called, if any, together with a
specification of the additional parts and labor and the total additional cost, and shall
do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the
notation on the work order .

(2) Upon completion of the repairs, obtain the customer's signature or
initials to an acknowledgment of notice and consent, if there is an oral consent of the
customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original
estimated price.

(signature or initials)"

Nothing in this section shall be construed as requiring an automotive
repair dealer to give a written estimated price if the dealer does not agree to perform
the requested repair.

1 8. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
2 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
3 proceeding against an automotive repair dealer or to render a decision invalidating a registration
4 temporarily or permanently.

5 9. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
6 "commission," "committec," "department," "division," "examining committee," "program," and
7 "agency." "License" includes certificate, registration or other means to engage in a business or
8 profession regulated by the Code.

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

12 11. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

24 13. Section 44072.8 of the Health and Safety Code states:

25 When a license has been revoked or suspended following a hearing under
26 this article, any additional license issued under this chapter in the name of the
licensec may be likewise revoked or suspended by the director.

27 ///

28 ///

1 COST RECOVERY

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

6 UNDERCOVER OPERATION – MAY 28, 2010

7 15. On or about May 28, 2010, a Bureau undercover operator drove a Bureau-
8 documented 2001 Chrysler 300M to Respondent's facility and requested a smog inspection. The
9 vehicle could not pass the visual portion of a smog inspection because the vehicle's positive
10 crankcase ventilation (PCV) valve was missing. The operator was not provided with an estimate
11 prior to the smog inspection. Respondent performed the smog inspection and issued electronic
12 Certificate of Compliance No. [REDACTED] for that vehicle. The operator paid \$69.95 for the smog
13 inspection and received a copy of Service Invoice No. [REDACTED] and the Vehicle Inspection Report
14 ("VIR").

15 FIRST CAUSE FOR DISCIPLINE

16 (Misleading Statements)

17 16. Respondent has subjected his registration to discipline under Code section 9884.7,
18 subdivision (a)(1), in that on or about May 28, 2010, he made statements which he knew or which
19 by exercise of reasonable care he should have known were untrue or misleading when he issued
20 electronic Certificate of Compliance No. [REDACTED] for the 2001 Chrysler 300M, certifying that
21 the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle's
22 PCV valve was missing.

23 SECOND CAUSE FOR DISCIPLINE

24 (Allowed Operator to Sign a Document that Did Not State the
25 Current Odometer Reading)

26 17. Respondent has subjected his registration to discipline under Code section 9884.7,
27 subdivision (a)(2), in that on or about May 28, 2010, he allowed the operator to sign a work order
28 that did not set forth the vehicle's current odometer reading.

1 bona fide inspection of the emission control devices and system on the vehicle, thereby depriving
2 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
3 Program.

4 **NINTH CAUSE FOR DISCIPLINE**

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

6 24. Respondent has subjected his technician license to discipline under Health and Safety
7 Code section 44072.2, subdivision (a), in that on or about May 28, 2010, regarding the 2001
8 Chrysler 300M, he violated sections of that Code, as follows:

9 a. **Section 44012, subdivision (a):** Respondent failed to determine that all emission
10 control devices and systems required by law were installed and functioning correctly in
11 accordance with test procedures.

12 b. **Section 44012, subdivision (f):** Respondent failed to perform emission control tests
13 on that vehicle in accordance with procedures prescribed by the department.

14 c. **Section 44032:** Respondent failed to perform tests of the emission control devices
15 and systems on that vehicle in accordance with section 44012 of that Code.

16 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of
17 Compliance No. [REDACTED], certifying that the vehicle had been inspected as required when, in
18 fact, it had not.

19 **TENTH CAUSE FOR DISCIPLINE**

20 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

21 25. Respondent has subjected his technician license to discipline under Health and Safety
22 Code section 44072.2, subdivision (c), in that on or about May 28, 2010, regarding the 2001
23 Chrysler 300M, he violated sections of the California Code of Regulations, title 16, as follows:

24 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
25 electronic Certificate of Compliance No. [REDACTED] without performing a bona fide inspection of
26 the emission control devices and systems on that vehicle as required by Health and Safety Code
27 section 44012.
28

1 b. On July 29, 2004, the Bureau issued Citation No. C05-0032 to Respondent against his
2 registration and station licenses for violations of Health and Safety Code section 44012,
3 subdivision (f) (failure to perform a visual/functional check of emission control devices) and
4 Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
5 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with the
6 ignition timing adjusted beyond the manufacturer's specifications. The Bureau assessed a civil
7 penalty of \$500. Respondent complied with this citation on August 18, 2004.

8 c. On June 5, 2009, the Bureau issued Citation No. C09-1392 to Respondent against his
9 registration and station licenses for violations of Health and Safety Code section 44012,
10 subdivision (f) (failure to perform a visual/functional check of emission control devices) and
11 Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
12 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with the
13 ignition timing adjusted beyond the manufacturer's specifications. The Bureau assessed a civil
14 penalty of \$500. Respondent complied with this citation on June 29, 2009.

15 d. On September 25, 2009, the Bureau issued Citation No. C2010-0238 to Respondent
16 against his registration and station licenses for violations of Health and Safety Code section
17 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
18 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
19 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a
20 missing pulse air injection system. The Bureau assessed a civil penalty of \$1,000. Respondent
21 appealed this citation on November 23, 2009. Respondent complied with this citation on
22 September 3, 2010.

23 e. On January 29, 2010, the Bureau issued Citation No. C2010-0777 to Respondent
24 against his registration and station licenses for violations of Health and Safety Code section
25 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
26 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
27 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with the
28 ignition timing adjusted beyond the manufacturer's specifications. The Bureau assessed a civil

1 penalty of \$2,000. Respondent appealed this citation on April 7, 2010. Respondent complied
2 with this citation on October 5, 2010.

3 f. On July 29, 2004, the Bureau issued Citation No. M05-0033 to Respondent against
4 his technician license for violations of Health and Safety Code section 44032, (qualified
5 technicians shall perform tests of emission control systems and devices in accordance with
6 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
7 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
8 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
9 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with the ignition
10 timing adjusted beyond the manufacturer's specifications. Respondent was required to attend an
11 8-hour training course. Respondent complied with this citation on October 2, 2004.

12 g. On June 5, 2009, the Bureau issued Citation No. M09-1393 to Respondent against his
13 technician license for violations of Health and Safety Code section 44032, (qualified technicians
14 shall perform tests of emission control systems and devices in accordance with section 44012 of
15 that Code) and California Code of Regulations, title 16, ("Regulation") section 3340.30,
16 subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in accordance with
17 sections 44012 and 44035 of the Health and Safety Code, and Regulation section 3340.42).
18 Respondent issued a certificate of compliance to a Bureau vehicle with the ignition timing
19 adjusted beyond the manufacturer's specifications. Respondent was required to attend an 8-hour
20 training course. Respondent complied with this citation on July 2, 2009.

21 h. On September 25, 2009, the Bureau issued Citation No. M2010-0239 to Respondent
22 against his technician license for violations of Health and Safety Code section 44032, (qualified
23 technicians shall perform tests of emission control systems and devices in accordance with
24 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
25 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
26 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
27 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a missing pulse
28 air injection system. Respondent was required to attend a 16-hour training course. Respondent

1 appealed this citation on November 23, 2009. Respondent complied with this citation on August
2 20, 2010.

3 i. On January 29, 2010, the Bureau issued Citation No. M2010-0778 to Respondent
4 against his technician license for violations of Health and Safety Code section 44032, (qualified
5 technicians shall perform tests of emission control systems and devices in accordance with
6 section 44012 of that Code) and California Code of Regulations, title 16, (“Regulation”) section
7 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
8 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
9 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with the ignition
10 timing adjusted beyond the manufacturer’s specifications. Respondent was required to attend a
11 68-hour training course. Respondent appealed this citation on April 7, 2010. Respondent
12 complied with this citation on October 1, 2010.

13 OTHER MATTERS

14 28. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
15 or permanently or refuse to validate, the registrations for all places of business operated in this
16 state by to Raj Kumar Dhawan doing business as Expert Auto Care, upon a finding that he has, or
17 is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to
18 an automotive repair dealer.

19 29. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
20 License Number TC 186865, issued to Raj Kumar Dhawan doing business as Expert Auto Care,
21 is revoked or suspended, any additional license issued under this chapter in the name of said
22 licensee including, but not limited to Advanced Emission Specialist Technician License Number
23 EA 134529, issued to Raj Kumar Dhawan, may be likewise revoked or suspended by the director.

24 PRAYER

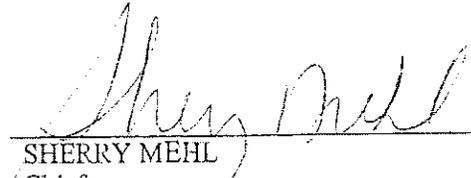
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Director of Consumer Affairs issue a decision:

27 1. Revoking, suspending, placing on probation, Automotive Repair Dealer Registration
28 Number ARD 186865, issued to Raj Kumar Dhawan doing business as Expert Auto Care;

- 1 2. Revoking, suspending, placing on probation any other automotive repair dealer
- 2 registration issued in the name Raj Kumar Dhawan;
- 3 3. Revoking or suspending Smog Check Test Only Station License Number TC 186865,
- 4 issued to Raj Kumar Dhawan doing business as Expert Auto Care;
- 5 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 6 & Safety Code in the name of Raj Kumar Dhawan;
- 7 5. Revoking or suspending Advanced Emission Specialist Technician License Number
- 8 EA 134529, issued to Raj Kumar Dhawan
- 9 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
- 10 & Safety Code in the name of Raj Kumar Dhawan;
- 11 7. Ordering Raj Kumar Dhawan to pay the Bureau of Automotive Repair the reasonable
- 12 costs of the investigation and enforcement of this case, pursuant to Business and Professions
- 13 Code section 125.3; and,
- 14 8. Taking such other and further action as deemed necessary and proper.

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DATED: 2/14/11



SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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