

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

In the Matter of the Accusation Against:

GUILLERMO DE LA GARZA, SR.
1349 S. Union Ave. #A
Los Angeles, CA 90015

Advanced Emission Specialist Technician
License No. EA 037499

Respondent.

Case No. 79/09-78

OAH No. L-2009070562

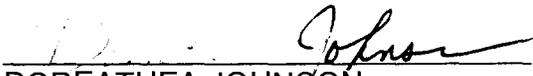
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

The suspension of Advanced Emission Specialist Technician License No. EA 037499 shall commence on the effective date of this Decision.

This Decision shall become effective on 7/26/10.

IT IS SO ORDERED June 22, 2010.


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

1 EDMUND G. BROWN JR.
Attorney General of California
2 KAREN B. CHAPPELLE
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
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6 Facsimile: (213) 897-2804
Attorneys for Complainant

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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:

Case No. 79/09-78

12 **GUILLERMO DE LA GARZA, SR.**
13 **1349 S. Union Ave. #A**
Los Angeles, CA 90015
14 **Advanced Emission Specialist Technician**
License No. EA037499

OAH No. L-2009070562
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 Respondent.

16
17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive Repair. She
22 brought this action solely in her official capacity and is represented in this matter by Edmund G.
23 Brown Jr., Attorney General of the State of California, by Thomas L. Rinaldi, Deputy Attorney
24 General.

25 2. Guillermo De La Garza, Sr. (Respondent) is represented in this proceeding by
26 attorney Rey L. Ochoa, whose address is 142 Main Street, Suite C, Seal Beach, CA 90704.

27 3. In or about 2003, the Bureau of Automotive Repair issued Advanced Emission
28 Specialist Technician License No. EA037499 to Respondent. The Advanced Emission Specialist

1 Technician License was in full force and effect at all times relevant to the charges brought in
2 Accusation No. 79/09-78 and expired on September 29, 2009.

3 JURISDICTION

4 4. Accusation No. 79/09-78 was filed before the Director of Consumer Affairs
5 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against
6 Respondent. The Accusation and all other statutorily required documents were properly served
7 on Respondent on August 12, 2009. Respondent timely filed his Notice of Defense contesting the
8 Accusation. A copy of Accusation No. 79/09-78 is attached as exhibit A and incorporated herein
9 by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 79/09-78. Respondent has also carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
14 Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
19 the attendance of witnesses and the production of documents; the right to reconsideration and
20 court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 79/09-78.

1 terminates. Failure to complete payment of cost recovery within this time frame shall constitute a
 2 violation of probation which may subject Respondent's license to outright revocation; however,
 3 the Director or the Director's Bureau of Automotive Repair designee may elect to continue
 4 probation until such time as reimbursement of the entire cost recovery amount has been made to
 5 the Bureau.

6 ACCEPTANCE

7 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
 8 discussed it with my attorney, Rey L. Ochoa. I understand the stipulation and the effect it will
 9 have on my Smog Check Technician. I enter into this Stipulated Settlement and Disciplinary
 10 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
 11 of the Director of Consumer Affairs.

12 DATED: 03-15-10 Guillermo de la Garza Sr.
 13 GUILLERMO DE LA GARZA SR.
 14 Respondent

15 I have read and fully discussed with Respondent Guillermo De La Garza, Sr. the terms and
 16 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
 17 I approve its form and content.

18 DATED: 3/15/10 Rey L. Ochoa
 19 Rey L. Ochoa
 20 Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 5/27/10

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General



THOMAS L. RINALDI
Deputy Attorney General
Attorneys for Complainant

LA2008900434
Stipulation.rtf

Exhibit A

Accusation No. 79/09-78

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
4 Telephone: (213) 897-2520
Facsimile: (213) 897-2804

5 Attorneys for Complainant

6
7 **BEFORE THE**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12
13 **HOOVER AUTO TECH SMOG**
2211 S. Hoover Street
Los Angeles, CA 90007
14 **SHARON M. KIM, OWNER**
15
16 Automotive Repair Dealer Registration No.
ARD 252719
17 Smog Check, Test Only, Station License No.
TC 252719
18
19 and
20 **GUILLERMO DE LA GARZA, SR.**
1349 S. Union Ave., #A
Los Angeles, CA 90015
21
22 Advanced Emission Specialist Technician
License No. EA 037499
23
24 Respondents.

Case No. 79/09-78

ACCUSATION
SMOG CHECK

25 Complainant alleges:

26 **PARTIES**

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

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Automotive Repair Dealer Registration No. ARD 252719

2. On or about November 9, 2007, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 252719 to Sharon M. Kim ("Respondent Kim"), owner of Hoover Auto Tech Smog. Respondent's automotive repair dealer registration was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2009, unless renewed.

Smog Check, Test Only, Station License No. TC 252719

3. On or about December 21, 2007, the Director issued Smog Check, Test Only, Station License Number TC 252719 to Respondent Kim. Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2009, unless renewed.

Advanced Emission Specialist Technician License No. EA 037499

4. In or about 2003, the Director issued Advanced Emission Specialist Technician License Number EA 037499 to Guillermo De La Garza, Sr. ("Respondent De La Garza"). Respondent's advanced emission specialist technician license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2009, unless renewed.

JURISDICTION

5. Business and Professions Code ("Code") section 9884.7 provides that the Director may invalidate an automotive repair dealer registration.

6. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director 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. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

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

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

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

Cost Recovery

13. 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.

VIDEO SURVEILLANCE OF MAY 21, 2008

14. On May 21, 2008, a representative of the Bureau conducted a video surveillance operation of Respondent Kim's smog check facility, Hoover Auto Tech Smog (hereinafter "smog check facility"). The surveillance operation and information obtained from the Bureau's Vehicle Information Database ("VID") revealed that between 0903 hours and 0923 hours, Respondent De La Garza performed a smog inspection that resulted in the issuance of the electronic certificate of compliance for the vehicle set forth in Table One, below, certifying that he had tested and inspected the vehicle and that the vehicle was in compliance with applicable laws and regulations. In fact, Respondent De La Garza performed the smog inspection using the clean piping¹ method by using the tail pipe emissions of a vehicle other than the vehicle being certified in order to issue the certificate of compliance. The vehicle certified was not in the test bay at the time of the smog inspection.

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1. Pursuant to California Code of Regulations, title 16, section 3340.1, subdivision (t), "clean piping" means the use of a sample of the exhaust emissions of one vehicle in order to cause the Emission Inspection System to issue a certificate of compliance for another vehicle.

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Table One

Test Times	Vehicle Certified	Vehicle Actually Tested	Cert Issued
0903 - 0923	1984 Toyota Camry Lic. No. 4UKZ234	1988 Toyota Camry License #4LRV091	NA651296C

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

15. Respondent Kim has subjected her registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about May 21, 2008, she made statements which she knew or which by exercise of reasonable care she should have known were untrue or misleading by issuing an electronic certificate of compliance for the vehicle set forth in Table One, above, certifying that the vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle had been clean piped.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

16. Respondent Kim has subjected her registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about May 21, 2008, she committed an act which constituted fraud by issuing the electronic certificate of compliance for the vehicle set forth in Table One, above, without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

17. Respondent Kim has subjected her station license to discipline under Health and Saf. Code section 44072.2, subdivision (a), in that on or about May 21, 2008, regarding the electronic certificate of compliance and the vehicle set forth in Table One, above, she violated sections of that Code, as follows:

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1 a. **Section 44012, subdivision (f):** Respondent Kim failed to perform
2 emission control tests on the vehicle in accordance with procedures prescribed by the department.

3 b. **Section 44015, subdivision (b):** Respondent Kim issued the electronic
4 certificate of compliance for the vehicle without properly testing and inspecting the vehicle to
5 determine if it was in compliance with section 44012 of that Code.

6 c. **Section 44059:** Respondent Kim willfully made a false entry for the
7 electronic certificate of compliance by certifying that the vehicle had been inspected as required
8 when, in fact, it had not.

9 **FOURTH CAUSE FOR DISCIPLINE**

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

11 18. Respondent Kim has subjected her station license to discipline under
12 Health and Saf. Code section 44072.2, subdivision (c), in that on or about May 21, 2008,
13 regarding the electronic certificate of compliance and the vehicle set forth in Table One, above,
14 she violated sections of the California Code of Regulations, title 16, as follows:

15 a. **Section 3340.24, subdivision (c):** Respondent Kim falsely or fraudulently
16 issued the electronic certificate of compliance for the vehicle without performing a bona fide
17 inspection of the emission control devices and systems on the vehicle as required by Health and
18 Saf. Code section 44012.

19 b. **Section 3340.35, subdivision (c):** Respondent Kim issued the electronic
20 certificate of compliance for the vehicle even though the vehicle had not been inspected in
21 accordance with section 3340.42 of that Code.

22 c. **Section 3340.42:** Respondent Kim failed to conduct the required smog
23 test and inspections on the vehicle in accordance with the Bureau's specifications.

24 **FIFTH CAUSE FOR DISCIPLINE**

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

26 19. Respondent Kim has subjected her station license to discipline under
27 Health and Saf. Code section 44072.2, subdivision (d), in that on or about May 21, 2008,
28 regarding the electronic certificate of compliance and the vehicle set forth in Table One, above,

1 she committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
2 the electronic certificate of compliance for the vehicle when, in fact, the vehicle had not been
3 properly tested and inspected, thereby depriving the People of the State of California of the
4 protection afforded by the Motor Vehicle Inspection Program.

5 **SIXTH CAUSE FOR DISCIPLINE**

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

7 20. Respondent De La Garza has subjected his technician license to discipline
8 under Health and Saf. Code section 44072.2, subdivision (a), in that on or about May 21, 2008,
9 regarding the electronic certificate of compliance and the vehicle set forth in Table One, above,
10 he violated sections of that Code, as follows:

11 a. **Section 44012, subdivision (f):** Respondent De La Garza failed to
12 determine that all emission control devices and systems required by law were installed and
13 functioning correctly on the vehicle in accordance with test procedures.

14 b. **Section 44032:** Respondent De La Garza failed to perform tests of the
15 emission control devices and systems on the vehicle in accordance with section 44012 of that
16 Code, in that the vehicle had been clean piped.

17 c. **Section 44059:** Respondent De La Garza entered false information into
18 the Emission Inspection System ("EIS") for the electronic certificate of compliance by certifying
19 that the vehicle had been inspected as required when, in fact, it had not.

20 **SEVENTH CAUSE FOR DISCIPLINE**

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

22 21. Respondent De La Garza has subjected his technician license to discipline
23 under Health and Saf. Code section 44072.2, subdivision (c), in that on or about May 21, 2008,
24 regarding the electronic certificate of compliance and the vehicle set forth in Table One, above,
25 he violated sections of the California Code of Regulations, title 16, as follows:

26 a. **Section 3340.24, subdivision (c):** Respondent De La Garza falsely or
27 fraudulently issued an electronic smog certificate of compliance for the vehicle.

28 ///

1 b. Section 3340.30, subdivision (a): Respondent De La Garza failed to
2 inspect and test the vehicle in accordance with Health and Saf. Code section 44012.

3 c. Section 3340.41, subdivision (c): Respondent De La Garza entered false
4 information into the EIS for the electronic certificate of compliance by entering vehicle
5 identification information or emission control information for a vehicle other than the vehicle
6 being tested.

7 d. Section 3340.42: Respondent De La Garza failed to conduct the required
8 smog test and inspections on the vehicle in accordance with the Bureau's specifications.

9 **EIGHTH CAUSE FOR DISCIPLINE**

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

11 22. Respondent De La Garza has subjected his technician license to discipline
12 under Health and Saf. Code section 44072.2, subdivision (d), in that on or about May 21, 2008,
13 he committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
14 the electronic certificate of compliance for the vehicle set forth in Table One, above, without
15 performing a bona fide inspection of the emission control devices and systems on that vehicle,
16 thereby depriving the People of the State of California of the protection afforded by the Motor
17 Vehicle Inspection Program.

18 **OTHER MATTERS**

19 23. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse
20 to validate, or may invalidate temporarily or permanently, the registrations for all places of
21 business operated in this state by Respondent Sharon M. Kim, owner of Hoover Auto Smog
22 Tech, upon a finding that said Respondent has, or is, engaged in a course of repeated and willful
23 violations of the laws and regulations pertaining to an automotive repair dealer.

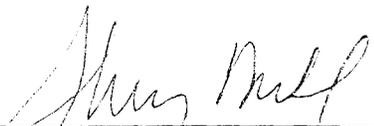
24 24. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test
25 Only, Station License Number TC 252719, issued to Respondent Sharon M. Kim, owner of
26 Hoover Auto Tech Smog, is revoked or suspended, any additional license issued under this
27 chapter in the name of said licensee may be likewise revoked or suspended by the director.

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

DATED: 2/23/09



SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant