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

11 In the Matter of the Accusation Against:

Case No. 79/06-13

12 **DOW LEWIS MOTORS, INC.**
2913 Colusa Highway
13 Yuba City, California 95993
LARRY DOW LEWIS, PRES.

A C C U S A T I O N

(Smog Check)

14 Automotive Repair Dealer Registration
15 No. AH 155379
Smog Check Station License No. RH 155379

16 and

17 **JEREMY LAWRENCE WILSON**
18 212 Western Drive
Bakersfield, California 93309

19 Advanced Emission Specialist Technician
20 License No. EA 147538

21 Respondents.

22
23 Richard Ross ("Complainant") alleges:

24 **PARTIES**

25 1. Complainant brings this Accusation solely in his official capacity as the
26 Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

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Automotive Repair Dealer Registration

2. On or about January 1, 1990, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number AH 155379 ("registration") to Dow Lewis Motors, Inc. ("Respondent Dow Lewis"). The registration will expire on August 31, 2006, unless renewed.

Smog Check Station License

3. On or about September 17, 1990, the Bureau of Automotive Repair issued Smog Check Station License Number RH 155379 ("station license") to Respondent Dow Lewis. The station license will expire on August 31, 2006, unless renewed.

Advanced Emission Specialist Technician License

4. On or about September 3, 2003, the Bureau of Automotive Repair issued Advanced Emission Specialist Technician License Number EA 147538 ("technician license") to Jeremy Lawrence Wilson ("Respondent Wilson"). The technician license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2005, unless renewed.

STATUTORY PROVISIONS

5. 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 refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

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

(4) Any other conduct which constitutes fraud.

(6) Failure in any material respect to comply with the provisions of this chapter [the Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted pursuant to it.

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1 (b) Except as provided for in subdivision (c), if an automotive repair
2 dealer operates more than one place of business in this state, the director pursuant
3 to subdivision (a) shall only refuse to validate, or shall only invalidate temporarily
4 or permanently 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.

5 (c) Notwithstanding subdivision (b), the director may refuse to validate, or
6 may invalidate temporarily or permanently, the registration for all places of
7 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.

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

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

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

19 9. Section 44072.2 of the Health and Safety Code states:

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

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

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

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

27 (g) Fails to make and keep records showing his or her transactions as a
28 licensee, or fails to have those records available for inspection by the director or
his or her duly authorized representative for a period of not less than three years

1 after completion of any transaction to which the records refer, or refuses to
2 comply with a written request of the director to make the records available for
inspection.

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

7 11. Section 44072.8 of the Health and Safety Code states:

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

11 COST RECOVERY

12 12. Code section 125.3 provides, in pertinent part, that a Board may request
13 the administrative law judge to direct a licensee found to have committed a violation or
14 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
15 and enforcement of the case.

16 QUALITY ASSURANCE INSPECTIONS

17 DECEMBER 28, 2004 AND JANUARY 4, 2005

18 13. On December 28, 2004, Bureau representatives performed a quality
19 assurance inspection of Respondent Dow Lewis's facility. The representatives spoke with Curt
20 Long, the service manager, and requested invoices for two inspections that had been performed
21 on December 20, 2004, by Respondent Wilson. According to the Vehicle Information Database
22 ("VID"), Respondent Wilson had performed inspections of two vehicles and subsequently issued
23 electronic certificates of compliance for each of the vehicles as follows:

24 a. At approximately 12:43 p.m., Respondent Wilson conducted a two speed
25 idle emission systems inspection of a 1981 Chevrolet, California License Number 3A71630, and
26 issued electronic Certificate of Compliance Number FR218605C.

27 b. At approximately 12:54 p.m., Respondent Wilson conducted a two speed
28 idle emission systems inspection of a 2004 Chevrolet, California License Plate Number

1 7N86006, and issued electronic Certificate of Compliance Number FR218606C. On the same
2 day, during the initial quality assurance inspection, Mr. Long was unable to produce the
3 requested paperwork for the 1981 Chevrolet.

4 14. On January 4, 2005, the Bureau returned to Respondent Dow Lewis's
5 facility and met with Mr. Long and Respondent Wilson. Respondent Wilson admitted to Bureau
6 representatives that he had certified the 1981 Chevrolet, California License Plate Number
7 3A71630, using clean-piping methods¹. Respondent Wilson stated he had used the tailpipe
8 emissions of the 2004 Chevrolet, California License Plate Number 7N86006, to certify the 1981
9 Chevrolet.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

12 15. Respondent Dow Lewis has subjected his registration to discipline under
13 Code section 9884.7, subdivision (a)(1), in that on or about December 20, 2004, he made
14 statements which were known or which by exercise of reasonable care should have been known
15 to be untrue or misleading by issuing electronic Certificate of Compliance Number FR218605C,
16 for the 1981 Chevrolet, California License Plate Number 3A71630, certifying that the vehicle
17 was in compliance with applicable laws and regulations when, in fact, the vehicle had been
18 clean-piped.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 16. Respondent Dow Lewis has subjected his registration to discipline under
22 Code section 9884.7, subdivision (a)(4), in that on or about December 20, 2004, he committed
23 fraudulent acts whereby the People of the State of California have been injured, by issuing
24 electronic Certificate of Compliance Number FR218605C, for the 1981 Chevrolet, without
25 performing a bona fide inspection of the emission control devices and systems on that vehicle,

26 _____
27 1. "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of
28 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
compliance or are not present in the smog check area during the time of the certification.

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

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Failure to Comply with Chapter Requirements)**

5 17. Respondent Dow Lewis has subjected his station license to discipline
6 under Health and Safety Code section 44072.2, subdivision (a), in that on or about December 20,
7 2004, he failed to comply with the following sections of that Code:

8 a. **Section 44012, subdivision (f):** Respondent Dow Lewis failed to
9 perform tests and inspections of the 1981 Chevrolet in accordance with the procedures prescribed
10 by the department.

11 b. **Section 44015, subdivision (b):** Respondent Dow Lewis issued
12 electronic Certificate of Compliance Number FR218605C, for the 1981 Chevrolet, without
13 properly testing and inspecting the vehicle to determine if it was in compliance with Health and
14 Safety Code section 44012.

15 c. **Section 44059:** Respondent Dow Lewis willfully made false entries for
16 electronic Certificate of Compliance Number FR218605C, by certifying that the 1981 Chevrolet
17 had been inspected as required when, in fact, the vehicle had been clean-piped.

18 **FOURTH CAUSE FOR DISCIPLINE**

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

20 18. Respondent Dow Lewis has subjected his station license to discipline
21 under Health and Safety Code section 44072.2, subdivision (c), in that on or about December 20,
22 2004, he failed to materially comply with the following sections of the California Code of
23 Regulations, title 16:

24 a. **Section 3340.24, subdivision (c):** Respondent Dow Lewis falsely or
25 fraudulently issued electronic Certificate of Compliance Number FR218605C, for the 1981
26 Chevrolet, even though the vehicle had been clean-piped.

27 b. **Section 3340.35, subdivision (c):** Respondent Dow Lewis issued
28 electronic Certificate of Compliance Number FR218605C, certifying that the 1981 Chevrolet had

1 been tested and inspected in accordance with section 3340.42 of that Code when, in fact, the
2 vehicle had been clean-piped.

3 c. **Section 3340.42:** Respondent Dow Lewis failed to conduct the required
4 smog tests and inspections of the 1981 Chevrolet in accordance with the Bureau's specifications.

5 **FIFTH CAUSE FOR DISCIPLINE**

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

7 19. Respondent Dow Lewis has subjected his station license to discipline
8 under Health and Safety Code section 44072.2, subdivision (d), in that on or about December 20,
9 2004, he committed acts involving dishonesty, fraud, or deceit whereby another was injured as
10 set forth in paragraphs 16 through 18 above, depriving the People of the State of California of the
11 protection afforded by the Motor Vehicle Inspection Program.

12 **SIXTH CAUSE FOR DISCIPLINE**

13 **(Failure to Maintain Records of all Transactions)**

14 20. Respondent Dow Lewis has subjected his station license to discipline
15 under Health and Safety Code section 44072.2, subdivision (d), in that on or about December 20,
16 2004, he failed to maintain and have available for inspection by the Bureau the records regarding
17 the certification of the 1981 Chevrolet.

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Comply with Chapter Requirements)**

20 21. Respondent Wilson has subjected his technician license to discipline under
21 Health and Safety Code section 44072.2, subdivision (a), in that on or about December 20, 2004,
22 he violated the following sections of that Code:

23 a. **Section 44012, subdivision (f):** Respondent Wilson failed to perform
24 smog tests and inspections of the 1981 Chevrolet in accordance with procedures prescribed by
25 the department.

26 b. **Section 44032:** Respondent Wilson failed to perform tests and
27 inspections of the emission control devices and systems on the 1981 Chevrolet in accordance
28 with Health and Safety Code section 44012.

1 c. **Section 44059:** Respondent Wilson entered false information for
2 electronic Certificate of Compliance Number FR218605C, by indicating that all emission control
3 devices and systems were installed and functioning correctly when, in fact, he had not performed
4 smog tests and inspections of that vehicle as required by Health and Safety Code section 44012.

5 **EIGHTH CAUSE FOR DISCIPLINE**

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

7 22. Respondent Wilson has subjected his technician license to discipline under
8 Health and Safety Code section 44072.2, subdivision (c), in that on or about December 20, 2004,
9 he failed to materially comply with the following sections of the California Code of Regulations,
10 title 16:

11 a. **Section 3340.24, subdivision (c):** Respondent Wilson falsely or
12 fraudulently issued electronic Certificate of Compliance Number FR218605C, for the 1981
13 Chevrolet, without performing a bona fide inspection of the emission control devices and
14 systems on that vehicle, as required by Health and Safety Code section 44012.

15 b. **Section 3340.30, subdivision (a):** Respondent Wilson failed to perform
16 tests and inspections of the 1981 Chevrolet, in accordance with Health and Safety Code section
17 44012, and section 3340.42 of this Article.

18 c. **Section 3340.41, subdivision (c):** Respondent Wilson made false entries
19 into the EIS unit, by entering vehicle identification information for a vehicle other than the 1981
20 Chevrolet being tested.

21 d. **Section 3340.42:** Respondent Wilson failed to conduct the required smog
22 tests and inspections on the 1981 Chevrolet, in accordance with the Bureau's specifications.

23 **NINTH CAUSE FOR DISCIPLINE**

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

25 23. Respondent Wilson has subjected his technician license to discipline under
26 section 44072.2, subdivision (d), in that on or about December 20, 2004, he committed acts
27 involving dishonesty, fraud, or deceit, as set forth in paragraphs 21 and 22 above, thereby

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

3 **OTHER MATTERS**

4 24. Under Code section 9884.7, subdivision (c), the director may invalidate
5 temporarily or permanently, the registrations for all places of business operated in this state by
6 Dow Lewis Motors, Inc., doing business as Dow Lewis Motors, upon a finding that Dow Lewis
7 Motors, Inc., has, or is, engaged in a course of repeated and willful violations of the laws and
8 regulations pertaining to an automotive repair dealer.

9 25. Under Health and Safety Code section 44072.8, if Smog Check Station
10 License Number RH 155379, issued to Dow Lewis Motors, Inc., doing business as Dow Lewis
11 Motors, is revoked or suspended, any additional license issued under this chapter in the name of
12 said licensee may be likewise revoked or suspended by the director.

13 26. Under Health and Safety Code section 44072.8, if Advanced Emission
14 Specialist Technician License Number EA 147538, issued to Jeremy Lawrence Wilson, is
15 revoked or suspended, any additional license issued under this chapter in the name of said
16 licensee may be likewise revoked or suspended by the director.

17 **PRAYER**

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

20 1. Temporarily or permanently invalidating Automotive Repair Dealer
21 Registration Number AH 155379, issued to Dow Lewis Motors, Inc.;

22 2. Temporarily or permanently invalidating any other automotive repair
23 dealer registration issued to Dow Lewis Motors, Inc.;

24 3. Revoking or suspending Smog Check Station License Number
25 RH 155379, issued to Dow Lewis Motors, Inc.;

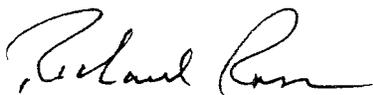
26 4. Revoking or suspending any additional license issued under this chapter in
27 the name of Dow Lewis Motors, Inc.;

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- 5. Revoking or suspending Advanced Emission Specialist Technician License Number EA 147538, issued to Jeremy Lawrence Wilson;
- 6. Revoking or suspending any additional license issued under this chapter in the name of Jeremy Lawrence Wilson;
- 7. Ordering Dow Lewis Motors, Inc. and Jeremy Lawrence Wilson to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 8. Taking such other and further action as deemed necessary and proper.

DATED: 10.31.05



RICHARD ROSS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant