

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

In the Matter of the Accusation and Petition to
Revoke Probation Against:

**CHANG SIK KIM dba KIMS AUTO
REPAIR**

5121 E. Florence Ave.
Bell, CA 90201

Automotive Repair Dealer Registration No.
ARD 99676
Lamp Station License No. LS 99676, Class A
Smog Check Test and Repair Station License
No. RC 99676

and

CHANG SIK KIM

Smog Check Inspector License No.
EO 111109
Smog Check Repair Technician License No.
EI 111109 (*formerly Advanced Emission
Specialist Technician EA 111109*)
Lamp Adjuster License No. LA 111109, Class
A

Respondent.

Case No.: 79/18-5130

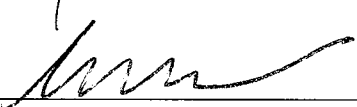
OAH No.: 2019041137

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective at 5:00 PM on November 4, 2019.

DATED: Sept. 25, 2019



GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Legal Affairs Division
Department of Consumer Affairs

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

**In the Matter of the Accusation and Petition to Revoke
Probation against:**

CHANG SIK KIM, dba KIMS AUTO REPAIR

Automotive Repair Dealer Registration No. ARD 99676

Lamp Station License No. LS 99676, Class A

Smog Check Test Station License No. RC 99676

and

CHANG SIK KIM

Smog Check Inspector License No. EO 111109

Smog Check Repair Technician License No. EI 111109 (formerly

Advanced Emission Specialist Technician License No. EA 111109)

Lamp Adjuster License No. LA 111109, Class A

Respondent.

Case No. 79/18-5130

OAH No. 2019041137

PROPOSED DECISION

Carmen D. Snuggs, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on July 22, 2019, in Los Angeles, California.

William D. Gardner, Deputy Attorney General, represented Patrick Dorais (Complainant), Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department).

Michael B. Levin, Attorney at Law, represented respondent Chang Sik Kim, Smog Check Inspector, Smog Check Repair Technician, and Lamp Adjuster (Respondent), doing business as Kims Auto Repair (KAR).

Samantha Yu, an interpreter, was present at Respondent's request and provided Korean interpretation services.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 22, 2019.

Following submission of the matter and upon review of Exhibit B, the ALJ noted that page two of the document, a character reference letter written by Gunsoo Lee, included Mr. Lee's telephone number and address. In order to protect Mr. Lee's privacy and prevent disclosure of confidential personal information, the ALJ redacted this information from the exhibit.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant filed the Accusation and Petition in his official capacity. Respondent timely filed a notice of defense.
2. In 1983, the Bureau issued Automotive Repair Dealer Registration Number ARD 99676 (ARD or registration) to Respondent, doing business as KAR. On September 12, 2007, the Bureau issued Smog Check Station License Number RC 99676, to Respondent doing business as KAR, and on September 19, 1988, the Bureau issued Lamp Station License Number LS 99876, class A, and Brake Station License Number BS 99676, class C, to Respondent doing business as KAR. Respondent's Brake Station License was revoked on October 13, 2017. Respondent's registration and Smog Check Station and Lamp Station licenses were in effect and at all times relevant, and will expire on January 31, 2020, unless renewed.
3. In 1996, the Bureau issued Advanced Emission Specialist (EA) Technician License Number EA 111109 to Respondent. That license was cancelled on July 31, 2012, and pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), renewed pursuant to Respondent's election, effective that date, as Smog Check Inspector License Number EO 111109 and Smog Check Repair Technician License Number EI 111109. Respondent's Smog Check Inspector and Smog Check Repair Technician licenses are scheduled to expire on July 31, 2020.
4. In 1988, the Bureau issued Brake Adjuster License Number BA 111109, class C, and Lamp Adjuster License Number 111109, class A, to Respondent.

Respondent's Brake Adjuster license was revoked on October 13, 2017. His Lamp Adjuster license is scheduled to expire on July 31, 2022.

5. In a Decision and Order, effective October 13, 2017, in Case No 79/16-139 (Prior Decision) adopting a Stipulated Settlement and Disciplinary Order, the Board revoked Respondent's Brake Station and Brake Adjuster licenses. The Board also revoked Respondent's registration and Lamp Station, Smog Check Station, Smog Check Inspector, Smog Check Repair Technician, and Lamp Adjuster licenses, stayed the revocation, and placed Respondent on probation for three years on specified terms and conditions, which included the following:

1. **Obey All Laws.** During the period of probation, Respondent shall comply with all federal and state statutes, regulations and rules governing all [Bureau of Automotive Repair] registrations and licenses held by respondent. [¶]

6. **Violation of Probation.** If Respondent violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard may set aside the stay order and carry out the disciplinary order provided in the decision

(Ex. 1.)

6. The Prior Decision was based on allegations that Respondent issued brake, lamp, and smog certificates to three Bureau vehicles during undercover operations certifying that: the vehicles' brakes were in satisfactory condition when none of the vehicles were capable of passing a brake inspection; he inspected the

vehicles' lamps when the lamp inspections were conducted by an unidentified individual; and he conducted the smog inspection when the inspection was conducted by an unidentified individual.

7. On April 27, 2017, Respondent signed the Stipulated Settlement and Disciplinary Order which was adopted by the Prior Decision. The signature page contained the following statement directly above Respondent's signature:

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Michael B. Levin, Esq. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration, Brake Station License, Lamp Station License, Smog Check Test and Repair Station License, Smog Check Inspector License, Smog Check Repair Technician License, Brake Adjuster License, and Lamp Adjuster License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

(Ex. 1.)

8. On January 24, 2018, Respondent attended a Probation Conference with a Bureau representative and discussed methods to achieve and maintain compliance with the terms and conditions of probation.

The April 23, 2018 Inspection

9. On April 23, 2018, an undercover operative employed by the Bureau drove a 2002 Honda Accord to KAR and requested a smog check on the car. The vehicle had been modified by the Bureau in a manner such that it should have failed any subsequent smog inspection. Specifically, Tom Najjar, a Bureau Lab Technician, removed the vehicle's three-way catalytic converter. The catalytic converter is a necessary element in the vehicle's emission control system in that it reduces the amount of toxic pollutants emitted by a vehicle into the atmosphere.

10. After removing the catalytic converter, Mr. Najjar took steps to mask the effect of its removal. He replaced the catalytic converter with a straight exhaust pipe, which had no emission control function, and installed two non-approved, after-market spacers under the vehicle's O2 oxygen sensor. If the straight exhaust pipe and the spacers were not installed in the manner in which they were, the vehicle's Malfunction Indicator Light (MIL) most likely would have illuminated due to the removal of the catalytic converter.

11. One of the required components of a proper smog inspection is a visual inspection of the engine and emission control system to verify that all required emission control equipment is present and properly connected. The smog check inspector must also manually enter whether the components of a vehicle's emission system pass or fail the inspection. If a vehicle's emission control component is missing, modified, or disconnected, the technician should indicate the result of the visual inspection as "Tampered" and the vehicle shall fail the inspection. In the case of the subject Honda Accord, Respondent was required to conduct a visual inspection to determine if the catalytic converter was in place. The vehicle's under-hood label indicated that the exhaust emission control system included a three-way catalytic

converter. Moreover, the vehicle's service manual, as well as the 2013 Smog Check Manual and the 2018 Motor Information Systems repair manual, standard sources in the automotive repair industry, showed that the vehicle inspected by Respondent, a 2002 Honda Accord, had a catalytic converter for emission control.

12. Mr. Najjar's testimony established that a smog check inspector must use all information to him to determine a vehicle's emission control requirements, including the manuals listed in Factual Finding 13. His testimony also established that the catalytic converter on the subject Honda Accord is located underneath the vehicle in an off-center position, and that the space between the ground and the base of the Honda Accord was approximately eight inches. The catalytic converter is 16 inches long and six to eight inches in diameter. A smog check inspector is not required to utilize a hoist or get underneath a vehicle to perform an inspection. However, in order to visually inspect the catalytic converter on the subject Honda Accord without the use of a hoist or flat dolly, the smog inspector would be able to see the catalytic converter by getting down on his knees and bending over to see underneath the vehicle. Byron Yung, the Bureau Program Representative II who delivered the Honda Accord to the operator that drove the subject vehicle to KAR, verified that the catalytic converter was missing by getting on his knees and bending over to see underneath the vehicle.

13. Respondent conducted a smog inspection on the vehicle and determined that the vehicle passed the inspection. In the Vehicle Inspection Report (VIR), Respondent indicated that the catalytic converter passed the Emission Control Systems Visual Inspection. However, the vehicle should have failed the visual inspection given the removal of the catalytic converter. Had Respondent conducted a proper inspection, he would have found that the straight exhaust pipe and spacers had been installed in place of the catalytic converter. In the related OIS Test Detail, in the

"Visual" section, Respondent used the "P" (i.e., Pass) for the visual inspection of the catalytic converter. The Bureau's operative paid for the smog inspection, obtained an invoice and the VIR from Respondent, and returned the Honda to a Bureau investigator.

14. After inspecting the Honda Accord, Respondent issued Certificate of Compliance number HR736010C. Because the vehicle should not have passed the Emission Control Systems Visual Inspection, the certificate of compliance was improperly issued.

Respondent's Evidence

15. Respondent is a veteran of the Korean Army and Vietnam War, and served from 1969 to 1970. He has owned and operated KAR since 1983, is KAR's sole smog check inspector and repair technician, and he employs one assistant. KAR was a STAR Station for more than 15 years but is no longer certified as such. Respondent estimated that he performed between 30 and 50 smog check inspections per month in 2018. He maintains reference manuals at KAR and consults ALLDATA, an online repair manual. Respondent's testimony demonstrated his knowledge of conducting smog inspections in accordance with prescribed procedures.

16. Respondent is familiar with a catalytic converter and contended that he typically checks for a vehicle's catalytic converter in every smog inspection. He has placed a vehicle on a hoist in the past when he had difficulty locating its emission components. Respondent asserted that he did not recall checking for the catalytic converter on the subject Honda Accord. He acknowledged at the hearing that he signed the VIR indicating that the subject vehicle's catalytic converter passed the visual inspection under penalty of perjury, and stated that he believed that statement to be

true and correct at the time of the inspection. Respondent's testimony was contradicted by Mr. Najjar's and Mr. Yung's testimony, which established that the Honda Accord's catalytic converter was missing at the time Respondent conducted the smog check inspection.

17. Respondent expressed a desire to maintain his registration and licenses. He indicated that he would perform smog check inspections pursuant to the procedures mandated by the Bureau, he would take his time and not rush when performing inspections, and that he would double and triple check to make sure he properly conducted inspections. Respondent has complied with the Prior Decisions' cost recovery probationary condition to pay \$6,684 to the Bureau in monthly payments of \$278.50, and has two payments remaining. He obtained certificates of completion of UT007 OBD II Evap. Emission Systems, CFC-12, HFC-134a, and HFO-1234yf refrigerant recycling and service procedures for cars 2015 and newer, and Bureau Specified Diagnostic and Repair (72 hours) courses, on October 16, 2014, August 10, 2018, and November 14, 2017, respectively. KAR received a Station Follow-Up Pass Rate score of 0.63¹ for the period of July 12, 2019 to the present.

18. Gunsoo Lee, a retired Chief Manufacturing Engineer and Respondent's friend, testified on Respondent's behalf. Mr. Lee has known Respondent for 40 years, he is also a veteran of the Korean Army, and he served in the Vietnam War but did not serve with Respondent. He described Respondent as an honest member of society who follows the law and is faithful to his work. Mr. Lee is familiar with Respondent's participation in community service activities such as providing blankets to the

¹ An FPR score of 0.40 is required to maintain STAR Station status.

homeless in 2018, and participating in the Fire Department's program of recycling used motor oil. He prepared a character reference letter consistent with his testimony.

19. Respondent offered character reference letters written by Eric Batres, M.D., F.A.A.F.P., and Pastor Andre Chang. He stated that Dr. Batres and Pastor Chang are aware of the Bureau's allegations against him. Dr. Batres' practice is located next to KAR. Respondent has serviced Dr. Batres' vehicle since 2003. He described Respondent as very capable, attentive, honest, courteous, hardworking, and reliable. Respondent has been a student in Pastor Chang's computer class for two years. Pastor Chang lauded Respondent's attendance record, his relationships with his friends, and his sincerity. Pastor Chang attested to Respondent's history of taking responsibility for his actions. Mr. Lee's testimony and the character reference letters are afforded weight in that they support Respondent's testimony regarding his professional conduct and community service activities.

20. Respondent is married and the sole provider of his family. He estimated that his net income is \$6,300 and described expenses that totaled \$1,590. In addition, at times Respondent provides \$1,000 per month to his son who suffers from a chronic health condition. Moreover, he pays his assistant at KAR \$600 to \$700 per week.

Costs

21. Complainant has requested that Respondent be ordered to pay enforcement costs in the amount of \$7,948.53 pursuant to Business and Professions Code section 125.3. This amount consists of \$4,375 in costs incurred by the Office of the Attorney General and billed to the Board. At hearing, Complainant introduced a Certification of Prosecution Costs: Declaration of William D. Gardner. The declaration attached a computer printout of the tasks the Attorney General's office performed, the

amount of time spent performing these tasks, and the amounts charged. Legal Analysts charged \$180 for their work on this case, but it was not established that their work was reasonable or necessary. Therefore, \$180 is subtracted from Complainant's requested prosecution costs.

22. The Case Hours and Costs Spreadsheet attached to the Declaration of Byron Yung in support of Complainant's investigation costs, indicated that Mr. Yung spent 43.50 hours at \$82.15 per hour investigating this matter. Mr. Yung contended that he spent 25 hours writing the Probation Violation Report. However, Mr. Yung's declaration failed to describe with any specificity how much time he spent completing each task involved in preparing the report (editing, preparing a draft report, etc.). In addition, the Smog Check Program Background section of the report is non-case specific and appears to be the verbatim standard language used by the Bureau in its reports. Accordingly, it was not established that the amount of time billed for preparing the Probation Violation Report was reasonable or necessary. Therefore, Complainant's investigation costs are reduced by 25 percent, or \$893.38 ($\82.15×25 hours).

23. Complainant's total enforcement costs are reduced by \$1,073.38. The reasonable cost of prosecution is \$6,375.15.

LEGAL CONCLUSIONS

1. The Bureau's highest priority in exercising its licensing, regulatory, and disciplinary functions is protection of the public. (Bus. & Prof. Code, § 9880.3.)

2. Complainant has the burden of proving the allegations in the Accusation by a preponderance of the evidence. (*Imports Performance v. Department of*

Consumer Affairs, Bureau of Automotive Repair (2011) 201 Cal.App.4th 911, 916-917.)

As discussed below, Complainant has met his burden.

3. When an automotive repair dealer cannot show there was a bona fide error, the Director of Consumer Affairs (Director) may revoke the automotive repair dealer's ARD registration if any of the following occur: the dealer or any employee makes or authorizes any statement 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, or conducts an act that constitutes fraud. (Bus. & Prof. Code, § 9884.7, subs. (a)(1), (4), & (6), italics added.)

4. Business and Professions Code section 9884.22, subdivision (a), provides:

(a) Notwithstanding any other provision of law, the director may revoke, suspend, or deny at any time any registration required by this article on any of the grounds for disciplinary action provided in this article. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

5. Health and Safety Code section 44072.2, subdivision (a),² authorizes the Bureau to take disciplinary action against a license if the licensee, or any partner, officer, or director violates any section of the Code and the regulations adopted

² All further statutory references are to the Health and Safety Code unless otherwise indicated.

pursuant to it, which relate to the licensed activities, or if a licensee commits any act involving dishonesty, fraud, or deceit whereby another is injured.

6. The Bureau shall ensure that a visual or functional check is made of emission control devices of tested vehicles and performed in accordance with procedures prescribed by the Bureau. (§ 44012, subd. (f).) A Smog Check Technician shall perform test of emission control devices and systems in accordance with section 44012. (§ 44032.)

7. Section 44015, subdivision (b) provides that a certificate of compliance shall be issued only if a vehicle meets the requirements of section 40012.

8. Section 44059 provides that the willful making of any false statement or entry with regard to a material matter in any certificate of compliance constitutes perjury.

9. California Code of Regulations (CCR), title 16, section 3340.24³ authorizes the Bureau to suspend or revoke a license or pursue other legal action where the licensee falsely or fraudulently issues a certificate of compliance.

10. CCR section 3340.30, subdivision (a), requires a licensed smog check technician to inspect, test and repair vehicles in accordance with sections 44012 and 44035 CCR section 3340.42.

11. CCR section 3340.35, subdivision (c), provides that a licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in CCR

³ Further references to the CCR are to title 16.

section 3340.42 and has all the required emission control equipment and devices installed and functioning correctly.

12. CCR section 3340.42 sets forth the mandatory emissions inspection standards and test procedures.

Causes for Discipline

13. Cause exists to discipline Respondent's registration under Business and Professions Code section 9884.22, because Respondent made statements which were known to be untrue or misleading or, which by exercise of reasonable care should have been known to be untrue or misleading, when he issued Certificate of Compliance Number HR736010C to a Bureau undercover vehicle with a missing emissions control system component, specifically the catalytic converter. (Factual Findings 9 through 14, and 16.)

14. Cause exists to discipline Respondent's registration under Business and Professions Code section 9884.7, in conjunction with Business and Professions Code section 9884.22, because Respondent willfully made a false statement or entry with regard to a material matter in Certificate of Compliance Number HR736010C. (Factual Findings 9 through 14, and 16.)

15. Cause exists to discipline Respondent's station license pursuant to section 44072.2, subdivision (a), in that he failed to comply with various provisions of the Health and Safety Code in connection performing the smog check inspection of the Honda Accord. The violations include violation of section 44012, subdivision (f), requiring performance of the visual inspection; section 44015, subdivision (b), because Respondent issued Certificate of Compliance Number HR736010C without properly testing and inspecting the vehicle to determine if it was in compliance with section

44012; and section 44059, because Respondent willfully made false entries for Certificate of Compliance Number HR736010C by certifying that the Honda Accord had been inspected as required when it had not. (Factual Findings 9 through 14, and 16.)

16. Cause exists to discipline Respondent's station under section 44072.2, subdivision (c), in that he failed to comply with Bureau regulations. The regulations violated include CCR sections 3340.24, subdivision (c) (false or fraudulent electronic certificate of compliance); 3340.35, subdivision (c) (issuance of a certificate of compliance without inspecting a vehicle in accordance with CCR section 3340.42); and section 3340.42 (failure to perform tests to Bureau specifications). (Factual Findings 9 through 14, and 16.)

17. Cause exists to discipline Respondent's smog check inspector and smog check repair licenses pursuant to section 44072.2, subdivision (a), in that he failed to comply with various provisions of the Health and Safety Code in connection performing the smog check inspection of the Honda Accord. The violations include violation of section 44015, subdivision (b), because Respondent issued Certificate of Compliance Number HR736010C without properly testing and inspecting the vehicle to determine if it was in compliance with section 44012; and section 44059, because Respondent willfully made false entries for Certificate of Compliance Number HR736010C by certifying that the Honda Accord had been inspected as required when it had not. (Factual Findings 9 through 14, and 16.)

18. Cause exists to discipline Respondent's smog check inspector and smog check repair licenses under section 44072.2, subdivision (c), in that he failed to comply with Bureau regulations. The regulations violated include CCR sections 3340.24, subdivision (c) (false or fraudulent electronic certificate of compliance); 3340.30,

subdivision (b) (failure to inspect vehicles in accordance with CCR section 3340.42); and section 3340.42 (failure to perform tests to Bureau specifications). (Factual Findings 9 through 14, and 16.)

19. Cause exists to revoke Respondent's probation and impose the stayed revocation of Respondent's license for failure to comply with Condition 1 of his probation, by failing to obey all laws, specifically by reason of his violation of the Business and Professions and Health and Safety Code as well as the CCR, as set forth in Factual Findings 5 through 14, and Legal Conclusions 13 through 18.

Other Legal Conclusions

20. Any other ARD's held by Respondent may be disciplined pursuant to Business and Professions Code section 9884.7, subdivision (c), for the violations established herein.

21. Any other licenses held by Respondent pursuant to Business and Professions Code, Division 3, Chapter 20.3, articles 5 and 6, may be disciplined pursuant to section 9889.9 if discipline is imposed on any other license.

22. Any other licenses issued to Respondent pursuant to Chapter 5 of Part 5 of Division 26 of the Health and Safety Code may be disciplined as a result of the discipline of his licenses that are the subject to this proceeding, based on section 44072.8.

23. All allegations upon which findings or conclusions are not made are deemed unproven, or surplusage.

Discipline

24. CCR section 3395, subdivision (b), sets forth the criteria the Bureau considers when evaluating the rehabilitation of a licensee. The applicable criteria include the nature and severity of the acts, the time that has elapsed since commission of the acts, whether the licensee or registrant has complied with any terms of probation lawfully imposed against the licensee, and evidence, if any, of rehabilitation submitted by the licensee or registrant. Respondent failed to determine that a vehicle was missing a vital emission component. His conduct was in direct conflict with the Bureau's goal of administering an effective vehicle emissions reduction program. Specifically, the vehicle that should have failed the visual inspection was authorized to continue in operation. In aggravation, Respondent knowingly stipulated to the discipline imposed on his registration and licenses and agreed to abide by the probationary terms and conditions, which were explained to him. By issuing a certificate of compliance to the Honda Accord in violation of the Bureau's statutes and regulations, Respondent violated his probation six months into his probationary term and within three months of attending a Probation Conference. In mitigation, Respondent's conduct occurred more than a year ago. His registration and licenses have subjected to disciplinary action only once, in 2017, in the 36 and 23 years, respectively, that Respondent has been licensed by the Bureau. Respondent has substantially complied with the cost recovery condition of his probation, and he has taken Bureau approved courses to improve his auto industry knowledge. He has also taken computer classes for two years for self-improvement.

25. The Bureau has developed guidelines for use in determining what sort of discipline should flow from violations of the statutes and regulations that it is charged with enforcing. The guidelines are incorporated into the regulations, at CCR section

3395.4 (hereafter Guidelines). Those Guidelines provide factors in aggravation and mitigation.

26. The Guidelines recommend a period of probation ranging from two years to five years for the violations committed by Respondent. The purpose of proceedings of this type is to protect the public, and not to punish an errant licensee. (E.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) There is no evidence that the violation was a willful evasion of the program's objectives. Similarly, there is no evidence that the violation was persistent or done in bad faith. Respondent's long history of Bureau licensure without misconduct, with the exception of the violations underlying the Prior Decision, his bona fide effort to discharge his monetary obligation to the Bureau, and his evidence in mitigation established that revocation of Respondent's registration and licenses would be unduly harsh. The public will be sufficiently protected by an extension of Respondent's probationary term with appropriate terms and conditions, including courses related to Respondent's violations.

Costs

27. Pursuant to *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, various factors must be considered in determining the amount of costs to be assessed. The Bureau must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a licensee who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The Bureau must consider the licensee's subjective good faith belief in the merits of his or her position, as well as whether the licensee has raised a colorable challenge to the proposed discipline. The Bureau must determine that the licensee will be financially able to make

later payments. Finally, the Bureau may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct.

28. As established in Factual Findings 21 through 23, the Bureau's reasonable cost of enforcement is \$6,375.15. Respondent offered evidence regarding his salary and monthly expenses, but did not contend that he would not be able to pay the Bureau's costs. Rather, the evidence established that he was able to pay the Bureau's costs of \$6,684 in monthly installments pursuant to the Prior Decision. Accordingly, Respondent shall be ordered to pay the Bureau's costs in the total amount of \$6,375.15.

ORDER

The following registrations and licenses issued to Respondent Chang Sik Kim are covered by this Order: 1) ARD 99676; Smog Check Station License Number RC 99676; 2) Lamp Station License Number LS 99676, class A; 3) Smog Check Inspector License No. EO 111109; 4) Smog Check Repair Technician License No. EI 111109; and 5) Lamp Adjuster License Number LA 111109. Each such registration and license is revoked pursuant to Legal Conclusions 13 through 22, jointly and severally. However, the revocations are stayed and each such registration and license is placed on probation for five (5) years upon the following terms and conditions:

1. **Obey All Laws.** During the period of probation, Respondent shall comply with all federal and state statutes, regulations and rules governing all Bureau of Automotive Repair (BAR) registrations and licenses held by Respondent.

2. **Quarterly Reporting.** During the period of probation, Respondent shall report either by personal appearance or in writing as determined by BAR on a schedule set by BAR, but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

3. **Report Financial Interests.** Respondent shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by BAR during the period of probation, report any financial interest which any Respondent or any partners, officers, or owners of any Respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

4. **Access to Examine Vehicles and Records.** Respondent shall provide BAR representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including the point of completion. Respondent shall also provide BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

5. **Tolling of Probation.** If, during probation, Respondent leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, Respondent shall notify BAR in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California.

All provisions of probation other than cost reimbursement requirements, restitution requirements, training requirements, and that Respondent obey all laws, shall be held in abeyance during any period of time of 30 days or more in which

Respondent is not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which Respondent is not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license or registration is conducted or performed during the tolling period.

6. **Violation of Probation.** If Respondent violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard, may set aside the stay order and carry out the disciplinary order provided in the decision. Once Respondent is served notice of BAR's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

7. **Maintain Valid License.** Respondent shall, at all times while on probation, maintain a current and active registration and licenses with BAR, including any period during which suspension or probation is tolled. If Respondent's registration or license is expired at the time the decision becomes effective, the registration or license must be renewed by Respondent within 30 days of that date. If Respondent's registration or license expires during a term of probation, by operation of law or otherwise, then upon renewal Respondent's registration or license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active registration and licenses during the period of probation shall also constitute a violation of probation.

8. **Cost Recovery.** Respondent shall pay the Bureau of Automotive Repair \$6,375.15 for the reasonable costs of the investigation and enforcement of case No. 79/18-5130. Respondent shall make such payment as follows: 48 equal monthly payments of \$132.81 with the final payment due no later than 12 months prior to the termination of probation. Respondent shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for case No. 79/18-5130. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. BAR reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

9. **Completion of Probation.** Upon successful completion of probation, Respondent's affected registration and licenses will be fully restored or issued without restriction, if Respondent meets all current requirements for registration or licensure and has paid all outstanding fees, monetary penalties, or cost recovery owed to BAR.

10. **License Surrender.** Following the effective date of a decision that orders a stay of invalidation or revocation, if Respondent ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request that the stay be vacated. Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right to evaluate the Respondent's request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision.

Respondent may not petition the Director for reinstatement of the surrendered registration and/or license, or apply for a new registration or license under the jurisdiction of BAR at any time before the date of the originally scheduled completion of probation. If Respondent applies to BAR for a registration or license at any time after that date, Respondent must meet all current requirements for registration or licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

11. Training Courses.

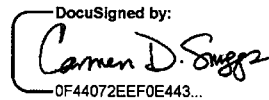
A) During the period of probation, Respondent shall attend and successfully complete a BAR-specified and approved training course in inspection, diagnosis and/or repair of emission systems failures and engine performance, applicable to the class of license held by the Respondent. Respondent shall provide to the Bureau proof of enrollment in the course within 30 days of the effective date of the decision, and proof of successful course completion within 180 days of the effective date of the decision.

Failure to provide proof of enrollment and/or successful course completion to the Bureau within the timeframes specified shall constitute a violation of probation, and Respondent shall be prohibited from issuing any certificate of compliance or noncompliance until such proof is received.

B) Within 60 days of the effective date of the decision, Respondent shall attend a Write It Right presentation provided by a Bureau Representative, at the location, date, and time determined by the Bureau.

C) Within 180 days of the effective date of the decision, Respondent shall complete ordered coursework or training that is acceptable to BAR and relevant to the adjudicated violation. Respondent shall submit to BAR satisfactory evidence of completion of coursework or training within the timeline specified for completion of the ordered coursework or training.

DATE: August 20, 2019

DocuSigned by:

OF44072EEF0E443...

CARMEN D. SNUGGS

Administrative Law Judge

Office of Administrative Hearings

1 XAVIER BECERRA
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 WILLIAM D. GARDNER
Deputy Attorney General
4 State Bar No. 244817
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6292
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

12 In the Matter of the Accusation and Petition to
Revoke Probation Against:

Case No. 79/18-5130

13 **ACCUSATION AND PETITION TO**
14 **REVOKE PROBATION**

15 **CHANG SIK KIM DBA KIMS AUTO**
16 **REPAIR**
17 **5121 E. Florence Ave.**
18 **Bell, CA 90201**

19 **Automotive Repair Dealer Registration No.**
20 **ARD 99676**
21 **Lamp Station License No. LS 99676, Class A**
22 **Smog Check Test and Repair Station**
23 **License No. RC 99676**

24 **and**

25 **CHANG SIK KIM**
26 **Smog Check Inspector License No.**
27 **EO 111109**
28 **Smog Check Repair Technician License No.**
EI 111109 (formerly Advanced Emission
Specialist Technician EA 111109)
Lamp Adjuster License No. LA 111109,
Class A

Respondent.

///

///

1 Complainant alleges:

2

PARTIES

3

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

6

2. In 1983, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 99676 to Chang Sik Kim ("Respondent") dba Kims Auto Repair. The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2019, unless renewed.

10

3. On or about September 12, 2007, the Bureau of Automotive Repair issued Smog Check Station License Number RC 99676 to Respondent dba Kims Auto Repair. The Smog Check Station License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2019, unless renewed.

14

4. On or about September 19, 1988, the Bureau of Automotive Repair issued Lamp Station License Number LS 99676, class A, to Respondent dba Kims Auto Repair. The Lamp Station License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2019, unless renewed.

18

5. On or about September 19, 1988, the Bureau of Automotive Repair issued Brake Station License Number BS 99676, class C, to Respondent dba Kims Auto Repair. The Brake Station License was due to expire on January 31, 2018; however, it was revoked on October 13, 2017.

22

6. In 1996, the Bureau issued Advanced Emission Specialist Technician License EA 111109 to Respondent. Said license expired on July 31, 2012, was cancelled the same day, and renewed pursuant to Respondent's election as Smog Check Inspector License No. EO 111109 and Smog Check Repair Technician License No. EI 111109, effective July 31, 2012. Smog Check Inspector License EO 111109 and Smog Check Repair Technician License No. EI 111109 were

27

///

28

///

1 in full force and effect at all times relevant to the charges brought herein and will expire on July
2 31, 2020, unless renewed.¹

3 7. In 1988, the Bureau of Automotive Repair issued Lamp Adjuster License Number LA
4 111109, class A, to Respondent. The Lamp Adjuster License expired on July 31, 2017, and was
5 cancelled on September 3, 2017.

6 8. In 1988, the Bureau of Automotive Repair issued Brake Adjuster License Number
7 BA 111109, class c, to Respondent. The Brake Adjuster License expired on July 31, 2017, and
8 was revoked on October 13, 2017.

9 9. In a disciplinary action entitled "In the Matter of the Accusation Against Chang Sik
10 Kim dba Kims Auto Repair," Case No. 79/16-139, the Bureau of Automotive Repair issued a
11 Decision and Order, effective October 13, 2017, in which Respondent's Automotive Repair
12 Dealer Registration, Smog Check Station License, Lamp Station License, Smog Check Inspector
13 License, and Smog Check Repair Technician License were revoked. However, the revocation of
14 said licenses was stayed and Respondent's Automotive Repair Dealer Registration, Smog Check
15 Station License, Lamp Station License, Smog Check Inspector License, and Smog Check Repair
16 Technician License were placed on probation for three (3) years with certain terms and
17 conditions.² A copy of that Decision and Order is attached as Exhibit A and is incorporated by
18 reference.

19 **JURISDICTION, STATUTORY & REGULATORY PROVISIONS FOR ACCUSATION**

20 10. Business and Professions Code ("BPC") section 9884.13 provides, in pertinent part,
21 that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed
22 with a disciplinary proceeding against an automotive repair dealer or to render a decision
23 temporarily or permanently invalidating (suspending or revoking) a registration.

24
25 ¹ Effective August 1, 2012, California Code of Regulations, title 16, section 3340.28, 3340.29 and
26 3340.30 were amended to implement a license restructure from the Advanced Emission Specialist
27 Technician (EA) license and Basic Area (EB) Technician license to Smog Check Inspector (EO) license
and and/or Smog Check Repair Technician (EI) license.

28 ² Pursuant to the Decision and Order, Respondent's Brake Station License and Brake
Adjuster License were also revoked, but the revocation of those licenses was not stayed.

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

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

8 13. Section 9884.7 of the BPC states, in pertinent part:

9 "(a) The director, where the automotive repair dealer cannot show there was a bona fide
10 error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an
11 automotive repair dealer for any of the following acts or omissions related to the conduct of the
12 business of the automotive repair dealer, which are done by the automotive repair dealer or any
13 automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

17

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

20 14. Section 9882.22 of the BPC states, in pertinent part:

21 The willful making of any false statement or entry with regard to a material matter in any
22 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
23 by this chapter or Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the
24 Health and Safety Code constitutes perjury and is punishable as provided in the Penal Code.

25 15. Section 44072.2 of the HSC states, in pertinent part:

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

1 “(a) Violates any section of this chapter and the regulations adopted pursuant to it, which
2 related to the licensed activities.

3 ...

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

5

6 16. Section 44012, subdivision (f), of the HSC states:

7 A visual or functional check is made of emission control devices specified by the
8 department, including the catalytic converter in those instances in which the department
9 determines it to be necessary to meet the findings of Section 44001. The visual or functional
10 check shall be performed in accordance with procedures prescribed by the department.

11 17. Section 44015, subdivision (b), of the HSC provides that a certificate of compliance
12 shall be issued if a vehicle meets the requirements of HSC section 40012.

13 18. Section 44059 of the HSC provides:

14 The willful making of any false statement or entry with regard to a material matter in any
15 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
16 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business
17 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code.

18 19. Section 44032 of the HSC states, in pertinent part, “all tests must be conducted in
19 accordance with section 44012 (i.e. Motor Vehicle Inspection Program Requirements).

20 20. California Code of Regulations (“CCR”), title 16, section 3340.24, subdivision (c),
21 states:

22 “The bureau may suspend or revoke the license of or pursue other legal action against a
23 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
24 certificate of noncompliance.”

25 21. CCR, title 16, section 3340.30, subdivision (a), states in pertinent part:

26 “A licensed smog check inspector and/or repair technician shall comply with the following
27 requirements at all times while licensed:

28 ///

1 c. **Section 44059:** Respondent willfully made false entries for the electronic certificates
2 of compliance by certifying that the vehicle had been inspected as required when, in fact, it had
3 not.

4 **FOURTH CAUSE FOR DISCIPLINE**

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

6 29. Respondent has subjected his station license to discipline under HSC section
7 44072.2, subdivision (c), in that when issuing an electronic certificate of compliance to the
8 undercover Bureau vehicle identified in paragraph 25, above, Respondent violated the following
9 sections of title 16 of the CCR:

10 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
11 electronic certificate of compliance without performing a bona fide inspection of the emission
12 control devices and systems on the vehicle as required by HSC section 44012.

13 b. **Section 3340.35, subdivision (c):** Respondent issued an electronic certificate of
14 compliance even though the vehicle had not been inspected in accordance with section 3340.42 of
15 the HSC.

16 c. **Section 3340.42:** Respondent failed to conduct the required smog test and inspection
17 on the vehicle in accordance with the Bureau's specifications.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Violation of the Motor Vehicle Inspection Program)**

20 30. Respondent has subjected his smog check inspector and smog check repair licenses to
21 discipline under HSC section 44072.2, subdivision (a), in that, Respondent violated the following
22 sections of the HSC with respect to his inspection of the undercover Bureau vehicle identified in
23 paragraph 25, above:

24 a. **Section 44015, subdivision (b):** Respondent issued an electronic certificate of
25 compliance without properly testing and inspecting the vehicle to determine if it was in
26 compliance with section 44012 of the HSC.

27 ///

28

1 38. Pursuant to BPC section 9889.9, if the Lamp Station License and/or Lamp Adjuster
2 License issued to Chang Sik Kim is revoked or suspended, any additional licenses issued under
3 Articles 5 and 6 of [the Automotive Repair Act] in the name of the licensee may be likewise
4 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 issue a decision:

8 1. Revoking or suspending the following licenses issued to Chang Kim Sung: ARD
9 99676; Smog Check Station License Number RC 99676; Lamp Station License Number LS
10 99676, class A; Smog Check Inspector License No. EO 111109; and Smog Check Repair
11 Technician License No. EI 111109;

12 2. Ordering Chang Kim Sung to pay the Bureau of Automotive Repair the reasonable
13 costs of the investigation and enforcement of the Accusation portion of this case, pursuant to
14 Business and Professions Code section 125.3;

15 3. Revoking the probation that was granted by the Bureau in Case No. 79/16-139
16 and imposing the disciplinary order that was stayed thereby revoking the following registration
17 and licenses issued to Chang Kim Sung: ARD 99676; Smog Check Station License Number RC
18 99676; Lamp Station License Number LS 99676, class A; Smog Check Inspector License No. EO
19 111109; Smog Check Repair Technician License No. EI 111109; and Lamp Adjuster License
20 Number LA 111109, class A;

21 4. Revoking or suspending the registrations for all places or business operated in this
22 state by Chang Sik Kim pursuant to BPC section 9884.7, subdivision (c);

23 5. Revoking or suspending any and all additional licenses issued under Chapter 5 of Part
24 5 of Division 26 of the HSC in the name of Chang Sik Kim pursuant to HSC section 44072.8;

25 ///

26 ///

27 ///

28 ///

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

- 6. Revoking or suspending any and all additional licenses issued under Articles 5 and 6 of the Automotive Repair Act in the name of Chang Sik Kim pursuant to BPC section 9889.9; and
- 7. Taking such other and further action as deemed necessary and proper.

DATED: 1-29-19 by Patrick Dorais Assist. Chief
 PATRICK DORAIS Patrick Dorais
 Chief
 Bureau of Automotive Repair
 Department of Consumer Affairs
 State of California
 Complainant

LA2018601814
 13385703.docx