

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

In the Matter of the Accusation Against:

JOSEPH FRANK GONDERMAN
4271 North First Street, No. 144
San Jose, CA 95134

Smog Check Inspector License No.
EO 632369

Smog Check Repair Technician
License No. EI 632369 (formerly
Advanced Emission Specialist
Technician License No. EA 632369)

Respondent.

Case No. 79/14-76

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective April 20th, 2016.

DATED: March 14, 2016



TAMARA COLSON
Assistant General Counsel
Department of Consumer Affairs

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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October 23, 2015

Via Email Only

Rebecca Harris
Bureau of Automotive Repair
10949 North Mather Boulevard
Rancho Cordova, CA 95670

Re: RECOMMENDATION TO ADOPT STIPULATION
In the Matter of the Accusation Against:
JOSEPH FRANK GONDERMAN
Bureau of Automotive Repair Case No. 79/14-76

Dear Ms. Harris:

Enclosed for consideration by the Director of Consumer Affairs are the Stipulated Settlement and Disciplinary Order in this matter. For the reasons stated below, our office recommends that the Director adopt the agreement and issue the enclosed Decision and Order.

The terms and conditions contained in the stipulation were coordinated with you and Greg Pearson prior to being offered to Respondent.

LICENSE INFORMATION

Joseph Frank Gonderman ("Respondent") was issued Advanced Emission Specialist Technician License No. EA 632369 on or about August 9, 2010. The license was subsequently redesignated as Smog Check Inspector License No. EO 632369 and Smog Check Repair Technician License No. EI 632369. The licenses expired on August 31, 2014 and have not been renewed.

CHARGES AND ADMISSIONS

The Accusation against Respondent was filed on January 6, 2014. It alleges that on October 18, 2012, Respondent committed the following violations:

Violation of Motor Vehicle Inspection Program (Health & Saf. Code, §§ 44072.2, subd. (a); 44012; and 44015, subd. (b));

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Violation of Motor Vehicle Inspection Program Regulations (Health & Saf. Code, § 44072.2, subd. (c) and 44012; Cal. Code Regs., tit. 16, and 44012; Cal. Code Regs., tit. 16, §§ 3340.31, subd. (a); 3340.41, subd. (c); 3340.42; and 3371);

Dishonesty, Fraud, or Deceit (Health & Saf. Code, § 44072.2, subd. (d)); and

Aiding or Abetting Unlicensed Person (Health & Saf. Code, § 44072.2, subd. (f)).

As alleged in the Accusation, Respondent improperly smog certified two vehicles, one with ignition timing outside of manufacturer's specifications, and one that was "clean-piped." The Accusation further alleges that Respondent allowed an unlicensed individual to perform the inspections.

Respondent admits that a factual basis exists for the charges.

PROPOSED SETTLEMENT CONTRASTED WITH PENALTY GUIDELINES

Respondent has agreed to the revocation of his licenses and to pay cost recovery in the amount of \$1,936.75 prior to the issuance of a new license.

Revocation is the maximum discipline recommended by the Bureau's disciplinary guidelines for Respondent's violations, and therefore, the proposed discipline comports with the guidelines.

MITIGATING OR AGGRAVATING CIRCUMSTANCES

This is the first time Respondent has been before the Bureau in a disciplinary matter. The case is based upon incidents which occurred one day three years ago. Respondent has been cooperative in these proceedings. He stopped doing smog checks after being served with the Accusation and he takes responsibility for aiding and abetting an unlicensed individual perform smog checks. The unlicensed individual was his brother, who had recently been released from prison. Respondent thought his brother was rehabilitated and he was trying to help him get back on his feet. Respondent insists that he had no idea that his brother would commit clean-piping.

OTHER MATERIAL INFORMATION

The operator in the Bureau's undercover run was a Bureau employee who has since been terminated from Bureau employment. He would not be available as a witness if this case were to proceed to hearing. Not having him available to testify weakens the Bureau's case considerably. We therefore offered probation to Respondent to settle this case, but Respondent agreed to revocation because he is no longer working as a smog technician.

REASONS FOR RECOMMENDATION

Based on the evidence in this case, this stipulation provides for meaningful discipline and a fair resolution of the charges in the Accusation. The stipulation for revocation provides for

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Rebecca Harris
October 23, 2015
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maximum public protection and at the same time allows Respondent to accept responsibility for his actions. This office therefore recommends that the Director adopt the proposed stipulation as the decision in this case.

I hope the above information is sufficient to enable the Director to make a decision in this matter. If you have any questions, please do not hesitate to contact me at your earliest convenience.

Sincerely,



ASPASIA A. PAPAVALASSILIOU
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

AAP:dbm

Enclosures: Proposed Stipulation and Accusation

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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12
13 **JOSEPH FRANK GONDERMAN**
4271 North First Street, No. 144
San Jose, CA 95134
14
15 **Smog Check Inspector**
License No. EO 632369
16
17 **Smog Check Repair Technician**
License No. EI 632369
18
19 (formerly Advanced Emission Specialist
Technician License No. EA 632369)
20
21 Respondent.

Case No. 79/14-76

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
entitled proceedings that the following matters are true:

23 PARTIES

24 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He
25 brought this action solely in his official capacity and is represented in this matter by Kamala D.
26 Harris, Attorney General of the State of California, by Aspasia A. Papavassiliou, Deputy Attorney
27 General.
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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 10/22/2015

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General



ASPASIA A. PAPAASSILIOU
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/14-76

1 KAMALA D. HARRIS
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2 DIANN SOKOLOFF
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9 BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
10 FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA
11

12 In the Matter of the Accusation Against:

Case No. 79/14-76

13 A DISCOUNT SMOG CHECK CENTERS # 3
RAMONA ESPINOZA, OWNER
14 6055 Dougherty Road
Dublin, CA 94568
15

ACCUSATION

(Smog Check)

16 Automotive Repair Dealer
Registration No. ARD 263071
Smog Check, Test Only, Station
17 License No. TC 263071
18

and

19 JOSEPH FRANK GONDERMAN
1910 Main Street
20 Santa Clara, CA 95050

21 Smog Check Inspector
License No. EO 632369
22 Smog Check Repair Technician
License No. EI 632369
23 (formerly Advanced Emission Specialist Technician
License No. EA632369)
24

Respondents.

25
26 Complainant alleges:

27 PARTIES

28 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as

1 the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

2 A Discount Smog Check Centers # 3 (Ramona Espinoza, Owner)

3 2. On or about August 24, 2010, the Bureau issued Automotive Repair Dealer
4 Registration Number ARD 263071 to Ramona Espinoza as owner of A Discount Smog Check
5 Centers # 3 (Respondent Espinoza). The registration will expire on August 31, 2014, unless
6 renewed.

7 3. On or about September 1, 2010, the Bureau issued Smog Check, Test Only, Station
8 License Number TC 263071 to Respondent Espinoza. The license will expire on August 31,
9 2014, unless renewed.

10 Joseph Frank Gonderman

11 4. On or about August 9, 2010, the Bureau issued Advanced Emission Specialist
12 Technician License No. EA 632369, subsequently redesignated as Smog Check Inspector License
13 No. EO 632369 and Smog Check Repair Technician License No. EI 632369, to Joseph Frank
14 Gonderman (Respondent Gonderman).¹ The license will expire on August 31, 2014, unless
15 renewed.

16 JURISDICTION

17 5. This Accusation is brought before the Director of Consumer Affairs (Director) for the
18 Bureau, under the authority of the following laws.

19 6. Section 477 of the Business and Professions Code provides, in pertinent part, that
20 "Board" includes "bureau," "commission," "committee," "department," "division," "examining
21 committee," "program," and "agency." "License" includes certificate, registration or other means
22 to engage in a business or profession regulated by the Code:

23 7. Section 9884.13 of the Business and Professions Code provides, in pertinent part, that
24 the expiration of a valid registration shall not deprive the director or chief of jurisdiction to
25

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 Technician (EB) license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision
2 invalidating a registration temporarily or permanently.

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

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

10 10. Section 44072.8 of the Health and Safety Code states:

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

14 STATUTORY AND REGULATORY PROVISIONS

15 Business and Professions Code

16 11. Section 9884.7 of the Business and Professions Code states, in pertinent part:

17 (a) The director, where the automotive repair dealer cannot show there was a bona
18 fide error, may deny, suspend, revoke, or place on probation the registration of an
19 automotive repair dealer for any of the following acts or omissions related to the
20 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 statement
22 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 (3) Failing or refusing to give to a customer a copy of any document requiring his or
her signature, as soon as the customer signs the document.

25 (4) Any other conduct that constitutes fraud.

26 ...

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

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12. Section 9884.9, subdivision (a), of the Business and Professions Code states:

The automotive repair dealer shall give to the customer a written estimated price for labor and parts necessary for a specific job. No work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer that shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Written consent or authorization for an increase in the original estimated price may be provided by electronic mail or facsimile transmission from the customer. The bureau may specify in regulation the procedures to be followed by an automotive repair dealer if an authorization or consent for an increase in the original estimated price is provided by electronic mail or facsimile transmission. If that consent is oral, the dealer shall make a notation on the work order of the date, time, name of person authorizing the additional repairs and telephone number called, if any, together with a specification of the additional parts and labor and the total additional cost, and shall do either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on the work order.

(2) Upon completion of the repairs, obtain the customer's signature or initials to an acknowledgment of notice and consent, if there is an oral consent of the customer to additional repairs, in the following language:

"I acknowledge notice and oral approval of an increase in the original estimated price.

(signature or initials)"

Nothing in this section shall be construed as requiring an automotive repair dealer to give a written estimated price if the dealer does not agree to perform the requested repair.

Health and Safety Code

13. Section 44012 of the Health and Safety Code states, in pertinent part:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department and may require loaded mode dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other appropriate test procedures as determined by the department in consultation with the state board. The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning no earlier than January 1, 2013. However, the department, in consultation with the state board, may prescribe alternative test procedures that include loaded mode dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems that the department and the state board determine exhibit operational problems. The department shall ensure, as appropriate to the test method, the following:

1 (f) A visual or functional check is made of emission control devices specified by the
2 department, including the catalytic converter in those instances in which the
3 department determines it to be necessary to meet the findings of Section 44001. The
4 visual or functional check shall be performed in accordance with procedures
5 prescribed by the department.

6 14. Section 44014, subdivision (a), of the Health and Safety Code states:

7 "Except as otherwise provided in this chapter, the testing and repair portion of the program
8 shall be conducted by smog check stations licensed by the department, and by smog check
9 technicians who have qualified pursuant to this chapter."

10 15. Section 44015, subdivision (b), of the Health and Safety Code states:

11 "If a vehicle meets the requirements of Section 44012, a smog check station licensed to
12 issue certificates shall issue a certificate of compliance or a certificate of noncompliance."

13 16. Section 44032 of the Health and Safety Code states:

14 "No person shall perform, for compensation, tests or repairs of emission control devices or
15 systems of motor vehicles required by this chapter unless the person performing the test or repair
16 is a qualified smog check technician and the test or repair is performed at a licensed smog check
17 station. Qualified technicians shall perform tests of emission control devices and systems in
18 accordance with Section 44012."

19 17. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

25 ...

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

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

...

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

California Code of Regulations

18. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

1 "A licensed smog check inspector and/or repair technician shall comply with the following
2 requirements at all times while licensed:

3 (a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
4 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
5 article."

6 19. California Code of Regulations, title 16, section 3340.35, states, in pertinent part:

7 ...

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

11 ...

12 (d) No person shall sell, issue, cause or permit to be issued any certificate purported
13 to be a valid certificate of compliance or noncompliance unless duly licensed to do
14 so.

14 20. California Code of Regulations, title 16, section 3340.41, subdivision (c), states:

15 "No person shall enter into the emissions inspection system any vehicle identification
16 information or emission control system identification data for any vehicle other than the one
17 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
18 information about the vehicle being tested. "

19 21. California Code of Regulations, title 16, section 3340.42, states, in pertinent part:

20 Smog check inspection methods are prescribed in the Smog Check Manual,
21 referenced by section 3340.45.

22 (a) All vehicles subject to a smog check inspection, shall receive one of the following
23 test methods:

24 (1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-
25 year vehicle, except diesel-powered, registered in the enhanced program areas of the
26 state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon
27 dioxide and oxides of nitrogen emissions, as contained in the bureau's specifications
28 referenced in subsection (a) of Section 3340.17 of this article. The loaded-mode test
shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis
dynamometer, certified by the bureau.

On and after March 31, 2010, exhaust emissions from a vehicle subject to this
inspection shall be measured and compared to the emissions standards shown in the
Vehicle Look-up Table (VLT) Row Specific Emissions Standards (Cutpoints) Table,

1 dated March 2010, which is hereby incorporated by reference. If the emissions
2 standards for a specific vehicle are not included in this table then the exhaust
3 emissions shall be compared to the emissions standards set forth in TABLE I or
4 TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured
5 emissions are less than or equal to the applicable emission standards specified in the
6 applicable table;

7 ...
8 (b) In addition to subsection (a), all vehicles subject to the smog check program shall
9 receive the following:

10 (1) A visual inspection of emission control components and systems to verify the
11 vehicle's emission control systems are properly installed.

12 (2) A functional inspection of emission control systems as specified in the Smog
13 Check Manual, referenced by section 3340.45, which may include an OBD test, to
14 verify their proper operation.

15 22. California Code of Regulations, title 16, section 3340.45, states:

16 (a) All Smog Check inspections shall be performed in accordance with requirements
17 and procedures prescribed in the following:

18 (1) Smog Check Inspection Procedures Manual, dated August 2009, which is hereby
19 incorporated by reference. This manual shall be in effect until subparagraph (2) is
20 implemented.

21 (2) Smog Check Manual, dated 2013, which is hereby incorporated by reference.
22 This manual shall become effective on or after January 1, 2013.

23 23. California Code of Regulations, title 16, section 3353, states, in part:

24 "No work for compensation shall be commenced and no charges shall accrue without
25 specific authorization from the customer in accordance with the following requirements:

26 (a) Estimate for Parts and Labor. Every dealer shall give to each customer a written
27 estimated price for labor and parts for a specific job.

28 ...
29 (c) Additional Authorization. The dealer shall obtain the customer's authorization before
30 any additional work not estimated is done or parts not estimated are supplied. This authorization
31 shall be in written, oral, or electronic form, and shall describe additional repairs, parts, labor and
32 the total additional cost."

33 24. California Code of Regulations, title 16, section 3371, states, in part:

34 "No dealer shall publish, utter, or make or cause to be published, uttered, or made any false
35 or misleading statement or advertisement which is known to be false or misleading, or which by
36

1 the exercise of reasonable care should be known to be false or misleading.”

2
3 25. California Code of Regulations, title 16, section 3373, states:

4 "No automotive repair dealer or individual in charge shall, in filling out an estimate,
5 invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter,
6 withhold therefrom or insert therein any statement or information which will cause any such
7 document to be false or misleading, or where the tendency or effect thereby would be to mislead
8 or deceive customers, prospective customers, or the public."

9 COST RECOVERY PROVISION

10 26. Section 125.3 of the Code provides, in pertinent part, that a Board may request the
11 administrative law judge to direct a licensee found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
14 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
15 included in a stipulated settlement.

16 FACTUAL BACKGROUND

17 27. On or about October 18, 2012, Respondents improperly smog certified two
18 vehicles—a 1990 Mercury with ignition timing outside of manufacturer's specifications, and a
19 1991 Honda Accord that was "clean piped."² In addition, Respondents allowed an unlicensed
20 individual to perform the inspections, and in the case of one vehicle, failed to provide the
21 customer with a written estimate and then charged the customer more than the price originally
22 quoted. The circumstances are described in further detail in paragraphs 28 to 33, below.

23 28. A Bureau representative (customer) participating in an undercover operation visited
24 Respondent Espinoza's station and asked Respondent Gonderman to perform a smog check for a

25
26 ² In clean piping, the smog technician enters vehicle information into the Emission
27 Inspection System machine (EIS) for the vehicle he wishes to certify but then samples the exhaust
28 of a different (clean running) vehicle. Using this method, the technician is able to issue a smog
certificate to a vehicle that is not present at the facility or would not be able to pass the emissions
test using its own exhaust.

1 1990 Mercury. As part of the undercover operation, the vehicle's ignition timing was adjusted
2 outside of the manufacturer's specifications. This adjustment would have caused the vehicle to
3 fail a properly conducted smog inspection.

4 29. The customer presented a coupon to Respondent Gonderman advertising smog checks
5 for \$34.95 but Respondent Gonderman stated the coupon only applied to 1996 or newer vehicles,
6 and that a smog check for the Mercury would be \$70. The customer agreed to have the inspection
7 performed, and signed a work order, but did not receive a copy of the work order or a written
8 estimate.

9 30. The customer then observed a man later identified as Trevor Hall perform the
10 inspection. Hall did not have a license authorizing him to perform smog inspections. Hall
11 inserted and removed the Emissions Inspection System machine (EIS), performed the
12 Acceleration Simulation Mode (ASM) tailpipe emissions test, and made entries into the EIS.
13 Respondent Gonderman was not present at the inspection bay during this process. At the
14 conclusion of the inspection, the EIS transmitted the results of the inspection to the Vehicle
15 Identification Database (VID). Information from the VID indicates that the Mercury was tested
16 between 13:51 and 13:56 hours with Respondent Gonderman as the inspector/technician.

17 31. Hall never checked the vehicle's ignition timing. He never performed the Low
18 Pressure Fuel Evaporative Test (LPFET). And he never opened the compartment door to verify
19 the presence of a fuel cap, let alone perform the required functional test of the fuel cap.
20 Respondent Gonderman did not perform any of these tests, either.

21 32. After completion of the smog inspection, Respondent Gonderman spoke to Hall at the
22 EIS, then left to speak with another customer. Hall then performed a second inspection of the
23 Mercury. This second inspection included inserting and removing the EIS exhaust sample probe,
24 performing the ASM tailpipe emissions test, and making entries into the EIS. Hall also made
25 entries into LPFET system, even though the LPFET system was never connected to the Mercury.
26 Respondent Gonderman was not present at the inspection bay during this process. Information
27 from the VID and VIR indicates that a 1991 Honda Accord (Honda) was inspected and certified
28 from 14:00-14:03 hours with Respondent Gonderman as the inspector/technician. In fact, the

1 only vehicle being tested at the station at the time was the Mercury, indicating that the Mercury
2 was used to "clean-pipe" the Honda.

3 33. After the inspections, Respondent Gonderman told the customer that the Mercury had
4 passed smog inspection and that the price was \$75. When the customer asked why the price was
5 higher than originally quoted, Respondent Gonderman replied that the \$70 was just an estimate,
6 that he could not predict how much a smog check would cost until after the fact. The customer
7 paid the \$75 and was provided with an invoice and the Vehicle Inspection Report (VIR).

8 FIRST CAUSE FOR DISCIPLINE

9 (False and Misleading Statements)

10 34. Respondent Espinoza has subjected her automotive repair dealer registration to
11 discipline because she made false or misleading statements in violation of Business and
12 Professions Code section 9884.7, subdivision (a)(1). As described in paragraph 33, above,
13 Respondent's employee made a false statement that he could not provide an accurate estimate for
14 the performance of the smog inspection of the Mercury until after the inspection.

15 SECOND CAUSE FOR DISCIPLINE

16 (Failure to Provide Signed Document)

17 35. Respondent Espinoza has subjected her automotive repair dealer registration to
18 discipline because she failed to provide a copy of a signed document to a customer as soon as he
19 signed it in violation of Business and Professions Code section 9884.7, subdivision (a)(3). As
20 described in paragraph 29, above, Respondent's employee failed to provide a copy of the signed
21 work order for the smog inspection of the Mercury.

22 THIRD CAUSE FOR DISCIPLINE

23 (Fraud)

24 36. Respondent Espinoza has subjected her automotive repair dealer registration to
25 discipline because she committed fraud in violation of Business and Professions Code section
26 9884.7, subdivision (a)(4). As described in paragraphs 27-33 above, she issued certificates of
27 compliance for the Mercury and Honda without performing bona fide smog inspections, thus
28 depriving the people of California the protections afforded by the Motor Vehicle Inspection

1 Program.

2 FOURTH CAUSE FOR DISCIPLINE

3 (Violation of Automotive Repair Act: Failure to Provide Customer with Written Estimate)

4 37. Respondent Espinoza has subjected her automotive repair dealer registration to
5 discipline because she violated the Automotive Repair Act when she failed to provide a customer
6 with a written estimate for parts and labor for a specific job and then failed to obtain the
7 customer's authorization before exceeding the original estimated price in violation of Business
8 and Professions Code sections 9884.7, subdivision (a)(6) and 9884.9, subdivision (a). As
9 described in paragraphs 29 and 33 above, she failed to provide a written estimate to the customer
10 before performing the smog inspection of the Mercury and then failed to obtain authorization to
11 exceed the original oral estimate.

12 FIFTH CAUSE FOR DISCIPLINE

13 (Violation of Motor Vehicle Inspection Program)

14 38. Respondent Espinoza has subjected her smog check, test only, station license to
15 discipline and Respondent Gonderman has subjected his smog check inspector license and smog
16 check repair technician license to discipline because Respondents failed to comply with the Motor
17 Vehicle Inspection Program, in violation of Health and Safety Code section 44072.2, subdivision
18 (a). As described in paragraphs 27-33 above, Respondents failed to properly smog check the
19 Mercury and Honda, in violation of Health and Safety Code section 44012, and they improperly
20 issued certificates of compliance for the vehicles in violation of Health and Safety Code section
21 44015, subdivision (b).

22 SIXTH CAUSE FOR DISCIPLINE

23 (Violation of Motor Vehicle Inspection Program Regulations)

24 39. Respondent Espinoza has subjected her smog check, test only, station license to
25 discipline and Respondent Gonderman has subjected his smog check inspector license and smog
26 check repair technician license to discipline because Respondents Espinoza and Gonderman
27 failed to comply with regulations pertaining to the Motor Vehicle Inspection Program, in
28 violation of Health and Safety Code section 44072.2, subdivision (c), as described in paragraphs

1 27-33 above and as set forth in the subparagraphs, below.

2 (A) Respondent Gonderman failed to inspect the Mercury or Honda in accordance with
3 Health and Safety Code section 44012. (Cal. Code Regs., tit. 16, § 3340.31, subd. (a).)

4 (B) Respondent Espinoza issued smog check certificates of compliance for the Mercury
5 and Honda without performing proper emission control tests or inspections. (Cal. Code Regs., tit.
6 16, § 3340.35, subd. (c).)

7 (C) Respondent Espinoza allowed an unlicensed person to issue smog certificates of
8 compliance. (Cal. Code Regs., tit. 16, § 3340.35, subd. (d).)

9 (D) Respondents Espinoza and Gonderman allowed an unlicensed technician to make
10 false entries into the EIS to perform smog check inspections and issue smog check certificates of
11 compliance. (Cal. Code Regs., tit. 16, § 3340.41, subd. (c).)

12 (E) Respondents Espinoza and Gonderman failed to perform an emissions test regarding
13 the Honda, failed to perform a visual inspection of the Honda's emission control systems, and
14 failed to perform any functional inspection of the Honda's emission control systems; in addition,
15 regarding the Mercury, Respondents Espinoza and Gonderman failed to verify the presence of a
16 fuel cap, failed to functionally check the gasoline filler cap's integrity, failed to functionally
17 verify the proper setting of the ignition timing, and failed to perform a low pressure check of the
18 fuel evaporative control system. (Cal. Code Regs., tit. 16, § 3340.42.)

19 (F) Respondent Espinoza failed to provide the Mercury customer with a written estimates
20 for parts and labor for a specific job, and exceeded the oral estimate without prior authorization
21 from the customer. (Cal. Code Regs., tit. 16, § 3353, subs. (a) and (c).)

22 (G) Respondents Espinoza and Gonderman made false and misleading statements in the
23 issuance of certificates of compliance for the Mercury and Honda; in addition, Respondent
24 Gonderman, acting for Respondent Espinoza, made a false statement to the Mercury customer
25 that the station could not provide an estimate for the smog check until after the inspection. (Cal.
26 Code Regs., tit. 16, § 3371.)

27 (H) Respondents Espinoza and Gonderman created false or misleading records by causing
28 false entries to be made into the EIS in order to produce false VIRs and issue false certificates of

1 compliance for the Mercury and Honda. (Cal. Code Regs., tit. 16, § 3340.41, subd. (c).)

2 SEVENTH CAUSE FOR DISCIPLINE

3 (Dishonesty, Fraud or Deceit)

4 40. Respondent Espinoza has subjected her smog check, test only, station license to
5 discipline and Respondent Gonderman has subjected his smog check inspector license and smog
6 check repair technician license to discipline because Respondents Espinoza and Gonderman
7 committed acts of dishonesty, fraud, or deceit, in violation of Health and Safety Code section
8 44072.2, subdivision (d). As described in paragraphs 27-33 above, Respondents caused the
9 issuance of certificates of compliance for the Mercury and Honda without performing bona fide
10 smog inspections, thus depriving the people of California the protections afforded by the Motor
11 Vehicle Inspection Program.

12 EIGHTH CAUSE FOR DISCIPLINE

13 (Aiding or Abetting Unlicensed Person)

14 41. Respondent Espinoza has subjected her smog check, test only, station license to
15 discipline and Respondent Gonderman has subjected his smog check inspector license and smog
16 check repair technician license to discipline because Respondents Espinoza and Gonderman aided
17 and abetted an unlicensed person to evade the provisions of the Motor Vehicle Inspection
18 Program in violation of Health and Safety Code section 44072.2, subdivision (f). As described in
19 paragraphs 30-32, above, they allowed Trevor Hall to perform smog check inspections of the
20 Mercury and Honda

21 PRAYER

22 THEREFORE, Complainant requests that a hearing be held on the matters alleged in this
23 Accusation, and that following the hearing, the Director of Consumer Affairs issue a decision:

- 24 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
25 263071, issued to Ramona Espinoza;
- 26 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
27 263071, issued to Ramona Espinoza;
- 28 3. Ordering Ramona Espinoza to pay the Bureau of Automotive Repair the reasonable

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costs of the investigation and enforcement of this case, under Business and Professions Code section 125.3;

4. Revoking or suspending Smog Check Inspector License No. EO 632369, issued to Joseph Frank Gonderman;

5. Revoking or suspending Smog Check Repair Technician License No. EI 632369, issued to Joseph Frank Gonderman;

6. Ordering Joseph Frank Gonderman to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, under Business and Professions Code section 125.3;

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

DATED: January 6, 2014



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

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