

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

In the Consolidated Matters of the Citation
Appeals by and Accusation Against:

**R T AUTO REPAIR,
JAMES TOMSICH, PARTNER,
JIM M. TOMSICH, PARTNER,**

and

JAMES MARIO TOMSICH,

Respondents.

Case No. 79/15-100

Citation No. C2014-0298

Citation No. M2014-0299

OAH Nos. 2015050102
2015050157

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 February 10, 2016.

DATED: December 24, 2015


TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

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OAH Nos. 2015050102

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PROPOSED DECISION

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard these consolidated matters in Chico, California, on October 22, 2015.

Deputy Attorney General Brian S. Turner appeared on behalf of complainant Patrick Dorais, in his official capacity as Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department). Also present on complainant's behalf was Bureau Program Representative Kelly Renihan.

There were no appearances by or on behalf of respondents RT Auto Repair or James Mario Tomsich.

Oral and documentary evidence was presented. At the conclusion of the hearing, the Bureau offered oral closing argument. The record was then closed and the matter submitted for decision on October 22, 2015.

FACTUAL FINDINGS

1. *Licensure of Respondent RT Auto Repair:* On April 21, 1994, the Bureau issued Automotive Repair Dealer Registration Number ARD 177942 to James Tomsich and

Jim M. Tomsich, partners, doing business as RT Auto Repair (hereafter, RT) in Redding, California. On May 2, 1994, the Bureau issued the following licenses to RT: Smog Check Station License Number RC 177942, Lamp Station License Number LS 177942 (Class A), and Brake Station License Number BS 177942 (Class C). Each of these licenses is current through April 30, 2016.¹

2. *Licensure of Respondent Tomsich:* In 1997, the Bureau issued Basic Area (EB) Technician license number 5640 to respondent James Mario Tomsich (Tomsich). This license was scheduled to expire on December 31, 2013, but was cancelled on September 30, 2013, due to regulatory changes to the structure of such licenses. The license was renewed that date as Smog Check Inspector (EO) License Number 5640 and Smog Check Repair Technician (EI) License Number 5640. These licenses are current through December 31, 2015. The Bureau also issued Brake Adjuster License Number BA 5640 (Class C) and Lamp Adjuster License Number LA 5640 (Class A) to respondent Tomsich in 1984 and 1989, respectively. These licenses are current through December 31, 2016.

3. *Citation No. C2014-0298:* On November 12, 2013, the Bureau issued Citation Number C2014-0298 to respondent RT's ARD registration and Smog Check Station licenses for a violation of Health and Safety Code section 44012, subdivision (f).² The Citation was based on RT's conduct on October 8, 2013, when it allegedly "issued Certificate of Compliance # PA236980C to a Bureau ... undercover vehicle with the ignition timing adjusted beyond specifications." RT was ordered to pay a \$3,000 penalty for this violation.

4. *Citation No. M2014-0299:* On November 12, 2013, the Bureau issued Citation Number M2014-0299 to respondent Tomsich's technician license for a violation of section 44032. The citation was predicated on the same conduct described above. Respondent Tomsich was directed to complete a 68-hour, Bureau-certified training course and to pay a \$1,000 penalty.

5. On December 17, 2013, respondents appealed each of these citations.

6. *Accusation:* On May 4, 2015, complainant filed an Accusation requesting that all licenses issued to respondents RT and Tomsich be disciplined, based on allegations that they had engaged in untrue or misleading statements, dishonesty, fraud or deceit, and had violated the Motor Vehicle Inspection Program and related regulations. These violations were alleged to have occurred on March 12, 2014, when respondents inspected a Bureau undercover vehicle and issued a Vehicle Inspection Report and a Certificate of Compliance for this vehicle, even though it had been altered so that it could not pass a properly conducted California smog emissions test. As matters in aggravation, complainant alleged six citations

¹ Pursuant to Business and Professions Code section 477, subdivision (b), a "license" includes a "registration."

² Unless otherwise specified, all undesignated statutory references are to the Health and Safety Code.

that had been issued to each of the respondents for similar conduct. Complainant further requested an ordered that respondents pay the reasonable costs of the Bureau's investigation and enforcement of this case.

7. Respondents timely filed their Notice of Defense. The case was then set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California. (Gov. Code, 11500 et seq.) By order dated May 12, 2015, the Bureau's request to consolidate the citation appeals and the contested Accusation was granted.

8. Respondents were properly and timely served with the Accusation, Citations and Notice of Hearing in this matter, but they failed to appear at the hearing. The matter proceeded against respondents by default, as authorized by Government Code section 11522. At hearing, complainant called the following employees as witnesses: Nikolas W. Louie, Matt Lara, Eugene Phillips, Joseph Sandberg and Kelly Renihan. There were no witnesses for respondent. The testimony of the witnesses is paraphrased as relevant below.

Citations: The October 8, 2013 Undercover Run

9. The vehicle involved in the October 8, 2013 undercover run which was the basis for the citations is a 1990 Honda Accord, California license number 2UAK206. Three Bureau employees or former employees were involved in this operation: Mr. Louie, Mr. Renihan and Mr. Lara. Their testimony and the related documentary and photographic evidence persuasively established the factual basis for both citations.

10. Mr. Louie is a Program Representative I who works in the Bureau's Forensic Documentation Laboratory (lab) in Sacramento. On August 13 and 14, 2013, Mr. Louie documented the vehicle and ensured that its ignition timing was correctly set at 15 degrees Before Top Dead Center (BTDC). Mr. Louie inspected the vehicle, using both the Acceleration Simulation Mode (ASM) and the Two-Speed Idle (TSI) emissions tests, and it passed both smog inspections. Mr. Louie then introduced a malfunction to the vehicle's ignition timing, by adjusting timing out of factory specifications to 25 degrees BTDC. With this adjustment, the vehicle failed the functional portion of both tests. Mr. Louie installed a tamper indicator on the vehicle to detect adjustment of the vehicle's ignition timing. He photographed the under-hood information label and tamper indicator, and test drove the vehicle, which ran with no problems. The vehicle was secured in the Bureau's lab until he released it to Mr. Renihan.

11. On October 8, 2013, Bureau Program Representative Renihan re-inspected the vehicle and ensured that the tamper indicator on the misadjusted ignition timing was still intact. At a meeting location in Redding, Mr. Renihan again verified that the tamper indicator was intact. He photographed the vehicle's conditions and started a video recorder that was installed on the vehicle. He then instructed Mr. Lara to take it to RT and request a smog inspection.

12. On October 8, 2013, Mr. Lara took the vehicle to RT Smog. Using the pseudonym Matt Perez, he requested a smog inspection. Mr. Lara did not sign a work order or receive a written estimate before the inspection. After the inspection, Mr. Lara paid \$45 for the inspection, signed an invoice and received a Smog Check Vehicle Inspection Report (VIR) from RT. The VIR indicated that the vehicle had passed all components of the smog check, including the functional inspection, and it indicated "Ignition Timing: 15 BTDC." The VIR also issued Smog Check Certificate of Compliance Number [REDACTED], which was electronically transmitted to the California Department of Motor Vehicles (DMV). As verified by the VIR and the BAR97 Test Detail report, respondent Tomsich was the technician who performed this smog inspection.

13. Following its inspection at RT, Mr. Lara returned the vehicle to Mr. Renihan who stopped the video recorder, photographed the vehicle, and took custody of the Invoice and VIR Mr. Lara had received from RT. Mr. Renihan then returned the vehicle to the lab and secured it. He downloaded all of the photographs taken and the video to non-rewritable disks. On reviewing the video recording, Mr. Renihan determined that there had been no attempt made to inspect the vehicle's ignition timing. This was confirmed when Mr. Louie re-inspected the vehicle and found it to be in the same condition as when he released it. With the maladjusted timing, the vehicle was not able to pass a properly conducted smog inspection.

Accusation: The March 12, 2014 Undercover Run

14. The vehicle involved in the March 12, 2014 undercover run alleged in the Accusation was a 2002 Dodge Dakota truck, California license number [REDACTED]. Three Bureau employees or former employees were involved in this operation: Mr. Phillips, Mr. Renihan and Mr. Sandberg. Their testimony and the related documentary and photographic evidence persuasively established the factual basis for the Accusation.

15. [REDACTED] is a Program Representative I who works in the Bureau's lab in Sacramento. On February 21, 2014, [REDACTED] inspected the vehicle, using both the ASM and the TSI emissions tests, and it passed both smog inspections. [REDACTED] then introduced a malfunction to the vehicle by removing the Fuel Evaporative (EVAP) canister and replacing it with a defective EVAP canister. In its altered condition, the defective canister had a broken vacuum connector causing a vacuum hose to the canister to remain disconnected. [REDACTED] photographed the conditions of the EVAP canister and hoses both before and after the malfunction was induced. [REDACTED] re-inspected the vehicle after introducing these malfunctions, and it failed the visual inspection portion of both smog tests. It required the installation of a replacement EVAP canister and reconnection of all related vacuum hoses before a Certificate of Compliance could be issued. [REDACTED] secured the vehicle in the lab until he released it to [REDACTED] on March 3, 2014.

16. On March 3, 2014, [REDACTED] re-inspected the vehicle and visually verified that the EVAP canister was defective. On March 12, 2014, at a meeting location in Redding, [REDACTED] again verified that the EVAP canister was defective. He photographed the

vehicle's under-hood Emission Control Information Label and the defective canister. He then released the vehicle to [REDACTED] with instructions to take it to RT and request a smog inspection.

17. On March 3, 2014, Program Representative [REDACTED] took the vehicle to RT Smog. Using the pseudonym John Henas, he requested a smog inspection. [REDACTED] did not sign a work order or receive a written estimate before the inspection. After the inspection, he paid \$45 for the inspection, signed an invoice and received a VIR from RT. The VIR indicated that the vehicle had passed all components of the smog check, including the visual portion of the test. The VIR also issued Smog Check Certificate of Compliance Number [REDACTED], which was electronically transmitted to the DMV. As verified by the VIR and the BAR97 Test Detail report, respondent Tomsich was the technician who performed this smog inspection.

18. Following its inspection at RT, [REDACTED] returned the vehicle to Mr. [REDACTED] who re-inspected it and visually verified that the EVAP canister was defective. Mr. [REDACTED] photographed the under-hood Emission Control Information Label and the defective canister, and took custody of the Invoice and VIR given to [REDACTED] by RT. Mr. [REDACTED] then returned the vehicle to the lab, where he downloaded all of the photographs taken to non-rewritable disks.

19. On March 18, 2014, [REDACTED] re-inspected the vehicle, performing both the ASM and TSI tests. The vehicle failed the visual portion of both tests, based on its defective EVAP canister and disconnected vacuum hose. [REDACTED] concluded that the vehicle was not in condition to pass a properly conducted smog inspection due to the existence of these defects.

Matters in Aggravation: Respondents' Prior Citation History

20. Complainant provided certified copies of its official records pertaining to the citations previously issued to respondents. He argued that respondents' licenses should be revoked based on their inability to comply with the law as demonstrated by their repeated citations and the new violations alleged in the Accusation.

21. *Respondent RT:* Excluding the citation under appeal, respondent RT has previously been cited on five occasions. Citation #C96-0250 was issued February 20, 1996. The specific violations are unknown, but the record established that respondent RT paid a \$250 fine on April 18, 1996. Citation #C07-0602 was issued March 2, 2007, for a violation of section 44012, subdivision (f) and related regulation. On April 25, 2007, RT paid a \$500 fine, for issuing a Certificate of Compliance to an undercover vehicle with a missing Air Injection (AIR) System. Citation #C07-1059 was issued on June 27, 2007, for a violation of section 44012, subdivision (f), and related regulation. On August 15, 2007, RT paid a \$1,000 fine, for issuing a Certificate of Compliance to an undercover vehicle with a missing Positive Crankcase Ventilation (PCV). Citation # C2011-1081 was issued on March 17, 2011, for a violation of section 44012, subdivision (f) and related regulation. On May 13,

2011, RT paid a \$1,000 fine, for issuing a Certificate of Compliance to an undercover vehicle with a non-functional exhaust gas recirculation (EGR) valve. Citation # C20109732 was issued on January 18, 2012, for a violation of section 44012, subdivision (f). On January 31, 2013, RT paid a fine of \$1,500, for issuing a Certificate of Compliance to an undercover vehicle with a missing AIR pump. The sixth citation to RT, currently under appeal, was issued on November 12, 2013, again for a violation of section 44012, subdivision (f).

22. *Respondent Tomsich*: Excluding the citation under appeal, respondent Tomsich has previously been cited on five occasions by the Bureau. The dates of the five final citations roughly parallel those issued to RT above, and generally involve violations of section 44032 and related regulations, based on his issuance of Certificates of Compliance to undercover vehicles with defects in their emission control system. On February 29, 1996, Citation #M96-0251 was issued for an 8-hour training course (vehicle with non-functional EGR valve). On March 2, 2007, Citation #M07-0603 was issued for an 8-hour training course (vehicle with a missing AIR system). On June 27, 2007, Citation #M07-1060 was issued for a 16-hour training course (vehicle with a missing PCV system). On March 17, 2011, Citation #M2011-1082 was issued for an 8-hour training course (vehicle with a non-functional EGR valve). On January 18, 2012, Citation #M2012-0733 was issued for a 16-hour training course (vehicle with a missing AIR pump). With the exception of the current citation, respondent Tomsich has completed each of the ordered training courses. The sixth citation to Tomsich, currently under appeal, was issued on November 12, 2013, for a 68-hour training course plus a \$1,000 fine.

Costs of Investigation and Enforcement

23. Complainant submitted an "Investigative and Other Costs" summary, supported by the September 28, 2015 Declaration of Mark Fernandez, Bureau Enforcement Program Manager I. These documents constitute prima facie evidence that the Bureau incurred a total of \$3,451.70 in the investigation of this matter.

Complainant also submitted the Declaration of Deputy Attorney General Brian S. Turner, signed October 19, 2015, supported by the Department of Justice's (DOJ's) Costs of Suit Summary and Matter Time Activity by Professional Type printout itemizing legal costs. These documents constitute prima facie evidence that DOJ has billed the Bureau a total of \$5,295 for legal services on this case.

The combined costs of the Bureau's investigation and enforcement in this matter are reasonable and total \$8,746.70.

LEGAL CONCLUSIONS

1. *Burden of Proof*: The burden of proof is on complainant to establish that the facts alleged in both the citations and in the Accusation are true, and he must do so using the preponderance of the evidence standard. (*Imports Performance et al. v. Department of*

Consumer Affairs, Bureau of Automotive Repair (2nd Dist. 2011) 201 Cal.App.4th 911, 916-918.) Once this burden is met, the burden shifts to respondents, who have the burden of proving any affirmative defenses. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156.)

2. Business and Professions Code section 9884.7, subdivision (a), provides in pertinent part that:

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

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

[¶] . . . [¶]

(4) Any other conduct that constitutes fraud.

3. Pursuant to Business and Professions Code sections 9889.1 and 9889.3, subdivision (d), the director may suspend, revoke, or take other disciplinary action against a brake or lamp adjuster license “if the licensee or any partner: . . . (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured.”

4. Under the Motor Vehicle Inspection Program (Health and Safety Code section 44000 et seq.), the department is authorized to issue a citation for a violation of the requirements of this chapter or a regulation. (Health & Saf. Code, § 44050, subd. (a).) The citation may contain an order of abatement or the assessment of an administrative fine, or both. The regulations provide that the “director or his/her designee is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and/or administrative fines for violations by a licensee or contractor of Health and Safety Code section 44000 et seq. and any regulations adopted pursuant thereto.” (Cal. Code Regs., tit. 16, § 3394.25.)

5. In addition, Health and Safety Code section 44072.2 authorizes the director to suspend, revoke, or take other disciplinary action against a license if the licensee, or any partner, officer, or director thereof, does any of the following, including:

(a) Violates any section of this chapter [the Motor Vehicle Inspection Program] and the regulations adopted pursuant to it, which related to the licensed activities.

[¶] . . . [¶]

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

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

6. Health and Safety Code section 44032 provides that “no person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check technician and the test or repair is performed at a licensed smog check station. Qualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012.”

7. Under Health and Safety Code section 44012, subdivision (f), the department shall ensure that “a visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.”

8. California Code of Regulations, title 16, section 3340.30, in pertinent part, provides that: “A licensed smog check inspector and/or repair technician shall comply with the following requirements at all times while licensed: (a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article.

Legal Cause to Affirm Citations

9. *Respondent Tomsich - Citation Number M2014-0299*: As set forth in the Factual Findings and Legal Conclusions as a whole, legal cause exists to affirm Citation Number M2014-0299, based on respondent Tomsich’s violation of Health and Safety Code section 44032 on October 8, 2013, when he issued Certificate of Compliance Number # PA236980C to a Bureau undercover vehicle with the ignition timing adjusted beyond specifications. Respondent Tomsich did not appear to contest this citation, the factual predicate for which was established by the Bureau’s witnesses.

Legal cause also exists to affirm the \$1,000 penalty imposed on respondent Tomsich by the citation. The Motor Vehicle Inspection Program authorizes administrative fines ranging from \$1,000 to \$5,000 for each violation of section 44032. (Health & Saf. Code, §

44050; Cal. Code Regs., tit. 16, § 3394.26, Table 1.) The \$1,000 fine imposed is the lowest possible fine for such violation and reflects consideration of the factors set forth in Health & Safety Code section 44050, subdivision (b). Respondent Tomsich will be ordered to pay this fine in full within sixty (60) days of the effective date of the decision.

The citation may require “the smog check technician to successfully complete one or more retraining courses prescribed by the department pursuant to subdivision (c) of Section 44031.5, or successfully complete one or more advanced retraining courses prescribed by the department, or both.” (Health & Saf. Code, § 44050, subd. (c).) The 68-hour training course imposed by the citation is affirmed. This training condition must be satisfied before respondent Tomsich can reapply for licensure as a smog technician.

10. *Respondent RT - Citation No. C2014-0298*: As set forth in the Factual Findings and Legal Conclusions as a whole, legal cause exists to affirm Citation Number C2014-0298, based on respondent RT’s violation of Health and Safety Code section 44012, subdivision (f), on October 8, 2013, when RT issued, or caused to be issued, Certificate of Compliance Number # PA236980C to a Bureau undercover vehicle with the ignition timing adjusted beyond specifications. Respondent RT did not appear to contest this citation, the factual predicate for which was established by the Bureau’s witnesses.

Legal Cause also exists to affirm the \$3,000 penalty imposed by the citation. The Motor Vehicle Inspection Program authorizes administrative fines ranging from \$1,000 to \$5,000 for each violation of section 44012. (Health & Saf. Code, § 44050; Cal. Code Regs., tit. 16, § 3394.26, Table 1.) The \$3,000 penalty imposed on respondent RT for this violation is \$2,000 below the maximum fine for a violation of Health and Safety Code section 44012 and reflects consideration of the factors set forth in Health & Safety Code section 44050, subdivision (b). Respondent RT will be ordered to pay this fine in full within sixty (60) days of the effective date of the decision.

Legal Cause to Sustain Accusation

11. *Respondent RT*: As set forth in the Factual Findings and Legal Conclusions as a whole, respondent RT’s Auto Repair Registration is subject to discipline for violating Business and Professions Code section 9884.7, subdivisions (a)(1) (untrue or misleading statements), and (a)(4) (fraud), based on the issuance of Certificate of Compliance #PE668105 under penalty of perjury, for an undercover vehicle which could not pass a properly conducted smog inspection, and for failing to ensure that a bona fide inspection was performed. As set forth in the Factual Findings and Legal Conclusions as a whole, respondent RT’s lamp and brake station licenses are subject to discipline for violating Business and Professions Code section 9889.3, subdivision (d) (dishonesty, fraud or deceit), based on this same conduct.

12. As set forth in the Factual Findings and Legal Conclusions as a whole, respondent RT’s smog check station license is subject to discipline based on its violations of the Motor Vehicle Inspection Program, Health and Safety Code sections 44072.2, 44012,

subdivision (f), 44015 and failure to comply with related regulations (Cal. Code of Regs., tit. 16, §§ 3340.35, subdiv. (c) and 3340.42), based on: (a) its failure to ensure that the visual inspection of the emission control components of the 2002 Dodge was performed in accordance with the procedures prescribed by the department and (2) its issuance of an electronic smog certificate of compliance for this vehicle without properly testing and inspecting it to determine it complied with section 44012. Respondent RT's smog check station license is also subject to discipline for violating Health and Safety Code section 44072.2, subdivision (d), (commission of dishonest, fraudulent or deceitful act injuring another) based on this same conduct. RT's failure to comply with the Motor Vehicle Inspection Program causes injury to the public.

13. *Respondent Tomsich:* As set forth in the Factual Findings and Legal Conclusions as a whole, respondent Tomsich's smog technician licenses are subject to discipline based on:

- a. his violation of Health and Safety Code section 44072.2, subdivision (a), by: failing to comply with Health and Safety Code section 44012, subdivision (f), in his performance of a visual inspection of the emission control components on the 2002 Dodge and failing to comply with California Code of Regulations, title 16, sections 3340.30, subdivision (a), and 3340.42;
- b. his violation of Health and Safety Code section 44072.2, subdivision (d), by: committing a dishonest, fraudulent or deceitful act whereby another is injured based on this same conduct and injury to the public; and
- c. his violation of Business and Professions Code section 9889.3, subdivision (d), based on this same conduct and injury.

14. *Appropriate Discipline:* Based on a review of the record as a whole, including the matters in aggravation, revocation of all licenses issued to respondents RT and Tomsich is the appropriate discipline. Respondents failed to appear and provide any evidence, and the record persuasively establishes that respondents have been repeatedly cited for similar conduct. There was no evidence to suggest that respondents have taken any steps to change or improve their practices, or that, in the future, they will comply with laws designed to protect the health of the public.

15. *Costs:* Pursuant to Business and Professions Code section 125.3, respondents may be directed to pay the reasonable costs of investigation and enforcement of the action against their licenses. In pertinent part, this statute further provides that:

- (b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

Factors considered in determining the reasonableness of costs include: whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. (*Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32.) No testimony or other evidence was offered by respondents regarding the appropriateness of these costs in light of these factors. There is no basis to reduce the amounts certified by the Bureau.

As set forth in the Factual Findings and Legal Conclusions as a whole and particularly in Factual Finding 23, respondents shall be ordered to pay the Bureau's reasonable costs of investigation and prosecution of this case, in the total amount of \$8,746.70.

ORDER

1. The appeal of Citation Number C2014-0298 is DENIED. The citation and related \$3,000 penalty issued to respondent RT Auto Repair is AFFIRMED.
2. Within 60 days of the effective date of this decision, James Tomsich and Jim M. Tomsich, Partners, doing business as RT Auto Repair, shall pay the administrative penalty of \$3,000 to the Bureau.
3. The appeal of Citation Number M2014-0299 is DENIED. The citation, order to complete a 68-hour Bureau-certified training course and related \$1,000 penalty issued to respondent James Mario Tomsich is AFFIRMED.
4. Within 60 days of the effective date of this decision, James Mario Tomsich shall pay \$1,000 to the Bureau. James Mario Tomsich shall complete a 68-hour training course, as a condition precedent to any application for re-licensure as smog technician.
5. Automotive Repair Dealer Registration Number ARD 177942, issued to RT Auto Repair, is REVOKED.

6. Smog Check Station License Number RC 177942, issued to RT Auto Repair, is REVOKED.

7. Lamp Station License Number LS 177942 (Class A), and Brake Station License Number BS 177942 (Class C), issued to RT Auto Repair, are REVOKED.

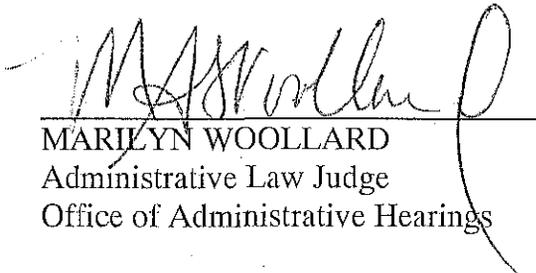
8. Any additional licenses issued under Chapter 5 of the Health and Safety Code, and/or under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code, in the name of RT Auto Repair, are REVOKED.

9. Smog Check Inspector (EO) License Number 5640 and Smog Check Repair Technician (EI) License Number 5640, issued to James Mario Tomsich, are REVOKED.

10. Brake Adjuster license number BA 5640 (Class C) and Lamp Adjuster license number LA 5640 (Class A), issued to James Mario Tomsich, are REVOKED.

11. Any additional licenses issued under Chapter 5 of the Health and Safety Code, and/or under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code, in the name of James Mario Tomsich, are REVOKED.

DATED: November 23, 2015


Marilyn Woollard
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 79/15-100

12 RT AUTO REPAIR
13 JAMES TOMSICH, PARTNER
14 JIM M. TOMSICH, PARTNER
1030 Lake Boulevard
15 Redding, CA 96003-1742

ACCUSATION

16 Automotive Repair Dealer Reg. No. ARD 177942
17 Smog Check Station License No. RC 177942
Lamp Station License No. LS 177942
Brake Station License No. BS 177942

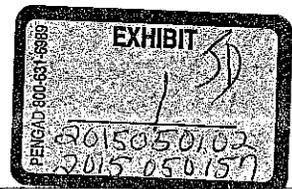
18 and

19 JAMES MARIO TOMSICH
1030 Lake Boulevard
20 Redding, CA 96003

21 Smog Check Inspector License No. EO 005640
22 Smog Check Repair Technician License No. EI
005640 (formerly Basic Area Technician License
23 No. 005640)
Brake Adjuster License No. BA 005640
24 Lamp Adjuster License No. LA 005640

25 Respondents.

26 ///
27 ///
28 ///



1 Complainant alleges:

2 PARTIES

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

5 **R T Auto Repair**

6 2. On or about April 21, 1994, the Director of Consumer Affairs ("Director") issued
7 Automotive Repair Dealer Registration Number ARD 177942 ("registration") to R T Auto Repair
8 ("Respondent R T Auto Repair"), with James Tomsich and Jim M. Tomsich as partners. The
9 registration was in full force and effect at all times relevant to the charges brought herein and will
10 expire on April 30, 2015, unless renewed.

11 3. On or about May 2, 1994, the Director issued Smog Check Station License Number
12 RC 177942 to Respondent R T Auto Repair. The smog check station license was in full force and
13 effect at all times relevant to the charges brought herein and will expire on April 30, 2015, unless
14 renewed.

15 4. On or about May 2, 1994, the Director issued Lamp Station License Number
16 LS 177942 to Respondent R T Auto Repair. Respondent's lamp station license was in full force
17 and effect at all times relevant to the charges brought herein and will expire on April 30, 2015,
18 unless renewed.

19 5. On or about May 2, 1994, the Director issued Brake Station License Number
20 BS 177942 to Respondent R T Auto Repair. Respondent's brake station license was in full force
21 and effect at all times relevant to the charges brought herein and will expire on April 30, 2015,
22 unless renewed.

23 **James Mario Tomsich**

24 6. In or about 1997, the Director issued Basic Area Technician License Number EB
25 005640 to James Mario Tomsich ("Respondent Tomsich"). Respondent's basic area technician
26 license was due to expire on December 31, 2013. Pursuant to California Code of Regulations,
27 title 16, section 3340.28, subdivision (e), the license was renewed, pursuant to Respondent's
28 election, as Smog Check Inspector License Number EO 005640 and Smog Check Repair

1 Technician License Number EI 005640 ("smog technician licenses") effective September 30,
2 2013.¹ Respondent's smog technician licenses will expire on December 31, 2015, unless
3 renewed.

4 7. In or about 1984, the Director issued Brake Adjuster License Number BA 005640 to
5 Respondent Tomsich. Respondent's brake adjuster license was in full force and effect at all times
6 relevant to the charges brought herein and will expire on December 31, 2015, unless renewed.

7 8. In or about 1989, the Director issued Lamp Adjuster License Number LA 005640 to
8 Respondent Tomsich. Respondent's lamp adjuster license was in full force and effect at all times
9 relevant to the charges brought herein and will expire on December 31, 2016, unless renewed.

10 JURISDICTION

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

13 10. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a
14 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
15 proceeding against an automotive repair dealer or to render a decision temporarily or permanently
16 invalidating (suspending or revoking) a registration

17 11. Bus. & Prof. Code section 9889.1 provides, in pertinent part, that the Director may
18 suspend or revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of
19 the Automotive Repair Act.

20 12. Bus. & Prof. Code section 9889.7 provides, in pertinent part, that the expiration or
21 suspension of a license by operation of law or by order or decision of the Director or a court of
22 law, or the voluntary surrender of a license shall not deprive the Director of jurisdiction to
23 proceed with any disciplinary proceedings.

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26 ¹ Effective August 1, 2012, 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 13. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent
2 part, that the Director has all the powers and authority granted under the Automotive Repair Act
3 for enforcing the Motor Vehicle Inspection Program.

4 14. Health & Saf. Code section 44072.6 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 15. Health & Saf. Code section 44072.8 states that when a license has been revoked or
9 suspended following a hearing under this article, any additional license issued under this chapter
10 in the name of the licensee may be likewise revoked or suspended by the director.

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

15 **STATUTORY PROVISIONS**

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

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

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

23

24 (4) Any other conduct that constitutes fraud.

25

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

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18. Bus. & Prof. Code section 9889.3 states in pertinent part:

The director may suspend, revoke, or take other disciplinary action against a license as provided in this article [Article 7 (commencing with section 9889.1) of the Automotive Repair Act] if the licensee or any partner, officer, or director thereof:

....

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

19. Bus. & Prof. Code section 9889.9 states that “[w]hen any license has been revoked or suspended following a hearing under the provisions of this article [Article 7 (commencing with section 9889.1) of the Automotive Repair Act], any additional license issued under Articles 5 and 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the director.”

20. Bus. & Prof. Code section 22, subdivision (a), states:

“Board” as used in any provision of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.”

21. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a “license” includes “registration” and “certificate.”

22. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

....

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

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

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1 COST RECOVERY

2 23. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
3 the administrative law judge to direct a licentiate found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
5 and enforcement of the case.

6 UNDERCOVER OPERATION: 2002 DODGE

7 24. On or about March 12, 2014, a Bureau's undercover operator drove the Bureau's
8 documented 2002 Dodge to Respondent R T Auto Repair and requested a smog inspection.
9 Bureau personnel documented the vehicle with a defective fuel evaporative canister, the vacuum
10 connector was broken, and the vacuum hose was disconnected. All components are required for
11 the smog system to operate properly and to legal standards. In the documented condition, the
12 Bureau's vehicle could not meet California smog system and emission requirements and could
13 not pass a properly conducted California smog check inspection. The operator did not receive a
14 written estimate for the inspection or sign a work order. After Respondents completed the
15 inspection, the operator paid \$45 in cash and received copies of an invoice and a vehicle
16 inspection report ("VIR"). The VIR indicated that Respondent James M. Tomsich EO 005640
17 had performed the smog inspection on the vehicle. An electronic smog Certificate of Compliance
18 No. [REDACTED] was subsequently issued for the vehicle by Respondents.

19 25. Following the undercover run, the Bureau's vehicle was taken to a secure area and a
20 post-run inspection was performed. The post-run inspection revealed the Bureau's vehicle still
21 had the defective fuel evaporative canister, the broken vacuum connector, and the vacuum hose
22 was still disconnected. In this condition, the Bureau's vehicle could not pass a California Smog
23 Emissions test.

24 FIRST CAUSE FOR DISCIPLINE

25 (Untrue or Misleading Statements)

26 26. Respondent R T Auto Repair's registration is subject to disciplinary action pursuant
27 to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a
28 statement which it knew or in the exercise of reasonable care should have known to be untrue or

1 misleading, as follows: Respondent R T Auto Repair's smog check technician, Respondent
2 Tomsich, certified under penalty of perjury on the VIR that the Bureau's 2002 Dodge had passed
3 the inspection and was in compliance with applicable laws and regulations. In fact, the fuel
4 evaporative canister on the vehicle was defective, the vacuum connector was broken, and the
5 vacuum hose was disconnected. As such, the vehicle would not pass the inspection required by
6 Health & Saf. Code section 44012.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Fraud)

9 27. Respondent R T Auto Repair's registration is subject to disciplinary action pursuant
10 to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act that
11 constitutes fraud by issuing an electronic smog certificate of compliance for the Bureau's 2002
12 Dodge without ensuring that a bona fide inspection was performed of the emission control
13 devices and systems on the vehicle, thereby depriving the People of the State of California of the
14 protection afforded by the Motor Vehicle Inspection Program.

15 **THIRD CAUSE FOR DISCIPLINE**

16 (Dishonesty, Fraud, or Deceit)

17 28. Respondent R T Auto Repair's lamp and brake station licenses are subject to
18 disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that
19 Respondent committed an act involving dishonesty, fraud, or deceit whereby another was injured,
20 as set forth in paragraph 27 above.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 (Violations of the Motor Vehicle Inspection Program)

23 29. Respondent R T Auto Repair's smog check station license is subject to disciplinary
24 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed
25 to comply with the following sections of that Code:

26 a. **Section 44012, subdivision (f)**: Respondent failed to ensure that the visual
27 inspection of the emission control components on the Bureau's 2002 Dodge was performed in
28 accordance with procedures prescribed by the department.

1 perform the visual inspection of the emission control components on the Bureau's 2002 Dodge in
2 accordance with procedures prescribed by the department.

3 **EIGHTH CAUSE FOR DISCIPLINE**

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

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

9 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the Bureau's
10 2002 Dodge in accordance with Health & Saf. Code sections 44012 and 44035, and California
11 Code of Regulations, title 16, section 3340.42.

12 b. **Section 3340.42**: Respondent failed to conduct the required smog tests on the
13 Bureau's 2002 Dodge in accordance with the Bureau's specifications.

14 **NINTH CAUSE FOR DISCIPLINE**

15 (Dishonesty, Fraud or Deceit)

16 34. Respondent Tomsich's smog technician licenses are subject to disciplinary action
17 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
18 dishonest, fraudulent, or deceitful act whereby another is injured by issuing an electronic smog
19 certificate of compliance for the Bureau's 2002 Dodge without performing a bona fide inspection
20 of the emission control devices and systems on the vehicle, thereby depriving the People of the
21 State of California of the protection afforded by the Motor Vehicle Inspection Program.

22 **TENTH CAUSE FOR DISCIPLINE**

23 (Dishonesty, Fraud, or Deceit)

24 35. Respondent Tomsich's brake and lamp adjuster licenses are subject to disciplinary
25 action pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that Respondent
26 committed an act involving dishonesty, fraud, or deceit whereby another was injured, as set forth
27 in paragraph 34 above.

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1 MATTERS IN AGGRAVATION

2 36. To determine the degree of discipline, if any, to be imposed on Respondents,
3 Complainant alleges as follows:

4 **RT Auto Repair**

5 a. On or about February 20, 1996, the Bureau issued Citation No. C96-0250 against
6 Respondent, and assessed a civil penalty of \$250. Respondent paid the fine on April 18, 1996.

7 b. On or about March 2, 2007, the Bureau issued Citation No. C07-0602 against
8 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
9 determine that emission control devices and systems required by State and Federal law are
10 installed and functioning correctly in accordance with test procedures); and California Code of
11 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
12 compliance to a vehicle that was improperly tested). On or about February 16, 2007, Respondent
13 issued a certificate of compliance to a Bureau undercover vehicle with a missing air injection
14 system. The Bureau assessed civil penalties totaling \$500 against Respondent for the violations.
15 Respondent paid the fine on April 25, 2007.

16 c. On or about June 27, 2007, the Bureau issued Citation No. C07-1059 against
17 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
18 perform a visual/functional check of emission control devices according to procedures prescribed
19 by the department); and Regulation 3340.35, subdivision (c) (issuing a certificate of compliance
20 to a vehicle that was improperly tested). On or about June 19, 2007, Respondent had issued a
21 certificate of compliance to a Bureau undercover vehicle with a missing positive crankcase
22 ventilation system. The Bureau assessed civil penalties totaling \$1,000 against Respondent for
23 the violations. Respondent paid the fine on August 15, 2007.

24 d. On or about March 17, 2011, the Bureau issued Citation No. C2011-1081 against
25 Respondent for violations of Health & Saf. Code section 44012, subdivision (f) (failure to
26 determine that emission control devices and systems required by State and Federal law are
27 installed and functioning correctly in accordance with test procedures); and Regulation 3340.35,
28 subdivision (c) (issuing a certificate of compliance to a vehicle that was improperly tested). On

1 or about March 2, 2011, Respondent had issued a certificate of compliance to a Bureau
2 undercover vehicle with a non-functional EGR valve. The Bureau assessed civil penalties
3 totaling \$1,000 against Respondent for the violations. Respondent paid the fine on May 13, 2011.

4 e. On or about January 18, 2012, the Bureau issued Citation No. C2012-0732 against
5 Respondent for a violation of Health & Saf. Code section 44012, subdivision (f) (failure to
6 perform a visual check of emission control devices according to procedures prescribed by the
7 department). On or about December 20, 2011, Respondent had issued a certificate of compliance
8 to a Bureau undercover vehicle with a missing AIR pump. The Bureau assessed civil penalties
9 totaling \$1,500 against Respondent for the violations. Respondent paid the fine on January 31,
10 2013.

11 f. On or about November 12, 2013, the Bureau issued Citation No. C2014-0298 against
12 Respondent for a violation of Health & Saf. Code section 44012, subdivision (f). On or about
13 October 8, 2013, Respondent had issued a certificate of compliance to a Bureau undercover
14 vehicle with the ignition timing adjusted beyond specifications. The Bureau assessed civil
15 penalties totaling \$3,000 against Respondent for the violation. On or about December 18, 2013,
16 Respondent appealed the citation. The citation is currently pending.

17 **James Mario Tomsich**

18 g. On or about February 29, 1996, the Bureau issued Citation No. M96-0251 against
19 Respondent for violations of Health & Saf. Code section 44032 and 44012, subdivision (a)
20 (failure to determine that emission control devices and systems required by State and Federal law
21 are installed and functioning correctly in accordance with test procedure adopted pursuant to
22 Health & Saf. Code section 44013). On or about November 21, 1995, Respondent issued a
23 certificate of compliance to a Bureau undercover vehicle with a non-functional exhaust gas
24 recirculation valve. Respondent was directed to complete an 8 hour training course and to submit
25 proof of completion to the Bureau within 30 days from receipt of the citation. Respondent
26 completed the training on May 11, 1996.

27 h. On or about March 2, 2007, the Bureau issued Citation No. M07-0603 against
28 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall

1 perform tests of emission control systems and devices in accordance with Health & Saf. Code
2 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
3 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
4 Regulation 3340.42). On or about February 16, 2007, Respondent had issued a certificate of
5 compliance to a Bureau undercover vehicle with a missing air injection system. Respondent was
6 directed to complete an 8 hour training course and to submit proof of completion to the Bureau
7 within 30 days from receipt of the citation. Respondent completed the training on May 19, 2007.

8 i. On or about June 27, 2007, the Bureau issued Citation No. M07-1060 against
9 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
10 perform tests of emission control systems and devices in accordance with Health & Saf. Code
11 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
12 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
13 Regulation 3340.42). On or about June 19, 2007, Respondent issued a certificate of compliance
14 to a Bureau undercover vehicle with a missing positive crankcase ventilation system.
15 Respondent was directed to complete a 16 hour training course and to submit proof of completion
16 to the Bureau within 30 days from receipt of the citation. Respondent completed the training on
17 September 1, 2007.

18 j. On or about March 17, 2011, the Bureau issued Citation No. M2011-1082 against
19 Respondent for violations of Health & Saf. Code section 44032 (qualified technicians shall
20 perform tests of emission control systems and devices in accordance with Health & Saf. Code
21 section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall inspect, test
22 and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035 and
23 Regulation 3340.42). On or about March 2, 2011, Respondent issued a certificate of compliance
24 to a Bureau undercover vehicle with a non-functional EGR valve. Respondent was directed to
25 complete an 8 hour training course and to submit proof of completion to the Bureau within 30
26 days from receipt of the citation. Respondent completed the training on November 4, 2011.

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1 k. On or about January 18, 2012, the Bureau issued Citation No. M2012-0733 against
2 Respondent for a violation of Health & Saf. Code section 44032 (qualified technicians shall
3 perform tests of emission control systems and devices in accordance with Health & Saf. Code
4 section 44012). On or about December 20, 2011, Respondent had issued a certificate of
5 compliance to a Bureau undercover vehicle with a missing AIR pump. Respondent was directed
6 to complete a 16 hour training course and to submit proof of completion to the Bureau within 30
7 days from receipt of the citation. Respondent appealed the citation; however, it was affirmed on
8 February 6, 2013. Respondent completed the training on March 28, 2013.

9 l. On or about November 12, 2013, the Bureau issued Citation No. M2014-0299 against
10 Respondent for a violation of Health & Saf. Code section 44032. On or about October 8, 2013,
11 Respondent had issued a certificate of compliance to a Bureau undercover vehicle with the
12 ignition timing adjusted beyond specifications. Respondent was directed to complete a 68 hour
13 BAR certified training course and to submit proof of completion to the Bureau within 60 days of
14 the Citation Service Conferencc. Rcspondent was also ordered to pay a \$1,000 civil penalty. On
15 or about December 18, 2013, Respondent appealed the citation. The citation is currently pending.

16 **OTHER MATTERS**

17 37. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
18 suspend, revoke or place on probation the registration for all places of business operated in this
19 state by Respondent R T Auto Repair upon a finding that Respondent has, or is, engaged in a
20 course of repeated and willful violations of the laws and regulations pertaining to an automotive
21 repair dealer.

22 38. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
23 Number RC 177942, issued to R T Auto Repair, is revoked or suspended, any additional license
24 issued under this chapter in the name of this licensee may be revoked or suspended by the
25 Director.

26 39. Pursuant to Bus. & Prof. Code section 9889.9, if Lamp Station License Number
27 LS 177942 and/or Brake Station License Number BS 177942, issued to R T Auto Repair, are
28 revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the

1 Bus. & Prof. Code in the name of said licensee may be likewise revoked or suspended by the
2 Director.

3 40. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
4 Number EO 005640 and Smog Check Repair Technician License Number EI 005640, issued to
5 James Mario Tomsich, are revoked or suspended, any additional license issued under this chapter
6 in the name of this licensee may be revoked or suspended by the Director.

7 41. Pursuant to Bus. & Prof. Code section 9889.9, if Brake Adjuster License Number BA
8 005640 and/or Lamp Adjuster License Number LA 005640, issued to James Mario Tomsich, are
9 revoked or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the
10 Bus. & Prof. Code in the name of this licensee may be revoked or suspended by the Director.

11 PRAYER

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

14 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
15 177942, issued to R T Auto Repair;

16 2. Revoking or suspending any other automotive repair dealer registration issued to R T
17 Auto Repair;

18 3. Revoking or suspending Smog Check Station License Number RC 177942, issued to
19 R T Auto Repair;

20 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
21 and Safety Code in the name of R T Auto Repair;

22 5. Revoking or suspending Lamp Station License Number LS 177942, issued to R T
23 Auto Repair;

24 6. Revoking or suspending Brake Station License Number BS 177942, issued to R T
25 Auto Repair;

26 7. Revoking or suspending any additional license issued under Articles 5 and 6 of
27 Chapter 20.3 of the Business and Professions Code in the name of R T Auto Repair;

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8. Revoking or suspending Smog Check Inspector License Number EO 005640 and Smog Check Repair Technician License No. EI 005640, issued to James Mario Tomsich;

9. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of James Mario Tomsich;

10. Revoking or suspending Brake Adjuster License Number BA 005640, issued to James Mario Tomsich;

11. Revoking or suspending Lamp Adjuster License Number LA 005640, issued to James Mario Tomsich;

12. Revoking or suspending any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of James Mario Tomsich;

13. Ordering R T Auto Repair and James Mario Tomsich to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: March 19, 2015



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

SA2014116783