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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: **AFFORDABLE & QUICK SMOG** **29900 Mission Blvd.** **Hayward, CA 94544** **MALWINDER SINGH, OWNER** **Automotive Repair Dealer Registration No. ARD 264429** **Smog Check Test Only Station License No. TC 264429** **and** **MALWINDER SINGH** **27536 La Porte Ave.** **Hayward, CA 94545** **Advanced Emission Specialist Technician License No. EA 150724** Respondents.	Case No. 79/12-152 **ACCUSATION** Smog Check

Complainant alleges:

PARTIES

1. John Wallauch (Complainant) brings this Accusation 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 March 23, 2011, the Bureau issued Automotive Repair Dealer Registration Number ARD 264429 ("registration") to Malwinder Singh ("Respondent") doing

business as Affordable & Quick Smog. The registration was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

Smog Check Test Only Station License

3. On or about March 25, 2011, the Bureau issued Smog Check Test Only Station License Number TC 264429 ("station license") to Respondent. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

Advanced Emission Specialist Technician License

4. On or about 2007, the Bureau issued Advanced Emission Specialist Technician License Number EA 150724 ("technician license") to Respondent. The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on February 24, 2014, unless renewed.

STATUTORY PROVISIONS

5. 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 that constitutes fraud.

. . .

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

. . .

(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.

6. 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.

7. Section **44002** of the Health and Safety Code 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.

8. Section **44012** of the Health and Safety Code requires that tests at smog check stations be performed in accordance with procedures prescribed by the department.

9. Section **44072.2** of the Health and Safety Code 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 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.

. . .

(h) Violates or attempts to violate the provisions of this chapter relating to the particular activity for which he or she is licensed.

10. Section **44072.6** of the Health and Safety Code 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.

11. Section **44072.8** of the Health and Safety Code 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.

12. California Code of Regulations, Title 16, section **3340.30**, states, in pertinent part:

A licensed smog check inspector and/or repair technician shall comply with the following requirements at all times while licensed:

(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

. . .

13. California Code of Regulations, Title 16, section **3340.35(c)**, states, in pertinent part:

(c) A licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly.

. . .

14. California Code of Regulations, Title 16, section **3340.41(c)**, states:

No person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested.

COST RECOVERY

15. 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.

FACTUAL SUMMARY

16. On or about March 1, 2012, the Bureau's investigative staff conducted an undercover surveillance operation at Respondent's shop, Affordable & Quick Smog. Respondent was observed to perform fraudulent smog inspections, as follows:

a. Fraudulent Inspection 1: Respondent Singh purported to test a 1989 Mazda, license number 4L07912, entered information in the Emissions Inspection System regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that Respondent tested was a two-door Honda. The 1989 Mazda was not in the test bay of the facility at the time of the certification.

b. Fraudulent Inspection 2: Respondent Singh purported to test a 1991 GMC K30, license number 5K18579, entered information in the Emissions Inspection System regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that Respondent tested was a two-door Honda. The 1991 GMC K30 was not in the test bay of the facility at the time of the certification.

c. Fraudulent Inspection 3: Respondent Singh purported to test a 1990 Chevrolet C1500 pickup, license number 3Y39424, and entered information in the Emissions Inspection System regarding said vehicle. In reality, the vehicle that Respondent tested was a two-door Honda. The 1990 Chevrolet C1500 pickup was not in the test bay of the facility at the time of the test.

d. Fraudulent Inspection 4: Respondent Singh purported to test a 1990 Chevrolet C1500 pickup, license number 3Y39424, entered information in the Emissions Inspection System regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that Respondent tested was a 1996 Mazda pickup truck. The 1990 Chevrolet C1500 pickup was not in the test bay of the facility at the time of the certification.

e. Fraudulent Inspection 5: Respondent Singh purported to test a 1996 Acura Integra, license number 5FTP770, entered information in the Emissions Inspection System regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle

that Respondent tested was a 1996 Mazda pickup truck. The 1996 Acura Integra was not in the test bay of the facility at the time of the certification.

f. Fraudulent Inspection 6: Respondent Singh purported to test a 1999 Honda Accord, license number 4HDC338, entered information in the Emissions Inspection System regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that Respondent tested was a 1996 Mazda pickup truck. The 1999 Honda Accord was not in the test bay of the facility at the time of the certification.

g. Fraudulent Inspection 7: Respondent Singh purported to test a 1999 BMW 3-Series, license number 4FJY852, entered information in the Emissions Inspection System regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that Respondent tested was a 2001 Oldsmobile Alero. The 1999 BMW 3-Series was not in the test bay of the facility at the time of the certification.

h. Fraudulent Inspection 8: Respondent Singh purported to test a 1996 Honda Civic, license number 6JUH499, entered information in the Emissions Inspection System regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that Respondent tested was a 1996 Mazda pickup truck. The 1996 Honda Civic was not in the test bay of the facility at the time of the certification.

17. On or about March 2, 2012, the Bureau's investigative staff conducted an undercover surveillance operation at Respondent's shop, Affordable & Quick Smog. Respondent was observed to perform fraudulent smog inspections, as follows:

a. Fraudulent Inspection 9: Respondent Singh purported to test a 1997 Infiniti QX4, license number 5BOX927, entered information in the Emissions Inspection System regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that Respondent tested was a 1996 Mazda pickup truck. The 1997 Infiniti QX4 was not in the test bay of the facility at the time of the certification.

b. Fraudulent Inspection 10: Respondent Singh purported to test a 1997 Nissan Altima, license number 3UVC808, entered information in the Emissions Inspection System regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle

that Respondent tested was a 1996 Mazda pickup truck. The 1997 Nissan Altima was not in the test bay of the facility at the time of the certification.

c. Fraudulent Inspection 11: Respondent Singh purported to test a 1994 Ford Mustang, license number 3JSZ737, entered information in the Emissions Inspection System regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that Respondent tested was a 1996 Mazda pickup truck. The 1994 Ford Mustang was not in the test bay of the facility at the time of the certification.

d. Fraudulent Inspection 12: Respondent Singh purported to test a 1994 Toyota Camry, license number 4USZ095, entered information in the Emissions Inspection System regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that Respondent tested was a 1996 Mazda pickup truck. The 1994 Toyota Camry was not in the test bay of the facility at the time of the certification.

e. Fraudulent Inspection 13: Respondent Singh purported to test a 1989 Chevrolet C1500 truck, license number AYASAD, entered information in the Emissions Inspection System regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that Respondent tested was a 1996 Mazda pickup truck. The 1989 Chevrolet C1500 truck was not in the test bay of the facility at the time of the certification.

f. Fraudulent Inspection 14: Respondent Singh purported to test a 1996 Honda Accord, license number 4XWB964, entered information in the Emissions Inspection System regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that Respondent tested was a 1997 Nissan Quest. The 1996 Honda Accord was not in the test bay of the facility at the time of the certification.

g. Fraudulent Inspection 15: Respondent Singh purported to test a 2000 Chevrolet Venture FWD, license number 7F18980, entered information in the Emissions Inspection System regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that Respondent tested was a 1996 Mazda pickup truck. The 2000 Chevrolet Venture FWD was not in the test bay of the facility at the time of the certification.

h. Fraudulent Inspection 16: Respondent Singh purported to test a 1987 Mazda B-Series truck, license number 4P07890, entered information in the Emissions Inspection System regarding said vehicle, and issued a certificate for said vehicle. In reality, the vehicle that Respondent tested was a 1986 Ford Bronco. The 1987 Mazda B-Series truck was not in the test bay of the facility at the time of the certification.

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements - Registration)

18. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading, as set forth above in paragraphs 16-17. Respondent fraudulently purported to test vehicles in Fraudulent Inspections 1-16, and certified that the vehicles in Fraudulent Inspections 1-2 and 4-16 passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles using clean-piping methods.

SECOND CAUSE FOR DISCIPLINE

(Fraud - Registration)

19. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that he committed acts which constitute fraud, as set forth above in paragraphs 16-17.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply With Chapter - Registration)

20. Respondent has subjected his registration to discipline under Code section 9884.7, subdivision (a)(6), in that he failed to comply with laws and regulations pertaining to the performance of smog checks, as set forth above in paragraphs 16-17.

FOURTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program – Station License)

21. Respondent has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivisions (a) and (c), in that he violated sections of that Code and

applicable regulations, as set forth above in paragraphs 16-17, as follows:

a. **Section 44012**: Respondent failed to ensure that the emission control tests were performed on those vehicles in accordance with procedures prescribed by the department.

b. **Section 44015**: Respondent issued electronic certificates of compliance for those vehicles without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health and Safety Code section 44012.

c. **Section 44059**: Respondent willfully made false entries for the electronic certificates of compliance by certifying that those vehicles had been inspected as required when, in fact, they had not.

d. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles as required by Health and Safety Code section 44012.

e. **Section 3340.35, subdivision (c)**: Respondent issued electronic certificates of compliance even though those vehicles had not been inspected in accordance with section 3340.42.

f. **Section 3340.42**: Respondent failed to conduct the required smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit – Station License)

22. Respondent subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic certificates of compliance for vehicles without performing bona fide inspections of the emission control devices and system on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above in paragraphs 16-17.

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SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program – Technician License)

23. Respondent has subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivisions (a) and (c), in that he violated sections of that Code and applicable regulations, as set forth above in paragraphs 16-17, as follows:

a. **Section 44012**: Respondent failed to ensure that the emission control tests were performed on those vehicles in accordance with procedures prescribed by the department.

b. **Section 44015**: Respondent issued electronic certificates of compliance for those vehicles without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health and Safety Code section 44012.

c. **Section 44059**: Respondent willfully made false entries for the electronic certificates of compliance by certifying that those vehicles had been inspected as required when, in fact, they had not.

d. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued electronic certificates of compliance for those vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles as required by Health and Safety Code section 44012.

e. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test those vehicles in accordance with Health and Safety Code section 44012.

f. **Section 3340.35, subdivision (c)**: Respondent issued electronic certificates of compliance even though those vehicles had not been inspected in accordance with section 3340.42.

g. **Section 3340.42**: Respondent failed to conduct the required smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

SEVENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit – Technician License)

24. Respondent subjected his technician license to discipline under Health and Safety Code section 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or

deceit, whereby another was injured by issuing electronic certificates of compliance for vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above in paragraphs 16-17.

DISCIPLINARY CONSIDERATIONS

25. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges aggravating circumstances as follows:

26. On or about September 15, 2011, Respondent was issued Citation No. C2012-0224 based on his failure to perform a visual/functional check of emission control devices during a vehicle inspection, in violation of California Health and Safety Code section 44012(f).

27. On or about September 15, 2011, Respondent was issued Citation No. M2012-0225 based on his failure to perform an adequate test of a vehicle's emissions control system, in violation of California Health and Safety Code section 44032.

28. On or about October 5, 2011, Respondent attended a Citation Conference with Bureau personnel to discuss Citations C2012-0224 and M2012-0225. At that time, Respondent was admonished that future violations of the laws pertaining to Smog inspections would result in legal action against him.

OTHER MATTERS

29. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate, or may invalidate temporarily or permanently, the registrations for all places of business operated in this state by Malwinder Singh, 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.

30. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station License Number TC 264429, issued to Malwinder Singh, doing business as Affordable & Quick Smog, 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.

31. Pursuant to Health & Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 150724, issued to Malwinder Singh, 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, suspending, or placing on probation Automotive Repair Dealer Registration Number ARD 264429, issued to Malwinder Singh, doing business as Affordable & Quick Smog;

2. Revoking, suspending, or placing on probation any other automotive repair dealer registration issued to Malwinder Singh;

3. Revoking or suspending Smog Check Test Only Station License Number TC 264429, issued to Malwinder Singh, doing business as Affordable & Quick Smog;

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

5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 150724, issued to Malwinder Singh;

6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Malwinder Singh;

7. Ordering Malwinder Singh 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,

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

DATED: June 21 2012

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