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

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12 In the Matter of the Accusation Against:

Case No. 79/09-52

13 THE AUTO & TIRE DOCTOR, INC.
JOHN LAMOREUX, PRESIDENT
14 12000 Pioneer Trail
Truckee, CA 96162

A C C U S A T I O N

(Smog Check)

15

16 Automotive Repair Dealer Reg. No. ARD 251206
Smog Check Station License No. RC 251206

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Respondent.

18

Complainant alleges:

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PARTIES

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

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Automotive Repair Dealer Registration No. ARD 251206

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2. On or about July 24, 2007, the Director of Consumer Affairs ("Director")
25 issued Automotive Repair Dealer Registration Number ARD 251206 to The Auto & Tire Doctor,
26 Inc. ("Respondent"), with John Lamoreux as president. Respondent's automotive repair dealer
27 registration was in full force and effect at all times relevant to the charges brought herein and
28 will expire on June 30, 2009, unless renewed.

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Smog Check Station License No. RC 251206

3. On or about July 25, 2007, the Director issued Smog Check Station License Number RC 251206 to Respondent. Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2009, unless renewed.

Prior Licensing History

Automotive Repair Dealer Registration No. ARD 113440

4. On or about October 18, 1984, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 113440 to Respondent's President, John Lamoreux, as sole owner of Auto Doctor, last located at 12000 Pioneer Trail, Truckee, CA 96162. The registration was canceled on or about July 25, 2007.

Smog Check Station License No. RC 113440

5. On or about April 17, 1990, the Director issued Smog Check Station License Number RC 113440 to Respondent's President, John Lamoreau, as sole owner of Auto Doctor, last located at 12000 Pioneer Trail, Truckee, CA 96162. The registration was canceled on or about July 25, 2007.

JURISDICTION

6. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that the Director may invalidate an automotive repair dealer registration.

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

8. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

9. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director

1 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
2 the Director of jurisdiction to proceed with disciplinary action.

3 **STATUTORY PROVISIONS**

4 10. Bus. & Prof. Code section 9884.7 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
8 following acts or omissions related to the conduct of the business of the
9 automotive repair dealer, which are done by the automotive repair dealer or any
10 automotive technician, employee, partner, officer, or member of the automotive
11 repair dealer.

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

16

17 (4) Any other conduct which constitutes fraud.

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

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22 (c) Notwithstanding subdivision (b), the director may refuse to
23 validate, or may invalidate temporarily or permanently, the registration
24 for all places of business operated in this state by an automotive repair
25 dealer upon a finding that the automotive repair dealer has, or is, engaged
26 in a course of repeated and willful violations of this chapter, or regulations
27 adopted pursuant to it.

28 11. Bus. & Prof. Code section 9884.9, subdivision (a), states, in pertinent part:

The automotive repair dealer shall give to the customer a written
estimated price for labor and parts necessary for a specific job. No work shall be
done and no charges shall accrue before authorization to proceed is obtained from
the 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 when an authorization or consent for an
increase in the original estimated price is provided by electronic mail or facsimile

1 transmission. If that consent is oral, the dealer shall make a notation on the work
2 order of the date, time, name of person authorizing the additional repairs and
3 telephone number called, if any, together with a specification of the additional
4 parts and labor and the total additional cost . . .

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

9 13. Health & Saf. Code section 44072.2 states, in pertinent part:

10 The director may suspend, revoke, or take other disciplinary action
11 against a license as provided in this article if the licensee, or any partner,
12 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
15 pursuant to it, which related to the licensed activities.

16

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

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

21 14. Health & Saf. Code section 44072.8 states that when a license has been
22 revoked or suspended following a hearing under this article, any additional license issued under
23 this chapter in the name of the licensee may be likewise revoked or suspended by the director.

24 Cost Recovery

25 15. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board
26 may request the administrative law judge to direct a licentiate found to have committed a
27 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
28 investigation and enforcement of the case.

29 UNDERCOVER OPERATION OF APRIL 17, 2008: 1990 PLYMOUTH SUNDANCE

30 16. On April 17, 2008, an undercover operator with the Bureau, using the
31 alias "Ronnie Brooks" (hereinafter "operator"), took the Bureau's 1990 Plymouth Sundance to
32 Respondent's facility and requested a smog inspection. The thermostatic air cleaner hot air tube

1 had been removed from the Bureau-documented vehicle. The operator did not sign a work order
2 or receive a written estimate for the inspection. After the inspection was completed, the operator
3 paid the facility \$68.25 and received copies of an invoice and vehicle inspection report. That
4 same day, electronic smog Certificate of Compliance # MY660211C was issued for the vehicle.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Untrue or Misleading Statements)**

7 17. Respondent's automotive repair dealer registration is subject to
8 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that
9 Respondent made or authorized a statement which it knew or in the exercise of reasonable care
10 should have known to be untrue or misleading, as follows: Respondent certified that the
11 Bureau's 1990 Plymouth Sundance had passed the inspection and was in compliance with
12 applicable laws and regulations. In fact, the thermostatic air cleaner hot air tube was missing and
13 as such, the vehicle would not pass the inspection required by Health & Saf. Code section 44012.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Fraud)**

16 18. Respondent's automotive repair dealer registration is subject to
17 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that
18 Respondent committed an act which constitutes fraud, as follows: Respondent issued an
19 electronic smog certificate of compliance for the Bureau's 1990 Plymouth Sundance without
20 performing a bona fide inspection of the emission control devices and systems on the vehicle,
21 thereby depriving the People of the State of California of the protection afforded by the Motor
22 Vehicle Inspection Program.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Violations of the Bus. & Prof. Code)**

25 19. Respondent's automotive repair dealer registration is subject to
26 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that
27 Respondent failed to comply with section 9884.9, subdivision (a), of that Code in the following
28 material respects: Respondent failed to obtain the operator's authorization for the smog

1 inspection on the Bureau's 1990 Plymouth Sundance in that Respondent failed to have the
2 operator sign a work order.^{1/} Further, Respondent failed to provide the operator with a written
3 estimate for parts and/or labor necessary for the smog inspection.

4 **FOURTH CAUSE FOR DISCIPLINE**

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

6 20. Respondent's smog check station license is subject to disciplinary action
7 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
8 comply with the following sections of that Code:

- 9 a. **Section 44012:** Respondent failed to perform the emission control tests
10 on the Bureau's 1990 Plymouth Sundance in accordance with procedures
11 prescribed by the department.
12 b. **Section 44015:** Respondent issued an electronic smog certificate of
13 compliance for the Bureau's 1990 Plymouth Sundance without properly
14 testing and inspecting the vehicle to determine if it was in compliance
15 with Health & Saf. Code section 44012.

16 **FIFTH CAUSE FOR DISCIPLINE**

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

19 21. Respondent's smog check station license is subject to disciplinary action
20 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
21 comply with the following sections of California Code of Regulations, title 16:

- 22 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
23 issued an electronic smog certificate of compliance for the Bureau's 1990
24 Plymouth Sundance.

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26 _____
27 1. California Code of Regulations, title 16, section 3303, subdivision (j), states: "Authorization" means
28 consent. Authorization shall consist of the customer's signature on the work order, taken before repair work
begins. Authorization shall be valid without the customer's signature only when oral or electronic authorization is
documented in accordance with applicable sections of these regulations.

1 estimate for parts and/or labor necessary for the smog inspection.

2 **TENTH CAUSE FOR DISCIPLINE**

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

4 27. Respondent's smog check station license is subject to disciplinary action
5 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
6 comply with the following sections of that Code:

7 a. **Section 44012:** Respondent failed to perform the emission control tests
8 on the Bureau's 1998 Ford Explorer in accordance with procedures
9 prescribed by the department.

10 b. **Section 44015:** Respondent issued an electronic smog certificate of
11 compliance for the Bureau's 1998 Ford Explorer without properly
12 testing and inspecting the vehicle to determine if it was in compliance
13 with Health & Saf. Code section 44012.

14 **ELEVENTH CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with Regulations Pursuant
16 to the Motor Vehicle Inspection Program)**

17 28. Respondent's smog check station license is subject to disciplinary action
18 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
19 comply with the following sections of California Code of Regulations, title 16:

20 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
21 issued an electronic smog certificate of compliance for the Bureau's 1998
22 Ford Explorer.

23 b. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog
24 certificate of compliance for the Bureau's 1998 Ford Explorer even
25 though the vehicle had not been inspected in accordance with section
26 3340.42.

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- 1 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on
2 the Bureau's 1998 Ford Explorer in accordance with the Bureau's
3 specifications.

4 **TWELFTH CAUSE FOR DISCIPLINE**

5 **(Dishonesty, Fraud or Deceit)**

6 29. Respondent's smog check station license is subject to disciplinary action
7 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
8 dishonest, fraudulent, or deceitful act whereby another is injured. Respondent issued an
9 electronic smog certificate of compliance for the Bureau's 1998 Ford Explorer without
10 performing a bona fide inspection of the emission control devices and systems on the vehicle,
11 thereby depriving the People of the State of California of the protection afforded by the Motor
12 Vehicle Inspection Program.

13 **DISCIPLINE CONSIDERATIONS**

14 30. To determine the degree of discipline, if any, to be imposed on
15 Respondent, Complainant alleges as follows:

16 a. On or about August 8, 2007, the Bureau issued Citation No. C08-0107
17 against Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure
18 to
19 perform a visual/functional check of emission control devices according to procedures
20 prescribed by the department), and California Code of Regulations, title 16, section
21 ("Regulation") 3340.35, subdivision (c) (issuing a certificate of compliance to a vehicle that was
22 improperly tested). Respondent had issued a certificate of compliance to a Bureau undercover
23 vehicle with a missing PCV system. The Bureau assessed civil penalties totaling \$500 against
24 Respondent for the violations. Respondent complied with the citation and paid the fine on
25 September 27, 2007.

26 b. On or about November 20, 2007, the Bureau issued Citation No.
27 C08-0497 against Respondent for violations of Health & Saf. Code section 44012, subdivision
28 (f) (failure to perform a visual/functional check of emission control devices according to

1 procedures prescribed by the department), and Regulation 3340.35, subdivision (c) (issuing a
2 certificate of compliance to a vehicle that was improperly tested). Respondent had issued a
3 certificate of compliance to a Bureau undercover vehicle with a missing PCV system. The
4 Bureau assessed civil penalties totaling \$2,000 against Respondent for the violations.
5 Respondent complied with the citation and paid the fine on April 4, 2008.

6 **PRIOR DISCIPLINE CONSIDERATIONS**

7 31. To determine the degree of discipline, if any, to be imposed on
8 Respondent, Complainant alleges as follows:

9 a. On or about June 14, 2002, the Bureau issued Citation No. C02-1112
10 against Respondent's President, John Lamoreux, as sole owner of "Auto Doctor" for violations
11 of Health & Saf. Code section 44012, subdivision (f) (failure to perform a visual/functional
12 check of emission control devices according to procedures prescribed by the department), and
13 California Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing
14 a certificate of compliance to a vehicle that was improperly tested). The Auto Doctor, solely
15 owned by Respondent's President, had issued a certificate of compliance to a Bureau undercover
16 vehicle with incorrect ignition timing. The Bureau assessed civil penalties totaling \$500 against
17 Respondent's President for the violations. Respondent's President complied with the citation
18 and paid the fine on July 12, 2002.

19 b. On or about June 4, 2004, the Bureau issued Citation No. C04-0583
20 against Respondent's President, John Lamoreux, as sole owner of "Auto Doctor" for violations
21 of Health & Saf. Code section 44012, subdivision (f) (failure to perform a visual/functional
22 check of emission control devices according to procedures prescribed by the department), and
23 California Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing
24 a certificate of compliance to a vehicle that was improperly tested). The Auto Doctor, solely
25 owned by Respondent's President, had issued a certificate of compliance to a Bureau undercover
26 vehicle with incorrect ignition timing. The Bureau assessed civil penalties totaling \$500 against
27 Respondent's President for the violations. Respondent's President complied with the citation
28 and paid the fine on July 1, 2004.

1 c. On or about September 8, 2004, the Bureau issued Citation No. C05-0089
2 against Respondent's President, John Lamoreux, as sole owner of "Auto Doctor" for violations
3 of Health & Saf. Code section 44012, subdivision (f) (failure to perform a visual/functional
4 check of emission control devices according to procedures prescribed by the department), and
5 California Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing
6 a certificate of compliance to a vehicle that was improperly tested). The Auto Doctor, solely
7 owned by Respondent's President, had issued a certificate of compliance to a Bureau undercover
8 vehicle with incorrect ignition timing. The Bureau assessed civil penalties totaling \$1,000
9 against Respondent's President for the violations. Respondent's President complied with the
10 citation and paid the fine on November 24, 2004.

11 d. On or about May 29, 2007, the Bureau issued Citation No. C07-0946
12 against Respondent's President, John Lamoreux, as sole owner of "Auto Doctor" for violations
13 of Health & Saf. Code section 44012, subdivision (f) (failure to perform a visual/functional
14 check of emission control devices according to procedures prescribed by the department), and
15 California Code of Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing
16 a certificate of compliance to a vehicle that was improperly tested). The Auto Doctor, solely
17 owned by Respondent's President, had issued a certificate of compliance to a Bureau undercover
18 vehicle with a missing air injection system. The Bureau assessed civil penalties totaling \$500
19 against Respondent's President for the violations. Respondent's President complied with the
20 citation and paid the fine on June 21, 2007.

21 **OTHER MATTERS**

22 32. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the
23 Director may refuse to validate, or may invalidate temporarily or permanently, the registrations
24 for all places of business operated in this state by Respondent The Auto & Tire Doctor, Inc. upon
25 a finding that said Respondent has, or is, engaged in a course of repeated and willful violations
26 of the laws and regulations pertaining to an automotive repair dealer.

27 33. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station
28 License Number RC 251206, issued to The Auto & Tire Doctor, Inc., is revoked or suspended,

1 any additional license issued under this chapter in the name of said licensee may be likewise
2 revoked or suspended by the director.

3 PRAYER

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

6 1. Temporarily or permanently invalidating Automotive Repair Dealer
7 Registration Number ARD 251206, issued to The Auto & Tire Doctor, Inc.;

8 2. Temporarily or permanently invalidating any other automotive repair
9 dealer registration issued to The Auto & Tire Doctor, Inc.;

10 3. Revoking or suspending Smog Check Station License Number
11 RC 251206, issued to The Auto & Tire Doctor, Inc.;

12 4. Revoking or suspending any additional license issued under Chapter 5 of
13 the Health and Safety Code in the name of The Auto & Tire Doctor, Inc.;

14 5. Ordering Respondent The Auto & Tire Doctor, Inc. to pay the Director of
15 Consumer Affairs the reasonable costs of the investigation and enforcement of this case,
16 pursuant to Business and Professions Code section 125.3;

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

18 DATED: 12/11/08.

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

Complainant