

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

In the Matter of the First Amended Accusation
Against:

Case No. 77/11-01

OAH No. 2011110547

ANTONYS SMOG CHECK
JUAN GASTELUM, Partner
SILVIANO MICHEL, Partner
1287 N. Blackstone Avenue, #B
Fresno, California 93703

Automotive Repair Dealer Registration
No. ARD 248940
Smog Check Station License No. RC 248940
Brake Station License No. BS 248940
Lamp Station License No. LS 248940

JUAN ANTONIO GASTELUM
13324 S. Pear
Caruthers, California 93609
and
P. O. Box 358
Caruthers, California 93609

Advanced Emission Specialist Technician
License No. EA 151972
Brake Adjuster License No. BA 151972
Lamp Adjuster License No. LA 151972

SILVIANO MICHEL
Fresno, California 93722
and
Caruthers, California 93609

Advanced Emission Specialist Technician
License No. EA 150695
Brake Adjuster License No. BA 150695
Lamp Adjuster License No. LA 150695

Respondents.

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 September 12, 2012.

DATED: August 6, 2012



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

In the Matter of the First Amended
Accusation Against:

Case No. 77/11-01

ANTONYS SMOG CHECK
JUAN GASTELUM, Partner
SILVIANO MICHEL, Partner
1287 N. Blackstone Avenue, #B
Fresno, California 93703

OAH No. 2011110547

Automotive Repair Dealer Registration No.
ARD248940
Smog Check Station License No. RC 248940
Lamp Station License No. LS 248940
Brake Station License No. BS 248940

JUAN ANTONIO GASTELUM
Caruthers, California 93609
and
P.O. Box 358
Caruthers, California 93609

Advanced Emission Specialist Technician
License No. EA 151972
Brake Adjuster License No. BA 151972
Lamp Adjuster License No. LA 151972

SILVIANO MICHEL
Fresno, California 93722
and
Caruthers, California 93609

Advanced Emission Specialist Technician
License No. EA 150695
Brake Adjuster License No. BA 150695
Lamp Adjuster License No. LA 150695

Respondents.

PROPOSED DECISION

Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Fresno, California on June 12, 2012.

Patrick M. Kenady, Deputy Attorney General, represented complainant John Wallauch, Chief, Bureau of Automotive Repair, (Bureau) Department of Consumer Affairs.

Respondents Juan Antonio Gastelum and Silvano Michel represented themselves and Antonys Smog Check.

Evidence was received, the matter was submitted and the record closed on June 12, 2012.

PROCEDURAL FINDINGS

Registration and Licenses

1. On January 16, 2007, the Bureau issued Automotive Repair Dealer Registration Number ARD 248940 (registration) to Juan Gastelum and Silvano Michel, Partners, doing business as Antonys Smog Check (Antonys).¹

2. On February 26, 2007, the Bureau issued Smog Check Station Number RC 248940 (station license) to Antonys.

3. On March 5, 2007, the Bureau issued Lamp Station License Number LS 248940 and Brake Station License Number BS 248940 to Antonys.

4. In 2005, the Bureau issued Advanced Emission Specialist Technician License Number EA 150695 (technician license), Lamp Adjuster License Number LA 150695 and Brake Adjuster License Number BA 150695 to Silvano Michel (Michel).

5. In 2007, the Bureau issued Advanced Emission Specialist Technician License Number EA 151972 (technician license), Brake Adjuster License Number BA 151972 and Lamp Adjuster License Number LA 151972 to Juan Antonio Gastelum (Gastelum).

6. The registration and all licenses issued to respondents were in full force and effect at all times relevant to the Findings below.

¹ Some of respondents' documents refer to the licensee as "Antony's Smog Check." For consistency, the name appearing on the registration "Antonys Smog Check" will be used herein.

Accusations

7. On July 12, 2011, Sherry Mehl made and filed the Accusation in her official capacity as Bureau Chief. On May 23, 2012, John Wallauch made the First Amended Accusation and caused it to be filed on June 12, 2012, in his official capacity.

8. Respondents timely filed a Request for Hearing pursuant to Government Code sections 11504 and 11509. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

FACTUAL FINDINGS

1. In May 2009, the Bureau reviewed the number of brake and lamp certificate purchases made by licensees in areas of Fresno. Antonys had purchased 1600 certificates that year, an average of 400 a month, an excessively high number compared to the average brake and lamp certificate purchases. On May 13, 2009, the Bureau reviewed Antonys' purchase data, which showed that Antonys was consistently purchasing an average of seven brake certificate books and seven lamp certificate books per month. Additional data showed that Antonys was performing very rapid smog inspections, with no failures. As a result, the Bureau initiated an investigation into Antonys' business practices.

Undercover Operation No. 1: 1996 Toyota Camry

2. Jeff Vietzke (Vietzke) is a Program Representative II (S) in the Bureau's Fresno Documentation Lab. On June 16, 2009, he began preparing and documenting the Bureau's 1996 Toyota Camry (96 Camry)² for use in an undercover run to Antonys. Vietzke inspected the lamp and brake systems in accordance with appropriate technical sources. He verified that the headlamps were adjusted within specifications and that the brake system was in good and serviceable condition. He adjusted the front headlamps so that they would be out of specifications. Vietzke then removed the right front brake rotor and replaced it with a brake rotor measuring .948 inches in thickness. Discard thickness for this brake rotor is 1.024 inches. The left front brake rotor was within specification at 1.110 inches in thickness. Vietzke then removed the left rear brake drum and machined it to an inside diameter of 231.73 millimeters. Discard diameter for this brake drum is specified as 230.06 millimeters. As a result, the left rear brake drum was out of adjustment and oversized, causing the parking brake to be out of adjustment as well.

3. On July 13, 2009, an undercover Bureau operator (operator) drove the 96 Camry to Antonys, at 1287 N. Blackstone Avenue, #B, Fresno, and requested a brake and

² California license number 4FPY 174.

lamp inspection. When the operator arrived at Antonys, she completed and signed a repair order in the amount of \$65, but was not provided with a copy.

4. Later that day, the operator contacted Antonys and spoke with an employee who told her that the vehicle was ready. The employee told the operator that the vehicle passed the inspections and the total charges were \$61.50. On that same day, the operator returned to Antonys to retrieve the vehicle. The operator was greeted by the same employee from earlier that day. The employee told the operator that the front rotors on the vehicle needed to be replaced before he could certify the brake system. The operator paid the employee \$61.50 and received a copy of Service Order No. 013313. The operator was also provided with lamp adjustment certificate number LC874846.

5. On July 15, 2009, Vietzke re-inspected the vehicle and found that the headlamps had been properly adjusted and were within specifications. The undersized right front brake rotor and the oversized left rear brake drum remained in place. It was clear that Antonys had removed the vehicle's wheels in order to perform the inspection, breaking the tamper indicator seals at each wheel in the process.

6. Service Order No. 013313 showed that Antonys identified the "Needed Repairs" as "Front rotors need replacing" and "Rear left drum out of specification." Antonys identified both front brake rotors as needing replacement when the left front brake rotor was well above the minimum specification and not in need of replacement.

Undercover Operation No. 2: 2001 Ford Focus

7. Irving J. Develbiss (Develbiss) is a Program Representative I in the Bureau's Fresno Documentation Lab. On November 30, 2009, he began preparing and documenting the Bureau's 2001 Ford Focus (01 Focus)³ for use in an undercover run to Antonys. He prepared documentation that the vehicle was to undergo a brake, lamp and smog inspection as a reconstructed vehicle. Develbiss used the appropriate reference sources when inspecting the vehicle and determined that the required emission control systems for the vehicle were present, properly connected and in good working order. He conducted a California Smog Check inspection (smog check inspection), which the vehicle passed.

8. Develbiss removed the vehicle's Malfunction Indicator Lamp (MIL) light bulb. The smog check inspection criteria for a 01 Focus requires that the vehicle have an operational MIL to pass. Develbiss performed another smog check inspection and the vehicle did not pass the MIL functional tests. Develbiss performed another smog check inspection on December 2, 2009, and the vehicle failed the functional portion of the test due to an inoperative MIL.

9. Develbiss also inspected the lamp system in accordance with appropriate reference sources, and found that both headlamps were correctly within specification. He

³ VIN 1 FAFP33P21W319968

adjusted the front headlamps out of proper adjustment, so that the left front headlamp pointed excessively downward by 13 inches and the right front headlamp pointed excessively downward by 14 inches. He placed a tamper indicator on all front headlamp adjusting screws to detect any adjustment efforts.

10. Develbiss inspected the brake system in accordance with appropriate reference sources. The brake system was in good operating condition and met all manufacturer specifications. Develbiss removed both rear brake drums and replaced them with oversized drums (205.79 millimeters in diameter on the driver side rear and 206.50 millimeters in diameter on the passenger side rear brake drum.) Both rear brake drums then exceeded manufacturer allowable specifications for maximum diameter (oversized). Develbiss measured the rear brake linings at 2.27 millimeters above the rivets in thickness. The manufacture's original equipment linings have 5 millimeters of material thickness when new. The minimum lining thickness according to the manufacturer is 1.0 mm above the rivets. Develbiss installed tamper indicator seals on all four wheels to detect their removal, because it is necessary to remove the wheels to inspect and measure the service brake system on the 01 Focus.

11. On February 8, 2010, an operator drove the 01 Focus to Antonys and was greeted by Gastelum. The operator told Gastelum that he needed a brake and lamp inspection and a smog check. Gastelum told the operator that he could perform the inspections and that the vehicle would be ready later that afternoon. The operator told Gastelum that his name was Dave and gave him his telephone number. The operator did not receive a written estimate or sign any documents.

12. Later that same day, Gastelum contacted the operator and stated that the vehicle was ready to be picked up and that the vehicle had passed all the inspections. The operator returned to Antonys to retrieve the vehicle. The operator paid \$100 and received a copy of Service Order No. 017074. The service order section stating "Receipt of a copy of this order is hereby acknowledged" bore the forged signature "Dave." The operator also received Brake Certificate Number BC980477 (issued by Michel), Lamp Certificate Number LC966978 (issued by Michel), and a Smog Check Vehicle Inspection Report (VIR) referencing Smog Check Certificate Number NQ652868 (issued by Gastelum).

13. On February 9, 2010, Develbiss re-inspected the 01 Focus and found that the front headlamps had been adjusted to manufacturer's specifications. However, the MIL light bulb remained missing and none of the four tire and wheel assemblies had been removed for inspection of the brake system. The right and left rear brake drums remained beyond factory specifications for maximum diameter (oversized). A Certificate of Compliance should not have been issued for the 01 Focus if the brake drums, rotors, or brake materials exceed manufacturer's tolerances.

14. Develbiss conducted a smog check inspection on February 9, 2010, and the vehicle failed the functional portion of the smog check inspection due to the inoperative MIL. A smog certificate should not have been issued for the vehicle.

Undercover Operation No. 3: 2005 Ford Focus

15. Michael Frerichs (Frerichs) is a Program Representative I, in the Bureau's Sacramento, Documentation Lab. On April 14, 2010, he began preparing and documenting the Bureau's 2005 Ford Focus (05 Focus)⁴ for use in an undercover run to Antonys. He prepared documentation that the vehicle was to undergo a brake, lamp and smog inspection as a reconstructed vehicle. Frerichs used the appropriate reference sources when inspecting the vehicle and conducted a smog check inspection, which the vehicle passed.

16. Frerichs removed the instrument panel cluster assembly, disassembled the unit and installed a piece of tape on the lens plate to prevent the Check Engine (MIL) icon from illuminating. He reassembled and reinstalled the instrument panel cluster assembly. He performed another smog check inspection. The vehicle failed the functional portion of the test due to the MIL icon not being illuminated.

17. Frerichs adjusted the headlights to create a condition where the left headlight was out of adjustment, as it was too low, and the right headlight was at the correct level.

18. Frerichs inspected the brake system of the 05 Focus. The rotors and disc brake pads were within vehicle manufacturer specifications. He removed the rear brake drums. The brake drum diameters exceeded the vehicle manufacturer discard specification. He machined the left rear and right rear primary brake shoe lining to a thickness less than the vehicle manufacturer discard specification of 0.039, 0.030 on the left and 0.034 on the right. He installed the machined primary brake shoes. As a result, both left and right brake drums and left and right primary brake shoes were not within vehicle manufacturer's specifications and were in need of replacement. Frerichs installed the wheels on the vehicle and placed a tamper indicator on one lug nut of each wheel to detect removal of any of the four wheels. He also placed a tamper indicator on the rear spindle mounting bolt for the left and right rear spindles on the back side of the rear brake shoe backing plates, to detect removal of the rear spindles.

19. The same Bureau operator who had taken the 01 Focus to Antonys took the 05 Focus in on May 17, 2010. The operator spoke with Gastelum and requested a brake, lamp, and smog inspection. Gastelum told an employee, Paco, to scan the vehicle's computer system. Paco scanned the vehicle's computer system and told the operator that he could perform the inspections. The operator and Paco entered the repair facility. Paco asked for the operator's name. The operator told Paco his name was Dave Garcia, which Paco wrote on Service Order No. 019140. The operator did not receive a written estimate or sign any documents.

⁴ California license number 5KMZ749.

20. The operator waited at Antonys until the 05 Focus was ready. He watched Gastelum perform a smog inspection and take the vehicle out for a road test. At approximately 1645 hours., an employee drove the vehicle into the service bay. The operator saw the hood open and saw the employee visually checking the head lamps. The employee did not remove the wheels. Approximately 10 minutes later, the employee drove the vehicle out of the repair facility.

21. The operator was told the vehicle was ready. He paid \$90 and received a copy of Service Order No. 019140. The operator also received Brake Certificate Number BC1035642 (issued by Michel), Lamp Certificate Number LC1021341 (issued by Michel), and a Smog Check VIR referencing Smog Check Certificate Number NU018494 (issued by Gastelum).

22. On June 1, 2010, Frerichs re-inspected the vehicle and found that the MIL was still inoperative, the front headlamps had been adjusted but not to manufacturer's specifications, none of the four tire and wheel assemblies had been removed for inspection of the brake system and the right and left rear brake drums remained beyond factory specifications for maximum diameter (oversized). As a result, the vehicle did not meet the standards required for lamp certificate, a smog check certificate or a brake certificate.

Civil Injunction

23. On February 23, 2011, the District Attorney, County of Fresno, filed a Complaint for Injunction, Civil Penalties and Other Relief alleging that respondents had issued unlawful brake and lamp adjustors certificates and unlawful smog check certificates and had engaged in unlawful business acts and practices. At the same time, the District Attorney filed a Stipulation for Entry of Final Judgment (Stipulation), which had been signed by Gastelum and Michel, individually and doing business as Antonys Smog Check. The Stipulation provided that a Final Judgment and Injunction (Injunction) be entered forthwith without the presentation of any evidence and without trial or adjudication of any issue or law or fact therein. The Injunction ordered that respondents were permanently enjoined from performing improper brake, lamp and smog repairs, inspections and certifications in violation of Business and Professions Code section 9884.7 et seq. and Health and Safety Code section 44000 et seq. The Injunction provides that failure to comply with this provision would result in further civil penalties pursuant to Business and Professions Code section 17207. The Injunction provides that respondents are liable jointly and separately to pay the sum of \$15,000 to Fresno County as agreed civil penalties and restitution.

24. The copy of the Injunction submitted in evidence was not signed by the court or stamped with a court filing stamp. However, at hearing, respondents admitted there had been an injunction issued against them. The evidence is also clear that respondents signed the Stipulation, which included a copy of the Injunction and incorporated it by reference.

Undercover Operation No. 4: 2000 Pontiac Trans-Am

25. After the Injunction was in place, on August 8, 2011, Develbiss began inspection and documentation of the Bureau's 2000 Pontiac Trans-Am⁵ for an undercover run to Antonys. He prepared documentation that the vehicle was to undergo a brake, lamp and smog inspection as a reconstructed vehicle. Develbliss used the appropriate reference sources when inspecting the vehicle and conducted a smog check inspection, which the vehicle passed.

26. Develbliss removed both right side disc brake rotors and replaced them with undersized disc brake rotors. Both of these rotors measured less than the rotor discard specification stamped onto the rotors themselves. The vehicle would not pass a brake inspection without replacing the rotors. Develbliss marked the undersized rotors with BAR marks. He installed tamper indicators on all four wheels to detect their removal. Removal of the wheels was necessary to inspect and measure the service brake system on this vehicle.

27. Develbliss adjusted the front headlamps out of proper adjustments. The left front headlamp pointed excessively downwards by 24 inches. The right front headlamp pointed excessively downward by 25 inches. He placed a tamper indicator on all front headlamp adjusting screws to detect any adjustment efforts.

28. Develbliss removed the air injection system (AIR) exhaust tubes and check valves from both sides of the engine, so that the vehicle would not pass the visual inspection of the smog check inspection. He performed a smog check inspection and the vehicle failed the visual portion of the test due to the missing AIR components.

29. On August 26, 2011, an operator drove the 2000 Trans-Am to Antonys and requested a brake, lamp, and smog inspection. The operator arrived at Antonys and was greeted by Gastelum. The operator told Gastelum that she needed a brake, lamp, and smog inspection. Gastelum prepared a repair order, but did not provide the operator with a copy or have her sign it. A short time later, the vehicle was ready. The operator paid \$90 and received a copy of Service Order No. 027607, Lamp Adjustment Certificate No. LC1302937 (issued by Michel), and a Smog Check VIR referencing Smog Check Certificate Number WX943612 (issued by Gastelum).

30. On August 29, 2011, Develbliss re-inspected the vehicle. The headlamps were within vehicle manufacturer specifications and tamper indicators on the front headlamp adjustment were broken, indicating adjustments were made. He inspecting the tamper indicators on the wheels and found that all four wheel removal tamper indicators were broken and the wheels had been removed. Develbliss removed all tire and wheel assemblies and both passenger side disc brake rotors. He determined that both of the right side disc brake rotors were the same undersized rotors he had marked with BAR marks. The rotors had not been replaced. A brake certificated should not have been issued due to the

⁵ VIN 2G2FV22GOY2115519

undersized rotors. The vehicle's AIR system components were missing and a smog certificate should not have been issued.

31. The August 29, 2011, re-inspection demonstrated that despite the issuance of the Injunction in February 2011, respondents continued to perform improper brake and smog repairs, inspections and certifications.

Respondents' Defenses and Factors in Aggravation, Mitigation and Rehabilitation

32. In order to determine whether and to what extent it is appropriate to discipline respondents' licenses, it is necessary to weigh and balance respondents' conduct in light of any factors in aggravation and mitigation. (California Code of Regulations, title 16, section 3395.4.) Complainant introduced evidence designed to show aggravation: respondents' repeated violations and continuing violations despite the Injunction.

33. Respondents argued that they had been operating their business for four years and the Bureau did not approach them until 2009. They "did not find out they were doing anything wrong" until they received the injunction and the \$15,000 fine. They feel it is unfair that the Bureau waited so long to advise them that they were doing something wrong and to give them advice on how to correct their problems. It was never their intention to do anything wrong. They paid the citation and were trying to improve themselves and they wish BAR representatives would have communicated better with them. The BAR had told them they were processing too many cars and they told the BAR that they double check two to three times on the inspections. Further, Michel testified that he discovered that his equipment was using low-voltage batteries and giving him the wrong readings and he has changed this and will now get the right readings. Now, he always takes off the wheels and measures two to three times to make sure he is getting the right brake readings.

34. Gastelum testified that he now proactively "almost flips the vehicle upside down" when doing an inspection. He never intended to pass inspections for vehicles that did not warrant passage. When the 2000 Grand Am was driven in, he did a visual inspection but does not know how he bypassed the valves. He had no intention of putting a dirty vehicle on the street. Now, no cars are touched without giving an estimate to the customer and he and Michel are doing all of the brake and lamp inspections.

35. Respondents also testified that other stations have gotten only citations when they failed to notice that vehicles were missing valves or PVCs. They know of another station which had a non-technician working on vehicles and the station got only a citation. They never passed a gross polluting vehicle or took money to pass a vehicle. They "just miss stuff once in a while" as a "human error." There is "no intention to fail or pass or get more money out of the person." Respondents claim they have "not done any disaster to the environment" and they have only made "mistakes" similar to clerical errors. They maintain that all employees are now better trained in the regulations for issuing estimates and that they now do most of the "paperwork" themselves. They also point out they have placed a lot of time and money in their investment and careers, and only four cars in two years have been

problematic. They are willing to pay citations and “do the right things now.” Respondents’ arguments for mitigation and rehabilitation were not persuasive. Respondents repeatedly failed to perform proper inspections, repeatedly failed to issue appropriate paperwork, repeatedly issued brake certificates and smog certificates for vehicles which did not meet standards and collected monies from customers after representing that the inspections were done properly.

36. Complainant points out that respondents have “no recognition of their responsibility in this matter.” This was evident at hearing. Complainant correctly maintained that respondent’s references to other stations and their citations were irrelevant. Complainant argued that respondents have allowed vehicles to pass smog inspections and brake and light inspections which jeopardize the environment as well as the safety of the drivers and other persons on the road. In fact, they performed so little of their duties that they did not remove assemblies or wheels, which are conditions precedent to a proper inspection of brakes. Complainant was persuasive. Respondents have repeatedly demonstrated that they are unwilling or unable to perform the duties of their licenses and registrations.

Costs of Investigation and Prosecution

37. Complainant established that the reasonable costs of the Attorney General in prosecution of this matter were \$9,280. The Bureau produced a Certification of Investigative Costs in the amount of \$45,217.41, consisting of “investigator costs,” “vehicle preparation costs” and “undercover vehicle operator and evidence costs.” The undercover vehicle operator costs of \$641.50 were reasonable.

38. The “Investigator Costs” comprised 348 hours of work at varying rates for a total of \$24,672.65. These costs were broken down by fiscal year and by Program Representative I, II and II. However, there was no itemization or other indicia of how or why these costs were billed. There were no employee names, dates of activity, time spent on activity, or types of activity indicated. There was no testimony at hearing or by declaration as to what activities the Program Representatives were engaged in that consumed 348 hours (8.7- 40 hour work weeks). After hearing the testimony of the representatives and after reviewing their declarations, it is clear that much work was done in inspecting, testing and documenting the four vehicles at issue herein and preparing reports. However, there is another section of the Bureau’s declaration of cost which shows Bureau representatives spent 279 hours (6.97-40 hour work weeks) in “Vehicle Preparation Costs” for a sum of \$19,903.26.

39. On its face, the Bureau’s declaration is wholly inadequate to identify the basis for the request for costs. On its face, the Bureau’s declaration appears to seek costs in excess of reasonable expenditures for the scope of work performed. Moreover, the summary nature of the Bureau’s declaration bars the respondents from challenging the total expenditures. For example, respondents cannot know from the Bureau declaration whether the Bureau conducted additional undercover runs which were not successful, and included the costs of

these investigations in the summary of costs. Additional runs could explain why it took almost seven full-time weeks to inspect, document and introduce defects into "four" vehicles and 8.7 full time weeks to conduct other undefined activities relating to "four" vehicles. Further, respondents cannot know from the summary nature of the declaration whether any particular expenditure can be challenged. For example, the program representatives spent an unknown amount of time introducing defects to the headlamps of the four undercover vehicles, and respondents failed to identify and correct the defect fully on only one of these vehicles. Likewise, the program representatives spent an unknown amount of time documenting and introducing a defect into the rear left drum of the 96 Camry. Respondents properly detected the defect and advised the operator that the rear left drum was out of specification. It is fundamental fairness that the target of an investigation not bear the costs of portions of an investigation that exonerate him/her. There is no evidence that the hours spent introducing and documenting these defects were "backed out" of the summary hours.

40. In conclusion, complainant failed to establish the reasonable costs of the investigation of the case above \$641.50.

41. Complainant did establish that the costs of enforcement/prosecution were reasonable. The scope of the prosecution was appropriate to the alleged misconduct. As set forth in the Legal Conclusions below, the charges were sustained and respondents' licenses are revoked.

42. At hearing, the parties were advised that the Administrative Law Judge would take evidence relating to the factors set forth in *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32. The parties were advised that these factors would be considered in determining the reasonableness of costs. These factors include; whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

43. Respondents testified that they could not pay costs if their licenses were revoked. They pointed out that they owe payments of \$1,000 per month to Fresno County pursuant to the settlement and injunction.

LEGAL CONCLUSIONS

Authority to Discipline License/Registration

1. Section 9884.7 of the Business and Professions Code (Code) states, in pertinent part:

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

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

[¶]...[¶]

(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.

(4) Any other conduct which constitutes fraud.

(5) Conduct constituting gross negligence.

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

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

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only suspend, revoke, or place on probation the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to

operate his or her other places of business.

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.⁶

2. Section 9889.3 of the Code states, in pertinent part:

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

(a) Violates any section of the Business and Professions Code that relates to his or her licensed activities.

[¶]...[¶]

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

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

[¶]...[¶]

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

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

4. Health and Safety Code, section 44072.2, provides, in pertinent part:

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

⁶ Additionally, Health and Safety Code section 44072.8 and Business and Professions Code section 9889.9 provide that if any of a licensee's licenses are revoked or suspended, any additional licenses issued to that licensee may be revoked or suspended.

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

[¶]...[¶]

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

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

5. Section 9889.16 of the Code states:

Whenever a licensed adjuster in a licensed station upon an inspection or after an adjustment, made in conformity with the instructions of the bureau, determines that the lamps or the brakes upon any vehicle conform with the requirements of the Vehicle Code, he shall, when requested by the owner or driver of the vehicle, issue a certificate of adjustment on a form prescribed by the director, which certificate shall contain the date of issuance, the make and registration number of the vehicle, the name of the owner of the vehicle, and the official license of the station.

6. Section 9884.9 of the Code states:

(a) 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 when 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 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.

7. California Code of Regulations (CCR) title 16, section 3305 provides:

(a) All adjusting, inspecting, servicing, and repairing of brake systems and lamp systems for the purpose of issuing any certificate of compliance or adjustment shall be performed in official stations, by official adjusters, in accordance with the following, in descending order of precedence, as applicable:

(1) Vehicle Manufacturers' current standards, specifications and recommended procedures, as published in the manufacturers' vehicle service and repair manuals.

(2) Current standards, specifications, procedures, directives, manuals, bulletins and instructions issued by vehicle and equipment or device manufacturers.

(3) Standards, specifications and recommended procedures found in current industry-standard reference manuals and periodicals published by nationally recognized repair information providers.

(4) The bureau's Handbook for Brake Adjusters and Stations, February 2003, which is hereby incorporated by reference.

(5) The bureau's Handbook for Lamp Adjusters and Stations,

February 2003, which is hereby incorporated by reference.

(b) The specific activities for which an official station is licensed shall be performed only in an area of the station that has been approved by the bureau. Other work may be performed in the approved area, as desired. The work area shall be within a building and shall be large enough to accommodate the motor vehicle being serviced. The bureau may make an exception to the preceding requirement by approving a work area adjacent to a building for purposes of inspecting and adjusting equipment and devices on buses, trucks, truck tractors, trailers, and semitrailers. The work area shall be kept clean and orderly.

(c) The services of an officially licensed adjuster appropriate to each type and class of station license held shall be available at each official station, except a fleet owner station, not less than 40 hours weekly or not less than half of the hours the station is open for business weekly, whichever is less. Fleet owner stations are required to provide the services of a licensed adjuster only for certification procedures.

8. CCR, title 16, section 3321 provides in pertinent part:

The operation of official brake adjusting stations shall be subject to the following provisions:

[¶]...[¶]

(c) Effective April 1, 1999, licensed stations shall purchase certificates of adjustment from the bureau for a fee of three dollars and fifty cents (\$3.50) and shall not purchase or otherwise obtain such certificates from any other source. A licensed station shall not sell or otherwise transfer unused certificates of adjustment. Full payment is required at the time certificates are ordered. Certificates are not exchangeable following delivery. Issuance of a brake adjustment certificate shall be in accordance with the following provisions:

(1) When a brake adjustment certificate is issued to an applicant for an authorized emergency vehicle permit, the certificate shall certify that the vehicle has been road-tested and that the entire braking system meets all requirements of the Vehicle Code and bureau regulations.

(2) Where the entire brake system on any vehicle has been

inspected or tested and found to be in compliance with all requirements of the Vehicle Code and bureau regulations, and the vehicle has been road-tested, the certificate shall certify that the entire system meets all such requirements.

¶...¶

(d) After correcting specified defects, official brake adjusters shall certify that defects indicated on citations or other enforcement forms have been corrected.

(1) The adjuster shall inform the customer of any other defective conditions present or likely to occur in the future, which have come to the adjuster's attention in conjunction with inspection of the vehicle and correction of specified defects. The adjuster shall inform the customer of the percentage of braking material left on pads/shoes, as appropriate.

(2) If the customer does not authorize additional repairs to correct other defects found during the inspection, the adjuster shall certify that only the specific defects listed on the enforcement form have been corrected.

(3) Only a licensed adjuster employed at an official adjusting station may sign an enforcement form as an official adjuster. The adjuster's license number, the license class, and the official station license number shall be included with the signature.

(4) Certification by a licensed adjuster on an enforcement form that a violation has been corrected shall include the date of correction, the station's and the adjuster's license numbers, and the adjuster's signature.

9. The expiration or surrender of a license or registration does not deprive the director of authority to take disciplinary action.⁷

⁷ Section 9889.7 of the Code states:

The expiration or suspension of a license by operation of law or by order or decision of the director or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the director of jurisdiction to proceed with any investigation of or action or disciplinary proceedings against such

10. Section 9889.9 of the Code states:

When any license has been revoked or suspended following a hearing under the provisions of this article, any additional license issued under Articles 5 and 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the director.

Section 44072.8 of the Health and Safety Code states:

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

First Cause for Discipline

11. As set forth in Findings 2 through 6, respondent Antonys' registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(1), in that on July 13, 2009, respondent made and authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, in that respondent falsely represented to the operator on Service Order No. 013313 that both front rotors needed to be replaced when the left front rotor of a 1996 Toyota Camry was well above the minimum specifications and did not need to be replaced.

Second Cause for Discipline

12. As set forth in Findings 2 through 6, respondent Antonys' registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(6), in that on July 13, 2009, regarding the 1996 Toyota Camry, respondent failed to comply with provisions of CCR, title 16, in the following material respects:

- a. Section 3305, subdivision (a): Respondent failed to perform a proper brake inspection in accordance with the vehicle's manufacturer standards

licensee, or to render a decision suspending or revoking such license.

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

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

and/or current standards, specifications, recommended procedures, and directives issued by the Bureau, in that respondent identified both front brake rotors as needing replacement when the left front brake rotor was well above the minimum specification and not in need of replacement.

b. Section 3321, subdivision (c)(2): Respondent failed to inspect the entire brake system in accordance with all Bureau regulations, in that respondent identified both front brake rotors as needing replacement when the left front brake rotor was well above the minimum specifications and not in need of replacement.

Third Cause for Discipline

13. As set forth in Findings 2 through 6, respondent Antonys' registration is subject to discipline under Code section 9884.7, subdivision (a)(3), in that on July 13, 2009, regarding the 1996 Toyota Camry, respondent failed to provide the operator with a copy of Service Order No. 013313, as soon as the operator signed the document.

Fourth Cause for Discipline

14. As set forth in Findings 2 through 6, respondent Antonys' brake and lamp station licenses are subject to discipline under Code section 9889.3, subdivision (a), in that respondent violated sections of the Code relating to its licensed activities, as set forth in Legal Conclusion 11.

Fifth Cause for Discipline

15. As set forth in Findings 2 through 6, respondent Antonys' brake and lamp station licenses are subject to discipline under Code section 9889.3, subdivision (c), in that on July 13, 2009, regarding the 1996 Toyota Camry, respondent failed to comply with provisions of CCR, title 16, as set forth in Legal Conclusion 12.

Sixth Cause for Discipline

16. As set forth in Findings 7 through 14, respondent Antonys' registration is subject to discipline under Code section 9884.7, subdivision (a)(1), in that on February 8, 2010, regarding the 2001 Ford Focus, respondent made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

- a. Respondent issued electronic Certificate of Compliance No. NQ652868, certifying that the vehicle was in compliance with applicable laws and regulations, when it could not have passed the smog inspection because the vehicle's MIL light bulb was missing.
- b. Respondent certified under penalty of perjury on Brake Certificate

Number BC980477 that the applicable inspection was performed on the brake system when respondent's technician, Michel, failed to inspect the brake system on the vehicle, as evidenced by his failure to remove any of the four wheels.

c. Respondent certified under penalty of perjury on Brake Certificate Number BC980477 that the left and right rear brake drums were in satisfactory condition when the rear brake drums were beyond factory specifications for maximum diameter (oversized).

Seventh Cause for Discipline

17. As set forth in Findings 7 through 14, respondent Antonys' registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(4), in that on February 8, 2010, regarding the 2001 Ford Focus, respondent committed acts that constitute fraud, as follows:

a. Respondent issued electronic Certificate of Compliance No. NQ652868 without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

b. Respondent obtained payment from the operator for performing the applicable inspections on the vehicle's brake system as specified by the Bureau and in accordance with the Vehicle Code, when respondent failed to perform the necessary inspections.

Eighth Cause for Discipline

18. As set forth in Findings 7 through 14, respondent Antonys' registration is subject to discipline under Code section 9884.7, subdivision (a)(5), in that on February 8, 2010, regarding the 2001 Ford Focus, respondent committed acts constituting gross negligence, in that respondent's technician, Michel, failed to properly inspect the brake system and issued Brake Certificate BC 980477, indicating that the vehicle's brakes were in satisfactory condition and were in accordance with the Vehicle Code when they were not.

Ninth Cause for Discipline

19. As set forth in Findings 7 through 14, respondent Antonys' registration is subject to discipline under Code section 9884.7, subdivision (a)(7), in that respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative in a material respect, as follows:

a. Respondent's technician, respondent Michel, failed to properly inspect the vehicle's brake system and issued Brake Certificate BC 980477, indicating that the vehicle's brakes were in satisfactory condition and in accordance with

the Vehicle Code when they were not.

- b. Respondent's technician, respondent Gastelum, failed to perform the smog inspection properly and issued Smog Certificate Number NQ652868. The vehicle's MIL was missing, rendering the vehicle incapable of passing the functional portion of the smog inspection.

Tenth Cause for Discipline

20. As set forth in Findings 7 through 14, respondent Antonys' registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(6), in that on February 8, 2010, regarding the 2001 Ford Focus, respondent failed to comply with provisions of that Code in the following material respects:

- a. Section 9884.9(a): Respondent failed to provide the operator with a written estimated price for parts and labor for a specific job.
- b. Section 9889.16: Respondent issued Brake Certificate Number BC980477 for the vehicle, when the vehicle was not in compliance with Bureau regulations or the requirements of the Vehicle Code, in that the left and right rear brake drums were oversized.

Eleventh Cause for Discipline

21. As set forth in Findings 7 through 14, respondent Antonys' registration is subject to discipline pursuant to Code section 9884.7, subdivision (a)(6), in that on February 8, 2010, regarding the 2001 Ford Focus, respondent failed to comply with provisions of CCR, title 16, in the following material respects:

- a. Section 3305(a): Respondent failed to perform a brake inspection in accordance with the vehicle's manufacturer standards and/or current standards, specifications, recommended procedures, and/or directives issued by the Bureau.
- b. Section 3321(c)(2): Respondent issued Brake Certificate Number BC980477, certifying that the vehicle's brakes had been inspected and were in satisfactory condition when they were not.

Twelfth Cause for Discipline

22. As set forth in Findings 7 through 14, respondent Antonys' brake and lamp station licenses are subject to discipline under Code section 9889.3 subdivision (a), in that on February 8, 2010, regarding the 2001 Ford Focus, respondent violated sections of the Code, relating to its licensed activities.

Thirteenth Cause for Discipline

23. As set forth in Findings 7 through 14, respondent Antonys' brake and lamp station licenses are subject to discipline under Code section 9889.3, subdivision (c), in that on February 8, 2010, regarding the 2001 Ford Focus, respondent failed to comply with provisions of CCR, title 16, as set forth above in Legal Conclusion 21.

Fourteenth Cause for Discipline

24. As set forth in Findings 7 through 14, respondent Antonys' brake and lamp station licenses are subject to discipline under Code section 9889.3, subdivision (d), in that respondent committed acts involving dishonesty, fraud, or deceit whereby another was injured, as set forth above in Legal Conclusion 17.

Fifteenth Cause for Discipline

25. As set forth in Findings 7 through 14, respondent Michel's brake adjuster license is subject to discipline under Code section 9889.3, subdivision (a), in that on February 8, 2010, regarding the 2001 Ford Focus, respondent violated sections of the Code, relating to his licensed activities, as set forth above in Legal Conclusion 20.a.

Sixteenth Cause for Discipline

26. As set forth in Findings 7 through 14, respondent Michel's brake adjuster license is subject to discipline under Code section 9889.3, subdivision (c), in that on February 8, 2010, regarding the 2001 Ford Focus, respondent failed to comply with provisions of CCR, title 16, as set forth above in Legal Conclusion 20.

Seventeenth Cause for Discipline

27. As set forth in Findings 7 through 14, respondent Michel's brake adjuster license is subject to discipline under Code section 9889.3, subdivision (d), in that on February 8, 2010, regarding the 2001 Ford Focus, respondent committed acts involving dishonesty, fraud, or deceit, by issuing Brake Certificate Number BC 980477, certifying that the brake system was in satisfactory condition and in accordance with the Vehicle Code, when it was not.

Eighteenth Cause for Discipline

28. As set forth in Findings 7 through 14, respondent Antonys' smog check station license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (a), in that regarding the 2001 Ford Focus, respondent failed to comply with the following sections of that Code:

- a. Section 44012: Respondent failed to perform the emission control tests on the vehicle in accordance with procedures prescribed by the department.

- b. Section 44015: Respondent issued electronic smog Certificate of Compliance Number NQ652868 for the vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with Health and Safety Code section 44012.

Nineteenth Cause for Discipline

29. As set forth in Findings 7 through 14, respondent Antonys' smog check station license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (c), in that respondent failed to comply with the provisions of CCR, title 16, as follows:

- a. Section 3340.24(c): Respondent falsely or fraudulently issued electronic smog Certificate of Compliance Number NQ652868, in that the vehicle could not have passed the smog inspection because the vehicle's MIL light bulb was missing.
- b. Section 3340.35(c): Respondent issued electronic smog Certificate of Compliance Number NQ652868 for the vehicle even though the vehicle had not been inspected in accordance with California Code of Regulations, title 16, section 3340.42.
- c. Section 3340.42: Respondent failed to conduct the required smog tests on the vehicle in accordance with the Bureau's specifications.

Twentieth Cause for Discipline

30. As set forth in Findings 7 through 14, respondent Antonys' smog check station license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on February 8, 2010, respondent committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing electronic smog Certificate of Compliance Number NQ652868 for the 2001 Ford Focus without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Twenty-First Cause for Discipline

31. As set forth in Findings 7 through 14, respondent Gastelum's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on February 8, 2010, regarding the 2001 Ford Focus, respondent Gastelum failed to comply with the following sections of that Code:

- a. Section 44012: Respondent Gastelum failed to perform the emission control tests on the vehicle in accordance with procedures prescribed by the department.

- b. Section 44032: Respondent Gastelum failed to perform a test of the emission control devices and systems on the vehicle in accordance with Health and Safety Code section 44012.

Twenty-Second Cause for Discipline

32. As set forth in Findings 7 through 14, respondent Gastelum's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on February 8, 2010, regarding the 2001 Ford Focus, he failed to comply with provisions of CCR, title 16, as follows:

- a. Section 3340.24(c): Respondent Gastelum falsely or fraudulently issued electronic smog Certificate of Compliance Number NQ652868, in that the vehicle could not have passed the smog inspection because the vehicle's MIL light bulb was missing.
- b. Section 3340.30(a): Respondent Gastelum failed to inspect and test the vehicle in accordance with Health and Safety Code section 44012.
- c. Section 3340.42: Respondent Gastelum failed to conduct the required smog tests and inspections on the vehicle in accordance with the Bureau's specifications.

Twenty-Third Cause for Discipline

33. As set forth in Findings 7 through 14, respondent Gastelum's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on February 8, 2010, respondent Gastelum committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing electronic smog Certificate of Compliance Number NQ652868 for the 2001 Ford Focus without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Twenty-Fourth Cause for Discipline

34. As set forth in Findings 15 through 22, respondent Antonys' registration is subject to discipline under Code section 9884.7, subdivision (a)(1), in that on May 17, 2010, regarding the 2005 Ford Focus, respondent made and authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

- a. Respondent issued electronic Certificate of Compliance No. NU018494, certifying that the vehicle was in compliance with applicable laws and regulations, when it could not have passed the functional portion of the smog inspection because the vehicle's MIL was inoperative.

b. Respondent certified under penalty of perjury on Brake Certificate Number BC1035642 that the applicable inspection was performed on the brake system, when Respondent's technician, Respondent Michel, failed to inspect the brake system on the vehicle.

c. Respondent certified under penalty of perjury on Brake Certificate Number BC1035642 that the left and right rear brake drums were in satisfactory condition, when the rear brake drums were beyond factory specifications for maximum diameter (oversized).

d. Respondent certified under penalty of perjury on Lamp Certificate Number LC1021341 that the applicable adjustments had been performed on the lamp system when both headlamps were out of adjustment.

Twenty-Fifth Cause for Discipline

35. As set forth in Findings 15 through 22, respondent Antonys' registration is subject to discipline under Code section 9884.7, subdivision (a)(4), in that on May 17, 2010, regarding the 2005 Ford Focus, respondent committed acts that constitute fraud, as follows:

a. Respondent issued electronic Certificate of Compliance No. NU018494 without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

b. Respondent obtained payment from the operator for performing the applicable inspections on the vehicle's brake system as specified by the Bureau and in accordance with the Vehicle Code when respondent failed to perform the necessary inspections.

Twenty-Sixth Cause for Discipline

36. As set forth in Findings 15 through 22, respondent Antonys' registration is subject to discipline under Code section 9884.7, subdivision (a)(5), in that on May 17, 2010, regarding the 2005 Ford Focus, respondent committed acts constituting gross negligence, in the following respects:

a. Respondent's technician, respondent Michel, failed to properly inspect the brake system and issued Brake Certificate BC 1035642, indicating that the vehicle's brakes were in satisfactory condition and were in accordance with the Vehicle Code when they were not.

b. Respondent's technician, respondent Michel, failed to properly inspect the lamp system and issued Lamp Certificate LC 1021341, indicating that the vehicle's lamps were in satisfactory condition and were in accordance with the Vehicle Code when they were not.

Twenty-Seventh Cause for Discipline

37. As set forth in Findings 15 through 22, respondent Antonys' registration is subject to discipline under Code section 9884.7, subdivision (a)(7), in that respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative in a material respect, as follows:

- a. Respondent's technician, Michel, failed to properly inspect the vehicle's brake system and issued Brake Certificate BC 1035642, indicating that the vehicle's brakes were in satisfactory condition and in accordance with the Vehicle Code when they were not.
- b. Respondent's technician, Michel, failed to properly inspect and adjust the lamp system on the vehicle and issued Lamp Certificate LC 1021341, indicating that the vehicle's lamp system was in satisfactory condition and in accordance with the Vehicle Code when they were not.
- c. Respondent's technician, Gastelum, failed to perform the smog inspection properly and issued Smog Certificate Number NU018494. The vehicle's MIL was inoperative, rendering the vehicle incapable of passing the functional portion of the smog inspection.

Twenty-Eighth Cause for Discipline

38. As set forth in Findings 15 through 22, respondent Antonys' registration is subject to discipline under Code section 9884.7, subdivision (a)(6), in that on May 17, 2010, regarding the 2005 Ford Focus, respondent failed to comply with provisions of that Code in the following material respects:

- a. Section 9884.9(a):
 - i. Respondent failed to provide the operator with a written estimated price for parts and labor for a specific job.
 - ii. Respondent failed to obtain the operator's authorization to perform work.
- b. Section 9889.16: Respondent issued Brake Certificate Number BC1035642 and Lamp Certificate Number LC1021341 for the vehicle, when the vehicle was not in compliance with Bureau regulations or the requirements of the Vehicle Code.

Twenty-Ninth Cause for Discipline

39. As set forth in Findings 15 through 22, respondent Antonys' registration is subject to discipline under Code section 9884.7, subdivision (a)(6), in that on May 17, 2010,

regarding the 2005 Ford Focus, respondent failed to comply with provisions of CCR, title 16, in the following material respects:

- a. Section 3305(a): Respondent failed to perform a brake and lamp inspection in accordance with the vehicle's manufacturer standards and/or current standards, specifications, recommended procedures, and/or directives issued by the Bureau.
- b. Section 3316(d)(2): Respondent issued Lamp Certificate Number LC1021341, certifying that the vehicle's lamps had been inspected and were in satisfactory condition when they were not.
- c. Section 3321(c)(2): Respondent issued Brake Certificate Number BC1035642, certifying that the vehicle's brakes had been inspected and were in satisfactory condition when they were not.

Thirtieth Cause for Discipline

40. As set forth in Findings 15 through 22, respondent Antonys' brake and lamp station licenses are subject to discipline under Code section, 9889.3, subdivision (a), in that on May 17, 2010, regarding the 2005 Ford Focus, respondent violated sections of the Code, relating to its licensed activities, as set forth in Legal Conclusions 34 through 39.

Thirty-First Cause for Discipline

41. As set forth in Findings 15 through 22, respondent Antonys' brake and lamp station licenses are subject to discipline under Code section, 9889.3 subdivision (c), in that on May 17, 2010, regarding the 2005 Ford Focus, respondent failed to comply with provisions of CCR, title 16, as set forth in Legal Conclusion 39.

Thirty-Second Cause for Discipline

42. As set forth in Findings 15 through 22, respondent Antonys' brake and lamp station licenses are subject to discipline under Code section, 9889.3 subdivision (d), in that respondent committed acts involving dishonesty, fraud, or deceit whereby another was injured, as set forth in Legal Conclusion 35.

Thirty-Third Cause for Discipline

43. As set forth in Findings 15 through 22, respondent Michel's brake and lamp adjuster licenses are subject to discipline under Code section 9889.3, subdivision (a), in that on May 17, 2010, regarding the 2005 Ford Focus, respondent violated sections of the Code, relating to its licensed activities, as set forth in Legal Conclusions 34 through 39.

Thirty-Fourth Cause for Discipline

44. As set forth in Findings 15 through 22, respondent Michel's brake and lamp

adjuster licenses are subject to discipline under Code section 9889.3, subdivision (e), in that on May 17, 2010, regarding the 2005 Ford Focus, respondent failed to comply with provisions of CCR, title 16, as set forth in Legal Conclusion 39.

Thirty-Fifth Cause for Discipline

45. As set forth in Findings 15 through 22, respondent Michel's brake and lamp adjuster licenses are subject to discipline under Code section 9889.3, subdivision (d), in that on May 17, 2010, regarding the 2005 Ford Focus, he committed acts involving dishonesty, fraud, or deceit, by issuing Brake Certificate Number BC 1035642 and Lamp Certificate Number LC 1021341, certifying that the brake and lamp systems were in satisfactory condition and were in accordance with the Vehicle Code, when they were not.

Thirty-Sixth Cause for Discipline

46. As set forth in Findings 15 through 22, respondent Antonys' smog check station license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (a), in that regarding the 2005 Ford Focus, respondent failed to comply with the following sections of that Code:

- a. Section 44012: Respondent failed to perform the emission control tests on the vehicle in accordance with procedures prescribed by the department.
- b. Section 44015: Respondent issued electronic smog Certificate of Compliance Number NU018494 for the vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with Health and Safety Code section 44012.

Thirty-Seventh Cause for Discipline

47. As set forth in Findings 15 through 22, respondent Antonys' smog check station license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (c), in that respondent failed to comply with the provisions of CCR, title 16, as follows:

- a. Section 3340.24(c): Respondent falsely or fraudulently issued electronic smog Certificate of Compliance Number NU018494, in that the vehicle could not have passed the functional portion of the smog inspection because the vehicle's MIL was inoperative.
- b. Section 3340.35(c): Respondent issued electronic smog Certificate of Compliance Number NU018494 for the vehicle even though the vehicle had not been inspected in accordance with CCR, title 16, section 3340.42.
- c. Section 3340.42: Respondent failed to conduct the required smog tests on the vehicle in accordance with the Bureau's specifications.

Thirty-Eighth Cause for Discipline

48. As set forth in Findings 15 through 22, respondent Antonys' smog check station license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on May 17, 2010, respondent committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing electronic smog Certificate of Compliance Number NU018494 for the 2005 Ford Focus without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Thirty-Ninth Cause for Discipline

49. As set forth in Findings 15 through 22, respondent Gastelum's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on May 17, 2010, regarding the 2005 Ford Focus, Gastelum failed to comply with the following sections of that Code:

- a. Section 44012: Respondent Gastelum failed to perform the emission control tests on the vehicle in accordance with procedures prescribed by the department.
- b. Section 44032: Respondent Gastelum failed to perform a test of the emission control devices and systems on the vehicle in accordance with Health and Safety Code section 44012.

Fortieth Cause for Discipline

50. As set forth in Findings 15 through 22, respondent Gastelum's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on May 17, 2010, regarding the 2005 Ford Focus, he failed to comply with provisions of CCR, title 16, as follows:

- a. Section 3340.24(c): Respondent Gastelum falsely or fraudulently issued electronic smog Certificate of Compliance Number NU018494, in that the vehicle could not have passed the functional portion of the smog inspection because the vehicle's MIL was inoperative.
- b. Section 3340.30(a): Respondent Gastelum failed to inspect and test the vehicle in accordance with Health and Safety Code section 44012.
- c. Section 3340.42: Respondent Gastelum failed to conduct the required smogtests and inspections on the vehicle in accordance with the Bureau's specifications.

Forty-First Cause for Discipline

51. As set forth in Findings 15 through 22, respondent Gastelum's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on May 17, 2010, Gastelum committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing electronic smog Certificate of Compliance Number NU018494 for the 2005 Ford Focus without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Forty-Second Cause for Discipline

52. As set forth in Findings 15 through 22, respondent Michel's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on May 17, 2010, Michel committed dishonest, fraudulent, or deceitful acts whereby another was injured, as set forth above Legal Conclusion 35.

Forty-Third Cause for Discipline

53. As set forth in Findings 25 through 31, respondent Antonys' registration is subject to discipline under Code section 9884.7, subdivision (a)(1), in that on August 26, 2011, regarding the 2000 Pontiac Trans-Am, respondent made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, in that respondent issued electronic smog Certificate of Compliance No. WX943612, certifying that the vehicle was in compliance with applicable laws and regulations, when it could not have passed the visual portion of the smog inspection because the vehicle's AIR system was missing components.

Forty-Fourth Cause for Discipline

54. As set forth in Findings 25 through 31, respondent Antonys' registration is subject to discipline under Code section 9884.7, subdivision (a)(4), in that on August 26, 2011, regarding the 2000 Pontiac Trans-Am, respondent committed acts that constitute fraud by issuing electronic smog Certificate of Compliance No. WX943612 without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Forty-Fifth Cause for Discipline

55. As set forth in Findings 25 through 31, respondent Antonys' registration is subject to discipline under Code section 9884.7, subdivision (a)(7), in that on August 26, 2011, regarding the 2000 Pontiac Trans-Am, respondent willfully departed from or disregarded accepted trade standards for good and workmanlike repair without the consent of the owner or the owner's duly authorized representative in a material respect, in that

respondent's technician, Gastelum, failed to perform the smog inspection properly and issued electronic smog Certificate of Compliance No. WX943612. The vehicle's AIR system was missing components, rendering the vehicle incapable of passing the visual portion of the smog inspection.

Forty-Sixth Cause for Discipline

56. As set forth in Findings 25 through 31, respondent Antonys' registration is subject to discipline under Code section 9884.7, subdivision (a)(6), in that on August 26, 2011, regarding the 2000 Pontiac Trans-Am, respondent failed to comply with provisions of that Code in the following material respects:

- a. Section 9884.9(a): Respondent failed to provide the operator with a written estimated price for parts and labor for a specific job.
- ii. Respondent failed to obtain the operator's authorization to perform work.

Forty-Seventh Cause for Discipline

57. As set forth in Findings 25 through 31, respondent Antonys' brake and lamp station licenses are subject to discipline under Code section 9889.3, subdivision (a), in that on August 26, 2011, regarding the 2000 Pontiac Trans-Am, respondent violated sections of the Code, relating to its licensed activities, as set forth in Legal Conclusions 53, 54 and 56.

Forty-Eighth Cause for Discipline

58. As set forth in Findings 25 through 31, respondent Antonys' brake and lamp station licenses are subject to discipline under Code section 9889.3, subdivision (d), in that on August 26, 2011, regarding the 2000 Pontiac Trans-Am, respondent committed acts involving dishonesty, fraud, or deceit whereby another was injured, as set forth in Legal Conclusion 54.

Forty-Ninth Cause for Discipline

59. As set forth in Findings 25 through 31, respondent Antonys' smog check station license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on August 26, 2011, regarding the 2000 Pontiac Trans-Am, respondent failed to comply with the following sections of that Code:

- a. Section 44012: Respondent failed to perform the emission control tests on the vehicle in accordance with procedures prescribed by the department.
- b. Section 44015: Respondent issued electronic smog Certificate of Compliance No. WX943612 for the vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with Health and Safety Code section 44012.

Fiftieth Cause for Discipline

60. As set forth in Findings 25 through 31, respondent Antonys' smog check station license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (c), in that respondent failed to comply with the provisions of CCR, title 16, as follows:

- a. Section 3340.24(c): Respondent falsely or fraudulently issued electronic smog Certificate of Compliance No. WX943612, in that the vehicle could not have passed the visual portion of the smog inspection because the vehicle's AIR system was missing components.
- b. Section 3340.35(c): Respondent issued electronic smog Certificate of Compliance No. WX943612 for the vehicle even though the vehicle had not been inspected in accordance with California Code of Regulations, title 16, section 3340.42.
- c. Section 3340.42: Respondent failed to conduct the required smog tests on the vehicle in accordance with the Bureau's specifications.

Fifty-First Cause for Discipline

61. As set forth in Findings 25 through 31, respondent Antonys' smog check station license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on August 26, 2011, respondent committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing electronic smog Certificate of Compliance No. WX943612 for the 2000 Pontiac Trans-Am without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Fifty-Second Cause for Discipline

62. As set forth in Findings 25 through 31, respondent Gastelum's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (a), in that on August 26, 2011, regarding the 2000 Pontiac Trans-Am, respondent Gastelum failed to comply with the following sections of that Code:

- a. Section 44012: Respondent Gastelum failed to perform the emission control tests on the vehicle in accordance with procedures prescribed by the department.
- b. Section 44032: Respondent Gastelum failed to perform a test of the emission control devices and systems on the vehicle in accordance with Health and Safety Code section 44012.

Fifty-Third Cause for Discipline

63. As set forth in Findings 25 through 31, respondent Gastelum's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on August 26, 2011, regarding the 2000 Pontiac Trans-Am, he failed to comply with provisions of CCR, title 16, as follows:

- a. Section 3340.24(c): Respondent Gastelum falsely or fraudulently issued electronic smog Certificate of Compliance Number WX943612, in that the vehicle could not have passed the visual portion of the smog inspection because the vehicle's AIR system was missing components.
- b. Section 3340.30(a): Respondent Gastelum failed to inspect and test the vehicle in accordance with Health and Safety Code section 44012.
- c. Section 3340.42: Respondent Gastelum failed to conduct the required smog tests and inspections on the vehicle in accordance with the Bureau's specifications.

Fifty-Fourth Cause for Discipline

63. As set forth in Findings 25 through 31, respondent Gastelum's technician license is subject to discipline pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on August 26, 2011, Gastelum committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing electronic smog Certificate of Compliance Number WX943612 for the 2000 Pontiac Trans-Am without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

Costs Recovery

64. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. As set forth in Findings 38 through 43, the complainant established that the reasonable costs of enforcement /prosecution of this matter were \$9,280. The reasonable costs of investigation of this matter were not established above the \$641.50 in undercover vehicle operator and evidence costs. Thus complainant established reasonable costs of investigation and prosecution/enforcement of this matter as \$9,921.50.

ORDER

1. Automotive Repair Dealer Registration No. ARD 248940, issued to Juan Gastelum and Silvano Michel, Partners, doing business as Antonys Smog Check is REVOKED.
2. Any other automotive repair dealer registration issued to Juan Gastelum and Silvano Michel is REVOKED.
3. Smog Check Station License Number RC 248940, issued to Juan Gastelum and Silvano Michel, Partners, doing business as Antonys Smog Check is REVOKED.
4. Any additional license issued under chapter 5, of the Health and Safety Code in the name of Juan Gastelum and Silvano Michel, doing business as Antonys Smog Check is REVOKED.
5. Lamp Station License Number LS 248940, issued to Juan Gastelum and Silvano Michel, Partners, doing business as Antonys Smog Check is REVOKED.
6. Brake Station License Number BS 248940, issued to Juan Gastelum and Silvano Michel, Partners, doing business as Antonys Smog Check is REVOKED.
7. Any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of Juan Gastelum and Silvano Michel, doing business as Antonys Smog Check is REVOKED.
8. Advanced Emission Specialist Technician License Number EA 150695, issued to Silvano Michel is REVOKED.
9. Any additional license issued under Chapter 5 of the Health and Safety Code in the name of Silvano Michel is REVOKED.
10. Brake Adjuster License Number BA 150695, issued to Silvano Michel is REVOKED.
11. Lamp Adjuster License Number LA 150695, issued to Silvano Michel is REVOKED.
12. Any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of Silvano Michel is REVOKED.
13. Advanced Emission Specialist Technician License Number EA 151972, issued to Juan Antonio Gastelum is REVOKED.

14. Any additional license issued under Chapter 5 of the Health and Safety Code in the name of Juan Antonio Gastelum is REVOKED.

15. Brake Adjuster License Number BA 151972, issued to Juan Antonio Gastelum is REVOKED.

16. Lamp Adjuster License Number LA 151972, issued to Juan Antonio Gastelum is REVOKED.

17. Any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of Juan Antonio Gastelum is REVOKED.

18. Juan Gastelum and Silviano Michel, Partners, doing business as Antonys Smog Check, shall pay the Director of Consumer Affairs \$9,921.50 as reasonable costs of the prosecution/ enforcement of this case, pursuant to Code section 125.3. Respondents may pay in an installment plan approved by the Bureau.

Dated: July 11, 2012


ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 PATRICK M. KENADY
Deputy Attorney General
4 State Bar No. 050882
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5377
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12
13
14 In the Matter of the Accusation Against:

Case No. 77/11-01

15 **ANTONYS SMOG CHECK**
JUAN GASTELUM, Partner
16 **SILVIANO MICHEL, Partner**
1287 N. Blackstone Avenue, #B
17 Fresno, California 93703
Automotive Repair Dealer Registration No. ARD 248940
18 **Smog Check Station License No. RC 248940**
19 **Lamp Station License No. LS 248940**
Brake Station License No. BS 248940

FIRST AMENDED
A C C U S A T I O N

20 **JUAN ANTONIO GASTELUM**
21 13324 S. Pear
Caruthers, California 93609
22 and
23 P.O. Box 358
Caruthers, California 93609
24 **Advanced Emission Specialist Technician License No. EA**
151972
25 **Brake Adjuster License No. BA 151972**
26 **Lamp Adjuster License No. LA 151972**
27
28

1 **SILVIANO MICHEL**
2 4638 West Pine Avenue
3 Fresno, California 93722
4 and
5 13337 S. Marks Avenue
6 Caruthers, California 93609
7 **Advanced Emission Specialist Technician License No. EA**
8 **150695**
9 **Brake Adjuster License No. BA 150695**
10 **Lamp Adjuster License No. LA 150695**

Respondents.

John Wallauch ("Complainant") alleges:

PARTIES

1. Complainant brings this First Amended Accusation solely in his official capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs. The First Amended Accusation supersedes and replaces nunc pro tunc the Accusation heretofore filed.

LICENSE INFORMATION

Antonys Smog Check

2. On or about January 16, 2007, the Bureau issued Automotive Repair Dealer Registration Number ARD 248940 ("registration") to Juan Gastelum and Silvano Michel, Partners, doing business as Antonys Smog Check ("Respondent Antonys"). The registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2013, unless renewed.

3. On or about February 26, 2007, the Bureau issued Smog Check Station Number RC 248940 ("station license") to Respondent Antonys. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2013, unless renewed.

4. On or about March 5, 2007, the Bureau issued Lamp Station License Number LS 248940 to Respondent Antonys. The lamp station license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2013, unless renewed.

///

1 5. On or about March 5, 2007, the Bureau issued Brake Station License Number BS
2 248940 to Respondent Antonys. The brake station license was in full force and effect at all times
3 relevant to the charges brought herein and will expire on January 31, 2012, unless renewed.

4 **Silviano Michel**

5 6. In or about 2005, the Bureau issued Advanced Emission Specialist Technician
6 License Number EA 150695 (“technician license”) to Silviano Michel (“Respondent Michel”).
7 Respondent Michel’s technician license was in full force and effect at all times relevant to the
8 charges brought herein and will expire on March 31, 2013, unless renewed.

9 7. In or about 2005, the Bureau issued Brake Adjuster License Number BA 150695 to
10 Respondent Michel. Respondent Michel’s brake adjuster license was in full force and effect at all
11 times relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

12 8. In or about 2005, the Bureau issued Lamp Adjuster License Number LA 150695 to
13 Respondent Michel. Respondent Michel’s lamp adjuster license was in full force and effect at all
14 times relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

15 **Juan Antonio Gastelum**

16 9. In or about 2007, the Bureau issued Advanced Emission Specialist Technician
17 License Number EA 151972 (“technician license”) to Juan Antonio Gastelum (“Respondent
18 Gastelum”). Respondent Gastelum’s technician license was in full force and effect at all times
19 relevant to the charges brought herein and will expire on October 31, 2013, unless renewed.

20 10. In or about 2007, the Bureau issued Brake Adjuster License Number BA 151972 to
21 Respondent Gastelum. Respondent Gastelum’s brake adjuster license was in full force and effect
22 at all times relevant to the charges brought herein and will expire on October 31, 2014, unless
23 renewed.

24 11. In or about 2007, the Bureau issued Lamp Adjuster License Number LA 151972 to
25 Respondent Gastelum. Respondent Gastelum’s lamp adjuster license was in full force and effect
26 at all times relevant to the charges brought herein and will expire on October 31, 2014, unless
27 renewed.

28 ///

1 STATUTORY PROVISIONS

2 12. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
3 part:

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

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

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

15 (4) Any other conduct which constitutes fraud.

16 (5) Conduct constituting gross negligence.

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

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

22 (b) Except as provided for in subdivision (c), if an automotive repair
23 dealer operates more than one place of business in this state, the director pursuant to
24 subdivision (a) shall only suspend, revoke, or place on probation the registration of
25 the specific place of business which has violated any of the provisions of this chapter.
26 This violation, or action by the director, shall not affect in any manner the right of the
27 automotive repair dealer to operate his or her other places of business.

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

13. Section 9889.3 of the Code states, in pertinent part:

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

(a) Violates any section of the Business and Professions Code that relates
to his or her licensed activities.

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

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

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

4 14. Section 9889.1 of the Code states:

5 Any license issued pursuant to Articles 5 and 6, may be suspended or
6 revoked by the director. The director may refuse to issue a license to any applicant
7 for the reasons set forth in Section 9889.2. The proceedings under this article shall be
8 conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1
9 of Division 3 of Title 2 of the Government Code, and the director shall have all the
10 powers granted therein.

11 15. Section 9889.9 of the Code states:

12 When any license has been revoked or suspended following a hearing
13 under the provisions of this article, any additional license issued under Articles 5 and
14 6 of this chapter in the name of the licensee may be likewise revoked or suspended by
15 the director.

16 16. Section 9889.16 of the Code states:

17 Whenever a licensed adjuster in a licensed station upon an inspection or
18 after an adjustment, made in conformity with the instructions of the bureau,
19 determines that the lamps or the brakes upon any vehicle conform with the
20 requirements of the Vehicle Code, he shall, when requested by the owner or driver of
21 the vehicle, issue a certificate of adjustment on a form prescribed by the director,
22 which certificate shall contain the date of issuance, the make and registration number
23 of the vehicle, the name of the owner of the vehicle, and the official license of the
24 station.

25 17. Section 9884.9 of the Code states:

26 (a) The automotive repair dealer shall give to the customer a written
27 estimated price for labor and parts necessary for a specific job. No work shall be done
28 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 when 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.

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

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

6 _____
7 (signature or initials)

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

11 18. Section 9889.7 of the Code states:

12 The expiration or suspension of a license by operation of law or by order
13 or decision of the director or a court of law, or the voluntary surrender of a license by
14 a licensee shall not deprive the director of jurisdiction to proceed with any
15 investigation of or action or disciplinary proceedings against such licensee, or to
16 render a decision suspending or revoking such license.

17 19. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a
18 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
19 proceeding against an automotive repair dealer or to render a decision invalidating a registration
20 temporarily or permanently.

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

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

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

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

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

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

22. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
expiration or suspension of a license by operation of law, or by order or decision of the

1 Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not
2 deprive the Director of jurisdiction to proceed with disciplinary action.

3 23. Section 44072.8 of the Health and Safety Code states:

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

7 COST RECOVERY

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

12 BACKGROUND INFORMATION

13 25. On or about May 13, 2009, the Bureau reviewed Respondent Antonys smog check
14 data and the brake and lamp certificate purchases between January 2009 and March 2009, which
15 indicated that Respondent was performing very quick smog inspections with no failures, and
16 consistently purchasing an average of seven brake certificate books and seven lamp certificate
17 books per month. As a result, the Bureau initiated an investigation into Respondent Antonys
18 business practices.

19 UNDERCOVER OPERATION NO. 1: 1996 TOYOTA CAMRY

20 26. On or about July 13, 2009, an undercover Bureau operator ("operator") drove a
21 Bureau documented 1996 Toyota Camry to Respondent's facility and requested a brake and lamp
22 inspection. The vehicle defect included an undersized right front brake rotor, an oversized left
23 rear brake drum, and both front headlamps were out of adjustment. The left rear oversized brake
24 drum was out of adjustment, causing the parking brake to be out of adjustment. When the
25 operator arrived at Respondent's facility, she was greeted by an employee who told her that he
26 could have the inspections completed by the end of the day. The operator completed and signed a
27 repair order in the amount of \$65 but was not provided with a copy.

28 27. Later that day, the operator contacted Respondent's facility and spoke with an
employee who told her that the vehicle was ready. The employee told the operator that the

1 vehicle passed the inspections and the total charges were \$61.50. On that same day, the operator
2 returned to Respondent's facility to retrieve the vehicle. The operator was greeted by the same
3 employee from earlier that day. The employee told the operator that the front rotors on the
4 vehicle needed to be replaced before he could certify the brake system. The operator paid the
5 employee \$61.50 and received a copy of Service Order No. 013313. The operator was also
6 provided with lamp adjustment certificate number LC874846.

7 28. On or about July 15, 2009, a Bureau representative re-inspected the vehicle and
8 found that the headlamps were properly adjusted and within specifications. The undersized right
9 front brake rotor and the oversized left rear brake drum remained in place.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

12 29. Respondent Antonys' registration is subject to discipline pursuant to Code section
13 9884.7(a)(1), in that on or about July 13, 2009, Respondent made or authorized statements which
14 it knew or in the exercise of reasonable care should have known to be untrue or misleading, in
15 that Respondent falsely represented to the operator on Service Order No. 013313 that both front
16 rotors needed to be replaced when, in fact, the left front rotor was well above the minimum
17 specifications and did not need to be replaced.

18 **SECOND CAUSE FOR DISCIPLINE**

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

20 30. Respondent Antonys' registration is subject to discipline pursuant to Code section
21 9884.7(a)(6), in that on or about July 13, 2009, regarding the 1996 Toyota Camry, Respondent
22 failed to comply with provisions of California Code of Regulations, title 16, in the following
23 material respects:

24 a. **Section 3305(a):** Respondent failed to perform a proper brake inspection in
25 accordance with the vehicle's manufacturer standards and/or current standards, specifications,
26 recommended procedures, and/or directives issued by the Bureau, in that Respondent identified
27 both front brake rotors as needing replacement when, in fact, the left front brake rotor was well
28 above the minimum specification and not in need of replacement.

1 light bulb had been removed. The operator arrived at Respondent's facility and was greeted by
2 Respondent Gastelum. The operator told Respondent Gastelum that he needed a brake and lamp
3 inspection, and a smog check. Respondent Gastelum told the operator that he could perform the
4 inspections and that the vehicle would be ready later that afternoon. The operator told
5 Respondent Gastelum that his name was Dave and gave him his telephone number. The operator
6 did not receive a written estimate or sign any documents.

7 35. Later that same day, Respondent Gastelum contacted the operator and stated that
8 the vehicle was ready to be picked up and that the vehicle had passed all the inspections. The
9 operator returned to Respondents facility to retrieve the vehicle. The operator paid \$100 and
10 received a copy of Service Order No. 017074. The service order had been signed by someone
11 named "Dave" (not the operator). The operator also received Brake Certificate Number
12 BC980477 (issued by Respondent Michel), Lamp Certificate Number LC966978 (issued by
13 Respondent Michel), and Smog Check Vehicle Inspection Report (VIR) referencing Smog Check
14 Certificate Number NQ652868 (issued by Respondent Gastelum).

15 36. On or about February 9, 2010, a Bureau representative reinspected the vehicle and
16 found the following:

- 17 a. The MIL light bulb was still missing.
18 b. The front headlamps had been adjusted to manufacturer's specifications.
19 c. The right and left rear brake drums remained beyond factory specifications for
20 maximum diameter (oversized).
21 d. None of the four tire and wheel assemblies had been removed for inspection of the
22 brake system.

23 **SIXTH CAUSE FOR DISCIPLINE**

24 **(Untrue or Misleading Statements)**

25 37. Respondent Antonys' registration is subject to discipline under Code section
26 9884.7(a)(1), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent
27 made or authorized statements which it knew or in the exercise of reasonable care should have
28 known to be untrue or misleading, as follows:

1 a. Respondent issued electronic Certificate of Compliance No. NQ652868, certifying
2 that the vehicle was in compliance with applicable laws and regulations, when in fact, it could not
3 have passed the smog inspection because the vehicle's MIL light bulb was missing.

4 b. Respondent certified under penalty of perjury on Brake Certificate Number
5 BC980477 that the applicable inspection was performed on the brake system when, in fact,
6 Respondent's technician, Respondent Michel, failed to inspect the brake system on the vehicle, as
7 evidenced by his failure to remove any of the four wheels.

8 c. Respondent certified under penalty of perjury on Brake Certificate Number
9 BC980477 that the left and right rear brake drums were in satisfactory condition when, in fact, the
10 rear brake drums were beyond factory specifications for maximum diameter (oversized).

11 SEVENTH CAUSE FOR DISCIPLINE

12 (Fraud)

13 38. Respondent Antonys' registration is subject to discipline pursuant to Code section
14 9884.7(a)(4), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent
15 committed acts that constitute fraud, as follows:

16 a. Respondent issued electronic Certificate of Compliance No. NQ652868 without
17 performing a bona fide inspection of the emission control devices and systems on the vehicle,
18 thereby depriving the People of the State of California of the protection afforded by the Motor
19 Vehicle Inspection Program.

20 b. Respondent obtained payment from the operator for performing the applicable
21 inspections on the vehicle's brake system as specified by the Bureau and in accordance with the
22 Vehicle Code, when in fact, Respondent failed to perform the necessary inspections, as more
23 particularly set forth above in paragraph 36 (c) and (d).

24 EIGHTH CAUSE FOR DISCIPLINE

25 (Gross Negligence)

26 39. Respondent Antonys' registration is subject to discipline under Code section
27 9884.7(a)(5), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent
28 committed acts constituting gross negligence, in that Respondent's technician, Respondent

1 Michel, failed to properly inspect the brake system and issued Brake Certificate BC 980477.
2 indicating that the vehicle's brakes were in satisfactory condition and were in accordance with the
3 Vehicle Code when, in fact, they were not.

4 **NINTH CAUSE FOR DISCIPLINE**

5 **(Departure from Trade Standards)**

6 40. Respondent Antonys' registration is subject to discipline under Code section
7 9884.7(a)(7), in that Respondent willfully departed from or disregarded accepted trade standards
8 for good and workmanlike repair without the consent of the owner or the owner's duly authorized
9 representative in a material respect, as follows:

10 a. Respondent's technician, Respondent Michel, failed to properly inspect the vehicle's
11 brake system and issued Brake Certificate BC 980477, indicating that the vehicle's brakes were in
12 satisfactory condition and in accordance with the Vehicle Code when, in fact, they were not.

13 b. Respondent's technician, Respondent Gastelum, failed to perform the smog inspection
14 properly and issued Smog Certificate Number NQ652868. The vehicle's MIL was missing,
15 rendering the vehicle incapable of passing the functional portion of the smog inspection.

16 **TENTH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with the Code)**

18 41. Respondent Antonys' registration is subject to discipline pursuant to Code section
19 9884.7(a)(6), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent
20 failed to comply with provisions of that Code in the following material respects:

21 a. **Section 9884.9(a):** Respondent failed to provide the operator with a written
22 estimated price for parts and labor for a specific job.

23 b. **Section 9889.16:** Respondent issued Brake Certificate Number BC980477 for the
24 vehicle, when the vehicle was not in compliance with Bureau regulations or the requirements of
25 the Vehicle Code, in that the left and right rear brake drums were oversized.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ELEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

42. Respondent Antonys' registration is subject to discipline pursuant to Code section 9884.7(a)(6), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent failed to comply with provisions of California Code of Regulations, title 16, in the following material respects:

a. **Section 3305(a)**: Respondent failed to perform a brake inspection in accordance with the vehicle's manufacturer standards and/or current standards, specifications, recommended procedures, and/or directives issued by the Bureau.

b. **Section 3321(c)(2)**: Respondent issued Brake Certificate Number BC980477, certifying that the vehicle's brakes had been inspected and were in satisfactory condition, when in fact, they were not.

TWELFTH CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

43. Respondent Antonys' brake and lamp station licenses are subject to discipline under Code section 9889.3(a), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent violated sections of the Code, relating to its licensed activities, as more particularly set forth above in paragraphs 37 and 41.

THIRTEENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

44. Respondent Antonys' brake and lamp station licenses are subject to discipline under Code section 9889.3(c), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent failed to comply with provisions of California Code of Regulations, title 16, as more particularly set forth above in paragraph 42.

///

///

///

///

1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

3 49. Respondent Antonys' smog check station license is subject to discipline pursuant to
4 Health and Safety Code section 44072.2(a), in that regarding the 2001 Ford Focus, Respondent
5 failed to comply with the following sections of that Code:

6 a. **Section 44012:** Respondent failed to perform the emission control tests on the
7 vehicle in accordance with procedures prescribed by the department.

8 b. **Section 44015:** Respondent issued electronic smog Certificate of Compliance
9 Number NQ652868 for the vehicle without properly testing and inspecting the vehicle to
10 determine if it was in compliance with Health and Safety Code section 44012.

11 **NINETEENTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations Pursuant to the**
13 **Motor Vehicle Inspection Program)**

14 50. Respondent Antonys' smog check station license is subject to discipline pursuant to
15 Health and Safety Code section 44072.2(c), in that Respondent failed to comply with the
16 provisions of California Code of Regulations, title 16, as follows:

17 a. **Section 3340.24(c):** Respondent falsely or fraudulently issued electronic smog
18 Certificate of Compliance Number NQ652868, in that the vehicle could not have passed the smog
19 inspection because the vehicle's MIL light bulb was missing.

20 b. **Section 3340.35(c):** Respondent issued electronic smog Certificate of Compliance
21 Number NQ652868 for the vehicle even though the vehicle had not been inspected in accordance
22 with California Code of Regulations, title 16, section 3340.42.

23 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the vehicle
24 in accordance with the Bureau's specifications.

25 **TWENTIETH CAUSE FOR DISCIPLINE**

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

27 51. Respondent Antonys' smog check station license is subject to discipline pursuant to
28 Health and Safety Code section 44072.2(d), in that on or about February 8, 2010, Respondent

1 committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing
2 electronic smog Certificate of Compliance Number NQ652868 for the 2001 Ford Focus without
3 performing a bona fide inspection of the emission control devices and systems on the vehicle,
4 thereby depriving the People of the State of California of the protection afforded by the Motor
5 Vehicle Inspection Program.

6 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

8 52. Respondent Gastelum's technician license is subject to discipline pursuant to Health
9 and Safety Code section 44072.2(a), in that on or about February 8, 2010, regarding the 2001
10 Ford Focus, Respondent Gastelum failed to comply with the following sections of that Code:

11 a. **Section 44012:** Respondent Gastelum failed to perform the emission control tests on
12 the vehicle in accordance with procedures prescribed by the department.

13 b. **Section 44032:** Respondent Gastelum failed to perform a test of the emission control
14 devices and systems on the vehicle in accordance with Health and Safety Code section 44012.

15 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

17 53. Respondent Gastelum's technician license is subject to discipline under Health and
18 Safety Code section 44072.2(c), in that on or about February 8, 2010, regarding the 2001 Ford
19 Focus, he failed to comply with provisions of California Code of Regulations, title 16, as follows:

20 a. **Section 3340.24(e):** Respondent Gastelum falsely or fraudulently issued electronic smog
21 Certificate of Compliance Number NQ652868, in that the vehicle could not have passed the smog
22 inspection because the vehicle's MIL light bulb was missing.

23 b. **Section 3340.30(a):** Respondent Gastelum failed to inspect and test the vehicle in
24 accordance with Health and Safety Code section 44012.

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

27 ///
28 ///

1 TWENTY-FIFTH CAUSE FOR DISCIPLINE

2 (Fraud)

3 58. Respondent Antonys' registration is subject to discipline pursuant to Code section
4 9884.7(a)(4), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent
5 committed acts that constitute fraud, as follows:

6 a. Respondent issued electronic Certificate of Compliance No. NU018494 without
7 performing a bona fide inspection of the emission control devices and systems on the vehicle.
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program.

10 b. Respondent obtained payment from the operator for performing the applicable
11 inspections on the vehicle's brake system as specified by the Bureau and in accordance with the
12 Vehicle Code when, in fact, Respondent failed to perform the necessary inspections, as more
13 particularly set forth above in paragraph 56, subsections (c) and (d).

14 TWENTY-SIXTH CAUSE FOR DISCIPLINE

15 (Gross Negligence)

16 59. Respondent Antonys' registration is subject to discipline under Code section
17 9884.7(a)(5), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent
18 committed acts constituting gross negligence, in the following respects:

19 a. Respondent's technician, Respondent Michel, failed to properly inspect the brake
20 system and issued Brake Certificate BC 1035642, indicating that the vehicle's brakes were in
21 satisfactory condition and were in accordance with the Vehicle Code when, in fact, they were not.

22 b. Respondent's technician, Respondent Michel, failed to properly inspect the lamp
23 system and issued Lamp Certificate LC 1021341, indicating that the vehicle's lamps were in
24 satisfactory condition and were in accordance with the Vehicle Code when, in fact, they were not.

25 ///

26 ///

27 ///

28 ///

1 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

2 **(Departure from Trade Standards)**

3 60. Respondent Antonys' registration is subject to discipline under Code section
4 9884.7(a)(7), in that Respondent willfully departed from or disregarded accepted trade standards
5 for good and workmanlike repair without the consent of the owner or the owner's duly authorized
6 representative in a material respect, as follows:

7 a. Respondent's technician, Respondent Michel, failed to properly inspect the vehicle's
8 brake system and issued Brake Certificate BC 1035642, indicating that the vehicle's brakes were
9 in satisfactory condition and in accordance with the Vehicle Code when, in fact, they were not.

10 b. Respondent's technician, Respondent Michel, failed to properly inspect and adjust the
11 lamp system on the vehicle and issued Lamp Certificate LC 1021341, indicating that the vehicle's
12 lamp system was in satisfactory condition and in accordance with the Vehicle Code when, in
13 fact, they were not.

14 c. Respondent's technician, Respondent Gastelum, failed to perform the smog inspection
15 properly and issued Smog Certificate Number NU018494. The vehicle's MIL was inoperative,
16 rendering the vehicle incapable of passing the functional portion of the smog inspection.

17 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

18 **(Failure to Comply with the Code)**

19 61. Respondent Antonys' registration is subject to discipline pursuant to Code section
20 9884.7(a)(6), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent failed
21 to comply with provisions of that Code in the following material respects:

22 a. **Section 9884.9(a):**

23 i. Respondent failed to provide the operator with a written estimated price for
24 parts and labor for a specific job.

25 ii. Respondent failed to obtain the operator's authorization to perform work.

26 b. **Section 9889.16:** Respondent issued Brake Certificate Number BC1035642 and
27 Lamp Certificate Number LC1021341 for the vehicle, when the vehicle was not in compliance
28 with Bureau regulations or the requirements of the Vehicle Code.

1 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

3 62. Respondent Antonys' registration is subject to discipline pursuant to Code section
4 9884.7(a)(6), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent failed
5 to comply with provisions of California Code of Regulations, title 16, in the following material
6 respects:

7 a. **Section 3305(a)**: Respondent failed to perform a brake and lamp inspection in
8 accordance with the vehicle's manufacturer standards and/or current standards, specifications,
9 recommended procedures, and/or directives issued by the Bureau.

10 b. **Section 3316(d)(2)**: Respondent issued Lamp Certificate Number LC1021341,
11 certifying that the vehicle's lamps had been inspected and were in satisfactory condition when, in
12 fact, they were not.

13 c. **Section 3321(c)(2)**: Respondent issued Brake Certificate Number BC1035642,
14 certifying that the vehicle's brakes had been inspected and were in satisfactory condition when, in
15 fact, they were not.

16 **THIRTIETH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with the Code)**

18 63. Respondent Antonys' brake and lamp station licenses are subject to discipline
19 under Code section 9889.3(a), in that on or about May 17, 2010, regarding the 2005 Ford Focus,
20 Respondent violated sections of the Code, relating to its licensed activities, as more particularly
21 set forth above in paragraphs 57, 58, and 61.

22 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

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

24 64. Respondent Antonys' brake and lamp station licenses are subject to discipline
25 under Code section 9889.3(c), in that on or about May 17, 2010, regarding the 2005 Ford Focus,
26 Respondent failed to comply with provisions of California Code of Regulations, title 16, as more
27 particularly set forth above in paragraph 62.

28 ///

1 c. Section 3340.42: Respondent Gastelum failed to conduct the required smog tests and
2 inspections on the vehicle in accordance with the Bureau's specifications.

3 **FORTY-FIRST CAUSE FOR DISCIPLINE**

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

5 74. Respondent Gastelum's technician license is subject to discipline pursuant to Health
6 and Safety Code section 44072.2(d), in that on or about May 17, 2010, Respondent Gastelum
7 committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing
8 electronic smog Certificate of Compliance Number NU018494 for the 2005 Ford Focus without
9 performing a bona fide inspection of the emission control devices and systems on the vehicle,
10 thereby depriving the People of the State of California of the protection afforded by the Motor
11 Vehicle Inspection Program.

12 **FORTY-SECOND CAUSE FOR DISCIPLINE**

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

14 75. Respondent Michel's technician license is subject to discipline pursuant to Health and
15 Safety Code section 44072.2(d), in that on or about May 17, 2010, Respondent Michel committed
16 dishonest, fraudulent, or deceitful acts whereby another was injured, as set forth above in
17 paragraphs 48 and 68.

18 **BACKGROUND INFORMATION**

19 76. On February 28, 2011, the Fresno County Superior Court issued an injunction
20 against Respondent Antony's facility which permanently enjoined them from performing
21 improper brake, lamp, and smog repairs, inspections, and certifications. However, Respondents
22 continued to perform improper brake, lamp, and smog repairs, inspections and certifications, as
23 set forth below in paragraph 78.

24 **UNDERCOVER OPERATION NO. 4: 2000 PONTIAC TRANS-AM**

25 77. On or about August 26, 2011, an undercover Bureau operator ("operator") drove a
26 Bureau documented 2000 Pontiac Trans-Am to Respondent Antony's facility and requested a
27 brake, lamp, and smog inspection. The vehicle could not have passed the smog inspection
28 because the vehicle's AIR injection system was missing components. In addition, the vehicle

1 could not have passed the brake inspection because both right side disc brake rotors were
2 undersized. Furthermore, the vehicle could not have passed the lamp inspection because both
3 front headlamps were out of adjustment. The operator arrived at Respondent's facility and was
4 greeted by Respondent Gastelum. The operator told Respondent Gastelum that she needed a
5 brake, lamp, and smog inspection. Respondent Gastelum prepared a repair order, but did not
6 provide the operator with a copy or have her sign it. A short time later, the vehicle was ready.
7 The operator paid \$90 and received a copy of Service Order No. 027607, Lamp Adjustment
8 Certificate No. LC1302937 (issued by Respondent Michel), and Vehicle Inspection Report,
9 referencing Smog Check Certificate Number WX943612 (issued by Respondent Gastelum).

10 78. On or about August 29, 2011, a Bureau representative reinspected the vehicle
11 using Service Order No. 027607, Lamp Adjustment Certificate No. LC1302937, and Smog Check
12 Vehicle Inspection Report, as a reference. The inspection revealed the following:

- 13 a. Both right side disc brake rotors remained undersized.
- 14 b. The vehicle's AIR system components were missing.

15 **FORTY-THIRD CAUSE FOR DISCIPLINE**

16 **(Untrue or Misleading Statements)**

17 79. Respondent Antonys' registration is subject to discipline under Code section
18 9884.7(a)(1), in that on or about August 26, 2011, regarding the 2000 Pontiac Trans-Am,
19 Respondent made or authorized statements which it knew or in the exercise of reasonable care
20 should have known to be untrue or misleading, in that Respondent issued electronic smog
21 Certificate of Compliance No. WX943612, certifying that the vehicle was in compliance with
22 applicable laws and regulations, when in fact, it could not have passed the visual portion of the
23 smog inspection because the vehicle's AIR injection system was missing components.

24 **FORTY-FOURTH CAUSE FOR DISCIPLINE**

25 **(Fraud)**

26 80. Respondent Antonys' registration is subject to discipline pursuant to Code section
27 9884.7(a)(4), in that on or about August 26, 2011, regarding the 2000 Pontiac Trans-Am,
28 Respondent committed acts that constitute fraud by issuing electronic smog Certificate of

1 Compliance No. WX943612 without performing a bona fide inspection of the emission control
2 devices and systems on the vehicle, thereby depriving the People of the State of California of the
3 protection afforded by the Motor Vehicle Inspection Program.

4 **FORTY-FIFTH CAUSE FOR DISCIPLINE**

5 **(Departure from Trade Standards)**

6 81. Respondent Antonys' registration is subject to discipline under Code section
7 9884.7(a)(7), in that on or about August 26, 2011, regarding the 2000 Pontiac Trans-Am,
8 Respondent willfully departed from or disregarded accepted trade standards for good and
9 workmanlike repair without the consent of the owner or the owner's duly authorized
10 representative in a material respect, in that Respondent's technician, Respondent Gastelum, failed
11 to perform the smog inspection properly and issued electronic smog Certificate of Compliance No.
12 WX943612. The vehicle's AIR injection system was missing components, rendering the vehicle
13 incapable of passing the visual portion of the smog inspection.

14 **FORTY-SIXTH CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with the Code)**

16 82. Respondent Antonys' registration is subject to discipline pursuant to Code section
17 9884.7(a)(6), in that on or about August 26, 2011, regarding the 2000 Pontiac Trans-Am,
18 Respondent failed to comply with provisions of that Code in the following material respects:

19 a. **Section 9884.9(a):**

20 i. Respondent failed to provide the operator with a written estimated price for
21 parts and labor for a specific job.

22 ii. Respondent failed to obtain the operator's authorization to perform work.

23 **FORTY-SEVENTH CAUSE FOR DISCIPLINE**

24 **(Failure to Comply with the Code)**

25 83. Respondent Antonys' brake and lamp station licenses are subject to discipline
26 under Code section 9889.3(a), in that on or about August 26, 2011, regarding the 2000 Pontiac
27 Trans-Am, Respondent violated sections of the Code, relating to its licensed activities, as more
28 particularly set forth above in paragraphs 79, 80, and 82.

1 **FORTY-EIGHTH CAUSE FOR DISCIPLINE**

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

3 84. Respondent Antonys' brake and lamp station licenses are subject to discipline
4 pursuant to Code section 9889.3(d), in that on or about August 26, 2011, regarding the 2000
5 Pontiac Trans-Am, Respondent committed acts involving dishonesty, fraud, or deceit whereby
6 another was injured, as more particularly set forth above in paragraph 80.

7 **FORTY-NINTH CAUSE FOR DISCIPLINE**

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

9 85. Respondent Antonys' smog check station license is subject to discipline pursuant to
10 Health and Safety Code section 44072.2(a), in that on or about August 26, 2011, regarding the
11 2000 Pontiac Trans-Am, Respondent failed to comply with the following sections of that Code:

12 a. **Section 44012:** Respondent failed to perform the emission control tests on the
13 vehicle in accordance with procedures prescribed by the department.

14 b. **Section 44015:** Respondent issued electronic smog Certificate of Compliance No.
15 WX943612 for the vehicle without properly testing and inspecting the vehicle to determine if it
16 was in compliance with Health and Safety Code section 44012.

17 **FIFTEITH CAUSE FOR DISCIPLINE**

18 **(Failure to Comply with Regulations Pursuant to the**
19 **Motor Vehicle Inspection Program)**

20 86. Respondent Antonys' smog check station license is subject to discipline pursuant to
21 Health and Safety Code section 44072.2(c), in that Respondent failed to comply with the
22 provisions of California Code of Regulations, title 16, as follows:

23 a. **Section 3340.24(c):** Respondent falsely or fraudulently issued electronic smog
24 Certificate of Compliance No. WX943612, in that the vehicle could not have passed the visual
25 portion of the smog inspection because the vehicle's AIR injection system was missing
26 components.

27 ///

28 ///

1 **FIFTY-THIRD CAUSE FOR DISCIPLINE**

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

3 89. Respondent Gastelum's technician license is subject to discipline under Health and
4 Safety Code section 44072.2(c), in that on or about August 26, 2011, regarding the 2000 Pontiac
5 Trans-Am, he failed to comply with provisions of California Code of Regulations, title 16, as
6 follows:

7 a. **Section 3340.24(c)**: Respondent Gastelum falsely or fraudulently issued electronic smog
8 Certificate of Compliance Number WX943612, in that the vehicle could not have passed the
9 visual portion of the smog inspection because the vehicle's AIR injection system was missing
10 components.

11 b. **Section 3340.30(a)**: Respondent Gastelum failed to inspect and test the vehicle in
12 accordance with Health and Safety Code section 44012.

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

15 **FIFTY-FOURTH CAUSE FOR DISCIPLINE**

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

17 90. Respondent Gastelum's technician license is subject to discipline pursuant to Health
18 and Safety Code section 44072.2(d), in that on or about August 26, 2011, Respondent Gastelum
19 committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing
20 electronic smog Certificate of Compliance Number WX943612 for the 2000 Pontiac Trans-Am
21 without performing a bona fide inspection of the emission control devices and systems on the
22 vehicle, thereby depriving the People of the State of California of the protection afforded by the
23 Motor Vehicle Inspection Program.

24 **OTHER MATTERS**

25 91. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
26 probation the registrations for all places of business operated in this state by Juan Gastelum and
27 Silvano Michel, doing business as Antonys Smog Check, upon a finding that it has, or is,
28

1 engaged in a course of repeated and willful violation of the laws and regulations pertaining to an
2 automotive repair dealer.

3 92. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station
4 License Number RC 248940, issued to Juan Gastelum and Silviano Michel, doing business as
5 Antonys Smog Check, is revoked or suspended, any additional license issued under this chapter
6 in the name of said licensees may be likewise revoked or suspended by the director.

7 93. Pursuant to Code section 9889.9, if Lamp Station License Number LS 248940,
8 issued to Juan Gastelum and Silviano Michel, doing business as Antonys Smog Check, is revoked
9 or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business
10 and Professions Code in the name of said licensees may be likewise revoked or suspended by the
11 director.

12 94. Pursuant to Code section 9889.9, if Brake Station License Number BS 248940,
13 issued to Juan Gastelum and Silviano Michel, doing business as Antonys Smog Check, is revoked
14 or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business
15 and Professions Code in the name of said licensees may be likewise revoked or suspended by the
16 director.

17 95. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission
18 Specialist Technician License Number EA 150695, issued to Silviano Michel, is revoked or
19 suspended, any additional license issued under this chapter in the name of said licensee may be
20 likewise revoked or suspended by the director.

21 96. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA 150695,
22 issued to Silviano Michel, is revoked or suspended, any additional license issued under Articles 5
23 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensee may be
24 likewise revoked or suspended by the director.

25 97. Pursuant to Code section 9889.9, if Lamp Adjuster License Number LA 150695,
26 issued to Silviano Michel, is revoked or suspended, any additional license issued under Articles 5
27 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensee may be
28 likewise revoked or suspended by the director.

- 1 6. Revoking or suspending Brake Station License Number BS 248940, issued to Juan
2 Gastelum and Silviano Michel, Partners, doing business as Antonys Smog Check;
- 3 7. Revoking or suspending any additional license issued under Articles 5 and 6 of
4 Chapter 20.3 of the Business and Professions Code in the name of Juan Gastelum and Silviano
5 Michel, doing business as Antonys Smog Check;
- 6 8. Revoking or suspending Advanced Emission Specialist Technician License
7 Number EA 150695, issued to Silviano Michel;
- 8 9. Revoking or suspending any additional license issued under Chapter 5 of the
9 Health and Safety Code in the name of Silviano Michel;
- 10 10. Revoking or suspending Brake Adjuster License Number BA 150695, issued to
11 Silviano Michel;
- 12 11. Revoking or suspending Lamp Adjuster License Number LA 150695, issued to
13 Silviano Michel;
- 14 12. Revoking or suspending any additional license issued under Articles 5 and 6 of
15 Chapter 20.3 of the Business and Professions Code in the name of Silviano Michel;
- 16 13. Revoking or suspending Advanced Emission Specialist Technician License
17 Number EA 151972, issued to Juan Antonio Gastelum;
- 18 14. Revoking or suspending any additional license issued under Chapter 5 of the
19 Health and Safety Code in the name of Juan Antonio Gastelum;
- 20 15. Revoking or suspending Brake Adjuster License Number BA 151972, issued to
21 Juan Antonio Gastelum;
- 22 16. Revoking or suspending Lamp Adjuster License Number LA 151972, issued to
23 Juan Antonio Gastelum;
- 24 17. Revoking or suspending any additional license issued under Articles 5 and 6 of
25 Chapter 20.3 of the Business and Professions Code in the name of Juan Antonio Gastelum;
- 26 ///
- 27 ///
- 28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

18. Ordering Juan Gastelum and Silvano Michel, Partners, doing business as Antonys Smog Check, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: May 23 2012


JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

SA2010102577
10700862.doc

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 PATRICK M. KENADY
Deputy Attorney General
4 State Bar No. 050882
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5377
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12
13
14 In the Matter of the Accusation Against:

15 **ANTONYS SMOG CHECK**
JUAN GASTELUM, Partner
16 **SILVIANO MICHEL, Partner**
1287 N. Blackstone Avenue, #B
17 Fresno, California 93703
Automotive Repair Dealer Registration No. ARD 248940
18 **Smog Check Station License No. RC 248940**
19 **Lamp Station License No. LS 248940**
Brake Station License No. BS 248940

20 **JUAN ANTONIO GASTELUM**
21 13324 S. Pear
Caruthers, California 93609
22 and
23 P.O. Box 358
Caruthers, California 93609
24 **Advanced Emission Specialist Technician License No. EA**
151972
25 **Brake Adjuster License No. BA 151972**
26 **Lamp Adjuster License No. LA 151972**

Case No. 77|11-01

ACCUSATION

1 **SILVIANO MICHEL**
2 4638 West Pine Avenue
3 Fresno, California 93722
4 and
5 13337 S. Marks Avenue
6 Caruthers, California 93609
7 **Advanced Emission Specialist Technician License No. EA**
8 **150695** ✓
9 **Brake Adjuster License No. BA 150695** ✓
10 **Lamp Adjuster License No. LA 150695** ✓

Respondents.

Sherry Mehl ("Complainant") alleges:

PARTIES

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

LICENSE INFORMATION

Antonys Smog Check

2. On or about January 16, 2007, the Bureau issued Automotive Repair Dealer Registration Number ARD 248940 ("registration") to Juan Gastelum and Silviano Michel Partners, doing business as Antonys Smog Check ("Respondent Antonys"). The registration was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2012, unless renewed.

3. On or about February 26, 2007, the Bureau issued Smog Check Station Number RC 248940 ("station license") to Respondent Antonys. The station license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2012, unless renewed.

4. On or about March 5, 2007, the Bureau issued Lamp Station License Number LS 248940 to Respondent Antonys. The lamp station license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2012, unless renewed.

///

///

1 5. On or about March 5, 2007, the Bureau issued Brake Station License Number BS
2 248940 to Respondent Antonys. The brake station license was in full force and effect at all times
3 relevant to the charges brought herein and will expire on January 31, 2012, unless renewed.

4 **Silviano Michel**

5 6. In or about 2005, the Bureau issued Advanced Emission Specialist Technician
6 License Number EA 150695 ("technician license") to Silviano Michel ("Respondent Michel").
7 Respondent Michel's technician license was in full force and effect at all times relevant to the
8 charges brought herein and will expire on March 31, 2013, unless renewed.

9 7. In or about 2005, the Bureau issued Brake Adjuster License Number BA 150695 to
10 Respondent Michel. Respondent Michel's brake adjuster license was in full force and effect at all
11 times relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

12 8. In or about 2005, the Bureau issued Lamp Adjuster License Number LA 150695 to
13 Respondent Michel. Respondent Michel's lamp adjuster license was in full force and effect at all
14 times relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

15 **Juan Antonio Gastelum**

16 9. In or about 2007, the Bureau issued Advanced Emission Specialist Technician
17 License Number EA 151972 ("technician license") to Juan Antonio Gastelum ("Respondent
18 Gastelum"). Respondent Gastelum's technician license was in full force and effect at all times
19 relevant to the charges brought herein and will expire on October 31, 2011, unless renewed.

20 10. In or about 2007, the Bureau issued Brake Adjuster License Number BA 151972 to
21 Respondent Gastelum. Respondent Gastelum's brake adjuster license was in full force and effect
22 at all times relevant to the charges brought herein and will expire on October 31, 2014, unless
23 renewed.

24 11. In or about 2007, the Bureau issued Lamp Adjuster License Number LA 151972 to
25 Respondent Gastelum. Respondent Gastelum's lamp adjuster license was in full force and effect
26 at all times relevant to the charges brought herein and will expire on October 31, 2014, unless
27 renewed.

28 ///

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

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

4 14. Section 9889.1 of the Code states:

5 Any license issued pursuant to Articles 5 and 6, may be suspended or
6 revoked by the director. The director may refuse to issue a license to any applicant
7 for the reasons set forth in Section 9889.2. The proceedings under this article shall be
8 conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1
9 of Division 3 of Title 2 of the Government Code, and the director shall have all the
10 powers granted therein.

11 15. Section 9889.9 of the Code states:

12 When any license has been revoked or suspended following a hearing
13 under the provisions of this article, any additional license issued under Articles 5 and
14 6 of this chapter in the name of the licensee may be likewise revoked or suspended by
15 the director.

16 16. Section 9889.16 of the Code states:

17 Whenever a licensed adjuster in a licensed station upon an inspection or
18 after an adjustment, made in conformity with the instructions of the bureau,
19 determines that the lamps or the brakes upon any vehicle conform with the
20 requirements of the Vehicle Code, he shall, when requested by the owner or driver of
21 the vehicle, issue a certificate of adjustment on a form prescribed by the director,
22 which certificate shall contain the date of issuance, the make and registration number
23 of the vehicle, the name of the owner of the vehicle, and the official license of the
24 station.

25 17. Section 9884.9 of the Code states:

26 (a) The automotive repair dealer shall give to the customer a written
27 estimated price for labor and parts necessary for a specific job. No work shall be done
28 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 when 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.

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

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

6 _____
7 (signature or initials)

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

11 18. Section 9889.7 of the Code states:

12 The expiration or suspension of a license by operation of law or by order
13 or decision of the director or a court of law, or the voluntary surrender of a license by
14 a licensee shall not deprive the director of jurisdiction to proceed with any
15 investigation of or action or disciplinary proceedings against such licensee, or to
16 render a decision suspending or revoking such license.

17 19. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a
18 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
19 proceeding against an automotive repair dealer or to render a decision invalidating a registration
20 temporarily or permanently.

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

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

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

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

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

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

22. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
expiration or suspension of a license by operation of law, or by order or decision of the

1 Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not
2 deprive the Director of jurisdiction to proceed with disciplinary action.

3 23. Section 44072.8 of the Health and Safety Code states:

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

6 COST RECOVERY

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

11 BACKGROUND INFORMATION

12 25. On or about May 13, 2009, the Bureau reviewed Respondent Antonys smog check
13 data and the brake and lamp certificate purchases between January 2009 and March 2009, which
14 indicated that Respondent was performing very quick smog inspections with no failures, and
15 consistently purchasing an average of seven brake certificate books and seven lamp certificate
16 books per month. As a result, the Bureau initiated an investigation into Respondent Antonys
17 business practices.

18 UNDERCOVER OPERATION NO. 1: 1996 TOYOTA CAMRY

19 26. On or about July 13, 2009, an undercover Bureau operator ("operator") drove a
20 Bureau documented 1996 Toyota Camry to Respondent's facility and requested a brake and lamp
21 inspection. The vehicle defect included an undersized right front brake rotor, an oversized left
22 rear brake drum, and both front headlamps were out of adjustment. The left rear oversized brake
23 drum was out of adjustment, causing the parking brake to be out of adjustment. When the
24 operator arrived at Respondent's facility, she was greeted by an employee who told her that he
25 could have the inspections completed by the end of the day. The operator completed and signed a
26 repair order in the amount of \$65 but was not provided with a copy.

27 27. Later that day, the operator contacted Respondent's facility and spoke with an
28 employee who told her that the vehicle was ready. The employee told the operator that the

1 vehicle passed the inspections and the total charges were \$61.50. On that same day, the operator
2 returned to Respondent's facility to retrieve the vehicle. The operator was greeted by the same
3 employee from earlier that day. The employee told the operator that the front rotors on the
4 vehicle needed to be replaced before he could certify the brake system. The operator paid the
5 employee \$61.50 and received a copy of Service Order No. 013313. The operator was also
6 provided with lamp adjustment certificate number LC874846.

7 28. On or about July 15, 2009, a Bureau representative re-inspected the vehicle and
8 found that the headlamps were properly adjusted and within specifications. The undersized right
9 front brake rotor and the oversized left rear brake drum remained in place.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

12 29. Respondent Antonys' registration is subject to discipline pursuant to Code section
13 9884.7(a)(1), in that on or about July 13, 2009, Respondent made or authorized statements which
14 it knew or in the exercise of reasonable care should have known to be untrue or misleading, in
15 that Respondent falsely represented to the operator on Service Order No. 013313 that both front
16 rotors needed to be replaced when, in fact, the left front rotor was well above the minimum
17 specifications and did not need to be replaced.

18 **SECOND CAUSE FOR DISCIPLINE**

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

20 30. Respondent Antonys' registration is subject to discipline pursuant to Code section
21 9884.7(a)(6), in that on or about July 13, 2009, regarding the 1996 Toyota Camry, Respondent
22 failed to comply with provisions of California Code of Regulations, title 16, in the following
23 material respects:

24 a. **Section 3305(a):** Respondent failed to perform a proper brake inspection in
25 accordance with the vehicle's manufacturer standards and/or current standards, specifications,
26 recommended procedures, and/or directives issued by the Bureau, in that Respondent identified
27 both front brake rotors as needing replacement when, in fact, the left front brake rotor was well
28 above the minimum specification and not in need of replacement.

1 light bulb had been removed. The operator arrived at Respondent's facility and was greeted by
2 Respondent Gastelum. The operator told Respondent Gastelum that he needed a brake and lamp
3 inspection, and a smog check. Respondent Gastelum told the operator that he could perform the
4 inspections and that the vehicle would be ready later that afternoon. The operator told
5 Respondent Gastelum that his name was Dave and gave him his telephone number. The operator
6 did not receive a written estimate or sign any documents.

7 35. Later that same day, Respondent Gastelum contacted the operator and stated that
8 the vehicle was ready to be picked up and that the vehicle had passed all the inspections. The
9 operator returned to Respondent's facility to retrieve the vehicle. The operator paid \$100 and
10 received a copy of Service Order No. 017074. The service order had been signed by someone
11 named "Dave" (not the operator). The operator also received Brake Certificate Number
12 BC980477 (issued by Respondent Michel), Lamp Certificate Number LC966978 (issued by
13 Respondent Michel), and Smog Check Vehicle Inspection Report (VIR) referencing Smog Check
14 Certificate Number NQ652868 (issued by Respondent Gastelum).

15 36. On or about February 9, 2010, a Bureau representative reinspected the vehicle and
16 found the following:

- 17 a. The MIL light bulb was still missing.
- 18 b. The front headlamps had been adjusted to manufacturer's specifications.
- 19 c. The right and left rear brake drums remained beyond factory specifications for
20 maximum diameter (oversized).
- 21 d. None of the four tire and wheel assemblies had been removed for inspection of the
22 brake system.

23 SIXTH CAUSE FOR DISCIPLINE

24 (Untrue or Misleading Statements)

25 37. Respondent Antonys' registration is subject to discipline under Code section
26 9884.7(a)(1), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent
27 made or authorized statements which it knew or in the exercise of reasonable care should have
28 known to be untrue or misleading, as follows:

1 a. Respondent issued electronic Certificate of Compliance No. NQ652868, certifying
2 that the vehicle was in compliance with applicable laws and regulations, when in fact, it could not
3 have passed the smog inspection because the vehicle's MIL light bulb was missing.

4 b. Respondent certified under penalty of perjury on Brake Certificate Number
5 BC980477 that the applicable inspection was performed on the brake system when, in fact,
6 Respondent's technician, Respondent Michel, failed to inspect the brake system on the vehicle, as
7 evidenced by his failure to remove any of the four wheels.

8 c. Respondent certified under penalty of perjury on Brake Certificate Number
9 BC980477 that the left and right rear brake drums were in satisfactory condition when, in fact, the
10 rear brake drums were beyond factory specifications for maximum diameter (oversized).

11 **SEVENTH CAUSE FOR DISCIPLINE**

12 **(Fraud)**

13 38. Respondent Antonys' registration is subject to discipline pursuant to Code section
14 9884.7(a)(4), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent
15 committed acts that constitute fraud, as follows:

16 a. Respondent issued electronic Certificate of Compliance No. NQ652868 without
17 performing a bona fide inspection of the emission control devices and systems on the vehicle,
18 thereby depriving the People of the State of California of the protection afforded by the Motor
19 Vehicle Inspection Program.

20 b. Respondent obtained payment from the operator for performing the applicable
21 inspections on the vehicle's brake system as specified by the Bureau and in accordance with the
22 Vehicle Code, when in fact, Respondent failed to perform the necessary inspections, as more
23 particularly set forth above in paragraph 36 (c) and (d).

24 **EIGHTH CAUSE FOR DISCIPLINE**

25 **(Gross Negligence)**

26 39. Respondent Antonys' registration is subject to discipline under Code section
27 9884.7(a)(5), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent
28 committed acts constituting gross negligence, in that Respondent's technician, Respondent

1 Michel, failed to properly inspect the brake system and issued Brake Certificate BC 980477,
2 indicating that the vehicle's brakes were in satisfactory condition and were in accordance with the
3 Vehicle Code when, in fact, they were not.

4 **NINTH CAUSE FOR DISCIPLINE**

5 **(Departure from Trade Standards)**

6 40. Respondent Antonys' registration is subject to discipline under Code section
7 9884.7(a)(7), in that Respondent willfully departed from or disregarded accepted trade standards
8 for good and workmanlike repair without the consent of the owner or the owner's duly authorized
9 representative in a material respect, as follows:

10 a. Respondent's technician, Respondent Michel, failed to properly inspect the vehicle's
11 brake system and issued Brake Certificate BC 980477, indicating that the vehicle's brakes were in
12 satisfactory condition and in accordance with the Vehicle Code when, in fact, they were not.

13 b. Respondent's technician, Respondent Gastelum, failed to perform the smog inspection
14 properly and issued Smog Certificate Number NQ652868. The vehicle's MIL was missing,
15 rendering the vehicle incapable of passing the functional portion of the smog inspection.

16 **TENTH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with the Code)**

18 41. Respondent Antonys' registration is subject to discipline pursuant to Code section
19 9884.7(a)(6), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent
20 failed to comply with provisions of that Code in the following material respects:

21 a. **Section 9884.9(a):** Respondent failed to provide the operator with a written
22 estimated price for parts and labor for a specific job.

23 b. **Section 9889.16:** Respondent issued Brake Certificate Number BC980477 for the
24 vehicle, when the vehicle was not in compliance with Bureau regulations or the requirements of
25 the Vehicle Code, in that the left and right rear brake drums were oversized.

26 ///

27 ///

28 ///

1 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

3 45. Respondent Antonys' brake and lamp station licenses are subject to discipline
4 pursuant to Code section 9889.3(d), in that Respondent committed acts involving dishonesty,
5 fraud, or deceit whereby another was injured, as more particularly set forth above in paragraph
6 38.

7 **FIFTEENTH CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with the Code)**

9 46. Respondent Michel's brake adjuster license is subject to discipline under Code
10 section 9889.3(a), in that on or about February 8, 2010, regarding the 2001 Ford Focus,
11 Respondent violated sections of the Code, relating to his licensed activities, as more particularly
12 set forth above in paragraph 41(b).

13 **SIXTEENTH CAUSE FOR DISCIPLINE**

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

15 47. Respondent Michel's brake adjuster license is subject to discipline under Code
16 section 9889.3(c), in that on or about February 8, 2010, regarding the 2001 Ford Focus,
17 Respondent failed to comply with provisions of California Code of Regulations, title 16, as more
18 particularly set forth above in paragraph 42.

19 **SEVENTEENTH CAUSE FOR DISCIPLINE**

20 **(Acts Involving Dishonesty, Fraud, or Deceit - Adjuster Licenses)**

21 48. Respondent Michel's brake adjuster license is subject to discipline under Code section
22 9889.3(d), in that on or about February 8, 2010, regarding the 2001 Ford Focus, Respondent
23 committed acts involving dishonesty, fraud, or deceit, by issuing Brake Certificate Number BC
24 980477, certifying that the brake system was in satisfactory condition and in accordance with the
25 Vehicle Code, when, in fact, it was not.

26 ///

27 ///

28 ///

1 **EIGHTEENTH CAUSE FOR DISCIPLINE**

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

3 49. Respondent Antonys' smog check station license is subject to discipline pursuant to
4 Health and Safety Code section 44072.2(a), in that regarding the 2001 Ford Focus, Respondent
5 failed to comply with the following sections of that Code:

6 a. **Section 44012:** Respondent failed to perform the emission control tests on the
7 vehicle in accordance with procedures prescribed by the department.

8 b. **Section 44015:** Respondent issued electronic smog Certificate of Compliance
9 Number NQ652868 for the vehicle without properly testing and inspecting the vehicle to
10 determine if it was in compliance with Health and Safety Code section 44012.

11 **NINETEENTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations Pursuant to the**
13 **Motor Vehicle Inspection Program)**

14 50. Respondent Antonys' smog check station license is subject to discipline pursuant to
15 Health and Safety Code section 44072.2(c), in that Respondent failed to comply with the
16 provisions of California Code of Regulations, title 16, as follows:

17 a. **Section 3340.24(c):** Respondent falsely or fraudulently issued electronic smog
18 Certificate of Compliance Number NQ652868, in that the vehicle could not have passed the smog
19 inspection because the vehicle's MIL light bulb was missing.

20 b. **Section 3340.35(c):** Respondent issued electronic smog Certificate of Compliance
21 Number NQ652868 for the vehicle even though the vehicle had not been inspected in accordance
22 with California Code of Regulations, title 16, section 3340.42.

23 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the vehicle
24 in accordance with the Bureau's specifications.

25 **TWENTIETH CAUSE FOR DISCIPLINE**

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

27 51. Respondent Antonys' smog check station license is subject to discipline pursuant to
28 Health and Safety Code section 44072.2(d), in that on or about February 8, 2010, Respondent

1 committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing
2 electronic smog Certificate of Compliance Number NQ652868 for the 2001 Ford Focus without
3 performing a bona fide inspection of the emission control devices and systems on the vehicle,
4 thereby depriving the People of the State of California of the protection afforded by the Motor
5 Vehicle Inspection Program.

6 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

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

8 52. Respondent Gastelum's technician license is subject to discipline pursuant to Health
9 and Safety Code section 44072.2(a), in that on or about February 8, 2010, regarding the 2001
10 Ford Focus, Respondent Gastelum failed to comply with the following sections of that Code:

11 a. **Section 44012:** Respondent Gastelum failed to perform the emission control tests on
12 the vehicle in accordance with procedures prescribed by the department.

13 b. **Section 44032:** Respondent Gastelum failed to perform a test of the emission control
14 devices and systems on the vehicle in accordance with Health and Safety Code section 44012.

15 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

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

17 53. Respondent Gastelum's technician license is subject to discipline under Health and
18 Safety Code section 44072.2(c), in that on or about February 8, 2010, regarding the 2001 Ford
19 Focus, he failed to comply with provisions of California Code of Regulations, title 16, as follows:

20 a. **Section 3340.24(c):** Respondent Gastelum falsely or fraudulently issued electronic smog
21 Certificate of Compliance Number NQ652868, in that the vehicle could not have passed the smog
22 inspection because the vehicle's MIL light bulb was missing.

23 b. **Section 3340.30(a):** Respondent Gastelum failed to inspect and test the vehicle in
24 accordance with Health and Safety Code section 44012.

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

27 ///

28 ///

1 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

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

3 54. Respondent Gastelum's technician license is subject to discipline pursuant to Health
4 and Safety Code section 44072.2(d). in that on or about February 8, 2010. Respondent Gastelum
5 committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing
6 electronic smog Certificate of Compliance Number NQ652868 for the 2001 Ford Focus without
7 performing a bona fide inspection of the emission control devices and systems on the vehicle,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program.

10 **UNDERCOVER OPERATION NO. 3: 2005 FORD FOCUS**

11 55. On or about May 17, 2010, an undercover Bureau operator ("operator") drove a
12 Bureau documented 2005 Ford Focus to Respondent Antony's facility and requested a brake,
13 lamp, and smog inspection. The vehicle could not have passed the inspections because the front
14 headlamps were out of adjustment, the left and right rear brake drums were beyond factory
15 specifications for maximum diameter (oversized), and the MIL was inoperative. The operator
16 arrived at Respondent's facility and was greeted by Respondent Gastelum. The operator told
17 Respondent Gastelum that he needed a brake and lamp inspection, and a smog check.
18 Respondent Gastelum told an employee, Paco, to scan the vehicle's computer system. Paco
19 scanned the vehicle's computer system and told the operator that he could perform the
20 inspections. The operator and Paco entered the repair facility. Paco asked for the operator's
21 name. The operator told Paco his name was Dave Garcia, which Paco wrote on Service Order
22 No. 019140. The operator did not receive a written estimate or sign any documents. A short time
23 later, the vehicle was ready. The operator paid \$90 and received a copy of Service Order No.
24 019140. The operator also received Brake Certificate Number BC1035642 (issued by
25 Respondent Michel), Lamp Certificate Number LC1021341 (issued by Respondent Michel), and
26 Smog Check Vehicle Inspection Report (VIR) referencing Smog Check Certificate Number
27 NU018494 (issued by Respondent Gastelum).

1 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 58. Respondent Antonys' registration is subject to discipline pursuant to Code section
4 9884.7(a)(4), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent
5 committed acts that constitute fraud, as follows:

6 a. Respondent issued electronic Certificate of Compliance No. NU018494 without
7 performing a bona fide inspection of the emission control devices and systems on the vehicle,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program.

10 b. Respondent obtained payment from the operator for performing the applicable
11 inspections on the vehicle's brake system as specified by the Bureau and in accordance with the
12 Vehicle Code when, in fact, Respondent failed to perform the necessary inspections, as more
13 particularly set forth above in paragraph 56, subsections (c) and (d).

14 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

15 **(Gross Negligence)**

16 59. Respondent Antonys' registration is subject to discipline under Code section
17 9884.7(a)(5), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent
18 committed acts constituting gross negligence, in the following respects:

19 a. Respondent's technician, Respondent Michel, failed to properly inspect the brake
20 system and issued Brake Certificate BC 1035642, indicating that the vehicle's brakes were in
21 satisfactory condition and were in accordance with the Vehicle Code when, in fact, they were not.

22 b. Respondent's technician, Respondent Michel, failed to properly inspect the lamp
23 system and issued Lamp Certificate LC 1021341, indicating that the vehicle's lamps were in
24 satisfactory condition and were in accordance with the Vehicle Code when, in fact, they were not.

25 ///

26 ///

27 ///

28 ///

1 TWENTY-SEVENTH CAUSE FOR DISCIPLINE

2 (Departure from Trade Standards)

3 60. Respondent Antonys' registration is subject to discipline under Code section
4 9884.7(a)(7), in that Respondent willfully departed from or disregarded accepted trade standards
5 for good and workmanlike repair without the consent of the owner or the owner's duly authorized
6 representative in a material respect, as follows:

7 a. Respondent's technician, Respondent Michel, failed to properly inspect the vehicle's
8 brake system and issued Brake Certificate BC 1035642, indicating that the vehicle's brakes were
9 in satisfactory condition and in accordance with the Vehicle Code when, in fact, they were not.

10 b. Respondent's technician, Respondent Michel, failed to properly inspect and adjust the
11 lamp system on the vehicle and issued Lamp Certificate LC 1021341, indicating that the vehicle's
12 lamp system was in satisfactory condition and in accordance with the Vehicle Code when, in
13 fact, they were not.

14 c. Respondent's technician, Respondent Gastelum, failed to perform the smog inspection
15 properly and issued Smog Certificate Number NU018494. The vehicle's MIL was inoperative,
16 rendering the vehicle incapable of passing the functional portion of the smog inspection.

17 TWENTY-EIGHTH CAUSE FOR DISCIPLINE

18 (Failure to Comply with the Code)

19 61. Respondent Antonys' registration is subject to discipline pursuant to Code section
20 9884.7(a)(6), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent failed
21 to comply with provisions of that Code in the following material respects:

22 a. Section 9884.9(a):

23 i. Respondent failed to provide the operator with a written estimated price for
24 parts and labor for a specific job.

25 ii. Respondent failed to obtain the operator's authorization to perform work.

26 b. Section 9889.16: Respondent issued Brake Certificate Number BC1035642 and
27 Lamp Certificate Number LC1021341 for the vehicle, when the vehicle was not in compliance
28 with Bureau regulations or the requirements of the Vehicle Code.

1 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

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

3 62. Respondent Antonys' registration is subject to discipline pursuant to Code section
4 9884.7(a)(6), in that on or about May 17, 2010, regarding the 2005 Ford Focus, Respondent failed
5 to comply with provisions of California Code of Regulations, title 16, in the following material
6 respects:

7 a. **Section 3305(a)**: Respondent failed to perform a brake and lamp inspection in
8 accordance with the vehicle's manufacturer standards and/or current standards, specifications,
9 recommended procedures, and/or directives issued by the Bureau.

10 b. **Section 3316(d)(2)**: Respondent issued Lamp Certificate Number LC1021341,
11 certifying that the vehicle's lamps had been inspected and were in satisfactory condition when, in
12 fact, they were not.

13 c. **Section 3321(c)(2)**: Respondent issued Brake Certificate Number BC1035642,
14 certifying that the vehicle's brakes had been inspected and were in satisfactory condition when, in
15 fact, they were not.

16 **THIRTIETH CAUSE FOR DISCIPLINE**

17 **(Failure to Comply with the Code)**

18 63. Respondent Antonys' brake and lamp station licenses are subject to discipline
19 under Code section 9889.3(a), in that on or about May 17, 2010, regarding the 2005 Ford Focus,
20 Respondent violated sections of the Code, relating to its licensed activities, as more particularly
21 set forth above in paragraphs 57, 58, and 61.

22 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

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

24 64. Respondent Antonys' brake and lamp station licenses are subject to discipline
25 under Code section 9889.3(c), in that on or about May 17, 2010, regarding the 2005 Ford Focus,
26 Respondent failed to comply with provisions of California Code of Regulations, title 16, as more
27 particularly set forth above in paragraph 62.

28 ///

1 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

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

3 65. Respondent Antonys' brake and lamp station licenses are subject to discipline
4 pursuant to Code section 9889.3(d), in that Respondent committed acts involving dishonesty,
5 fraud, or deceit whereby another was injured, as more particularly set forth above in paragraph
6 58.

7 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with the Code)**

9 66. Respondent Michel's brake and lamp adjuster licenses are subject to discipline
10 under Code section 9889.3(a), in that on or about May 17, 2010, regarding the 2005 Ford Focus,
11 Respondent violated sections of the Code, relating to its licensed activities, as more particularly
12 set forth above in paragraph 61(b).

13 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

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

15 67. Respondent Miche!'s brake and lamp adjuster licenses are subject to discipline
16 under Code section 9889.3(c), in that on or about May 17, 2010, regarding the 2005 Ford Focus,
17 Respondent failed to comply with provisions of California Code of Regulations, title 16, as more
18 particularly set forth above in paragraph 62.

19 **THIRTY-FIFTH CAUSE FOR DISCIPLINE**

20 **(Acts Involving Dishonesty, Fraud, or Deceit - Adjuster Licenses)**

21 68. Respondent Michel's brake and lamp adjuster licenses are subject to discipline under
22 Code section 9889.3(d), in that on or about May 17, 2010, regarding the 2005 Ford Focus, he
23 committed acts involving dishonesty, fraud, or deceit, by issuing Brake Certificate Number BC
24 1035642 and Lamp Certificate Number LC 1021341, certifying that the brake and lamp systems
25 were in satisfactory condition and were in accordance with the Vehicle Code, when, in fact, they
26 were not.

27 ///

28 ///

1 **THIRTY-SIXTH CAUSE FOR DISCIPLINE**

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

3 69. Respondent Antonys' smog check station license is subject to discipline pursuant to
4 Health and Safety Code section 44072.2(a), in that regarding the 2005 Ford Focus. Respondent
5 failed to comply with the following sections of that Code:

6 a. **Section 44012:** Respondent failed to perform the emission control tests on the
7 vehicle in accordance with procedures prescribed by the department.

8 b. **Section 44015:** Respondent issued electronic smog Certificate of Compliance
9 Number NU018494 for the vehicle without properly testing and inspecting the vehicle to
10 determine if it was in compliance with Health and Safety Code section 44012.

11 **THIRTY-SEVENTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations Pursuant to the**
13 **Motor Vehicle Inspection Program)**

14 70. Respondent Antonys' smog check station license is subject to discipline pursuant to
15 Health and Safety Code section 44072.2(c), in that Respondent failed to comply with the
16 provisions of California Code of Regulations, title 16, as follows:

17 a. **Section 3340.24(c):** Respondent falsely or fraudulently issued electronic smog
18 Certificate of Compliance Number NU018494, in that the vehicle could not have passed the
19 functional portion of the smog inspection because the vehicle's MIL was inoperative.

20 b. **Section 3340.35(c):** Respondent issued electronic smog Certificate of Compliance
21 Number NU018494 for the vehicle even though the vehicle had not been inspected in accordance
22 with California Code of Regulations, title 16, section 3340.42.

23 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the vehicle
24 in accordance with the Bureau's specifications.

25 ///

26 ///

27 ///

28 ///

1 THIRTY-EIGHTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud or Deceit)

3 71. Respondent Antonys' smog check station license is subject to discipline pursuant to
4 Health and Safety Code section 44072.2(d), in that on or about May 17, 2010, Respondent
5 committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing
6 electronic smog Certificate of Compliance Number NU018494 for the 2005 Ford Focus without
7 performing a bona fide inspection of the emission control devices and systems on the vehicle,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program.

10 THIRTY-NINTH CAUSE FOR DISCIPLINE

11 (Violations of the Motor Vehicle Inspection Program)

12 72. Respondent Gastelum's technician license is subject to discipline pursuant to Health
13 and Safety Code section 44072.2(a), in that on or about May 17, 2010, regarding the 2005 Ford
14 Focus, Respondent Gastelum failed to comply with the following sections of that Code:

15 a. Section 44012: Respondent Gastelum failed to perform the emission control tests on
16 the vehicle in accordance with procedures prescribed by the department.

17 b. Section 44032: Respondent Gastelum failed to perform a test of the emission control
18 devices and systems on the vehicle in accordance with Health and Safety Code section 44012.

19 FORTIETH CAUSE FOR DISCIPLINE

20 (Failure to Comply with Regulations)

21 73. Respondent Gastelum's technician license is subject to discipline under Health and
22 Safety Code section 44072.2(c), in that on or about May 17, 2010, regarding the 2005 Ford
23 Focus, he failed to comply with provisions of California Code of Regulations, title 16, as follows:

24 a. Section 3340.24(c): Respondent Gastelum falsely or fraudulently issued electronic smog
25 Certificate of Compliance Number NU018494, in that the vehicle could not have passed the
26 functional portion of the smog inspection because the vehicle's MIL was inoperative.

27 b. Section 3340.30(a): Respondent Gastelum failed to inspect and test the vehicle in
28 accordance with Health and Safety Code section 44012.

1 c. Section 3340.42: Respondent Gastelum failed to conduct the required smog tests and
2 inspections on the vehicle in accordance with the Bureau's specifications.

3 **FORTY-FIRST CAUSE FOR DISCIPLINE**

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

5 74. Respondent Gastelum's technician license is subject to discipline pursuant to Health
6 and Safety Code section 44072.2(d), in that on or about May 17, 2010, Respondent Gastelum
7 committed a dishonest, fraudulent, or deceitful act whereby another was injured by issuing
8 electronic smog Certificate of Compliance Number NU018494 for the 2005 Ford Focus without
9 performing a bona fide inspection of the emission control devices and systems on the vehicle,
10 thereby depriving the People of the State of California of the protection afforded by the Motor
11 Vehicle Inspection Program.

12 **FORTY-SECOND CAUSE FOR DISCIPLINE**

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

14 75. Respondent Michel's technician license is subject to discipline pursuant to Health and
15 Safety Code section 44072.2(d), in that on or about May 17, 2010, Respondent Michel committed
16 dishonest, fraudulent, or deceitful acts whereby another was injured, as set forth above in
17 paragraphs 48 and 68.

18 **OTHER MATTERS**

19 76. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
20 probation the registrations for all places of business operated in this state by Juan Gastelum and
21 Silvano Michel, doing business as Antonys Smog Check, upon a finding that it has, or is,
22 engaged in a course of repeated and willful violation of the laws and regulations pertaining to an
23 automotive repair dealer.

24 77. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station
25 License Number RC 248940, issued to Juan Gastelum and Silvano Michel, doing business as
26 Antonys Smog Check, is revoked or suspended, any additional license issued under this chapter
27 in the name of said licensees may be likewise revoked or suspended by the director.

28 ///

1 78. Pursuant to Code section 9889.9, if Lamp Station License Number LS 248940,
2 issued to Juan Gastelum and Silviano Michel, doing business as Antonys Smog Check, is revoked
3 or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business
4 and Professions Code in the name of said licensees may be likewise revoked or suspended by the
5 director.

6 79. Pursuant to Code section 9889.9, if Brake Station License Number BS 248940,
7 issued to Juan Gastelum and Silviano Michel, doing business as Antonys Smog Check, is revoked
8 or suspended, any additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business
9 and Professions Code in the name of said licensees may be likewise revoked or suspended by the
10 director.

11 80. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission
12 Specialist Technician License Number EA 150695, issued to Silviano Michel, is revoked or
13 suspended, any additional license issued under this chapter in the name of said licensee may be
14 likewise revoked or suspended by the director.

15 81. Pursuant to Code section 9889.9, if Brake Adjuster License Number BA 150695,
16 issued to Silviano Michel, is revoked or suspended, any additional license issued under Articles 5
17 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensee may be
18 likewise revoked or suspended by the director.

19 82. Pursuant to Code section 9889.9, if Lamp Adjuster License Number LA 150695,
20 issued to Silviano Michel, is revoked or suspended, any additional license issued under Articles 5
21 and 6 of Chapter 20.3 of the Business and Professions Code in the name of said licensee may be
22 likewise revoked or suspended by the director.

23 83. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission
24 Specialist Technician License Number EA 151972, issued to Juan Antonio Gastelum, is revoked
25 or suspended, any additional license issued under this chapter in the name of said licensee may be
26 likewise revoked or suspended by the director.

27 ///

28 ///

1 7. Revoking or suspending any additional license issued under Articles 5 and 6 of
2 Chapter 20.3 of the Business and Professions Code in the name of Juan Gastelum and Silvano
3 Michel, doing business as Antonys Smog Check;

4 8. Revoking or suspending Advanced Emission Specialist Technician License
5 Number EA 150695, issued to Silvano Michel;

6 9. Revoking or suspending any additional license issued under Chapter 5 of the
7 Health and Safety Code in the name of Silvano Michel;

8 10. Revoking or suspending Brake Adjuster License Number BA 150695, issued to
9 Silvano Michel;

10 11. Revoking or suspending Lamp Adjuster License Number LA 150695, issued to
11 Silvano Michel;

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

14 13. Revoking or suspending Advanced Emission Specialist Technician License
15 Number EA 151972, issued to Juan Antonio Gastelum;

16 14. Revoking or suspending any additional license issued under Chapter 5 of the
17 Health and Safety Code in the name of Juan Antonio Gastelum;

18 15. Revoking or suspending Brake Adjuster License Number BA 151972, issued to
19 Juan Antonio Gastelum;

20 16. Revoking or suspending Lamp Adjuster License Number LA 151972, issued to
21 Juan Antonio Gastelum;

22 17. Revoking or suspending any additional license issued under Articles 5 and 6 of
23 Chapter 20.3 of the Business and Professions Code in the name of Juan Antonio Gastelum;

24 ///

25 ///

26 ///

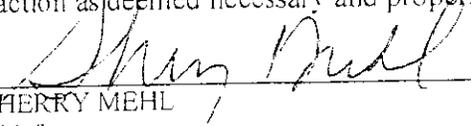
27 ///

28 ///

1 18. Ordering Juan Gastelum and Silvano Michel, Partners, doing business as Antonys
2 Smog Check, to pay the Director of Consumer Affairs the reasonable costs of the investigation
3 and enforcement of this case, pursuant to Code section 125.3: and.

4 19. Taking such other and further action as deemed necessary and proper.

5 DATED: 7/12/11



SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

9 SA2010102577
10 10700862.doc

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28