

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

In the Matter of the Accusation Against:

DUARTE SMOG TEST ONLY
KEVORK K. NIZIAN, Owner
1721 East Hungtington Drive
Duarte, CA 91010

Automotive Repair Dealer Registration
No. ARD 235741
Smog Check Station License
No. TC 235741
Smog Check Technician License
No. EA 146308

Respondent.

Case No. 79/10-55

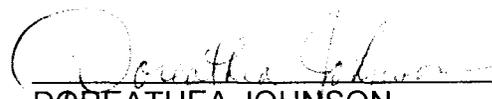
OAH No. L-2010071103

DECISION

The attached Stipulated Settlement and Disciplinary Order 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 on 1-24-11.

DATED: December 20, 2010



DORÉATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 EDMUND G. BROWN JR.
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 RANDY M. MAILMAN
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Attorneys for Complainant
7

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

10
11 In the Matter of the Accusation Against:
12 **DUARTE SMOG TEST ONLY; KEVORK**
K. NIZIAN, OWNER
13 **1721 East Huntington Drive**
Duarte, CA 91010
14 **Automobile Repair Dealer License No.**
ARD# 235741
15 **Smog Check Station License No. TC#**
235741
16 **Smog Check Technician No. EA# 146308**
17 Respondent.

Case No. 79/10-55

OAH No. L-2010071103

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

18
19 In the interest of a prompt and speedy settlement of this matter, consistent with the public
20 interest and the responsibilities of the Director of Consumer Affairs and the Bureau of
21 Automotive Repair the parties hereby agree to the following Stipulated Settlement and
22 Disciplinary Order which will be submitted to the Director for his approval and adoption as the
23 final disposition of the Accusation.

24 PARTIES

25 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair. She
26 brought this action solely in her official capacity and is represented in this matter by Edmund G.
27 Brown Jr., Attorney General of the State of California, by Randy M. Mailman, Deputy Attorney
28 General.

1 in any other business required to be registered pursuant to Section 9884.6 of the Business and
2 Professions Code.

3 4. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect
4 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

5 5. **Jurisdiction.** If an accusation is filed against Respondent during the term of
6 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter
7 until the final decision on the accusation, and the period of probation shall be extended until such
8 decision.

9 6. **Violation of Probation.** Should the Director of Consumer Affairs determine that
10 Respondent has failed to comply with the terms and conditions of probation, the Department may,
11 after giving notice and opportunity to be heard, revoke the license.

12 7. **Continuing Education Courses.** During the period of probation, Respondent shall
13 attend and successfully complete a Bureau certified training course in diagnosis and repair of
14 emission systems failures and engine performance, applicable to the class of license held by the
15 Respondent. Said course shall be completed and proof of completion submitted to the Bureau
16 within 60 days of the effective date of this decision and order. If proof of completion of the
17 course is not furnished to the Bureau within the 60-day period, Respondents' license shall be
18 immediately suspended until such proof is received.

19 8. **Restrictions.** During the period of probation, Respondent shall not perform any form
20 of smog inspection, or emission system diagnosis or repair, until Respondent has purchased,
21 installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to
22 properly perform such work, and BAR has been given 10 days notice of the availability of the
23 equipment for inspection by a BAR representative.

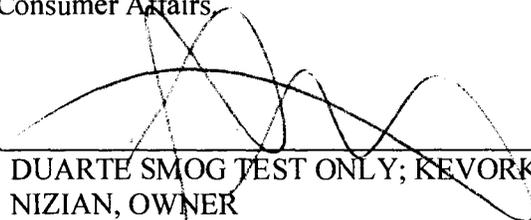
24 9. **Cost Recovery.** Respondent shall pay the Bureau the reasonable costs of
25 investigation in the amount of \$2,000. Payment to the Bureau of the full amount of cost recovery
26 shall be received no later than 6 months before probation terminates. Failure to complete
27 payment of cost recovery within this time frame shall constitute a violation of probation which
28 may subject Respondent's license to outright revocation; however, the Director or the Director's

1 Bureau of Automotive Repair designee may elect to continue probation until such time as
2 reimbursement of the entire cost recovery amount has been made to the Bureau.

3 ACCEPTANCE

4 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
5 stipulation and the effect it will have on my Automobile Repair Dealer License, and Smog Check
6 Station License, and Smog Check Technician. I enter into this Stipulated Settlement and
7 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
8 Decision and Order of the Director of Consumer Affairs.

9
10 DATED: 11-08-10


11 DUARTE SMOG TEST ONLY; KEVORK K.
12 NIZIAN, OWNER
13 Respondent

14 ENDORSEMENT

15 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
16 submitted for consideration by the Director of Consumer Affairs.

17 Dated: Nov. 22, 2010

18 Respectfully Submitted,

19 EDMUND G. BROWN JR.
20 Attorney General of California
21 KAREN B. CHAPPELLE
22 Supervising Deputy Attorney General


23 RANDY M. MAILMAN
24 Deputy Attorney General
25 *Attorneys for Complainant*

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Exhibit A

Accusation No. 79/10-55

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Special Assistant Attorney General
3 GREGORY J. SALUTE
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Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 79/10-55

13 **DUARTE SMOG TEST ONLY**
1721 East Huntington Drive
14 Duarte, CA 91010

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

15 **Mailing Address:**
2558 Elda Street
16 Duarte, CA 91010
KEVORK K. NIZIAN, OWNER
Automobile Repair Dealer Registration
17 No. ARD 235741
Smog Check Test Only Station License
18 No. TC 235741

Respondent.

19
20
21 Complainant alleges:

22 **PARTIES**

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

25 **Automobile Repair Dealer Registration**

26 2. On or about September 23, 2004, the Bureau issued Automobile Repair Dealer
27 Registration Number ARD 235741 ("registration) to Kevork K. Nizian ("Respondent") doing
28

1 business as Duarte Smog Test Only. The registration was in full force and effect at all times
2 relevant to the charges brought herein and will expire on September 30, 2010, unless renewed.

3 **Smog Check Test Only Station License**

4 3. On or about October 19, 2004, the Bureau issued Smog Check Test Only Station
5 License Number TC 235741 ("station license") to Respondent. The station license was in full
6 force and effect at all times relevant to the charges brought herein and will expire on September
7 30, 2010, unless renewed.

8 **STATUTORY PROVISIONS**

9 4. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
10 part:

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

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

20 (4) Any other conduct which constitutes fraud.

21 (6) Failure in any material respect to comply with the provisions of this
22 chapter [the Automotive Repair Act (Bus. & Prof. Code, 9880, et seq.)] or regulations
23 adopted pursuant to it.

24 (b) Except as provided for in subdivision (c), if an automotive repair
25 dealer operates more than one place of business in this state, the director pursuant to
26 subdivision (a) shall only invalidate temporarily or permanently the registration of the
27 specific place of business which has violated any of the provisions of this chapter.
28 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.

(c) Notwithstanding subdivision (b), the director may invalidate 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 is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

5. Code section 9884.9, subdivision (a), states:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the

1 customer. No charge shall be made for work done or parts supplied in excess of the
2 estimated price without the oral or written consent of the customer that shall be
3 obtained at some time after it is determined that the estimated price is insufficient and
4 before the work not estimated is done or the parts not estimated are supplied. Written
5 consent or authorization for an increase in the original estimated price may be
6 provided by electronic mail or facsimile transmission from the customer. The bureau
7 may specify in regulation the procedures to be followed by an automotive repair
8 dealer if an authorization or consent for an increase in the original estimated price is
9 provided by electronic mail or facsimile transmission. If that consent is oral, the
10 dealer shall make a notation on the work order of the date, time, name of person
11 authorizing the additional repairs and telephone number called, if any, together with a
12 specification of the additional parts and labor and the total additional cost, and shall
13 do either of the following:

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

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

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

21 _____
22 (signature or initials)"

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

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

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

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

1 9. Section 44072.2 of the Health and Safety Code states:

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

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

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

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

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

16 11. Section 44072.8 of the Health and Safety Code states:

17 "When a license has been revoked or suspended following a hearing under this article, any
18 additional license issued under this chapter in the name of the licensee may be likewise revoked
19 or suspended by the director."
20

21 COST RECOVERY

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

26 UNDERCOVER OPERATION – APRIL 8, 2009

27 13. On April 8, 2009, a Bureau undercover operator ("operator") drove a Bureau-
28 documented 1992 Nissan Maxima to Respondent's facility for a smog inspection. The vehicle
could not pass a smog inspection because the vehicle's ignition timing was adjusted beyond
specifications. The operator did not sign or receive an estimate prior to the inspection.
Respondent performed the smog inspection and issued electronic Certificate of Compliance No.
VZ083344, certifying that he had tested and inspected the 1992 Nissan Maxima and that the

1 vehicle was in compliance with applicable laws and regulations. In fact, the vehicle could not
2 have passed the smog inspection because the vehicle's ignition timing was adjusted beyond
3 specifications.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 14. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
7 subdivision (a)(1), in that on or about April 8, 2009, Respondent made or authorized statements
8 which he knew or in the exercise of reasonable care he should have known to be untrue or
9 misleading by issuing electronic Certificate of Compliance No. VZ083344 for the 1992 Nissan
10 Maxima, certifying that the vehicle was in compliance with applicable laws and regulations. In
11 fact, the vehicle could not have passed the smog inspection because the vehicle's ignition timing
12 was adjusted beyond specifications.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Fraud)**

15 15. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
16 subdivision (a)(4), in that on or about April 8, 2009, he committed acts which constitute fraud by
17 issuing electronic Certificate of Compliance No. VZ083344 for the 1992 Nissan Maxima without
18 performing a bona fide inspection of the emission control devices and systems on that vehicle,
19 thereby depriving the People of the State of California of the protection afforded by the Motor
20 Vehicle Inspection Program.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Code)**

23 16. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
24 subdivision (a)(6), in that on or about April 8, 2009, Respondent failed to comply with Code
25 section 9884.9, subdivision (a), by failing to provide the operator with a written estimated price
26 for parts and labor for a specific job, prior to commencement of repairs.

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28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 17. Respondent's station license is subject to discipline pursuant to Health & Safety Code
4 section 44072.2, subdivision (a), in that on or about April 8, 2009, regarding the 1992 Nissan
5 Maxima, Respondent failed to comply with the following sections of that Code:

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

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

11 c. **Section 44015, subdivision (b):** Respondent issued electronic Certificate of
12 Compliance No. VZ083344 without properly testing and inspecting that vehicle to determine if it
13 was in compliance with Health & Safety Code section 44012.

14 d. **Section 44059:** Respondent willfully made false entries for electronic Certificate of
15 Compliance No. VZ083344, by certifying that the vehicle had been inspected as required when,
16 in fact, it had not.

17 **FIFTH CAUSE FOR DISCIPLINE**

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

20 18. Respondent's station license is subject to discipline pursuant to Health & Safety Code
21 section 44072.2, subdivision (c), in that on or about April 8, 2009, regarding the 1992 Nissan
22 Maxima, Respondent failed to comply with provisions of California Code of Regulations, title 16,
23 as follows:

24 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
25 electronic Certificate of Compliance No. VZ083344, in that the vehicle could not pass the smog
26 inspection because the vehicle's ignition timing was adjusted beyond specifications.

27 ///

28 ///

1 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices
2 according to procedures prescribed by the department), and California Code of Regulations, title
3 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of compliance to a
4 vehicle that was improperly tested), for issuing a certificate of compliance to a Bureau undercover
5 vehicle with a missing positive crankcase ventilation system. The Bureau assessed civil penalties
6 totaling \$1,000 against Respondent for the violations. Respondent complied with this citation on
7 July 7, 2008.

8 c. On or about December 19, 2008, the Bureau issued Citation No. C09-0743 against
9 Respondent's registration and smog station licenses for violations of Health & Safety Code
10 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
11 devices according to procedures prescribed by the department), and California Code of
12 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
13 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
14 Bureau undercover vehicle with a missing evaporative control canister. The Bureau assessed
15 civil penalties totaling \$2,000 against Respondent for the violations. Respondent complied with
16 this citation on February 4, 2009.

17 **OTHER MATTERS**

18 21. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
19 or permanently or refuse to validate, the registrations for all places of business operated in this
20 state by to Kevork K. Nizian doing business as Duarte Smog Test Only, upon a finding that he
21 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
22 pertaining to an automotive repair dealer.

23 22. Under Health and Safety Code section 44072.8, if Smog Check Test Only Station
24 License Number TC 235741, issued to Kevork K. Nizian doing business as Duarte Smog Test
25 Only, is revoked or suspended, any additional license issued under this chapter in the name of
26 said licensee may be likewise revoked or suspended by the director.

27 ///

28 ///

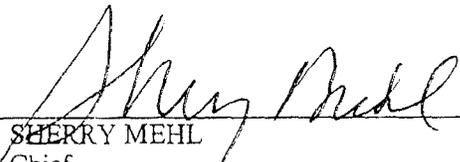
PRAYER

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

1. Temporarily or permanently invalidating Automobile Repair Dealer Registration Number ARD 235741, issued to Kevork K. Nizian doing business as Duarte Smog Test Only;
2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to Kevork K. Nizian;
3. Revoking or suspending Smog Check Test Only Station License Number TC 235741, issued to Kevork K. Nizian doing business as Duarte Smog Test Only;
4. Revoking or suspending any additional license issued under Chapter 5 of the Health & Safety Code in the name of Kevork K. Nizian;
5. Ordering Kevork K. Nizian to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
6. Taking such other and further action as deemed necessary and proper.

DATED: _____

3/1/10



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