

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

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

**ADVANCED SMOG CENTER
KENNETH FLOYD WUORI, Owner**

Automotive Repair Dealer Registration No
ARD 253746
Smog Check Test Only Station License No.
TC 253746

and

KENNETH FLOYD WUORI,

Smog Check Repair Technician License No.
EI 153230 (formerly Advanced
Technician License No. EA 153230)

Smog Check Inspector License No. EO
153230 (formerly Advanced Emission
Specialist Technician License No. EA
153230)

Respondents.

Case No. 79/15-105

OAH No. 2015061010

DECISION

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

This Decision shall become effective October 19, 2016.

DATED: September 2, 2016

Doreatha Johnson
DOREATHEA JOHNSON
Deputy Director
Division of Legal Affairs
Department of Consumer Affairs

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FOR THE BUREAU OF AUTOMOTIVE REPAIR
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License No. EA 153230)

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153230 (formerly Advanced Emission
Specialist Technician License No. EA
153230)

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Case No. 79/15-105

OAH No. 2015061010

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of
Administrative Hearings, heard this matter on June 16, 2016, in Oakland, California.

Deputy Attorney General Maretta D. Ward represented complainant Patrick Dorais,
Chief of the Bureau of Automotive Repair.

William D. Ferreira, Attorney at Law, represented respondents Advanced Smog
Center and Kenneth Floyd Wuori, who was present throughout the proceeding.

The record was left open for receipt of argument from respondents and a reply from complainant. Respondents brief was timely received and marked as Exhibit E for identification. No reply was received from complainant and the record closed on July 14, 2016.

The matter was submitted for decision on July 14, 2016.

FACTUAL FINDINGS

Introduction

1. On April 7, 2015, complainant Patrick Dorais, Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, brought the accusation and petition to revoke probation in his official capacity.

2. On February 22, 2008, the Bureau of Automotive Repair (bureau) issued Automotive Repair Dealer Registration No. ARD 253746 to Kenneth Floyd Wuori (respondent), owner, doing business as, Advanced Smog Center, located in Fairfield, California. On February 26, 2008, the bureau issued Smog Check Test Only Station License No. TC 253746 to respondent as owner of Advanced Smog Center.

3. In 2006, the bureau issued Advanced Emission Specialist Technician License EA 153230 to respondent. Effective December 30, 2013, the license was renewed as Smog Check Inspector License No. EO 153230 and Smog Check Repair Technician License No. EI 153230.

4. The licenses were in full force and effect at all times relevant here.

History of Citations and License Discipline

5. On February 11, 2009, the bureau issued Citation No. M09-0926 against respondent's smog check technician license, and Citation No. C09-0925 against respondent's ARD registration and smog check test only station license. A citation conference was held on March 9, 2009. Respondent complied with the citations by submitting proof of completion of an eight-hour training course and paying a civil penalty of \$500 by March 18, 2009.

6. On October 15, 2009, the bureau issued Citation No. M2020-0376 against respondent's smog check technician license, and Citation No. C2010-0375 against respondent's ARD registration and smog check test only station license. A citation conference was held on November 10, 2009. Respondent complied with the citations by submitting proof of completion of a 16-hour training course and paying a civil penalty of \$1,000 by November 25, 2009.

7. On September 3, 2010, the bureau issued Citation No. M2011-0249 against respondent's smog check technician license, and Citation No. C2011-0248 against respondent's ARD registration and smog check test only station license. A citation conference was held on September 29, 2010. Respondent complied with the citations by submitting proof of completion of a 68-hour training course and paying a civil penalty of \$2,500 by September 29, 2010.

8. On September 14, 2011, the bureau filed an accusation against respondent following an undercover run on December 10, 2010. The accusation alleged that respondent issued a certificate of compliance to a vehicle with a missing air injection reactor system. Effective June 28, 2012, the bureau adopted a Stipulated Settlement and Disciplinary Order that revoked respondent's registration and licenses, but stayed the revocation and placed the registration and licenses on probation for three years on certain terms and conditions. The conditions imposed a 15-day suspension and required respondent to obey all laws, submit quarterly reports, submit to random inspections, complete continuing education courses and pay the bureau's enforcement costs in the amount of \$3,808.

At a probation conference on July 12, 2012, respondent presented a plan for succeeding on probation. The plan included: 1) extending smog check inspection times to perform more thorough inspections; 2) performing timing inspections as required; 3) hiring another licensed technician; and, 4) ensuring that the contract for service follows the regulation and the bureau's "Write-It-Right Guide for Automotive Repair Dealers."

9. On November 2, 2012, respondent attended a probation conference with bureau representatives. Respondent had completed the 15-day suspension and respondent was making payments on the costs pursuant to an agreed upon payment plan. Respondent had also completed the 28-hour education course that was ordered as a condition of probation. Respondent advised the bureau representatives that in an effort to be more thorough, he had slowed down his inspections.

10. Respondent's probation was scheduled to terminate on June 28, 2015.

June 25, 2014 Undercover Operation

11. From June 18 to June 20, 2014, a bureau representative tested and installed a defect on a bureau vehicle, a 1997 Chevrolet Astro van. The representative removed the vehicle's intact fuel evaporative canister and replaced it with a fuel evaporative canister with a large hole in the body. Fuel evaporative canisters come in different shapes and sizes, and some have a plastic cover or shield for protection.

The fuel evaporative canister stores and processes vapors from the fuel tank. The process is important because the vapors contain hydrocarbons, a pollutant that the bureau is trying to minimize. The vapors are collected in the canister and absorbed by charcoal in the canister until they are burned in the engine. The bureau representative removed charcoal that is normally in the canister. The representative drove the vehicle with the defective fuel

evaporative canister and observed no drivability concerns; however, the vehicle could not pass a properly performed smog check inspection with the hole in the canister.

12. On June 26, 2014, an undercover operator employed by the bureau was directed to drive the 1997 Chevrolet Astro van with the defective fuel evaporative canister to Advanced Smog Center to request a smog check inspection. Respondent performed the smog check inspection.

13. The purpose of the smog check program is to reduce pollution in the State of California. A properly performed smog check inspection has three parts: 1) a tailpipe emissions test; 2) a functional test of certain components of the emissions system; and, 3) a visual inspection of the emission control components.

14. The 1997 Chevrolet Astro van passed the tailpipe emissions test when respondent performed the smog check inspection. The functional portion of a smog check inspection is performed by testing the onboard diagnostic computer. The onboard diagnostic computer monitors the functionality of various components of the vehicle, including the emissions control system. When it detects a problem, the malfunction indicator lamp (MIL), or "check engine light," is illuminated.

The hole in the fuel evaporative canister of the 1997 Chevrolet Astro van did not cause the MIL to illuminate during the inspection. Whether the vehicle's engine is warm or cold, and the amount of fuel in the gas tank, can affect whether a vehicle's MIL illuminates. Under normal conditions, the MIL would eventually illuminate due to the hole in the fuel evaporative canister. The technician cannot rely exclusively on the functional portion of the test because the monitors do not always detect problems; for this reason, the bureau also requires technicians to perform a visual inspection of the emissions control system.

15. The 1997 Chevrolet Astro van had an under hood emission control information label and emission hose routing diagrams. A technician is not required to disassemble the vehicle; however, based on the available information, including the under hood diagrams and industry reference materials, he or she must visually inspect the emissions control system to confirm that it is present and functional. Based on the under hood label and diagram, and by reviewing industry reference materials, a technician properly performing a thorough inspection would have seen the hole in the canister of the bureau's 1997 Chevrolet Astro van and determined that the vehicle failed the visual portion of the inspection.

16. After completing his inspection of the 1997 Chevrolet Astro van, respondent issued a smog check certificate of compliance. The smog check vehicle inspection report signed by respondent indicates that the vehicle's fuel evaporative controls passed the visual inspection and functional check. The vehicle should not have passed the visual inspection with the defective fuel evaporative canister.

Enforcement Costs

17. The bureau has incurred \$13,487.50 in enforcement costs in this matter.

Respondent's Evidence

18. Respondent testified with candor at hearing. From 1973 until 1993, respondent was employed as an automobile technician for the United States Air Force; he worked on a wide variety of equipment including aircraft towing tractors, snow plows, forklifts and warehouse tugs. From November 1994 through April 2004, he performed maintenance on buses for the Sacramento Regional Transit District. After suffering a work-related injury, respondent became a smog check technician; he has been licensed by the bureau for over 10 years.

19. Respondent recalls inspecting the bureau's 1997 Chevrolet Astro van. He performed the visual inspection and observed the damaged canister. However, because there was no charcoal residue present, he assumed that the hole was in a protective shield, rather than in the canister itself. All fuel evaporative canisters look different and some have a plastic shroud for protection. If the hole is in the shroud, the vehicle would pass; if the hole is in the canister itself, it would fail inspection. Respondent understood that the vehicle's onboard diagnostic computer would illuminate the check engine light if the vapors were escaping. Since the vehicle passed the functional portion of the test, he assumed the hole was in the protective shroud rather than in the canister. After hearing the evidence, respondent agrees that the vehicle should have failed the inspection. However, respondent contends that his error was not knowing; rather, he contends that it was a bona fide error.

20. Respondent is 62 years old and plans to retire in December 2019, at age 66. He would like to continue being self-employed at his station until then because he loves his work. Respondent paid the bureau's previous costs in full ahead of schedule. Respondent's ability to pay future costs would be compromised if his licenses were revoked due to having limited funds. Aside from the station's income, he receives \$1,097 per month in retirement benefits and he is supporting his son who is attending the University of California, Davis.

21. Respondent presented expert testimony from Oscar Gomez, a bureau-certified instructor of the Level I and Level II training for smog check inspectors. Gomez has a smog inspection and repair technician license and is ASE (Auto Service Excellence) certified. He has testified as an expert approximately 10 times.

Gomez reviewed the evidence in this matter. He has performed smog check inspections on similar vehicles. Gomez opined that the functional test did not report the defect in the canister because the gas tank was full. Gomez also opined that the location of the canister in the vehicle made it difficult to see, and the lack of charcoal around the hole indicated that the canister itself was not defective. Usually when a canister is leaking there is visible charcoal around the hole. Generally, a vehicle fails inspection involving a fuel evaporative canister because: 1) the part is missing altogether; 2) the onboard diagnostic

computer shows a trouble code; 3) the check engine light illuminates; or, 4) the technician sees charcoal residue on the canister indicating a leak. In Gomez's opinion, based upon the location of the canister, the lack of any charcoal residue or indication from the onboard diagnostic test, it was reasonable to assume that the canister was functioning and the hole, which was located on the side rather than on the bottom, was in a plastic cover. Gomez's testimony was persuasive in explaining why respondent failed to detect the defect in the fuel evaporative canister.

LEGAL CONCLUSIONS

1. The standard of proof applied in this proceeding is preponderance of the evidence. (*Imports Performance et al., v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 915-916.)

Accusation

FIRST CAUSE FOR DISCIPLINE

2. Pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), the Director of the Department of Consumer Affairs may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for making an untrue or misleading statement which is known, or should be known by the exercise of reasonable care, to be untrue or misleading. The bureau alleges that by issuing the certificate of compliance, respondent made an untrue statement that he knew or should have known was untrue.

Respondent conceded after hearing the evidence that he should not have issued a certificate of compliance after inspecting the bureau's 1997 Chevrolet Astro van. However, the evidence did not establish that respondent issued the certificate of compliance knowing that it should have failed inspection. (Factual Finding 19.)

A licensee is not subject to discipline pursuant to section 9884.7 if he or she can show that the statement was made due to a bona fide error. Although the emissions control system's defect was not obvious, respondent's failure to closely and carefully inspect the vehicle does not constitute a bona fide error; respondent should have known by the exercise of reasonable care that the vehicle failed inspection. Cause for discipline on respondent's automotive repair dealer registration therefore exists pursuant to Business and Professions section 9884.7, subdivision (a)(1).

SECOND CAUSE FOR DISCIPLINE

3. Pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), the bureau may impose discipline on a registration when the automotive repair dealer has engaged in conduct that constitutes fraud. Neither the Automotive Repair Act nor the regulations promulgated under it include a definition of "fraud." In general, fraud will be

found when an individual "intentionally, or by design, misrepresents a material fact, or produces a false impression in order to mislead another, or to entrap or cheat him, or to obtain an undue advantage of him." (*Wayne v. Bureau of Private Investigators & Adjusters* (1962) 201 Cal.App.2d 427, 438; see Civ. Code, § 1572.) Based on the matters set forth in Factual Finding 19, the evidence did not establish that respondent engaged in fraud. Accordingly, cause does not exist to discipline respondent's registration under Business and Professions Code section 9884.7, subdivision (a)(4).

THIRD CAUSE FOR DISCIPLINE

4. Pursuant to Health and Safety Code section 44072.2, subdivision (a), a licensee is subject to discipline for violating any section of the Motor Vehicle Inspection Program or the regulations adopted pursuant to it. Health and Safety Code section 44012, subdivision (e), requires a smog check inspection to include a visual inspection of the vehicle emission control system. Section 44012, subdivision (f), provides that that the visual inspection of the emission and control system must be performed in compliance with the Motor Vehicle Inspection Program. Section 44015, subdivision (a), provides that a licensed smog check station shall not issue a certification of compliance without properly testing and inspecting the vehicle pursuant to section 44012. Section 44059 states that the willful making of any false statement on a certificate of compliance constitutes perjury and is punishable as provided in the Penal Code.

The evidence did not establish that respondent willfully or fraudulently issued the certificate of compliance; cause for discipline does not exist for a violation of Health and Safety Code sections 44072.2 and 44059.

However, the evidence established that respondent failed to perform a thorough visual inspection of emission control system. Cause for discipline therefore exists pursuant to Health and Safety Code sections 44072.2, 44012, subdivisions (e) and (f), and 44015.

FOURTH CAUSE FOR DISCIPLINE

5. Complainant contends that respondent's registration and licenses are subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (c), because he violated California Code of Regulations, title 16, sections 3340.24, subdivision (c) (falsely or fraudulently issuing a certificate of compliance without performing a bona fide inspection of the emissions control system); 3340.35, subdivision (c) (issuing a certificate of compliance without performing the required inspection); and, 3340.42 (failing to conduct smog check and inspection in accordance with the bureau's specifications).

The evidence did not establish that respondent falsely or fraudulently issued a certificate of compliance without performing a bona fide inspection of the emissions control system; cause for discipline does not exist for a violation of Health and Safety Code section 44072.2 and California Code of Regulations, title 16, section 3340.24, subdivision (c).

However, the evidence established that respondent issued a certificate of compliance without conducting an inspection in accordance with the bureau's specifications; cause for discipline exists pursuant to Health and Safety Code section 44072.2 and California Code of Regulations, title 16, sections 3340.35, subdivision (c), and 3340.42.

FIFTH, SIXTH, SEVENTH AND EIGHTH CAUSES FOR DISCIPLINE

6. Complainant has restated the First through Fourth Causes for Discipline in the Fifth through Eighth Causes for Discipline. At hearing, it was argued that the duplicative allegations related to the failure to perform a functional inspection of the bureau's 1997 Chevrolet Astro van in accordance with the bureau's specifications; however, the evidence did not establish that respondent failed to perform a functional inspection in accordance with the bureau's specifications. Therefore, no discipline is warranted on the Fifth through Eighth Causes for discipline.

Petition to Revoke Probation

7. Complainant argues that respondent's probation should be revoked for failing to comply with Condition 2, which requires him to obey all statutes, regulations and rules governing automotive inspections and repairs. Condition 8 permits the Director of the Department of Consumer Affairs to invalidate respondent's automotive repair registration and revoke his licenses for failing to comply with Condition 2. Complainant established cause to revoke respondent's probation as set forth in Legal Conclusions 2 through 5.

Disciplinary Considerations

8. In reaching a decision on a disciplinary action, the bureau considers the "Guidelines for Disciplinary Penalties and Terms of Probation." (Cal. Code of Regs., tit. 16, § 3395.4.) In order to determine whether and to what extent it is appropriate to discipline respondents' licenses, it is necessary to weigh and balance respondent's conduct in light of any factors in aggravation and mitigation. Under the guidelines, factors in aggravation include a history of citations and/or formal disciplinary action; the failure to comply with the bureau's request for corrective action; the failure to successfully complete a period of probation; and, conduct which constitutes fraud or gross negligence.

Under the guidelines, factors in mitigation include: evidence that a licensed station has taken specific steps for retraining and has initiated steps to minimize recurrence; evidence of resolution of consumer complaints with a subsequent change in business practices; and evidence of implementing internal controls or audits designed to eliminate errors. According to the guidelines, the bureau's emphasis is on disciplining licensees who show a pattern of abuse or willful misconduct in dealing with the public.

Regarding his previous citations, respondent accepted responsibility for his errors and completed the required education courses and paid the fines. Respondent has met with bureau representatives and worked cooperatively to implement ideas to help him perform

proper smog inspections. He timely paid the costs of investigation imposed by his probationary order.

The bureau's undercover operations are an important part of the Program's focus on vigorous enforcement, which is designed to ensure that smog inspections are conducted properly to protect the public health. Respondent established, however, that the undercover operation here presented an unusual issue. He observed the hole in the canister, but because the charcoal had been removed and the MIL light did not illuminate, he assumed that the hole was in a cover. The evidence also established that due to its location, the canister and the hole were difficult to view. Respondent should have been more thorough; however, his failure to detect the defect was explained by other unexpected findings. Considering the record as a whole, it would not be contrary to the public interest to extend probation on respondent's registration and licenses for an additional two years from the date of this Decision, on conditions including a 30-day suspension.

Costs of Enforcement

9. Pursuant to Business and Professions Code section 125.3, the bureau may request the administrative law judge to direct a licensee found to have violated the licensing act to pay a sum not to exceed the reasonable costs of investigation and prosecution. The bureau incurred enforcement costs of \$13,487.50. (Factual Finding 17.)

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Supreme Court enumerated several factors that a licensing agency must consider in assessing costs. It must not assess the full costs of investigation and enforcement when to do so would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The agency must also consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge to the discipline or is unable to pay.

In this matter, four of the eight causes for discipline were not supported by the evidence. Therefore, respondent was able to obtain the dismissal of those charges. In addition, through his testimony, respondent demonstrated good faith in his position and raised a colorable challenge to the discipline requested. Moreover, respondent established that he is on a limited income. Under these circumstances, the costs reimbursement will be reduced to \$4,000.

ORDER

Pursuant to the accusation and petition to revoke probation against respondent Kenneth Floyd Wuori, owner, doing business as Advanced Smog Center, Automotive Repair Dealer Registration No. ARD 253746, is invalidated, and Smog Check Test Only Station License No. RC 253746, Smog Check Inspector License No. EO 153230 and Smog Check

Repair Technician License No. EI 153230 are revoked. However, the invalidation and revocations are stayed, and are placed on probation for two years, subject to the following terms and conditions:

1. Automotive Repair Dealer Registration No. ARD 253746, Smog Check Test Only Station License No. RC 253746, Smog Check Inspector License No. EO 153230 and Smog Check Repair Technician License No. EI 153230, issued to respondent Kenneth Floyd Wuori, are suspended for 30 consecutive days, to be served beginning on the effective date of the Decision.
2. Respondent shall comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
3. Respondent shall post a prominent sign, provided by the Bureau, indicating that beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.
4. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
5. Within 30 days of the effective date of this action, respondent shall report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.
6. Respondent shall provide bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.
7. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.
8. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard,

temporarily or permanently invalidate the registration.

9. During the period of probation, respondent Kenneth Floyd Wuori shall attend and successfully complete a Bureau Certified Licensed Inspector Training Course as directed by the Bureau. The course shall be completed and proof of completion submitted to the Bureau within 180 days of the effective date of this Decision and Order. If proof of completion of the course is not furnished to the Bureau within the 180-day period, respondent's technician license shall be immediately suspended until such proof is received.

10. Respondent shall pay to the Bureau, pursuant to Business and Professions Code section 125.3, enforcement costs in the amount of \$4,000. Payment to the Bureau shall be made in 24 installments, beginning the effective date of the Decision with the final payment due no later than 12 months before probation terminates. Failure to complete payment of the cost recovery within this time frame shall constitute a violation of probation which may subject respondent's Automotive Repair Dealer Registration, his Smog Check Test Only Station License, his Smog Check Repair Technician License and his Smog Check Inspector License to outright revocation. However, the Director or the Director's Bureau of Automotive Repair designee may elect to continue probation until such time as reimbursement of the entire cost recovery amount has been made to the Bureau.

DATED: July 21, 2016

DocuSigned by:
Jill Schlichtmann
D0097D940B484D9

JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings

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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 Against:

Case No.

79/15-105

13 **ADVANCED SMOG**
KENNETH FLOYD WUORI, Owner
14 **1881 Walters Ct., Suite F**
Fairfield, CA 94533

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

SMOG CHECK

15 **Automotive Repair Dealer Registration No.**
ARD 253746
16 **Smog Check Test Only Station License No.**
TC 253746

17 **KENNETH FLOYD WUORI**
18 **57 Barcelona Court**
Fairfield, CA 94533

19 **Smog Check Repair Technician License No.**
EI 153230 (formerly Advanced Emission
20 **Specialist Technician License No. EA**
153230)

21 **Smog Check Inspector License No. EO**
22 **153230 (formerly Advanced Emission**
23 **Specialist Technician License No. EA**
153230)

24 Respondent.
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1 Complainant alleges:

2 **PARTIES**

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

5 **Automotive Repair Dealer Registration**

6 2. On or about February 22, 2008, the Bureau of Automotive Repair issued Automotive
7 Repair Dealer Registration Number ARD 253746 to Kenneth Floyd Wuori (Respondent). The
8 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
9 charges brought herein and will expire on January 31, 2016, unless renewed.

10 **Smog Check Station License**

11 3. On or about February 26, 2008, the Bureau of Automotive Repair issued Smog
12 Check Test Only Station License Number TC 253746 to (Respondent). The Smog Check Test
13 Only Station License was in full force and effect at all times relevant to the charges brought
14 herein and will expire on January 31, 2016, unless renewed.

15 **Smog Check Inspector License**

16 4. In 2006, the Bureau issues Advanced Emissions Specialist Technician License
17 Number EA 153230 ("technician license") to Respondent. The technician license was due to
18 expire on December 31, 2013. Pursuant to California Code of Regulations, title 16, section
19 3340.28, subdivision (e), the license was renewed, pursuant to Respondent's election, and the
20 Bureau of Automotive Repair issued Smog Check Inspector License Number EO 153230 to
21 (Respondent). The Smog Check Inspector License was in full force and effect at all times
22 relevant to the charges brought herein and will expire on December 31, 2015, unless renewed.¹

23 **Smog Check Repair Technician License**

24 5. In 2006, the Bureau issues Advanced Emissions Specialist Technician License
25 Number EA 153230 ("technician license") to Respondent. The technician license was due to

26 ¹ Effective August 1, 2013, California Code of Regulations, title 16, sections 3340.28,
27 3340.29 and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) License.

1 expire on December 31, 2013. Pursuant to California Code of Regulations, title 16, section
2 3340.28, subdivision (e), the license was renewed, pursuant to Respondent's election, and the
3 Bureau of Automotive Repair issued Smog Check Repair Technician License Number EI 153230
4 to (Respondent). The Smog Check Inspector License was in full force and effect at all times
5 relevant to the charges brought herein and will expire on December 31, 2015, unless renewed.²

6 JURISDICTION

7 6. This Accusation is brought before the Director of Consumer Affairs (Director) for the
8 Bureau of Automotive Repair, under the authority of the following laws.

9 7. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau,"
10 "commission," "committee," "department," "division," "examining committee," "program," and
11 "agency." "License" includes certificate, registration or other means to engage in a business or
12 profession regulated by the Code.

13 8. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
14 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
15 proceeding against an automotive repair dealer or to render a decision invalidating a registration
16 temporarily or permanently.

17 9. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
18 surrender, cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction
19 to proceed with a disciplinary action during the period within which the license may be renewed,
20 restored, reissued or reinstated.

21 10. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
22 expiration or suspension of a license by operation of law, or by order or decision of the Director
23 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
24 the Director of jurisdiction to proceed with disciplinary action.

25 //

26 ² Effective August 1, 2013, California Code of Regulations, title 16, sections 3340.28,
27 3340.29 and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) License.

1 PETITION TO REVOKE PROBATION

2 11. The Petition to Revoke Probation is brought before the Chief of the Bureau of
3 Automotive Repair, Department of Consumer Affairs under Probation Term and Condition
4 Number(s) 2 and 8 of the Decision and Order In the Matter of the Accusation Against Advanced
5 Smog Center Case No. 79/12-31. Those terms and conditions state:

6 12. **Obey All Laws.** Comply with all statutes, regulations and rules governing
7 automotive inspections estimates and repairs.

8 13. **Violation of Probation.** Should the Director of Consumer Affairs determine that
9 Respondent has failed to comply with the terms and conditions of probation, the Department may,
10 after giving notice and opportunity to be heard temporarily or permanently invalidate the
11 Automotive Repair Dealer Registration and/or suspend or revoke the Smog Check Test Only
12 Station License and/or Advanced Emission Specialist Technician License.³

13 STATUTORY PROVISIONS

14 14. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
15 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
16 the Motor Vehicle Inspection Program.

17 15. Section 44072.2 of the Health and Safety Code states:

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

21 "(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health
22 and Saf. Code, ' 44000, et seq.)] and the regulations adopted pursuant to it, which related to the
23 licensed activities.

24 "(b) Is convicted of any crime substantially related to the qualifications, functions, and
25 duties of the licenseholder in question.

26 ³ In the Matter of the Accusation Against Advanced Smog Center, Case No. 79/12-31 as
27 noted in the Decision and Order, following a Stipulated Settlement Agreement, adopted June 8,
28 2012 and effective on June 28, 2012, Respondent was disciplined as follows: Revocation stayed,
three years' probation and suspension of 15 days.

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

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

3 "(e) Has misrepresented a material fact in obtaining a license.

4 "(f) Aids or abets unlicensed persons to evade the provisions of this chapter.

5 "(g) Fails to make and keep records showing his or her transactions as a licensee, or fails to
6 have those records available for inspection by the director or his or her duly authorized
7 representative for a period of not less than three years after completion of any transaction to
8 which the records refer, or refuses to comply with a written request of the director to make the
9 records available for inspection.

10 "(h) Violates or attempts to violate the provisions of this chapter relating to the particular
11 activity for which he or she is licensed."

12 16. Section 9884.7 of the Code states:

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

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

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

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

25 (4) Any other conduct that constitutes fraud.

26 (5) Conduct constituting gross negligence.

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

1 (7) Any willful departure from or disregard of accepted trade standards for good and
2 workmanlike repair in any material respect, which is prejudicial to another without consent of the
3 owner or his or her duly authorized representative.

4 (8) Making false promises of a character likely to influence, persuade, or induce a
5 customer to authorize the repair, service, or maintenance of automobiles.

6 (9) Having repair work done by someone other than the dealer or his or her employees
7 without the knowledge or consent of the customer unless the dealer can demonstrate that the
8 customer could not reasonably have been notified.

9 17. Section 44072.8 of the Health and Safety Code states:

10 "When a license has been revoked or suspended following a hearing under this article, any
11 additional license issued under this chapter in the name of the licensee may be likewise revoked
12 or suspended by the director."

13 18. Section 44012 of the Health and Safety Code states:

14 "The test at the smog check stations shall be performed in accordance with procedures
15 prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded
16 mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas,
17 and shall ensure all of the following:

18 "(a) Emission control systems required by state and federal law are reducing excess
19 emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of
20 Section 44013.

21 "(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of
22 the vehicle's emission control system.

23 "(c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of
24 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded
25 mode are tested in accordance with procedures prescribed by the department. In determining
26 how loaded mode and evaporative emissions testing shall be conducted, the department shall
27 ensure that the emission reduction targets for the enhanced program are met.

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1 "(d) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and
2 crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic
3 compound emissions, in accordance with procedures prescribed by the department.

4 "(e) For diesel-powered vehicles, if the department determines that the inclusion of those
5 vehicles is technologically and economically feasible, a visual inspection is made of emission
6 control devices and the vehicle's exhaust emissions in an idle mode or loaded mode are tested in
7 accordance with procedures prescribed by the department. The test may include testing of
8 emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of
9 applicable standards, measurement of emissions of smoke or particulates, or both.

10 "(f) A visual or functional check is made of emission control devices specified by the
11 department, including the catalytic converter in those instances in which the department
12 determines it to be necessary to meet the findings of section 44001. The visual or functional
13 check shall be performed in accordance in procedures prescribed by the department.

14 19. Section 44015 of the Health and Safety Code states in pertinent part:

15 "A licensed smog check station shall not issue a smog certificate except as authorized by
16 this chapter."

17 20. Section 44059 of the Health and Safety Code states:

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

22 21. California Code of Regulations, title 16, section 3340.24, states:

23 "(a) Any disciplinary or reinstatement proceeding under this article involving licensed
24 stations, licensed technicians, or fleet owners licensed pursuant to section 44020 of the Health
25 and Safety Code shall be conducted in accordance with chapter 5 (commencing with section
26 11500) of division 3, Title 2 of the Government Code.

27 "(b) The bureau may suspend or revoke the license of or pursue other legal action against a
28 licensee, if the licensee knowingly and willfully resists, delays, or obstructs any employee of the

1 bureau or any employee of the quality assurance contractor of the bureau in carrying out the
2 lawful performance of his or her duties.

3 "(c) The bureau may suspend or revoke the license of or pursue other legal action against a
4 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
5 certificate of noncompliance.

6 "(d) The bureau may suspend or revoke the license of or pursue other legal action against a
7 licensee that fails to complete retraining when required by the department, pursuant to section
8 44045.6 of the Health and Safety Code."

9 22. California Code of Regulations, title 16, section 3340.35, states in pertinent part:

10 A licensed station shall issue a certificate of compliance or noncompliance to the owner or
11 operator of any vehicle that has been inspected in accordance with the procedures specified in
12 section 3340.42 of this article and has all the required emission control equipment and devices
13 installed and functioning correctly.

14 23. California Code of Regulations, title 16, section 3340.41, states:

15 "(a) A licensed station shall give a copy of the test report printed from the emissions
16 inspection system to the customer. The report shall be attached to the customer's invoice.

17 "(b) No person shall enter into the emissions inspection system any access or qualification
18 number other than as authorized by the bureau, nor in any way tamper with the emissions
19 inspection system.

20 "(c) No person shall enter into the emissions inspection system any vehicle identification
21 information or emission control system identification data for any vehicle other than the one
22 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
23 information about the vehicle being tested.

24 "(d) The specifications and procedures required by Section 44016 of the Health and Safety
25 Code shall be the vehicle manufacturer's recommended procedures for emission problem
26 diagnosis and repair or the emission diagnosis and repair procedures found in industry-standard
27 reference manuals and periodicals published by nationally recognized repair information
28 providers. Smog check stations and smog check technicians shall, at a minimum, follow the

1 applicable specifications and procedures when diagnosing defects or performing repairs for
2 vehicles that fail a smog check test.

3 "(e) A smog check station shall not perform an initial test, except for an official pre-test, on
4 or issue a certificate of compliance to any vehicle that has been directed to a test-only station for
5 its biennial smog check pursuant to Sections 44010.5 or 44014.7 of the Health and Safety Code,
6 unless the station is licensed as a test-only station pursuant to subdivision (b) of Section 44014 of
7 the Health and Safety Code. The reinspection and certification of a test-only directed vehicle that
8 has failed an initial test at a test-only station and has undergone subsequent repairs to correct the
9 cause of the failure, may be performed by a test-only station, or by a test-and- repair station that
10 performs those repairs and that is also certified as a Gold Shield station pursuant to Section
11 44014.2 of the Health and Safety Code and Article 10 (commencing with section 3392.1) of this
12 chapter.

13 24. California Code of Regulations, title 16, section 3340.42, states in pertinent part:

14 Smog check stations and smog check technicians shall conduct tests and inspections in
15 accordance with the bureau's BAR-97 Emissions Inspection System Specifications referenced in
16 subsections (a) and (b) of Section 3340.17.

17 COST RECOVERY

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

22 UNDERCOVER OPERATION

23 26. On or about June 25, 2014, for the purpose of determining if Respondent was in
24 compliance with the terms of probation, a Bureau undercover operator drove a Bureau
25 documented 1997 Chevrolet to Respondent's facility and requested a smog inspection. The
26 vehicle was not capable of passing a properly conducted smog test because the vehicle's Fuel
27 Evaporative Canister was defective. The operator was not provided a copy of the work order
28 before work began and prior to the smog inspection. Respondent performed the smog inspection

1 and issued electronic Certificate of Compliance No. PI167745 for that vehicle. The operator paid
2 \$48.00 for the smog inspection and received a copy of Invoice [REDACTED] and the vehicle
3 inspection report.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Misleading Statements)**

6 27. Respondent is subject to disciplinary action under section Code section 9884.7,
7 subdivision (a)(1), in that on or about June 25, 2014, he made statements which he knew or which
8 by the exercise of reasonable care should have known were untrue or misleading when he issued
9 electronic Certificate of Compliance [REDACTED], for the 1997 Chevrolet, certifying that the
10 vehicle was in compliance with applicable laws and regulations when, in fact, the vehicle's Fuel
11 Evaporative Canister was defective and the vehicle could not pass a properly conducted smog
12 test.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Fraud)**

15 28. Respondent is subject to disciplinary action under section 9884.7, subdivision (a)(4),
16 in that on or about June 25, 2014, he committed acts which constitute fraud by issuing electronic
17 Certificate of Compliance [REDACTED], for the 1997 Chevrolet, without performing a bona
18 fide inspection of the systems on that vehicle, thereby depriving the public of the protection
19 afforded by the Motor Vehicle Inspection Program.

20 **THIRD CAUSE FOR DISCIPLINE**

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

22 29. Respondent is subject to disciplinary action under Health and Safety Code section
23 44072.2, subdivision (a), in that on or about June 25, 2014, regarding the 1997 Chevrolet, he
24 violated various sections of that Code as follows:

25 a. **Section 44012**, subdivision (e); Respondent failed to perform a visual inspection of
26 the vehicle emission control systems.

27 b. **Section 44012**, subdivision (f); Respondent failed to perform a visual inspection of
28 the vehicle emission and control systems in compliance with the requirement of this chapter.

1 c. **Section 44015**, subdivision (b); Respondent issued electronic Certificate of
2 Compliance No. PI167745 without properly testing and inspecting the vehicle to determine it if
3 was in compliance with section 44012 of the Code.

4 d. **Section 44059**; Respondent willfully made false entries for the electronic Certificate
5 of Compliance [REDACTED], certifying that the vehicle had been inspected as required when, in
6 fact, it had not.

7 **FOURTH CAUSE FOR DISCIPLINE**

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

9 30. Respondent is subject to discipline under Health and Safety Code section 44072.2,
10 subdivision (c), in that on or about June 25, 2014, regarding the 1997 Chevrolet, he violated
11 sections of the California Code of Regulations, title 16, as follows:

12 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued
13 electronic Certificate of Compliance [REDACTED] without performing a bona fide inspection of
14 the emission control devices and systems on that vehicle as required by Health and Safety Code
15 section 44012.

16 b. **Section 3340.35, subdivision (c)**: Respondent issued electronic Certificate of
17 Compliance [REDACTED] even though that vehicle had not been inspected in accordance with
18 section 3340.42 of that Code.

19 c. **Section 3340.42**: Respondent failed to conduct the required smog tests and
20 inspections on that vehicle in accordance with the Bureau's specifications.

21 **FIFTH CAUSE FOR DISCIPLINE**

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

23 31. Respondent is subject to disciplinary action under Health and Safety Code section
24 44072.2, subdivision (d), in that on or about June 25, 2014, regarding the 1997 Chevrolet, he
25 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
26 electronic Certificate of Compliance [REDACTED] for that vehicle without performing a bona
27 fide inspection of the emission control devices and system on the vehicle, thereby depriving the

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1 People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program.

3 **SIXTH CAUSE FOR DISCIPLINE**

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

5 32. Respondent is subject to disciplinary action under Health and Safety Code section
6 44072.2, subdivision (a), in that on or about June 25, 2014, regarding the 1997 Chevrolet, he
7 violated sections of that Code, as follows:

8 a. **Section 44012**, subdivision (a): Respondent failed to determine that all emission
9 control devices and systems required by law were installed and functioning correctly in
10 accordance with test procedures.

11 b. **Section 44012**, subdivision (f): Respondent failed to perform emission control tests
12 on that vehicle in accordance with procedures prescribed by the department.

13 c. **Section 44032**: Respondent failed to perform tests of the emission control devices
14 and systems on that vehicle in accordance with section 44012 of that Code.

15 d. **Section 44059**: Respondent willfully made false entries for electronic Certificate of
16 Compliance [REDACTED], certifying that the vehicle had been inspected as required when, in
17 fact, it had not.

18 **SEVENTH CAUSE FOR DISCIPLINE**

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

20 33. Respondent is subject to disciplinary action under section Health and Safety Code,
21 section 44072.2, subdivision (c) in that on or about June 25, 2014, regarding the 1997 Chevrolet
22 he violated section of the California Code of Regulations, title 16, as follows:

23 a. **Section 3340.24**, subdivision (c); Respondent false or fraudulently issued electronic
24 Certificate of Compliance [REDACTED] without performing a bona fide visual inspection of the
25 control systems on the vehicle as required by Health Safety Code section 44012.

26 b. **Section 3340.30**, subdivision (a); Respondent failed to inspect and test that vehicle
27 in accordance with Health and Safety Code section 44012.

28 c. **Section 3340.41**, subdivision (c); Respondent entred false information into

1 the emissions Inspection System for electronic Certificate of Compliance [REDACTED] by
2 entering pass for the visual inspection of the fuel evaporative canister system, when in fact the
3 fuel evaporative carrier was defective.

4 d. **Section 3340.42:** Respondent failed to conduct the required smog tests and inspections
5 The vehicle in accordance with Bureau specifications.

6 **EIGHTH CAUSE FOR DISCIPLINE**

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

8 34. Respondent is subject to disciplinary action under Health and Safety Code section
9 44072.2 subdivision (d), in that on or about June 25, 2012, regarding the 1997 Chevrolet, he
10 committed acts involving dishonesty fraud or deceit which by another was injured using
11 electronic Certificate of Compliance [REDACTED] without performing a bona fide inspection of
12 the visual components and systems on t the vehicle, thereby depriving the public of the protection
13 afforded by the Motor Vehicle Inspection Program.

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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 253746, issued to Kenneth Floyd Wuori;
2. Revoking or suspending Smog Check Test Only Station License Number TC 253746, issued to Kenneth Floyd Wuori;
3. Revoking or suspending Smog Check Inspector License Number EO 153230, issued to Kenneth Floyd Wuori;
4. Revoking or suspending Smog Check Repair Technician License Number EI 153230 issued to Kenneth Floyd Wuori;
5. Ordering Kenneth Floyd Wuori to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
6. Taking such other and further action as deemed necessary and proper.

DATED: April 7, 2015


PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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