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

In the Matter of the Accusation and Petition to Revoke Probation Against: **GO GO SMOG & AUTO GLASS** **GUSTAVO GONZALEZ, OWNER** 260 Garden Highway, Suite #E Yuba City, CA 95991 **Automotive Repair Dealer Registration No. ARD 261602** **Smog Check Station License No. RC 261602** Respondent.	Case No. 79/16-3256

Patrick Dorais ("Complainant") alleges:

PARTIES

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

Automotive Repair Dealer Registration

2. On or about April 15, 2010, the Bureau issued Automotive Repair Dealer Registration Number ARD 261602 ("registration") to Gustavo Gonzalez ("Respondent"), Owner, doing business as Go Go Smog & Auto Glass. The registration will expire on March 31, 2017, unless renewed.

Smog Check Station License

3. On or about June 9, 2010, the Bureau issued Smog Check Station License Number RC 261602 ("station license") to Respondent. The station license will expire on March 31, 2017, unless renewed.

Disciplinary Action

4. In a disciplinary action titled *In the Matter of the Accusation Against Go Go Smog & Auto Glass, Gustavo Gonzalez, Owner, et al.*, Case No. 79/12-171, the Director of the Department of Consumer Affairs ("Director") adopted a Stipulated Settlement and Disciplinary Order, effective December 20, 2012, revoking Respondent's registration and station license. However, the revocations were stayed and both licenses were placed on probation for three (3) years with certain terms and conditions.

5. In a disciplinary action titled *In the Matter of the Accusation and Petition to Revoke Probation Against Go Go Smog & Auto Glass, Gustavo Gonzalez, Owner*, Case No. 79/14-119, the Director adopted a Stipulated Settlement and Disciplinary Order, effective March 27, 2015, extending Respondent's probation for an additional three years to the previously ordered stayed revocation and probationary period.

STATUTORY PROVISIONS

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

> (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.
>
> (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
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> . . .
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> (4) Any other conduct that constitutes fraud.
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> . . .
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> (6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.
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> (b) Except as provided for in subdivision (c), if an automotive repair dealer

operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

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

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

8. Code section 118, subdivision (b), states:

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

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

10. Health and Safety 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.

11. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

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

13. Health and Safety Code section 44072.8 states:

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

14. 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.

UNDERCOVER OPERATION

15. On or about February 24, 2016, a Bureau undercover operator (the "operator") took the Bureau's 2002 Honda to Go Go Smog & Auto Glass, Respondent's facility, and requested a smog inspection. Respondent allegedly performed the smog inspection. The operator paid $45.00 and received a copy of Invoice [redacted] and a Vehicle Inspection Report ("VIR").

16. The Bureau obtained information from the Vehicle Information Database ("VID") showing that Smog Technician J. M. had performed a smog inspection on the 2002 Honda on February 24, 2016, resulting in the issuance of electronic smog Certificate of Compliance [redacted].

17. On or about March 14, 2016, the Bureau inspected the 2002 Honda and found that the vehicle could not have passed the smog test because the Catalytic Converter had been removed and an Add-on Adaptor was installed on the vehicle.

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FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

18. Respondent's registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading. Specifically, on or about February 24, 2016, Respondent certified under penalty of perjury that the Bureau's 2002 Honda had passed a smog inspection and was in compliance with applicable laws and regulations. In fact, the Catalytic Converter had been removed and an Add-On Adaptor was installed, which precluded the vehicle from passing the inspection required by Health & Safety Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

19. Respondent's registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(4), in that on or about February 24, 2016, Respondent committed an act that constitutes fraud by issuing an electronic smog certificate of compliance for the Bureau's 2002 Honda without ensuring that a bona fide inspection was performed 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

(Motor Vehicle Inspection Program - Code Violations)

20. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about February 24, 2016, Respondent failed to comply with provisions of that Code, as follows:

a. **Section 44012:** Respondent failed to ensure that the emission control tests were performed on the Bureau's 2002 Honda in accordance with procedures prescribed by the department.

b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for the Bureau's 2002 Honda without ensuring that the vehicle was properly tested and inspected to determine if it was in compliance with Health & Safety Code section 44012.

FOURTH CAUSE FOR DISCIPLINE

(Motor Vehicle Inspection Program - Regulation Violations)

21. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about February 24, 2016, Respondent failed to comply with provisions of California Code of Regulations, title 16 ("Regulations"), as follows:

a. **Regulations section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate of compliance for the Bureau's 2002 Honda even though the vehicle had not been inspected in accordance with Regulations section 3340.42.

b. **Regulations section 3340.42:** Respondent failed to ensure that the required smog tests were conducted on the Burcau's 2002 Honda in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

22. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about February 24, 2016, Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the Bureau's 2002 Honda without ensuring that a bona fide inspection was performed 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.

PETITION TO REVOKE PROBATION

23. Complainant incorporates by reference as though fully set forth herein the allegations as set forth above in paragraphs 1 through 22.

24. Condition Number 8 of Respondent Gonzalez's probation provides that should the Director of the Department of Consumer Affairs determine that Respondent has failed to comply

with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard, suspend, or revoke the license.

25. Grounds exist to revoke Respondent's probation and re-impose the order of revocation of his Automotive Repair Dealer Registration and Smog Check Station License.

CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws)

26. Condition 2 of Respondent Gonzalez's probation states that Respondent, "shall comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs."

27. Respondent Gonzalez's probation is subject to revocation in that he failed to comply with all statutes, regulations, and rules governing automotive inspections, as set forth above in paragraphs 15 through 22, incorporated herein by reference.

OTHER MATTERS

28. Under Code section 9884.7, subdivision (c), the Director may invalidate temporarily or permanently or refuse to validate, the registrations for all places of business operated in this state by Respondent Gustavo Gonzalez, Owner, doing business as Go Go Smog & Auto Glass, upon a finding that he has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

29. Under Health and Safety Code section 44072.8, if Smog Check Station License Number RC 261602, issued to Respondent Gustavo Gonzalez, Owner, doing business as Go Go Smog & Auto Glass, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the director.

PRAYER

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

1. Revoking probation and re-imposing the order of revocation of Automotive Repair Dealer Registration Number ARD 261602, issued to Gustavo Gonzalez, Owner, doing business as Go Go Smog & Auto Glass;

2. Revoking or suspending any other automotive repair dealer registration issued to Gustavo Gonzalez;

3. Revoking probation and re-imposing the order of revocation of Smog Check Station License Number RC 261602, issued to Gustavo Gonzalez, doing business as Go Go Smog & Auto Glass;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Gustavo Gonzalez;

5. Ordering Gustavo Gonzalez 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,

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

DATED: October 7, 2016

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

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