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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: **SMOG CHECK ONLY** **FRANK H. SAKAMOTO, OWNER** **9913 Bloomington Avenue** **Bloomington, CA 92316** **Automotive Repair Dealer Reg. No. ARD 260323** **Smog Check, Test Only, Station License No. TC 260323** **and** **FRANK H. SAKAMOTO** **9728 Carob Avenue, #D** **Fontana, CA 92335** **Advanced Emission Specialist Technician License No. EA 631798** Respondents.	Case No. 79/13-16 **ACCUSATION** Smog Check

Complainant alleges:

PARTIES/LICENSE INFORMATION

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.

2. On or about December 28, 2009, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 260323 ("registration") to Frank H.

Sakamoto ("Respondent"), owner of Smog Check Only. Respondent's registration was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2012, unless renewed.

3. On or about December 29, 2009, the Director issued Smog Check, Test Only, Station License Number TC 260323 ("smog check station license") to Respondent. 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 November 30, 2012, unless renewed.

4. On or about February 24, 2010, the Director issued Advanced Emission Specialist Technician License Number EA 631798 ("technician license") to Respondent. Respondent's technician license was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2014, unless renewed.

JURISDICTION

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

6. Bus. & Prof. 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 temporarily or permanently invalidating (revoking or suspending) a registration.

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.

8. Health & Saf. Code section 44072.6 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.

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STATUTORY PROVISIONS

9. Bus. & Prof. Code section 9884.7 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.

. . . .

(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.

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."

12. Health & Saf. Code section 44072.2 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 [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 . . .

13. 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

14. Bus. & Prof. 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.

VID DATA REVIEW

15. In or about March 2012, a representative of the Bureau initiated an investigation against Respondent based on a review of information from the Bureau's Vehicle Information Database ("VID"), which indicated that Respondent may be engaging in fraudulent smog check activities. On March 5, 2012, the representative conducted a detailed review of VID data for all smog inspections performed at Respondent's facility for the period of August 1, 2011, through March 5, 2012. The representative found that vehicles 1 through 14 identified below, all of which were tested by Respondent, recorded certain diagnostic trouble codes (hereinafter "code") during the OBD II tests[1]. The representative obtained information indicating that the codes were not applicable to the vehicles. The Bureau concluded that Respondent performed the smog inspections on the vehicles using a different vehicle during the OBD II tests, a method known as

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[1] The On Board Diagnostics (OBD II) functional test is an automated function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves information from the vehicle's on-board computer about the status of the readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II functional test, it will fail the overall inspection.

"clean plugging",[2] resulting in the issuance of fraudulent certificates of compliance for the vehicles.

Date & Time of Inspection	Vehicle Certified	Certificate No.
1. 08/02/2011 14:27 – 14:37	2001 Toyota Camry; License No. 4TJF132	WX538503C
2. 08/02/2011 15:06 – 15:13	2001 Honda Accord; License No. 6JBZ853	WX538506C
3. 08/02/2011 15:17 – 15:25	2000 Honda Civic; License No. 6JEA626	WX538507C
4. 08/31/2011 12:31 – 12:42	2001 Ford Focus; License No. 5RKN984	WX965897C
5. 08/31/2011 13:28 – 13:40	1997 Chevrolet G35 Van; License No. 5R23305	WX965899C
6. 08/31/2011 13:53 – 14:00	1996 Nissan 240SX; License No. 5FXA331	WX965900C
7. 10/13/2011 10:37 – 10:44	1999 Chevrolet S10 2WD; License No. 8S59855	WZ755159C
8. 10/22/2011 11:30 – 11:45	1999 Honda Civic; License No. 4FZL955	WZ755198C
9. 12/27/2011 14:35 – 14:47	1998 Jeep Grand Cherokee; License No. 4CUJ228	XB820212C
10. 01/23/2012 14:20 – 14:40	2004 Ford Ranger 2WD; License No. 7M67676	XD216145C
11. 01/30/2012 15:05 – 15:12	1998 Dodge Neon; License No. 4CDS181	XD418856C
12. 02/18/2012 13:18 – 13:26	2000 Dodge Dakota pickup 2WD; License No. 7F09868	XD794952C
13. 02/18/2012 14:28 – 14:36	1999 Toyota Camry Solara; License No. 4EMJ561	XD794956C
14. 02/23/2012 14:17 – 14:45	1998 Nissan Frontier; License No. 8L69755	XD884452C

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[2] Clean-plugging is the use of the OBD II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is not in compliance due to a failure to complete the minimum number of self tests, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

16. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent certified that vehicles 1 through 14, identified in paragraph 15 above, had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on the vehicles using clean-plugging methods in that he substituted or used a different vehicle(s) during the OBD II functional tests in order to issue smog certificates of compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

17. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts which constitute fraud by issuing electronic smog certificates of compliance for vehicles 1 through 14, identified in paragraph 15 above, 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.

THIRD CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

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

a. **Section 44012:** Respondent failed to perform the emission control tests on vehicles 1 through 14, identified in paragraph 15 above, in accordance with procedures prescribed by the department.

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b. **Section 44015:** Respondent issued electronic smog certificates of compliance for vehicles 1 through 14, identified in paragraph 15 above, without properly testing and inspecting the vehicles to determine if they were in compliance with Health & Saf. Code section 44012.

FOURTH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of compliance for vehicles 1 through 14, identified in paragraph 15 above, even though the vehicles had not been inspected in accordance with section 3340.42.

b. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1 through 14, identified in paragraph 15 above, in accordance with the Bureau's specifications.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

20. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 through 14, identified in paragraph 15 above, 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.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

21. Respondent's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44012 of that Code in a material respect, as follows: Respondent failed to perform the emission

control tests on vehicles 1 through 14, identified in paragraph 15 above, in accordance with procedures prescribed by the department.

SEVENTH CAUSE FOR DISCIPLINE

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

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

a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1 through 14, identified in paragraph 15 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1 through 14, identified in paragraph 15 above, in accordance with the Bureau's specifications.

EIGHTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

23. Respondent's technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing electronic smog certificates of compliance for vehicles 1 through 14, identified in paragraph 15 above, 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.

OTHER MATTERS

24. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Respondent Frank H. Sakamoto, owner of Smog Check Only, upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

25. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station License Number TC 260323, issued to Respondent Frank H. Sakamoto, owner of Smog Check Only, 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.

26. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 631798, issued to Respondent Frank H. Sakamoto, 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 or suspending Automotive Repair Dealer Registration Number ARD 260323, issued to Frank H. Sakamoto, owner of Smog Check Only;

2. Revoking or suspending any other automotive repair dealer registration issued to Frank H. Sakamoto;

3. Revoking or suspending Smog Check, Test Only, Station License Number TC 260323, issued to Frank H. Sakamoto, owner of Smog Check Only;

4. Revoking or suspending Advanced Emission Specialist Technician License Number EA 631798, issued to Frank H. Sakamoto;

5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Frank H. Sakamoto;

6. Ordering Frank H. Sakamoto, individually, and as owner of Smog Check Only, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 9/18/12

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

LA2012507003