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

In the Matter of the Accusation Against: BLUE RIBBON AUTOMOTIVE William Chip Carroll, Owner Automotive Repair Dealer Registration No. ARD 210627 Smog Check Station License No. RC 210627 WILLIAM CHIP CARROLL Advanced Emission Specialist Technician License No. EA 151506, Respondents.	Case No. 79/09-47 OAH No. 2009030906

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective 9/19/11.

IT IS SO ORDERED August 17, 2011.

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

ref

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

In the Matter of the Accusation Against: **BLUE RIBBON AUTOMOTIVE** William Chip Carroll, Owner Automotive Repair Dealer Registration No. ARD 210627 Smog Check Station License No. RC 210627 **WILLIAM CHIP CARROLL** Advanced Emission Specialist Technician License No. EA 151506 Respondent.	Case No. 79/09-47 OAH No. 2009030906

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 21-23, 2011, in Bakersfield. The record was closed and the matter was submitted for decision at the conclusion of the hearing on June 23, 2011.

Michael Brown, Deputy Attorney General, represented Sherry Mehl (Complainant). Joe W. Whittington, Esq., represented William Chip Carroll, who is the owner of Blue Ribbon Automotive (Respondent). Mr. Carroll was present each day.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant brought the Accusation in her official capacity as Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department), State of California.

2. Respondent submitted a Notice of Defense, which requested a hearing to contest the charges asserted in the Accusation.

3. On May 30, 2000, the Director of the Department (Director) issued Automotive Repair Dealer Registration Number ARD 210627 to Respondent. The automotive repair dealer registration was in full force and effect at all times relevant, and will expire on May 31, 2012, unless renewed.

4. On April 23, 2003, the Director issued Smog Check Station License Number RC 210627 to Respondent. The smog check station license was in full force and effect at all times relevant and will expire on May 31, 2012, unless renewed.

5. In 2005, the Director issued Advanced Emission Specialist Technician License Number EA 151506 to Respondent. The advanced emission specialist technician license was in full force and effect at all times relevant and will expire on March 31, 2013, unless renewed.

Background Information

6. On March 18, 2004, Bureau staff held an office conference with Respondent out of concern regarding some of Respondent's business practices.

7. On July 7, 2006, Bureau staff held another office conference with Respondent as a result of consumer complaints that had been submitted to the Bureau. The validity of those complaints was not established, except for one involving Cynthia Flores. Respondent had charged Ms. Flores for installing a PCV hose when, in fact, his shop had installed a section of water hose, which was the incorrect repair. Bureau staff contended that Respondent had done faulty work and had falsely billed her. Respondent contended it was a simple mistake, in that the wrong hose was sent from the parts supplier, and that hose was only connected in order to conduct a smog examination. Although Bureau staff investigated and doubted Respondent's version of events, nothing further came of the Flores complaint, except the recommendation that the report be placed in Respondent's master file.

8. During the July 7, 2006 office conference, Respondent was given a number of recommendations, including that he and his staff follow manufacturer's recommended procedures for emission diagnosis and repair, that they comply with all provisions of the Automotive Repair Act and Smog Check Program, and that in the future a documented vehicle and/or station inspection would be used to confirm compliance.

9. As a result of the above, Bureau staff viewed Respondent with suspicion. Any consumer complaints that were submitted thereafter were thoroughly investigated, and the decision was made to send three documented vehicles with different induced malfunctions to Respondent's shop.

Undercover Operation #1: 1984 Chevrolet Monte Carlo

10. On December 20, 2006, Bureau Representative Erasmo Lopez (Lopez), acting in an undercover capacity and using an alias, took the Bureau's 1984 Chevrolet Monte Carlo to Respondent's facility and requested a smog inspection. The car had been induced to malfunction in ways that would result in a failed smog inspection. More specifically, an open wire in the vehicle's computerized Mixture Control (MC) solenoid circuit had been created and a burnt-out bulb installed in the instrument panel malfunction indicator light (MIL) light socket. Lopez signed and received a copy of a written estimate, then left Respondent's facility.

11. Later that same day, Lopez telephoned the facility and spoke with Respondent. Respondent told Lopez that the vehicle failed the smog inspection and needed a diagnosis for an additional fee of $79, which Lopez authorized.

12. On December 21, 2006, Lopez telephoned the facility and was told that they were waiting for diagnostic results. On December 22, 2006, at approximately 4:30 p.m., Lopez again telephoned the facility and was told by Respondent that additional time was needed to diagnose the vehicle for a total fee of $159. Lopez authorized the additional diagnosis.

13. On December 26, 2006, Lopez telephoned the shop and was told by Respondent that the vehicle needed additional electrical checks, a bulb needed replacement, a defective wire to the MC solenoid needed repair, and a throttle position sensor (TPS) computer code kept activating. Respondent told Lopez that the total cost of the repair would be $400, which Lopez authorized.

14. Respondent was the technician on this vehicle. He discovered the MC solenoid circuit problem and the burnt-out MIL bulb. But his explanation why he replaced the TPS was not credible. He testified that he was drawn to the TPS system because a TPS code kept coming back on the MIL. He testified that as a result of that code, he tested the TPS system and got anomalous electrical readings. He testified that he replaced the TPS because he believed it had malfunctioned. However, Bureau Representative Larry Leask had installed a new TPS in this vehicle when documenting it to be sent to Respondent's shop. He tested the vehicle before and after he made his inducements and detected no problem with the TPS. At no time did Mr. Leask get a computer code relating to the TPS on the car's MIL, either before or after making the inducements. It is highly unlikely that a new TPS in this condition would have malfunctioned shortly after installation, even when the induced problems related to the vehicle's electrical system. Complainant's evidence on this point, including the testimony of Mr. Leask and Bureau investigator Dan Craig, was persuasive. On the other hand, Respondent's technician, Seth Wood, vaguely testified that a TPS "can" malfunction if it encounters moisture. However, Respondent presented no evidence corroborating such a phenomenon exits or indicating that the TPS in question had become moist, so Mr. Wood's testimony was not persuasive.

15. Therefore, it was established that there was nothing wrong with the vehicle's TPS. That being the case, there would have been no computer codes relating to the TPS generated by the car's computer when it was in Respondent's shop. Since Respondent found the two induced problems, and there was nothing wrong with the TPS, no reason is apparent for Respondent to have obtained anomalous results after testing the TPS system, nor is it apparent that Respondent would have needed to test the TPS system. Since the TPS system is an integral part of a vehicle's emission control system, and Respondent is a Bureau-licensed advanced emission specialist technician, it is presumed that Respondent is familiar with the TPS system and did not erroneously replace a part that was not in need of repair out of ignorance or mistake.

16. On December 27, 2006, Lopez telephoned the facility and was told the repairs were complete. On December 28, 2006, Lopez paid the facility $428.04 and received copies of an invoice and the two vehicle inspection reports (VIR) for the smog inspections. With the repairs, the car now passed smog inspection.

17. On January 10 and 11, 2007, Mr. Leask inspected the vehicle and found that the TPS had been replaced. However, the TPS did not need to be replaced, as it was not defective. The only repairs needed were the replacement of the MIL light bulb and repair of the MC solenoid circuit open wire, which had been performed by Respondent. Mr. Leask also found that the new TPS Respondent had installed in the vehicle was not correctly adjusted per manufacturer's specifications.

18. Respondent represented to Bureau Representative Lopez that the Bureau's 1984 Chevrolet Monte Carlo needed a new TPS when, in fact, the TPS was not in need of replacement. Respondent's testimony explaining why he replaced the TPS sensor was not credible. Respondent presented no other plausible explanation for replacing a part that did not need to be replaced. Under these circumstances, it was established that Respondent made a false statement regarding the need to replace the TPS in order to induce Lopez to purchase an unnecessary repair on the vehicle, which increased the overall cost of the repair by approximately $100.

Undercover Operation #2: 1988 Oldsmobile Cutlass Ciera

19. Bureau staff decided to send another documented vehicle to Respondent's shop. This time a 1988 Oldsmobile Cutlass Ciera was used. Bureau Representative Leask disconnected the car's computer knock sensor, which would cause the vehicle to fail a smog inspection. In addition, Mr. Leask made defective the vehicle's air conditioning (AC) clutch relay, causing the system not to blow cold air. There was nothing wrong with the brake system. In fact, Mr. Leask installed new calipers, he installed new brake rotors and measured them to confirm that they exceeded manufacturer specifications, and he measured the brake pads to confirm that they exceeded manufacturer specifications for friction thickness.

20. On August 9, 2007, a representative of the Bureau acting in an undercover capacity and using the alias Claire Johnson (Johnson), took the Bureau's 1988 Oldsmobile Cutlass Ciera to Respondent's facility. Johnson said that she had just purchased the car, and asked for a smog inspection. Johnson also told them that the air conditioning system was not working, and asked that they check the brakes because the car was so old. Johnson signed and received a copy of a written estimate, then left the facility.

21. On August 10, 2007, Johnson received a telephone message from Respondent, who stated that the air conditioning system needed to be retrofitted, the front calipers were leaking brake fluid, the rotors were below specifications, and the vehicle had failed the smog test and would need a diagnosis. Subsequently, Respondent told Johnson that the vehicle needed front brakes, including brake pads, rotors, and calipers; and that the air conditioning system needed to be retrofitted. Respondent told Johnson that the total cost of the repairs would be $1,056.56. Johnson authorized the repairs.

22. On August 14, 2007, Johnson received a telephone message from Respondent. Respondent stated that the vehicle's air conditioning and brakes were working, the vehicle had passed the smog inspection, and the vehicle was ready to be picked-up.

23. On August 15, 2007, Johnson paid the facility $1,082.83 and received a copy of an invoice and the VIR for the August 14, 2007 smog inspection. Later that same day, Bureau Representative Leask inspected the vehicle and found that the front brake calipers, disc pads, and disc rotors had been replaced and the air conditioning system recharged or retrofitted to R134 refrigerant. Mr. Leask further found that the left inner disc pad retainer spring Respondent had installed on the vehicle was broken. Mr. Leask also found that although the air conditioning relay had been replaced, it was not listed on Respondent's invoice.

24. The only repairs needed on this vehicle were the reconnection of the knock sensor wire and replacement of the AC compressor clutch relay, both of which had been discovered and repaired by Respondent's shop. There was absolutely nothing wrong with the brakes. Both Respondent and his technician who worked on this car, Marcus Tassey, testified that they noticed the front right caliper was leaking brake fluid. That testimony was not credible, in light of the fact that Mr. Leask had installed new calipers, tested the vehicle, inspected it, and observed no such leaking. The pads and rotors were measured and confirmed by Mr. Leask to be within specification. Mr. Tassey could not remember the measurements he took of the rotors, and thus could not specifically describe why they needed to be replaced. Respondent testified that the pads were replaced because they are intimately connected with the calipers, and if the calipers need to be replaced, the pads should be too. However, the calipers did not need to be replaced in this case.

25. Similarly, the AC did not need to be retrofitted. Although changing the R12 refrigerant would have been a convenience to a consumer, in that the new R134 refrigerant would have been easier to obtain in the future because it was more environmentally friendly, Respondent did not depict this type of repair as an upgrade or convenience, but rather a necessity, and that it had to be done for him to repair the vehicle. Moreover, there was no need to evacuate the car's R12 refrigerant to check on the AC system, as neither the manufacturer's specifications or the Bureau's regulations require such. Since the refrigerant did not need to be evacuated, it did not need to be replaced, thus there was no need to consider what type of refrigerant to put back in the AC system.

26. Respondent represented to Johnson that the Bureau's 1988 vehicle needed extensive brake and AC repairs when, in fact, those repairs were unnecessary. Instead, simpler and less expensive repairs were needed, i.e., reconnecting the knock sensor wire and replacing the AC compressor clutch relay. Respondent's explanation why his repairs were done was not credible. Since the unnecessary and extensive repairs were made to the areas of concern expressed by Johnson, causing the overall cost of the repair to increase by hundreds of dollars, and Respondent presented no credible explanation why those repairs were done, it was established under these circumstances that Respondent made a false statement regarding the need to retrofit the AC system and to repair the brakes in order to induce Johnson to purchase unnecessary repairs on the vehicle, which increased the overall cost of the repair.

Undercover Operation #3: 1988 Toyota Camry

27. On September 19, 2007, a representative of the Bureau acting in an undercover capacity and using the alias Marie Peterson took the Bureau's 1988 Toyota Camry to Respondent's facility and requested that the brakes be checked. Respondent found nothing wrong with the brakes and recommended no repairs. The Bureau found no fault with Respondent's actions and has alleged no grounds for discipline as a result of this undercover operation.

Consumer Complaint: 2001 Pontiac Sunfire

28. On January 8, 2008, consumer Carol Kelley (Kelley) took her 2001 Pontiac Sunfire to Respondent's shop because it intermittently would not start. Kelley had just recently taken it for repair to PI Motorsports (PI), who replaced the fuel pump. Kelley told Respondent that the fuel pump has been replaced by PI. Respondent told Kelley that he would perform diagnostic tests on the vehicle and advise her of any problem. Kelley received an estimate, which showed a labor charge of $89.50 and stated, in part, "VEHICLE INTERMITTENTLY WON'T START, CHECK AND ADVISE" and "CHECK ALL ELECTRICAL ADVISE...."

29. On January 9, 2008, at approximately 10:00 a.m., Kelley contacted Respondent and was told by him that he should have explained that electrical diagnostics always cost two hours worth of labor. Kelley authorized the additional labor charge of $89.50. Later that day, Respondent's technician, Seth, contacted Kelley to let her know that no problems with the vehicle could be found that would cause it not to start, but that the electrical wiring was a "total mess" and was all "hacked up." Kelley picked up her vehicle after hours from Respondent's facility along with Respondent's invoice, which stated "IF SYMPTOMS REOCCUR DIAGNOSTIC WILL CONTINUE AT NO CHARGE."

30. On January 15, 2008, Kelley's vehicle was towed to Respondent's facility for further diagnostics because it would not start. Respondent's technician Seth handled the diagnostics. Seth has been a mechanic for six years. He has obtained no automotive mechanic certifications. He had great difficulty figuring out the problem with this car. Although he attempted to follow the Mitchell Repair Manual for this vehicle, he failed to do so properly, which lead him astray. After his initial efforts, his only conclusions were that there was something wrong with the electrical wiring and that the fuel pump was not getting the proper electrical flow. Seth shared his opinions with Respondent, who attempted to confirm Seth's findings. In doing so, however, Respondent also failed to properly follow the Mitchell Manual, which led him astray as well. Seth and Respondent believed there was an electrical wiring problem unresolved by PI, which in turn caused the new fuel pump to short out and malfunction.

31. At approximately 10:25 a.m. on January 15th, Respondent contacted Kelley and told her that the electrical wiring to the fuel pump should have been replaced when PI installed the new fuel pump in her vehicle and that the wiring had burnt out the fuel pump. Respondent said the wiring would have to be replaced. Respondent also told Kelley that he could not warranty PI's fuel pump because it did not appear to be a factory part. He recommended that she replace the fuel pump with a factory approved part which he could then warranty. The estimate for these repairs was approximately $450 for parts and tax and approximately $280 for labor. Kelley authorized the repair of the vehicle, and paid for the repairs by phone, partially by credit card and the rest through Itex (a bartering organization) credit. She also requested that Respondent provide her with the fuel pump removed from her vehicle.

32. Seth went forward with the recommended repair work, including replacing the fuel pump. But he was unable to get the car to start upon completion of his repairs. He retraced the electrical wiring system in question and found a damaged connector near the passenger compartment. That explained to him why the car would not start, even with a new fuel pump. Seth rewired that area and the car started again. Respondent contacted Kelley again and explained the situation. He told her that the fuel pump PI had previously installed was probably good and he offered to reinstall it for her, but he recommended to her that she keep the one his shop installed because it was factory recommended and he could warranty it. Kelley agreed.

33. Kelley picked up her vehicle after hours from Respondent's facility, which contained the pump PI installed and Respondent's invoice totaling $726.37. Although the invoice alluded to the fact that there had been rewiring near the "bulk head," the invoice failed to list the specific electrical wire and connectors used to repair the wiring to the fuel pump. In any event, Ms. Kelley's car was now starting and running properly.

34. Kelley complained to the Bureau about the situation generally, but was not necessarily complaining against Respondent. Since both PI and Respondent had replaced fuel pumps in her car, she was unsure who to blame or how to proceed. As a result of her complaint, however, Bureau Representative Leask inspected the fuel pump installed by PI and removed by Respondent from Kelley's vehicle, and found it to operate normally.

Mitigation and Aggravation

35. In mitigation, Respondent has no prior record of any citations or disciplinary action by the Bureau. None of the prior complaints or matters that were the subject of the office conferences discussed above led to any citation or discipline. Respondent and his technician were able to correct the problem Ms. Kelley had in starting her car.

36. Respondent's "Circle of Inspection" process serves as aggravation. According to Respondent, the Circle of Inspection process involves mechanics checking all major systems of all incoming vehicles. Respondent testified that the process is intended for the safety and education of the customer, in that they will be notified of any mechanical problem found in the vehicle during the inspection. In practice, however, it does not appear that the Circle of Inspection is routinely done on all major systems, but rather can be limited to just the area of complaint by the customer. For example, when Bureau Representative Johnson brought the 1988 Oldsmobile to Respondent's shop and asked for the brakes to be checked because the car was so old, the Circle of Inspection document for her car indicates that only the brakes were subjected to that process, despite the age of the car. Respondent also testified that he does a high volume repair business, i.e., his shop services approximately 2,000-2,500 cars per year. He also admitted that the Circle of Inspection process does tend to increase the sale of repairs. Thus, it was established that the real purpose of the Circle of Inspection is simply to increase the number of repairs done on cars that come into the shop, rather than for safety or education. This also provides a motive for Respondent to have made the false representations involved in the first two undercover operations.

///

///

Costs

37. Complainant incurred $20,865 in attorney's fees billed by the Department of Justice in prosecuting this matter from the inception of the case through May 27, 2011.[1] None of the time reflected in the Department of Justice cost certification is attributed to any particular part of the investigation. It represents the aggregate total of time billed in the matter.

38. Complainant also incurred $25,251.65 in costs for the investigation of this matter, including $17,692.50 in costs from 250 hours of time generated by a Bureau Program Representative I in the 2007/2008 fiscal year. None of the time reflected in the Bureau's cost certification is attributed to any particular part of the investigation. It represents the aggregate total of investigation time spent.

LEGAL CONCLUSIONS

Kelley Consumer Complaint

1. First Cause for Discipline (Untrue or Misleading Statements). Respondent's automobile repair dealer registration is not subject to disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(1).[2] It was not established that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading regarding the need to replace the fuel pump in Ms. Kelley's 2001 Pontiac Sunfire. Although it turned out that the fuel pump did not need to be replaced, Respondent and his technician had come to the good faith opinion that the electrical wiring problems they discovered caused the fuel pump to short out. When they later discovered that was wrong, they disclosed the problem to Ms. Kelley, who elected to keep the fuel pump Respondent had installed. There was no motive for Respondent to try to persuade a consumer to replace a fuel pump that had been recently replaced, other than the erroneous opinion that it had shorted out. Respondent's disclosure of the situation to the consumer also shows he operated in good faith in this repair. Moreover, unlike PI, Respondent was ultimately able to discover the actual problem with the car and to effectuate a proper repair. (Factual Findings 28-34.)

---

[1] The amount for the anticipated attorneys' fees generated between May 27, 2011, and the commencement of the hearing was not established because DAG Brown's declaration was admitted only as administrative hearsay and that declaration was the only source of that information.

[2] All further statutory references are to the Business and Professions Code unless otherwise specified.

2. Second Cause for Discipline (Fraud). Respondent's automobile repair dealer registration is not subject to disciplinary action pursuant to section 9884.7, subdivision (a)(4), in that it was not established that he committed acts constituting fraud regarding the recommendation to Ms. Kelley to replace the fuel pump in her 2001 Pontiac Sunfire, for the reasons discussed above in Legal Conclusion No. 1. (Factual Findings 28-34.)

3. Third Cause for Discipline (Violations of the Automotive Repair Act). Respondent's automobile repair dealer registration is subject to disciplinary action pursuant to section 9884.7, subdivision (a)(6), in that Respondent failed to comply with the provisions of section 9884.8 of the Automotive Repair Act by failing to list on Ms. Kelley's invoice the electrical wire and connectors used to repair the wiring to the fuel pump on Kelley's 2001 Pontiac Sunfire. (Factual Findings 28-34.)

4. Fourth Cause for Discipline (Departure from Trade Standards). Respondent's automobile repair dealer registration is not subject to disciplinary action pursuant to section 9884.7, subdivision (a)(7). It was established that Respondent, both personally and through his technician Seth, willfully departed from or disregarded accepted trade standards for good and workmanlike repair by failing to follow the Mitchell Manual to repair and confirm the condition of the fuel pump on Ms. Kelley's 2001 Pontiac Sunfire. However, it was also established that after discovering his error replacing a fuel pump that was not broken, Respondent disclosed the situation to Ms. Kelley, who consented to the repairs under the circumstances. (Factual Findings 28-34.)

5. Fifth Cause for Discipline (Dishonesty, Fraud or Deceit). Respondent's smog check station license is not subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that it was not established that Respondent committed a dishonest, fraudulent, or deceitful act whereby another was injured, regarding Respondent's representations to Ms. Kelley concerning her 2001 Pontiac Sunfire, for the reasons discussed above in Legal Conclusion Nos. 1 and 2. (Factual Findings 28-34.)

Undercover Operation #1: 1984 Chevrolet Monte Carlo

6. Sixth Cause for Discipline (Untrue or Misleading Statements). Respondent's automotive repair dealer registration is subject to disciplinary action pursuant to section 9884.7, subdivision (a)(l), in that Respondent made a statement which he knew, or in the exercise of reasonable care, should have known, to be untrue or misleading. Specifically, Respondent represented to Bureau Representative Lopez that the Bureau's 1984 Chevrolet Monte Carlo needed a new TPS when, in fact, the TPS was not in need of replacement. (Factual Findings 10-18.)

7. Seventh Cause for Discipline (Fraud). Respondent's automotive repair dealer registration is subject to disciplinary action pursuant to section 9884.7, subdivision (a)(4), in that Respondent committed an act constituting fraud, as he made a false representation to Bureau Representative Lopez in order to induce him to purchase an unnecessary repair on the vehicle, i.e., the replacement of the TPS. (Factual Findings 10-18.)

8. Eighth Cause for Discipline (Departure From Trade Standards). Respondent's automotive repair dealer registration is subject to disciplinary action pursuant to 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. More specifically, Respondent failed to properly repair the Bureau's 1984 Chevrolet Monte Carlo by failing to adjust the new TPS he installed on the vehicle within the manufacturer's specification. (Factual Findings 10-18.)

9. Ninth Cause for Discipline (Violations of the Motor Vehicle Inspection Program). Respondent's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44016 of that Code by failing to perform the repairs on the Bureau's 1984 Chevrolet Monte Carlo in accordance with established specifications and procedures. More specifically, Respondent replaced the TPS which was not in need of repair, and then once installed failed to properly adjust the TPS within the manufacturer's specifications. (Factual Findings 10-18.)

10. Tenth Cause for Discipline (Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program). Respondent's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that Respondent failed to comply with California Code of Regulations, title 16 (Regulation), section 3340.41 by failing to follow applicable specifications and procedures when performing the repairs on the Bureau's 1984 Chevrolet Monte Carlo, as set forth in Legal Conclusion No. 9. (Factual Findings 10-18.)

11. Eleventh Cause for Discipline (Dishonesty, Fraud or Deceit). Respondent's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent, or deceitful act in the repair of the Bureau's 1984 Chevrolet Monte Carlo, as set forth in Legal Conclusion No. 7. (Factual Findings 10-18.)

///

///

12. Twelfth Cause for Discipline (Violations of the Motor Vehicle Inspection Program). Respondent's advanced emission specialist technician license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44016 of that Code by failing to perform the repairs on the Bureau's 1984 Chevrolet Monte Carlo in accordance with established specifications and procedures, as set forth in Legal Conclusion No. 9. (Factual Findings 10-18.)

13. Thirteenth Cause for Discipline (Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program). Respondent's advanced emission specialist technician license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that Respondent failed to comply with Regulation 3340.41 by failing to follow applicable specifications and procedures when diagnosing the cause of the emissions failure and performing the repairs on the Bureau's 1984 Chevrolet Monte Carlo, as set forth in Legal Conclusion No 10. (Factual Findings 10-18.)

14. Fourteenth Cause for Discipline (Dishonesty, Fraud or Deceit). Respondent's advanced emission specialist technician license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent, or deceitful act whereby another was injured, in order to induce Bureau Representative Lopez to purchase an unnecessary repair on the vehicle, as set forth in Legal Conclusion No. 7. (Factual Findings 10-18.)

Undercover Operation #2: 1988 Oldsmobile Cutlass Ciera

15. Fifteenth Cause for Discipline (Untrue or Misleading Statements). Respondent's automotive repair dealer registration is subject to disciplinary action pursuant to section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which he knew or in the exercise of reasonable care should have known to be untrue or misleading. Respondent represented to Bureau Representative Johnson that the Bureau's 1988 Oldsmobile Cutlass Ciera needed the front brake calipers, disc pads, and disc rotors replaced, and the AC system retrofitted. In fact, the front brake calipers, disc pads, and disc rotors were not in need of replacement and the AC system did not need to be retrofitted. (Factual Findings 19-26.)

16. Sixteenth Cause for Discipline (Fraud). Respondent's automotive repair dealer registration is subject to disciplinary action pursuant to section 9884.7, subdivision (a)(4), in that Respondent committed an act constituting fraud. More specifically, Respondent made a false or misleading representation to Bureau Representative Johnson regarding the Bureau's 1988 Oldsmobile Cutlass Ciera, in order to induce Johnson to purchase unnecessary repairs on the vehicle, i.e., replacement of the front brake calipers, disc pads, and disc rotors, and retrofitting the AC system. (Factual Findings 19-26.)

17. Seventeenth Cause for Discipline (Departure From Trade Standards). Respondent's automotive repair dealer registration is subject to disciplinary action pursuant to 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. More specifically, Respondent installed a broken left inner disc pad retainer spring on the vehicle. (Factual Findings 19-26.)

18. Eighteenth Cause for Discipline (Performing Repairs Without Authorization). Respondent's automotive repair dealer registration is subject to disciplinary action pursuant to section 9884.7, subdivision (a)(6), in that he failed to comply with section 9884.9, subdivision (a), by failing to obtain Johnson's written or oral authorization prior to replacing the AC relay on the Bureau's 1988 Oldsmobile Cutlass Ciera. (Factual Findings 19-26.)

19. Nineteenth Cause for Discipline (Dishonesty, Fraud or Deceit). Respondent's smog check station license is subject to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent, or deceitful act whereby another was injured, as set forth in Legal Conclusion No. 16. (Factual Findings 19-26.)

Other Discipline

20. Pursuant to section 9884.7, subdivision (c), the Director may invalidate temporarily or permanently, the registrations for all places of business operated in this state by Respondent William Chip Carroll, owner of Blue Ribbon Automotive, upon a finding that Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

21. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station License Number RC 210627, issued to Respondent, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

22. Pursuant to Health and Safety Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 151506, issued to Respondent, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

///

///

///

Disposition

23. The Administrative Law Judge has reviewed and considered the Bureau's *Guidelines For Disciplinary Penalties and Terms of Probation* (Guidelines) [rev. 1997] in arriving at the disposition for this case, including the various factors to be considered and the recommended discipline for the various types of misconduct established in this case.

24. The Guidelines describe a number of aggravating factors that should be considered in determining discipline. In this case, a few of those factors apply against Respondent. For example, Respondent was the subject of at least two office conferences before the events underlying the cause for discipline in this case (factor 1 C). Two of the three undercover operations involved fraudulent acts by Respondent (Factor 1 R). Because the fraudulent acts proven in this case were connected to Respondent's so-called "Circle of Inspection" process, it is concluded that those unlawful acts were part of a pattern of practice (factor 1 L). Other aggravating evidence was presented, including Respondent's failure to express any contrition or acceptance of responsibility for the violations established in this case, as well as his failure to take any corrective action to prevent future instances of similar misconduct.

25. The Guidelines also describe a number of mitigating factors that should be considered in determining discipline. In this case, Respondent has no prior record of citations or discipline with the Bureau. In addition, Respondent's mechanic was ultimately able to repair Ms. Kelley's car, where a prior shop had not; and Respondent's staff did the right things with one of the three undercover operations. These mixed results show that a pattern of fraudulent repairs was not predominant.

26. The misconduct established in this case, particularly two instances of fraud, is serious and revocation could be justified. The aggravating facts also give pause. However, Respondent's lack of prior disciplinary history with the Bureau is significant in the weighing process. The mixed results presented in this case also give pause, where two instances of fraud are countered by two instances when Respondent and his staff essentially did nothing wrong. Moreover, the Bureau's decision to not take possession of the TPS after the Lopez undercover operation, or the brake parts after the Johnson undercover operation, also gives pause. The ability to test those parts after Respondent's repairs could have very well answered the lingering doubt created by Respondent's insistence that those parts were defective. Under these very unique circumstances, Respondent is given the benefit of the doubt, and discipline less than revocation is warranted.

27. The Guidelines specify minimum and maximum discipline for fraudulent acts, by far the most serious misconduct established in this case. Yet the range between the minimum and maximum discipline recommended is not that far apart. Thus, there are essentially two choices available, the minimum discipline suggested for fraud, which is extensive, or the maximum discipline, which is

revocation. In this case, the minimum level of discipline is chosen. The discipline contained in the order below is intended to protect the public from continued illegal behavior and to facilitate the rehabilitation of the probationer without being unduly burdensome or anti-competitive. (Guidelines, p. 1). (Factual Findings 1-36.)

Costs

28. Section 125.3 provides, in pertinent part, that a board or bureau may request an administrative law judge to direct a licentiate found to have committed a violation(s) of that entity's governing licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

29. In this case, numerous violations of the Automotive Repair Act and Motor Vehicle Inspection Program were established. Thus, the Bureau is entitled to its reasonable costs incurred in investigating and prosecuting this matter. Complainant established that the Bureau incurred a total of $46,116.65 in costs investigating and prosecuting this matter. However, two deductions are warranted to render a reasonable amount of such costs.

30. A deduction to the prosecution costs is warranted. As concluded above, Complainant prevailed in the two undercover operations, but essentially failed to prevail in the claims relating to the Kelley consumer complaint, other than the minor, technical violation of failing to list the electrical wire and connectors on an invoice. Since Complainant did not prevail on one-third of the case prepared by legal counsel and presented at hearing, a one-third reduction of the attorneys' fees in this matter is warranted, reducing the reasonable prosecution costs to $13,908.61.

31. A deduction to the Bureau's investigation costs is also warranted. Since the Bureau's cost certification does not reveal which hours were spent on which part of its investigation, it can only be assumed that the total investigation time was evenly divided amongst the three undercover operations and the one consumer complaint involving Ms. Kelley. As discussed above, Complainant essentially did not prevail with regard to the Kelley complaint. One of the three undercover operations resulted in no findings of a violation of the Automotive Repair Act or the Motor Vehicle Inspection Program. Therefore, Complainant did not prevail on half of the matters involved in its investigation. Therefore, a one-half reduction of the Bureau's investigation costs is warranted, reducing the investigation costs to $12,625.83.

32. Based on the above, Complainant established that reasonable costs in the amount of $26,534.44 were incurred in the investigation and prosecution of this matter.

///

///

ORDER

1. Automotive Repair Dealer Registration Number ARD 210627, issued to Respondent William Chip Carroll, owner of Blue Ribbon Automotive, is permanently invalidated; that invalidation is stayed, and Respondent is placed on probation for a period of five years, under the terms and conditions listed below.

2. Smog Check Station License Number RC 210627, issued to Respondent William Chip Carroll, owner of Blue Ribbon Automotive, is revoked; that revocation is stayed, and Respondent is placed on probation for a period of five years, under the terms and conditions listed below.

3. Advanced Emission Specialist Technician License Number EA 151506, issued to Respondent William Chip Carroll, is revoked; that revocation is stayed, and Respondent is placed on probation for a period of five years, under the terms and conditions listed below.

4. During the period of probation for the above licenses and licensing rights, Respondent shall:

A. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

B. Respondent shall be suspended for 30 days, beginning from the effective date of this decision. This suspension shall run concurrently for each of Respondent's licenses and licensing rights. During the period of suspension, Respondent shall post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

C. Respondent must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

D. Within 30 days of the effective date of this action, Respondent shall report any financial interest he may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

E. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

F. If an accusation is filed against Respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

G. Should the Director of Consumer Affairs determine that Respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard permanently invalidate the registration and revoke the two involved licenses.

H. During the period of probation, Respondent shall attend and successfully complete a Bureau certified training course in diagnosis and repair of emission systems failures and engine performance, applicable to the class of license held by the Respondent. Said course shall be completed and proof of completion submitted to the Bureau within 60 days of the effective date of this decision and order. If proof of completion of the course is not furnished to the Bureau within the 60-day period, Respondent's advanced emissions specialist technician license shall be immediately suspended until such proof is received.

I. During the period of probation, Respondent shall not perform any form of smog inspection, or emission system diagnosis or repair, until Respondent has purchased, installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to properly perform such work, and BAR has been given 10 days notice of the availability of the equipment for inspection by a BAR representative.

5. Any other automotive repair dealer registration issued to Respondent William Chip Carroll is permanently invalidated.

6. Any additional license issued under Chapter 5 of the Health and Safety Code in the name of Respondent William Chip Carroll is revoked.

7. Respondent William Chip Carroll, individually and as owner of Blue Ribbon Automotive, is ordered to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case in the amount of $26,534.44, by the end of the fourth year of the probationary period described above, in monthly or quarterly installments as agreed to by the Department.

DATED: July 20, 2011

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings

EDMUND G. BROWN JR., Attorney General
of the State of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-8944
Facsimile: (213) 897-1071

Attorneys for Complainant

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

In the Matter of the Accusation Against: **BLUE RIBBON AUTOMOTIVE** 6600 Schirra Court #A Bakersfield, CA 93313 **WILLIAM CHIP CARROLL, OWNER** Automotive Repair Dealer Registration No. ARD 210627 Smog Check Station License No. RC 210627 and **WILLIAM CHIP CARROLL** 6600 Schirra Court, #A Bakersfield, CA 93313 Advanced Emission Specialist Technician License No. EA 151506 Respondents.	Case No. 79/09-47 **ACCUSATION** SMOG CHECK

Complainant alleges:

PARTIES

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

///

///

Automotive Repair Dealer Registration No. ARD 210627

2. On or about May 30, 2000, the Director of Consumer Affairs ("Director") issued Automotive Repair Dealer Registration Number ARD 210627 to William Chip Carroll ("Respondent"), owner of Blue Ribbon Automotive. Respondent's automotive repair dealer registration was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2009, unless renewed.

Smog Check Station License No. RC 210627

3. On or about April 23, 2003, the Director issued Smog Check Station License Number RC 210627 to Respondent. Respondent's smog check station license was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2009, unless renewed.

Advanced Emission Specialist Technician License No. EA 151506

4. On or about June 13, 2005, the Director issued Advanced Emission Specialist Technician License Number EA 151506 to Respondent. Respondent's advanced emission specialist technician license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2009, unless renewed.

JURISDICTION

5. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that the Director may invalidate an automotive repair dealer registration.

6. Bus. & Prof. Code section 9884.13 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.

7. Health and Safety Code ("Health & Saf. 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.

8. Health & Saf. Code section 44072.6 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.

STATUTORY PROVISIONS

9. Bus. & Prof. Code section 9884.7 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 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.
>
> . . . .
>
> (c) Notwithstanding subdivision (b), the director may refuse to validate, or may invalidate temporarily or permanently, 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.

10. Bus. & Prof. Code section 9884.8 states, in pertinent part, that "[a]ll work done by an automotive repair dealer, including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied . . ."

///

///

///

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

> 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 . . .

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

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

> The director may suspend, revoke, or take other disciplinary action against a license as provided in this article if the licensee, or any partner, officer, or director thereof, does any of the following:
>
> (a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and Saf. Code § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.
>
> . . . .
>
> (c) Violates any of the regulations adopted by the director pursuant to this chapter.
>
> (d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured . . .

14. Health & Saf. Code section 44072.8 states that 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.

///

///

COST RECOVERY

15. Bus. & Prof. 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.

CONSUMER COMPLAINT (KELLEY): 2001 PONTIAC SUNFIRE

16. On January 8, 2008, consumer Carol Jean Kelley ("Kelley") took her 2001 Pontiac Sunfire to Respondent's facility because it intermittently would not start. Kelley told Respondent that the fuel pump had been replaced by PI Motorsports ("PI") on December 28, 2007. Respondent told Kelley that he would perform diagnostic tests on the vehicle and then advise her of the problem. Kelley received Estimate #010247, which showed a labor charge of $89.50 and stated "VEHICLE INTERMITTENTLY WON'T START, CHECK AND ADVISE" and "CHECK ALL ELECTRICAL ADVISE."

17. On January 9, 2008, at approximately 10:00 a.m., Kelley contacted Respondent and was told by him that he should have explained that electrical diagnostics always cost two hours worth of labor. Kelley authorized the additional labor charge. Later that day, Respondent's technician, Seth, contacted Kelley to let her know that no problems with the vehicle could be found that would cause it not to start and that the electrical was a "total mess" and was all "hacked up." Kelley picked up her vehicle after hours from Respondent's facility along with Respondent's invoice, which stated "IF SYMPTOMS REOCCUR DIAGNOSTIC WILL CONTINUE AT NO CHARGE."

18. On January 15, 2008, Kelley's vehicle was towed to Respondent's facility for further diagnostics as it would not start. At approximately 10:25 a.m., Respondent contacted Kelley and told her that the electrical wiring to the fuel pump should have been replaced when PI installed the new fuel pump in her vehicle and that the wiring had burnt out the fuel pump. Respondent also told Kelley that, since the fuel pump did not appear to be a factory part, he could not warranty it, and it would cost approximately $450 for parts and tax and approximately $280 for labor to replace the fuel pump and wiring. Kelley authorized the repair of the vehicle, paid

for the repairs by phone via credit card and Itex (a bartering organization) credit, and requested that Respondent provide her with the fuel pump removed from her vehicle. Kelley picked up her vehicle, which contained her old fuel pump and Respondent's Invoice #4315 totaling $726.37, after hours from Respondent's facility.

19. Kelley subsequently took the fuel pump that was alleged to be defective back to PI to inquire about the warranty. At that time Kelley was informed that the fuel pump was in good working condition.

20. On February 13, 2008, Bureau Representative Larry Leask ("Leask") inspected the fuel pump removed by Respondent from Kelley's vehicle and found it to operate normally.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

21. Respondent's automobile repair dealer registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading in that Respondent represented to Kelley that the fuel pump on her 2001 Pontiac Sunfire was defective and needed to be replaced. In fact, the fuel pump was not in need of replacement at the time the vehicle was taken to Respondent's facility.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

22. Respondent's automobile repair dealer registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in that he committed acts constituting fraud in that Respondent made untrue or misleading statements to Kelley, as set forth in paragraph 21 above, in order to induce Kelley to purchase unnecessary repairs on her 2001 Pontiac Sunfire, then sold Kelley unnecessary repairs, including replacement of the fuel pump.

///

///

///

THIRD CAUSE FOR DISCIPLINE

(Violations of the Code)

23. Respondent's automobile repair dealer registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with the provisions of Code section 9884.8 by failing to list on Invoice #4315 the electrical wire and connectors used to repair the wiring to the fuel pump on Kelley's 2001 Pontiac Sunfire.

FOURTH CAUSE FOR DISCIPLINE

(Departure from Trade Standards)

24. Respondent's automobile repair dealer registration is subject to disciplinary action pursuant to 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 the following material respects:

a. Respondent failed to confirm the condition of the fuel pump on Kelley's 2001 Pontiac Sunfire after repairing the wiring to the fuel pump.

b. Respondent replaced the fuel pump on Kelley's 2001 Pontiac Sunfire when, in fact, that part was new, was free of abnormalities, was within manufacturer's specifications, and/or was not in need of replacement.

FIFTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

25. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent, or deceitful act whereby another is injured, as follows: Respondent made a false or misleading representation to Kelley regarding her 2001 Pontiac Sunfire, as set forth in paragraph 21 above, in order to induce Kelley to purchase an unnecessary repair on the vehicle, i.e., the replacement of the fuel pump, then sold Kelley the unnecessary repair.

///

UNDERCOVER OPERATION #1: 1992 CHEVROLET S10 PICKUP

26. On December 20, 2006, a Bureau Representative acting in an undercover capacity and using the alias Ernesto Velazquez ("Velazquez"), took the Bureau's 1984 Chevrolet Monte Carlo to Respondent's facility and requested a smog inspection. An open wire in the vehicle's computerized Mixture Control ("MC") solenoid circuit had been created and a burnt-out bulb installed in the system MIL light socket, causing the vehicle to fail a smog inspection. Velazquez signed and received a copy of a written estimate, then left the facility.

27. At approximately 1620 hours that same day, Velazquez telephoned the facility and spoke with Respondent. Respondent told Velazquez that the vehicle failed the smog inspection and needed a diagnosis for an additional fee of $79. Velazquez authorized the diagnosis.

28. On December 21, 2006, at approximately 1100 hours, Velazquez telephoned the facility and was told that they were waiting for diagnostic results.

29. On December 22, 2006, at approximately 1630 hours, Velazquez telephoned the facility and was told by Respondent that additional time was needed to diagnose the vehicle for a total fee of $159. Velazquez authorized the additional diagnosis.

30. On December 26, 2006, at approximately 1600 hours, Velazquez telephoned the facility and was told by Respondent that the vehicle needed additional electrical checks, a bulb needed replacement, a defective wire to the MC solenoid needed repair, and a Throttle Position Sensor ("TPS") computer code kept coming back. Respondent told Velazquez that the total cost of the repair would be $400, which Velazquez authorized.

31. On December 27, 2006, at approximately 1600 hours, Velazquez telephoned the facility and was told the repairs were complete.

32. On December 28, 2006, at approximately 0815 hours, Velazquez paid the facility $428.04 and received copies of an invoice and the two vehicle inspection reports ("VIR") for the smog inspections.

///

///

33. On January 10, 2007 and January 11, 2007, Bureau Representative Leask inspected the vehicle and found that the TPS sensor had been replaced when, in fact, the only repairs needed were the replacement of the MIL light bulb and repair of the MC solenoid circuit open wire. Further, the new TPS sensor Respondent had installed in the vehicle was not correctly adjusted.

SIXTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

34. Respondent's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which he knew or in the exercise of reasonable care should have known to be untrue or misleading. Respondent represented to Bureau Representative Velazquez that the Bureau's 1984 Chevrolet Monte Carlo needed a new TPS sensor. In fact, the TPS sensor was not in need of replacement. Further, the only repairs needed on the vehicle were the replacement of the MIL light bulb and repair of the MC solenoid circuit open wire.

SEVENTH CAUSE FOR DISCIPLINE

(Fraud)

35. Respondent's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act constituting fraud, as follows: Respondent made a false or misleading representation to Bureau Representative Velazquez regarding the Bureau's 1984 Chevrolet Monte Carlo, as set forth in paragraph 34 above, in order to induce Velazquez to purchase an unnecessary repair on the vehicle, i.e., the replacement of the TPS sensor, then sold Velazquez the unnecessary repair.

///

///

///

///

EIGHTH CAUSE FOR DISCIPLINE

(Departure From Trade Standards)

36. Respondent's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. 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: Respondent failed to properly repair the Bureau's 1984 Chevrolet Monte Carlo by failing to properly adjust the TPS sensor on the vehicle.

NINTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

37. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44016 of that Code by failing to perform the repairs on the Bureau's 1984 Chevrolet Monte Carlo in accordance with established specifications and procedures.

TENTH CAUSE FOR DISCIPLINE

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

38. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with Regulation 3340.41 by failing to follow applicable specifications and procedures when performing the repairs on the Bureau's 1984 Chevrolet Monte Carlo.

ELEVENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

39. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent, or deceitful act whereby another is injured, as follows: Respondent made a false or misleading representation to Bureau Representative Velazquez regarding the Bureau's

1984 Chevrolet Monte Carlo, as set forth in paragraph 34 above, in order to induce Velazquez to purchase an unnecessary repair on the vehicle, i.e., the replacement of the TPS sensor, then sold Velazquez the unnecessary repair.

TWELFTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

40. Respondent's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section 44016 of that Code by failing to perform the repairs on the Bureau's 1984 Chevrolet Monte Carlo in accordance with established specifications and procedures.

THIRTEENTH CAUSE FOR DISCIPLINE

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

41. Respondent's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with Regulation 3340.41 by failing to follow applicable specifications and procedures when diagnosing the cause of the emissions failure and performing the repairs on the Bureau's 1984 Chevrolet Monte Carlo.

FOURTEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

42. Respondent's advanced emission specialist technician license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent, or deceitful act whereby another is injured, as follows: Respondent made a false or misleading representation to Bureau Representative Velazquez regarding the Bureau's 1984 Chevrolet Monte Carlo, as set forth in paragraph 34 above, in order to induce Velazquez to purchase an unnecessary repair on the vehicle, i.e., the replacement of the TPS sensor, then sold Velazquez the unnecessary repair.

///

UNDERCOVER OPERATION #2: 1988 OLDSMOBILE CUTLASS CIERA

43. On August 9, 2007, a representative of the Bureau acting in an undercover capacity and using the alias Claire Johnson ("Johnson"), took the Bureau's 1988 Oldsmobile Cutlass Ciera to Respondent's facility and requested a smog inspection, a brake inspection, and diagnostics to determine why the air conditioning did not function. The computer knock sensor was disconnected on the Bureau-documented vehicle, causing the vehicle to fail a smog inspection. In addition, the vehicle's air conditioning clutch relay was made defective, causing the system not to operate. Johnson signed and received a copy of a written estimate, then left the facility.

44. On August 10, 2007, Johnson received a telephone message from Respondent. Respondent stated that the air conditioning system needed to be retrofitted, the front calipers were leaking brake fluid, the rotors were below specifications, and the vehicle had failed the smog test.

45. On August 13, 2007, at approximately 0820 hours, Johnson telephoned Respondent. Respondent told her that the vehicle had failed smog and would need a diagnosis; the vehicle needed front brakes, including brake pads, rotors, and calipers; and the air conditioning system needed to be retrofitted. Respondent told Johnson that the total cost of the repairs would be $1,056.56 and he would call her back with an estimate for any additional repairs. Johnson authorized the vehicle repairs.

46. On August 14, 2007, Johnson received a telephone message from Respondent. Respondent stated that the vehicle's air conditioning and brakes were working, the vehicle had passed smog, and the vehicle was ready to be picked-up.

47. On August 15, 2007, Johnson paid the facility $1,082.83 and received a copy of an invoice and the vehicle inspection report ("VIR") for the August 14, 2007, smog inspection. That same day, Bureau Representative Leask inspected the vehicle and found that the front brake calipers, disc pads, and disc rotors had been replaced and the air conditioning system recharged or retrofitted to R134 refrigerant when, in fact, the only repairs needed were the reconnection of the knock sensor wire and replacement of the AC compressor clutch relay.

Further, the left inner disc pad staked retainer spring Respondent had installed on the vehicle was broken. Leask also found that the air conditioning relay had been replaced, but was not listed on Respondent's invoice.

FIFTEENTH CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

48. Respondent's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which he knew or in the exercise of reasonable care should have known to be untrue or misleading. Respondent represented to Bureau Representative Johnson that the Bureau's 1988 Oldsmobile Cutlass Ciera needed the front brake calipers, disc pads, and disc rotors replaced and the air conditioning system retrofitted. In fact, the front brake calipers, disc pads, and disc rotors were not in need of replacement and the air conditioning system did not need to be retrofitted. Further, the only repairs needed on the vehicle were the reconnection of the knock sensor wire and replacement of the AC compressor clutch relay.

SIXTEENTH CAUSE FOR DISCIPLINE

(Fraud)

49. Respondent's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed an act constituting fraud, as follows: Respondent made a false or misleading representation to Bureau Representative Johnson regarding the Bureau's 1988 Oldsmobile Cutlass Ciera, as set forth in paragraph 48 above, in order to induce Johnson to purchase unnecessary repairs on the vehicle, i.e., replacement of the front brake calipers, disc pads, and disc rotors and retrofitting of the air conditioning system, then sold Johnson the unnecessary repairs.

///

///

///

SEVENTEENTH CAUSE FOR DISCIPLINE

(Departure From Trade Standards)

50. Respondent's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. 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: Respondent failed to properly repair the Bureau's 1988 Oldsmobile Cutlass Ciera by installing a broken left inner disc pad staked retainer spring on the vehicle.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Performing Repairs Without Authorization)

51. Respondent's automotive repair dealer registration is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(6), in that he failed to comply with Code section 9884.9, subdivision (a), by failing to obtain Johnson's written or oral authorization prior to replacing the air conditioning relay on the Bureau's 1988 Oldsmobile Cutlass Ciera.

NINETEENTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

52. Respondent's smog check station license is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent, or deceitful act whereby another is injured, as follows: Respondent made a false or misleading representation to Bureau Representative Johnson regarding the Bureau's 1988 Oldsmobile Cutlass Ciera, as set forth in paragraph 48 above, in order to induce Johnson to purchase unnecessary repairs on the vehicle, i.e., the replacement of the front brake calipers, disc pads, and disc rotors and retrofitting of the air conditioning system, then sold Johnson the unnecessary repairs.

///

///

OTHER MATTERS

53. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may invalidate temporarily or permanently, the registrations for all places of business operated in this state by Respondent William Chip Carroll, owner of Blue Ribbon Automotive, upon a finding that said Respondent has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

54. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License Number RC 210627, issued to William Chip Carroll, owner of Blue Ribbon Automotive, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

55. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 151506, issued to William Chip Carroll, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

PRAYER

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

1. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number ARD 210627, issued to William Chip Carroll, owner of Blue Ribbon Automotive;

2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to William Chip Carroll;

3. Revoking or suspending Smog Check Station License Number RC 210627, issued to William Chip Carroll, owner of Blue Ribbon Automotive;

4. Revoking or suspending Advanced Emission Specialist Technician License Number EA 151506, issued to William Chip Carroll;

5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of William Chip Carroll;

6. Ordering Respondent William Chip Carroll individually and as owner of Blue Ribbon Automotive, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 12/2/08

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

03562110LA2008900246
clp; 11/5/08
Blue Ribbon Autmotive.acc.wpd