

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

In the Matter of the Accusation Against:

IN & OUT SMOG AND OIL CHANGE;
AMIR HOSSEIN LOTFIZADEH
10344 ½ West Olympic Blvd.
Los Angeles, CA 90064

Automotive Repair Dealer Registration
No. ARD 243065
Smog Check, Test Only, Station License
No. TC 243065
Advanced Emission Specialist License
No. EA 146857

Case No. 79/12-38

OAH No. 2012040516

Respondents.

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective 9/28/12.

DATED: September 7, 2012

Doreatha Johnson
DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 SHAWN P. COOK
Deputy Attorney General
4 State Bar No. 117851
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-9954
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

10

11 In the Matter of the Accusation Against:
12 **IN & OUT SMOG AND OIL CHANGE;**
AMIR HOSSEIN LOTFIZADEH
13 **10344 1/2 West Olympic Blvd.**
Los Angeles, CA 90064
14 **Automotive Repair Dealer Registration No.**
ARD 243065
15 **Smog Check, Test Only, Station License No.**
TC 243065
16 **Advanced Emission Specialist License No.**
EA 146857
17
18 Respondents.

Case No. 79/12-38
OAH No. 2012040516
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 PARTIES

- 22 1. John Wallauch (Complainant) is the Chief of the Bureau of Automotive Repair. He
23 brought this action solely in his official capacity and is represented in this matter by Kamala D.
24 Harris, Attorney General of the State of California, by Shawn P. Cook, Deputy Attorney General.
25 2. Respondent In & Out Smog and Oil Change; Amir Hossein Lotfizadeh (Respondent)
26 is represented in this proceeding by attorney Jeffrey T. Osborn, whose address is: Jeffrey T.
27 Osborn, Esq.; Law Offices of Jeffrey T. Osborn; 16152 Beach Blvd., Ste. 250; Huntington Beach,
28 CA 92647

1 and ending dates of the suspension and indicating the reason for the suspension. The sign shall be
2 conspicuously displayed in a location open to and frequented by customers and shall remain
3 posted during the entire period of actual suspension.

4 4. **Reporting.** Respondent or Respondent's authorized representative must report in
5 person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the
6 Bureau, but no more frequently than each quarter, on the methods used and success achieved in
7 maintaining compliance with the terms and conditions of probation.

8 5. **Report Financial Interest.** Within 30 days of the effective date of this action, report
9 any financial interest which any partners, officers, or owners of the Respondent facility may have
10 in any other business required to be registered pursuant to Section 9884.6 of the Business and
11 Professions Code.

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

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

18 8. **Violation of Probation.** Should the Director of Consumer Affairs determine that
19 Respondent has failed to comply with the terms and conditions of probation, the Department may,
20 after giving notice and opportunity to be heard, lift the stay herein of invalidation of the
21 Automotive Repair Dealer Registration and/or revocation of the Smog Check, Test Only, Station
22 License).

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

28 10. **Cost Recovery.** Payment to the Bureau of fifty percent of the total amount of cost

1 recovery (\$10,151.77) shall be received no later than 6 months before probation terminates, to be
 2 paid in twenty-four (24) equal monthly installments. The amount to be paid is \$5,075.88. Failure
 3 to complete payment of cost recovery within this time frame shall constitute a violation of
 4 probation which may subject Respondent's License and/or Registration to outright revocation
 5 without further hearing; however, the Director or the Director's Bureau of Automotive Repair
 6 designee may elect to continue probation until such time as reimbursement of the entire cost
 7 recovery amount has been made to the Bureau.

8 ACCEPTANCE

9 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
 10 discussed it with my attorney, Jeffrey T. Osborn. I understand the stipulation and the effect it will
 11 have on my Automotive Repair Dealer Registration, and Smog Check, Test Only, Station
 12 License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly,
 13 and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer
 14 Affairs.

15
16 DATED: July 31, 12

17 A. Lotfizadeh
 18 IN & OUT SMOG AND OIL CHANGE; AMIR
 19 HOSSEIN LOTFIZADEH

20 Respondent

21 I have read and fully discussed with Respondent In & Out Smog and Oil Change; Amir
 22 Hossein Lotfizadeh the terms and conditions and other matters contained in the above Stipulated
 23 Settlement and Disciplinary Order. I approve its form and content.

24 DATED: 8-1-12

25 Jeffrey T. Osborn
 26 Attorney for Respondent

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ENDORSEMENT

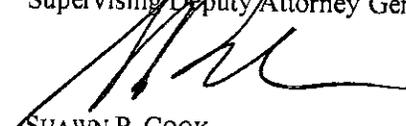
The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: July _____, 2012

August 2, 2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General



SHAWN P. COOK
Deputy Attorney General
Attorneys for Complainant

LA2011501738
Stipulation.rtf

Exhibit A

Accusation No. 79/12-38

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 SHAWN P. COOK
Deputy Attorney General
4 State Bar No. 117851
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-9954
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

12 In the Matter of the Accusation Against:

Case No. 79/12-38

13 **IN & OUT SMOG AND OIL CHANGE**
10344 1/2 West Olympic Blvd.
14 Los Angeles, CA 90064
AMIR HOSSEIN LOTFIZADEH
Automotive Repair Dealer Registration No.
15 ARD 243065
Smog Check Test Only Station License No.
16 TC 243065,

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

17 and

18 **AMIR HOSSEIN LOTFIZADEH**
18236 Nordoff Street
19 Northridge, CA 91325
Advanced Emission Specialist Technician
20 License No. EA 146857

21 Respondents.

22 Complainant alleges:

23 **PARTIES**

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

26 **Automotive Repair Dealer Registration**

27 2. On a date uncertain in 2005, the Bureau issued Automotive Repair Dealer
28 Registration Number ARD 243065 ("registration") to Amir Hossein Lotfizadeh ("Respondent").

1 doing business as In & Out Smog and Oil Change. The registration was in full force and effect at
2 all times relevant to the charges brought herein and will expire on December 31, 2011, unless
3 renewed.

4 **Smog Check Test Only Station License**

5 3. On or about April 24, 2006, the Bureau issued Smog Check Test Only Station
6 License Number TC 243065 ("station license") to Respondent. The station license was in full
7 force and effect at all times relevant to the charges brought herein and will expire on December
8 31, 2011, unless renewed.

9 **Advanced Emission Specialist Technician License**

10 4. On a date uncertain in 2003, the Bureau issued Advanced Emission Specialist
11 Technician License Number EA 146857 ("technician license") to Respondent. The technician
12 license was in full force and effect at all times relevant to the charges brought herein and will
13 expire on February 28, 2013, unless renewed.

14 **STATUTORY PROVISIONS**

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

17 (a) The director, where the automotive repair dealer cannot show there
18 was a bona fide error, may deny, suspend, revoke, or place on probation the
19 registration of an automotive repair dealer for any of the following acts or omissions
20 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.

21 (1) Making or authorizing in any manner or by any means whatever any
22 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.

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

24 (4) Any other conduct that constitutes fraud.

25 (b) Except as provided for in subdivision (c), if an automotive repair
26 dealer operates more than one place of business in this state, the director pursuant to
27 subdivision (a) shall only suspend, revoke, or place on probation the registration of
28 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.

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

6
7
8
9
10 6. Code section 118, subdivision (b) states:

11 The suspension, expiration, or forfeiture by operation of law of a license
12 issued by a board in the department, or its suspension, forfeiture, or cancellation by
13 order of the board or by order of a court of law, or its surrender without the written
14 consent of the board, shall not, during any period in which it may be renewed,
15 restored, reissued, or reinstated, deprive the board of its authority to institute or
16 continue a disciplinary proceeding against the licensee upon any ground provided by
17 law or to enter an order suspending or revoking the license or otherwise taking
18 disciplinary action against the licensee on any such ground.

19
20
21 7. Code section 9884.9 states, in pertinent part:

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

(signature or initials)"

8. 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 disciplinary

1 proceeding against an automotive repair dealer or to render a decision invalidating a registration
2 temporarily or permanently.

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

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

10 11. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

22 13. Section 44072.8 of the Health and Safety Code states:

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

25 COST RECOVERY

26 14. Code section 125.3 provides, in pertinent part, that a Board may request the
27 administrative law judge to direct a licensee found to have committed a violation or violations of
28

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **UNDERCOVER OPERATION – JANUARY 25, 2011**

4 15. On or about January 25, 2011, a Bureau undercover operator drove a Bureau-
5 documented 2002 Chevrolet Monte Carlo to Respondent's facility and requested a smog
6 inspection. The vehicle could not pass the visual portion of a smog inspection because the
7 vehicle's positive crankcase ventilation ("PCV") system was missing. The operator signed a
8 work order/estimate but was not provided with a copy of that document prior to the smog
9 inspection. Respondent performed the smog inspection and issued electronic Certificate of
10 Compliance No. WR658505C for that vehicle. The operator paid \$60 for the smog inspection
11 and received a copy of an invoice dated January 25, 2011, and an illegible copy of the Vehicle
12 Inspection Report.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Misleading Statements)**

15 16. Respondent has subjected his registration to discipline under Code section 9884.7,
16 subdivision (a)(1), in that on or about January 25, 2011, he made statements which he knew or
17 which by exercise of reasonable care he should have known were untrue or misleading when he
18 issued electronic Certificate of Compliance No. WR658505C for the 2002 Chevrolet Monte
19 Carlo, certifying that the vehicle was in compliance with applicable laws and regulations when, in
20 fact, the vehicle's PCV system was missing.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Failed to Provide a Copy of a Signed Document)**

23 17. Respondent has subjected his registration to discipline under Code section 9884.7,
24 subdivision (a)(3), in that on or about January 25, 2011, Respondent failed to provide the operator
25 with a copy of the work order as soon as she signed the document.

26 ///

27 ///

28 ///

1 subdivision (b) (all licensed smog check stations shall utilize original equipment and replacement
2 parts that are certified by the department) and Regulation, section 3340.17, subdivision (e) (the
3 analyzer shall be calibrated only with BAR-approved gases that are certified in accordance with
4 section 3340.18 of that chapter). Respondent was found to have modified his EIS by attaching an
5 air compressor in place of the BAR-approved certified Zero Air Gas. The Bureau assessed a civil
6 penalty of \$1,000. Respondent complied with this citation on March 27, 2009.

7 c. On July 8, 2009, the Bureau issued Citation No. C2010-0005 to Respondent against
8 his registration and station licenses for violations of Health and Safety Code section 44012,
9 subdivision (f) (failure to perform a visual/functional check of emission control devices) and
10 Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
11 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with a
12 missing evaporative canister. The Bureau assessed a civil penalty of \$500. Respondent complied
13 with this citation on September 24, 2009.

14 d. On December 30, 2009, the Bureau issued Citation No. C2010-0610 to Respondent
15 against his registration and station licenses for violations of Health and Safety Code section
16 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
17 and Regulation, section 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle
18 improperly tested). Respondent issued a certificate of compliance to a Bureau vehicle with the
19 ignition timing adjusted beyond the manufacturer's specifications. The Bureau assessed a civil
20 penalty of \$2,000. Respondent appealed this citation on February 10, 2010. A citation hearing
21 was held on August 9, 2011. Respondent has not complied with this citation.

22 e. On March 6, 2008, the Bureau issued Citation No. M08-0754 to Respondent against
23 his technician license for violations of Health and Safety Code section 44032, (qualified
24 technicians shall perform tests of emission control systems and devices in accordance with
25 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
26 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
27 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
28 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with the ignition

1 timing adjusted beyond the manufacturer's specifications. Respondent was required to attend an
2 8-hour training course. Respondent complied with this citation on June 9, 2008.

3 f. On July 8, 2009, the Bureau issued Citation No. M2010-0006 to Respondent against
4 his technician license for violations of Health and Safety Code section 44032, (qualified
5 technicians shall perform tests of emission control systems and devices in accordance with
6 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
7 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
8 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
9 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with a missing
10 evaporative canister. Respondent was required to attend an 8-hour training course. Respondent
11 complied with this citation on November 3, 2009.

12 g. On December 30, 2009, the Bureau issued Citation No. M2010-0611 to Respondent
13 against his technician license for violations of Health and Safety Code section 44032, (qualified
14 technicians shall perform tests of emission control systems and devices in accordance with
15 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
16 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
17 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
18 3340.42). Respondent issued a certificate of compliance to a Bureau vehicle with the ignition
19 timing adjusted beyond the manufacturer's specifications. Respondent was required to attend a
20 16-hour training course. Respondent appealed this citation on February 10, 2010. A citation
21 hearing was held on August 9, 2011. Respondent has not complied with this citation.

22 OTHER MATTERS

23 27. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
24 or permanently or refuse to validate, the registrations for all places of business operated in this
25 state by to Amir Hossein Lotfizadeh, upon a finding that he 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.

28 ///

