

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

In the Matter of the Accusation Against:

**KUMBAWA R. OH, Owner, d.b.a.
AUTOPORT CAR REPAIR SERVICE,**
Automotive Repair Dealer Registration No.
ARD 241395
Smog Check Station License No.
RC 241395
Lamp Station License No. LS 241395, A
Brake Station License No. BS, 241395, C

and

KUMBAWA RUU OH,
Advanced Emission Specialist Technician
License No. EA 24793 (re-designated upon
renewal as Smog Check Inspector License
number EO 24793 and Smog Check Repair
Technician License number EI 24793)
Brake Adjuster License No. BA 24793, C
Lamp Adjuster License No. LA 24793, A

Respondents.

Case No. 77/14-18

OAH No. 2013120734

ORDER CORRECTING CLERICAL ERRORS NUNC PRO TUNC

Upon his own motion, the Director of Consumer Affairs finds that there were clerical errors in the Proposed Decision of the Administrative Law Judge in the above-entitled matter adopted on July 2, 2014.

IT IS HEREBY ORDERED that the following clerical errors be corrected nunc pro tunc as of the date of entry of the decision:

1. Page 10, paragraph 2 under Order: "Smog Station License number TC 186865" is corrected to read "Smog Check Station License number RC 241395."
2. Page 11, paragraph 3 under Order: "Advanced Emission Specialist Technician License number EA 134529" is corrected to read "Advanced Emission Specialist Technician License number EA 24793 (re-designated upon renewal as Smog Check Inspector License number EO 24793 and Smog Check Repair Technician License number EI 24793)."

DATED: July 22, 2014



DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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

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License No. EA 24793
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Respondents.

Case No. 77/14-18

OAH No. 2013120734

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

August 19, 2014

DATED: July 2, 2014


DONALD CHANG
Assistant Chief Counsel
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

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Respondents.

Case No. 77/14-18

OAH No. 2013120734

PROPOSED DECISION

Administrative Law Judge Regina J. Brown, Office of Administrative Hearings, State of California, heard this matter on May 21, 2014, in Oakland, California.

Brett A. Kingsbury, Deputy Attorney General, represented complainant Patrick Dorais.

Respondent Kumbawa R. Oh represented himself and Autoport Car Repair Service.

The matter was submitted on May 21, 2014.

FACTUAL FINDINGS

1. Complainant Patrick Dorais filed the Accusation in his official capacity as Acting Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.
2. On September 15, 2005, the Bureau issued Automotive Repair Dealer Registration number ARD 241395 (registration) to respondent Kumbawa R. Oh, Owner, doing business as Autoport Car Repair Service, located at 3901 San Leandro Street, Oakland, California. This registration will expire on September 30, 2014, unless it is renewed.
3. On December 1, 2008, the Bureau issued Smog Check Station License number RC 241395 to respondent. This license will expire on September 30, 2014, unless it is renewed.
4. On January 30, 2006, the Bureau issued Lamp Station License number LS 241395, Class A, to respondent. This license will expire on September 30, 2014, unless it is renewed.
5. On January 30, 2006, the Bureau issued Brake Station License number BS 241395, Class C, to respondent. This license will expire on September 30, 2014, unless it is renewed.
6. In 2008, the Bureau issued Advanced Emission Specialist Technician License number EA 24793 (smog technician license) to respondent. The smog technician license will expire on January 31, 2016, unless it is renewed.¹
7. In 2004, the Bureau issued Lamp Adjuster License number LA 24793 to respondent. The Lamp Adjuster License will expire on January 31, 2016, unless it is renewed.
8. In 1989, the Bureau issued Brake Adjuster License number BA 24793 to respondent. The Lamp Adjuster License will expire on January 31, 2015, unless it is renewed.

Undercover Operation No. 1, October 11, 2012

9. On October 11, 2012, a Bureau undercover operator drove a 1994 Ford to Autoport Car Repair Service for smog, brake, and lamp inspections. A Bureau representative had installed an undersized right front brake rotor, an oversized left rear brake drum,

¹ The smog technician license was due to expire on January 31, 2014. However, the license was renewed pursuant to respondent's election, pursuant to California Code of Regulations, title 16, section 3340.28, subdivision (e), to Smog Check Inspector (EO) license number 24793 and Smog Check Repair Technician (EI) license number 24793.

rendered both headlamps out of adjustment, and made the left rear back-up light inoperable on the vehicle. In that condition, the vehicle could not pass the brake and lamp inspections. Respondent gave the undercover operator a verbal estimate of \$130. The undercover operator did not sign or receive a work order or written estimate prior to the inspections. Respondent test drove the vehicle. He did not remove the wheels from the vehicle to perform the brake inspection. He performed the lamp and smog inspections. Respondent told the undercover operator that one of the reverse lights did not work, the headlights were out of adjustment, and the cost to adjust the headlights was \$25, and the cost to replace the back light was \$5. The undercover operator authorized the repairs, but he did not sign or receive a written estimate. An unidentified employee replaced the lightbulb in the rear of the vehicle. Respondent adjusted the headlights with an optical-type headlight aimer.

10. Following the inspections, respondent issued Lamp Certificate of Adjustment number [REDACTED] and Brake Certificate of Adjustment number [REDACTED] to the undercover operator. The Brake Certificate had the boxes checked for satisfactory condition of the brake lining shoes and drums/rotors which requires removal of the wheels to confirm. The undercover operator completed and signed a work order at respondent's request, paid \$160, and retrieved the vehicle. Upon reinspection of the vehicle, a Bureau representative found that the undersized right front brake rotor and the oversized left rear brake drum were still present, and the left side headlamp was still out of adjustment. The vehicle was not in a condition to receive the lamp and brake certificates.

Undercover Operation No. 2, December 19, 2012

11. On December 19, 2012, a Bureau undercover operator drove a 1995 Honda to Autoport Car Repair Service for smog, brake, and lamp inspections. A Bureau representative had installed an undersized right front brake rotor and an oversized left rear brake drum, rendered both headlamps out of adjustment, and made the left rear license plate light inoperable on the vehicle. In that condition, the vehicle could not pass the brake and lamp inspections. Respondent gave the undercover operator a verbal estimate of \$140. The undercover operator did not sign or receive a work order or written estimate prior to the inspections. Respondent performed the lamp and smog inspections. He did not test drive the vehicle or remove the wheels from the vehicle to perform the brake inspection.

12. Following the inspections, respondent issued Lamp Certificate of Adjustment number [REDACTED] and Brake Certificate of Adjustment number [REDACTED] to the undercover operator. The Brake Certificate had the boxes checked for satisfactory condition of the brake lining shoes and drums/rotors which requires removal of the wheels to confirm. The undercover operator paid respondent \$140, received a work order, and retrieved the vehicle. Upon reinspection of the vehicle, a Bureau representative found that the undersized right front brake rotor and the oversized left rear brake drum were still present, the headlamps were still out of adjustment and the left rear license plate light was still inoperable. The vehicle was not in a condition to receive the lamp and brake certificates.

Undercover Operation No. 3, February 13, 2013

13. On February 13, 2013, a Bureau undercover operator drove a 1999 GMC to Autoport Car Repair Service for smog, brake, and lamp inspections. A Bureau representative had installed an undersized right front brake rotor, an oversized left rear brake drum, rendered both headlamps out of adjustment, made the license plate lights inoperable, and removed the air injection pump on the vehicle. In that condition, the vehicle could not pass the smog, brake and lamp inspections. Respondent gave the undercover operator a verbal estimate of \$120. The undercover operator did not sign or receive a work order or written estimate prior to the inspections. Respondent performed the smog inspection and lamp inspection. He test drove the vehicle. He did not remove the wheels from the vehicle to perform the brake inspection. Respondent told the undercover operator that the right headlight was out of adjustment, the license plate lightbulbs were inoperable, and the cost to adjust the headlight was \$10, and the cost to replace the license plate lightbulbs was \$10. The undercover operator authorized the repairs, but he did not sign or receive a written estimate. Respondent adjusted the headlight with an optical-type headlight aimer. The undercover operator paid respondent \$130, and received a work order and Vehicle Inspection Report number 08740434. The Vehicle Inspection Report certified that the vehicle passed the visual inspection, functional check, and emissions test. The vehicle was not in a condition to receive such certification. Respondent told the undercover operator to return later that morning to have the license plate bulbs replaced.

14. Following the inspections, the undercover operator paid respondent the remaining \$10, but he did not receive an invoice. Respondent issued Lamp Certificate of Adjustment number [REDACTED] and Brake Certificate of Adjustment number [REDACTED]. The Brake Certificate had the boxes checked for satisfactory condition of the brake lining shoes and drums/rotors which requires removal of the wheels to confirm. The undercover operator retrieved the vehicle. Upon reinspection of the vehicle, a Bureau representative found that the undersized right front brake rotor and the oversized left rear brake drum were still present, the headlamps were still out of adjustment, and the air injection pump was still missing from the vehicle. The vehicle was not in a condition to receive the smog, lamp and brake certificates. The evidence did not establish that respondent intentionally failed to identify that the air injection pump was missing.

15. The Accusation was issued.² Respondent filed a timely appeal of the Accusation.

² The Accusation erroneously indicates that there are 32 separate causes of action. There are only 23 separate causes of action because the Accusation skipped from cause of action number 13 to cause of action number 20 on page 13 of the Accusation.

Respondent's Evidence

16. Respondent acknowledges that he did not remove the wheels to perform the brake inspections on the vehicles. He contends that he is able to perform the brake inspection by doing a road test, making sure that the parking brake is working, and checking the brake fluid. Only if he finds a defect from this visual inspection, will he remove the wheels. However, he admitted under cross-examination that one cannot observe the brake lining and shoes without removing the wheels. He also provided no explanation as to why he did not conduct a road test on one of the vehicles.

17. Respondent contends that it would be cost-prohibitive to remove the wheels from each vehicle that is brought to the facility for a brake inspection, and he would have to substantially increase his prices. He also contends that other facilities engage in the same practices. He also contends that the Bureau does not provide training on how to perform brake inspections. However, he provided no evidence to support his contentions.

18. Respondent has owned Autoport Car Repair Service for over eight years. He attended school at Sequoyah in Fremont from 1988-1989. He also took courses in automobile mechanics at the College of Alameda, including how to inspect brakes.

Prior Citation History

19. On June 7, 2012, the Bureau issued Citation No. C2012-1730 against respondent's smog station license for a violation of Health and Safety Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices according to the procedure). The Bureau assessed a civil penalty of \$1,000, which respondent paid. The Bureau also issued Citation No. M2012-1731 against respondent's advanced emission specialist technician license for a violation of Health and Safety Code section 44032 (qualified technicians shall perform tests of emission control systems and devices in accordance with section 44012 of that Code). The Bureau required that respondent attend an eight-hour training course which he completed on August 11, 2012.

20. On July 23, 2012, respondent attended a citation conference with a Bureau representative to discuss the aforementioned citation. At the citation conference, the Bureau representative offered to conduct a citation seminar for service representatives at respondent's facility.

Costs

21. The Bureau certifies that the following costs were incurred in connection with the investigation and enforcement of this matter:

Investigative services from Bureau staff, including but not limited to, investigative time, evidence, and undercover vehicle preparation costs.	\$ 27,368.04
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Deputy Attorney General (DAG) costs	25.50 hours @ \$170/hr	\$ 4,335.00
DAG estimated additional costs	11.00 hours @ \$170/hr	\$ 1,870.00
Paralegal costs	2.25 hours @ \$120/hr	\$ 270.00
Total costs incurred:		\$ 33,843.04

22. Respondent operates his facility in a low income area of Oakland which impacts the income for his business.

LEGAL CONCLUSIONS

Respondent's Automotive Repair Dealer Registration

1. Cause for discipline exists, pursuant to Business and Professions Code³ section 9884.7, subdivision (a)(1) (untrue or misleading statements), by reason of the matters set forth in Findings 9 through 14.

2. Cause for discipline exists, pursuant to section 9884.7, subdivision (a)(3) (failure to provide copy of signed work order), by reason of the matters set forth in Findings 9 through 14.

3. Cause for discipline exists, pursuant to section 9884.7, subdivision (a)(4) (fraud), by reason of the matters set forth in Findings 9 through 14.

4. Cause for discipline exists, pursuant to section 9884.7, subdivision (a)(6), as that section interacts with section 9884.9, subdivision (a) (failure to provide written estimate), by reason of the matters set forth in Findings 9 through 14.

However, cause for discipline was not established pursuant to section 9884.8 (failure to provide invoice), with the exception of the \$10 charged for the license plate lightbulb in undercover operation number 3.

Respondent's Lamp and Brake Station License

5. Cause for discipline exists, pursuant to section 9889.3, subdivision (c), as that section interacts with California Code of Regulations, title 16, sections 3305 (failure to perform brake and lamp inspection), 3316, subdivision (d) (issuance of lamp certificate not in compliance), 3321, subdivision (c) (issuance of brake certificate not in compliance), and 3373 (false and misleading information on brake and lamp certificates), by reason of the matters set forth in Findings 9 through 14.

³ All statutory references are to the Business and Professions Code unless otherwise indicated.

6. Cause for discipline exists, pursuant to section 9889.3, subdivision (d) (dishonesty, fraud, or deceit), by reason of the matters set forth in Findings 9 through 14.

Respondent's Brake and Lamp Adjuster License

7. Cause for discipline exists, pursuant to section 9889.3, subdivision (c), as that section interacts with California Code of Regulations, title 16, sections 3305, 3316, subdivision (d), 3321, subdivision (c), and 3373, by reason of the matters set forth in Findings 9 through 14.

8. Cause for discipline exists, pursuant to section 9889.3, subdivision (d) (dishonesty, fraud, or deceit), by reason of the matters set forth in Findings 9 through 14.

Respondent's Smog Check Station License

9. Cause for discipline exists, pursuant to Health and Safety Code section 44072.2, subdivision (a) (violation of the Motor Vehicle Inspection Program), as that section interacts with Health and Safety Code sections 44012, subdivision (a), and 44012, subdivision (f) (incomplete smog inspection), by reason of the matters set forth in Findings 13 and 14.

10. Cause for discipline exists, pursuant to Health and Safety Code section 44072.2, subdivision (c) (violation of regulations of the Motor Vehicle Inspection Program), as that section interacts with California Code of Regulations, title 16, sections 3340.35, subdivision (c) (issuance of certificate of compliance without proper smog testing), and section 3340.42 (failure to conduct smog inspection as required), by reason of the matters set forth in Findings 13 and 14.

11. Cause for discipline has not been established, pursuant to Health and Safety Code section 44072.2, subdivision (d) (dishonesty, fraud, or deceit).

Respondent's Advanced Emission Specialist Technician License

12. Cause for discipline exists, pursuant to Health and Safety Code section 44072.2, subdivision (a), as that section interacts with Health and Safety Code sections 44012, subdivision (a), and 44012, subdivision (f), by reason of the matters set forth in Findings 13 and 14.

13. Cause for discipline exists, pursuant to Health and Safety Code section 44072.2, subdivision (c), as that section interacts with California Code of Regulations, title 16, sections 3340.30, subdivision (a) (failure to inspect vehicle), 3340.41, subdivision (c) (entering false information), and 3340.42, by reason of the matters set forth in Findings 13 and 14.

14. Cause for discipline has not been established, pursuant to Health and Safety Code section 44072.2, subdivision (d) (dishonesty, fraud, or deceit).

Other Matters

15. Section 9884.7, subdivision (c), provides that: “the director may suspend, revoke, or place on probation the registration of all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter [Chapter 20.3 Automotive Repair Act].”

16. Health and Safety Code section 44072.8, provides that the suspension or revocation of a smog check station license or smog check technician license constitutes cause to suspend or revoke any additional license issued under the Motor Vehicle Inspection Program.

17. Section 9889.9, provides that the revocation or suspension of a lamp or brake station license or lamp or brake adjuster license constitutes cause to suspend or revoke any additional license issued under provisions governing lamp or brake adjusters.

Penalty Determination

18. It is undisputed that respondent did not remove the wheels to perform brake inspections on the three vehicles. Respondent attempts to place the blame on the Bureau for not providing training on how to conduct brake inspections. He also asserts that he, as well as other facility owners, do not remove wheels to conduct brake inspections because it is cost-prohibitive, and that a visual inspection without removing the wheels is appropriate. He does not appear to grasp the seriousness of his failure to properly perform brake inspections. The rules and regulations regarding the conduct of brake and lamp inspections are designed to protect the public from terrible harm that can result from the operation of unsafe vehicles. Three undercover vehicles were certified by respondent as thoroughly inspected and safe for operation when they were not. Additionally, respondent failed to provide written estimates of repairs. Although this may seem to be a minor matter, it provides additional evidence of his failure to pay attention to statutory requirements.

It is also undisputed that respondent certified that a vehicle passed the smog emissions test when it did not comply with testing standards. However, the evidence did not establish that he engaged in fraud or deceit in certifying that vehicle. Considering all the facts and circumstances, it is determined that the public interest requires revocation of the lamp and brake licenses, and a period of probation for respondent’s registration, smog check station license, and smog technician license.

Cost Recovery

19. Generally, the Board's certification of the actual costs constitutes prima facie evidence of the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 125.3.)

20. In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Court set forth the factors to be considered in determining the reasonableness of costs. Those factors include: whether respondent has been successful at the hearing in getting charges reduced or dismissed; respondent's subjective good faith belief in the merits of his position; whether respondent has raised a colorable challenge to the proposed discipline; respondent's financial ability to pay the cost award; and whether the scope of the investigation was appropriate to the alleged conduct of the respondent.

Applying the *Zuckerman* factors, the amount of costs awarded complainant should be reduced. The Bureau's costs of preparing the three undercover vehicles will be reduced to \$9,882. The estimated additional prosecution costs up to the date of the hearing will be reduced to \$0. Respondent will be ordered to pay \$22,091.04.

ORDER

1. Automotive Repair Dealer Registration number ARD 241395 issued to respondent Kumbawa R. Oh, Owner, doing business as Autoport Car Repair Service, is permanently invalidated. However, the permanent invalidation is stayed for a two (2) year period of probation on the following terms and conditions:
 - a. Comply with all statutes, regulations and rules governing automotive inspections, estimates, and repairs.
 - b. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
 - c. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of respondent's facility may have in any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code.
 - d. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

- e. If an Accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the Accusation, and the period of probation shall be extended until such decision.
- f. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Bureau may, after giving notice and opportunity to be heard, temporarily or permanently invalidate the registration.

2. Smog Check Station License number TC 186865 issued to respondent is revoked. However, the revocation is stayed for a two (2) year period of probation on the following terms and conditions:

- a. Comply with all statutes, regulations and rules governing automotive inspections, estimates, and repairs.
- b. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
- c. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of respondent's facility may have in any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code.
- d. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.
- e. If an Accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the Accusation, and the period of probation shall be extended until such decision.
- f. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Bureau may, after giving notice and opportunity to be heard, temporarily or permanently invalidate the registration.

3. Advanced Emission Specialist Technician License number EA 134529 issued to respondent is revoked. However, the revocation is stayed for a two (2) year period of probation on the following terms and conditions:

- a. Comply with all statutes, regulations and rules governing automotive inspections, estimates, and repairs.
- b. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
- c. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of respondent's facility may have in any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code.
- d. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.
- e. If an Accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the Accusation, and the period of probation shall be extended until such decision.
- f. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Bureau may, after giving notice and opportunity to be heard, temporarily or permanently invalidate the registration.

4. Lamp Station License number LS 241395, Class A, issued to respondent is revoked.

5. Brake Station License number BS 241395, Class C, issued to respondent is revoked.

6. Lamp Adjuster License number LA 24793, Class A, issued to respondent is revoked.

7. Brake Adjuster License number BA 24793, Class C, issued to respondent is revoked.

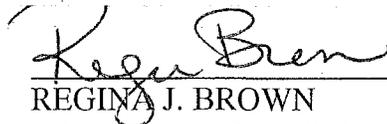
8. Any other Automotive Repair Dealer Registration issued to respondent under the Automotive Repair Act is revoked.

9. Any additional license issued under the Motor Vehicle Inspection Program to respondent is revoked.

10. Any additional license issued under the licensing provisions for lamp and brake adjusting stations to respondent is revoked.

11. Respondent shall pay the Bureau the reasonable costs of investigation and enforcement in the amount of \$22,091.04. This amount shall be paid to the Bureau within 60 days of the effective date of this decision, unless the Bureau, upon a request from respondent, allows payment to be made in installments.

DATED: June 19, 2014



REGINA J. BROWN
Administrative Law Judge
Office of Administrative Hearings

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7
8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 77/14-18

13 **KUMBAWA ROH - OWNER, D.B.A.**
14 **AUTOPORT CAR REPAIR SERVICE**
3901 San Leandro St.
Oakland, CA 94601
Automotive Repair Dealer Reg. No. ARD
241395
15 Smog Check Station License No. RC 241395
16 Lamp Station License No. LS 241395, A
Brake Station License No. BS 241395, C

A C C U S A T I O N

17 and

18 **KUMBAWA RUU OH**
3901 San Leandro St.
19 Oakland, CA 94601
Advanced Emissions Specialist Technician
20 License No. EA 24793 (to be redesignated
upon renewal as EO 24793 and/or EI 24793)
21 Brake Adjuster License No. BA 24793, C
Lamp Adjuster License No. LA 24793, A

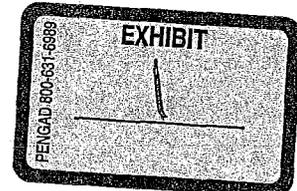
22 Respondent.

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24
25 Complainant alleges:

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1 PARTIES

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

5 LICENSE INFORMATION

6 **Automotive Repair Dealer Registration No. ARD 241395**

7 2. On or about September 15, 2005, the Director of Consumer Affairs ("Director") issued
8 Automotive Repair Dealer Registration Number ARD 241395 ("registration") to Kumbawa R. Oh,
9 doing business as Autoport Car Repair Service (Respondent). Respondent's registration was in full
10 force and effect at all times relevant to the charges brought herein and will expire on September 30,
11 2014, unless renewed.

12 **Smog Check Station License No. RC 241395**

13 3. On or about December 1, 2008, the Director issued Smog Check Station License
14 Number RC 241395 to Respondent. Respondent's smog check station license was in full force and
15 effect at all times relevant to the charges brought herein and will expire on September 30, 2014,
16 unless renewed.

17 **Lamp Station License Station License No. LS 241395**

18 4. On or about January 30, 2006, the Director issued Lamp Station License Number LS
19 241395 to Respondent. Respondent's lamp station license was in full force and effect at all times
20 relevant to the charges brought herein and will expire on September 30, 2014, unless renewed.

21 **Brake Station License No. BS 241395**

22 5. On or about January 30, 2006, the Director issued Brake Station License Number BS
23 241395 to Respondent. Respondent's brake station license was in full force and effect at all times
24 relevant to the charges brought herein and will expire on September 30, 2014, unless renewed.

25 **Advanced Emissions Specialist Technician License No. EA 24793**

26 6. In 2008 the Director issued an Advanced Emissions Specialist Technician License
27 Number EA 24793 to Kumbawa Ruu Oh ("Respondent Oh"). Respondent Oh's Advanced Emissions
28 Specialist Technician License was in full force and effect at all times relevant to the charges brought

1 herein and will expire on January 31, 2014, unless renewed. Upon timely renewal of the license, the
2 license will be redesignated as EO 24793 and/or EI 24793.¹

3 **Lamp Adjuster License No. LA 24793**

4 7. In 2004 the Director issued Lamp Adjuster License Number LA 24793 to Respondent
5 Oh. Respondent Oh's Lamp Adjuster license was in full force and effect at all times relevant to the
6 charges brought herein and will expire on January 31, 2016, unless renewed.

7 **Brake Adjuster License No. BA 24793**

8 8. In 1989 the Director issued Brake Adjuster License Number BA 24793 to Respondent
9 Oh. Respondent Oh's Brake Adjuster license was in full force and effect at all times relevant to the
10 charges brought herein and will expire on January 31, 2015, unless renewed.

11 **JURISDICTION**

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

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

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

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

24 14. Section 44072 of the Health and Safety Code provides, in pertinent part, that the
25 Director may suspend or revoke any license issued under Chapter 5 of Part 5 of Division 26 of the

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

1 Health and Safety Code.

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

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

8 STATUTORY PROVISIONS

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

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

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

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

20 (4) Any other conduct that constitutes fraud.

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

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

27 18. Bus. & Prof. Code section 9884.8 states:

28 All work done by an automotive repair dealer, including all warranty work, shall be
recorded on an invoice and shall describe all service work done and parts supplied. Service work
and parts shall be listed separately on the invoice, which shall also state separately the subtotal
prices for service work and for parts, not including sales tax, and shall state separately the sales
tax, if any, applicable to each. If any used, rebuilt, or reconditioned parts are supplied, the
invoice shall clearly state that fact. If a part of a component system is composed of new and used,
rebuilt or reconditioned parts, that invoice shall clearly state that fact. The invoice shall include a
statement indicating whether any crash parts are original equipment manufacturer crash parts or
non-original equipment manufacturer aftermarket crash parts. One copy of the invoice shall be
given to the customer and one copy shall be retained by the automotive repair dealer.

19. Bus. & Prof. Code section 9884.9, subdivision (a), states in pertinent part:

1 The automotive repair dealer shall give to the customer a written estimated price for labor
2 and parts necessary for a specific job. No work shall be done and no charges shall accrue before
3 authorization to proceed is obtained from the customer. No charges shall be made for work done
4 or parts supplied in excess of the estimated price without the oral or written consent of the
5 customer that shall be obtained at some time after it is determined that the estimated price is
6 insufficient and before the work not estimated is done or the parts not estimated are supplied. . . .
7 If that consent is oral, the dealer shall make a notation on the work order of the date, time, name
8 of person authorizing the additional repairs, and telephone number called, if any, together with a
9 specification of the additional parts and labor in the total additional cost, and shall do either of the
10 following:

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

13 (2) Upon completion of the repairs, obtain the customer's signature or initials to an
14 acknowledgment of notice and consent, if there is an oral consent of the customer to additional
15 repairs, and the following language: "I acknowledge notice and oral approval of an increase in the
16 original estimated price. _____ (signature or initials)"

17 20. Bus. & Prof. Code section 9889.3 states, in pertinent part:

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

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

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

23 21. Bus. & Prof. Code section 9889.9 provides that when any license has been revoked
24 or suspended following a hearing under the provisions of Article 7 (commencing with section
25 9889.1), any additional license issued under Articles 5 and 6 of Chapter 20.3 of Division 3 of the
26 Code may likewise be suspended or revoked.

27 22. Bus. & Prof. Code section 22, states:

28 "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."

29 23. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
30 "License" includes "registration" and "certificate."

31 24. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

(d) Commits any act involving dishonesty, fraud, or deceit whereby

1 another is injured.

2 25. Section 44072.8 of the Health and Safety Code states:

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

6 **COST RECOVERY**

7 26. Bus. & Prof. Code section 125.3 provides, in pertinent part, that the Bureau
8 may request the administrative law judge to direct a licentiate found to have committed a
9 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs
10 of the investigation and enforcement of the case.

11 **UNDERCOVER OPERATION 1 – October 11, 2012**

12 27. On October 11, 2012, a Bureau undercover operator (“operator”) drove a Bureau
13 documented 1994 Ford to Respondent’s facility and requested smog, brake and lamp inspections.
14 The vehicle was documented as having an undersized right front brake rotor, an oversized left
15 rear brake drum, both headlamps out of adjustment, and an inoperative left rear back-up light.
16 These defects would cause the vehicle to fail properly performed brake and lamp inspections. The
17 operator spoke to an individual he identified as Kumbawa Oh (Oh), the owner/technician of the
18 business. The operator received a verbal estimate of \$130.00 for the smog, brake and lamp
19 inspections/certifications. The operator did not sign or receive a work order or a written estimate
20 prior to the work being performed. The operator was able to observe the smog, brake and lamp
21 inspections. The operator watched as Oh drove the vehicle away from the facility and returned in
22 the vehicle approximately one minute later. He then watched as Oh performed the smog and lamp
23 inspections. The operator noted that the wheels were never removed from the Ford at any time
24 during the inspection process. After the inspections, Oh approached the operator and informed
25 him that one of the back-up lights did not work and the headlights were out of adjustment. Oh
26 told the operator that the cost to adjust the headlights was \$25.00 and the cost to replace the back-
27 up light bulb was \$5.00. The operator authorized these repairs, but did not sign or receive a
28 written estimate. The operator then observed an unidentified person replace the back-up bulb on
the Ford and Oh adjust the headlights with an optical type headlight aimer. Oh then completed
and signed Lamp Certificate of Adjustment number [REDACTED] and Brake Certificate of

1 Adjustment number [REDACTED]. The operator then filled out and signed a work order at Oh's
2 request and then paid Oh \$160.00. He then received a document titled "Estimate Copy [REDACTED]",
3 the Lamp and Brake Certificates of Adjustment mentioned above, and a copy of the smog check
4 Vehicle Inspection Report (VIR). The operator then retrieved the undercover vehicle.

5 28. On or about November 1, 2012, the Bureau re-inspected the undercover vehicle
6 and determined that the undersized right front brake rotor and oversized left rear brake drum were
7 still present, and the left side headlamp was still out of adjustment. The Lamp and Brake
8 Certificates of Adjustment should not have been issued to the undercover vehicle.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Untrue or Misleading Statements)**

11 29. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
12 subdivision (a)(1), in that on or about October 11, 2012, he made statements which he knew or
13 which by exercise of reasonable care should have known to be untrue or misleading. The
14 circumstances were that Respondent issued Lamp Certificate of Adjustment number [REDACTED]
15 and Brake Certificate of Adjustment number [REDACTED] certifying, with respect to the 1994
16 Ford, that Respondent had performed inspections, adjustments, and/or repairs in accordance with
17 the specifications of the Bureau of Automotive Repair, the vehicle manufacturer, and law, that all
18 items were of an approved type, and that all statements on the certificates were true.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 30. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
22 subdivision (a)(4), in that on or about October 11, 2012, Respondent committed acts which
23 constitute fraud by issuing a Brake Certificate of Adjustment for the 1994 Ford, as set forth in
24 "Undercover Operation 1 - October 11, 2012," without performing a bona fide inspection of the
25 brake system on that vehicle, and by accepting payment for an inspection not performed, thereby
26 depriving the People of the State of California of the protection afforded by the Business and
27 Professions Code and the Vehicle Code of the State of California.

28 ///

1 THIRD CAUSE FOR DISCIPLINE

2 (Failure to Comply with the Business and Professions Code)

3 31. Respondent's registration is subject to discipline pursuant to Bus. & Prof. Code
4 section 9884.7, subdivision (a)(6), in that on or about October 11, 2012, Respondent, with
5 respect to the Bureau's 1994 Ford, failed to comply with provisions of the Code in the following
6 material respects:

7 a. Section 9884.9, subdivision (a): Respondent failed to provide the Bureau
8 operator with a written estimate and failed to properly record the additional consent for the
9 replacement of the back-up light bulb and the adjustment of the headlights.

10 FOURTH CAUSE FOR DISCIPLINE

11 (Violation of Regulations)

12 32. Respondent's lamp and brake station licenses are subject to discipline pursuant to
13 Bus. & Prof. Code section 9889.3, subdivision (c), in that on or about October 11, 2012, with
14 respect to the Bureau's 1994 Ford, Respondent failed to comply with provisions of California
15 Code of Regulations, title 16, in the following material respects:

16 a) Section 3305: Respondent failed to perform the brake and lamp inspections
17 and certifications on the Bureau's 1994 Ford to the standards set forth in this section of the
18 California Code of Regulations.

19 b) Section 3316, subsection (d): Respondent issued Lamp Certificate of
20 Adjustment number [REDACTED] to the Bureau's 1994 Ford, when in fact the lighting system on
21 the vehicle was not in compliance with the requirements of the Vehicle Code and Bureau
22 regulations.

23 c) Section 3321, subsection (c): Respondent issued Brake Certificate of
24 Adjustment number [REDACTED] to the Bureau's 1994 Ford, when in fact the brake system on the
25 vehicle was not in compliance with the requirements of the Vehicle Code and Bureau regulations.

26 FIFTH CAUSE FOR DISCIPLINE

27 (Dishonesty, Fraud, Deceit)

28 33. Respondent's brake and lamp station licenses are subject to discipline pursuant to

1 Bus. & Prof. Code section 9889.3, subdivision (d), in that on or about October 11, 2012,
2 Respondent committed an act involving dishonesty, fraud, or deceit whereby another was injured.
3 Specifically, Respondent accepted payment to perform an inspection, and issued a Brake
4 Certificate of Adjustment, but did not perform a bona fide inspection of the brake system on the
5 Bureau's 1994 Ford, thereby depriving the People of the State of California of the protection
6 afforded by the Business and Professions Code and the Vehicle Code of the State of California.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with Regulations)**

9 34. Respondent Oh's Brake and Lamp Adjuster Licenses are subject to discipline
10 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that on or about October 11,
11 2012, with respect to the Bureau's 1994 Ford, Respondent failed to comply with provisions of the
12 California Code of Regulations, title 16, in the following material respects:

13 a) **Section 3305:** Respondent Oh failed to perform the brake and lamp inspections
14 and certifications on the Bureau's 1994 Ford to the standards set forth in this section of the
15 California Code of Regulations.

16 b) **Section 3316, subsection (d):** Respondent Oh issued Lamp Certificate of
17 Adjustment number [REDACTED] to the Bureau's 1994 Ford, when in fact the lighting system on
18 the vehicle was not in compliance with the requirements of the Vehicle Code and Bureau
19 regulations.

20 c) **Section 3321, subsection (c):** Respondent Oh issued Brake Certificate of
21 Adjustment number [REDACTED] to the Bureau's 1994 Ford, when in fact the brake system on the
22 vehicle was not in compliance with the requirements of the Vehicle Code and Bureau regulations.

23 d) **Section 3373:** Respondent Oh inserted information into the Brake and Lamp
24 Certificates of Adjustment issued to the Bureau's 1994 Ford that caused those documents to be
25 false and misleading.

26 **SEVENTH CAUSE FOR DISCIPLINE**

27 **(Dishonesty, Fraud, Deceit)**

28 35. Respondent Oh's Brake and Lamp Adjuster Licenses are subject to discipline

1 pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that on or about October 11,
2 2012, Respondent Oh committed an act involving dishonesty, fraud, or deceit whereby another
3 was injured. Specifically, Respondent Oh accepted payment to perform an inspection, and he
4 issued a Brake Certificate of Adjustment, without performing a bona fide inspection of the brake
5 system on the Bureau's 1994 Ford, thereby depriving the People of the State of California of the
6 protection afforded by the Business and Professions Code and the Vehicle Code of the State of
7 California.

8 **UNDERCOVER OPERATION 2 – December 19, 2012**

9 36. On December 19, 2012, a Bureau undercover operator ("operator") drove a Bureau
10 documented 1995 Honda to Respondent's facility and requested smog, brake and lamp
11 inspections. The vehicle was documented as having an undersized right front brake rotor,
12 oversized left rear brake drum, the headlamps were out of adjustment, and a left rear license plate
13 light was inoperative. These defects would cause the vehicle to fail properly performed brake and
14 lamp inspections. The operator spoke to Kumbawa Oh, the owner/technician of the business. Oh
15 told the operator the smog, brake and lamp inspections would cost \$140.00. The operator verbally
16 authorized the inspections, but did not sign a work order and was not provided with a copy of a
17 written estimate prior to the work being performed. The operator was able to observe the
18 inspections. The operator observed that Oh did not remove any wheels, test drive the vehicle or
19 use any tools/equipment to inspect or adjust the headlamps. The operator observed Oh complete
20 and sign Lamp Certificate of Adjustment number [REDACTED] and Brake Certificate of
21 Adjustment number [REDACTED]. The operator paid \$140.00, received a document titled
22 "Estimate Copy [REDACTED]", the Lamp and Brake Certificates of Adjustment mentioned above, and
23 a VIR for the smog check/certification. The operator then retrieved the undercover vehicle.

24 37. On or about December 20, 2012, the Bureau re-inspected the undercover vehicle
25 and determined the undersized right front brake rotor and oversized left rear brake drum were still
26 present, the headlamps were still out of adjustment, the tamper seals were still intact, and the left
27 rear license plate light was inoperative, such that the 1995 Honda was unable to pass properly
28 performed brake and lamp inspections.

1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 38. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
4 subdivision (a)(1), in that on or about December 19, 2012, Respondent made statements which he
5 knew or which by exercise of reasonable care should have known to be untrue or misleading.
6 Respondent issued Lamp Certificate of Adjustment number [REDACTED] and Brake Certificate of
7 Adjustment number [REDACTED], certifying, with respect to the 1995 Honda, that Respondent had
8 performed inspections, adjustments, and/or repairs in accordance with the specifications of the
9 Bureau of Automotive Repair, the vehicle manufacturer, and law, that all items were of an
10 approved type, and that all statements on the certifications were true.

11 **NINTH CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 39. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
14 subdivision (a)(4), in that on or about December 19, 2012, Respondent committed acts which
15 constitute fraud. Specifically, Respondent accepted payment for inspections of the 1995 Honda,
16 and issued Lamp Certificate of Adjustment number [REDACTED] and Brake Certificate of
17 Adjustment number [REDACTED], but did not perform bona fide inspections of the brake and lamp
18 systems on the vehicle, thereby depriving the People of the State of California of the protection
19 afforded by the Business and Professions Code and Vehicle Code of California.

20 **TENTH CAUSE FOR DISCIPLINE**

21 **(Failure to Comply with Written Documentation Requirements)**

22 40. Respondent's registration is subject to discipline pursuant to Bus. & Prof. Code
23 section 9884.7, subdivisions (a)(3) and (a)(6), in that Respondent failed to comply with
24 requirements for written documentation with respect to the Bureau's 1995 Honda. Specifically:

25 a. Section 9884.7, subdivision (a)(3): Respondent failed to provide the
26 Bureau operator with a copy of the signed work order.

27 b. Section 9884.7, subdivision (a)(6), and section 9884.9, subdivision (a):
28 Respondent failed to provide the Bureau operator with a written estimate.

1 ELEVENTH CAUSE FOR DISCIPLINE

2 (Violation of Regulations)

3 41. Respondent's lamp and brake station licenses are subject to discipline pursuant to
4 Bus. & Prof. Code section 9889.3, subdivision (c), in that on or about December 19, 2012, with
5 regard to the Bureau's 1995 Honda, Respondent failed to comply with provisions of the
6 California Code of Regulations, title 16, in the following material respects:

7 a. Section 3305: Respondent failed to perform the brake and lamp inspections
8 and certifications on the Bureau's 1995 Honda to the standards set forth in this section of the
9 California Code of Regulations.

10 b. Section 3316, subsection (d): Respondent issued Lamp Certificate of
11 Adjustment number [REDACTED] to the Bureau's 1995 Honda, when in fact the lighting system on
12 the vehicle was not in compliance with the requirements of the Vehicle Code and Bureau
13 regulations.

14 c. Section 3321, subsection (c): Respondent issued Brake Certificate of
15 Adjustment number [REDACTED] to the Bureau's 1995 Honda, when in fact the brake system on
16 the vehicle was not in compliance with the requirements of the Vehicle Code and Bureau
17 regulations.

18 TWELFTH CAUSE FOR DISCIPLINE

19 (Dishonesty, Fraud, Deceit)

20 42. Respondent's brake and lamp station licenses are subject to discipline pursuant to
21 Bus. & Prof. Code section 9889.3, subdivision (d), in that on or about December 19, 2012,
22 Respondent committed acts involving dishonesty, fraud, or deceit whereby another was injured.
23 Specifically, Respondent accepted payment to perform inspections of the 1995 Honda, and he
24 issued Lamp and Brake Certificates of Adjustment, but he did not perform bona fide inspections
25 of the brake and lamp systems, thereby depriving the People of the State of California of the
26 protection afforded by the Business and Professions Code and the Vehicle Code of the State of
27 California.

28 ///

1 THIRTEENTH CAUSE FOR DISCIPLINE

2 (Failure to Comply with Regulations)

3 43. Respondent Oh's Brake and Lamp Adjuster Licenses are subject to discipline
4 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that on or about December 19,
5 2012, with regard to the Bureau's 1995 Honda, Respondent failed to comply with provisions of
6 the California Code of Regulations, title 16, in the following material respects:

7 a. Section 3305: Respondent Oh failed to perform the brake and lamp inspections
8 and certifications on the Bureau's 1995 Honda to the standards set forth in this section of the
9 California Code of Regulations.

10 b. Section 3316, subsection (d): Respondent Oh issued Lamp Certificate of
11 Adjustment number [REDACTED] to the Bureau's 1995 Honda, when in fact the lighting system on
12 the vehicle was not in compliance with the requirements of the Vehicle Code and Bureau
13 regulations.

14 c. Section 3321, subsection (c): Respondent Oh issued Brake Certificate of
15 Adjustment number [REDACTED] to the Bureau's 1995 Honda, when in fact the brake system on
16 the vehicle was not in compliance with the requirements of the Vehicle Code and Bureau
17 regulations.

18 d. Section 3373: Respondent Oh inserted information into the Brake and Lamp
19 Certificates of Adjustment issued to the Bureau's 1995 Honda that caused those documents to be
20 false and misleading.

21 TWENTIETH CAUSE FOR DISCIPLINE

22 (Dishonesty, Fraud, Deceit)

23 44. Respondent Oh's Brake and Lamp Adjuster Licenses are subject to discipline
24 pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that on or about December 19,
25 2012, Respondent Oh committed acts involving dishonesty, fraud, or deceit whereby another was
26 injured. Specifically, Respondent Oh accepted payment to perform inspections, and issued Lamp
27 and Brake Certificates of Adjustment, but did not perform bona fide inspections of the brake and
28 lamp systems, thereby depriving the People of the State of California of the protection afforded

1 by the Business and Professions Code and the Vehicle Code of the State of California.

2 UNDERCOVER OPERATION 3 – February 13, 2013

3 45. On February 13, 2013, a Bureau undercover operator (“operator”) drove a Bureau
4 documented 1999 GMC to Respondent’s facility and requested smog, brake and lamp
5 inspections. The vehicle was documented as having an undersized right front brake rotor,
6 oversized left rear brake drum, the headlamps adjusted outside of manufacturer specifications,
7 inoperative license plate lights, and a missing air injection (AIR) pump. These defects would
8 cause the vehicle to fail properly performed smog, lamp, and brake inspections. The operator
9 spoke to an individual identified as Kumbawa Oh, the owner/technician of the business, who told
10 him the inspections would cost \$120.00. The operator did not receive a copy of the work order or
11 written estimate. The operator was able to observe the smog, brake and lamp inspections. The
12 operator observed that Oh performed the smog inspection and a portion of the lamp inspection
13 and then drove the vehicle away from the facility, returning approximately one minute and twenty
14 seconds later. Oh then completed the lamp inspection but never performed a brake inspection.

15 46. Oh then told the operator that the GMC’s right headlight was out of adjustment
16 and the license plate light bulbs were inoperative. Oh also said that it would cost \$10.00 to adjust
17 the right headlamp and \$10.00 to replace the two bulbs. Oh then said that the operator could
18 either replace the bulbs himself, or return the vehicle later that morning and another technician
19 would replace them. The operator verbally authorized Oh to perform all the repairs and Oh then
20 adjusted the right side headlamp with an optical aimer. The operator then observed Oh
21 completing and signing Lamp and Brake Certificates of Adjustment. The operator paid Oh
22 \$130.00 and received a document titled “Estimate Copy [REDACTED]” and a VIR for the smog
23 inspection. The VIR shows that the 1999 GMC passed the smog inspection and Electronic
24 Certificate of Compliance number [REDACTED]4 was issued. The VIR further shows the smog
25 inspection was performed by Respondent Oh. Oh retained the Brake and Lamp Certificates of
26 Adjustment until the operator returned for the bulb replacement, explaining “they go together”.

27 47. On February 13, 2013, at 11:30 a.m., the operator returned the GMC to
28 Respondent and the license plate bulbs were replaced by another technician. The operator then

1 paid Oh the balance of \$10.00 and received Lamp Certificate of Adjustment number [REDACTED]
2 and Brake Certificate of Adjustment number [REDACTED]. The operator never received a final
3 invoice for the license plate bulb replacement. The operator then retrieved the vehicle.

4 48. On or about March 12, 2013, the Bureau re-inspected the 1999 GMC vehicle and
5 determined that the undersized right front brake rotor and oversized left rear brake drum were still
6 present, the headlamps were still adjusted beyond manufacturer specifications, and the air
7 injection (AIR) pump was still missing from the vehicle. These defects should have caused the
8 1999 GMC to fail the smog, brake, and lamp inspections.

9 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

10 **(Untrue or Misleading Statements)**

11 49. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
12 subdivision (a)(1), in that on or about February 13, 2013, Respondent made statements which he
13 knew or by exercise of reasonable care should have known to be untrue or misleading, in that:

14 a. Respondent issued Lamp Certificate of Adjustment number [REDACTED] and
15 Brake Certificate of Adjustment number [REDACTED], certifying, with respect to the 1999 GMC,
16 that Respondent had performed inspections, adjustments, and/or repairs in accordance with the
17 specifications of the Bureau of Automotive Repair, the vehicle manufacturer, and law, that all
18 items were of an approved type, and that all statements on the certifications were true.

19 b. Respondent issued Smog Certificate of Compliance number [REDACTED] and
20 certified in the VIR that he had performed the inspection in accordance with all Bureau
21 requirements and that all information in the VIR was true and accurate.

22 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

23 **(Fraud)**

24 50. Respondent's registration is subject to discipline pursuant to Code section 9884.7,
25 subdivision (a)(4), in that on or about February 13, 2013, Respondent committed acts which
26 constitute fraud. Specifically, Respondent accepted payment for inspections of the 1999 GMC,
27 and issued certificates of compliance and adjustment as described above, but did not perform
28 bona fide inspections of the emission, lamp and brake systems on the vehicle, thereby depriving

1 the People of the State of California of the protection afforded by the Health and Safety Code, the
2 Business and Professions Code, and the Vehicle Code of the State of California.

3 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Written Documentation Requirements)**

5 51. Respondent's registration is subject to discipline pursuant to Bus. & Prof. Code
6 section 9884.7, subdivisions (a)(3) and (a)(6), in that on or about February 13, 2013, Respondent,
7 with regard to the Bureau's 1999 GMC, failed to comply with written documentation
8 requirements in the following material respects:

9 a. **Section 9884.7, subdivision (a)(3):** Respondent failed to provide the Bureau
10 operator with a copy of the signed work order when the operator signed it.

11 b. **Section 9884.7, subdivision (a)(6), and section 9884.8:** Respondent failed to
12 provide the operator with an invoice for the replacement of the license plate bulbs.

13 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

14 **(Violation of Regulations)**

15 52. Respondent's lamp and brake station licenses are subject to discipline pursuant to
16 Bus. & Prof. Code section 9889.3, subdivision (c), in that on or about February 13, 2013, with
17 regard to the Bureau's 1999 GMC, Respondent failed to comply with provisions of the California
18 Code of Regulations, title 16, in the following material respects:

19 a. **Section 3305:** Respondent failed to perform the brake and lamp
20 inspections and certifications on the Bureau's 1999 GMC to the standards set forth in this section
21 of the California Code of Regulations.

22 b. **Section 3316, subsection (d):** Respondent issued Lamp Certificate of
23 Adjustment number [REDACTED] to the Bureau's 1999 GMC, when in fact the lighting system on
24 the vehicle was not in compliance with the requirements of the Vehicle Code and Bureau
25 regulations.

26 c. **Section 3321, subsection (c):** Respondent issued Brake Certificate of
27 Adjustment number [REDACTED] to the Bureau's 1999 GMC, when in fact the brake system on
28 the vehicle was not in compliance with the requirements of the Vehicle Code and Bureau

1 regulations.

2 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

3 **(Dishonesty, Fraud, Deceit)**

4 53. Respondent's brake and lamp station licenses are subject to discipline pursuant to
5 Bus. & Prof. Code section 9889.3, subdivision (d), in that respondent committed acts involving
6 dishonesty, fraud, or deceit whereby another was injured. Specifically, Respondent accepted
7 payment for inspections of the 1999 GMC, and issued certificates of compliance and adjustment
8 as described above, but did not perform bona fide inspections of the brake, lamp, and emission
9 systems on the Bureau's 1999 GMC, thereby depriving the People of the State of California of the
10 protection afforded by the Health and Safety Code, the Business and Professions Code, and the
11 Vehicle Code of the State of California.

12 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

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

14 54. Respondent's smog station license is subject to discipline pursuant to Health and
15 Safety Code section 44072.2, subdivision (a), in that on or about February 13, 2013, with respect
16 to the 1999 GMC, Respondent violated provisions of the Health and Safety Code, as follows:

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

20 b. **Section 44012, subdivision (f):** Respondent failed to perform the
21 visual/functional test in accordance with procedures prescribed by the department.

22 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

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

24 55. Respondent's smog station license is subject to discipline pursuant to Health and
25 Safety Code section 44072.2, subdivision (c), in that on or about February 13, 2013, with regard
26 to the 1999 GMC, Respondent violated sections of the California Code of Regulations, title 16, as
27 follows:
28

1 a. **Section 3340.35, subdivision (c):** Respondent issued Electronic Certificate of
2 Compliance No. OS749434 even though the vehicle had not been inspected in accordance with
3 the procedures specified in section 3340.42.

4 b. **Section 3340.42:** Respondent failed to conduct the required smog tests and
5 inspections in accordance with the Bureau's specifications.

6 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

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

8 56. Respondent's smog station license is subject to discipline pursuant to Health and
9 Safety Code section 44072.2, subdivision (d), in that on or about February 13, 2013, with respect
10 to the 1999 GMC, he committed acts involving dishonesty, fraud or deceit whereby another was
11 injured. Specifically, Respondent accepted payment for inspections of the 1999 GMC, and issued
12 certificates of compliance and adjustment as described above, but he did not perform bona fide
13 inspections of the emission, brake, and lamp systems on the vehicle, thereby depriving the People
14 of the State of California of the protection afforded by the Health and Safety Code, Business and
15 Professions Code, and Vehicle Code of California.

16 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with Regulations)**

18 57. Respondent Oh's Brake and Lamp Adjuster Licenses are subject to discipline
19 pursuant to Bus. & Prof. Code section 9889.3, subdivision (c), in that on or about February 13,
20 2013, with regard to the Bureau's 1999 GMC, Respondent Oh failed to comply with provisions of
21 the California Code of Regulations, title 16, in the following material respects:

22 a. **Section 3305:** Respondent Oh failed to perform the brake and lamp inspections
23 and certifications on the Bureau's 1999 GMC to the standards set forth in this section of the
24 California Code of Regulations.

25 b. **Section 3316, subsection (d):** Respondent Oh issued Lamp Certificate of
26 Adjustment number [REDACTED] to the Bureau's 1999 GMC when in fact the lighting system on
27 the vehicle was not in compliance with the requirements of the Vehicle Code and Bureau
28 regulations.

1 discipline pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on or about
2 February 13, 2013, regarding the 1999 GMC, he violated sections of the California Code of
3 Regulations, title 16, as follows:

4 a. **Section 3340.30, subdivision (a):** Respondent Oh failed to inspect and test that
5 vehicle in accordance with Health and Safety Code section 44012.

6 b. **Section 3340.41, subdivision (c):** Respondent Oh entered false information into
7 the Emission Inspection System for the 1999 GMC by entering "Pass" for the "air injection"
8 portion when, in fact, the vehicle's air injection (AIR) pump was missing.

9 c. **Section 3340.42:** Respondent Oh failed to conduct the required smog tests and
10 inspections in accordance with the Bureau's specifications.

11 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

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

13 61. Respondent Oh's Advanced Emission Specialist Technician License is subject to
14 discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on or
15 about February 13, 2013, with regard to the 1999 GMC, he committed acts involving dishonesty,
16 fraud or deceit whereby another was injured. Specifically, Respondent Oh accepted payment for
17 inspections, and issued certificates of compliance and adjustment as described above, but did not
18 perform bona fide inspections of the brake, lamp, and emission control systems on the vehicle,
19 thereby depriving the People of the State of California of the protection afforded by the Health and
20 Safety Code, the Business and Professions Code, and the Vehicle Code of California.

21 **PRIOR CITATIONS**

22 62. To determine the degree of discipline, if any, to be imposed upon Respondents,
23 Complainant alleges as follows:

24 a. On June 7, 2012, the Bureau issued Citation No. C2012-1730 to Respondent,
25 against its Smog Station license, for violations of Health and Safety Code section 44012,
26 subdivision (f) (failure to perform a visual/functional check of emission control devices according
27 to procedures prescribed by the department). The Bureau assessed a civil penalty of \$1000.00.
28

1 Respondent complied with the citation on August 15, 2012.

2 b. On June 7, 2012, the Bureau issued Citation No. M2012-1731 to Respondent Oh,
3 against his Advanced Emission Specialist Technician License, for violations of Health and Safety
4 Code section 44032 (failure to perform a test of emission control systems and devices in
5 accordance with Health and Safety Code section 44012). Respondent Oh was required to
6 complete an eight (8) hour training course. Respondent Oh complied with the citation on
7 August 11, 2012.

8 **OTHER MATTERS**

9 63. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
10 probation the registrations for all places of business operated in this state by Kumbawa Oh, upon
11 a finding that he has, or is, engaged in a course of repeated and willful violation of the laws and
12 regulations pertaining to an automotive repair dealer.

13 64. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station
14 License Number RC 241395, issued to Kumbawa Oh, is revoked or suspended, any additional
15 license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name
16 of said licensee may be likewise revoked or suspended by the director.

17 65. Pursuant to Code section 9889.9, if Lamp Station License Number LS 241395,
18 issued to Kumbawa Oh, is revoked or suspended, any additional license issued under Articles 5
19 and 6 of Chapter 20.3 of Division 3 of the Code in the name of said licensee may be likewise
20 revoked or suspended by the Director.

21 66. Pursuant to Code section 9889.9, if Brake Station License Number BS 241395
22 issued to Kumbawa Oh, is revoked or suspended, any additional license issued under Articles 5
23 and 6 of Chapter 20.3 of Division 3 of the Code in the name of said licensee may be likewise
24 revoked or suspended by the Director.

25 67. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission
26 Specialist Technician License number EA 24793 (to be redesignated upon renewal as EO 24793
27 and/or EI 24793), issued to Kumbawa Oh, is revoked or suspended, any additional license issued
28 under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said

1 licensee may be likewise revoked or suspended by the director.

2 68. Pursuant to Code section 9889.9, if Lamp Adjuster License Number LA 24793,
3 issued to Kumbawa Oh, is revoked or suspended, any additional license issued under Articles 5
4 and 6 of Chapter 20.3 of Division 3 of the Code in the name of said licensee may be likewise
5 revoked or suspended by the Director.

6 69. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA 24793,
7 issued to Kumbawa Oh, is revoked or suspended, any additional license issued under Articles 5
8 and 6 of Chapter 20.3 of Division 3 of the Code in the name of said licensee may be likewise
9 revoked or suspended by the Director.

10 **PRAYER**

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

13 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
14 Registration No. ARD 241395, issued to Kumbawa Oh, doing business as Autoport Car Repair
15 Service;

16 2. Revoking, suspending, or placing on probation any other automotive repair dealer
17 registration issued to Kumbawa Oh;

18 3. Revoking, suspending, or placing on probation Smog Check Station License
19 Number RC 241395, issued to Kumbawa Oh, doing business as Autoport Car Repair Service;

20 4. Revoking, suspending, or placing on probation Advanced Emission Specialist
21 Technician License Number EA 24793 (to be redesignated upon renewal as EO 24793 and/or EI
22 24793), issued to Kumbawa Oh;

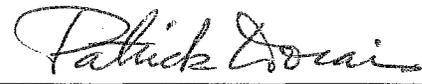
23 5. Revoking, suspending, or placing on probation any additional license issued under
24 Chapter 5, Part 5, Division 26 of the Health and Safety Code in the name of Kumbawa Oh;

25 6. Revoking, suspending, or placing on probation Brake Station License Number BS
26 241395, issued to Kumbawa Oh, doing business as Autoport Car Repair Service;

27 7. Revoking, suspending, or placing on probation Lamp Station License Number LS
28 241395, issued to Kumbawa Oh, doing business as Autoport Car Repair Service;

- 1 8. Revoking, suspending, or placing on probation Brake Adjuster License Number
- 2 BA 24793, issued to Kumbawa Oh;
- 3 9. Revoking, suspending, or placing on probation Lamp Adjuster License Number
- 4 LA 24793, issued to Kumbawa Oh;
- 5 10. Revoking, suspending, or placing on probation any other license issued to
- 6 Kumbawa Oh under Articles 5 and 6 of Chapter 20.3 of Division 3 of the Business and
- 7 Professions Code;
- 8 11. Ordering Respondents to pay the Director of Consumer Affairs the reasonable
- 9 costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and;
- 10 12. Taking such other and further action as deemed necessary and proper.

11
12 DATED: September 25, 2013



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

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