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6
7 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
8 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA

9 In the Matter of the Accusation Against:

Case No. 79/09-78

10 **HOOVER AUTO TECH SMOG**

11 2211 S. Hoover Street
Los Angeles, CA 90007

12 **SHARON M. KIM, OWNER**

13 Automotive Repair Dealer Registration No.
ARD 252719

14 Smog Check, Test Only, Station License No.
TC 252719

15 and

16 **GUILLERMO DE LA GARZA, SR.**

17 1349 S. Union Ave., #A
Los Angeles, CA 90015

18 Advanced Emission Specialist Technician
19 License No. EA 037499

20 Respondents.

ACCUSATION

SMOG CHECK

21
22 Complainant alleges:

23 **PARTIES**

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

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1 **Automotive Repair Dealer Registration No. ARD 252719**

2 2. On or about November 9, 2007, the Director of Consumer Affairs
3 ("Director") issued Automotive Repair Dealer Registration Number ARD 252719 to Sharon M.
4 Kim ("Respondent Kim"), owner of Hoover Auto Tech Smog. Respondent's automotive repair
5 dealer registration was in full force and effect at all times relevant to the charges brought herein
6 and will expire on October 31, 2009, unless renewed.

7 **Smog Check, Test Only, Station License No. TC 252719**

8 3. On or about December 21, 2007, the Director issued Smog Check, Test
9 Only, Station License Number TC 252719 to Respondent Kim. Respondent's smog check
10 station license was in full force and effect at all times relevant to the charges brought herein and
11 will expire on October 31, 2009, unless renewed.

12 **Advanced Emission Specialist Technician License No. EA 037499**

13 4. In or about 2003, the Director issued Advanced Emission Specialist
14 Technician License Number EA 037499 to Guillermo De La Garza, Sr. ("Respondent De La
15 Garza"). Respondent's advanced emission specialist technician license was in full force and
16 effect at all times relevant to the charges brought herein and will expire on September 30, 2009,
17 unless renewed.

18 **JURISDICTION**

19 5. Business and Professions Code ("Code") section 9884.7 provides that the
20 Director may invalidate an automotive repair dealer registration.

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

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

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

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

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

Cost Recovery

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

VIDEO SURVEILLANCE OF MAY 21, 2008

14. On May 21, 2008, a representative of the Bureau conducted a video surveillance operation of Respondent Kim's smog check facility, Hoover Auto Tech Smog (hereinafter "smog check facility"). The surveillance operation and information obtained from the Bureau's Vehicle Information Database ("VID") revealed that between 0903 hours and 0923 hours, Respondent De La Garza performed a smog inspection that resulted in the issuance of the electronic certificate of compliance for the vehicle set forth in Table One, below, certifying that he had tested and inspected the vehicle and that the vehicle was in compliance with applicable laws and regulations. In fact, Respondent De La Garza performed the smog inspection using the clean piping¹ method by using the tail pipe emissions of a vehicle other than the vehicle being certified in order to issue the certificate of compliance. The vehicle certified was not in the test bay at the time of the smog inspection.

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1. Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t), "clean piping" means the use of a sample of the exhaust emissions of one vehicle in order to cause the Emission Inspection System to issue a certificate of compliance for another vehicle.

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Table One

Test Times	Vehicle Certified	Vehicle Actually Tested	Cert Issued
0903 - 0923	1984 Toyota Camry Lic. No. 4UKZ234	1988 Toyota Camry License #4LRV091	NA651296C

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

15. Respondent Kim has subjected her registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about May 21, 2008, she made statements which she knew or which by exercise of reasonable care she should have known were untrue or misleading by issuing an electronic certificate of compliance for the vehicle set forth in Table One, above, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle had been clean piped.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

16. Respondent Kim has subjected her registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about May 21, 2008, she committed an act which constituted fraud by issuing the electronic certificate of compliance for the vehicle set forth in Table One, above, without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

17. Respondent Kim has subjected her station license to discipline under Health and Saf. Code section 44072.2, subdivision (a), in that on or about May 21, 2008, regarding the electronic certificate of compliance and the vehicle set forth in Table One, above, she violated sections of that Code, as follows:

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1 a. **Section 44012, subdivision (f):** Respondent Kim failed to perform
2 emission control tests on the vehicle in accordance with procedures prescribed by the department.

3 b. **Section 44015, subdivision (b):** Respondent Kim issued the electronic
4 certificate of compliance for the vehicle without properly testing and inspecting the vehicle to
5 determine if it was in compliance with section 44012 of that Code.

6 c. **Section 44059:** Respondent Kim willfully made a false entry for the
7 electronic certificate of compliance by certifying that the vehicle had been inspected as required
8 when, in fact, it had not.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

11 18. Respondent Kim has subjected her station license to discipline under
12 Health and Saf. Code section 44072.2, subdivision (c), in that on or about May 21, 2008,
13 regarding the electronic certificate of compliance and the vehicle set forth in Table One, above,
14 she violated sections of the California Code of Regulations, title 16, as follows:

15 a. **Section 3340.24, subdivision (c):** Respondent Kim falsely or fraudulently
16 issued the electronic certificate of compliance for the vehicle without performing a bona fide
17 inspection of the emission control devices and systems on the vehicle as required by Health and
18 Saf. Code section 44012.

19 b. **Section 3340.35, subdivision (c):** Respondent Kim issued the electronic
20 certificate of compliance for the vehicle even though the vehicle had not been inspected in
21 accordance with section 3340.42 of that Code.

22 c. **Section 3340.42:** Respondent Kim failed to conduct the required smog
23 test and inspections on the vehicle in accordance with the Bureau's specifications.

24 **FIFTH CAUSE FOR DISCIPLINE**

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

26 19. Respondent Kim has subjected her station license to discipline under
27 Health and Saf. Code section 44072.2, subdivision (d), in that on or about May 21, 2008,
28 regarding the electronic certificate of compliance and the vehicle set forth in Table One, above,

1 she committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
2 the electronic certificate of compliance for the vehicle when, in fact, the vehicle had not been
3 properly tested and inspected, thereby depriving the People of the State of California of the
4 protection afforded by the Motor Vehicle Inspection Program.

5 **SIXTH CAUSE FOR DISCIPLINE**

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

7 20. Respondent De La Garza has subjected his technician license to discipline
8 under Health and Saf. Code section 44072.2, subdivision (a), in that on or about May 21, 2008,
9 regarding the electronic certificate of compliance and the vehicle set forth in Table One, above,
10 he violated sections of that Code, as follows:

11 a. **Section 44012, subdivision (f):** Respondent De La Garza failed to
12 determine that all emission control devices and systems required by law were installed and
13 functioning correctly on the vehicle in accordance with test procedures.

14 b. **Section 44032:** Respondent De La Garza failed to perform tests of the
15 emission control devices and systems on the vehicle in accordance with section 44012 of that
16 Code, in that the vehicle had been clean piped.

17 c. **Section 44059:** Respondent De La Garza entered false information into
18 the Emission Inspection System ("EIS") for the electronic certificate of compliance by certifying
19 that the vehicle had been inspected as required when, in fact, it had not.

20 **SEVENTH CAUSE FOR DISCIPLINE**

21 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

22 21. Respondent De La Garza has subjected his technician license to discipline
23 under Health and Saf. Code section 44072.2, subdivision (c), in that on or about May 21, 2008,
24 regarding the electronic certificate of compliance and the vehicle set forth in Table One, above,
25 he violated sections of the California Code of Regulations, title 16, as follows:

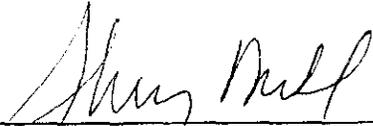
26 a. **Section 3340.24, subdivision (c):** Respondent De La Garza falsely or
27 fraudulently issued an electronic smog certificate of compliance for the vehicle.

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

DATED: 2/23/09



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

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clp: 1/29/09
Hoover Auto Tech Smog.acc.wpd