

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

In the Matter of the Statement of Issues Against:

**DEL DF, INC., dba
PRECISION AUTO CARE CENTER**
8740 A Jamacha Road
Spring Valley, CA 91977
JEANET S. MARTINEZ, a.k.a.
JEANET SANCHEZ MARTINEZ, PRES.

Respondent.

Case No. 77/08-08S

OAH No. 2010070662

In the Matter of Accusation and Petition to
Revoke Probation Against:

**PETRO GROUP, INC., DBA,
PETRO AUTO CARE**
8740 Jamacha Road, Suite B
Spring Valley, CA 91977
JORGE ALBERTO PETRO, PRESIDENT

Automotive Repair Dealer Registration
No. ARD 236228

Respondent.

Case No. 77/10-41

OAH No. 2010070662

In the Matter of the Statement of Issues Against:

PETRO AUTO CARE
10 E. 1st Street
National City, CA 91950

ADRIANA R. PETRO, OWNER

Respondent.

Case No. 77/08-13S

OAH No. 2010070662

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, except that, pursuant to Government Code section 11517(c)(2)(C), the typographical error in the Proposed Decision is corrected as follows:

1. Page 1, caption: Under the first Respondent, the street name "Jamacho" is corrected to read "Jamacha."

This Decision shall become effective

June 6, 2014

DATED:

MAY 01 2014



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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PROPOSED DECISION

On March 17 and 18, 2014, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard these matters which were consolidated for hearing.

G. Michael German, Deputy Attorney General, represented the complainant.

Adriana Petro, Secretary, represented herself and respondent Petro Group Inc. and Jorge Alberto Petro, President. Jeanet S. Sanchez Martinez represented herself.

During the hearing, complainant's motion to file a First Amended Statement of Issues against respondent Adriana R. Petro was granted.

At the conclusion of the evidentiary portion of the hearing, respondent Jeanet Sanchez Martinez withdrew the two applications for licensure that she had filed with the Bureau of Automotive Repair in 2009. She also withdrew her request for a hearing following the Bureau of Automotive Repair's denial of the two applications. Accordingly, Statement of Issues No. 77/08-08S was dismissed.

The two remaining matters were submitted on March 18, 2014.

FACTUAL FINDINGS

1. On March 21, 2011, Sherry Mehl, Chief, Bureau of Automotive Repair, Department of Consumer Affairs, State of California (Bureau), filed Accusation and Petition to Revoke Probation No. 77/10-41 in her official capacity. Respondent Petro Group Inc. filed a timely Notice of Defense.

On January 14, 2011, Ms. Mehl filed Statement of Issues No. 77/08-13S in her official capacity. Respondent Adriana Petro filed a timely Notice of Defense. On March 18, 2014, Mr. German on behalf of Patrick Dorias, Chief of the Bureau, filed a First Amended Statement of Issues.

2. Respondent Jorge Alberto Petro, President of Petro Group Inc., dba Petro Auto Care, 8740 Jamacha Road, Suite B, Spring Valley, CA 91977 (hereafter "respondent Petro Auto Care") is registered as an Automotive Repair Dealer under the Automotive Repair Act of 1971. The Bureau issued registration number ARD 236228 to respondent Petro Auto Group in 2004. The license will expire on October 31, 2014, unless renewed. Respondent Adriana Petro is the Secretary of the corporation.

3. On September 9, 2008, Ms. Mehl filed Accusation No. 77/08-13 against respondent Petro Auto Group. An administrative hearing was held on July 21, 2010. The charges were based upon three undercover operations conducted by representatives of the

Bureau in 2006 and 2007 in connection with brake repairs performed by respondent Petro Auto Care. In a Proposed Decision dated August 16, 2010, the administrative law judge determined there were multiple causes to invalidate the registration for violations of Business and Professions Code sections 9884.7, subdivisions (a)(1), (a)(3), (a)(4), and (a)(6).

The proposed disciplinary order revoked respondent Petro Auto Care's registration, stayed the revocation, and placed respondent Petro Auto Care on probation for three years on terms and conditions. Condition 1 required respondent Petro Auto Care to comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs. The Disciplinary Order also suspended respondent Petro Auto Care's registration for 10 days commencing on the effective date of the Decision. The Department of Consumer Affairs adopted the Proposed Decision on September 7, 2010, and it became effective on October 18, 2010.

4. On May 17, 2010, respondent Adriana Petro signed an Application for an Automotive Repair Dealer Registration and submitted it to the Bureau, which received it on May 20, 2010. Respondent Adriana Petro sought a license for a business to be called Petro Auto Care at premises located at 10 E. 1st Street, National City, California. Respondent Adriana Petro represented that she was the owner of the business and that it would be a sole proprietorship. The Bureau denied the application by letter dated June 17, 2010. Respondent Adriana Petro appealed the denial of the application.

5. Accusation and Petition to Revoke Probation No. 77/10-41 is based upon an undercover operation conducted by representatives of the Bureau on October 19 and October 21, 2010, at the premises of respondent Petro Auto Care, at a time when the registration was suspended. It alleged that respondent Petro Auto Care made untrue and misleading statements and committed fraud in connection with repairs it performed on an undercover vehicle on October 21, 2010. It further alleged that respondent Petro Auto Care violated the terms of its probation by performing repairs while its registration was under suspension and that it committed technical violations of the Automotive Repair Act.

First Amended Statement of Issues No. 77/08-13S is based in part on the role respondent Adriana Petro played in the misconduct committed by respondent Petro Auto Care and that was established in the decision in case number 77/08-13. The First Amended Statement of Issues also alleges that respondent Adriana Petro made false statements of facts on the application for licensure that she filed with the Bureau.

6. In 2010, Robert Trent was a supervisor in the San Diego field office of the Bureau. On September 30, 2010, he spoke to respondent Adriana Petro by telephone about the 10-day suspension that was to begin on October 18, 2010. Respondent Adriana Petro told Mr. Trent that she had spoken to her attorney and that respondent Petro Auto Care would not be closed during the 10 days of the suspension. She said they would only do repairs that did not require a Bureau registration, and she quoted Business and Professions Code section 9880.1, subdivision (e). Mr. Trent advised respondent Adriana Petro that all the repair facilities that he had been involved with did not do any repairs while they were

suspended, and he advised her to do the same. Respondent Adriana Petro told Mr. Trent that she would take the advice of her attorney.

7. David Winkowski is a Program Representative with the Bureau and was involved in the Bureau's investigation of respondent Petro Auto Care's conduct in 2006 and 2007 that led to the imposition of discipline against respondent Petro Auto Care's registration. On October 19, 2010, he began another undercover operation that targeted respondent Petro Auto Care. He obtained custody of the Bureau's 2000 Volkswagen Jetta, license plate number [REDACTED], and turned it over to Ignacio Villegas at a location in La Mesa. He instructed Mr. Villegas to drive the Jetta to respondent Petro Auto Care's facility.

When Mr. Villegas arrived at respondent Petro Auto Care's facility, he met respondent Adriana Petro in the office and told her that the Jetta had two dash lights that were on and the vehicle was shaking. He asked her if they could check it out; she said they could. A mechanic came to the office and picked up the keys to the Jetta. He asked Mr. Villegas what was wrong with the car. Mr. Villegas said the two lights were on and the car was shaking. The mechanic drove the car into a service bay and Mr. Villegas waited in the office.

About 10 minutes later, respondent Adriana Petro told Mr. Villegas the Jetta was shaking because the number 2 and number 4 cylinders were bad and she recommended replacing the four spark plugs, a sensor, and a gasket. She said the total repair would cost \$486.00. Mr. Winkowski earlier had provided Mr. Villegas with \$200.00 in cash. Mr. Villegas told respondent Adriana Petro that he did have that much money with him. Respondent Adriana Petro recommended replacing the spark plugs for \$129.96 and for him to return the next day for the sensor. Mr. Villegas agreed. Respondent Adriana Petro gave Mr. Villegas two copies of an estimate and he signed them.

Mr. Villegas waited about 90 minutes in the office until respondent Adriana Petro told him the repairs were completed. She gave him two copies of an invoice and told him to sign them. Mr. Villegas signed them and returned them to respondent Adriana Petro. He paid her \$140.00 in cash. Respondent Adriana Petro gave Mr. Villegas the change and one of the copies of the invoice. Mr. Villegas then left and met with Mr. Winkowski. The odometer reading at this time was 70,195.

8. Paul Hsu is a Program Representative with the Bureau and works in its Rialto Documentation Lab. He has worked as an auto mechanic for many years, worked for the Bureau for 18 years, and worked in the documentation lab for the last seven years. He holds various licenses and certifications in the field.

On October 4, 2010, Mr. Hsu began documenting the condition of the electronic engine controls and brake system of the Bureau's 2000 Volkswagen Jetta that was later used in the undercover operation on October 19. He machined the front brake pads to the point where they were in need of replacement. The Jetta has an electronic sensor that causes a warning light to illuminate in the instrument panel when the front brake pads are worn. Mr.

Hsu damaged the sensor to simulate activation due to worn front brake pads, and this caused the brake warning light to illuminate in the instrument panel. Mr. Hsu also damaged the electrical portion of the canister purge regulator valve. This valve is part of the Jetta's fuel evaporative emission controls. When he started the car, the check engine light was illuminated on the instrument panel. Finally, Mr. Hsu damaged the right front outer axle boot on the Jetta. He determined that grease had been thrown near the area of the damaged axle boot. Mr. Hsu then transported the Jetta to La Mesa and transferred custody of it to Mr. Winkowski. The odometer reading at this time was 70,195.

Mr. Hsu received custody of the Jetta from Mr. Winkowski later on October 19, 2010, and transported it back to the Fontana documentation lab. The next day, he artificially advanced the odometer on the Jetta to 70,298. On October 21, 2010, Mr. Hsu transported the Jetta back to La Mesa and transferred custody of it to Mr. Winkowski, who in turn transferred custody of the Jetta to Mr. Villegas. The odometer reading remained at 70,298.

9. Mr. Villegas drove the Jetta to respondent Petro Auto Care's facility, arriving at about 9:25 a.m. on October 21, 2010. When he arrived, the odometer reading was 70,301. He talked to respondent Adriana Petro. She said she was expecting him the previous day. Mr. Villegas said the previous day was a rainy day and he did not want to come in, but he was here at this time to fix the lights. Respondent Adriana Petro agreed. He asked her how much it would cost; respondent Adriana Petro said it would cost \$350 to \$375 for the sensor and labor. She also said the dash lights would be fixed. Mr. Villegas asked when the work would be done. Respondent Adriana Petro said about noon and she would call him when the work was done. She offered to give him a ride home but Mr. Villegas refused and left on foot.

Respondent Adriana Petro did not tell Mr. Villegas that another repair facility would perform the repairs on the Jetta. She did not tell him that respondent Petro Auto Care would not perform the repairs. She did not tell him the Jetta would be driven by a mechanic of respondent Petro Auto Care to a facility in Chula Vista where the repairs would be performed.

Respondent Adriana Petro called Mr. Villegas at about 12:22 p.m. and told him the repairs on the Jetta had been completed. Mr. Villegas arrived at respondent Petro Auto Care at about 12:47 p.m. and met with respondent Adriana Petro. She said the Jetta was ready and gave him six documents to sign. Mr. Villegas signed all six. Two were copies of Estimate # [REDACTED], two were copies of Repair Order # [REDACTED], and two were copies of Invoice # [REDACTED]. The cost of the repairs was \$329.26. Mr. Villegas gave respondent Adriana Petro all six documents and \$340.00 in cash. She gave him copies of the signed estimate, work order and invoice, and his change. Respondent Adriana Petro said the dash lights were still on and pointed to four codes on the invoice. She said they were able to clear three of them but not the P1426 code. Respondent Adriana Petro explained that their code reader would not show the P1426 code but that another code reader did. She gave Mr. Villegas the old sensor and told him to drive the vehicle and if the lights were still on by October 28, they would replace the evap solenoid at no charge. Mr. Villegas asked respondent Adriana Petro to write that

down on the invoice. Respondent Adriana wrote on the invoice "To return by 10/28/2010 to install evap solenoid at no charge." She said that he would only have to pay \$20 for the part and the labor was free. Mr. Villegas then left respondent Petro Auto Care. The odometer reading was 70,323.

Mr. Villegas returned to the La Mesa location and transferred custody of the Jetta to Mr. Winkowski. The odometer reading was 70,326.

10. The estimate and invoice Mr. Villegas received from respondent Adriana Petro on October 19, 2010, were on the letterhead of respondent Petro Auto Care, with the correct address listed and ARD number. The documents Mr. Villegas received from respondent Adriana Petro on October 21, 2010, were on the letterhead of another autobody shop in another city. The documents reflected an ARD number of 202116. That is a number issued by the Bureau to FS Group, Inc, doing business as Precision Motors, with Ricardo Sanchez Medina as president. Its location was 619 K Street, Chula Vista. Mr. Medina is respondent Adriana Petro's father.

11. Mr. Hsu received the Jetta back at the Fontana documentation lab along with copies of all the documents respondent Adriana Petro had provided to Mr. Villegas and the old part taken from the Jetta when the repairs were made. He inspected it on October 25, 2010. He noted that the October 19, 2010, invoice indicated the parts sold were spark plugs at a cost of \$40.00, and an intake manifold gasket at a cost of \$23.50. He noted that the labor to remove and replace the spark plugs was \$60.90, and the total cost of \$129.96. On the October 21, 2010, invoice, Mr. Hsu noted that the part provided was a "Mass Air Flow Sensor" and the cost was \$220.00. Under labor, he noted that invoice indicated "Remove and Replace Mass Air Flow Sensor" at a cost of \$87.00. He also noted there were four codes listed followed by the words "maf sensor output signal never changed, replaced maf and clear code."

Mr. Hsu conducted his inspection of the Jetta using the two invoices for reference. He noticed that the brake warning light and the check engine light were illuminated when he started the engine. He found that the spark plugs, intake manifold gasket and mass air flow (MAF) sensor were replacement parts that looked new. He determined that the brake pads and the axle boot were in the same condition as when the Jetta left his custody on October 19, and still in need of replacement.

The next day, Mr. Hsu used a scan tool to check and compare the condition of the replacement MAF and the returned MAF. He determined that the returned MAF sensor was not in need of replacement because the returned MAF sensor was within specifications. He also determined that the brake pads, axle boot and purge valve, which needed to be replaced, had not been replaced.

12. Mr. Winkowski wrote an Investigation Report summarizing the evidence gathered by the Bureau during the undercover operation. He testified at the hearing that it is Bureau policy that if a repair facility remains open during a period of suspension, the Bureau

will run an undercover vehicle into the facility to see if it is performing repairs. It was for this reason that he ordered the undercover operation conducted on October 19 and 21, 2010.

Mr. Winkowski assumed the MAF replacement on the Jetta was performed at respondent Petro Auto Care's facility and upon receipt of Mr. Hsu's report, wrote his report. He did not interview any representative of respondent Petro Auto Care to determine what transpired on October 21.

13. Angel Sanchez has worked for respondent Petro Auto Care for eight years as a mechanic. On October 21, 2010, he drove the Bureau's Jetta from respondent Petro Auto Care's facility in Spring Valley to Precision Motors in Chula Vista, waited for the repairs to be performed, and drove the vehicle back to respondent Petro Auto Care's facility in Spring Valley. He received the invoice, estimate and repair order from someone at Precision Motors and gave them to respondent Adriana Petro when he arrived in Spring Valley.

14. The odometer reading on the Jetta at the time Mr. Villegas brought the car into respondent Petro Auto Care's facility in Spring Valley on October 21, 2010, was 70,301. When he picked it up after the repairs were completed, the odometer reading was 70,323.

At the request of the administrative law judge, the parties measured the distance between respondent Petro Auto Care's facility in Spring Valley and Precision Motors in Chula Vista. The distance measured was about 11 miles one way, give or take a tenth of a mile. A round trip of approximately 22 miles accounts for the odometer readings, and corroborated the testimony of Mr. Sanchez that he drove the vehicle to and from the two repair shops.

15. According to Mr. Winkowski, the Bureau has not monitored the probation imposed on respondent Petro Auto Care after it determined that respondent Petro Auto Care had violated the law and violated the terms of probation on October 19 and 21, 2010, and the accusation and petition to revoke probation was filed. There was therefore no evidence of any other undercover operations undertaken against respondent Petro Auto Care during the three and a half years that have elapsed since the undercover operation in 2010.

16. Manuel Barron owned a muffler and brake shop located at 8740 Jamacha Road, Suite B, Spring Valley. He sold the business to respondent Petro Auto Care in 2004 and then worked there for six to eight months. He has known respondent Adriana Petro since she was about 14 years old and he remains friendly with her.

17. Ken Winslow was the landlord of the property at 8740 Jamacha Road, Spring Valley. He developed the property in 1985 and at one time leased Suite A to Precision Motors and Suite B to respondent Petro Auto Care. He testified that in 2009, respondent Petro Auto Care began leasing both suites. He testified that he had a good business relationship with respondent Adriana Petro and she was a good businesswoman. He was happy to deal with her when economic times became difficult in 2009 and other tenants were moving out. He called her "a sure thing."

18. Respondent Adriana Petro testified that the allegations made by the Bureau against her were baseless and very damaging to her and her family. She testified that she treated her customers with respect and she worked very hard. She believed that she had earned the respect of the community and pointed with pride to the absence of any consumer complaints made to the Bureau by any of her customers in the eight years since the Bureau first began investigating respondent Petro Auto Care. She testified she frequently works as a mechanic and pointed to a number of seminars and classes she has attended and a number of her achievements, such as an ASE certification as a service consultant. She testified that she and her husband have provided support to the St. John of the Cross Church in Spring Valley.

Respondent Adriana Petro denied that respondent Petro Auto Care performed any work on the Jetta on October 21, 2010, and only replaced the spark plugs on October 19, 2010. She did not explain who made the decision to have the repairs performed at Precision Motors, why Precision Motors was selected to perform the repairs, how and when the arrangements were made for the repairs to be performed at Precision Motors, or why she failed to tell Mr. Villegas that the repairs would be performed at another repair facility.

19. Respondent Jorge Petro accused the Bureau of harassing and bullying him and his wife for seven out of the last 10 years. He testified he is also a real estate broker and has never been in any trouble with the Bureau of Real Estate. He pointed to a survey service that Mitchell had recently instituted called Sure Critic that asked for feedback from customers. He provided several pages of comments from customers that praised the quality of the service respondent Petro Auto Care provided to them. Mr. Petro recalled only one meeting with a Bureau representative since being placed on probation and that involved only a quick review of some of the service records.

20. Box number 8c of the Application for Automotive Repair Dealer Registration that respondent Adriana Petro completed on May 17, 2010, and submitted to the Bureau asks the applicant: "List Business name and registration number of any CURRENT automotive repair dealer registration held by any person listed in number 7. Respondent Adriana Petro entered her name in box number 7." In answer to box number 8, respondent Adriana Petro wrote the word "NONE." This answer was false in that respondent Adriana Petro was at that time the secretary of a corporation holding ARD 236228 issued by the Bureau. Respondent Adriana Petro did not offer a satisfactory explanation for this false answer.

21. The Bureau incurred costs of investigation totaling \$8,558.36. In addition, the Bureau incurred attorney's fees for the services of Office of the Attorney General in the amount of \$17,330.00. The total costs for the investigation and enforcement of this matter is \$25,888.36.

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LEGAL CONCLUSIONS

1. Business and Professions Code section 9884.7 provides in part:
 - (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation 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 that constitutes fraud.

¶...
 - (6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.
2. Business and Professions Code section 9884.6 provides:
 - (a) It is unlawful for any person to be an automotive repair dealer unless that person has registered in accordance with this chapter and unless that registration is currently valid.
 - (b) A person who, for compensation, adjusts, installs, or tests retrofit systems for purposes of Chapter 6 (commencing with Section 44200) of Part 5 of Division 26 of the Health and Safety Code is an automotive repair dealer for purposes of this chapter.
3. Business and Professions Code section 9884.8 provides:

All work done by an automotive repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied. Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for

parts, not including sales tax, and shall state separately the sales tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a statement indicating whether any crash parts are original equipment manufacturer crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be given to the customer and one copy shall be retained by the automotive repair dealer.

4. Business and Professions Code section 9884.9 provides in part:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job.

5. Business and Professions Code section 9880.1 provides in part:

The following definitions apply for the purposes of this chapter:

(a) "Automotive repair dealer" means a person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles.

¶...

(e) "Repair of motor vehicles" means all maintenance of and repairs to motor vehicles performed by an automotive repair dealer including automotive body repair work, but excluding those repairs made pursuant to a commercial business agreement and also excluding repairing tires, changing tires, lubricating vehicles, installing light bulbs, batteries, windshield wiper blades and other minor accessories, cleaning, adjusting, and replacing spark plugs, replacing fan belts, oil, and air filters, and other minor services, which the director, by regulation, determines are customarily performed by gasoline service stations.

6. The accusation and petition to revoke probation case came about because respondent Petro Auto Care made the decision that while its license was suspended, it would nevertheless remain open and perform the minor services authorized by Business and Professions Code section 9880.1, subdivision (e). Among the services respondent Petro Auto Care could perform, even though its registration was suspended, was replacing spark plugs. Because of this decision, the Bureau undertook to perform an undercover operation

during the period of the suspension to determine if respondent Petro Auto Care was performing unauthorized repairs:

The undercover operation disclosed that respondent Petro Auto Care has not changed its unlawful practices that were disclosed during the prior case. Mr. Villegas brought the Bureau's Jetta to respondent Petro Auto Care's facility on October 19, and informed respondent Adriana Petro and the mechanic that the problems he was having with the car were that two instrument panel lights were on and the car was shaking. Respondent Adriana Petro reported back to Mr. Villegas that the reason the car was shaking was that two cylinders were bad and she recommended replacing four spark plugs, a sensor and a gasket, at a cost of \$486.00. The diagnosis and the proposed repairs had nothing to do with the actual problems that the Jetta had: worn front brake pads and damage to the brake sensor that caused the brake warning light to illuminate; a damaged canister purge regulator valve that caused the check engine light to illuminate; and a damaged right front outer axle boot.

It is obvious that respondent Adriana Petro's recommended replacement of the spark plugs was based upon her belief that respondent Petro Auto Care was authorized to perform such a repair. That would be true if indeed the Jetta needed its spark plugs replaced, but it did not. This recommendation is not any different from the false recommendations that respondent Petro Auto Care made in 2006 and 2007 relating to the need for brake work that proved to be unnecessary.

As a result of the recommendations respondent Adriana Petro made to Mr. Villegas, he incurred the cost of replacing the spark plugs and the MAF in the amount of \$459.92, but none of the work performed fixed the problems Mr. Hsu had created. Indeed, the two instrument panel lights were still on when respondent Adriana Petro returned the Jetta to Mr. Villegas. The replacement of the spark plugs and the MAF were unnecessary. Mr. Villegas and the Bureau got nothing from respondent Petro Auto Care for the money he paid. It was established, therefore, that respondent Petro Auto Care made untrue and misleading statements to Mr. Villegas regarding the repairs that the Jetta required.

Mr. Villegas was also misled when respondent Adriana Petro clearly implied to him that respondent Petro Auto Care would perform the replacement of the sensor. It turned out that respondent Petro Auto Care did not perform that service but Mr. Villegas was never advised that another repair facility would do the repair. He was never asked for his permission and never granted his permission for the work to be performed at another facility.

7. When respondent Adriana Petro decided to remain open during the period of suspension and rely upon the advice of her attorney, he apparently pointed her to subdivision (e) of Business and Professions Code section 9880.1. What respondent Adriana Petro seemed not to understand was that the term "automotive repair dealer" as defined by subdivision (a) was a person who for compensation repairs or diagnoses malfunctions of motor vehicles. Thus, when Mr. Villegas came to respondent Petro Auto Care and said the Jetta had several malfunctions, the acts of respondent Petro Auto Care in diagnosing the

malfunctions and recommending repairs constituted acts that required a registration just as much as the act of performing a repair such as replacing the MAF required a registration.

8. It is a close question as to whether respondent Petro Auto Care's conduct on October 21, 2010, constituted fraud. Clearly, the replacement of the perfectly good MAF for no reason at a cost of \$329.26 was fraudulent. Respondent Petro Auto Care participated in the fraud when respondent Adriana Petro told Mr. Villegas that the part needed replacement to fix the problems the Jetta was experiencing. Nevertheless, the actual repair was performed by another registered repair facility, which would normally be solely responsible for its work. *James v. Board of Dental Examiners* (1985) 172 Cal. App. 3rd 1096, 1110-11.

On the other hand, Precision Motors was not some unrelated repair shop. In 2010, the license was held by respondent Adriana Petro's father and at one time, respondent Adriana Petro's sister worked there. There was no evidence offered in this proceeding as to who respondent Adriana Petro spoke to at Precision Motors to arrange the repairs that Precision Motors performed on the Jetta. Since respondent Adriana Petro had decided two days earlier that the mass air flow sensor needed to be replaced, it is clear that Precision Motors did not exercise any independent judgment as to the type of repair to be performed, but simply did what respondent Adriana Petro asked it to do. Respondent Petro Auto Care cannot escape the consequences of its actions by merely farming out the work to another registered repair facility in this manner. It must therefore be concluded that respondent Petro Auto Care's conduct constituted fraud.

9. Cause to invalidate respondent Petro Auto Care's registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), false or misleading statements, was established by Factual Findings 6 through 14 and Legal Conclusions 6 and 7. Respondent Adriana Petro made false and misleading statements to Mr. Villegas that respondent Petro Auto Care could perform the repairs to the Jetta when, in fact, it could not because its registration was suspended, and respondent Adriana Petro misrepresented to Mr. Villegas that the Jetta's mass air flow sensor needed to be replaced to fix the malfunctions in the Jetta when, in fact, the mass air flow sensor did not need to be replaced and its replacement did not fix the Jetta's problems.

It was not established that respondent Petro Auto Care made false or misleading statements relating to the business name, address and automotive repair dealer registration on the documents relating to the replacement of the mass air flow sensor.

10. Cause to invalidate respondent Petro Auto Care's registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), fraud, was established by Factual Findings 6 through 14 and Legal Conclusions 6, 7 and 8.

11. Cause to invalidate respondent Petro Auto Care's registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), failure to comply with section 9884.6, was established by Factual Findings 6 through 14 and Legal Conclusions 6

and 7 in that respondent Petro Auto Care operated as an automotive repair dealer at a time when its registration was suspended.

It was not established that respondent Petro Auto Care violated section 9884.7, subdivision (a)(6) in any other respects.

12. Cause to revoke the probation and reimpose the order of revocation imposed in case number 77/08-13 was established by Factual Findings 6 through 14 and Legal Conclusions 6 through 11 in that respondent Petro Auto Care failed to comply with all statutes, regulations, and rules governing estimates, inspections and repairs as required by Term 1a of the terms of probation.

13. Business and Professions Code section 480 provides in part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

¶...

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

¶...

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.

14. Cause to deny the application of respondent Adriana Petro for licensure of Petro Auto Care pursuant to Business and Professions Code sections 9884.7, subdivision (a) and 480, subdivision (a)(3)(A), was established. While acting as the Secretary of respondent Petro Auto Care, respondent Adriana Petro committed acts which violated Business and Professions Code sections 9884.7, subdivisions (a) (1), (a)(3), (a)(4), (a)(6), and (a)(7), 9884.8, and 9884.9, subdivision (a). Those acts, which if committed by any licensee, would be grounds for suspension or revocation of a license issued by the Bureau. Respondent Adriana Petro's commission of these acts was established by the Factual Findings and Legal Conclusions in case number 77/08-13.

15. Cause to deny the application of respondent Adriana Petro for licensure of Petro Auto Care pursuant to Business and Professions Code sections 9884.7, subdivision (a)

and 480, subdivision (a)(2), was established. While acting as the Secretary of respondent Petro Auto Care, respondent Adriana Petro committed acts involving dishonesty, fraud or deceit. Respondent Adriana Petro's commission of these acts was established by the Factual Findings and Legal Conclusions in case number 77/08-13.

16. Cause to deny the application of respondent Adriana Petro for licensure of Petro Auto Care pursuant to Business and Professions Code sections 9884.7, subdivision (a) and 480, subdivision (c), was established by Factual Finding 20.

17. The Bureau enacted disciplinary guidelines, which are found at California Code of Regulations, title 16, section 3395.4. The guidelines provide a range of sanctions for various violations. The Bureau requests that an administrative law judge take into account factors in aggravation and mitigation when considering a final penalty.

The Decision in case number 77/08-13 undertook an extensive analysis of the factors in aggravation and mitigation presented during the hearing in that case. In this case, it was established that respondent Petro Auto Care continues to engage in false and misleading and fraudulent conduct. The evidence also established that respondent Petro Auto Care was willing to do anything it could to remain in business despite a suspension of its registration.

Respondents Jorge and Adriana Petro testified in this proceeding and neither acknowledged they did anything wrong. They produced no evidence to show that they had taken any steps to remedy the misconduct that was demonstrated in the earlier case or to prevent its recurrence. They produced no evidence to suggest that they would change their behavior in the future. Their only defense seemed to be that no member of the public had complained about their business activities. Respondents fail to understand that the undercover operators in the earlier case and Mr. Villegas in this case were members of the public and they were harmed by respondents' conduct. The purpose of the Automotive Repair Act and the highest priority of the Bureau is protection of the public. Bus. & Prof. Code, § 9880.3. The only appropriate orders to achieve that goal are to invalidate respondent Petro Auto Care's automotive repair dealer registration and to deny the application of respondent Adriana Petro for licensure at another location.

18. Cause exists pursuant to Business and Professions Code section 125.3 to order respondent Petro Auto Care to pay the Bureau's costs of investigation and prosecution in this matter in the amount of \$25,888.36, by reason of Factual Finding 21.

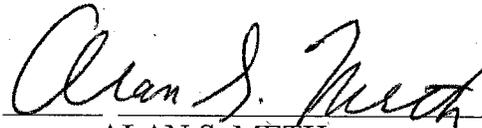
ORDER

1. Automotive Repair Dealer Registration No. ARD 236228 issued to Jorge Alberto Petro, President of Petro Group Inc., dba Petro Auto Care, is permanently invalidated.

2. The application of respondent Adriana Petro for licensure of Petro Auto Care is denied.

3. Respondent Petro Auto Group Inc. dba Petro Auto Care shall reimburse the Bureau for its costs of investigation in the amount of \$25,888.36.

DATED: March 26, 2014



ALAN S. METH

Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11
12 In the Matter of the Statement of Issues
Against:

Case No. 77/08-088

13
14 **DEL DF, INC., dba**
PRECISION AUTO CARE CENTER
8740 A Jamacha Road
15 Spring Valley, CA 91977
JEANET S. MARTINEZ, aka
16 **JEANET SANCHEZ MARTINEZ, PRES.**

STATEMENT OF ISSUES

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

24 **APPLICATION INFORMATION**

25 2. On or about June 3, 2009, the Bureau received an Application for Automotive Repair
26 Dealer Registration from Del DF, Inc., ("Respondent") doing business as Precision Auto Care
27 with Jeanet S. Martinez, also known as Jeanet Sanchez Martinez, as the President. On or about
28 May 26, 2009, Jeanet S. Martinez certified under penalty of perjury to the truthfulness of all

1 statements, answers, and representations in the application. The Bureau denied the application on
2 August 20, 2009.

3 STATUTORY PROVISIONS

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

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

11 4. Code section 480 provides, in pertinent part, that a board may deny a license if the
12 applicant has been convicted of a crime substantially related to the qualifications, functions or
13 duties of the business or profession for which application is made, has committed any act
14 involving dishonesty, fraud or deceit, has committed any act which if done by a licentiate would
15 be grounds for suspension or revocation of a license, or has knowingly made a false statement of
16 fact required to be revealed in the application.

17 BACKGROUND INFORMATION

18 5. Effective July 21, 2009, pursuant to the Decision in Accusation No. 77/08-08, FS
19 Group, Inc., doing business as Precision Motors had its Automotive Repair Dealer Registration
20 No. ARD 202114 (formerly AK 202114) revoked. The president of that corporation was Ricardo
21 Sanchez Medina, the father of Jeanet Sanchez Martinez, the President of Respondent herein.
22 Jeanet Sanchez Martinez was the manager of her father's facility during the time period of the
23 acts alleged in the accusation that lead to the revocation of ARD 202114.

24 FIRST CAUSE FOR DENIAL OF APPLICATION

25 (Acts Involving Dishonesty, Fraud or Deceit)

26 6. Respondent's application is subject to denial pursuant to Code sections 9884.7 and
27 480, subdivision (2), in that Jeanet S. Martinez, also known as Jeanet Sanchez Martinez
28 (President of Respondent herein), while acting as the of manager of Precision Motors, a revoked
automotive repair dealer, committed acts involving dishonesty, fraud, or deceit with the intent to

1 substantially benefit herself, as more particularly set forth in Accusation No. 77/08-08, attached
2 hereto as Exhibit A.

3 **SECOND CAUSE FOR DISCIPLINE**

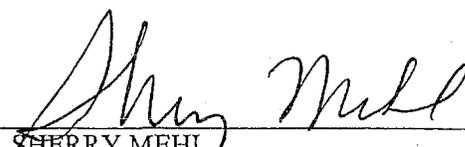
4 **(Committed Acts Which if Done by a Licentiate Constitute Cause**
5 **for Suspension or Revocation of a License)**

6 7. Respondent's application is subject to denial pursuant to Code sections 9884.7 and
7 480, subdivision (3)(a), in that Jeanet S. Martinez, also known as Jeanet Sanchez Martinez
8 (President of Respondent herein), while acting as the of manager of Precision Motors, a revoked
9 automotive repair dealer, committed acts, as more particularly set forth in Accusation No. 77/08-
10 08, Exhibit A, which if done by a licentiate of the business constitute cause for suspension or
11 revocation of a license.

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

- 14 1. Denying the application of DEL DF, Inc., doing business as Precision Auto Care
15 Center; and,
16 2. Taking such other and further action as deemed necessary and proper.

17
18
19 DATED: 5/19/10


20 SHERRY MEHL
21 Chief
22 Bureau of Automotive Repair
23 Department of Consumer Affairs
24 State of California
25 Complainant

26
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2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
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Telephone: (619) 645-3164
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Statement of Issues
Against:

12 **PETRO AUTO CARE**
13 **10 E. 1ST STREET**
14 **NATIONAL CITY, CA 91950**

15 **ADRIANA R. PETRO, OWNER**

16 Respondent.

Case No. 77/08-13s

OAH Case No. 2010070662

FIRST AMENDED

STATEMENT OF ISSUES

Hearing Date: March 17-18, 2014

17 Complainant alleges:

18 **PARTIES**

19 1. Complainant Patrick Dorais brings this First Amended Statement of Issues solely in
20 his official capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of
21 Consumer Affairs.

22 **Application for Automotive Repair Dealer Registration**

23 2. On or about May 20, 2010, the Bureau received an Application for Automotive
24 Repair Dealer Registration from Respondent Adriana R. Petro doing business as Petro Auto Care.
25 On or about May 17, 2010, Adriana R. Petro certified under penalty of perjury to the truthfulness
26 of all statements, answers, and representations in the application. The Bureau denied the
27 application on June 17, 2010.
28

1 another without consent of the owner or his or her duly authorized representative.

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

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

13 6. Code section 9884.8 states:

14 All work done by an automotive repair dealer, including all warranty
15 work, shall be recorded on an invoice and shall describe all service work done and
16 parts supplied. Service work and parts shall be listed separately on the invoice, which
17 shall also state separately the subtotal prices for service work and for parts, not
18 including sales tax, and shall clearly state that fact. If a part of a component system is
19 composed of new and used, rebuilt or reconditioned parts, that invoice shall clearly
20 state that fact. The invoice shall include a statement indicating whether any crash
21 parts are original equipment manufacturer crash parts or nonoriginal manufacturer
22 aftermarket crash parts. One copy of the invoice shall be given to the customer and
23 one copy shall be retained by the automotive repair dealer.

24 7. Code section 9884.9, subdivision (a), states:

25 (a) The automotive repair dealer shall give to the customer a written
26 estimated price for labor and parts necessary for a specific job. No work shall be done
27 and no charges shall accrue before authorization to proceed is obtained from the
28 customer. No charge shall be made for work done or parts supplied in excess of the
estimated price without the oral or written consent of the customer that shall be
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:

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

1 estimated price.

2 _____
3 (signature or initials)”

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

6 8. Code section 480 provides, in pertinent part:

7 (a) A board may deny a license regulated by this code on the grounds that
8 the applicant has one of the following:

9

10 (2) Done any act involving dishonesty, fraud, or deceit with the
11 intent to substantially benefit himself or herself or another, or substantially injure
12 another.

13 (3)(A) Done any act that if done by a licentiate of the business or
14 profession in question, would be grounds for suspension or revocation of license.

15

16 (c) A board may deny a license regulated by this code on the ground that
17 the applicant knowingly made a false statement of fact required to be revealed in the
18 application for the license.

19 **FIRST CAUSE FOR DENIAL OF APPLICATION**

20 **(Acts if Committed by a Licentiate Constitute Grounds for Discipline)**

21 9. Respondent’s application for an automotive repair dealer registration is subject to
22 denial pursuant to Code sections 9884.7, subdivision (a) and 480, subdivision (a)(3)(A), in that
23 while acting as Secretary of Petro Group, Inc., doing business as Petro Auto Care, Respondent
24 committed acts which if committed by any licensee would be grounds for suspension or
25 revocation of a license issued by this chapter pursuant to Code sections 9884.7, subdivisions
26 (a)(1), (a)(3), (a)(4), (a)(6), and (a)(7); and Code sections 9884.8 and 9884.9, subdivision (a), as
27 more particularly set forth in Accusation Number 77/08-13, attached hereto as **Exhibit A**, and
28 incorporated herein by reference.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Acts Constituting Dishonesty, Fraud or Deceit)

10. Respondent’s application for an automotive repair dealer registration is subject to
denial pursuant to Code sections 9884.7, subdivision (a) and 480, subdivision (a)(2), in that in

1 that while acting as Secretary of Petro Group, Inc., doing business as Petro Auto Care,
2 Respondent committed acts involving dishonesty, fraud or deceit, as more particularly set forth in
3 Accusation Number 77/08-13, attached hereto as **Exhibit A**, and incorporated herein by
4 reference.

5 **THIRD CAUSE FOR DENIAL OF APPLICATION**

6 **(False Statements of Facts Required to be Revealed in Application)**

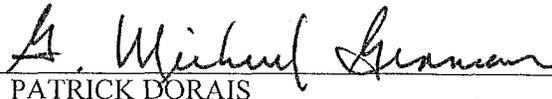
7 11. Respondent's application for an automotive repair dealer registration is subject to
8 denial pursuant to Code sections 9884.7, subdivision (a) and 480, subdivision (c), in that in
9 response to application questions 8(c), requiring Respondent to "List Business name and
10 registration number of any CURRENT automotive repair dealer registration held by any person
11 listed in number 7," and 8(d), requiring Respondent to "List business name and registration
12 number of any PRIOR automotive repair registration held by any person listed in number 7,"
13 Respondent wrote "NONE," which was a false statement of fact required to be revealed in an
14 application. The true facts were that at the time of completing the application, Respondent was
15 Secretary of Petro Group, Inc., doing business as Petro Auto Care (ARD236228), in which she
16 failed to identify her ownership interest in her application.

17 **PRAYER**

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

- 20 1. Denying the application of Adriana R. Petro doing business as Petro Auto Care for an
21 automotive repair dealer registration; and,
22 2. Taking such other and further action as deemed necessary and proper.

23
24
25 DATED: March 17, 2014

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

26
27
28 SD2010701826

1 KAMALA D. HARRIS
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2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
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Attorneys for Complainant

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

11
12 In the Matter of the Statement of Issues
Against:

Case No. 77/08-13s

13 **PETRO AUTO CARE**
14 **10 E. 1ST STREET**
NATIONAL CITY, CA 91950

STATEMENT OF ISSUES

15 **ADRIANA R. PETRO, OWNER**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 **Application for Automotive Repair Dealer Registration**

23 2. On or about May 20, 2010, the Bureau of Automotive Repair received an Application
24 for Automotive Repair Dealer Registration from Adriana R. Petro ("Respondent") doing business
25 as Petro Auto Care. On or about May 17, 2010, Adriana R. Petro certified under penalty of
26 perjury to the truthfulness of all statements, answers, and representations in the application. The
27 Bureau denied the application on June 17, 2010.

1 (7) Any willful departure from or disregard of accepted trade standards
2 for good and workmanlike repair in any material respect, which is prejudicial to
3 another without consent of the owner or his or her duly authorized representative.

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

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

15 6. Code section 9884.8 states:

16 All work done by an automotive repair dealer, including all warranty
17 work, shall be recorded on an invoice and shall describe all service work done and
18 parts supplied. Service work and parts shall be listed separately on the invoice, which
19 shall also state separately the subtotal prices for service work and for parts, not
20 including sales tax, and shall clearly state that fact. If a part of a component system is
21 composed of new and used, rebuilt or reconditioned parts, that invoice shall clearly
22 state that fact. The invoice shall include a statement indicating whether any crash
23 parts are original equipment manufacturer crash parts or nonoriginal manufacturer
24 aftermarket crash parts. One copy of the invoice shall be given to the customer and
25 one copy shall be retained by the automotive repair dealer.

26 7. Code section 9884.9, subdivision (a), states:

27 (a) The automotive repair dealer shall give to the customer a written
28 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
customer. No charge shall be made for work done or parts supplied in excess of the
estimated price without the oral or written consent of the customer that shall be
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 8. Code section 480 provides, in pertinent part, that a board may deny a license if the
8 applicant has been convicted of a crime substantially related to the qualifications, functions or
9 duties of the business or profession for which application is made, has committed any act
10 involving dishonesty, fraud or deceit, has committed any act which if done by a licentiate would
11 be grounds for suspension or revocation of a license, or has knowingly made a false statement of
12 fact required to be revealed in the application.

13 **FIRST CAUSE FOR DENIAL OF APPLICATION**

14 (Acts if Committed by a Licentiate Constitute Grounds for Discipline)

15 9. Respondent's application for an automotive repair dealer registration is subject to
16 denial pursuant to Code sections 9884.7, subdivision (a) and 480, subdivision (a)(3)(A), in that
17 while acting as Secretary of Petro Group, Inc., doing business as Petro Auto Care, Respondent
18 committed acts which if committed by any licensee would be grounds for suspension or
19 revocation of a license issued by this chapter pursuant to Code sections 9884.7, subdivisions
20 (a)(1), (a)(3), (a)(4), (a)(6), and (a)(7); and Code sections 9884.8 and 9884.9, subdivision (a), as
21 more particularly set forth in Accusation Number 77/08-13, Exhibit A.

22 **SECOND CAUSE FOR DENIAL OF APPLICATION**

23 (Acts Constituting Dishonesty, Fraud or Deceit)

24 10. Respondent's application for an automotive repair dealer registration is subject to
25 denial pursuant to Code sections 9884.7, subdivision (a) and 480, subdivision (a)(2), in that in
26 that while acting as Secretary of Petro Group, Inc., doing business as Petro Auto Care,
27 Respondent committed acts involving dishonesty, fraud or deceit, as more particularly set forth in
28 Accusation Number 77/08-13, Exhibit A.

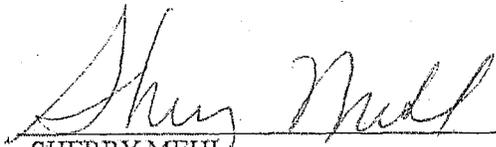
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PRAYER

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. Denying the application of Adriana R. Petro doing business as Petro Auto Care for an automotive repair dealer registration; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: 11/14/11



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

SD2010701826
10624867.doc

EXHIBIT A

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER, State Bar No. 101336
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7 Telephone: (619) 645-3037
Facsimile: (619) 645-2061
8 Attorneys for Complainant

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

13 In the Matter of the Accusation Against:
14 **PETRO GROUP, INC., DBA**
PETRO AUTO CARE
15 8740 Jamacha Road, Suite B
Spring Valley, California 91977
16 **JORGE ALBERTO PETRO, PRESIDENT**
17 Automotive Repair Dealer Registration
No. AK 236228
18 Respondent.

Case No. 77108-13

A C C U S A T I O N

20 Sherry Mehl ("Complainant") alleges:

21 **PARTIES**

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

24 **Automotive Repair Dealer Registration**

25 2. On or about October 29, 2004, the Bureau issued Automotive Repair
26 Dealer Registration Number AK 236228 ("registration") to Petro Group, Inc., ("Respondent"),
27 doing business as Precision Muffler & Brake. The registration was delinquent from

28 ///

1 October 31, 2005, to November 3, 2005, and October 31, 2006, to November 7, 2006. On or
2 about March 28, 2008, the business name changed to "Petro Auto Care". The registration will
3 expire on October 31, 2008, unless renewed.

4 STATUTORY PROVISIONS

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

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

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

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

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
23 regulations adopted pursuant to it.

24 (7) Any willful departure from or disregard of accepted trade standards for
25 good and workmanlike repair in any material respect, which is prejudicial to
26 another without consent of the owner or his or her duly authorized representative.

27 (b) Except as provided for in subdivision (c), if an automotive repair
28 dealer operates more than one place of business in this state, the director pursuant
to subdivision (a) shall only refuse to validate, or shall only invalidate temporarily
or permanently 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.

(c) Notwithstanding subdivision (b), the director may refuse to validate, or
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.

///

///

1 4. Code section 9884.8 states:

2 All work done by an automotive repair dealer, including all warranty
3 work, shall be recorded on an invoice and shall describe all service work done and
4 parts supplied. Service work and parts shall be listed separately on the invoice,
5 which shall also state separately the subtotal prices for service work and for parts,
6 not including sales tax, and shall state separately the sales tax, if any, applicable to
7 each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall
8 clearly state that fact. If a part of a component system is composed of new and
9 used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The
10 invoice shall include a statement indicating whether any crash parts are original
11 equipment manufacturer crash parts or nonoriginal equipment manufacturer
12 aftermarket crash parts. One copy of the invoice shall be given to the customer
13 and one copy shall be retained by the automotive repair dealer.

14 5. Code section 9884.9 states, in pertinent part:

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

6. Code section 9884.13 provides, in pertinent part, that the expiration of a
valid registration shall not deprive the director or chief of jurisdiction to proceed with a

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1 \$195.40. The operator asked Adriana what was wrong with the brake rotors. Adriana told the
2 operator that the brake rotors needed to be resurfaced "because of the wear they had", and that
3 the brakes "would cause vibrations".

4 11. Later that afternoon, the operator returned to Respondent's facility to pick
5 up the vehicle. The operator signed an invoice, paid Adriana \$205.17, and received a copy of
6 Invoice Number [REDACTED]

7 12. On or about November 7, 2006, the Bureau road tested and reinspected the
8 vehicle using Invoice Number [REDACTED]. The inspection revealed that front pads had been
9 replaced and the rotors had been resurfaced; however, the front brake rotors had been in good
10 serviceable condition and did not need to be resurfaced. Additionally, the right front brake rotor
11 had been machined out of specification.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Misleading Statements)**

14 13. Respondent has subjected its registration to discipline under Code section
15 9884.7, subdivision (a)(1), in that on or about November 6, 2006, it made statements which it
16 knew or which by exercise of reasonable care it should have known to be untrue or misleading by
17 falsely representing to the operator that the front brake rotors needed to be resurfaced when, in
18 fact, the front brake rotors were in good serviceable condition and did not need to be resurfaced.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Failure to Provide a Copy of a Signed Document)**

21 14. Respondent has subjected its registration to discipline under Code section
22 9884.7, subdivision (a)(3), in that on or about November 6, 2006, Respondent failed to provide
23 the operator with a copy of the work order as soon as the operator signed the document.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Fraud)**

26 15. Respondent has subjected its registration to discipline under Code section
27 9884.7, subdivision (a)(4), in that on or about November 6, 2006, it committed fraud when it

28 ///

1 accepted payment from the operator to resurface the front brake rotors when, in fact, those parts
2 were in good serviceable condition and not in need of resurfacing.

3 **FOURTH CAUSE FOR DISCIPLINE**

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

5 16. Respondent has subjected its registration to discipline under Code section
6 9884.7, subdivision (a)(6), in that on or about November 6, 2006, it failed to comply with the
7 following Code sections:

8 a. **Section 9884.8:** Regarding Invoice No. [REDACTED], Respondent failed to
9 document all parts as new, used, rebuilt or reconditioned.

10 b. **Section 9884.9, subdivision (a):** Respondent failed to provide the
11 operator with a written estimated price for parts and labor for a specific job.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **(Departure From Trade Standards)**

14 17. Respondent has subjected its registration to discipline under Code section
15 9884.7, subdivision (a)(7), in that on or about November 6, 2006, Respondent willfully departed
16 from or disregarded accepted trade standards for good and workmanlike repair by resurfacing the
17 right front brake rotor out of specification.

18 **UNDERCOVER OPERATION NO. 2 - 1996 CHEVROLET CAMARO**

19 18. On or about January 29, 2007, a Bureau undercover operator using the
20 alias Judy Kercher ("operator") telephoned Respondent's facility and spoke with Adriana. The
21 operator told Adriana she had coupons from a PennySaver advertisement for brake pads or shoes
22 and a labor special. Adriana told the operator the cost of front brakes would be \$89 and rear
23 brakes were also \$89. Adriana told the operator that the advertised brake special of \$45 was for
24 organic brake pads and that the operator's vehicle had semi-metallic pads. Adriana went on to
25 say that the operator could get the front brakes done for \$79 and the rear brakes for \$79. The
26 operator drove a Bureau documented 1996 Chevrolet Camaro, California License Plate No.
27 [REDACTED] to Respondent's facility and requested the advertised brake special, which included
28 a free brake inspection. The only repair necessary was to replace the front brake pads. The

1 operator spoke with Adriana and provided her with the advertisement for the brake special.
2 The operator filled out and signed a work order; however, the operator was not provided with a
3 copy of the document.

4 19. Later the same day, the operator spoke with Adriana, who told the operator
5 that the vehicle needed new front brakes. Further, Adriana told the operator that the front brake
6 rotors needed to be resurfaced because they had "black spots". Adriana also told the operator
7 that the rear brakes should be cleaned and adjusted because the "rear brakes were not touching".
8 Adriana quoted the operator \$222.15 for all the repairs. The operator authorized the repairs.

9 20. That same afternoon, the operator returned to Respondent's facility to pick
10 up the vehicle. The operator paid Adriana \$222.15 for the repairs and signed and received a
11 copy of Invoice No. [REDACTED]

12 21. On January 30, 2007, the Bureau began its reinspection of the vehicle
13 using Invoice No. [REDACTED]. The inspection revealed the following:

14 a. Respondent resurfaced the front brake rotors; however, the front brake
15 rotors were in good serviceable condition and did not need to be resurfaced.

16 b. Respondent failed to clean the rear brakes as invoiced.

17 c. Respondent adjusted the rear brakes; however, that service was not
18 necessary.

19 SIXTH CAUSE FOR DISCIPLINE

20 (Misleading Statements)

21 22. Respondent has subjected its registration to discipline under Code section
22 9884.7, subdivision (a)(1), in that on or about January 29, 2007, it made statements which it
23 knew or which by exercise of reasonable care it should have known to be untrue or misleading,
24 as follows:

25 a. Respondent represented to the operator that the front brake rotors needed
26 to be resurfaced when, in fact, the front brake rotors were in good serviceable condition and did
27 not need to be resurfaced.

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1 THIRTEENTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with Code)

3 33. Respondent has subjected its registration to discipline under Code section
4 9884.7, subdivision (a)(6), in that on or about May 30, 2007, it failed to comply with the
5 following Code sections:

6 a. Section 9884.8: Regarding Invoice No. [REDACTED], Respondent failed to
7 document all parts as new, used, rebuilt or reconditioned.

8 b. Section 9884.9, subdivision (a): Respondent failed to provide the
9 operator with a written estimated price for parts and labor for a specific job.

10 OTHER MATTERS

11 34. Under Code section 9884.7, subdivision (c), the director may invalidate
12 temporarily or permanently or refuse to validate, the registrations for all places of business
13 operated in this state by Petro Group, Inc., doing business as Petro Auto Care, upon a
14 finding that it has, or is, engaged in a course of repeated and willful violations of the laws and
15 regulations pertaining to an automotive repair dealer.

16 PRAYER

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

19 1. Temporarily or permanently invalidating Automotive Repair Dealer
20 Registration Number AK 236228, issued to Petro Group, Inc., doing business as Petro Auto
21 Care;

22 2. Temporarily or permanently invaliding any other automotive repair dealer
23 registration issued to Petro Group, Inc., doing business as Petro Auto Care;

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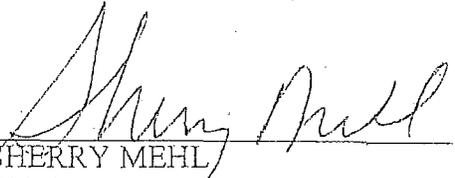
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- 1 3. Ordering Petro Group, Inc., to pay the Bureau of Automotive Repair the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
3 125.3; and,
4 4. Taking such other and further action as deemed necessary and proper.
5

6 DATED: 9/9/08

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8 
9 SHERRY MEHL
10 Chief
11 Bureau of Automotive Repair
12 Department of Consumer Affairs
13 State of California
14 Complainant
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6 San Diego, CA 92186-5266
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11
12 In the Matter of the Accusation/Petition to
Revoke Probation Against:

Case No. 77/10-41

13 **PETRO GROUP, INC., DBA**
14 **PETRO AUTO CARE**
8740 Jamacha Road, Suite B
15 Spring Valley, CA 91977
16 **JORGE A. PETRO, PRESIDENT**
Automotive Repair Dealer Registration No.
ARD236228

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

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

24 **Automotive Repair Dealer Registration**

25 2. On a date uncertain in 2004, the Bureau issued Automotive Repair Dealer
26 Registration Number ARD236228 ("registration") to Petro Group, Inc., doing business as Petro
27 Auto Care ("Respondent"). The registration was in full force and effect at all times relevant to
28 the charges brought herein and will expire on October 31, 2011, unless renewed.

1 PRIOR DISCIPLINARY ACTION

2 3. Pursuant to the Decision in Accusation No. 77/08-13, attached hereto as Exhibit "A"
3 and incorporated herein by reference, effective October 18, 2010, the Director of Consumer
4 Affairs ("Director") permanently invalidated Respondent's Automotive Repair Dealer
5 Registration No. ARD 236228; however, the invalidation was stayed, and Respondent was placed
6 on probation for three (3) years with terms, including Term 1a, which states:

7 Term 1 -During the period of probation, respondent shall:

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

10 Further, pursuant to the Decision, Respondent's registration was suspended for 10 days.

11 STATUTORY PROVISIONS

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

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

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

23 (4) Any other conduct which constitutes fraud.

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 refuse to validate, or shall only invalidate temporarily or
27 permanently the registration of the specific place of business which has violated any
28 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.

(c) Notwithstanding subdivision (b), the director may refuse to validate,
or 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.

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

3 _____
4 (signature or initials)"

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

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

13 COST RECOVERY

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

18 BACKGROUND

19 11. Pursuant to the Decision in Accusation No. 77/08-13, referenced in paragraph 3,
20 above, Respondent's Automotive Repair Dealer Registration Number ARD 236228 was
21 suspended for 10 days, effective October 18, 2010. During the period of suspension, Respondent
22 was informed that no diagnosis or repair work could be performed that required a valid
23 automotive repair dealer registration, with the exception of work such as oil changes.

24 ACCUSATION

25 UNDERCOVER OPERATION - OCTOBER 19, 2010 & OCTOBER 21, 2010

26 12. On or about October 19, 2010, a Bureau undercover operator ("operator") drove a
27 Bureau-documented 2000 Volkswagen Jetta to Respondent's facility. The only repairs necessary
28 were replacement of the front brake pads, an axle boot, and a purge valve. The operator spoke to
Adrianna and told her he wanted his vehicle checked out because there were two dash lights

1 illuminated and the vehicle was shaking. Adrianna informed the operator that Respondent could
2 do the work. The operator provided Respondent with the vehicle's keys. Shortly thereafter,
3 Adrianna informed the operator that the vehicle was shaking because the #2 and #4 cylinders
4 were bad. Adrianna recommended replacing four spark plugs, a sensor, and a gasket. She told
5 the operator that the cost of repairs would be \$486. The operator told Adrianna that he did not
6 have that much money with him. Adrianna recommended replacing the spark plugs for \$129.96.
7 She told the operator he could return the vehicle the following day for the sensor repair. The
8 operator authorized replacement of the spark plugs. Adrianna gave the operator two copies of
9 Estimate No. [REDACTED] which the operator signed. After the repairs were completed, Adrianna
10 gave the operator two copies of Invoice No. [REDACTED]. The operator signed both copies and paid
11 Respondent \$129.96 for the repairs and was provided with one copy of Invoice No. [REDACTED].

12 13. On or about October 21, 2010, the operator returned to Respondent's facility to have
13 the dash lights fixed. The operator asked what the cost would be and Adrianna gave him an
14 estimate of \$350 to \$375 for the sensor replacement, including labor. She also told the operator
15 that the sensor replacement would fix the dash lights. The operator was not provided with a
16 written estimate. The operator authorized the repairs and left the facility. Later that morning, the
17 operator received a telephone call from Adrianna, who told him that the repairs had been
18 completed. A short time later, the operator returned to Respondent's facility to retrieve the
19 vehicle. The operator signed two copies of Estimate No. [REDACTED] two copies of Repair Order No.
20 [REDACTED] and two copies of Invoice No. [REDACTED]. All six of the documents signed by the operator
21 set forth a business name, address, and registration number that did not belong to Respondent.
22 The operator paid Adrianna \$329.25 for the repair and received a copy of Estimate No. [REDACTED]
23 Repair Order no. [REDACTED] and Invoice No. [REDACTED]. Adrianna then informed the operator that they
24 were able to clear all of the codes except P1426; however, the dash lights were still on. Adrianna
25 told the operator to drive the vehicle until October 28, 2010, and if the dash lights were still on,
26 they would replace the evap solenoid at no charge. The operator asked Adrianna to write the
27 information about the dash lights and evap solenoid on the invoice, which she did. Adrianna then
28 told the operator that he would have to pay \$20 for the solenoid but that the labor would be free.

1 THIRD CAUSE FOR DISCIPLINE

2 (Failure to Comply with Code)

3 17. Respondent has subjected its registration to discipline pursuant to Code section
4 9884.7, subdivision (a)(6), in that on or about October 19 & 21, 2010, Respondent failed to
5 comply with sections of that Code, as follows:

6 a. **Section 9884.6:** Respondent was not compliance with Code section 9884.6, in that
7 Respondent was operating its automotive repair business when its registration was suspended.

8 b. **Section 9884.8:** Regarding Estimate No. [REDACTED], Repair Order No. [REDACTED] and
9 Invoice No. [REDACTED] Respondent failed to set forth its correct business name, address, and
10 automotive repair dealer registration number on those documents.

11 c. **Section 9884.9, subdivision (a):** Respondent failed to provide the operator with an
12 estimated price for parts and labor for a specific job regarding the repairs performed on October
13 21, 2010.

14 PETITION TO REVOKE PROBATION

15 18. The allegations of paragraphs 1 through 17 of the accusation above are incorporated
16 herein by reference as though fully set forth and are realleged.

17 19. Grounds exist to revoke the probation and reimpose the order of revocation of
18 Respondent's Automotive Repair Dealer Registration No. ARD 236228, in that Respondent failed
19 to comply with all statutes, regulations, and rules governing estimates and inspections as required
20 by Term 1a of the terms of the probation under Decision in Accusation No. 77/08-13, as set forth
21 in paragraphs 11 through 17 of the accusation above.

22 OTHER MATTERS

23 20. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
24 or permanently, the registrations for all places of business operated in this state by Petro Group,
25 Inc., doing business as Petro Auto Care, upon a finding that it has, or is, engaged in a course of
26 repeated and willful violations of the laws and regulations pertaining to an automotive repair
27 dealer.

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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. Vacating the stay and reimposing the order of invalidation of Automotive Repair Dealer Registration No. ARD 236228, issued to Petro Group, Inc., doing business as Petro Auto Care;

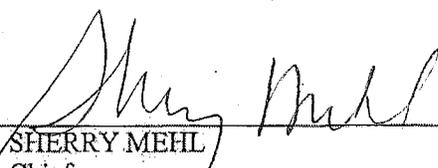
2. Revoking, suspending, or placing on probation Automotive Repair Dealer Registration Number ARD 236228, issued to Petro Group, Inc., doing business as Petro Auto Care;

3. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued in the name Petro Group, Inc., doing business as Petro Auto Care;

4. Ordering Petro Group Inc., 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,

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

DATED: 3/21/11



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

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

In the Matter of Accusation Against:

PETRO GROUP, INC., DBA,
PETRO AUTO CARE
8740 Jamacha Road, Suite B
Spring Valley, CA 91977
JORGE ALBERTO PETRO, PRESIDENT

Automotive Repair Dealer Registration
No. AK 236228,

Respondent.

Case No. 77/08-13

OAH No. 2010020991

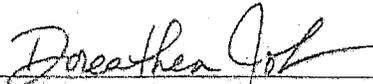
DECISION

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

This Decision shall become effective October 18, 2010.

IT IS SO ORDERED.

Date: September 7, 2010



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

In the Matter of Accusation Against:

PETRO GROUP, INC., DBA,
PETRO AUTO CARE
8740 Jamacha Road, Suite B
Spring Valley, CA 91977
JORGE ALBERTO PETRO, PRESIDENT

Automotive Repair Dealer Registration
No. AK 236228,

Respondent.

Case No. 77/08-13

OAH No. 2010020991

PROPOSED DECISION

On July 21, 2010, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Carl W. Sonne, Deputy Attorney General, represented the complainant.

Adriana Petro, Secretary, represented respondent Petro Group Inc. and Jorge Alberto Petro, President.

The matter was submitted on July 21, 2010.

FACTUAL FINDINGS

1. On September 9, 2008, Sherry Mehl, Chief, Bureau of Automotive Repair, Department of Consumer Affairs, State of California (Bureau), filed Accusation No. 77/08-13 in her official capacity. Respondent filed a timely Notice of Defense.

2. Respondent Jorge Alberto Petro, President of Petro Group Inc., dba Petro Auto Care, 8740 Jamacha Road, Suite B, Spring Valley, CA 91977 is registered as an Automotive

Repair Dealer under the Automotive Repair Act of 1971. The Bureau issued registration number AK 236228 to respondent in 2004. The license will expire on October 31, 2010, unless renewed. Respondent's previous business name was Precision Muffler & Brake; it was changed on March 17, 2007.

Undercover Operation—November 6, 2006

3. On November 6, 2006, a Bureau representative using the alias Baltozar Sarmiento drove a Bureau documented 2001 Chevrolet Monte Carlo to respondent's facility, then operating under the name of Precision Muffler & Brake. David Winkowski, a Program Representative with the Bureau, provided the Monte Carlo to the representative along with coupons from the PennySaver advertising brake pads or shoes from \$49.95 and a lube, oil and filter with free brake inspection for \$22.95. The odometer reading when the representative received the vehicle was 89,301, and he drove it one mile to respondent's facility.

Upon arriving at respondent's facility, the representative walked into the office and met Adriana Petro, the Secretary of respondent and Mr. Petro's wife. He showed her the coupon for the lube, oil and filter, with free brake inspection and requested that respondent perform that service. Adriana gave him a blank work order and at her request, the representative wrote his name, address, and telephone number on it. He gave the work order back to her and gave her the key to the vehicle. She filled in some information on the work order and had the representative sign it. She did not give him a copy of it. He gave her a copy of the PennySaver ad, and left the facility on foot at 9:45 a.m.

At 11:15 a.m., the representative called respondent and spoke to Adriana. She said the Monte Carlo needed front brakes because there was only five percent left. She said the rotors "needed to be resurfaced." She said the total cost would be \$242.17. The representative told her he had the \$49.95 brake coupon. She said the coupon was for non semi-metallic brake pads and the Monte Carlo had semi-metallic brake pads, but she would use the coupon to apply the discount. She said the amount was \$195.40 and she had discounted the price by \$35.00 because of the coupon. The representative asked her what was wrong with the brakes. Adriana said they needed to be resurfaced because of the wear they had on the brakes and "would cause vibrations," and explained that meant putting them on a machine. She said the total with tax was \$205.17. The representative authorized the repairs.

The representative returned to respondent's facility about two hours later and met with Adriana. She gave him two copies of the invoice which he signed and returned to her. She said the cost was \$205.17. He gave her in cash. She wrote a warranty on the invoice and explained that the warranty was for one year. She gave him the invoice and the keys to the Monte Carlo. The invoice did not document all parts as new, used, rebuilt, or reconditioned. The odometer reading was 89,304 when he drove away and returned the vehicle to Mr. Winkowski.

4. Steven M. Gauronski is a Program Representative with the Bureau and works in its Rialto Documentation Lab. He has worked as an auto mechanic for 30 years and worked for the Bureau for 14 years. He holds various licenses and certifications in the field.

Between October 17 and 31, 2006, Mr. Gauronski worked on the Bureau's 2001 Chevrolet Monte Carlo used later in the undercover operation on November 6, 2006. He inspected the vehicle and determined all systems were in good serviceable condition and took photographs. He installed two new front brake rotors and blended them to match the appearance of the surrounding areas. He inspected the vehicle's existing front disc brake pads and then evenly machined the pads near to the minimum lining thickness specifications. He observed no visible damage, defects or cracks in the brake pads.

On October 24 and 25, 2006, Mr. Gauronski road tested the vehicle over a course of 44 miles. The ending odometer reading was 89,301. He performed the road test to burnish the new front braking surfaces and to observe the performance of the brake system. He observed no pulsation, vibration, pull, or other anomalies in the brake performance during the road tests. He then added engine oil. Next, Mr. Gauronski measured the front brake rotors for thickness, lateral run out, that is, to see if they wobbled instead of spinning true, and thickness variation. He observed the front brake rotors to be in good condition with no visible damage or defects and all rotor measurements were within manufacturer's specifications.

On November 6, 2006, with a vehicle odometer reading of 89,301, Mr. Gauronski transferred custody of the Monte Carlo to Mr. Winkowski in Spring Valley. Later in the day, Mr. Winkowski returned the vehicle to Mr. Gauronski. It had been driven four miles. The next day, Mr. Gauronski, after he received respondent's invoice for the repairs performed on the vehicle, road tested the vehicle and found no abnormalities. He inspected the vehicle and observed new front disc pads and the front brake rotors had been resurfaced. He determined that the right front rotor was machined slightly beyond the minimum thickness after refinish specifications.¹

In Mr. Gauronski's opinion, the front disc brake pads needed to be replaced and were properly replaced. He did not believe the disc brake rotors needed to be resurfaced because they were in good condition just before the undercover operation, and were free of damage or defects. He reviewed General Motors' factory service manual and found there were specific conditions for resurfacing or replacing brake rotors on the 2001 Monte Carlo, such as excessive corrosion, rust or pitting, cracks, heat spots, scoring, or lateral runout, and none of those conditions existed in this car. He also did not believe the rotors needed resurfacing to avoid vibrations.

¹ At the hearing, Mr. Gauronski testified that since he last inspected the rotors, the manufacturer's specifications relating to machining rotors had been relaxed, and under the new specifications, the rotors would not be beyond allowable specifications.

Undercover Operation—January 29, 2007

5. On January 29, 2007, a Bureau representative using the alias Judy Kercher drove a Bureau documented 1996 Chevrolet Camaro to respondent's facility, then operating under the name of Precision Muffler & Brake. Mr. Winkowski provided the Camaro to the representative along with coupons from the PennySaver advertising brake pads or shoes from \$45 and free inspection with repairs. The odometer reading when the representative received the vehicle was 65,624.

The representative called Precision Muffler & Brake and spoke to Adriana. The representative said she was looking at the ad for the free brake inspection and asked for the cost for brakes on the Chevrolet. Adriana asked for information about the car, and based on that information, said the brakes would cost \$89.00, which included parts and labor and a one-year warranty. The representative asked about the \$45 ad. Adriana said that was for organic brake pads but the brakes on the Chevrolet were semi-metallic, but added that with the ad, the cost would be \$79.00. The representative said she would bring in the car. She also said that the brakes did not make any noises.

Upon arriving at respondent's facility, the representative walked into the office and met Adriana. She showed her the ad and requested the free brake inspection. Adriana asked the representative if she had called and she said she had. Adriana gave her a blank work order and at her request, the representative wrote her name, address, and telephone number on it. She gave the work order back to Adriana who had the representative sign it. She did not give the representative a copy of it. Adriana said they would inspect the brakes and call her with a report. The representative gave Adriana a copy of the PennySaver ad and the car keys, and walked away from the facility.

About a half hour later, Adriana called and told the representative that the Camaro needed front brakes. She said a "tick tick noise" was caused by the front brake indicators and the front rotors needed to be resurfaced because they had "black spots." Adriana said they used a lathe that mounts onto the vehicle to resurface the rotors, and she recommended cleaning and adjusting the rear brakes. She said the total for parts and labor, which included replacing the front brake pads, machining the front rotors, and cleaning and adjusting the rear brakes, was \$222.15. The representative authorized the repairs.

The representative returned to respondent's facility about two and a half hours later and met with Adriana. Adriana gave the representative two copies of the invoice which she signed and returned. Adriana explained the warranty. The representative paid Adriana \$222.00 in cash. She gave the representative the invoice and the keys to the Camaro. The invoice did not document all parts as new, used, rebuilt, or reconditioned. The odometer reading was 65,627 when she drove away and returned the vehicle to Mr. Winkowski.

6. Darrell Blasjo is a Program Representative with the Bureau and works in its Rialto Documentation Lab. He has worked as an auto mechanic for many years, worked for the Bureau for 20 years, and worked in the documentation lab for the last five years. He holds various licenses and certifications in the field.

On December 5, 2006, Mr. Blasjo began documenting the condition of the brake system of the Bureau's 1996 Chevrolet Camaro later used in the undercover operation on January 29, 2007. He had previously inspected the brake system and determined it was in good condition. He again inspected the front and rear brakes, and found no anomalies. He then removed the front brake pads and machined the wearable pad lining down until their thickness was visibly low. He next installed new rotors, measured them, and checked them for runout. He found the runout was .001 in., less than the .005 in. provided in the specifications. He determined that rotor surfaces were not scored and did not need resurfacing. He then blended the appearance of the brake system to match the overall appearance of the vehicle and underbody.

On December 14, 2007, Mr. Blasjo performed a test drive of the vehicle and determined the brake system performed properly, with no pulsation, fade, or pulling to one side. He burnished the pads into the rotors so that the two surfaces worked together. He estimated this occurred within 10 to 20 stops. The odometer reading after the test drive was 65,623. He then inspected the front brakes for anomalies and found none.

On January 29, 2007, the Camaro was transported to Spring Valley and transferred to Mr. Winkowski's custody. The odometer reading was 65,624. Mr. Blasjo received it back later in the day after it had been driven four miles.

On January 30, 2007, after he received a copy of respondent's invoice for the repairs performed on the Camaro, Mr. Blasjo began to re-inspect the vehicle. He determined that the introduced malfunction was low front brake pads which were properly replaced. He determined that the front brake rotors that he had installed had been resurfaced. In his opinion, the rotors did not need to be resurfaced. He determined that the rear brakes had been adjusted but not cleaned, in that the black dust on the brake drums, brake shoes, and hardware had the same appearance as before. He also found the rear brakes, which did not need adjustment, had been improperly adjusted to zero clearance, so the shoes were in constant contact with the brake drums and were causing constant drag which prevented the drums from being removed easily. Mr. Blasjo had set the rear brakes to have .050 in. clearance before the undercover operation, which met General Motors' specifications, but they did not meet them when he re-inspected the Camaro.

Undercover Operation—May 30, 2007

7. On May 30, 2007, a Bureau representative using the alias Connie Baker drove a Bureau documented 1995 Mazda 626 to respondent's facility, then operating under the name of Precision Muffler & Brake. Mr. Winkowski provided the Mazda to the

representative along with coupons from the PennySaver advertising brake pads or shoes from \$45 and free inspection with repairs. The odometer reading when the representative received the vehicle was 80,405.

The representative called Precision Muffler & Brake and spoke to Adriana. The representative said she was looking at the ad for the free brake inspection and asked for the cost for brakes on the Mazda. Adriana said the brakes on the Mazda were semi-metallic, and would be \$18.00 more. Adriana told her to bring in the coupon because the regular price for the brake job was \$95.00. The representative said she would bring in the car.

Upon arriving at respondent's facility, the representative walked into the office and met Adriana. She showed her the ad and told Adriana that she had called earlier. Adriana prepared a work order and asked the representative to write her name, address, and telephone number on it, and sign it. The representative did so and gave the work order back to Adriana along with a copy of the ad. Adriana did not give the representative a copy of the work order. The representative left the facility on foot.

About a two hours later, the representative called respondent's facility and spoke to Adriana, who said the Mazda needed front brakes. Adriana said the front rotors needed to be resurfaced and the rear brakes needed cleaning and adjusting. Adriana said the total for parts and labor, which included replacing the front brake pads, machining the front rotors, and cleaning and adjusting the rear brakes, was \$182.00. The representative authorized the repairs.

The representative returned to respondent's facility about three hours later and met with Adriana. She gave the representative two copies of the invoice which she signed and returned. The representative paid Adriana \$182.60 in cash. Adriana gave the representative the invoice and the keys to the Mazda. The invoice did not document all parts as new, used, rebuilt, or reconditioned. The odometer reading was 80,410 when she drove away and returned the vehicle to Mr. Winkowski.

8. Paul Hsu is a Program Representative with the Bureau and works in its Rialto Documentation Lab. He has worked as an auto mechanic for many years, worked for the Bureau for 14 years, and worked in the documentation lab for the last three years. He holds various licenses and certifications in the field.

On April 12, 2007, Mr. Hsu began documenting the condition of the brake system of the Bureau's 1995 Mazda 626 later used in the undercover operation on May 30, 2007. He inspected the front and rear brakes and found they were in good condition. He measured the front disc rotors and found them in specification. He did not believe they needed machining and they were not scored or heat stained. They showed signs of recent machining. He found the runout was within specifications. Mr. Hsu then machined the four front disc pads to a point where the wear indicators would contact the brake rotors and make noise. An acceptable repair was to replace the front disc pads. He then performed a road test and after

four miles, the brakes became fully normal in operation, without pull, chatter, grab, pulsation, or fade. He did hear squeaking noises emanating from the front brakes, and expected them because the wear indicators were contacting the rotor surfaces. He inspected the brakes again and found no problems within the braking system and no overheated or damaged parts. He blended the appearance of the brake system to match the condition of the adjacent areas. He road-tested the vehicle again, driving four miles, and found the braking system remained normal. The odometer reading was 80,405.

On May 30 2007, the Mazda was transported to Spring Valley and transferred to Mr. Winkowski's custody. Mr. Blasjo received it back later in the day after it had been driven six miles.

On June 12, 2007, after he received a copy of respondent's invoice for the repairs performed on the Mazda, Mr. Hsu reinspected the vehicle. He drove it and found the brakes performed normally and he did not hear the wear indicator noise. He determined that the front brake pads were replacement parts that looked new and the front disc rotors had been machined, then lightly sanded. He measured the rotors and determined that about 0.10 in. had been machined from each rotor and the rotor runout within specifications. He examined the rear brakes and concluded they had not been cleaned because they did not appear any cleaner than when he had blended the appearance of the brakes initially. He also found no evidence that the rear brakes had been adjusted.

In Mr. Hsu's opinion, the front brake rotors did not need to be machined because he had measured them only a few miles earlier and they were within specifications. It was also his opinion that the rear brakes were not cleaned or adjusted.

9. After he completed his investigation, Mr. Winkowski concluded that respondents made false and misleading statements to three customers to induce them to agree to have unnecessary work performed on the vehicles they brought to respondent's facility. In his view, the customers did not receive the advertised price, they were baited with one price and charged another, and respondents did not intend to perform the service at the advertised price. In his opinion, the ads for services were too low and they were too good to be true.

Respondent's Evidence

10. Thomas Teevin testified as an expert for respondent. He has been a master certified technician since 1978, possessed a smog check license since 1983, and is a teacher at San Diego City College. He has worked in the parts supply business for Napa and One Stop and is familiar with brakes and brake parts. He has a degree from Western Wisconsin University and has been in business a long time.

Mr. Teevin did not inspect the brakes on any of the vehicles used by the Bureau during its three undercover operations against respondent. He testified, however, that the process used by the three program representatives in milling the existing brake pads to the

point that they had to be replaced contaminated them. He pointed to a coolant used to suppress dust that became imbedded in the pad that in turn damaged the rotors when the brakes were applied. He also criticized the Bureau mechanics for using an acid solution to make the newly-installed rotors look old because the solution would change the rotors' finish, and he has found that if the solution is not removed, the brakes might not work at all. He felt the rotors had been contaminated and that required they be resurfaced.

In Mr. Teevin's view, the better practice is to turn rotors when new brake pads are installed to eliminate squeal and other noises, and to avoid having customers return. He testified he always turned rotors when new pads were installed. He has known respondent for ten years.

Mr. Teevin testified the current litigation was "absolute lunacy." He believed this undercover operation would generate revenue for the state. He disagreed with General Motors which required turning rotors only in certain situations, and testified that only GM, and no other manufacturer, required this. He believed it was an accepted industry standard for a shop to turn rotors whenever it installed new pads, and one reason was to avoid complaints. He testified a shop should tell the customer that turning the rotors was the best job.

11. Corey Gonzales is an auto mechanic with extensive training and certifications. He worked for GM for three years and presently works for respondent. He described how he performed resurfacing of rotors based on his training from GM. He testified he was not trained at GM to perform "pad slaps," that is, simply installing new pads without turning the rotors. Instead, he was trained to always turn the rotors and this was for safety reasons. However, he estimated that while working for respondent, he has not always turned the rotors when replacing brake pads.

12. Adriana Petro testified the amount of the Bureau's costs far exceeds her ability to pay. She testified respondent's facility is located in a lower income area and has been in business since 1986. She estimated the shop made about \$25,000-35,000 a month gross and she and her husband earned about \$5,000.00 a month from the business. She noted business has declined in the last few years because of the economic situation many of her lower income customers are in.

Ms. Petro testified that she has not received any complaints for faulty brake work or complaints about their advertising.

13. Respondent Jorge Petro testified his operation was a small one, family owned, and he tries to do the right thing. He did not believe he did anything wrong.

Evaluation

14. Respondent's defense is based upon Mr. Teevin's testimony that the Bureau mechanics contaminated the brake pads when they machined them to a point where they had to be replaced, and the pads then contaminated the rotors so that they necessarily had to be machined. His testimony is rejected. He was not an unbiased witness. He has a great deal of animosity towards the Bureau, calling this proceeding "absolute lunacy" and designed to generate revenue. He manifested a very negative attitude while testifying. He provided nothing to support his testimony except his belief that because he had been in the auto repair business for 45 years he knew what he was talking about. There was nothing to support such confidence. Furthermore, his claims that the rotors could be damaged requiring resurfacing after having been driven just a handful of miles simply makes no sense.

In contrast, the testimony of each of the Bureau mechanics was supported by extensive documentation, including photographs and manuals. Each testified that he used proper procedures which did not contaminate the brake pads, and the testimony of each witness made sense. Each corroborated the other. Their opinions were far more persuasive than those of Mr. Teevin.

15. The issue presented in this proceeding was one of appropriate disclosure to customers who sought services for brakes on their vehicles. Respondent offered a brake service at a very low price, but the evidence established that it was respondent's policy to persuade its customers to authorize more extensive and more expensive repairs than were necessary. All three customers were told that for one reason or another, or for no reason at all, the front brake rotors had to be resurfaced when in fact they did not. Respondent could have told the customers that resurfacing the rotors in every case was a good idea, but respondent did not do that, and instead, misrepresented the condition of the rotors so that the customers would agree to the additional work. The only work required was replacement of the front brake pads, which cost far less than the work actually performed.

Costs

16. The Bureau incurred costs of investigation totaling \$31,971.97. In addition, the Bureau incurred attorney's fees for the services of Office of the Attorney General in the amount of \$18,260.50. The total costs for the investigation and enforcement of this matter is \$50,232.47.

LEGAL CONCLUSIONS

1. Business and Professions Code section 9884.7 provides in part:

(a) *The director, where the automotive repair dealer cannot show there was a bona fide error . . . may invalidate 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.

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

(4) Any other conduct that constitutes fraud.

(6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

(7) Any willful departure from or disregard of accepted trade standards for good and workmanlike repair in any material respect, which is prejudicial to another without consent of the owner or his or her duly authorized representative.

2. Business and Professions Code section 9884.8 provides:

All work done by an automotive repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied. Service work and parts shall be listed separately on the invoice, which shall also state separately the subtotal prices for service work and for parts, not including sales tax, and shall state separately the sales tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall clearly state that fact. If a part of a component system is composed of new and used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a statement indicating whether any crash parts are original equipment manufacturer crash parts or nonoriginal equipment manufacturer aftermarket crash parts. One copy of the invoice shall be given to the customer and one copy shall be retained by the automotive repair dealer.

3. Business and Professions Code section 9884.9 provides in part:

(a) The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job.

4. Cause to invalidate respondent's registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), false or misleading statements, was established in that respondent made statements which it knew, or should have known, to be untrue or misleading, as follows:

a. Falsely represented to the representative operating the 2001 Chevrolet Monte Carlo that his vehicle's front brake rotors needed to be resurfaced when, in fact, the front brake rotors were in good serviceable condition and did not need to be resurfaced, as established in Factual Findings 3, 4, 9, 14, and 15.

b. Falsely represented to the representative operating the 1996 Chevrolet Camaro that her vehicle's front brake rotors needed to be resurfaced when, in fact, the front brake rotors were in good serviceable condition and did not need to be resurfaced, as established in Factual Findings 5, 6, 9, 14, and 15.

c. Falsely represented to the representative operating the 1996 Chevrolet Camaro that her vehicle's rear brakes needed to be cleaned and adjusted when, in fact, the rear brakes were in good serviceable condition and did not need to be cleaned and adjusted, as established in Factual Findings 5, 6, 9, 14, and 15.

d. Falsely represented to the representative operating the 1995 Mazda 626 that her vehicle's front brake rotors needed to be resurfaced when, in fact, the front brake rotors were in good serviceable condition and did not need to be resurfaced, as established in Factual Findings 7, 8, 9, 14, and 15.

e. Falsely represented to the representative operating the 1995 Mazda 626 that her vehicle's rear brakes needed to be cleaned and adjusted when, in fact, the rear brakes were in good serviceable condition and did not need to be cleaned and adjusted, as established in Factual Findings 7, 8, 9, 14, and 15.

5. Cause to invalidate respondent's registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(3), was established by reason of Findings 3, 5, and 7 in that in connection with each undercover operation, respondent failed to provide the representative with a copy of the work order as soon as the representative signed the document.

6. Cause to invalidate respondent's registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), fraud, was established by:

a. Findings 3 through 9, 14, and 15 in that in connection with each undercover operation, respondent accepted payment from the representatives to resurface the front brake rotors when, in fact, those parts were in good serviceable condition and not in need of resurfacing.

b. Findings 5, 6, 9, 14, and 15 in that in connection with the undercover operations relating to the 1996 Chevrolet Camaro, respondent accepted payment from the representative to clean and adjust the rear brakes when, in fact, the rear brakes were in good serviceable condition and did not need to be cleaned and adjusted.

c. Findings 7, 8, 9, 14, and 15 in that in connection with the undercover operations relating to the 1995 Mazda 626, respondent accepted payment from the representative to clean and adjust the rear brakes when, in fact, respondent failed to clean and adjust the rear brakes as invoiced.

7. Cause to invalidate respondent's registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), failing to comply with sections 9884.8 and 9884.9, subdivision (a), was established by Findings 3, 5, and 7 in that in connection with each of the undercover operations, respondent failed to document all parts as new, used, rebuilt, or reconditioned on its invoice and failed to provide the representatives with an estimated price for a specific job.

8. Cause to invalidate respondent's registration pursuant to Business and Professions Code section 9884.7, subdivision (a)(17), departure from trade standard, was not established by reason of Finding 3 and footnote 1. While respondent may have resurfaced the right front brake rotor on the 2001 Chevrolet Monte Carlo beyond the specifications then existing, the specifications have since changed and under current specifications, respondent's work would not violated trade standards. There is no reason to find a violation of trade standards and impose discipline for the commission of an act that is no longer improper.

9. The Bureau enacted disciplinary guidelines, which are found at Title 16, California Code of Regulations, section 3395.4. The guidelines provide a range of sanctions for various violations. The Bureau requests that an administrative law judge take into account factors in aggravation and mitigation when considering a final penalty. The only factor in aggravation is the pattern of misconduct. Three instances of misconduct arising from undercover operations occurred within a seven-month period more than three years ago. There have been no prior disciplinary actions, citations, office conferences, probation, and so forth relating to respondent's operation of his shop.

In mitigation, the amounts involved in each case are small and the investigation was prompted not by consumer complaints against respondent but because its ads were deemed too good to be true. Mrs. Petro testified in a sincere and honest way that her entire goal is to provide a good service to her customers, and she did not want them to be dissatisfied with the work done. She and her husband believe that a proper brake job includes resurfacing the

rotor when new brake pads are installed. Since the investigation, respondent has changed its advertising.

After weighing the factors of aggravation and mitigation, and considering all the evidence, it is appropriate to conclude that revocation of respondent's license is not necessary to adequately protect the public.

The two primary statutory violations were Business and Professions Code section 9884.7, subdivision (a)(1), false or misleading statements, and subdivision (a)(4), fraud. For violations involving false and misleading statements, the Bureau's recommended minimum penalty is a 90-day suspension, with 80 days stayed, and a two-year period of probation. For violations involving fraud, the recommended minimum penalty is revocation stayed, 30-day suspension, and a five-year period of probation. Penalties for violations involving documentation are less.

Mr. Winkowski who conducted the undercover investigation for the Bureau viewed this case as one involving false and misleading statements made to three customers to have unnecessary work performed. He also considered respondent's advertising as a form of bait and switch. He never testified that he viewed the case as one involving fraud. (Factual Finding 9.) At the hearing, the Bureau presented the case as one involving failure to disclose information and misrepresentation. Again, the Bureau did not view the case as one involving fraud.

Based on the foregoing, it is appropriate to view this case as primarily involving a violation of section 9884.7, subdivision (a)(1), false or misleading statement, but the fraudulent aspects of respondent's conduct cannot be ignored. For this reason, a penalty greater than the recommended penalty for a violation of 9884.7, subdivision (a)(1) is appropriate, but it should be less than the penalty recommended for a violation of 9884.7, subdivision (a)(4). Accordingly, based upon all the evidence and the violations established, and taking into account the Bureau's disciplinary guidelines, it is determined that a penalty of revocation, stayed, with a period of probation of three years, and a ten-day period of suspension, most appropriately protects the public.

10. Cause exists pursuant to Business and Professions Code section 125.3 to order respondents to pay the Bureau's costs of investigation and prosecution in this matter in the amount of \$50,232.47 by reason of Factual Finding 15.

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Supreme Court rejected a constitutional challenge to a cost regulation similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure the cost provision did not deter individuals from exercising their right to a hearing: An agency must not assess the full costs where it would unfairly penalize the respondent who has committed some misconduct but who has used the hearing process to obtain the dismissal of some charges or a reduction in

the severity of the penalty; the agency must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the agency must consider a respondent's ability to pay; and the agency may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct.

Respondent operates a small shop and demonstrated it did not have the financial resources to pay investigation costs in excess of \$50,000. After giving due consideration to respondents' ability to pay and the severity of the violations in relation to the extent of the investigation, it is reasonable to reduce the costs to \$7,500.00.

ORDER

Automotive Repair Dealer Registration No. AK 236228 issued to respondent Jorge Alberto Petro, President of Petro Group Inc., dba Petro Auto Care, is permanently invalidated. However, the invalidation is stayed and respondent is placed on probation for three (3) years on the following terms and conditions:

1. During the period of probation, respondent shall:
 - 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 the respondent 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 Department may, after giving notice and opportunity to be heard permanently invalidate the registrations.

h. If the accusation involves false and misleading advertising, during the period of probation, respondent shall submit any proposed advertising copy, whether revised or new, to the Bureau at least thirty (30) days prior to its use.

2. Respondent's registration is suspended for ten (10) days from the effective date of this decision.

3. Respondent shall reimburse the Bureau for its costs of investigation in the amount of \$7,500.00.

DATED: 8/16/2010


ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

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9

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

13 In the Matter of the Accusation Against:
14 **PETRO GROUP, INC., DBA**
PETRO AUTO CARE
15 8740 Jamacha Road, Suite B
Spring Valley, California 91977
16 **JORGE ALBERTO PETRO, PRESIDENT**
17 Automotive Repair Dealer Registration
No. AK 236228

Case No. 77108-13
A C C U S A T I O N

18 Respondent.
19

20 Sherry Mehl ("Complainant") alleges:

21 PARTIES

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

24 **Automotive Repair Dealer Registration**

25 2. On or about October 29, 2004, the Bureau issued Automotive Repair
26 Dealer Registration Number AK 236228 ("registration") to Petro Group, Inc., ("Respondent"),
27 doing business as Precision Muffler & Brake. The registration was delinquent from

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1 October 31, 2005, to November 3, 2005, and October 31, 2006, to November 7, 2006. On or
2 about March 28, 2008, the business name changed to "Petro Auto Care". The registration will
3 expire on October 31, 2008, unless renewed.

4 STATUTORY PROVISIONS

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

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

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

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

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
23 regulations adopted pursuant to it.

24 (7) Any willful departure from or disregard of accepted trade standards for
25 good and workmanlike repair in any material respect, which is prejudicial to
26 another without consent of the owner or his or her duly authorized representative.

27 (b) Except as provided for in subdivision (c), if an automotive repair
28 dealer operates more than one place of business in this state, the director pursuant
to subdivision (a) shall only refuse to validate, or shall only invalidate temporarily
or permanently 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.

(c) Notwithstanding subdivision (b), the director may refuse to validate, or
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.

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1 4. Code section 9884.8 states:

2 All work done by an automotive repair dealer, including all warranty
3 work, shall be recorded on an invoice and shall describe all service work done and
4 parts supplied. Service work and parts shall be listed separately on the invoice,
5 which shall also state separately the subtotal prices for service work and for parts,
6 not including sales tax, and shall state separately the sales tax, if any, applicable to
7 each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall
8 clearly state that fact. If a part of a component system is composed of new and
9 used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The
10 invoice shall include a statement indicating whether any crash parts are original
11 equipment manufacturer crash parts or nonoriginal equipment manufacturer
12 aftermarket crash parts. One copy of the invoice shall be given to the customer
13 and one copy shall be retained by the automotive repair dealer.

14 5. Code section 9884.9 states, in pertinent part:

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

26 6. Code section 9884.13 provides, in pertinent part, that the expiration of a
27 valid registration shall not deprive the director or chief of jurisdiction to proceed with a

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1 \$195.40. The operator asked Adriana what was wrong with the brake rotors. Adriana told the
2 operator that the brake rotors needed to be resurfaced "because of the wear they had", and that
3 the brakes "would cause vibrations".

4 11. Later that afternoon, the operator returned to Respondent's facility to pick
5 up the vehicle. The operator signed an invoice, paid Adriana \$205.17, and received a copy of
6 Invoice Number [REDACTED].

7 12. On or about November 7, 2006, the Bureau road tested and reinspected the
8 vehicle using Invoice Number [REDACTED]. The inspection revealed that front pads had been
9 replaced and the rotors had been resurfaced; however, the front brake rotors had been in good
10 serviceable condition and did not need to be resurfaced. Additionally, the right front brake rotor
11 had been machined out of specification.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Misleading Statements)**

14 13. Respondent has subjected its registration to discipline under Code section
15 9884.7, subdivision (a)(1), in that on or about November 6, 2006, it made statements which it
16 knew or which by exercise of reasonable care it should have known to be untrue or misleading by
17 falsely representing to the operator that the front brake rotors needed to be resurfaced when, in
18 fact, the front brake rotors were in good serviceable condition and did not need to be resurfaced.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Failure to Provide a Copy of a Signed Document)**

21 14. Respondent has subjected its registration to discipline under Code section
22 9884.7, subdivision (a)(3), in that on or about November 6, 2006, Respondent failed to provide
23 the operator with a copy of the work order as soon as the operator signed the document.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Fraud)**

26 15. Respondent has subjected its registration to discipline under Code section
27 9884.7, subdivision (a)(4), in that on or about November 6, 2006, it committed fraud when it

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1 accepted payment from the operator to resurface the front brake rotors when, in fact, those parts
2 were in good serviceable condition and not in need of resurfacing.

3 **FOURTH CAUSE FOR DISCIPLINE**

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

5 16. Respondent has subjected its registration to discipline under Code section
6 9884.7, subdivision (a)(6), in that on or about November 6, 2006, it failed to comply with the
7 following Code sections:

8 a. **Section 9884.8:** Regarding Invoice No. [REDACTED], Respondent failed to
9 document all parts as new, used, rebuilt or reconditioned.

10 b. **Section 9884.9, subdivision (a):** Respondent failed to provide the
11 operator with a written estimated price for parts and labor for a specific job.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **(Departure From Trade Standards)**

14 17. Respondent has subjected its registration to discipline under Code section
15 9884.7, subdivision (a)(7), in that on or about November 6, 2006, Respondent willfully departed
16 from or disregarded accepted trade standards for good and workmanlike repair by resurfacing the
17 right front brake rotor out of specification.

18 **UNDERCOVER OPERATION NO. 2 - 1996 CHEVROLET CAMARO**

19 18. On or about January 29, 2007, a Bureau undercover operator using the
20 alias Judy Kercher ("operator") telephoned Respondent's facility and spoke with Adriana. The
21 operator told Adriana she had coupons from a PennySaver advertisement for brake pads or shoes
22 and a labor special. Adriana told the operator the cost of front brakes would be \$89 and rear
23 brakes were also \$89. Adriana told the operator that the advertised brake special of \$45 was for
24 organic brake pads and that the operator's vehicle had semi-metallic pads. Adriana went on to
25 say that the operator could get the front brakes done for \$79 and the rear brakes for \$79. The
26 operator drove a Bureau documented 1996 Chevrolet Camaro, California License Plate No.
27 [REDACTED] to Respondent's facility and requested the advertised brake special, which included
28 a free brake inspection. The only repair necessary was to replace the front brake pads. The

1 operator spoke with Adriana and provided her with the advertisement for the brake special.
2 The operator filled out and signed a work order; however, the operator was not provided with a
3 copy of the document.

4 19. Later the same day, the operator spoke with Adriana, who told the operator
5 that the vehicle needed new front brakes. Further, Adriana told the operator that the front brake
6 rotors needed to be resurfaced because they had "black spots". Adriana also told the operator
7 that the rear brakes should be cleaned and adjusted because the "rear brakes were not touching".
8 Adriana quoted the operator \$222.15 for all the repairs. The operator authorized the repairs.

9 20. That same afternoon, the operator returned to Respondent's facility to pick
10 up the vehicle. The operator paid Adriana \$222.15 for the repairs and signed and received a
11 copy of Invoice No. [REDACTED].

12 21. On January 30, 2007, the Bureau began its reinspection of the vehicle
13 using Invoice No. [REDACTED]. The inspection revealed the following:

- 14 a. Respondent resurfaced the front brake rotors; however, the front brake
15 rotors were in good serviceable condition and did not need to be resurfaced.
16 b. Respondent failed to clean the rear brakes as invoiced.
17 c. Respondent adjusted the rear brakes; however, that service was not
18 necessary.

19 SIXTH CAUSE FOR DISCIPLINE

20 (Misleading Statements)

21 22. Respondent has subjected its registration to discipline under Code section
22 9884.7, subdivision (a)(1), in that on or about January 29, 2007, it made statements which it
23 knew or which by exercise of reasonable care it should have known to be untrue or misleading,
24 as follows:

- 25 a. Respondent represented to the operator that the front brake rotors needed
26 to be resurfaced when, in fact, the front brake rotors were in good serviceable condition and did
27 not need to be resurfaced.

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1 TENTH CAUSE FOR DISCIPLINE

2 (Misleading Statements)

3 30. Respondent has subjected its registration to discipline under Code section
4 9884.7, subdivision (a)(1), in that on or about May 30, 2007, it made statements which it knew or
5 which by exercise of reasonable care it should have known to be untrue or misleading, as
6 follows:

7 a. Respondent represented to the operator that the front brake rotors needed
8 to be resurfaced when, in fact, the front brake rotors were in good serviceable condition and did
9 not need to be resurfaced.

10 b. Respondent represented to the operator that the rear brakes needed to be
11 cleaned and adjusted when, in fact, this service was not necessary.

12 ELEVENTH CAUSE FOR DISCIPLINE

13 (Failure to Provide a Copy of a Signed Document)

14 31. Respondent has subjected its registration to discipline under Code section
15 9884.7, subdivision (a)(3), in that on or about May 30, 2007, Respondent failed to provide the
16 operator with a copy of the work order as soon as the operator signed the document.

17 TWELFTH CAUSE FOR DISCIPLINE

18 (Fraud)

19 32. Respondent has subjected its registration to discipline under Code section
20 9884.7, subdivision (a)(4), in that on or about May 30, 2007, it committed fraud when it accepted
21 payment from the operator for the following services that were not necessary or were not
22 performed:

23 a. Respondent resurfaced the front brake rotors when, in fact, those parts
24 were in good serviceable condition and did not need to be resurfaced.

25 b. Respondent failed to clean and adjust the rear brakes as invoiced.

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1 THIRTEENTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with Code)

3 33. Respondent has subjected its registration to discipline under Code section
4 9884.7, subdivision (a)(6), in that on or about May 30, 2007, it failed to comply with the
5 following Code sections:

6 a. Section 9884.8: Regarding Invoice No. [REDACTED], Respondent failed to
7 document all parts as new, used, rebuilt or reconditioned.

8 b. Section 9884.9, subdivision (a): Respondent failed to provide the
9 operator with a written estimated price for parts and labor for a specific job.

10 OTHER MATTERS

11 34. Under Code section 9884.7, subdivision (c), the director may invalidate
12 temporarily or permanently or refuse to validate, the registrations for all places of business
13 operated in this state by Petro Group, Inc., doing business as Petro Auto Care, upon a
14 finding that it has, or is, engaged in a course of repeated and willful violations of the laws and
15 regulations pertaining to an automotive repair dealer.

16 PRAYER

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

19 1. Temporarily or permanently invalidating Automotive Repair Dealer
20 Registration Number AK 236228, issued to Petro Group, Inc., doing business as Petro Auto
21 Care;

22 2. Temporarily or permanently invalidating any other automotive repair dealer
23 registration issued to Petro Group, Inc., doing business as Petro Auto Care;

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1 3. Ordering Petro Group, Inc., to pay the Bureau of Automotive Repair the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
3 125.3; and,

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

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6 DATED: 9/9/08

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