

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Accusation Against:

**W M SMOG TEST ONLY; GEORGINA
DEL CARMEN DIAZ, OWNER**

**1549 W. Washington Blvd.
Los Angeles, CA 90007
Automotive Repair Dealer Registration No.
ARD 264976
Smog Check Test Only Station License No.
TC 264976,**

and

**CHUN YOP LEE
939 Menlo Ave. #A
Los Angeles, CA 90006**

**Smog Check Inspector License No. EO
147772
Smog Check Repair License No. EI 147772**

**[Formerly Advanced Emission Specialist
Technician License No. EA 147772]**

Respondents.

Case No. 79/14-128

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1
2 1. On or about June 13, 2014, Complainant Patrick Dorais, in his official capacity as the
3 Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation
4 No. 79/14-128 against W M Smog Test Only; Georgina Del Carmen Diaz, Owner (Respondent W
5 M Smog Test Only) and Chun Yop Lee (Respondent Lee) before the Director of Consumer
6 Affairs (Director). (Accusation attached as Exhibit A.)

7 2. On or about May 6, 2011, the Bureau of Automotive Repair (Bureau) issued
8 Automotive Repair Dealer Registration No. ARD 264976 to Respondent W M Smog Test Only.
9 The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
10 charges brought in Accusation No. 79/14-128 and will expire on May 31, 2015, unless renewed.

11 3. On or about July 27, 2011, the Bureau of Automotive Repair issued Smog Check Test
12 Only Station License No. TC 264976 to Respondent W M Smog Test Only. The Smog Check
13 Test Only Station License was in full force and effect at all times relevant to the charges brought
14 in Accusation No. 79/14-128 and will expire on May 31, 2015, unless renewed.

15 4. In 2003, the Bureau of Automotive Repair issued Advanced Emission Specialist
16 Technician License Number EA 147772 to Respondent Lee. Respondent Lee's Advanced
17 Emission Specialist Technician License was due to expire on March 31, 2013. Pursuant to
18 California Code of Regulations, title 16, section 3340.28, subdivision (e), the license was
19 renewed, pursuant to Respondent Lee's election, as Smog Check Inspector License Number EO
20 147772 and Smog Check Repair Technician License Number EI 147772 ("technician licenses"),
21 effective March 11, 2013. Respondent's technician licenses will expire on March 31, 2015,
22 unless renewed.

23 5. On or about June 17, 2014, Respondents were served by Certified and First Class
24 Mail copies of the Accusation No. 79/14-128, Statement to Respondent, Notice of Defense,
25 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
26 and 11507.7) at their addresses of record which, pursuant to Business and Professions Code
27 section 136, are required to be reported and maintained with the Bureau. Respondent W M Smog
28

1 Test Only's address of record was and is: 1549 W. Washington Blvd. Los Angeles, CA 90007.

2 Respondent Lee's address of record is 939 Menlo Ave. #A, Los Angeles, CA 90006.

3 6. Service of the Accusation was effective as a matter of law under the provisions of
4 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
5 124.

6 7. Government Code section 11506 states, in pertinent part:

7 (c) The respondent shall be entitled to a hearing on the merits if the respondent
8 files a notice of defense, and the notice shall be deemed a specific denial of all parts
9 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

10 8. Respondents failed to file a Notice of Defense within 15 days after service upon them
11 of the Accusation, and therefore they waived their right to a hearing on the merits of Accusation
12 No. 79/14-128.

13 9. California Government Code section 11520 states, in pertinent part:

14 (a) If the respondent either fails to file a notice of defense or to appear at the
15 hearing, the agency may take action based upon the respondent's express admissions
16 or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

17 10. Pursuant to its authority under Government Code section 11520, the Director after
18 having reviewed the proof of service dated June 17, 2014, signed by L M Robinson, finds
19 Respondents are in default. The Director will take action without further hearing and, based on
20 Accusation, No. 79/14-128, proof of service and on the Affidavit of Bureau Representative
21 Mauricio Cabeza, finds that the allegations in the Accusation are true.

22 DETERMINATION OF ISSUES

23 1. Based on the foregoing findings of fact, Respondent W M Smog Test Only has
24 subjected her Automotive Repair Dealer Registration and Smog Check Test Only Station License
25 to discipline;

26 2. Based on the foregoing findings of fact, Respondent Lee has subjected his technician
27 licenses to discipline;

28 3. The agency has jurisdiction to adjudicate this case by default.

1 seven (7) days after service of the Decision on Respondents. The motion should be sent to the
2 Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho
3 Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing
4 on a showing of good cause, as defined in the statute.

5 This Decision shall become effective on September 12, 2014

6 It is so ORDERED August 18, 2014

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

51559139.DOC
DOJ Matter ID:LA2014511536

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 THOMAS L. RINALDI
Deputy Attorney General
4 State Bar No. 206911
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2541
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

10
11 In the Matter of the Accusation Against:
12 W M SMOG TEST ONLY; GEORGINA
DEL CARMEN DIAZ, Owner
13 1549 W. Washington Blvd.
Los Angeles, CA 90007
14
15 Automotive Repair Dealer Registration No.
ARD 264976
16 Smog Check Test Only Station License No.
TC 264976,
17 and
18 CHUN YOP LEE
939 Menlo Ave. #A
19 Los Angeles, CA 90006
20 Smog Check Inspector License No. EO
147772
21 Smog Check Repair License No. EI 147772
22 [Formerly Advanced Emission Specialist
Technician License No. EA 147772]
23
24 Respondent.

Case No. 79/14-128

A C C U S A T I O N

25 Complainant alleges:

26 **PARTIES**

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

1 (4) Any other conduct that constitutes fraud.

2 (b) Except as provided for in subdivision (c), if an automotive repair
3 dealer operates more than one place of business in this state, the director pursuant to
4 subdivision (a) shall only suspend, revoke, or place on probation the registration of
5 the specific place of business which has violated any of the provisions of this chapter.
6 This violation, or action by the director, shall not affect in any manner the right of the
7 automotive repair dealer to operate his or her other places of business.

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

13 7. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
14 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
15 proceeding against an automotive repair dealer or to render a decision invalidating a registration
16 temporarily or permanently.

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

21 9. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
22 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
23 the Motor Vehicle Inspection Program.

24 10. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

28 (a) Violates any section of this chapter [the Motor Vehicle Inspection
Program (Health and Saf. 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.

11. 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

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 12. Section 44072.8 of the Health and Safety Code states:

4 When a license has been revoked or suspended following a hearing under
5 this article, any additional license issued under this chapter in the name of the
6 licensee may be likewise revoked or suspended by the director.

7 13. California Code of Regulations, title 16, section 3340.28, subdivision (e), states that
8 “[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
9 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
10 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

11 COST RECOVERY

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

16 BACKGROUND

17 15. Between March and September, 2013, Respondent W M Smog through the actions of
18 Respondent Lee performed nine (9) smog inspections that resulted in the issuance of electronic
19 certificates of compliance for the vehicles set forth in Table 1, below, certifying that Respondents
20 had tested and inspected those vehicles and that the vehicles were in compliance with applicable
21 laws and regulations.

22 16. In fact, Respondents performed the smog inspections using the clean piping method
23 by utilizing the tail pipe emissions of vehicles other than the vehicles being certified in order to
24 issue the electronic certificates of compliance. The vehicles certified were not in the test bay at
25 the time of the smog inspections. Rather, the subject vehicles were either maintained in the
26 BAR’s documentation lab storage facility or were vehicles maintained by BAR in a condition that
27 would not allow them to pass a properly performed smog inspection.
28

Table 1

Test Times	Vehicle in EIS Data (License Plate #)	Vehicle Tested (License Plate #)	Certificate Issued
3-20-2013 0955-1015	1995 Toyota 4Runner [REDACTED]	2004 Lexus IS300 5FTB707 ¹	[REDACTED]
4-19-2013 1614-1640	1995 Acura Integra [REDACTED]	1999 Buick Century ² (4FJM685)	[REDACTED]
4-27-2013 0937-1010	1993 Honda Civic Del Sol [REDACTED]	Undetermined	[REDACTED]
7-18-2013 1554-1609	1995 Honda Civic [REDACTED]	2004 Lexus IS300 5FTB707	[REDACTED]
9-4-2013 1603-1618	1997 Acura Integra [REDACTED]	Undetermined	[REDACTED]
9-5-2013 1526-1548	1989 Toyota Camry [REDACTED]	Undetermined	[REDACTED]
9-6-2013 1114-1136	1995 Honda Prelude [REDACTED]	Undetermined	[REDACTED]
9-7-2013 1138-1159	1994 Toyota Paseo [REDACTED]	Undetermined	[REDACTED]
9-7-2013 1010-1028	1991 Mazda 626 [REDACTED]	Undetermined	[REDACTED]

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

17. Respondent W M Smog Test Only has subjected her registration to discipline under Code section 9884.7, subdivision (a)(1), in that she made statements which she knew or which by exercise of reasonable care should have known were untrue or misleading when she issued electronic certificates of compliance for the vehicles set forth in Table 1 above, certifying that those vehicles were in compliance with applicable laws and regulations when, in fact, the vehicles had been clean piped.³

¹ A check of DMV records indicates that this vehicle is owned by Respondent Lee.

² A check of DMV records indicates this vehicle is owned by Respondent W M Smog.

³ Clean-piping is a method used to fraudulently certify vehicles that will not pass a smog inspection on their own or otherwise not even present during the time the test is performed.

1 SECOND CAUSE FOR DISCIPLINE

2 (Fraud)

3 18. Respondent W M Smog Test Only has subjected her registration to discipline under
4 Code section 9884.7, subdivision (a)(4), in that she committed acts which constitute fraud by
5 issuing electronic certificates of compliance for the vehicles set forth in Table 1 above, without
6 performing bona fide inspections of the emission control devices and systems on those vehicles,
7 thereby depriving the People of the State of California of the protection afforded by the Motor
8 Vehicle Inspection Program.

9 THIRD CAUSE FOR DISCIPLINE

10 (Violation of the Motor Vehicle Inspection Program)

11 19. Respondent W M Smog Test Only has subjected her station license to discipline
12 under Health and Safety Code section 44072.2, subdivision (a), in that, regarding the vehicles set
13 forth in Table 1 above, she violated sections of that Code; as follows:

14 a. Section 44012, subdivision (a): Respondent W M Smog Test Only failed to
15 determine that all emission control devices and systems required by law were installed and
16 functioning correctly in accordance with test procedures.

17 b. Section 44012, subdivision (f): Respondent W M Smog Test Only failed to perform
18 emission control tests on those vehicles in accordance with procedures prescribed by the
19 department.

20 c. Section 44015, subdivision (b): Respondent W M Smog Test Only issued electronic
21 certificates of compliance without properly testing and inspecting the vehicles to determine if
22 they were in compliance with section 44012 of that Code.

23 d. Section 44059: Respondent W M Smog Test Only willfully made false entries for
24 the electronic certificates of compliance by certifying that those vehicles had been inspected as
25 required when, in fact, she had not.

1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 20. Respondent W M Smog Test Only has subjected her station license to discipline
4 under Health and Safety Code section 44072.2, subdivision (c), in that, regarding the vehicles set
5 forth in Table 1, above, it violated sections of the California Code of Regulations, title 16, as
6 follows:

7 a. **Section 3340.24, subdivision (c):** Respondent W M Smog Test Only falsely or
8 fraudulently issued electronic certificates of compliance without performing bona fide inspections
9 of the emission control devices and systems on those vehicles as required by Health and Safety
10 Code section 44012.

11 b. **Section 3340.35, subdivision (c):** Respondent W M Smog Test Only issued
12 electronic certificates of compliance even though those vehicles had not been inspected in
13 accordance with section 3340.42 of that Code.

14 c. **Section 3340.42:** Respondent W M Smog Test Only failed to conduct the required
15 smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

16 **FIFTH CAUSE FOR DISCIPLINE**

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

18 21. Respondent W M Smog Test Only subjected her station license to discipline under
19 Health and Safety Code section 44072.2, subdivision (d), in that, regarding the vehicles set forth
20 in Table 1, above, she committed acts involving dishonesty, fraud or deceit whereby another was
21 injured by issuing electronic certificates of compliance for those vehicles without performing
22 bona fide inspections of the emission control devices and systems on those vehicles, thereby
23 depriving the People of the State of California of the protection afforded by the Motor Vehicle
24 Inspection Program.

1 SIXTH CAUSE FOR DISCIPLINE

2 (Violations of the Motor Vehicle Inspection Program)

3 22. Respondent Lee has subjected his inspector license to discipline under Health and
4 Safety Code section 44072.2, subdivision (a), in that, regarding the vehicles set forth in Table 1,
5 he violated sections of that Code, as follows:

6 a. **Section 44012, subdivision (a):** Respondent Lee failed to determine that all emission
7 control devices and systems required by law were installed and functioning correctly in
8 accordance with test procedures.

9 b. **Section 44012, subdivision (f):** Respondent Lee failed to perform emission control
10 tests on those vehicles in accordance with procedures prescribed by the department.

11 c. **Section 44032:** Respondent Lee failed to perform tests of the emission control
12 devices and systems on those vehicles in accordance with section 44012 of that Code, in that
13 those vehicles had been clean piped.

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

17 SEVENTH CAUSE FOR DISCIPLINE

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

19 23. Respondent Lee has subjected his inspector license to discipline under Health and
20 Safety Code section 44072.2, subdivision (c), in that, regarding the vehicles set forth in Table 1,
21 he violated sections of the California Code of Regulations, title 16, as follows:

22 a. **Section 3340.24, subdivision (c):** Respondent Lee falsely or fraudulently issued
23 electronic certificates of compliance without performing bona fide inspections of the emission
24 control devices and systems on those vehicles as required by Health and Safety Code section
25 44012.

26 b. **Section 3340.30, subdivision (a):** Respondent Lee failed to inspect and test those
27 vehicles in accordance with Health and Safety Code section 44012.
28

1 c. Section 3340.41, subdivision (c): Respondent Lee entered false information into the
2 Emission Inspection System ("EIS") for the electronic certificates of compliance by entering
3 vehicle emission control information for vehicles other than the vehicles being certified.

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

6 **EIGHTH CAUSE FOR DISCIPLINE**

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

8 24. Respondent Lee has subjected his inspector license to discipline under Health and
9 Safety Code section 44072.2, subdivision (d), in that, he committed acts involving dishonesty,
10 fraud or deceit whereby another was injured by issuing electronic certificates of compliance for
11 the vehicles set forth in Table 1, above, without performing bona fide inspections of the emission
12 control devices and systems on those vehicles, thereby depriving the People of the State of
13 California of the protection afforded by the Motor Vehicle Inspection Program.

14 **OTHER MATTERS**

15 25. Under Code section 9884.7, subdivision (c), the director may invalidate temporarily
16 or permanently or refuse to validate, the registrations for all places of business operated in this
17 state by Respondent W M Smog Test Only, upon a finding that she has, or is, engaged in a
18 course of repeated and willful violations of the laws and regulations pertaining to an automotive
19 repair dealer.

20 26. Under Health and Safety Code section 44072.8, if Station License Number TC
21 269945, issued to Respondent W M Smog Test Only is revoked or suspended, any additional
22 license issued under this chapter in the name of said licensee may be likewise revoked or
23 suspended by the director.

24 27. Under Health and Safety Code section 44072.8, if either of Respondent Lee's
25 technician licenses are revoked or suspended, any additional license issued under this chapter in
26 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 or suspending Automotive Repair Dealer Registration Number ARD 264976, issued to Respondent W M Smog Test Only;
2. Revoking or suspending Smog Check Test Only Station License Number TC 264976, issued to Respondent W M Smog Test Only;
3. Revoking or suspending Smog Check Inspector License Number EO 147772, issued to Chun Yop Lee;
4. Revoking or suspending Smog Check Repair License Number EI 147772, issued to Chun Yop Lee;
5. Ordering Respondents 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;
6. Taking such other and further action as deemed necessary and proper.

DATED: June 13, 2014


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

LA2014511536
51531442.doc