

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

In the Matter of the Accusation Against:)

LAKWOOD AUTO REPAIR)
KENNETH WILLIAM PAIGE, Owner)
103 E. Elm Street)
Lodi, California 95240)

Case No. 79/08-21

OAH No. 2007110383

Automotive Repair Dealer Registration)
No. AM 197653)
Smog Check Station License No. RM 197653)

Respondent.)

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective 9/5/08.

IT IS SO ORDERED this 21st day of July, 2008.

Scott Reid

SCOTT REID
Chief Deputy Director
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

Case No. 79/08-21

LAKWOOD AUTO REPAIR; KENNETH
WILLIAM PAIGE, OWNER,

OAH No. 2007110383

Respondent.

PROPOSED DECISION

Gary A. Geren, Administrative Law Judge, Office of Administrative Hearings, heard this matter on May 27, 2008, in Sacramento, California.

Deputy Attorney General, Geoffrey S. Allen, represented complainant.

Edgardo Gonzales, Attorney at Law, represented respondent.

The matter was submitted on May 27, 2008.

FACTUAL FINDINGS

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

2. In early 1998 (the exact date is uncertain), the Director of Consumer Affairs (Director) issued Automotive Repair Dealer Registration Number AM 197653 to Kenneth William Paige (respondent). Respondent's automotive repair dealer registration was in full force and effect at all times relevant to the charges brought herein. Said license will expire on December 31, 2007, unless renewed.

3. On January 21, 1998, the Director issued Smog Check Station License Number RM 197653 to respondent. Respondent's smog check license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2007, unless renewed.

The Bureau alleges discipline should be taken against respondent's licenses because it contends improper repairs were performed on two vehicles, a Nissan Pathfinder and a Jeep CJ7. The Bureau also seeks discipline because respondent permitted unlicensed individuals to perform smog repairs.

The Nissan Repair

4. On April 14, 2006, Bureau Representative Tim Schaumburg (Schaumburg) conducted a Consumer Assistance Program (CAP)¹ inspection at respondent's facility located in Lodi, California. Schaumburg obtained respondent's records of a CAP approved repair to a 1990 Nissan Pathfinder (Nissan).

After reviewing the records, Schaumburg spoke with respondent's then-Smog Check Technician, Shoukat Din (Din), and his service manager, John Charlesworth (Charlesworth). The repair invoice indicated that its harmonic balancer was replaced to correct misaligned ignition timing marks (evidently, the harmonic balancer had been previously removed and improperly re-installed by someone other than respondent or his employees). While the harmonic balancer on some vehicles may "slip" out of position and require replacement to re-align timing marks, the harmonic balancer on the Nissan is constructed in a way that prevents "slippage." Schaumburg was aware of this fact and he pointed it out to Din and Charlesworth, who agreed, and admitted that they had undertaken an inappropriate repair on the Nissan.

Respondent was not at the facility at the time of Schaumburg's visit. Schaumburg contacted respondent by telephone. Respondent indicated that he was involved in a golf match, and agreed to meet with Schaumburg at a later date. On April 17, 2006, respondent met with Schaumburg and reviewed the repair records for the Nissan. Respondent agreed with Schaumburg that the replacement of the harmonic balancer was inappropriate. Respondent provided Schaumburg with a check in the amount of \$242.04 to refund the charge made against the CAP.

On April 28, 2006, Bureau Representative Tim Bowden (Bowden) conducted a "repair verification" on the Nissan (a physical inspection to verify that purported repairs were actually completed). Bowden's investigation showed that the ignition timing marks had been correctly re-aligned, but that the original harmonic balancer and its associated parts had not been replaced, contrary to what was indicated on the repair invoice.

¹ The CAP provides low-income vehicle owners financial assistance to make emissions-related repairs to a vehicle that fails a smog check inspection. CAP repair facilities obtain approval by the Bureau before undertaking repairs. The Bureau conducts random audits of repairs to insure that the repairs were properly completed.

5. On September 5, 2006, respondent and Bowden again discussed the Nissan repair and Bowden's findings. Respondent signed a declaration that day memorializing the conversation, and he testified at hearing that his declaration is substantially accurate. In pertinent part, respondent's declaration states:

I told Bowden that a Smog Check Technician formerly in my employ, Shoukat Din, was advised to seek the assistance of other unlicensed employees if he encountered difficulties with smog test failure diagnosis and repair. The other aforementioned employees are John Charlesworth and Hull Bun. The assistance instructions were given to Din because it was understood that his diagnostic skills were lacking. I understood that unlicensed smog test failure repair is a violation of the law. I felt compelled to hire Din in spite of his lacking skills because I was not able to find a more qualified technician. At some point after I learned of the potential repair issues regarding the aforementioned Nissan, I reviewed the repair with both Charlesworth and Bun. Bun indicated to me that he told Charlesworth that the vehicle's balancer and pulley assembly did not require replacement and could be re-indexed to correct the smog test failure. Charlesworth indicated to me that he understood that the balancer did not require replacement and instructed Bun to replace the balancer anyway.

[¶...¶]

Shoukat Din is no longer employed at Lakewood Auto Repair. Since the aforementioned repairs occurred, Charlesworth has received a Smog Check Technician license and now performs the station's smog tests and smog test failure repairs.

6. Bowden testified that he accurately prepared an Investigative Report dated November 8, 2006. In pertinent part, it states:

[Respondent] said that he had spoken at length with both Bun and Charlesworth regarding the repair and believes that Bun replaced the vehicle's harmonic balancer at the direction of Charlesworth even though both Charlesworth and Bun understood that the balancer did not require replacement but simply required reinstallation with the timing marks correctly aligned. [Respondent] added that Charlesworth directed Bun to complete the replacement because Charlesworth did not want to give an indication to CAP employees that the initial diagnosis was not correct.

7. Respondent's employees falsely charged the CAP for repairs that were unnecessary and were not performed.

The Jeep

8. On May 4, 2006, Bowden inspected a 1982 Jeep CJ7 that had service work completed by respondent's facility. From February 8, 2006 to March 15, 2006, respondent's facility performed repairs on the Jeep to correct an oil leak. The cost of the repairs totaled \$2301.24; the CAP paid \$425.05 of those costs.

The Bureau again reviewed invoices. One invoice indicated that the Jeep's timing cover gasket was replaced. On May 9, 2006, Bureau Representative William Espinosa (Espinosa) physically inspected the Jeep and determined that the timing cover gasket had not, in his opinion, been replaced.

The invoice describing the parts purchased for the Jeep shows that a "Timing Cover Gasket" was purchased. However, respondent established that the repair was to the front timing cover seal. The timing cover seal and the timing cover gasket can only be purchased as a kit containing a seal and two gaskets. Respondent established that his facility, in fact, replaced the timing cover seal, but not the gasket. The invoice should have more accurately stated "Timing Cover Kit," rather than "Timing Cover Gasket." Charlesworth testified in a plausible fashion that the invoice should have been more descriptive, but that no deceitful conduct was attempted nor did it occur.

Respondent testified convincingly that the invoice showed the labor billed for the work performed on the Jeep did not include charges for replacing the front timing cover gasket, but just the seal. Also, photographs of the Jeep's engine showed that the seal was likely replaced because the silicone sealant used to make such a repair is visible.

Unlicensed Smog Technicians

9. As set forth in Factual Finding 5, respondent directed Din to consult with fellow non-certified employees about repairs to vehicles' smog control systems.

Matters in Aggravation

10. At the time of the violations as described in Factual Findings Number 5 through 9, respondent exercised inadequate supervision over the operation of his facility. He was also aware that it was a violation to instruct a Certified Smog Technician to consult with fellow employees who do not hold such certifications.

Matters in Mitigation

11. Respondent's facility was originally started by his grandfather, later operated by his father, and ultimately purchased by respondent in 1998. Respondent's facility holds a "Gold Shield Certification." Such a certification is required in order to participate in the CAP. Respondent's facility was one of the first establishments to obtain this certification, sometime in 2003. As a consequence of holding such a certification, respondent's facility is

subjected to more Bureau audits than facilities that do not hold a "Gold Shield Certification." "Gold Shield" facilities that participate in the CAP are inspected every six months, or so.

Additionally, the Bureau conducts routine "Quality Assurance" inspections of all automotive repair facilities. In total, from 2001 through 2006, respondent's facility was inspected by the Bureau between ten and fourteen times. Prior to the instances presented in this matter, respondent's licenses had no disciplinary action taken against them.

Respondent's facility services between eight to twelve vehicles per day. In the last ten years, there was one consumer complaint made against it.

Respondent's facility is approved by the American Automobile Association (AAA). To obtain AAA approval, 200 to 300 invoices are reviewed by AAA to assess customer satisfaction, only facilities with the highest marks are awarded certification.

In 2007, respondent's facility was recognized by the Stockton Record newspaper as the "Best of San Joaquin" in the category of auto service and repair businesses. The recognition followed a consumer poll conducted by the newspaper.

Rehabilitation

12. Respondent is currently 37 years old, is married and the father of five children. He recognizes that the loss of his business would jeopardize his ability to care for his family. The Bureau's actions in this matter served as a "wake-up call" for respondent to better supervise the daily operation of his facility. To that end, respondent hired an experienced and well-respected manager, Michael Torrente, to assist him in the day-to-day operations. Bureau employees know Mr. Torrente as a "competent" and "real good guy." Mr. Torrente now oversees all repairs orders involving the CAP and he is a certified smog technician.

In September 2007, Charlesworth left respondent's and opened his own automotive repair business in Lodi. Din is no-longer employed there either.

Respondent now reviews all repair orders. He has become more efficient in operating the facility's software program so that more accurate invoices are prepared. Respondent takes responsibility for his violations; he operates his business with a level of responsibility and involvement that was lacking at the time the violations occurred.

LEGAL CONCLUSIONS

1. Business and Professions Code section 9884.7 provides that the Director may invalidate an automotive repair dealer registration.

2. Business and Professions Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

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

4. Business and Professions Code Section 9884.7 states, in pertinent part:

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may in validate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, Officer, or member of the automotive repair dealer.

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

[¶...¶]

(4) Any other conduct which constitutes fraud.

[¶...¶]

(c) Notwithstanding subdivision (b), the director may refuse to validate, or may and validate temporarily or permanently, the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or it is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

5. Health and Safety 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] and the regulations adopted pursuant to it, which are related to the licensed activities.

[¶...¶]

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

[¶...¶]

(f) Aids or abets unlicensed persons to evade the provisions of this chapter...

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

7. California Code of Regulations, title 16, section 3394.1 states, in pertinent part:

The purpose of the Consumer Assistance Program (CAP) is to improve California air quality by helping consumers comply with the requirements of the Smog Check Program. Vehicle owners, who meet eligibility requirements are offered the following:

[¶...¶]

(b) Financial assistance to make omissions-related repairs to a vehicle that fails a smog check inspection.

8. California Code of Regulations, title 16, section 3394.3 states, in pertinent part:

An applicant determined to be eligible under the Consumer Assistance Program may receive the following Assistance:

[¶...¶]

(b) Under the Repair Assistance option, up to five hundred dollars (\$ 500) in emissions-related diagnostic and repair services performed at a licensed smog check test-and-repair station operating under contract with the Bureau of Automotive Repair.

9. Business and Professions Code section 125.3 provides, in pertinent part, that a board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

Zuckerman v. State Board of Chiropractic Examiners (2002) 29 Cal.4th 32, set forth four factors required to be considered when deciding whether to reduce or eliminate costs: (1) Whether the licentiate used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licentiate had a "subjective" good faith belief in the merits of his position; (3) whether the licentiate raised a "colorable challenge" to the proposed discipline; and (4) whether the licentiate had the financial ability to make payments.

10. As set forth in Factual Findings 4-7 and 9, and Legal Conclusions 1 through 7, cause exists for the Bureau to take discipline against respondent's licenses. Respondent represented on the invoice pertaining to the repair of the Nissan that a new harmonic balancer was installed when, in fact, it was not; respondent allowed unlicensed individuals to diagnose and repair vehicles that failed smog check inspections, including work performed on the Nissan; and respondent aided and abetted unlicensed persons to diagnose repair vehicles that failed smog check inspections.

As for the more serious causes for discipline, fraud and deceit, respondent was not an active participant in charging the CAP for the costs associated with the Nissan, nor was respondent aware that a new harmonic balancer was not installed. Nonetheless, respondent's licenses are subject to discipline because of the acts of his employees that were committed when respondent failed to use reasonable care over their supervision.

11. As set forth in Factual Findings 8 and 12, and Legal Conclusion 9, respondent used the hearing process to advance meritorious positions. Respondent successfully refuted the allegation that his facility improperly charged for repair work that it did not complete with respect to the Jeep.

Respondent also presented persuasive evidence regarding mitigation and rehabilitation.

Under the *Zuckerman* analysis, respondent is not obligated, therefore, to pay all of the Bureau's costs of \$10,626.15. Also, respondent established that he incurred legal expenses defending the matter, and since he successfully advanced positions in his defense, his legal costs should also be considered in calculating the Bureau's cost recovery claim because it affects respondent's ability to pay the Bureau's costs. For, example respondent was required to obtain a home equity loan to pay for his legal fees. In light of the above, the Bureau's reasonable costs investigation and prosecution of this matter is in the sum of \$5000.00.

12. Evidence of mitigation and rehabilitation are to be considered when determining the appropriate measure of discipline. Rehabilitation is a "state of mind" and the law looks with favor upon one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058). Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940).

A set forth in Factual Finding 12 and Legal Conclusion 12, respondent has shown meaningful efforts towards rehabilitation. Respondent admitted to his wrongdoing by having uncertified personnel perform smog repairs and inadequately supervising the work of his employees. Looking forward, respondent has made affirmative steps to reasonably insure that his facility will operate within the confines of the law.

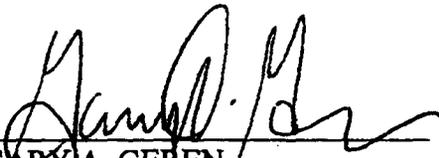
ORDER

Automotive Repair Dealer Registration Number AM 197653 and Smog Check Station License Number RM 197653 issued to respondent Kenneth William Paige, owner of Lakewood Auto Repair, are hereby revoked. However, the revocation is stayed, and probation is imposed for a period of three years. During the period of probation, respondent shall:

1. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
2. Respondent or respondents' authorized representative must report in person or in writing as prescribed by the Bureau, 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.
3. Within 30 days of the effective date of this decision, report any financial interest in which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.
4. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.
5. If an Accusation is filed against respondent during the term of probation, that 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 a decision is issued.
6. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and an opportunity to be heard, suspend or revoke any or all of respondent's licenses.

7. Respondent shall pay the Bureau of Automotive Repair \$5,000 within one year of the issuance of this decision.

DATED: June 24, 2008


GARY A. GEREN
Administrative Law Judge
Office of Administrative Hearings

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of the State of California
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7 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 79/08-21

13 LAKEWOOD AUTO REPAIR
KENNETH WILLIAM PAIGE, OWNER
14 103 E. Elm Street
Lodi, California 95240

A C C U S A T I O N
(S M O G C H E C K)

15 Automotive Repair Dealer Reg. No. AM 197653
16 Smog Check Station License No. RM 197653

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

24 **Automotive Repair Dealer Registration No. AM 197653**

25 2. In or about 1997 or 1998, the Director of Consumer Affairs ("Director")
26 issued Automotive Repair Dealer Registration Number AM 197653 to Kenneth William Paige
27 ("Respondent"), owner of Lakewood Auto Repair. Respondent's automotive repair dealer

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1 registration was in full force and effect at all times relevant to the charges brought herein and will
2 expire on December 31, 2007, unless renewed.

3 **Smog Check Station License No. RM 197653**

4 3. On or about January 21, 1998, the Director issued Smog Check Station
5 License Number RM 197653 to Respondent. Respondent's smog check station license was in
6 full force and effect at all times relevant to the charges brought herein and will expire on
7 December 31, 2007, unless renewed.

8 **JURISDICTION**

9 4. Business and Professions Code ("Bus. & Prof. Code") section 9884.7
10 provides that the Director may invalidate an automotive repair dealer registration.

11 5. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the
12 expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a
13 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a
14 registration temporarily or permanently.

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

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

22 **STATUTORY AND REGULATORY PROVISIONS**

23 **Statutory Provisions**

24 8. Bus. & Prof. Code section 9884.7 states, in pertinent part:

25 (a) The director, where the automotive repair dealer cannot show there
26 was a bona fide error, may refuse to validate, or may invalidate temporarily or
27 permanently, the registration of an automotive repair dealer for any of the
28 following acts or omissions related to the conduct of the business of the
automotive repair dealer, which are done by the automotive repair dealer or any
automotive technician, employee, partner, officer, or member of the automotive
repair dealer.

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

5

6 (4) Any other conduct which constitutes fraud.

7

8 (c) Notwithstanding subdivision (b), the director may refuse to
9 validate, or may invalidate temporarily or permanently, the registration
10 for all places of business operated in this state by an automotive repair
11 dealer upon a finding that the automotive repair dealer has, or is, engaged
12 in a course of repeated and willful violations of this chapter, or regulations
13 adopted pursuant to it.

14 9. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board"
15 includes "bureau," "commission," "committee," "department," "division," "examining
16 committee," "program," and "agency." "License" includes certificate, registration or other
17 means to engage in a business or profession regulated by the Bus. & Prof. Code.

18 10. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

25

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

28

(f) Aids or abets unlicensed persons to evade the provisions of this
chapter . . .

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

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FACTUAL BACKGROUND

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2 16. On April 14, 2006, Bureau Representative Tim Schaumburg
3 (“Schaumburg”) conducted a Consumer Assistance Program (“CAP”) inspection at Respondent’s
4 facility. Schaumburg obtained copies of Respondent’s records relating to repairs performed on
5 consumer Shu Wang’s (“Wang”) 1990 Nissan Pathfinder (hereinafter “1990 Nissan”), including
6 Respondent’s Invoice No. 000102468, dated March 8, 2006, totaling \$551.17. The invoice
7 indicated that the harmonic balancer assembly had been replaced on the 1990 Nissan.

8 17. On April 28, 2006, Bureau Representative Timothy Bowden (“Bowden”)
9 inspected the 1990 Nissan and determined that the harmonic balancer assembly had not been
10 recently replaced.

11 18. On May 15, 2006, the harmonic balancer assembly was removed from the
12 1990 Nissan and inspected by Bowden and Bureau Representative Jim Ainsworth (“Ainsworth”).
13 Bowden and Ainsworth found rust, oxidized paint, buildup of dirt, and corrosion in certain areas
14 of the assembly, indicating that the component had not been replaced as invoiced.

15 19. On May 4, 2006, Bowden inspected a 1982 Jeep CJ7 (hereinafter “1982
16 Jeep”) owned by Consumer Phyllis Hoerth (“Hoerth”). During the inspection, Hoerth provided
17 Bowden with Invoice Number 000102276, totaling \$2,301.24, prepared by Respondent. The
18 invoice indicated that from February 8, 2006, to March 15, 2006, Respondent’s facility
19 performed repairs on the 1982 Jeep to correct an oil leak. The invoice also indicated that Hoerth
20 had paid \$1,876.19 toward the repairs and that CAP had paid the remaining balance of \$425.05.
21 Hoerth told Bowden that she had authorized the facility to replace the timing cover gasket,
22 among other gaskets, seals, and covers, in addition to repairing an oil leak on the 1982 Jeep.
23 Bowden determined following his inspection that the timing cover gasket had not been replaced
24 as invoiced and that the engine continued to leak oil.

25 20. On May 9, 2006, Bureau Representative William Espinosa inspected the
26 1982 Jeep and confirmed that the timing cover gasket had not been replaced as invoiced.

27 21. On June 9, 2006, Bowden spoke to Respondent’s smog check technician,
28 Shoukat Din (“Din”), regarding the repair of the 1982 Jeep and the 1990 Nissan. That same day,

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 24. Respondent's automotive repair dealer registration is subject to
4 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that
5 Respondent committed acts which constitute fraud, as follows:

6 a. Respondent charged the State of California and/or consumer Wang for
7 replacing the harmonic balancer assembly on consumer Wang's 1990 Nissan Pathfinder when, in
8 fact, that part was not replaced on the vehicle.

9 b. Respondent charged the State of California and consumer Hoerth for
10 replacing the timing cover gasket on Hoerth's 1982 Jeep CJ7 when, in fact, that part was not
11 replaced on the vehicle.

12 **THIRD CAUSE FOR DISCIPLINE**

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

14 25. Respondent's smog check station license is subject to disciplinary action
15 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with
16 Code section 44014, subdivision (a), as follows: Respondent allowed unlicensed individuals,
17 including, but not limited to, Hull Bun, to diagnose and repair vehicles that failed smog check
18 inspections, including consumer Wang's 1990 Nissan Pathfinder, as set forth in paragraphs 21
19 and 22 above.

20 **FOURTH CAUSE FOR DISCIPLINE**

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

22 26. Respondent's smog check station license is subject to disciplinary action
23 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed
24 dishonest, fraudulent, or deceitful acts whereby another is injured, as set forth in paragraph 24
25 above.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Aiding or Abetting Unlicensed Persons)**

3 27. Respondent's smog check station license is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (f), in that Respondent aided and
5 abetted unlicensed persons, including, but not limited to, Hull Bun, by allowing Bun and others
6 to diagnose and repair vehicles that failed smog check inspections, including consumer Wang's
7 1990 Nissan Pathfinder, as set forth in paragraphs 21 and 22 above.

8 **OTHER MATTERS**

9 28. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the
10 Director may refuse to validate or may invalidate temporarily or permanently, the registrations
11 for all places of business operated in this state by Respondent Kenneth William Paige, owner of
12 Lakewood Auto Repair, upon a finding that said Respondent has, or is, engaged in a course of
13 repeated and willful violations of the laws and regulations pertaining to an automotive repair
14 dealer.

15 29. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station
16 License Number RM 197653, issued to Respondent Kenneth William Paige, owner of
17 Lakewood Auto Repair, is revoked or suspended, any additional license issued under this chapter
18 in the name of said licensee may be likewise revoked or suspended by the Director.

19 **PRAYER**

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

22 1. Temporarily or permanently invalidating Automotive Repair Dealer
23 Registration Number AM 197653, issued to Kenneth William Paige, owner of Lakewood Auto
24 Repair;

25 2. Temporarily or permanently invalidating any other automotive repair
26 dealer registration issued to Kenneth William Paige;

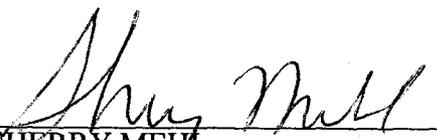
27 3. Revoking or suspending Smog Check Station License Number
28 RM 197653, issued to Kenneth William Paige, owner of Lakewood Auto Repair;

1 4. Revoking or suspending any additional license issued under Chapter 5 of
2 the Health and Safety Code in the name of Kenneth William Paige;

3 5. Ordering Respondent Kenneth William Paige, owner of Lakewood Auto
4 Repair, to pay the Director of Consumer Affairs the reasonable costs of the investigation and
5 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

7 DATED: 9-21-07.

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9 SHERRY MEHL
10 Chief
11 Bureau of Automotive Repair
12 Department of Consumer Affairs
13 State of California

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