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

11 In the Matter of the Accusation Against:

Case No. 79/16-36

12 **SIRVARD DAGLIAN d.b.a. S P Smog**
13 **11510 Oxnard Street**
14 **North Hollywood, CA 91606**

A C C U S A T I O N

15 **Automotive Repair Dealer Reg. No. ARD 222354**
16 **Smog Check, Test Only, Station License No. TC**
17 **222354**

(SMOG CHECK)

Respondent.

18 Complainant alleges:

19 **PARTIES**

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

21 2. On June 28, 2002, the Bureau issued Automotive Repair Dealer Registration Number
22 ARD 222354 to Respondent Sirvard Daglian doing business as S P Smog. The Automotive
23 Repair Dealer Registration was in force at all times alleged in this Accusation. It expires on June
24 30, 2016, unless renewed.

25 3. On August 2, 2002, the Bureau also issued Smog Check, Test Only, Station License
26 Number TC 222354 to Sirvard Daglian doing business as S P Smog. That license was also in
27 force at all times alleged in this Accusation. It expires on June 30, 2016, unless renewed.
28

1 **JURISDICTION**

2 4. This Accusation is brought before the Bureau under the following laws. Section
3 references are to the Health and Safety Code unless indicated otherwise.

4 5. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
5 Director of the Bureau of Automotive Repair has all the powers and authority granted under the
6 Automotive Repair Act for enforcing the Motor Vehicle Inspection Program, including
7 disciplining Motor Vehicle Inspection Program licensees.

8 6. Business and Professions Code sections 9882 and 9884.7, part of the Automotive
9 Repair Act, authorize the Director to discipline other licensees and registrants.

10 **STATUTES**

11 **MOTOR VEHICLE INSPECTION PROGRAM**

12 7. In part, section 44012 provides that tests at smog check stations shall be performed in
13 accordance with procedures prescribed by the department. Its subdivision (f) requires that tests
14 include a visual check of emissions devices:

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

18 8. In part, section 44015 subdivision (a) prohibits a station for passing a vehicle that has
19 been tampered with: “(a) A licensed smog check station shall not issue a certificate of
20 compliance, except as authorized by this chapter, to any vehicle that meets the following criteria:
21 (1) A vehicle that has been tampered with.”

22 9. Section 44035 generally authorizes discipline against a smog check station’s license
23 or a qualified smog check technician’s qualification for failure to meet or maintain the standards
24 prescribed for qualification, equipment, performance, or conduct.

25 10. In part, section 44072.2 specifically authorizes discipline against a smog check
26 station’s license for failing to comply with the Motor Vehicle Inspection Program’s statutes and
27 regulations or the Bureau’s regulations:

28 “The director may suspend, revoke, or take other disciplinary action

1 against a license as provided in this article if the licensee, or any partner, officer, or
2 director thereof, does any of the following:

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

6 ...

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

9 AUTOMOTIVE REPAIR

10 11. In part, Business and Professions Code section 9884.7 authorizes the Director to
11 discipline an automotive repair dealer registration for misleading statements:

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

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

22 12. In part, Business and Professions Code section 9884.9 requires written estimates:

23 (a) The automotive repair dealer shall give to the customer a written
24 estimated price for labor and parts necessary for a specific job. No work shall be done
25 and no charges shall accrue before authorization to proceed is obtained from the
26 customer. No charge shall be made for work done or parts supplied in excess of the
27 estimated price without the oral or written consent of the customer that shall be
28 obtained at some time after it is determined that the estimated price is insufficient and
before the work not estimated is done or the parts not estimated are supplied. Written
consent or authorization for an increase in the original estimated price may be
provided by electronic mail or facsimile transmission from the customer. The bureau
may specify in regulation the procedures to be followed by an automotive repair
dealer if an authorization or consent for an increase in the original estimated price is
provided by electronic mail or facsimile transmission. If that consent is oral, the
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:

1 "I acknowledge notice and oral approval of an increase in the original 2 estimated price.	
3	
4	(signature or initials)"

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

8 **BUREAU OF AUTOMOTIVE REPAIR REGULATIONS**
9 **MOTOR VEHICLE INSPECTION PROGRAM**

10 13. California Code of Regulations (CCR), title 16, section 3340.30, subdivision (a)
11 states that a licensed smog check inspector or repair technician shall "inspect, test and repair
12 vehicles, as applicable, in accordance with section 44012 of the Health and Safety Code, section
13 44035 of the Health and Safety Code, and section 3340.42 of this article."

14 14. 16 CCR section 3340.35, subdivision (c), states that a licensed smog check station
15 "shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle
16 that has been inspected in accordance with the procedures specified in section 3340.42 of this
17 article and has all the required emission control equipment and devices installed and functioning
18 correctly."

19 15. 16 CCR section 3340.42 subdivision (b) requires licensed smog check stations and
20 technicians to perform a visual and functional inspection of all tested vehicles:

21 "(b) In addition to subsection (a), all vehicles subject to the smog check
22 program shall receive the following:

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

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

28 16. 16 CCR section 3340.45 requires compliance with certain manuals:

"(a) All Smog Check inspections shall be performed in accordance
with requirements and procedures prescribed in the following:

(1) Smog Check Inspection Procedures Manual, dated August 2009,
which is hereby incorporated by reference. This manual shall be in effect until

1 subparagraph (2) is implemented.

2 (2) Smog Check Manual, dated 2013, which is hereby incorporated
3 by reference. This manual shall become effective on or after January 1, 2013.”

4 AUTOMOTIVE REPAIR

5 17. In part, 16 CCR section 3353 sets standards for written estimates:

6 “No work for compensation shall be commenced and no charges shall
7 accrue without specific authorization from the customer in accordance with the
8 following requirements:

9 (a) Estimate for Parts and Labor. Every dealer shall give to each customer
10 a written estimated price for parts and labor for a specific job.”

11 COST RECOVERY

12 18. Section 125.3 authorizes the Bureau to ask an administrative law judge to direct
13 licensees found to have violated licensing acts to pay their case’s reasonable investigation and
14 enforcement costs.

15 FACTUAL SUMMARY

16 19. On November 18, 2014, a Bureau undercover operator drove a Bureau-documented
17 1988 Toyota to Respondent Daglian’s smog check station and requested a smog inspection. The
18 Toyota should not have been able to pass the visual portion of a smog inspection because a
19 Bureau Program Representative had removed its air suction valve assembly, which is an integral
20 part of the air injection system. In its place, the Program Representative had installed an exhaust
21 port plug and hose and capped off the vacuum signal port. Respondent’s staff should have
22 discovered this alteration. They did not. They represented that the Toyota passed the visual
23 portion of the smog inspection and passed the smog inspection overall. They issued the Toyota
24 electronic Certificate of Compliance No. [REDACTED].

25 20. Respondent’s staff also did not provide Bureau’s operator with a written estimate
26 before the inspection started.

27 21. This wasn’t the first time the Bureau had cited Respondent’s shop for failing to
28 perform visual or functional inspections. Before this test occurred, the Bureau had issued her four
prior citations for passing cars with missing or malfunctioning emissions components:

1 A. Citation No. C2010-0307 in October 2009 for passing a car with a missing fuel
2 evaporative canister;

3 B. Citation No. C2014-0384 in December 2013 for passing a car with a missing exhaust
4 gas recirculation valve;

5 C. Citation No. C2014-0647 in March 2014 for again passing a car with a missing
6 exhaust gas recirculation valve; and

7 D. Citation No. C2014-1266 in October 2014 for passing a car with ignition timing
8 adjusted beyond specifications.

9 22. After each of these citations, Bureau staff went to Respondent's shop and counseled
10 Ms. Daglian and her staff on the importance of performing proper visual and functional
11 inspections of vehicles being smog checked. They also warned Respondent the Bureau may
12 conduct further investigations.

13 23. The four prior citations are now final.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Violation of the Motor Vehicle Inspection Program Statutes and Regulations)**

16 **(Against Smog Check, Test Only, Station License No. TC 222354)**

17 24. Respondent Daglian has subjected her smog check station license to discipline under
18 Health and Safety Code section 44072.2 subdivisions (a) and (c) because on November 18, 2014,
19 the station's staff committed the following statutory and regulatory violations in their inspection
20 of the 1988 Toyota:

21 A. **16 CCR Section 3340.42:** They failed to perform a visual inspection of the Toyota's
22 emission control components and systems to verify its emission control systems were properly
23 installed.

24 B. **16 CCR section 3340.35, subdivision (c):** They issued electronic Certificate of
25 Compliance No. [REDACTED] to the Toyota even though they had not conducted a visual inspection
26 in accordance with section 3340.42.

27 C. **16 CCR section 3373:** They created a false and misleading record by issuing the
28 Toyota a certificate of compliance.

1 D. **Section 44012, subdivision (f)**: They failed to perform emission control tests on the
2 Toyota in accordance with section 3340.42.

3 E. **Section 44015, subdivision (a)**: They issued electronic Certificate of Compliance
4 No. [REDACTED] to the Toyota when it had been tampered with.

5 25. Complainant realleges paragraphs 19 to 23 and their subparagraphs.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Misleading Statements)**

8 **(Against Automotive Repair Dealer Reg. No. ARD 222354)**

9 26. Respondent Dagleian has subjected her automotive repair dealer registration to
10 discipline under Business and Professions Code section 9884.7(a)(1) because her dealership made
11 statements that they knew or which by exercise of reasonable care they should have known were
12 untrue or misleading when they issued electronic Certificate of Compliance No. [REDACTED] for
13 the Toyota, certifying that the Toyota was in compliance with applicable laws and regulations
14 when, in fact, the vehicle had an inoperable air suction valve assembly, making it out of
15 compliance with the applicable laws and regulations.

16 27. Complainant realleges paragraphs 19 to 24 and their subparagraphs.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Failing to Provide Written Estimate)**

19 **(Against Automotive Repair Dealer Reg. No. ARD 222354)**

20 28. Respondent Dagleian has subjected her automotive repair dealer registration to
21 discipline under Business and Professions Code section 9884.9 and its implementing regulation
22 title 16 section 3353 for commencing work for compensation on the Toyota without providing a
23 written estimate.

24 29. Complainant realleges paragraphs 19 to 20.

25 **DISCIPLINARY CONSIDERATIONS**

26 30. To determine the degree of discipline, if any, to be imposed on Respondent,
27 Complainant alleges that Respondent was previously issued four prior citations, as described
28 above in paragraphs 21 through 23, each of which are now final.

1 **OTHER MATTERS**

2 31. Under Business and Professions Code section 9884.7, the director may suspend,
3 revoke, or place on probation the registrations for all places of business operated in this state by
4 Sirvard Daglian upon a finding that she has or is engaged in a course of repeated and willful
5 violations of the laws or regulations governing automotive repair dealers.

6 32. Under Health and Safety Code section 44072.8, if Smog Check Station License
7 Number TC 222354 issued to Sirvard Daglian doing business as S P Smog is revoked or
8 suspended, the director may revoke or suspend any additional license issued under this chapter in
9 that licensee's name.

10 **PRAYER**

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

13 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
14 222354, issued to Sirvard Daglian dba S P Smog;

15 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
16 222354, issued to Sirvard Daglian dba S P Smog;

17 3. Revoking or suspending any other automotive repair dealer registration issued to
18 Sirvard Daglian;

19 4. Revoking or suspending any other smog check station license issued to Sirvard
20 Daglian;

21 5. Ordering Sirvard Daglian to pay the Bureau of Automotive Repair this case's
22 reasonable costs of the investigation and enforcement under Business and Professions Code
23 section 125.3; and

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

DATED: October 12, 2015 

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

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