

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

In the Matter of the Accusation Against:

**RELIANCE AUTO BODY,
MOHAMMAD S. YUSUFI, OWNER**

Automotive Repair Dealer Registration
No. ARD 236453,

Case No. 77/11-64

OAH No. 2013040230

Respondent.

DECISION

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

This Decision shall become effective _____

SEP 16 2013

DATED: August 8, 2013



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

BEFORE THE DIRECTOR OF THE
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FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA

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Respondent.

Case No. 77/11-64

OAH No. 2013040230

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on July 16, 2013, in Oakland, California.

Deputy Attorney General Justin R. Surber represented complainant John Wallauch, Chief of the Bureau of Automotive Repair.

Mohammad Salim Yusufi represented himself and Reliance Auto Body.

The matter was submitted for decision on July 16, 2013.

FACTUAL FINDINGS

1. John Wallauch brought the accusation solely in his official capacity as the Chief of the Bureau of Automotive Repair (bureau), Department of Consumer Affairs.

2. On November 18, 2004, the bureau issued automotive repair dealer registration (No. ARD 236453), to Mohammad Salim Yusufi (respondent), doing business as Reliance Auto Body, at 29547 Ruus Road, Hayward, California. The registration is scheduled to expire on November 30, 2013, unless renewed.

The Bureau's Investigation

CONSUMER COMPLAINT

3. Consumer Sara Steadman contacted her insurer, Progressive Choice Insurance Company (Progressive), after her 2008 Dodge Charger was damaged in a traffic accident on October 10, 2010. A Progressive representative inspected the vehicle and went over the damage with her. The representative advised Steadman that the front grille and emblem would be replaced during the repair.

4. Steadman took her 2008 Dodge Charger to respondent's facility for collision repairs shortly thereafter. She met with Syed Merhan at the facility. Merhan promised to "take care of everything" and to return her vehicle to its pre-accident condition.

5. On October 12, 2010, Progressive prepared a damage appraisal for Steadman's car. The damage appraisal, totaling \$5,234.27, was provided to Merhan. Steadman left her car to be repaired at respondent's facility on November 1, 2010. Steadman was not given an estimate when she left her vehicle. Steadman understood that Merhan would repair the vehicle pursuant to Progressive's damage appraisal.

6. When Steadman returned to pick up her vehicle, she noticed that the emblem on the car was not new. Steadman questioned Merhan about the emblem; he told her that it was on back order and she should return in two weeks for him to install it. Merhan represented to Steadman that the balance of the repairs had been completed. She was not given a final invoice for the repair.

7. Upon inspecting the front grille closely, Steadman could see that it also had not been replaced. There was a scratch on the grille that she recognized as having been there before the accident. In addition, she noticed that the paint was chipping off of the bumper.

8. Steadman returned to respondent's facility pointed out the cracked grille and the paint chips on the bumper. Merhan told her to return in one week and he would fix the problems. When Steadman returned a week later, Merhan told her to come back in another week. Steadman returned a few more times, but eventually lost faith in respondent's facility and demanded a refund so that she could take the car to a new facility to have it repaired properly.

9. Progressive issued a check to respondent's facility for the repairs less Steadman's deductible of \$500. The check, dated December 9, 2010, in the amount of \$4,734.27 was endorsed by respondent and deposited into the facility's bank account.

10. Merhan later offered to settle the dispute with Steadman for \$1,100. Steadman refused, knowing the facility he had received a far larger payment from Progressive.

11. Steadman took the vehicle to another repair facility and filed a complaint with the bureau on January 25, 2011. She also filed a small claims court action against respondent's facility.¹

12. Bureau representative Philip Rice met with Steadman and inspected the vehicle on February 24, 2011. Rice observed that the front grille was cracked in two places and had not been replaced as described Progressive's damage appraisal. He also determined that the following parts had not been replaced as described in Progressive's appraisal: the air conditioner condenser, the upper front body tie bar, the right front body side rail assembly, the low note horn assembly and the high note horn assembly. Progressive had paid respondent's facility \$2,174.40 to perform these repairs.

13. Rice contacted respondent to ask about the repair on Steadman's vehicle. On March 22, 2011, Rice met with respondent and Merhan, who identified himself as the service manager. Merhan stated that he had repaired the vehicle pursuant to Progressive's damage appraisal and therefore did not prepare an estimate. Merhan did not write the facility's license number on the document as required when a facility relies upon an insurer's damage appraisal. Rice requested copies of the receipts for the parts replaced on Steadman's vehicle.

14. On March 22, 2011, respondent provided Rice with a receipt for a glass mirror in the amount of \$46.80, dated November 24, 2010, a copy of a money order made out to Steadman in the amount of \$500, dated December 3, 2010, and an agreement stating that Steadman would not have to pay the \$500 deductible and would receive \$500 from the facility if she agreed that respondent's facility could use the old parts in repairing the vehicle.

On March 24, 2011, respondent provided Rice with a receipt dated March 24, 2011, for various parts, including head lamps, a bumper reinforcement, a condenser and a radiator. The receipt references a 2009 Volkswagen Jetta. Respondent did not provide receipts for an air conditioner condenser, the upper front body tie bar, the right front body side rail assembly, the low note horn assembly or the high note horn assembly.

15. Steadman denies signing the agreement allowing respondent's facility to use old parts, or receiving the \$500 cashier's check.

16. After investigating Steadman's complaint, Rice decided to inspect additional repairs performed at respondent's facility.

REPAIR INSPECTION NO. 1

17. On July 13, 2011, the bureau received a copy of the Progressive damage appraisal for a collision repair on a 2008 Honda CRV owned by its insured, Delilah Serrano. Serrano's vehicle was damaged on October 2, 2010. Serrano took her Honda CRV to respondent's facility to be repaired. A Progressive adjuster inspected the vehicle at

¹ In January 2013 respondent paid Steadman \$2,000 to settle the small claims case.

respondent's facility and prepared a damage appraisal that totaled \$3,938.82.

18. Serrano met with Merhan at respondent's facility. He advised her that he owned the facility and that the repairs on her car would take three weeks to complete. Serrano had insurance coverage for a rental car for a one-month period. Serrano was not given an estimate or any paperwork by Merhan regarding the repair of her vehicle; however, she was told the vehicle would be repaired to its pre-accident condition.

19. The repairs to Serrano's vehicle were performed at respondent's facility in November 2010. The vehicle was not ready for 45 days and Serrano had to pay \$400 out-of-pocket for the extra rental car charges. When Serrano picked up her vehicle from respondent's facility, she understood that the repairs outlined on the Progressive appraisal had been made. Progressive paid respondent's facility \$3,938.82 for the completion of the repairs on its damage appraisal. Serrano was not given a final invoice by respondent's facility.

20. On August 3, 2011, Rice performed a post-repair inspection of Serrano's 2008 Honda CRV. The inspection revealed that the following parts had not been replaced, despite the damage appraisal calling for their replacement: 1) the left fender mud guard; 2) the left fender wheel opening molding; 3) the mud guard kit; 4) the left front door repair panel; 5) the left front lower door garnish molding; 6) the left rear lower door garnish molding; 7) the left quarter wheel opening molding; and, 8) the left quarter mud guard. In addition, respondent's facility had failed to refinish the left front door outside and the left front door jambs, or to remove and reinstall the left front belt molding, the left front outer door handle and the left rear outer door handle. The total cost of the repairs described in the Progressive damage appraisal that had not been performed by respondent's facility was \$1,432.05.

REPAIR INSPECTION NO. 2

21. On June 8, 2011, Rice obtained a copy of an insurance file from California State Auto Association (CSAA) concerning the repair of a vehicle owned by its insured, Carl Morris. Morris's 2006 Honda Accord LX was involved in a traffic accident on November 24, 2010. Morris took the vehicle to respondent's facility to perform collision repairs. On November 30, 2010, CSAA inspected Morris's vehicle and estimated the repair cost at \$6,617.80. Morris left his vehicle with respondent's facility to perform the repairs pursuant to the CSAA estimate. Morris was not given an estimate from respondent's facility, but he was told the car would be repaired to its pre-accident condition. When Morris retrieved his vehicle from respondent's facility, he understood that all of the repairs had been made as outlined in the CSAA estimate. On December 1, 2010, CSAA paid respondent \$6,117.80 for the repairs outlined on its estimate.

22. Rice inspected Morris's vehicle on August 4, 2011. He determined that CSAA paid respondent for the following parts that were not replaced as outlined in the CSAA estimate: 1) the information label regarding air bag caution; 2) the information label regarding the coolant notice; 3) the information label regarding the air conditioner

refrigerant; 4) the right front combination lamp assembly; 5) the left front combination lamp assembly; 6) the cooling fan shroud; 7) the air conditioner condenser; 8) the left fender panel; 9) the upper front body tie bar; 10) the high note horn assembly; and 11) the low note horn assembly. In addition, Rice determined that the headlamps had not been adjusted, the air conditioner had not been evacuated and recharged, the left front fender had not been refinished on the edge and outside, and the upper tie bar had not been refinished. The total cost of the repairs described in the CSAA estimate that had not been performed by respondent's facility was \$2,173.92.

REPAIR INSPECTION NO. 3

23. On June 28, 2011, Rice obtained a copy of an insurance file from Mid-Century Insurance Company (MCIC) regarding the repair of its insured Harifa Harifa's 2004 Mitsubishi Endeavor LS automobile. Harifa's vehicle was in a traffic accident on October 3, 2010. Rice met with Harifa and her son to discuss the repair of her vehicle. Harifa informed Rice that her vehicle was repaired at respondent's facility and that she had endorsed MCIC's check for the repairs over to respondent's facility. Harifa was told by Merhan that her vehicle would be repaired to its pre-accident condition. MCIC's estimate for the repair of Harifa's vehicle totaled \$5,886.36. When Harifa picked up her vehicle she understood that it had been repaired to its pre-accident condition. On October 13, 2010, MCIC paid respondent's facility \$5,886.36 for the repairs outlined on its estimate.

24. Rice inspected Harifa's 2004 Mitsubishi Endeavor LS on July 27, 2011. He determined that the following parts had not been replaced on Harifa's vehicle as outlined in the MCIC estimate: 1) the front bumper reinforcement; 2) the hood; 3) the air conditioner condenser; 4) the radiator assembly; 5) the right fender liner; and, 6) the air conditioning label. In addition, Rice determined that respondent's facility had failed to refinish the hood underside, and to evacuate, recover and recharge the refrigerant, as outlined in the MCIC estimate. The total cost of the repairs described in the MCIC estimate that had not been performed by respondent's facility was \$1,509.90.

FINAL STATION VISIT

25. Rice visited respondent's facility on November 3, 2011, to discuss the repair of the vehicles owned by Harifa, Morris and Serrano. He requested copies of the estimates, invoices and parts receipts for these repairs. Respondent informed Rice that he would provide the documents by November 11, 2011. Having received no documents by November 29, 2011, Rice contacted respondent by telephone. Respondent advised Rice that he was unable to locate any documents related to these repairs.

The Bureau's Costs

26. Complainant requests reimbursement of the costs of investigation and enforcement in this matter. Complainant submitted a declaration from the deputy attorney general assigned to enforce the case, with an attachment that details the time spent by

attorneys and paralegals preparing the matter for hearing. The amount incurred by the bureau for legal fees at the time the declaration was made was \$7,655. The deputy attorney general estimated that another six hours of his time would be necessary to further prepare the matter for hearing, bringing the total request to \$8,675. Whether this estimate proved to be accurate was not established at hearing.

27. Complainant also requests reimbursement of the costs of investigation by bureau employees. A program manager in Case Management and Enforcement Statistics certified a request for reimbursement of costs in the amount of \$14,918.39. The request is supported further by the testimony and declarations received in evidence from bureau personnel.

28. Complainant's total request for reimbursement of costs is \$23,593.39.

Respondent's Evidence

29. Respondent does not dispute that the vehicles owned by Steadman, Serrano, Morris and Harifa were not repaired according to the insurance company estimates. Nor does respondent dispute that the insurers paid for all of the repairs outlined in the estimates.

30. Respondent states that because he was suffering from high blood pressure between March 2010 and September 2011, he hired Merhan to run his business. Respondent states that he met Merhan while Merhan worked at a nearby facility. As far as respondent knows, Merhan is not licensed by the bureau. Respondent states that he left Merhan in charge of his facility while he was ill in 2010 and 2011. He states that he fired Merhan in September 2011, after he received numerous complaints about his work.

31. Respondent asserts that he does not know whether Merhan had a deal with Steadman. He offered to repair the vehicle for her, but she refused. He later settled the small claims case with her. Respondent denies responsibility for what happened to Steadman because he was not at the facility when her vehicle was repaired. Respondent concedes, however, that he cashed the check from Progressive for the repair of Steadman's vehicle.

32. Respondent testified that he does not know anything about the repair of Serrano's vehicle. Nor does he know who received the insurance company check. It was deposited at Cypress Market, not in respondent's bank account.

33. Respondent denies having any contact with Morris or being aware that his vehicle was repaired at respondent's facility.

34. Respondent met with Harifa when she came to the facility to complain about the repair performed on her vehicle. Respondent believes that Merhan made a deal with Harifa that satisfied her concerns.

35. Respondent denies any responsibility for Merhan's actions while Merhan was employed at his facility.

Summary

36. The bureau's evidence concerning the repairs of the vehicles owned by Steadman, Serrano, Morris and Harifa was persuasive and established that respondent's facility failed to repair the vehicles to their pre-accident condition despite being paid to do so by the insurers. Respondent hired an unlicensed individual, Merhan, to run his facility. Merhan represented to the insurers and the vehicle owners that the facility would repair the vehicles pursuant to the insurers' damage appraisals/estimates, but he failed to do so. Respondent, and/or his employee, accepted payment in the amount of \$7,290.27 for repairs on the four vehicles that were not performed.

37. Respondent's facility failed to provide the four consumers with proper written estimates or final invoices for their vehicle repairs.

LEGAL CONCLUSIONS

Causes for Discipline

CONSUMER COMPLAINT: 2008 DODGE CHARGER

1. First Cause for Discipline (Misleading Statements): Pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), the bureau may discipline the registration of an automotive repair dealer who has made any statement that is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

As set forth in Factual Findings 4 through 9 and 12, respondent's employee made statements that he knew, or in the exercise of reasonable care should have known, to be untrue or misleading, when he told Steadman and Progressive in November 2010 that Steadman's 2008 Dodge Charger was repaired pursuant to the Progressive damage appraisal. In fact, many parts were not replaced or repaired although the facility was paid by Progressive pursuant to its damage appraisal. Cause therefore exists to discipline the automotive repair dealer registration issued to respondent pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

2. Second Cause for Discipline (Fraud): Pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), the bureau may discipline the registration of an automotive repair dealer who has committed any conduct constituting fraud.

As set forth in Factual Findings 4 through 9 and 12, respondent committed fraud when he accepted payment in the amount of \$4,734.27 from Progressive for repairs to Steadman's vehicle when, in fact, respondent's facility failed to perform repairs to the

vehicle totaling \$2,174.40. Cause therefore exists to discipline the automotive repair dealer registration issued to respondent pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

3. Third Cause for Discipline (Failure to Comply with Code): Pursuant to Business and Professions Code section 9884.8, the bureau may discipline the registration of an automotive repair dealer who fails to provide a customer with a final invoice regarding the repairs performed on the vehicle. Pursuant to Business and Professions Code section 9884.9, subdivision (c), the bureau may discipline the registration of an automotive repair dealer who fails to provide the consumer with a written estimate price for parts and labor.

As set forth in Factual Findings 5, 6 and 13, respondent failed to give Steadman a final invoice or a written estimate on her car repair. Cause therefore exists to discipline the automotive repair dealer registration issued to respondent pursuant to Business and Professions Code sections 9884.8, and 9884.9, subdivision (c).

REPAIR INSPECTION NO. 1

4. Fourth Cause for Discipline (Misleading Statements): As set forth in Factual Findings 17 through 20, respondent, through his employee, made statements that he knew, or in the exercise of reasonable care should have known, to be untrue or misleading, when he told Serrano and Progressive in November 2010, that Serrano's 2008 Honda CRV had been repaired to its pre-accident condition, pursuant to the Progressive damage appraisal. In fact, many parts were not replaced or repaired pursuant to the damage appraisal. Respondent's facility was paid \$1,432.05 by Progressive for repairs that were not performed. Cause therefore exists to discipline the automotive repair dealer registration issued to respondent pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

5. Fifth Cause for Discipline (Fraud): As set forth in Factual Findings 17 through 20, respondent, through his employee, committed fraud when he accepted payment of \$3,983.82 for repairing Serrano's vehicle, pursuant to Progressive's estimate. In fact, respondent's facility had failed to perform repairs outlined in the estimate totaling \$1,432.05. Cause therefore exists to discipline the automotive repair dealer registration issued to respondent pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

6. Sixth Cause for Discipline (Code Violations): As set forth in Factual Findings 18 and 19, respondent failed to comply with Business and Professions Code sections 9884.8 and 9884.9, subdivision (c), by failing to provide Serrano with a final invoice or the estimated price for parts and labor for the repair of her vehicle. Cause therefore exists to discipline the automotive repair dealer registration issued to respondent pursuant to Business and Professions Code sections 9884.8 and 9884.9, subdivision (c).

REPAIR INSPECTION NO. 2

7. Seventh Cause for Discipline (Misleading Statements): As set forth in Factual Findings 21 and 22, respondent, through his employee, made statements that he knew, or in the exercise of reasonable care should have known, to be untrue or misleading, when he represented to Morris and CSAA in December 2010, that Morris's 2006 Honda Accord had been repaired pursuant to the CSAA estimate. In fact, parts totaling \$2,173.92 were not replaced or repaired as outlined in the CSAA estimate. Cause therefore exists to discipline the automotive repair dealer registration issued to respondent pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

8. Eighth Cause for Discipline (Fraud): As set forth in Factual Findings 21 and 22, respondent, through his employee, committed fraud when he accepted payment of \$6,117.87 from CSAA for the repairs to Morris's vehicle when, in fact, respondent's facility had failed to perform repairs totaling \$2,173.92. Cause therefore exists to discipline the automotive repair dealer registration issued to respondent pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

9. Ninth Cause for Discipline (Code Violations): As set forth in Factual Findings 21, 22 and 25, respondent failed to comply with Business and Professions Code sections 9884.8 and 9884.9, subdivision (c), by failing to provide Morris with a final invoice or the estimated price for parts and labor for the repair of his vehicle. Cause therefore exists to discipline the automotive repair dealer registration issued to respondent pursuant to Business and Professions Code sections 9884.8 and 9884.9, subdivision (c).

REPAIR INSPECTION NO. 3

10. Tenth Cause for Discipline (Misleading Statements): As set forth in Factual Findings 23 and 24, respondent, through his employee, made statements that he knew, or in the exercise of reasonable care should have known, to be untrue or misleading, when he told Harifa and MCIC in November 2010, that Harifa's 2004 Mitsubishi Endeavor LS had been repaired pursuant to the MCIC estimate. In fact, repairs totaling \$1,509.90 were not replaced or repaired pursuant to the MCIC estimate. Cause therefore exists to discipline the automotive repair dealer registration issued to respondent pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).

11. Eleventh Cause for Discipline (Fraud): As set forth in Factual Findings 23 and 24, respondent, through his employee, committed fraud when he accepted payment of \$5,886.36 from MCIC when, in fact, respondent's facility had failed to perform repairs totaling \$1,509.90. Cause therefore exists to discipline the automotive repair dealer registration issued to respondent pursuant to Business and Professions Code section 9884.7, subdivision (a)(4).

12. Twelfth Cause for Discipline (Code Violations): As set forth in Factual Findings 23 through 25, respondent failed to comply with Business and Professions Code sections 9884.8 and 9884.9, subdivision (c), by failing to provide Harifa with a final invoice or the estimated price for parts and labor for the repair of her vehicle. Cause therefore exists

to discipline the automotive repair dealer registration issued to respondent pursuant to Business and Professions Code sections 9884.8 and 9884.9, subdivision (c).

Disciplinary Considerations

13. The bureau's guidelines for disciplinary penalties (Cal. Code Regs., tit. 16, § 3395.4) have been considered in reaching the determination of the appropriate penalty.

14. Respondent hired an unlicensed individual to run his facility in his absence with no supervision. His employee made false statements and failed to repair four vehicles as promised to the consumers and insurers involved. The facility was overpaid by \$7,290.27 for the fraud its employee committed on four consumers. Respondent has failed to accept responsibility for his conduct and has provided no evidence of rehabilitation. Protection of the public is the highest priority for the bureau in exercising its licensing, regulatory, and disciplinary functions. In this matter, due to the seriousness of the misconduct, protection of the public mandates revocation of respondent's automotive repair dealer registration.

Costs

15. Pursuant to Business and Professions Code section 125.3, the bureau may request an administrative law judge to order a licensee found to have violated the licensing act to pay an amount that does not exceed the reasonable costs of investigation and enforcement. A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceedings or its designated representative, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

California Code of Regulations, title 1, section 1042, describes the procedures for submitting a request for reimbursement of the costs of investigation and enforcement. Section 1042 requires that except as otherwise provided by law, costs are to be supported by a declaration containing specific facts to support findings regarding actual costs incurred and the reasonableness of the costs. The bureau has established that it has incurred \$7,655 in enforcement costs and \$14,918.39 in investigative costs. (Factual Findings 26 and 27.) The declaration of the Deputy Attorney General also seeks recovery of \$1,020 in estimated costs for an additional six hours of preparation for hearing. (Factual Finding 27.) The estimated costs are not supported by a declaration that complies with California Code of Regulations, title 1, section 1042. Nor was it established at hearing that the estimated costs were, in fact, incurred. Therefore, the estimated costs will not be ordered.

16. This investigation was complex and involved multiple consumers and insurers. The enforcement of the matter was likewise complex. In the absence of evidence to the contrary, costs in the amount of \$22,573.39 are found to be reasonable.

17. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether costs should be assessed in the particular circumstances of each case. The agency must consider whether to do so will unfairly penalize the licensee who has committed misconduct, but who has used the hearing process to obtain a dismissal or a reduction in the severity of the discipline imposed, as well as whether the licensee will be financially able to pay the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct. (*Id.*, at pp. 44-45.) The agency must also 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 to the discipline or is unable to pay.

Here, the misconduct committed was serious and the hearing process did not result in a dismissal or reduction in the severity of the discipline imposed. Therefore, the evidence did not establish a basis for reducing the costs pursuant to the factors identified in *Zuckerman v. State Board of Chiropractic Examiners*, *supra*, 29 Cal.4th 32.

ORDER

1. Automotive Repair Dealer Registration No. ARD 236453 issued to Reliance Auto Body, Mohammad S. Yusufi, owner, is revoked.

2. Any other automotive repair dealer registration issued to Mohammad S. Yusufi is revoked.

3. Respondent Mohammad S. Yusufi shall pay the Bureau of Automotive Affairs the sum of \$22,573.39 as reimbursement for the reasonable costs of investigation and enforcement of this matter.

DATED: 7/19/12



JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings

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

10
11 In the Matter of the Accusation Against:
12 **RELIANCE AUTO BODY**
29547 Ruus Road
13 **Hayward, CA 94544**
MOHAMMAD S. YUSUFI, OWNER
14
15 **Automotive Repair Dealer Registration No.**
ARD 236453
16
17 Respondent.

Case No. 77/11-64

ACCUSATION

18 Complainant alleges:

19 **PARTIES**

20 1. John Wallauch ("Complainant") brings this Accusation solely in his official capacity
21 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

22 **Automotive Repair Dealer Registration**

23 2. On a date uncertain in 2004, the Bureau issued Automotive Repair Dealer
24 Registration Number ARD 236453 ("registration") to Mohammad S. Yusufi ("Respondent"),
25 doing business as Reliance Auto Body. The registration was in full force and effect at all times
26 relevant to the charges brought herein and will expire on November 30, 2012, unless renewed.

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1 may specify in regulation the procedures to be followed by an automotive repair
2 dealer when an authorization or consent for an increase in the original estimated price
3 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 . . .

4 (c) In addition to subdivisions (a) and (b), an automotive repair dealer,
5 when doing auto body or collision repairs, shall provide an itemized written estimate
6 for all parts and labor to the customer. The estimate shall describe labor and parts
7 separately and shall identify each part, indicating whether the replacement part is
8 new, used, rebuilt, or reconditioned. Each crash part shall be identified on the written
estimate and the written estimate shall indicate whether the crash part is an original
equipment manufacturer crash part or a nonoriginal equipment manufacturer
aftermarket crash part.

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

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

17 COST RECOVERY

18 8. Code section 125.3 provides, in pertinent part, that a Board may request the
19 administrative law judge to direct a licensee found to have committed a violation or violations of
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case.

22 **CONSUMER COMPLAINT - 2008 DODGE CHARGER**

23 9. In or about October 2010, Sara Steadman ("consumer") drove her 2008 Dodge
24 Charger to Respondent's facility for collision repairs. On or about October 12, 2010, Progressive
25 Choice Insurance Company ("PCIC"), prepared a Damage Appraisal for Claim No. 10-2441496-
26 01, totaling \$5,234.27, less the consumer's \$500 deductible. Following completion of the repairs,
27 PCIC paid Respondent \$4,734.27 for the repairs and the consumer paid Respondent her \$500
28 deductible. The consumer returned to Respondent's facility to retrieve her vehicle and discovered

1 that the front grille was cracked, the front Chrysler emblem was loose, and the paint on the front
2 bumper was chipped. The consumer returned to Respondent's facility and complained about the
3 repairs and Respondent offered to refund the consumer \$1,100, which she declined. On or about
4 January 28, 2011, the consumer failed a complaint with the Bureau.

5 10. On or about February 24, 2011, the Bureau made a field visit to Akins Collision
6 Center, Inc., and performed a post repair inspection of the consumer's vehicle. The Bureau
7 discovered that the following parts and labor had not been performed, totaling \$2,174.40:

8 a. Respondent failed to replace the front grille, pursuant to line item 11 of the repair
9 estimate.

10 b. Respondent failed to replace the air conditioning condenser, pursuant to line item 20
11 of the repair estimate.

12 c. Respondent failed to evacuate and recharge the air conditioner, pursuant to line item
13 21 of the repair estimate.

14 d. Respondent failed to replace the upper front body tie bar, pursuant to line item 23 of
15 the repair estimate.

16 e. Respondent failed to refinish the upper tie bar, pursuant to line item 24 of the repair
17 estimate.

18 f. Respondent failed to replace the right front body side rail, pursuant to line item 25 of
19 the repair estimate.

20 g. Respondent failed to refinish the sidemember complete, pursuant to line item 26 of
21 the repair estimate.

22 h. Respondent failed to replace the low note horn assembly, pursuant to line item 27 of
23 the repair estimate.

24 i. Respondent failed to replace the high note horn assembly, pursuant to line item 28 of
25 the repair estimate.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Misleading Statements)**

3 11. Respondent has subjected his registration to discipline under Code section 9884.7,
4 subdivision (a)(1), in that in or about November 2010, he made statements which he knew or
5 which by exercise of reasonable care he should have known were untrue or misleading, by
6 representing to the consumer and PCIC that the vehicle had been repaired pursuant to the estimate
7 prepared by PCIC when, in fact, Respondent had not replaced parts and performed labor totaling
8 \$2,174.40, as more particularly set forth in paragraph 10, subparagraphs a through i, above.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Fraud)**

11 12. Respondent has subjected his registration to discipline under Code section 9884.7,
12 subdivision (a)(4), in that in or about December 2010, Respondent committed fraud when he
13 accepted payment of \$4,734.27 from PCIC for parts and labor regarding the repairs to the
14 consumer's vehicle when, in fact, Respondent failed to replace parts and perform labor totaling
15 \$2,174.40.

16 **THIRD CAUSE FOR DISCIPLINE**

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

18 13. Respondent has subjected his registration to discipline under Code section 9884.7,
19 subdivision (a)(6), in that in or about November 2010, Respondent failed to comply with the
20 following sections of that code:

21 a. **Section 9884.8:** Respondent failed to provide the consumer with a final invoice
22 regarding the repairs performed to her vehicle.

23 b. **Section 9884.9, subdivision (c):** Respondent failed to provide the consumer with a
24 written estimated price for parts and labor for a specific job.

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1 **POST AUTO BODY REPAIR INSPECTION NO. 1**

2 14. On or about July 13, 2011, the Bureau received a copy of the PCIC Damage
3 Appraisal for Claim No. 10-1440132-01, totaling \$4,438.82, regarding a 2008 Honda CRV,
4 owned by Delilah Serrano ("consumer"). The repairs were completed by Respondent in or about
5 November 2010. PCIC paid Respondent \$3,938.82 for the repairs.

6 15. On or about August 3, 2011, the Bureau performed a post repair inspection of the
7 consumer's 2008 Honda CRV. That inspection revealed that the following parts had not been
8 replaced and labor had not been performed, totaling \$1,432.05:

9 a. Respondent failed to remove and replace the left fender mud guard, pursuant to line
10 item 4 of the repair estimate.

11 b. Respondent failed to replace the left fender wheel opening moulding, pursuant to line
12 item 5 of the repair estimate.

13 c. Respondent failed to replace the mud guard kit, pursuant to line item 6 of the repair
14 estimate.

15 d. Respondent failed to replace the left front door repair panel, pursuant to line item 8 of
16 the repair estimate.

17 e. Respondent failed to refinish the left front door outside, pursuant to line item 9 of the
18 repair estimate.

19 f. Respondent failed to refinish the left front door jams, pursuant to line item 10 of the
20 repair estimate.

21 g. Respondent failed to remove and install the left front belt moulding, pursuant to line
22 item 11 of the repair estimate.

23 h. Respondent failed to replace the left front lower door garnish moulding, pursuant to
24 line item 13 of the repair estimate.

25 i. Respondent failed to remove and install the left front outer door handle, pursuant to
26 line item 15 of the repair estimate.

27 j. Respondent failed to replace the left rear lower door garnish moulding, pursuant to
28 line item 19 of the repair estimate.

1 k. Respondent failed to remove and install the left rear outer door handle, pursuant to
2 line item 21 of the repair estimate.

3 l. Respondent failed to replace the left quarter wheel opening moulding, pursuant to line
4 item 25 of the repair estimate.

5 m. Respondent failed to replace the left quarter mud guard, pursuant to line item 26 of
6 the repair estimate.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Misleading Statements)**

9 16. Respondent has subjected his registration to discipline under Code section 9884.7,
10 subdivision (a)(1), in that in or about November 2010, he made statements which he knew or
11 which by exercise of reasonable care he should have known were untrue or misleading, by
12 representing to the consumer and PCIC that the vehicle had been repaired pursuant to the estimate
13 prepared by PCIC when, in fact, Respondent had not replaced parts and performed labor totaling
14 \$1,432.05, as more particularly set forth in paragraph 15, subparagraphs a through m, above.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Fraud)**

17 17. Respondent has subjected his registration to discipline under Code section 9884.7,
18 subdivision (a)(4), in that in or about October 2010, Respondent committed fraud when he
19 accepted payment of \$3,938.82 from PCIC for parts and labor regarding the repairs to the
20 consumer's vehicle when, in fact, Respondent failed to replace parts and perform labor totaling
21 \$1,432.05.

22 **SIXTH CAUSE FOR DISCIPLINE**

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

24 18. Respondent has subjected his registration to discipline under Code section 9884.7,
25 subdivision (a)(6), in that in or about November 2010, Respondent failed to comply with the
26 following sections of that code:

27 a. **Section 9884.8:** Respondent failed to provide the consumer with a final invoice
28 regarding the repairs performed to her vehicle.

- 1 i. Respondent failed to refinish the hood underside, pursuant to line item 21 of the
2 repair estimate.
- 3 j. Respondent failed to replace the cooling fan shroud, pursuant to line item 23 or the
4 repair estimate.
- 5 k. Respondent failed to replace the air conditioning condenser, pursuant to line item 24
6 of the repair estimate.
- 7 l. Respondent failed to evacuate and recharge the air conditioning, pursuant to line item
8 25 of the repair estimate.
- 9 m. Respondent failed to replace the left fender panel, pursuant to line item 29 of the
10 repair estimate.
- 11 n. Respondent failed to refinish the left fender outside, pursuant to line item 30 of the
12 repair estimate.
- 13 o. Respondent failed to refinish the left fender edge, pursuant to line item 31 of the
14 repair estimate.
- 15 p. Respondent failed to replace the upper front body tie bar, pursuant to line item 34 of
16 the repair estimate.
- 17 q. Respondent failed to refinish the upper tie bar, pursuant to line item 35 of the repair
18 estimate.
- 19 r. Respondent failed to replace the high note horn assembly, pursuant to line item 36 of
20 the repair estimate.
- 21 s. Respondent failed to replace the low note horn assembly, pursuant to line item 37 of
22 the repair estimate.

23 **SEVENTH CAUSE FOR DISCIPLINE**

24 **(Misleading Statements)**

25 21. Respondent has subjected his registration to discipline under Code section 9884.7,
26 subdivision (a)(1), in that in or about December 2010, he made statements which he knew or
27 which by exercise of reasonable care he should have known were untrue or misleading, by
28 representing to the consumer and CSAA that the vehicle had been repaired pursuant to the

1 estimate prepared by CSAA when, in fact, Respondent had not replaced parts and performed
2 labor totaling \$3,013.37, as more particularly set forth in paragraph 20, subparagraphs a through
3 s, above.

4 **EIGHTH CAUSE FOR DISCIPLINE**

5 **(Fraud)**

6 22. Respondent has subjected his registration to discipline under Code section 9884.7,
7 subdivision (a)(4), in that in or about December 2010, Respondent committed fraud when he
8 accepted payment of \$6,117.87 from CSAA for parts and labor regarding the repairs to the
9 consumer's vehicle when, in fact, Respondent failed to replace parts and perform labor totaling
10 \$3,013.37.

11 **NINTH CAUSE FOR DISCIPLINE**

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

13 23. Respondent has subjected his registration to discipline under Code section 9884.7,
14 subdivision (a)(6), in that in or about December 2010, Respondent failed to comply with the
15 following sections of that code:

16 a. **Section 9884.8:** Respondent failed to provide the consumer with a final invoice
17 regarding the repairs performed to her vehicle.

18 b. **Section 9884.9, subdivision (c):** Respondent failed to provide the consumer with a
19 written estimated price for parts and labor for a specific job.

20 **POST AUTO BODY REPAIR INSPECTION NO. 3**

21 24. On or about June 28, 2011, the Bureau received a copy of the Mid-Century Insurance
22 Company ("MCIC") Estimate of Record for Claim No. 1017024323-1-2, totaling \$5,886.36,
23 regarding a 2004 Mitsubishi Endeavor LS, owned by Hrifia Harifa ("consumer"). The collision
24 repairs were completed by Respondent in or about November 2010. MCIC paid Respondent
25 \$5,886.36 for the repairs.

26 25. On or about July 27, 2011, the Bureau performed a post repair inspection of the
27 consumer's 2004 Mitsubishi Endeavor LS. That inspection revealed that the following parts had
28 not been replaced and labor had not been performed, totaling \$1,509.90:

- 1 a. Respondent failed to replace the front bumper reinforcement, pursuant to line item 12
- 2 of the repair estimate.
- 3 b. Respondent failed to replace the hood, pursuant to line items 16 & 17 of the repair
- 4 estimate.
- 5 c. Respondent failed to refinish the hood underside complete, pursuant to line item 18 of
- 6 the repair estimate.
- 7 d. Respondent failed to replace the air conditioner condenser, pursuant to line item 20 of
- 8 the repair estimate.
- 9 e. Respondent failed to evacuate, recover, and recharge the refrigerant, pursuant to line
- 10 items 21 & 22 of the repair estimate.
- 11 f. Respondent failed to replace the radiator assembly, pursuant to line item 24 of the
- 12 repair estimate.
- 13 g. Respondent failed to replace the right fender liner, pursuant to line item 35 of the
- 14 repair estimate.
- 15 h. Respondent failed to replace the air conditioning label, pursuant to line item 44 of the
- 16 repair estimate.

17 **TENTH CAUSE FOR DISCIPLINE**

18 **(Misleading Statements)**

19 26. Respondent has subjected his registration to discipline under Code section 9884.7,

20 subdivision (a)(1), in that in or about November 2010, he made statements which he knew or

21 which by exercise of reasonable care he should have known were untrue or misleading, by

22 representing to the consumer and MCIC that the vehicle had been repaired pursuant to the

23 estimate prepared by MCIC when, in fact, Respondent had not replaced parts and performed labor

24 totaling \$1,509.90, as more particularly set forth in paragraph 25, subparagraphs a through h,

25 above.

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1 ELEVENTH CAUSE FOR DISCIPLINE

2 (Fraud)

3 27. Respondent has subjected his registration to discipline under Code section 9884.7,
4 subdivision (a)(4), in that in or about October 2010, Respondent committed fraud when he
5 accepted payment of \$5,886.36 from MCIC for parts and labor regarding the repairs to the
6 consumer's vehicle when, in fact, Respondent failed to replace parts and perform labor totaling
7 \$1,509.90.

8 TWELFTH CAUSE FOR DISCIPLINE

9 (Failure to Comply with Code)

10 28. Respondent has subjected his registration to discipline under Code section 9884.7,
11 subdivision (a)(6), in that in or about November 2010, Respondent failed to comply with the
12 following sections of that code:

13 a. **Section 9884.8:** Respondent failed to provide the consumer with a final invoice
14 regarding the repairs performed to her vehicle.

15 b. **Section 9884.9, subdivision (c):** Respondent failed to provide the consumer with a
16 written estimated price for parts and labor for a specific job.

17 OTHER MATTERS

18 29. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
19 or permanently or refuse to validate, the registrations for all places of business operated in this
20 state by Mohammad S. Yusufi, upon a finding that he has, or is, engaged in a course of repeated
21 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

22 PRAYER

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

- 25 1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration
26 Number ARD 236453, issued to Mohammad S. Yusufi, doing business as Reliance Auto Body;
- 27 2. Revoking, suspending or placing on probation any other automotive repair dealer
28 registration issued in the name Mohammad S. Yusufi;

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- 3. Ordering Mohammad S. Yusufi 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,
- 4. Taking such other and further action as deemed necessary and proper.

DATED: June 21 2012


JOHN WALLAUGH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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