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

11 In the Matter of the Accusation Against:
12
13 **SMOG CENTER**
14 **WLODEK W. ZUROMSKI,**
15 **aka WLODEK WALDEK ZUROMSKI, OWNER**
16 **2241 Monument Boulevard, #VW**
17 **Concord, CA 94520**
18 **Automotive Repair Dealer Reg. No. ARD 220146**
19 **Smog Check Test Only Station License No.**
20 **TC 220146**

Case No. 79/12-29

A C C U S A T I O N

SMOG CHECK

and

18 **WLODEK WALDEK ZUROMSKI**
19 **5575 Sepulveda Court**
20 **Concord, CA 94521-2445**
21 **Advanced Emission Specialist Technician License**
22 **No. EA 29500**

Respondents.

23 Complainant alleges:

24 **PARTIES**

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

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1 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
2 of jurisdiction to proceed with disciplinary action.

3 **STATUTORY PROVISIONS**

4 9. Bus. & Prof. Code section 9884.7 states, in pertinent part:

5 (a) The director, where the automotive repair dealer cannot show there
6 was a bona fide error, may deny, suspend, revoke, or place on probation the
7 registration of an automotive repair dealer for any of the following acts or omissions
8 related to the conduct of the business of the automotive repair dealer, which are done
9 by the automotive repair dealer or any automotive technician, employee, partner,
10 officer, or member of the automotive repair dealer.

11 (1) Making or authorizing in any manner or by any means whatever any
12 statement written or oral which is untrue or misleading, and which is known, or which
13 by the exercise of reasonable care should be known, to be untrue or misleading.

14 (2) Causing or allowing a customer to sign any work order which does
15 not state the repairs requested by the customer or the automobile's odometer reading
16 at the time of repair.

17

18 (4) Any other conduct that constitutes fraud.

19

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

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

28 10. Bus. & Prof. Code section 22, subdivision (a), states:

"Board" as used in any provision of this Code, refers to the board in
which the administration of the provision is vested, and unless otherwise expressly
provided, shall include "bureau," "commission," "committee," "department,"
"division," "examining committee," "program," and "agency."

11. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
"license" includes "registration" and "certificate."

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1 12. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

8

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

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

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

16 **COST RECOVERY**

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

21 **UNDERCOVER OPERATION: 1994 TOYOTA TRUCK**

22 15. On December 7, 2010, a representative of the Bureau, acting in an undercover
23 capacity ("representative"), took the Bureau's 1994 Toyota truck to Respondent's facility. The
24 PAIR (pulse air injection reactor system) reed valve assembly had been removed from the
25 Bureau-documented vehicle. The representative requested a smog inspection and provided
26 Respondent with an internet advertisement/coupon from the Website, *PennySaverUSA.com*. The
27 business name listed on the advertisement/coupon was Concord Smog Check. The facility was
28 offering smog inspections for \$26.99 plus \$8.25 for the smog certificate and an ETF (electronic
transfer fee) of \$4.76 on most cars, in addition to other costs¹. Respondent had the representative

¹ The advertisement/coupon stated that vans and trucks, test only vehicles, out of state vehicles, and vehicles requiring an EVAP test would cost \$10 extra.

1 sign a work order for the inspection. Respondent then wrote \$30 in additional fees on the work
2 order, and told the representative that the inspection would cost a total of \$70 since the vehicle
3 was a truck, was required to be inspected at a test only facility², and required an EVAP test. The
4 representative authorized the smog inspection for \$70 and received a copy of the work order.
5 After the inspection was completed, the representative paid Respondent \$70 and received copies
6 of an invoice and a vehicle inspection report. That same day, electronic smog Certificate of
7 Compliance #NY822674C was issued for the vehicle.

8 16. On December 16, 2010, the Bureau inspected the vehicle and found that the PAIR
9 reed valve assembly was still missing.

10 17. In or about January 2011, a representative of the Bureau obtained two advertisements
11 for discounted smog inspections at Respondent's facility, including an advertisement from the
12 January 12, 2011, edition of the *East County Times*. On January 14, 2011, the representative
13 went to Respondent's facility and showed Respondent the two advertisements as well as the
14 advertisement/coupon used during the undercover operation. Respondent verified that all three
15 advertisements were for his facility, Smog Center.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Untrue or Misleading Statements)**

18 18. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
19 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which
20 he knew, or in the exercise of reasonable care should have known to be untrue or misleading, as
21 follows: Respondent certified under penalty of perjury on the vehicle inspection report that the
22 Bureau's 1994 Toyota truck had passed the inspection and was in compliance with applicable
23 laws and regulations. In fact, the PAIR reed valve assembly had been removed from the vehicle

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25 _____
26 ² California Code of Regulations, title 16, section 3340.1, subdivision (p), defines a "test-only
27 facility" as a facility contracted by the Bureau to test and inspect vehicles. Health & Saf. Code
28 section 44014.5, subdivision (b), provides, in pertinent part, that the repair of vehicles at test-only
facilities is prohibited.

1 and as such, the vehicle would not pass the inspection required by Health & Saf. Code section
2 44012.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Failure to Record Odometer Reading)**

5 19. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
6 Code section 9884.7, subdivision (a)(2), in that Respondent caused or allowed the representative
7 to sign the work order which did not state the odometer reading of the Bureau's 1994 Toyota
8 truck.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Fraud)**

11 20. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
12 Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that constitutes
13 fraud, as follows: Respondent issued an electronic smog certificate of compliance for the
14 Bureau's 1994 Toyota truck without ensuring that a bona fide inspection was performed of the
15 emission control devices and systems on the vehicle, thereby depriving the People of the State of
16 California of the protection afforded by the Motor Vehicle Inspection Program.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(False Advertising)**

19 21. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
20 Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with California
21 Code of Regulations, title 16, section 3371, by publishing, uttering, or making or causing to be
22 published, uttered, or made false or misleading statements or advertising which Respondent
23 knew, or in the exercise of reasonable care should have known to be false or misleading, as
24 follows:

25 a. Respondent falsely represented on the advertisement/coupon, identified in paragraph
26 15 above, that his business name was Concord Smog Check.

27 b. Respondent falsely represented on the advertisement/coupon, identified in paragraph
28 15 above, that his facility was an "inspection and repair station". In fact, Respondent's station is a

1 test-only facility and as such, Respondent is prohibited from performing automotive repairs on
2 vehicles.

3 c. Respondent failed to show his business name on his advertisement in the January 12,
4 2011, edition of the *East County Times*.³

5 **FIFTH CAUSE FOR DISCIPLINE**

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

7 22. Respondent's smog check station license is subject to disciplinary action pursuant to
8 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with the
9 following sections of that Code:

10 a. **Section 44012:** Respondent failed to perform the emission control tests on the
11 Bureau's 1994 Toyota Truck in accordance with procedures prescribed by the department.

12 b. **Section 44015:** Respondent issued an electronic smog certificate of compliance for
13 the Bureau's 1994 Toyota truck without properly testing and inspecting the vehicle to determine
14 if it was in compliance with Health & Saf. Code section 44012.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with Regulations Pursuant**
17 **to the Motor Vehicle Inspection Program)**

18 23. Respondent's smog check station license is subject to disciplinary action pursuant to
19 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with the
20 following sections of California Code of Regulations, title 16:

21 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
22 electronic smog certificate of compliance for the Bureau's 1994 Toyota truck.

23 b. **Section 3340.35, subdivision (c):** Respondent issued an electronic smog certificate
24 of compliance for the Bureau's 1994 Toyota truck even though the vehicle had not been inspected
25 in accordance with section 3340.42.

26 ³ California Code of Regulations, title 16, section 3371 states, in pertinent part, that "...
27 advertisements and advertising signs shall clearly show the following: (a) Firm Name and
28 Address. The dealer's firm name and address as they appear on the State registration certificate as
an automotive repair dealer . . ."

1 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
2 Bureau's 1994 Toyota truck in accordance with the Bureau's specifications.

3 **SEVENTH CAUSE FOR DISCIPLINE**

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

5 24. Respondent's smog check station license is subject to disciplinary action pursuant to
6 Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest,
7 fraudulent, or deceitful act whereby another is injured, as follows: Respondent issued an
8 electronic smog certificate of compliance for the Bureau's 1994 Toyota truck without performing
9 a bona fide inspection of the emission control devices and systems on the vehicle, thereby
10 depriving the People of the State of California of the protection afforded by the Motor Vehicle
11 Inspection Program.

12 **EIGHTH CAUSE FOR DISCIPLINE**

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

14 25. Respondent's technician license is subject to disciplinary action pursuant to Health &
15 Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with provisions
16 of that Code in the following material respects:

17 a. **Section 44012:** Respondent failed to perform the emission control tests on the
18 Bureau's 1994 Toyota truck in accordance with procedures prescribed by the department.

19 b. **Section 44059:** Respondent willfully made a false entry on the vehicle inspection
20 report, as set forth in paragraph 18 above.

21 **NINTH CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Regulations Pursuant**
23 **to the Motor Vehicle Inspection Program)**

24 26. Respondent's technician license is subject to disciplinary action pursuant to Health &
25 Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions
26 of California Code of Regulations, title 16, as follows:

27 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
28 electronic smog certificate of compliance for the Bureau's 1994 Toyota truck.

1 devices according to procedures prescribed by the department); and Regulation 3340.35,
2 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested).
3 Respondent had issued a certificate of compliance to a Bureau undercover vehicle with a missing
4 fuel evaporative canister. The Bureau assessed civil penalties totaling \$500 against Respondent
5 for the violations. Respondent paid the fine on April 27, 2010.

6 c. On or about July 30, 2010, the Bureau issued Citation No. C2011-0108 against
7 Respondent, in his capacity as owner of Smog Center, for violations of Health & Saf. Code
8 sections 44012, subdivision (f) (failure to determine that emission control devices and systems
9 required by State and Federal law are installed and functioning correctly in accordance with test
10 procedures) and 44002 (failure to provide a customer a written estimate for parts and labor for a
11 specific job); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance to a
12 vehicle that was improperly tested). Respondent had issued a certificate of compliance to a
13 Bureau undercover vehicle with the ignition timing adjusted beyond specifications. The Bureau
14 assessed civil penalties totaling \$2,000 against Respondent for the violations. Respondent
15 appealed the citation on October 20, 2010.

16 d. On or about November 28, 2001, the Bureau issued Citation No. M02-0350 against
17 Respondent as to his smog check technician license for violations of Health & Saf. Code section
18 44032 (failure to determine that emission control devices and systems required by State and
19 Federal law are installed and functioning correctly in accordance with test procedures); and
20 Regulation 3340.30, subdivision (a) (issuing a certificate of compliance to a vehicle that was
21 improperly tested). Respondent had issued a certificate of compliance to a Bureau undercover
22 vehicle with a functional timing failure (the ignition timing was misadjusted). Respondent was
23 directed to complete an 8 hour training course and to submit proof of completion to the Bureau
24 within 30 days from receipt of the citation. Respondent completed the training on January 8,
25 2002.

26 e. On or about February 5, 2002, the Bureau issued Citation No. M02-0557 against
27 Respondent as to his smog check technician license for violations of Health & Saf. Code sections
28 44032 (failure to determine that emission control devices and systems required by State and

1 Federal law are installed and functioning correctly in accordance with test procedures); and
2 Regulation 3340.30, subdivision (a) (issuing a certificate of compliance to a vehicle that was
3 improperly tested). Respondent had issued a certificate of compliance to a Bureau undercover
4 vehicle with a non-functional exhaust gas recirculation system. Respondent was directed to
5 complete a 16 hour training course and to submit proof of completion to the Bureau within 30
6 days from receipt of the citation. Respondent appealed the citation on March 14, 2002, but
7 completed the training on December 19, 2002.

8 f. On or about September 11, 2008, the Bureau issued Citation No. M09-0235 against
9 Respondent as to his smog check technician license for violations of Health & Saf. Code sections
10 44032 (qualified technicians shall perform tests of emission control systems and devices in
11 accordance with Health & Saf. Code section 44012); and Regulation 3340.30, subdivision (a)
12 (qualified technicians shall inspect, test and repair vehicles in accordance with Health & Saf.
13 Code sections 44012 and 44035 and Regulation 3340.42). Respondent had issued a certificate of
14 compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond
15 specifications. Respondent was directed to complete an 8 hour training course and to submit
16 proof of completion to the Bureau within 30 days from receipt of the citation. Respondent
17 completed the training on October 17, 2008.

18 g. On or about January 29, 2010, the Bureau issued Citation No. M2010-0780 against
19 Respondent as to his smog check technician license for violations of Health & Saf. Code sections
20 44032 (qualified technicians shall perform tests of emission control systems and devices in
21 accordance with Health & Saf. Code section 44012); and Regulation 3340.30, subdivision (a)
22 (qualified technicians shall inspect, test and repair vehicles in accordance with Health & Saf.
23 Code sections 44012 and 44035 and Regulation 3340.42). Respondent had issued a certificate of
24 compliance to a Bureau undercover vehicle with a missing fuel evaporative canister. Respondent
25 was directed to complete an 8 hour training course and to submit proof of completion to the
26 Bureau within 30 days from receipt of the citation. Respondent completed the training on April
27 9, 2010.

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1 h. On or about July 30, 2010, the Bureau issued Citation No. M2011-0109 against
2 Respondent as to his smog check technician license for violations of Health & Saf. Code sections
3 44032 (qualified technicians shall perform tests of emission control systems and devices in
4 accordance with Health & Saf. Code section 44012); and Regulation 3340.30, subdivision (a)
5 (qualified technicians shall inspect, test and repair vehicles in accordance with Health & Saf.
6 Code sections 44012 and 44035 and Regulation 3340.42). Respondent had issued a certificate of
7 compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond
8 specifications. Respondent was directed to complete a 16 hour training course and to submit
9 proof of completion to the Bureau within 30 days from receipt of the citation. Respondent
10 completed the training on October 15, 2010.

11 **OTHER MATTERS**

12 29. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
13 suspend, revoke, or place on probation the registration for all places of business operated in this
14 state by Respondent Wlodek W. Zuromski, also known as Wlodek Waldek Zuromski
15 ("Zuromski"), owner of Smog Center, upon a finding that Respondent has, or is, engaged in a
16 course of repeated and willful violations of the laws and regulations pertaining to an automotive
17 repair dealer.

18 30. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
19 License Number TC 220146, issued to Zuromski, owner of Smog Center, is revoked or
20 suspended, any additional license issued under this chapter in the name of said licensee may be
21 likewise revoked or suspended by the director.

22 31. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
23 License Number EA 29500, issued to Zuromski, is revoked or suspended, any additional license
24 issued under this chapter in the name of said licensee may be likewise revoked or suspended by
25 the director.

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1 PRAYER

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

4 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
5 220146, issued to Wlodek W. Zuromski, also known as Wlodek Waldek Zuromski, owner of
6 Smog Center;

7 2. Revoking or suspending any other automotive repair dealer registration issued to
8 Wlodek W. Zuromski, also known as Wlodek Waldek Zuromski;

9 3. Revoking or suspending Smog Check Test Only Station License Number TC 220146,
10 issued to Wlodek W. Zuromski, also known as Wlodek Waldek Zuromski, owner of Smog
11 Center;

12 4. Revoking or suspending Advanced Emission Specialist License Number EA 29500,
13 issued to Wlodek W. Zuromski, also known as Wlodek Waldek Zuromski;

14 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
15 and Safety Code in the name of Wlodek W. Zuromski, also known as Wlodek Waldek Zuromski;

16 6. Ordering Wlodek W. Zuromski, also known as Wlodek Waldek Zuromski,
17 individually, and as owner of Smog Center, to pay the Director of Consumer Affairs the
18 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
19 Professions Code section 125.3;

20 7. Taking such other and further action as deemed necessary and proper.

21
22 DATED: 9/12/11


23 SHERRY MEHL
24 Chief
25 Bureau of Automotive Repair
26 Department of Consumer Affairs
27 State of California
28 Complainant

SF2011201529