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

In the Matter of the Accusation Against: **PRECISION FACTORY COLLISION REPAIR dba PRECISION FACTORY COLLISION REPAIR** **MICHAEL JOHN MARIANO, PR./TR.** **JAIME LORRAINE TAYLOR, SEC.** 3667 Recycle Road, #3 & #4 Rancho Cordova, CA 95742 Automotive Repair Dealer Reg. No. ARD 261893 Respondent.	Case No. 77/14-04 OAH No. 2013080284

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 October 24, 2014.

DATED: September 17, 2014

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

In the Matter of the Accusation Against: PRECISION FACTORY COLLISION REPAIR dba PRECISION FACTORY COLLISION REPAIR MICHAEL JOHN MARIANO, PR./TR. JAMIE LORRAINE TAYLOR, SEC. 3667 Recycle Road, #3 & #4 Rancho Cordova, CA 95742 Automotive Repair Dealer Reg. No. ARD 261893 Respondent.	Case No. 77/14-04 OAH No. 2013080284

PROPOSED DECISION

This matter was heard before Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 21, 2014, in Sacramento, California.

Jeffrey M. Phillips, Deputy Attorney General, represented complainant.

Esther Ralich, Attorney at Law, represented respondent.

Evidence was received, the record was closed, and the matter was submitted on July 21, 2014.

FACTUAL FINDINGS

1. Complainant John Wallauch, Chief, Bureau of Automotive Repair (Bureau), Department of Consumer Affairs, State of California, brought the Accusation solely in his official capacity.

2. On May 11, 2010, the Bureau issued Automotive Repair Dealer Registration Number ARD 261893 (registration) to Precision Factory Collision Repair, doing business as Precision Factory Collision Repair with Michael John Mariano as President and Treasurer and Jamie Lorraine Taylor as Secretary. The registration was in full force and effect at all times relevant to the factual findings below.

2010 *Hyundai Elantra*

3. On or about December 20, 2010, W.K. had his daughter's 2010 Hyundai Elantra towed to respondent's place of business for front end repairs following a collision in which the daughter rear-ended another vehicle. W.K. had removed the vehicle's damaged hood, fenders, bumper, and other front end parts. The parts were delivered with the vehicle. W.K. also delivered replacement parts that he had purchased from a parts supplier that had recommended respondent's business to perform the work. These included a replacement hood and fenders.

4. Michael Mariano provided an estimate for the repairs that included refinishing the replacement hood and removing the two windshield spray nozzles from the old hood and installing them on the replacement hood. The estimate also included setting up a frame straightening rack and pulling the damaged front end of the vehicle's frame for sway and sag. W.K. approved the estimate and the vehicle was later returned to him by respondent after respondent represented that the work had been completed.

5. W.K. was unhappy with the appearance of the new bumper cover and, after failing to resolve the matter with respondent, filed a complaint with the Bureau. When Bureau investigators inspected the vehicle, they noted that the hood on the vehicle bore the original vehicle identification number and one of the hinges that originally secured the hood to the frame of the vehicle had not been touched. In other words, respondent had repaired the original vehicle hood and had not installed the replacement purchased by W.K. and delivered to respondent. The two windshield spray nozzles remained in place in the old, repaired hood.

6. Bureau investigators also observed that the right front frame rail had marks consistent with being struck with a heavy hammer and the frame rail was still partially buckled. There were no clamp marks normally evident when a frame is secured to a straightening rack. Bureau investigators also noted that respondent did not possess a frame straightening rack and associated equipment to perform the work required in the estimate. When Michael Mariano was asked about this matter, he said that another shop had performed the frame straightening work for him, but he refused to name the shop.

7. Michael Mariano testified at the administrative hearing. He said that he never saw the original hood for W.K.'s daughter's vehicle. He said that he prepped and painted the replacement hood that W.K. brought him and he had no idea how the original hood found its

way back on the vehicle in a repaired condition. He said that "Nicolai," the owner of a nearby shop with a frame straightener, and he straightened the frame. Michael Mariano asserted that when he completed his repairs, the frame did not look like it was depicted in the Bureau investigator's photographs showing the hammer marks and partially buckled frame rail. Michael Mariano did not prepare a subcontract for the work by Nicholai, although he said he told W.K. that he did not have frame straightening equipment.

8. Virtually none of Michael Mariano's testimony was credible. The evidence was overwhelming that he repaired the original Hyundai Elantra's hood and disposed of the replacement hood in some manner. He did not use the proper equipment to straighten the frame and his attempts to hammer the frame into its original alignment created a dangerous situation in the event of a second front end collision. This was established by the testimony of one of the Bureau's investigators with many years of collision repair experience and training.

9. Respondent's conduct, through its officer and agent Michael Mariano, constituted fraud. W.K. paid to install and refinish the replacement hood he provided to respondent. He paid for the labor that should have been performed to properly straighten the frame of his daughter's vehicle. He paid for the removal of the spray nozzles from the old hood and installation of them in the new one. The work for which he paid was not performed, and respondent appropriated the replacement hood delivered to him. Each of these acts constituted fraudulent conduct.

10. Respondent, through its officer and agent, Michael Mariano, also made untrue and misleading statements. Respondent delivered the Hyundai Elantra to W.K. representing that all of the repairs in the estimate to which W.K. had agreed had been performed.

2004 Infinity M 45

11. On or about July 15, 2011, J.S.'s 2004 Infinity M 45 was damaged by fire and theft of the vehicle. On or about July 20, 2011, Nationwide Insurance Company of America (Nationwide) prepared an estimate for J.S. to repair the vehicle in the amount of $7, 503.87, less a $1,000 deductible, for a net sum of $6,503.87. The estimate included replacing the vehicle's roof, hood and deck lid. Respondent was listed as the repair facility on the estimate. Respondent performed work on the vehicle and Nationwide issued a two-party check on July 21, 2011, to respondent and J.S. in the amount of $6,503.87. The check was negotiated, but as noted below, the division of the proceeds was not established by the evidence.

12. In or about November of 2011, J.S.'s Infiniti M 45 was involved in a serious collision that rendered the vehicle a total loss. When Nationwide representatives examined the vehicle, they noted that the roof had been repaired rather than replaced as specified in their estimate provided J.S. Nationwide filed a complaint with the Bureau for possible fraud.

13. On November 30, 2011, Bureau investigators inspected the vehicle at a salvage yard. Although badly damaged, filler compound used to repair damaged vehicle sheet metal was readily apparent in the vehicle's roof, hood, and deck lid, establishing that these parts had not been replaced as contemplated by Nationwide's estimate.

14. Bureau investigators spoke to J.S. about his vehicle and the repairs made to it by respondent. J.S. refused to provide a written statement or testify, but he said that he spoke to respondent's agent Michael Mariano about wanting the roof repaired rather than replaced because he had heard that this option provided greater strength and integrity in the event of a collision. He assumed that Michael Mariano would seek authorization from Nationwide to make the change. He did not ask that the hood and deck lid be repaired, and assumed that these parts had been replaced in accordance with the Nationwide approved estimate. He told the Bureau's investigators that he did not have to pay any deductible[1], but denied any collusion with respondent to defraud Nationwide.

15. Michael Mariano testified and admitted that he had not replaced the vehicle's roof, hood or deck lid. Rather, he repaired all three of the parts. At hearing, he produced what he represented was his own estimate for the repairs to J.S.'s vehicle. The estimate specifies repairing the roof, hood and trunk lid. The total for repairs was $6,108.03. Michael Mariano denied that he reached an agreement with J.S. to "waive" the $1,000 deductible. He claimed that he obtained a verbal agreement from J.S. to proceed with the repairs in accordance with his own estimate. He explained that he did not mention or provide the estimate to the Bureau's investigators when he was interviewed because it was still on his computer and he had not yet placed it in the folder relating to the work. He said that he did not obtain J.S.'s signature authorizing the work because J.S. was in a hurry to pick up the car according to Michael Mariano. Michael Mariano explained that the approximately $400 difference between the Nationwide check and his estimate was not paid to J.S. Rather, respondent performed additional work on the vehicle unrelated to the insurance repairs to make up the difference.

16. Neither the testimony of Michael Mariano nor the hearsay statements of J.S. were credible and the estimate produced by respondent at the administrative hearing was almost certainly created by Michael Mariano to buttress his false testimony. There was clearly some sort of arrangement between the two men regarding the repairs to the Infinity M 45 that would be performed and the allocation of the funds from the Nationwide check. However, the evidence did not establish that respondent made untrue or misleading statements to Nationwide. There was no evidence that Nationwide entered into a contract with respondent for the repair of the vehicle in accordance with the Nationwide estimate. The fact that Nationwide issued a two-party check to respondent and J.S. does not, without more, establish such a contract. One of the Bureau investigators testified and established that it is an "industry standard" for collision repair facilities to notify insurance companies when

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[1] Apparently, J.S. meant that he arranged to have all of the repairs performed for the net amount paid by Nationwide, after deducting the $1,000.

they are going to deviate from the repairs specified in the insurance company estimate with the consent of the insured. But this also does not support the proposition that respondent was contractually bound to either perform the repairs in accordance with the estimate or notify the insurance company about any deviations. In summary, respondent did not represent to Nationwide that it would replace the vehicle's roof, hood or deck lid and did not represent that it had done so in connection with its receipt of funds to make repairs. Therefore, no untrue or misleading statements were made.

17. It was not established that respondent committed fraud when it accepted payment from Nationwide in the form of its portion of the two- party check for repairs. As noted in factual finding 16, there was no contractual relationship between Nationwide and respondent to repair the vehicle strictly in accordance with the Nationwide estimate and therefore nothing fraudulent about accepting proceeds from the two-party check. One of the Bureau's investigators mentioned in his testimony that a two-party check issued to the repair facility and the insured also helps to protect the holder of a lien on the vehicle whose collateral would be impaired if the vehicle were not repaired to its original condition. Here however, the Nationwide estimate only identified J.S. as the owner of the vehicle and there was no allegation that respondent made untrue statements to any lien holder or was guilty of defrauding a lien holder.

Costs of Investigation and Prosecution

18. The actual costs of investigation by the Bureau in this matter were $8,732.65. The actual costs of prosecution by the Office of the Attorney General were $3,622.65, for a total of $12,355.15. The reasonableness of such costs is addressed in the Legal Conclusions below.

LEGAL CONCLUSIONS

1. Business and Professions Code section 9884.7, subdivisions (a)(1) and (a)(4), reads:

> (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.

(4) Any other conduct that constitutes fraud.

2. Respondent is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), by reason of Factual Finding 10.

3. Respondent is subject to discipline pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), by reason of Factual Finding 9.

4. Complainant failed to establish that respondent was guilty of violating Business and Professions Code section 9884.7, subdivisions (a)(1) or (a)(4), in connection with the repairs to the Infinity M 45 vehicle.

5. The appropriate penalty in this matter is the revocation of respondent's license. Respondent's initial dishonest and fraudulent conduct with respect to the Hyundai Elantra was compounded by respondent's persistent denials of misconduct to the Bureau's investigators even in the face of irrefutable evidence. At hearing, respondent's President Michael Mariano maintained the same posture, thus establishing a pattern of dishonesty and untrustworthy behavior inconsistent with the integrity required of licensed automobile repair facilities.

6. Business and Professions Code section 125.3 reads, in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may 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.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) 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 proceeding 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.
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> (d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

7. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court decided that in order to determine whether the actual costs of investigation and prosecution sought by a regulatory board under a statute substantially identical to Business and Professions Code 125.3 are "reasonable," the Administrative Law Judge must consider: (a) Whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate to the alleged misconduct.

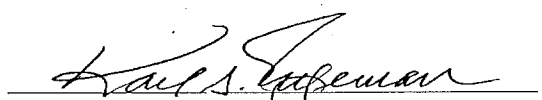
8. The costs sought in this matter must be reduced by reason of complainant's failure to prove the allegations relating to the Infinity M 45. There is no other basis upon which the costs should be reduced. As implied by the findings, respondent's defense did not demonstrate a subjective good faith belief in the merits of respondent's position. The recommended disposition of this matter is the revocation of respondent's license, so there was no colorable challenge to the proposed discipline. There was nothing to suggest that respondent is unable to pay the costs sought. Finally, the scope of the investigation as reflected by the hours billed by the Bureau's investigators appeared appropriate to the alleged misconduct. The costs are reduced by approximately one-half to $6,178.00, based on complainant's success in two of four causes of action alleged in the Accusation.

ORDER

1. Automotive Repair Dealer Registration number ARD 261893 issued to Precision Factory Collision Repair, doing business as Precision Factory Collision Repair, is revoked.

2. Respondent Precision Factory Collision Repair shall pay the amount of $6,178.00 to the Director of the Department of Consumer Affairs for the reasonable costs of investigation and prosecution of this matter.

DATED: August 15, 2014



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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 Against: **PRECISION FACTORY COLLISION REPAIR** **dba PRECISION FACTORY COLLISION REPAIR** **MICHAEL JOHN MARIANO, Pr./Tr.** **JAMIE LORRAINE TAYLOR, Sec.** **3667 Recycle Road, #3 & #4** **Rancho Cordova, CA 95742** **Automotive Repair Dealer License No. ARD 261893** Respondent.	Case No. 77/14-04 **ACCUSATION**

John Wallauch ("Complainant") alleges:

PARTIES

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

2. On or about May 11, 2010, the Bureau issued Automotive Repair Dealer Registration Number ARD 261893 ("registration") to Precision Factory Collision Repair, doing business as Precision Factory Collision Repair ("Respondent") with Michael John Mariano as President and Treasurer and Jamie Lorraine Taylor as Secretary. The registration was in full force and effect at

all times relevant to the charges brought herein and will expire on December 31, 2013, unless renewed.

STATUTORY PROVISIONS

3. 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.
>
> (4) Any other conduct which constitutes fraud.
>
> (6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.
>
> (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.

COST RECOVERY

4. 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.

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CONSUMER COMPLAINT – 2010 HYUNDAI ELANTRA

5. On or about December 20, 2010, consumer W.K. towed his 2010 Hyundai Elantra to Respondent's facility for front end damage repairs. W.K. received Estimate No. HYUNDAI1210, totaling $3,097.90. W.K. authorized the repairs.

6. On or about December 27, 2010, W.K. returned to Respondent's facility to retrieve his vehicle and paid Respondent $3,097.90 for the repairs. W.K. immediately noticed several repairs not performed.

7. On or about July 14, 2011, W.K. filed a complaint with the Bureau.

8. On or about September 9, 2011, a Bureau representative inspected W.K.'s vehicle using Respondent's Estimate No. HYUNDAI1210, as a reference, and found the following:

a. Respondent failed to remove and install the new hood that was provided by W.K.

b. Respondent failed to refinish the hood as invoiced.

c. Respondent failed to remove and install the left and right hood washer nozzles, as invoiced.

d. Respondent failed to pull and straighten the unibody structure/frame, as invoiced.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

9. Respondent is subject to discipline pursuant to Code section 9884.7(a)(1), in that on or about December 20, 2010, regarding the 2010 Hyundai Elantra, Respondent made statements which it knew or which by exercise of reasonable care should have known were untrue or misleading, in that Respondent falsely represented to W.K. that the vehicle had been repaired pursuant to Estimate No. HYUNDAI1210 when, in fact, it had not, as more particularly set forth above in paragraph 8.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

10. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in that on or about December 27, 2010, regarding the 2010 Hyundai Elantra, Respondent committed fraud when it accepted payment from W.K. to perform repairs and/or services

pursuant to Estimate No. HYUNDAI1210 when, in fact, those repairs and/or services had not been performed, as more particularly set forth above in paragraph 8.

CONSUMER COMPLAINT – 2004 INFINITY M45

11. On or about July 15, 2011, consumer J.S.'s 2004 Infinity M45 was damaged by fire and theft. On or about July 20, 2011, Nationwide Insurance Company of America ("Nationwide") prepared Estimate No. 7204203458160715110 1J/S1 ("1101J/S1"), in the amount of $6,503.87 (less a $1,000 deductible).

12. On or about July 20, 2011, J.S. had his vehicle repaired pursuant to Nationwide's Estimate No. 1101J/S1 at Respondent's facility.

13. On or about July 21, 2011, Nationwide issued a check to J.S. and Respondent in the amount of $6,503.87.

14. Subsequently, the vehicle was involved in an accident, revealing that Respondent failed to replace the hood, roof, and decklid pursuant to Nationwide's Estimate No. 1101J/S1.

15. On or about November 17, 2011, a Nationwide employee filed a complaint with the Bureau. In addition, Ludden filed a complaint with the California Department of Insurance as a suspected fraudulent claim.

16. On or about November 30, 2011, a Bureau representative inspected J.S.'s vehicle using Nationwide's Estimate No. 1101J/S1, as a reference, and found the following:

a. Respondent failed to replace the hood, as invoiced.

b. Respondent failed to replace the roof, as invoiced.

c. Respondent failed to replace the decklid, as invoiced.

THIRD CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

17. Respondent is subject to discipline pursuant to Code section 9884.7(a)(1), in that on or about July 20, 2011, regarding the 2004 Infinity M45, Respondent made statements which it knew or which by exercise of reasonable care should have known were untrue or misleading, in that Respondent falsely represented to Nationwide and J.S. that the vehicle had been repaired

pursuant to Nationwide's Estimate No. 1101J/S1 when, in fact, it had not, as more particularly set forth above in paragraph 16[1].

FOURTH CAUSE FOR DISCIPLINE

(Fraud)

18. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in that on or about July 21, 2011, regarding the 2004 Infinity M45, Respondent committed fraud when it accepted payment from Nationwide to perform repairs pursuant to Nationwide's Estimate No. 1101J/S1 when, in fact, those repairs had not been performed, as more particularly set forth above in paragraph 16.

OTHER MATTERS

19. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on probation the registrations for all places of business operated in this state by Precision Factory Collision Repair, upon a finding that it has, or is, engaged in a course of repeated and willful violation of the laws and regulations pertaining to an automotive repair dealer.

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, suspending or placing on probation Automotive Repair Dealer Registration Number ARD 261893, issued to Precision Factory Collision Repair;

2. Revoking, suspending or placing on probation any other automotive repair dealer registration issued to Precision Factory Collision Repair;

3. Ordering Precision Factory Collision Repair to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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[1] J.S. was aware that Respondent repaired the roof instead of replacing it.

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

DATED: July 3, 2013

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

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