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

12 In the Matter of the Accusation Against:
13 **JIMS SMOG CENTER**
14 **JAMES ROBERT MITCHELL, OWNER**
15 **5825 E. Imperial Highway**
16 **South Gate, CA 90280**
17 **Automotive Repair Dealer Reg. No. ARD 117271**
18 **Smog Check, Test Only, Station License No.**
19 **TC 117271**
20
21 **and**
22 **JAMES ROBERT MITCHELL**
23 **5825 E. Imperial Highway**
24 **South Gate, CA 90280**
25 **Smog Check Inspector License No. EO 100240**
26 **(formerly Advanced Emission Specialist**
27 **Technician License No. EA 100240)**
28
Respondents.

Case No. **79/14-136**

A C C U S A T I O N

Complainant alleges:

PARTIES

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

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1 7. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent
2 part, that the Director has all the powers and authority granted under the Automotive Repair Act
3 for enforcing the Motor Vehicle Inspection Program.

4 8. Health & Safety Code section 44072.6 provides, in pertinent part, that the expiration
5 or suspension of a license by operation of law, or by order or decision of the Director of
6 Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the
7 Director of jurisdiction to proceed with disciplinary action.

8 **STATUTORY PROVISIONS**

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

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

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

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20 (3) Failing or refusing to give to a customer a copy of any document
21 requiring his or her signature, as soon as the customer signs the document.

22 (4) Any other conduct that constitutes fraud.

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24 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
25 place on probation the registration for all places of business operated in this state by
26 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
27 engaged in a course of repeated and willful violations of this chapter, or regulations
28 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."

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.

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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 **REGULATORY PROVISIONS**

17 14. California Code of Regulations (“CCR”), title 16, section 3340.24, subdivision (c),
18 states: “The bureau may suspend or revoke the license of or pursue other legal action against a
19 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
20 certificate of noncompliance.”

21 15. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician
22 shall at all times “[i]nspect, test and repair vehicles, as applicable, in accordance with section
23 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
24 3340.42 of this article.”

25 16. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check
26 station “shall issue a certificate of compliance or noncompliance to the owner or operator of any
27 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of
28 this article and has all the required emission control equipment and devices installed and
functioning correctly.”

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17. CCR, title 16, section 3340.41, subdivision (c), provides:

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.

18. CCR, title 16, section 3340.42, sets forth specific emissions test methods and procedures which apply to all vehicles inspected in the State of California.

19. CCR, title 16, section 3340.28, subdivision (e), states that "[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

COST RECOVERY

20. 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.

UNDERCOVER OPERATION: 1999 TOYOTA

21. On or about November 5, 2013, an undercover operator with the Bureau ("operator") took the Bureau's 1999 Toyota to Respondent's facility and requested a smog inspection. Missing from the Bureau-documented vehicle was the EGR valve. The operator signed a work order, and received an estimate copy. After the inspection was completed, the operator paid the facility \$72 and received copies of invoice [REDACTED], and a vehicle inspection report (VIR). The vehicle inspection report indicated that the vehicle passed the inspection, resulting in the issuance of electronic smog Certificate of Compliance No. [REDACTED], and that Respondent conducted the inspection.

22. After completion of the undercover operation, on or about November 5, 2013, the Bureau re-inspected the vehicle and found that the EGR valve on the vehicle was still missing.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 23. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
4 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which
5 he knew, or in the exercise of reasonable care should have known to be untrue or misleading, as
6 follows:

7 a. Respondent certified that the Bureau's 1999 Toyota had passed the smog inspection
8 and was in compliance with applicable laws and regulations. In fact, the EGR valve on the
9 vehicle was missing. As such, the vehicle would not pass the inspection required by Health &
10 Saf. Code section 44012.

11 **SECOND CAUSE FOR DISCIPLINE**

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

13 24. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
14 Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that constitutes
15 fraud, as follows: Respondent issued an electronic smog certificate of compliance for the
16 Bureau's 1999 Toyota without performing a bona fide inspection of the emission control devices
17 and systems on the vehicle, thereby depriving the People of the State of California of the
18 protection afforded by the Motor Vehicle Inspection Program.

19 **THIRD CAUSE FOR DISCIPLINE**

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

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

24 a. **Section 44012, subdivision (f)**: Respondent failed to perform the functional tests of
25 the emission control systems and devices on the Bureau's 1999 Toyota in accordance with
26 procedures prescribed by the department.

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1 of the emission control systems and devices on the Bureau's 1999 Toyota in accordance with
2 procedures prescribed by the department.

3 **SEVENTH CAUSE FOR DISCIPLINE**
4 **(Failure to Comply with Regulations Pursuant**
5 **to the Motor Vehicle Inspection Program)**

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

9 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the Bureau's
10 1999 Toyota in accordance with Health & Saf. Code sections 44012 and 44035, and California
11 Code of Regulations, title 16, section 3340.42.

12 b. **Section 3340.42:** Respondent failed to conduct the required smog tests on the
13 Bureau's 1999 Toyota in accordance with the Bureau's specifications.

14 **EIGHTH CAUSE FOR DISCIPLINE**
15 **(Dishonesty, Fraud or Deceit)**

16 30. Respondent's technician license is subject to disciplinary action pursuant to Health &
17 Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent,
18 or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance
19 for the Bureau's 1999 Toyota without performing a bona fide inspection of the emission control
20 devices and systems on the vehicle, thereby depriving the People of the State of California of the
21 protection afforded by the Motor Vehicle Inspection Program.

22 **MATTERS IN AGGRAVATION**

23 31. To determine the degree of discipline, if any, to be imposed on Respondent,
24 Complainant alleges as follows:

25 a. On or about October 18, 2010, the Bureau issued Citation No. C2011-0468 against
26 Respondent, in his capacity as owner of Jims Smog Center, for violations of Health & Saf. Code
27 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
28 devices according to procedures prescribed by the department); and California Code of

1 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
2 compliance to a vehicle with a missing PCV system). On or about September 20, 2010,
3 Respondent issued a certificate of compliance to a Bureau undercover vehicle with a missing
4 Positive Crankcase Ventilation (PCV) system. The Bureau assessed civil penalties totaling \$1000
5 against Respondent for the violations. Respondent paid the fine on August 24, 2011.

6 b. On or about May 16, 2011, the Bureau issued Citation No. C2011-1337 against
7 Respondent, in his capacity as owner of Jims Smog Center, for a violation of Health & Saf. Code
8 section 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). On or about May 3, 2011, Respondent issued a certificate of compliance to a Bureau
11 undercover vehicle with a missing fuel evaporative cannister. The Bureau assessed civil penalties
12 totaling \$1,500 against Respondent for the violations. Respondent paid the fine on March 13,
13 2012.

14 c. On or about October 20, 2011, the Bureau issued Citation No. C2012-0318 against
15 Respondent, in his capacity as owner of Jims Smog Center, for violation of Health & Saf. Code
16 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
17 devices according to procedures prescribed by BAR.) On or about September 14, 2011,
18 Respondent issued a certificate of compliance to a Bureau undercover vehicle with the ignition
19 timing adjusted beyond manufacturer specifications. The Bureau assessed civil penalties totaling
20 \$1,500 against Respondent for the violations. Respondent paid the fine on March 13, 2012.

21 d. On or about October 18, 2010, the Bureau issued Citation No. M2011-0469 against
22 Respondent as to his technician license for violations of Health & Saf. Code sections 44032
23 (qualified technicians shall perform tests of emission control systems and devices in accordance
24 with Health & Saf. Code section 44012); and Regulation 3340.30, subdivision (a) (qualified
25 technicians shall inspect, test and repair vehicles in accordance with Health & Saf. Code sections
26 44012 and 44035 and Regulation 3340.42). On or about September 20, 2010, Respondent had
27 issued a certificate of compliance to a Bureau undercover vehicle with a missing Positive
28 Crankcase Ventilation (PCV) system. Respondent was directed to complete an 8-hour training

1 course and to submit proof of completion to the Bureau within 30 days from receipt of the
2 citation. Respondent completed the training on November 16, 2010.

3 e. On or about May 16, 2011, the Bureau issued Citation No. M2011-1338 against
4 Respondent as to his technician license for violation of Health & Saf. Code section 44032
5 (qualified technicians shall perform tests of emission control systems and devices in accordance
6 with Health & Saf. Code section 44012). On or about May 3, 2011, Respondent had issued a
7 certificate of compliance to a Bureau undercover vehicle with a missing fuel evaporative
8 cannister. Respondent was directed to complete a 16-hour training course and to submit proof of
9 completion to the Bureau within 30 days from receipt of the citation. Respondent completed the
10 training on February 20, 2012.

11 f. On or about October 20, 2011, the Bureau issued Citation No. M2012-0319 against
12 Respondent as to his technician license for violation of Health & Saf. Code section 44032
13 (qualified technicians shall perform tests of emission control systems and devices in accordance
14 with Health & Saf. Code section 44012). On or about September 14, 2011, Respondent issued a
15 certificate of compliance to a Bureau undercover vehicle with the ignition timing adjusted beyond
16 manufacturer specifications. Respondent was directed to complete a 68-hour Basic Clean Air Car
17 Course with proof of completion submitted to BAR and that he shall perform no smog inspection
18 or repair until training is completed. Respondent completed the training on February 17, 2012.

19 OTHER MATTERS

20 32. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
21 suspend, revoke, or place on probation the registration for all places of business operated in this
22 state by Respondent James Robert Mitchell, owner of Jims Smog Center, upon a finding that
23 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and
24 regulations pertaining to an automotive repair dealer.

25 33. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
26 License Number TC 117271, issued to Respondent James Robert Mitchell, owner of Jims Smog
27 Center, is revoked or suspended, any additional license issued under this chapter in the name of
28 said licensee may be likewise revoked or suspended by the director.

1 34. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
2 ("technician license") Number EO 100240 (previously EA 100240), issued to Respondent James
3 Robert Mitchell, is revoked or suspended, any additional license issued under this chapter in the
4 name of said licensee may be likewise revoked or suspended by the director.

5 **PRAYER**

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

8 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
9 117271, issued to James Robert Mitchell, owner of Jims Smog Center;

10 2. Revoking or suspending any other automotive repair dealer registration issued to
11 James Robert Mitchell;

12 3. Revoking or suspending Smog Check, Test Only, Station License Number TC
13 117271, issued to James Robert Mitchell, owner of Jims Smog Center;

14 4. Revoking or suspending Smog Check Inspector License Number EO 100240
15 (previously EA 100240), issued to James Robert Mitchell;

16 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
17 and Safety Code in the name of James Robert Mitchell;

18 6. Ordering James Robert Mitchell, individually, and as owner of Jims Smog Center, to
19 pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of
20 this case, pursuant to Business and Professions Code section 125.3; and

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

22
23 DATED: May 30, 2014


24 PATRICK DORAIS
25 Chief
26 Bureau of Automotive Repair
27 Department of Consumer Affairs
28 State of California
Complainant

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